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on

Managing Changes in FCRA

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Background

- ❑ FCRA legislation background is of late 60s – early 70s.
- ❑ Act was legislated during Emergency
- ❑ Main objective is to ensure that the foreign funds are not used to subvert, influence national agenda.
- ❑ It does not cover foreign monies rec'd through commercial transactions.
- ❑ FCRA Legislation basically does it in three ways:
 - prohibits certain persons in sensitive positions (legislature, political parties, govt. servants, judges, persons from media)
 - by monitoring persons (incl. organisations) which wish to receive such funds / benefits - through requiring persons to obtain prior permission / registration
 - by monitoring subsequent receipt of funds and their usage (by asking persons receiving such funds to submit necessary information).

Important Definitions

□ **FCRA 2010 Effective 1 May 2011**

□ Person

- Individual
- HUF
- Association
- S. 25 company

□ Foreign Contribution (S.2(h))

- Donation, delivery or transfer made by a foreign source or from a person who has rec'd it from a foreign source of an article (not being gift for personal use below specified value), any currency or security.
- Includes interest / income earned from such foreign contribution.

□ Foreign Source (S.2(j))

- Foreign govt. or its agency
- Any international agency (exceptions UN, World Bank or any other notified by the Govt.)
- Foreign corporations, foreign companies, foreign trade union, foreign non-profit agencies, foreign citizens
- Indian company with more than 50% shareholding held by persons mentioned above.

□ Foreign Hospitality (S.2(i))

- Any offer, not being a purely casual one, made in cash or kind for providing travel to / free boarding, etc. in any foreign country or medical treatment.

MAJOR CHANGES



The GOOD



Improvements

- ❑ New Act is better structured and rationalised.
- ❑ Several terms being used in the Act have been defined thus providing clarity (examples, 'person' as well as 'relative').
- ❑ More than one bank account permitted. (S.17 (1)) – A huge Relief.
- ❑ Scholarships / stipend have been exempted from under FCRA (S.4g)
- ❑ Power of revision (S. 32)/ compounding (S. 41) accorded in the Act, which was not their earlier.
- ❑ S.7 allows transfer of funds (upto 10%) to un-registered orgs, although the Rule 24(4) now makes it quite difficult to achieve the purpose it was originally intended.
- ❑ Bank records of FCRA bank account to be preserved for a period of six years. (R 17 (8)). – A rule which needs to be applauded.

More Transparency

- Earlier in the Act or Rules there were no guidelines on matters that Govt. will examine before granting FCRA registration / prior permission. Now S. 12 (4) codifies several requirements which the Dept. was verifying as part of its internal practices.
However eligibility criteria for Registration still not included in legislative provisions.
 - Existence for three years.
 - Minimum of Rs 6 lakh spending during this period.

- 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) for that year as well as subsequent year. GoI will also provide summary details of all such persons on its website. (R 13)
- 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.

Govt. more proactive

- ❑ Govt appears more participative
- ❑ Willing to find solutions for problems
- ❑ Rule 24 (2) : Govt responded within a few days to provide relief to the affected agencies
- ❑ Better consultation & discussion
- ❑ Recognises its weaknesses and willing to take help from the NPO sector to improve its workings – Training sessions of its own staff
- ❑ Trying to work with the sector to reach out to more NGOs



The BAD



Compliance - Challenges

- ❑ Changing of Form Nos. will cause mistakes, resulting in unintended non-compliance. This could have been easily avoided.
- ❑ Rules 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 inconsistent with Govt.'s line of thinking (under Income Tax - S80G).
- ❑ Earlier for responding to Prior Permission application Dept. was time bound. A maximum of (90+30) days. However now Govt. will ordinarily reply within 90 days but can take longer by giving reasons.
- ❑ 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. Efforts need to be made on how this would not cause unintended lapses.
- ❑ Now Fee has to be paid for renewal (₹ 500/-), new applications (₹2000/-; ₹1000/-).

Compliance challenges.....

- ❑ Need to attach bank statements with the Annual Return (FC6).
- ❑ Power to suspend Registration certificates (S.13) upto a maximum of 180 days.
- ❑ 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 once cancelled.
- ❑ If Reg./PP cancelled, then custody of bank funds, assets vests with the Govt. (S.15, R.14)

Increased Bureaucracy

- ❑ Govt. in addition to S. 9 has sweeping powers under the Act covering receipt of any FC by notifying. (S. 11(3)). It would have been better if some grounds were given so that affected party has legal course.
- ❑ 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). This seems inconsistent with Govt.'s policy on FDI in the media (upto 74%) and spread of Community Radios through NPOs for funding, etc.
- ❑ Specific persons involved in such programmes also covered. In today's age when persons need not stay in the same country how it would be possible to ensure that columnists, cartoonists, promoters of web-sites etc. do not receive FC.
- ❑ A lot of requirements for bankers.



The UGLY



Likely to cause Hardships

- ❑ 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.
- ❑ Detailed rule relating to Administrative Expenses likely to cause endless interpretations. This could be further worked upon in partnership with ICAI for identifying Guiding principles which could become the basis of such classification. (R. 5)
- ❑ 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)
- ❑ Anyone receiving more than Rs 1 lakh of FC from 'Relative' to intimate the Govt within 30 days under FC-1. (R. 6). Father receiving from son could fall in this category.

Likely to cause Hardships.... *cont'd*

- ❑ Rule 24 (4) requires that for every transfer of FC to unregistered organisations DM's approval is required. Defeats the purpose of S. 7.
- ❑ Grounds on which organisations can be declared as 'Political Nature, but not a Political party' have been significantly broadened through rules, and could make working of several activists organisations quite difficult.

Slips

- Rules do not define financial limit of article, earlier ₹1000/- (S.2(1)h; R.8) – seems to be an omission.

Managing Changes

Opening of more than one bank account (S. 17, R9 (1e) & (2e))

- ❑ Funds can be rec'd only in single FCRA designated bank account
- ❑ For utilisation purpose one or more bank accounts in one or more banks may be opened
- ❑ No funds other than FC would be deposited in such accounts
- ❑ Intimation of such opening be given on a plain piece of paper within 15 days.
- ❑ Annual Return (FC-6) to reflect FC rec'd and include details in respect of the funds trfd. to other bank a/cs (R 17(2)).
- ❑ Bank statements of FCRA designated bank account certified by a Bank official to accompany FC-6.

Renewal of Registration

- ❑ Application to be moved 6 months prior to expiry
- ❑ In case of NPOs implementing multi-year project to apply 12 months in advance.
- ❑ Delay may be condoned but not later than 4 months after the registration expires. (R. 12 (8))
- ❑ If renewal not applied than registration ceases after the expiry period and new application has to be moved as if its a new registration under Rule 9.
- ❑ Sole reason for this huge investment of effort on the part of the Dept. asking more than 36000 organisations to apply for renewal appears to be to weed out organisations not filing returns (*a very large number*), NGOs blacklisted or proceeded against. Is it worth the costs, could a more efficient way be found.

Transfer of funds to Reg. Orgs

- ❑ Rule 24(2) requires that before transferring funds to other registered / prior permitted orgs. Application needs to be made using Form FC-10.
- ❑ Dept. issued clarification vide letters to various bodies specifying that the same not needed provided orgs. are not being proceeded against.
- ❑ How do transferors decide if transferee orgs. are being proceeded against ?
- ❑ When does proceeding starts, when the Dept. issues notice or takes action or initiates proceedings in the court of law. This needs to be established by the Dept.
- ❑ Sector could facilitate the same by referring to some list maintained at Dept.'s website – practical problems would need to taken care of.
- ❑ Defeats the very purpose of registration / prior permission.

Relative

- Under S. 4(e) relatives have been permitted to send FC to persons who have otherwise been prohibited under S. 3 – Political parties, electoral candidates, Judges, Govt. servants, etc. This provision seems a bit contradictory considering no purpose has been defined what this FC could be used for, thus allowing utilisation of FC for any purpose.
- Only saving grace seems to be that under Rule 6 intimations have been asked for all FC above R 1 lakh. Although seems rather onerous to ask entire populace to comply with this rule.

Issues on which further clarity needed

- ❑ Rule 4 does not allow speculative activities, however there is no clarity how persons who are already invested in such schemes should comply.
- ❑ Can FC be used to set-up marketing infrastructure, etc. for raising local donations/resources? This is not clear, particularly after provision on Admin. Exps. brought out under S. 8 (2) of FCRA 2010.
- ❑ FC rec'd towards Corpus. Can this be shown as utilisation or will it remain in the books as money rec'd and remaining unutilised ?
- ❑ Would subscriptions rec'd from foreign delegates towards international conference be treated as FC ?
- ❑ Foreign funds rec'd towards sale of publications, could this be regarded as FC ?

Issues on which further clarity needed *cont'd*

- As per explanation provided Interest earned or 'return' on investments is to be treated as FC. However does this mean any income arising out of any venture undertaken from FC funds would be treated as FC (e.g. surplus on training prog.) – seems too elastic.

Way Forward

- Institution of a dialogue / consultation mechanism with the NPO sector to help resolve issues becoming impediments in smooth functioning of the stakeholders.

Thank You.
