

Presentation at SRRF Legal Compliance Workshop

FCRA and Latest Developments

By Subhash Mittal, FCA (India), ACA (England & Wales)

Secretary, Socio-Research & Reform Foundation

E-mail: socio-research@sma.net.in

Introduction

- ❑ FCRA 2010 is a national security legislation to regulate acceptance and utilization of **Foreign Contribution (FC)**
- ❑ It became effective on 1st May 2011 by repealing FCRA 1976.
- ❑ Basic premise of FCRA is based on three facets:
 - Prohibits certain critical persons from receiving FC (S.3).
 - Permission granted to receive only after thorough inspection (S.11, S.12).
 - Monitoring of activities of utilization of Foreign Contribution (S.18).

Applicability:

- ❑ Whole of India incl. J&K
- ❑ Even applicable to associated branches or subsidiaries of Indian companies located outside India.
- ❑ All citizens of India.

Exception:

- Transactions between GoI and foreign Govts.

Amendments in Rules (Dec'15)

- ❑ New Rule 17A
- ❑ Other Returns (FC1) for (1) gift from relative, (2) FC rec'd by candidate for election (3) receipt of securities (4) donation in kind.
- ❑ FC2 : Prior permission for foreign hospitality
- ❑ FC3 : Prior Permission / Registration / Renewal
- ❑ FC4 : Annual Return
- ❑ FC5 : Unregistered NGOs
- ❑ FC6 : Following intimation of changes to be given electronically within 15 days for changes in
 - Name
 - Address (if within State),
 - Objects,
 - Bank/Branch/Designated FC A/c
 - Key members of the association, where it goes above 50%. Earlier this was a major irritant

LATEST DEVELOPMENTS

- ❑ FCRA's being cancelled for not having online annual return available.
- ❑ Notice issued that online filing of FC information on qtrly basis plus annual accounts.
- ❑ All interactions with FCRA Dept now based on e-functionality (2015 amended rules)
- ❑ Indian registered entities now being treated as non-FCRA entities, even if more than 50% shareholding held by foreign sources (Finance Act 2016)
- ❑ Penalties for late filing of annual Returns now reduced. However risks of non-filing for 3 years could end-up in cancellation of FCRA
- ❑ Updation of bank accounts
- ❑ Renewals – largely done but boomeranged
- ❑ Govt in overdrive on FCRA and a number of issues seem knee-jerk reactions.

Essential Requirements

- ❑ No NGO can receive foreign funds without FCRA permission / Registration. NO FCRA funds be transferred to non-registered NGOs.
- ❑ Separate Designated bank Accounts
- ❑ Utilisation bank accounts permitted
- ❑ No mixing of FCRA / Non-FCRA funds
- ❑ Separate books of accounts
- ❑ Filing of Annual audited Return
- ❑ Disclosing of quarterly information about receipt of foreign funds.
- ❑ Update any changes in trustees/ address / bank accounts on FCRA website.
- ❑ No contribution to political parties / political nature associations

Other Important Aspects of FCRA

- ❑ Renewal of FCRA Registration every 5 years
- ❑ Ensure not more than 50% spent on administrative purpose (see Rule 5 for definition of administrative purpose)
- ❑ FC funds cannot be used for speculative purposes (see Rule 4 for definition of speculative purpose)
- ❑ Keep record of all donors
- ❑ Foreign currency donations rec'd in Hundis of temples, gurudwaras, etc. to be treated as FC
- ❑ Corpus donations in FC allowed but must be supported by written instructions
- ❑ All assets procured from FC must be in the name of Association and not individuals
- ❑ Preserve all FCRA records for 6 years

Definitions : **Foreign Contribution** (S.2 (h))

- ❑ Any donation, delivery or transfer by **any foreign source** of
 - any currency (foreign or Indian)
 - any article (above Rs 25,000 of value) for personal use
 - any security including foreign security (Securities Contracts (Regulation) Act 1956)
- ❑ Interest on FC deposited
- ❑ Any other income derived from assets created from FC including – proceeds from sale of FC assets
- ❑ Even indirect transfers treated as FC (example: A (Foreign Source) gives to B (Indian). If B gives to another Indian C, then it will be treated as FC in the hands of C.
- ❑ Infusion of capital in a S.8 company
- ❑ Even unsecured loans / subsidised loans

Cont'd..... Foreign Contribution (S.2 (h))

Exceptions

- Fees (including delegation / conference fee) rec'd by any person including an Educational Inst (fee from foreign students).
- In the normal course of business, trade or commerce
- An article gifted costing less than Rs 25,000

Definitions : **Foreign Source** (S.2 (j))

- No definition of foreign source given but a list of category of persons given to identify what could be a foreign source:
 - Foreign Govts or its agencies (Foreign embassies in India, USAID, DFID, etc.)
 - International Agencies like Care Intl, Plan Intl, but does not include any agencies notified by GoI (108 agencies notified by Govt include UN, World Bank & affiliated agencies)
 - A company incorporated in a foreign country, including an MNC or a subsidiary of a Foreign company
 - Foreign Trust or foundation
 - Society, club, trade union or other association registered in a foreign country
 - Foreign citizens
 - **A company incorporated under Companies Act 2013 but more than 50% of its share capital held by foreign sources as defined above – since amended.**

Persons prohibited to receive FC/FH (S.3)

S. 3 identifies persons who are prohibited from receiving FC & Foreign Hospitality

- ❑ Candidates for elections
- ❑ Member of any legislature
- ❑ Political party of office bearers thereof
- ❑ Organisation of a political nature (S. 5(1);R. 3)
- ❑ Judges, Govt servants including that for PSUs
- ❑ Associated with registered Newspaper (Correspondent, columnist, cartoonist, editor, owner, printer or publisher)
- ❑ Associated with production or broadcast of audio news or audio-visual news or even through any electronic mode.
- ❑ All type of persons as mentioned under Newspaper also covered for entities providing audio/visual news, etc.

Exceptions (S.4)..... Persons prohibited

Persons prohibited from accepting FC can do so under following circumstances:

- ❑ Salary, etc.
- ❑ Payment in ordinary course of business.
- ❑ Scholarship, stipend or any payment of like nature.
- ❑ Gift from a relative is exempt from FCRA restrictions (however above Rs 1 lakh in a FY, FCRA Dept has to be intimated in Form FC-1).
- ❑ As an agent of FS, if it is relating to a transaction with Central / State Govt.
- ❑ Any gift rec'd by a member as part of Indian Delegation, provided such gift is in accordance with rules made by GoI.

Changes in Registration / Prior Permission process (FC3)

- ❑ Common but still separate Form for Registration / prior permission / renewal – FC3.
- ❑ Applications to attach manually signed application (scanned) or ~~Digital Signatures (through DSC tokens)~~.
- ❑ Limit for applying for fresh applications after 6 months removed.
- ❑ Details of foreign citizens now specifically asked. In case of Indian origin foreign citizens PIO/OIC card details asked for, indicating PIO / OIC card holder could become trustees.
- ❑ Details of positions in other key functionary associations asked for.
- ❑ Form requires Adhar No. for key functionaries.
- ❑ Earlier form reqd info like connection with newspapers, organisations of political nature, etc. now not being asked for.
- ❑ Payment of fee Rs 2000/1000 can be made online, though earlier option of DD still retained.
- ❑ FCRA Renewal due every 5 years. Need to apply online at least 6 mths prior to expiry date.

Disclosures

- ❑ Annual audited FCRA accounts (BS, I&E, R&P) to be disclosed on website by 31st Dec
- ❑ Quarterly information of FC funds rec'd and particulars to be disclosed on website by 15th day from the end of the quarter. Details to include amounts, donor particulars, date of receipt.
- ❑ Bankers to provide FCRA Dept complete details of receipt or utilization of any foreign contribution by any person whether registered / prior permission given or not within 48 hours. [Earlier this was 30 days and only transactions above Rs 1 crore]

Annual Return (FC3)

- ❑ Now online filing compulsory – earlier it was more of a practice. Earlier return FC6
- ❑ Prior Permission Annual Returns were till now being filed as hard copy. Not sure how this will now be done online.
- ❑ All documents to be filed would be online as scanned document.
- ❑ Signatures on the Return either scanned / digital.
- ❑ Last date still remains 31 Dec.
- ❑ Subsequent Recipient now being described as 'transfer from a local source'.
- ❑ Sale of proceeds from assets to be taken in FCRA funds only.
- ❑ Donor details to be given for all donors giving more than Rs 20,000/-
- ❑ Earlier categorization under 58 categories not reqd. Instead :
 - (1) Total Utilization for Projects as per aims & objectives,
 - (2) Admin Exps. (rule 5), (3) Total Invested in Deposits, (4) Fresh fixed assets.

Annual return... *Cont'd*

- ❑ Statement to confirm Exp. does not prejudicially impact country's interests.
- ❑ Number of foreigners' working in Honorary / salaried capacities
- ❑ Details of all designated / Utilisation accounts to be given.
- ❑ CA certificate not reqd if no receipt or expenditure. But two new additions (1) Interest and Other Income to be specified, (2) Certify utilisation for the purposes it was registered for.

Penalties by Dept.

Delayed-filing of annual return

Delay in filing of Return up to 90 days after 31 December	2% of FC received in the financial year or Rs.10,000, whichever is lower (<i>higher</i>)
Delay in filing of Return after 90 days and up to 180 days	3% of FC received in the financial year or Rs 50,000 (<i>20,000</i>), whichever is lower (<i>higher</i>)
Delay in filing of Return after 180 days and up to 1 year	4% of FC received in the financial year or Rs 2 lakh whichever is less
Delay in filing of Return after 1 year and up to 2 years	5% of FC received in the financial year or Rs 5 lakh whichever is less
Delay in filing of Return after 2 years and up to 3 years	10% of FC received in the financial year or Rs 10 lakh whichever is less

Cont'dPenalties

Unauthorised receipt of FC - Compounding allowed on following lines if no misappropriation:

Acceptance of cheque or draft towards FC without registration/ PP even though it has not been deposited in a bank	Rs.10,000/- or 2% of the FC, whichever is higher
Acceptance of cheque or draft towards FC without registration/ PP and depositing in a bank without utilisation	Rs.25,000/- or 3% of the FC, whichever is higher
Utilization of FC but not diverted for purpose other than for which it was rec'd and records of receipt and utilization properly kept.	Rs.1,00,000/- or 5% of the FC, whichever is higher
Acceptance of FC in kind without registration or PP but no adverse inquiry	Rs.10,000/- or 2% of FC, whichever is higher

Cont'dPenalties

Severe penalties can be imposed including cancellation of FCRA registration, confiscation of funds/assets and even imprisonment upto 5 years.

- ❑ Inspection of Accounts or records can be undertaken by GoI (S. 23)
- ❑ Seizure of Accounts / records (S. 24)
- ❑ Seizure of FC / articles / security (S. 25)
- ❑ Disposal of properties by Govt (S.22 / S. 26)
- ❑ Appeal under S. 31
- ❑ S. 33 – S. 35 : provides for imprisonment for making false statements, helping organisations receiving FC, etc.

CSR in context of FCRA

- ❑ CSR as we know is mandatory for certain companies
- ❑ Companies registered under CA 2013 with more than 50% shareholding held by foreign source become Foreign Source (Examples Coca Cola India, ICICI, Axis Bank, HDFC, etc.)
- ❑ NGOs cannot accept funds from such companies without having requisite FCRA registration / Prior Permission
- ❑ Even say ICICI Bank promoting an Indian Society cannot transfer funds to its own Foundation without requisite permission.
- ❑ [Finance Act 2016](#) recently made certain amendments to overcome this restriction under S. 2(1)(j)(vi)
- ❑ Controversy is that amendment only partly covers Foreign source and hence may not cover all situations. Refer [S.2\(1\)\(j\)](#)

Questions ?
