

FCRA ROUNDTABLE

15TH March 2011, India International Centre, New Delhi

Comparative Study of FCRA Provisions

S.No.	FCRA 2010	FCRA 1976	COMMENTS
CHAPTER I : Preliminary			
1.	S. 1 No major change in the scope of the Act.	S. 1	Act was notified in the Gazette on 27 th September 2010. However rules for the said Act will be finalised only after 31 st March 2011.
2.	S. 2 <u>New Definitions</u> b) Authorised person in foreign exchange e) certificate f) company g) foreign company k) Panchayats included in the definition of Legislature l) notification m) person p) prescribed authority r) relative <u>New Definitions as provided under rules</u> b) Chartered Accountant		
3.	S. 2 (1) (h) (i) Article above Rs ? to be treated as foreign contribution	S. 2 (c) (i)	Article above ₹ 1000 to be treated as foreign contribution. Act states that the value of the Article to be defined in the Rules. However rules have not defined the same. Seems a slip.
4.	S. 2 (1) (h) Expl. 2 Interest earned in a Bank a/c to be treated as foreign contribution.	New	- Currently interest treated as foreign cont. as per practice / clarifications provided by the dept., now it has been formally specified in the Act.

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5.	S. 2 (1) (h) Expl. 3	Fee (incl. ones rec'd by educational bodies) as well as funds rec'd in the normal course of business to be excluded from definition of foreign contribution.	New	-	Again doubts used to be raised towards consultancy fees. This provision clarifies the situation in this regard. Fees for education courses will also not be regarded as foreign fees. Contribution towards sale of publications, etc. may not be treated as foreign contribution as long as it is done in the ordinary course of business. Thus anything which is not fee, (such as grants / donations) could be regarded as foreign contribution.
6.	S. 2 (1) (m)	Person defined as - Individual, - HUF - Association, - S. 25 company	New	-	
7.	S.2 (1) (r)	Relative to be defined as per Companies Act 1956.	New	-	S. 6 defines relative as (i) members of HUF (ii) husband & wife (iii) as per a list under Schedule 1A (a very long list consisting of at least 22 relations)
CHAPTER II : Regulation of Foreign Contribution & Foreign Hospitality					
8.	S. 3 (1) c	In addition to earlier requirements, now no foreign contribution to be accepted by any organisation owned by Govt.	S. 4 (1) c	This is in addition to the earlier requirements of Judge, Govt. servant or employee of any corporation.	Earlier provisions have been retained, but corporation has been added.
9.	S. 3 (1) g	Any association or company involved in production or broadcast of audio / visual news even if	New		Earlier only newspapers were covered, now the Act recognises the latest modes of mass-media, such as TV channels,

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		<p>these are conducted through web/ internet or any other mode of mass communication.</p> <p>Definition of electronic form under IT Act 2000. r) "electronic form" with reference to information means any information generated, sent, received or stored in media, magnetic, optical, computer memory, micro film, computer generated micro fiche or similar device;</p>			web, internet, etc.
10.	S. 3 (1) h	Correspondent or columnist, cartoonist, editor, owner of the association or company referred to in previous clause.	S. 4 (1) b	Earlier such persons were limited to registered newspaper.	Considering that in today's age, columnists need not even stay in India and make their contributions electronically, there is a need to understand what exactly the Govt. wishes to control and is it really successful in that.
11.	S. 3 (3) (i)	No person receiving any currency, whether Indian or foreign, from a foreign source on behalf of any <u>person</u> or <u>class of persons</u> , referred to in section 9, shall deliver such currency — (a) to any <u>person</u> other than a person for which it was received	S. 4 (3) (i)	No person receiving any currency, whether Indian or foreign, from a foreign source on behalf of any <u>association</u> referred to under S6(1) shall deliver such currency — (a) to any association or organisation other than the association for which it was received.	Earlier the prohibition was basically that funds will not be delivered to any other NGO than for which it was meant, now it is basically to cover organisations not covered elsewhere in the Act and which are specifically banned by the Central Govt.

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12.	S.4 (e)	<p>This section mainly covers exceptions to the all-pervading provisions made under S. 3:</p> <ul style="list-style-type: none"> - from his relative. <p>For definition of relative see above.</p>	S. 8 (e)	<p>Even receipts from relative required prior permission from the Govt. unless amount rec'd per annum does not exceed, Rs 8000/-.</p> <p>Intimation for this receipt was still required. However surprisingly no Form was prescribed for the same in the rules.</p>	<ul style="list-style-type: none"> - S. 4 now covers all the exceptions which were covered earlier under.S.8. - Receipts from relative of only more than Rs 1 lakh would require permission. Thus a relaxation. (Rule 6) - However the way Rule has been framed 'Any person receiving foreign contribution in excess of Rs 1 lakh or equivalent in a financial year from any of his relatives shall inform the Govt. through Form FC1, within 30 days. - Even Form FC1 does not clarify that this return is in context of Section 3 & 4. Thus one could simply interpret it as 'anyone'. Needs amendment.
13.	S.4 (g)	<p>The Act now allows receipt of funds for scholarship, stipend or funds of like nature, without any limits / govt. monitoring.</p>	S. 7	<p>All receipts of funds above ₹36,000/- per academic year need to be intimated to the Govt. within 30 days (if residing outside India than 60 days).</p>	<p>Rules for stipend and scholarships have been relaxed in a significant manner. Earlier a complete section (S.7) was covering the procedure relating to stipend / scholarships, which are just taken as exceptions under the exceptions section.</p>
14.	S. 5	<p>This Provision identifies the procedure for declaring an organization of 'Political nature, but not a political party'.</p> <p>This procedure</p>	S.5	<p>Covered only what an organisation once declared of 'Political nature, but not a political party' could receive such funds. It</p>	<p>While the 1976 Act covered organisations of a Political nature, not being a political party through only one section (S.5), mainly specifying what they could not do or how they could receive</p>

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		<p>includes:</p> <ul style="list-style-type: none"> - Govt. to specify grounds on which a organization can be declared as such under this category. - Govt. to give due notice, - Affected organization to give representation - All orders to be made in a time-bound manner. 		<p>did not have any procedure on how Govt. could come to such a conclusion. Thus no transparency and on what relief were available to an aggrieved organization.</p>	<p>foreign contribution, S. 5 under the New Act elaborates on the procedure for Govt. on how to declare such an organisation (Rule 3), and what recourse are available to the affected party, including time-bound manner in which Govt. has to act.</p> <p>However some of the rules could be a bit of political mine. As many organisations could fall foul of this rule.</p>
15.	S. 6	<p>No foreign hospitality to be accepted by legislator, office bearer of a political party, judge, Govt. servant, employee of a corporation or any other body owned or controlled by the Govt. shall not accept any foreign hospitality without prior approval of the Central Govt. If done in emergency illness then intimate within 30 days.</p>	S.9		<p>Exactly same. New Act has made it all encompassing by adding 'any other body owned or controlled by the Govt.'</p> <p>Rule 7: Prior permission for emergent medical aid above Rs 1 lakh may be made within 60 days of receipt of hospitality on a plain paper. For other hospitality only prior permission should be taken (application to be made at least 2 weeks before the proposed date of onward journey)</p>
16.	S.7	<p>No authorized person who has received FCRA funds can transfer to another non-registered / non-authorized organization, except as permitted under the rules.</p>	New		<p>Rule 23 (4) now permits upto a maximum of 10% of the total foreign contribution received by the transferor, provided a necessary permission for the same is obtained in Form FC10.</p> <p>However the Rule 23 (1) requires that 'any</p>

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				<p>person intending to transfer the FC may make an application in Form FC-10. The Govt. may permit the transfer in respect of a person who has been granted the certificate of registration or prior permission, in case the recipient person has not been proceeded against under any provision of the Act.’ Thus in a way rules have made it obligatory to apply even to the registered organizations when there is no specific provision in the Act to do so, Since S. 7 only covers organizations which are not registered. Thus a relief has become a major irritant for the sector (I am sure also a major bottleneck for the Dept. to manage large number of applications that inevitably will follow.), simply because of poor drafting. The sector needs to provide feedback to the MHA to suitably amend the provision (e-mail address: ds-fcra@nic.in).</p>
17.	S.8 (1) a	Person receiving funds not to utilize the same for ‘speculative purposes’.	New	<p>Rule 4 defines speculative activities. It covers investment in shares including mutual funds, land and similar schemes promising high returns. However investment in debt-based securities has been allowed.</p>

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18.	S.8 (1) b	No foreign contribution funds to be used in a manner that these result in meeting more than 50% in administrative expenses.	New		<p>While intention of this provision seems honorable, i.e. that funds meant for programmes are used productively. However it is quite likely that this provision would result in a lot of interpretations and 'split hairs'. Rule 5 identifies 'Admin. Expenses'. These include:</p> <ul style="list-style-type: none"> - salaries, wages, travel expenses of the executive committee members, - salaries, hiring costs, travel expenses for persons undertaking management activities - all consumable expenses (electricity, telephone, postal, repairs to premises from where association is functioning, printing & stationary, transport, travel charges by members of executive committee, - office equipment, - accounting and administration costs, - running & maintenance of vehicles - writing and filing reports - legal and professional charges - rent & other utilities <p>However expenditure incurred directly towards furtherance of</p>
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					the stated objectives, e.g. salaries of doctors of a hospital, salaries to teachers, etc. or salary of persons engaged in training or of persons engaged in collection of data, provided organization is primarily engaged I such activities.
19.	S. 9	Power of Central Govt. to prohibit receipt of foreign contribution, etc., in certain cases.	S. 10	No major change, except that earlier the provision specified only association, now it covers all organisations.	Seems a logical change, since associations, etc. are already governed by this Act. Amendment now gives the central govt. power to require any organization to comply with its diktats.
20.	S.10	Power to prohibit payment of currency, article, security received in contravention of the Act. Rule 8 specifies the procedure on how the govt. will ensure issue of prohibitory order, wherever violation occurs.	S. 12	No major change, except at some place the earlier provision did not mention 'security', which has now been covered.	
CHAPTER III : Registration					
21.	S.11 (1) & (2)	NPOs to receive funds based on registration/ Prior permission	S.6 (1) (a) & (1A)	No change.	In case of any violation of the rules is established, then remaining funds cannot be utilized.
22.	Proviso Rule (10) & S. 11 (1) & (2)	Registration / Prior permission issued under FCRA 1976 to be considered as if issued under the new Act (FCRA 2010). However the registration will be valid for a period of 5 years from the date when this	New		- All existing registrations will be valid only for 5 years from the date when the relevant provisions become effective. Considering that all organizations having registration under previous Act will become due at

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		section becomes applicable.			<p>the same time, the dept. would do well to plan in advance for ensuring renewal of registrations, otherwise it will cause a lot of unnecessary delays & heartburns. Perhaps that is why the dept. now requires that a renewal application be filed online six months prior to expiry.</p> <ul style="list-style-type: none"> - Neither a prior permission nor a registration application may be moved for a period of 6 months, if the previous application has lapsed. For example, if hard copy is not submitted within 30 days of online filing. (Rule 9(1)b) - Persons who have applied under FCRA 1976 and their applications are pending will be treated as applications filed under the new Act and hence would need to deposit fees as required. (Rule 9(5))
23.	S. 11 (3)	<p>Gives power to the central govt. to require prior permission by notifying:</p> <ul style="list-style-type: none"> - any person / class of persons, 	New		<p>Gives sweeping powers to the Central Govt. to control receipt of foreign funds by anyone, anywhere. Normally when the Govt. Is given such powers, there are</p>

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		<p>mis-utilisation of funds</p> <ul style="list-style-type: none"> - Not prosecuted or convicted for any offence. - Office bearers / directors of applicant organization have not been prosecuted / convicted - Not prosecuted / convicted for conversion through inducement - Not prosecuted / convicted for creating communal tension - Not likely to advocate sedition / violent methods - Not violated FCRA - Should have been involved in undertaking activities for which funds are being sought - Reasonable project for prior permission 			
26.	S. 13 Rule 13	<p>Gives power to suspend the certificate for upto a maximum period of 180 days, during which no funds can be rec'd.</p> <p>In case of suspension of registration, 25% of unutilized</p>	New		<p>Although specific power of suspension of certificate is not specified in the old Act, however it had power to prohibit utilization of funds, thus giving almost similar powers.</p>

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		amount may be utilized after obtaining prior approval.			
27.	S. 14	<p>Authority to cancel the certificate, after giving due opportunity to be heard.</p> <p>Once a certificate is cancelled, no further certificate / permission will be granted for a minimum of 3 years.</p>	New		Surprisingly this power was not available under the previous Act.
28.	S. 15 & Rule 14	<p>In case of cancellation, assets procured out of FC, whose certificate has been cancelled will vest as follows</p> <p>(i) remaining FC funds with the bank till the Govt. issues further directions.</p> <p>(ii) If a person whose certificate has been cancelled transfers FC to any other person rule 12 (a) will apply to the person who has rec'd such funds.</p> <p>(iii) Movable or immovable assets of the person who is in possession of movable / immovable assets acquired from FC, and if</p>			<p>In Rule (ii) there appears to be a typographical errors. As Rule 12 (a) does not exist. Could be 13 (a) ?</p> <p>Could have several implications on recordkeeping of the assets.</p>

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		that person's registration is cancelled or ceases to exist or becomes defunct, then interim custody of such assets vests with the District Magistrate.			
29.	S. 16	Certificate will need to be renewed within 6 months of <u>before</u> the expiry date. Normally Dept. will renew the same within 90 days of the receipt of the application. However if the Govt. is not able to do the same, it will communicate its reasons for the same.	New		Again until now the Govt was following the principle of time-bound approval. Govt. seems to be moving away from that principle.
CHAPTER IV : Accounts, Intimation, Audit & Disposal of Assets, etc.					
30.	S.17 (1) 1 st Proviso Rule 9 (1) (e) & Rule 9 (2) (e)	Opening of more than one bank accounts allowed in the same bank or even in other banks both in case of registrations as well as prior permissions. Opening of more than bank account needs to be informed to MHA within 15 days of opening any such accounts.	S.11 (1) b	FC could be rec'd only under one bank account as specified in the application for FCRA registration.	This is long pending demand of the sector as the original rule of one bank account created often rules which could not be complied with. This is certainly welcome.
31.	S. 18 Rule 12	In case a company receives more than Rs 1 crore in a financial year, it has to provide details both of	New		While this is a good move from the angle of transparency, however it may be noted that past attempts on similar disclosure had

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	S. 17 (2) Rule 15	<p>receipt as well as utilization in public domain.</p> <ul style="list-style-type: none"> - Banks will report to the Govt. wherever FC has been rec'd without receipt of the necessary certificate. - Banks will report to Govt. all cases where more than Rs 1 crore of FC is rec'd either in single transaction or in aggregate within a duration of 30 days by any person, whether registered or not under the Act. 	New	<p>to be withdrawn by the Govt. after a short time.</p> <p>Govt. wants to independently monitor who all are receiving foreign funds. Seems a Herculean task.</p>
32.	S. 18 Rule 20	<p>Every person receiving FC based on certificate / prior permission would submit a report in Form FC-6, accompanied by I&E, R&P & Balance sheet within 9 months of the closure of the financial year. The report has to be duly certified by a chartered accountant. The return has to be submitted alongwith a bank statement of the related FCRA bank a/c.</p> <p>A Nil report to be submitted even if</p>	Rule 4 (a) & FC3	<p>While most of the old rules have been followed, however requirement of submission of bank statement is new. Further there are no significant changes between old Form FC3 & new Form FC6.</p>

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		no contribution rec'd.			
33.	S. 19	Every person who has been granted a certificate or given prior approval to maintain accounts in the manner as prescribed for the FC rec'd and how these have been utilized.	S. 13 & Rule 8	Earlier Rule 8 prescribed that a cash book and ledger account to be maintained in double-entry basis and that a separate bank account to be maintained.	While the section states that accounts to be maintained as prescribed there is no specific rule regarding the same.
34.	S. 20	Power to the Govt. to enter any premises at any reasonable time for the purpose of the auditing the said books of accounts. Officer who can undertake the audit can be only a Gazetted officer holding a Group A post under central govt.	S 15A	Generally same, except in case of a political organisation, old rules stated that the Group A officer must have been one at least for last 10 years.	Thus a precaution in case of political party has been taken away.
35.	S. 21	If a candidate receives FC within 180 days immediately preceding the date of nomination as a candidate, then s/he will have to give intimation to the Dept. in form FC-9 within 45 days of being nominated as a candidate.	New		While a candidate is prohibited from receipt of funds, once a person has been nominated as a candidate for election. However this provision covers, even 6 month period prior to election period.
36.	S.22	In case a person who has rec'd FC and who becomes defunct or ceases to exist then all the assets of such person would be disposed of in the manner as laid	New		No specific rule prescribed for such situation, but Govt. could use Rule 14 to dispose off the assets.

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		down under applicable law in force. In case there is no such law applicable, then Govt. will specify the procedure.			
CHAPTER V, VI : Inspection, Search & Seizure, Adjudication					
37.	Ss. 23 - 31	Provisions relating to Inspection, Search & Seizure, Adjudication & Appeal	S. 14-21		Sub-clause (3) now lays down exact procedure of inventorising and getting the correctness of the inventory certified by a Magistrate. S 26 (4) refer to an application under sub-section (2), while in actual fact application is made under sub-section (3).
CHAPTER VII : Appeal & Revision Inspection, Search & Seizure, Adjudication					
38.	S 32	(1) Power of Revision accorded under the Act, either by the Govt. on its own or on application moved by a FCRA registered person. (2) However Govt. on its own would not revise any order which is more than 1 year old. (3) Applicant has to move within 1 year when the order was communicated or he otherwise came to know of it, whichever is earlier along with a fee of ₹1000/-	New		This is a welcome provision.
CHAPTER VIII : Offences & Penalties					
39.	S. 33	If any person knowingly gives false intimation /	New		

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		concealment of information about (i) FC rec'd while he was prohibited to receive the same [S 9(c)], or (ii) provides false information while filing returns as required of FC rec'd and utilized (iii) or seeks prior permission / registration then he can be convicted by a court for a maximum of 6 months imprisonment or fine or both.			
40.	S. 34	For transfer of article, currency, security in contravention of S.10 where s/he had been prohibited from such transfer, s/he may be punished with imprisonment for a term of 3 year or with fine or with both.	S. 22	No change.	
41.	S. 35	Whoever accepts or assists in accepting FC in contravention of any provision of this Act, shall be punishable with an imprisonment for a term of 5 years or with fine or with both.	S.23 (1) S. 23 (2)	No change. Punishment for acceptance of foreign hospitality upto 3 years or with fine or both.	S. 23 (2) seems to have been totally dropped.

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42.	S.36	Penalties in cse of confiscation of article, currency, security.	S. 36	No change except security now added.	
43.	S.37	If non-compliance of the Act for which no specific penalty is provided then the punishment can be upto a maximum of I year imprisonment or with a fine or both.	S. 25	Same, except under old provision fine was limited to ₹1000/- . In the provision fine amount has not been specified.	Why fine amount has not been specified?
44.	S.38	If a person is convicted under S. 35 or S.37 in regard to acceptance /utilization of FC second time then s/he cannot accept FC for next 5 years from the date of 2 nd conviction.	S. 25A	Basically same provision, except period for which funds cannot be accepted is 3 years.	Restriction enhanced from 3 to 5 years.
45.	S. 39	Offences by companies	S. 26	No change.	Considering company has been defined under the Act, still a new definition of company (to include body corporate, fir, society, trade union or other association of individuals) has been given. This seems to be inconsistent and appears to have happened, simply because exactly the same provision as earlier has been reproduced.
46.	S. 40	Court to take cognizance of offence only after previous sanction of the govt.	S. 27	No change	
47.	S.41 (1)	An application to Secretary may be	New		

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	(2)	made for any offence which is not punishable by 'imprisonment only' for compounding. The above will not apply to an individual or officer/ employee of an association who has committed an offence previously and was compounded within last 3 years.			
CHAPTER IX : Miscellaneous					
48.	S. 42	- Power to call for information or documents	New		
	S.43	- Investigation powers are same as that of an officer-in-charge at Police Station	S. 28	No change	
	S.44 (Rule 21)	- CBI or any other agency investigating cases under the Act to furnish quarterly return on progress on all cases.	New		
	S. 45	- No suit / other legal proceedings against any of the Govt. agencies or their officer for acting in good faith in pursuance of this Act.	S. 29		
	S. 46 – 48	Certain	S.30		

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	S. 49	administrative powers and power to make rules.	S.30 (3)		
	S.50	Procedure for laying of rules in parliament.	S. 31		
	S. 51	Power to exempt organizations from all or any provisions of this Act.	S. 32		
	S. 52	Not to apply to transactions between GoI and foreign governments.			
	S. 53	Provisions of this Act are in addition to, and not in derogation of the provisions of any other law.			
	S. 54	Power of GoI to remove any provisions which are found inconsistent, within 2 years of the commencement of the Act.			
		Provisions relating to repealing of FCRA 1976			