

Presentation at SRRF workshop
on NGOs & Cooperatives

The Good The Bad & The Ugly of 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).
- ❑ FCRA 2010 Effective 1 May 2011

Important Definitions

□ **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(7)). – 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.



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. But hardly being followed in practice.
- ❑ Hard copy of applications to be submitted within 30 days. If not submitted than application lapses. No receipt from the Dept. 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). Issue whether whole year or just closing balance.
- ❑ 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 number of requirements for bankers.



The UGLY



Likely to cause Hardships

- ❑ 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)
- ❑ 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.

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.
- 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. Seems rather onerous to ask entire populace to comply with this rule.

Slips

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

Thank You.

