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on

The Good The Bad The Ugly

of FCRA Provisions 2010 & Draft Rules

**By Subhash Mittal, Director
SMA Management Services (P) Ltd**

Current Effective Status

□ FCRA 2010

- Bill was tabled in Rajya Sabha in 2006 and passed in Rajya Sabha on 19th August 2010
- Introduced in Lok Sabha on 27th Aug 2010 and passed the same day.
- President assent received on 27th September 2010
- It was published in the Gazette on the same day.
- However 'Not in Force As Yet' thus the application of the 2010 Act is still in abeyance.

□ Draft Rules 2010

- Draft rules placed on MHA website and comments invited by 31st March 2010.

The GOOD



Improvements

- ❑ New Act is better structured and rationalised.
- ❑ Several terms being used in the Act have been defined (examples, person as well as relative). Although relative is a very long list.
- ❑ More than one bank account permitted. (S.17 (1))
- ❑ Scholarships / stipend have been exempted from under FCRA (S.4g)
- ❑ Power of revision accorded in the Act, which was not their earlier (S. 32)
- ❑ Earlier Act did not give any procedure on how organisations of 'political in nature but not political parties' were identified under FCRA. No recourse for questioning Dept.'s decisions. Now such organisations would be given opportunity to respond. (S.5)
- ❑ Foreign Hospitality to be extended to 'any other body owned or controlled by the Govt.' (S.9)
- ❑ Application for taking permission for foreign hospitality can be made upto 2 weeks before the hospitality is to be accepted. (Rule 7)
- ❑ S.7 allows transfer of funds (upto 10%) to un-registered orgs.

More Transparency

- ❑ Several procedures codified, such as earlier there were no guidelines on matters that Govt. will examine before granting FCRA registration / prior permission. Now S. 12 codifies all the requirements which the Dept. was verifying as part of its internal practices.
- ❑ Any person with registration / having prior permission, if receives more than Rs 1 crore FC in a year, will need to disclose summary details of annual receipt as well as utilisation in public domain (website). GoI will also do the same.
- ❑ If an electoral candidate receives FC within 180 days prior to nomination, then s/he will have to give notice within 45 days of being nominated.
- ❑ Clarification on Fees – not to be treated as FC, incl. ones rec'd by education bodies. (S 2(1) h Expl. 3)
- ❑ Clarification on Interest – now any interest or any other income earned on FC funds will be treated as FC money. (S 2(1) h Expl. 2)
- ❑ Speculative activities have now been properly defined (Rule 4).
~~These were earlier covered by the NGO Charter on FCRA~~

website The Good, The Bad & The Ugly of FCRA 2010 by S. Mittal, IIC, 15-3-2011

A close-up, high-angle shot of a man's face. He is wearing a dark, wide-brimmed hat and a dark jacket. His expression is serious and intense, looking directly at the camera. The lighting is dramatic, highlighting the texture of his skin and the details of his facial hair. A red horizontal line is drawn across the middle of the image, passing behind the text.

The BAD

Registration & its maintenance made more difficult

- ❑ Changing of Form Nos. will cause mistakes, headaches for people required to comply. This could have been easily avoided.
- ❑ Rules & Forms do not refer to sections to which these are relevant. Likely to cause a lot of confusion.
- ❑ Need to apply for renewal every 5 years. It is rather bothersome and is inconsistent with Govt.'s line of thinking.
- ❑ Now Fee has to be paid for renewal (₹ 500/-), new applications (₹2000/-; ₹1000/-).
- ❑ Hard copy of applications to be submitted within 30 days. If not submitted than application lapses. Next application cannot be moved for another 6 months.
- ❑ Earlier Govt. was time bound in responding a maximum of (90+30) days. However now Govt. will reply within 90 days but can take longer by giving reasons.

Registration.....

- ❑ Power to cancel the Registration certificate. (S. 14) Earlier power was not explicit in the Act (Govt. used blacklisting). However now no new application can be moved for 3 years.
- ❑ Power to suspend Registration certificates (S.13) upto a maximum of 180 days.
- ❑ Assets to vest with the Govt wherever registration cancelled or a registered/ permitted person ceases becomes defunct.

Increased Bureaucracy

- ❑ Govt. has sweeping powers under the Act covering receipt of any FC by notifying. (S. 11(3)).
- ❑ Govt has given itself similar powers even without notifying if it considers that FC/FH will prejudicially affect sovereignty, public interest, etc. (S.9)
- ❑ If any violation of the Act determined, unutilised/un-received funds cannot be utilised/received. (S.11(2)).
- ❑ Earlier only newspapers were covered now even news channels as well as web channels involved in production and broadcast of audio/visual news, current affair programmes. S3(1).
- ❑ Specific persons involved in such programmes also covered.

Increased Bureaucracy

- ❑ Need to attach bank statements with the Annual Return (FC6).
- ❑ Banks are now required to report all receipts of FC within 30 days, wherever a person required to obtain Registration / Prior Permission but has not obtained it so far. (Rule 15(1))
- ❑ If Reg./PP cancelled, then custody of bank funds, assets vests with the Govt. (S.15, R.14)

The UGLY



Errors & Blunders

- ❑ Rules do not define financial limit of article, earlier ₹1000/- (S.2(1)h; R.8) – seems to be an error.
- ❑ No rule specified for books of account. Earlier rule specified double entry (old R.8)
- ❑ For compliance for funds being rec'd from 'Relative' not just persons falling within the scope of FCRA to report but 'anyone receiving FC of more than ₹1 lakh to report. (R. 6 & S3&4). Even Form FC1 does not clarify this.
- ❑ Rule 23 (1) requires that for every transfer of FC to other organisations (incl. registered) application would need to be made and funds may be transferred only with Govt permission (R23(2)).
- ❑ Rule 14(2) refers to Rule 12 (a), this does not exist.

Likely to cause Hardships

- ❑ Renewal of all the existing FCRA registration to expire 5 years after this section of the Act becomes effective. Likely to cause huge bottlenecks. (S. 11)
- ❑ Detailed rule relating to Administrative Expenses likely to cause endless interpretations. Instead Govt should have given overriding principles with the help of ICAI. (R. 5)
- ❑ Applications pending when the Act becomes applicable would need to deposit fee. This will cause unavoidable hardships. (R. 9(5)). Cases would be rejected if persons not aware of the same. Applications cannot be revived for 6 months.
- ❑ Banks to report receipt of FC of ₹1 crore or more singly or in aggregate within 30 days for all persons, including unregistered. (S 17(2);R 15)

Thank You.
