

Presentation at IIC, Annexe, New Delhi  
20<sup>th</sup> December 2012

## **FCRA - Specific Situations**

---

**By CA Subhash Mittal, Secretary  
Socio Research Reform Foundation  
E-mail: [smittal@sma.net.in](mailto:smittal@sma.net.in)**

# Basic Framework

---

- Applicability –all natural & artificial persons
- Three basic features – Prohibits (S. 3), Licensing (S. 11), Monitoring (S. 18).
- Risks of defaults – Financial Penalty, Suspension & Cancellation & Imprisonment

# Applicability

---

- ❑ It is applicable to entire India
- ❑ Clause is an inclusive one, stating that it shall also apply to:
  - citizens outside India (all natural persons)
  - associates, branches, subsidiaries outside India of companies registered in India (all artificial persons)
- ❑ Thus definition is an inclusive one.
- ❑ However specific applicability is decided by individual provision in the FCRA Act. For example S. 3 prohibits certain type of persons as well as certain type of organisations.
- ❑ Applicable to all Non-Profit entities.
- ❑ In case of For-Profit entities specific provisions would need to be looked into.
- ❑ Govt entities – exempt (S. 50 & S. 51)

# Compounding of Defaults

---

- Section 41 (1) allows compounding of offences which are not punishable by imprisonment only.

<ul style="list-style-type: none"><li>• Funds accepted without permission though not yet deposited in bank account</li><li>• Contribution in kind without permission</li></ul>	<b>2%</b> <b>Min. Rs 10K</b>
Funds accepted without permission deposited in bank though not yet utilised	<b>3%</b> <b>Min. Rs 25K</b>
Funds accepted and utilised even though as per the terms	<b>5%</b> <b>Min. Rs 100K</b>

- Make an application to the Secretary for compounding of an offence.

# Provisions involving Imprisonment

---

- ❑ Giving False Statement while providing information to the Dept. (imprisonment upto 6 months) (S. 33)
- ❑ If a person transfers/pays funds, despite having been prohibited to do so under S. 10 (imprisonment upto 3 years) (S. 34)
- ❑ If a person accepts / assists in accepting FC in contravention of any provisions / rules. (imprisonment upto 5 years) (S. 35)
- ❑ If due to any 'act' or 'omission to act' and is convicted for the same resulting in item being liable to confiscation than fine upto 5 times the value of the item. (S. 36)
- ❑ If no specific provision for non-compliance, than imprisonment upto 1 year. (S. 37)
- ❑ If a person is convicted under S. 35 & 37 more than once, than cannot accept FC for 5 years. (S. 38)
- ❑ If an offence committed by a company, association, trade union, etc, than chief functionary / director / partner, etc. would also be convicted of the offence. (S. 39)

# Large FCRA Cancellations

---

- ❑ Almost 4200 FCRA registration cancelled.
- ❑ Implication : Funds were frozen and no further funds could be rec'd in the FCRA Account.
- ❑ FCRA Dept. rec'd representations from around 100+ organisations.
- ❑ SRRF has received a number of representations from grass-root organisations.
- ❑ A lot of confusion initially at the FCRA Dept.
- ❑ Dept. has since allowed organisations to utilise funds lying in the FCRA A/c for as long as payments are made by cheque.
- ❑ Also asked them to submit a representation, giving full facts.
- ❑ Dept. carrying out inspection of all vouchers, books of accounts, grant documentation, etc. for inspection.
- ❑ Registration being restored where no major adverse observations.
- ❑ A separate section to handle such cases of scrutiny
- ❑ Several organisations have rec'd 8-10 page questionnaire asking for detailed information over last several years

# Transfer of funds to other NGOs/SHGs

---

## Transfer of Funds to Non-registered organisations (incl. SHGs)

- ❑ Covered by Rule 24 (4)
- ❑ Agency wishing to transfer funds should apply on behalf of the unregistered entity in Form FC-10
- ❑ One FC-10 for one entity. Details of the account in which funds are being transferred to be provided.
- ❑ Total transfers to such entities restricted to 10% of the total FC of transferor.
- ❑ Though rule requires application to be counter-signed by DM, however Dept is not insisting upon the same.
- ❑ Take one approval for one entity for whole year, rather than for each transfer.

## Transfer of funds to other registered NGOs

- ❑ Ensure that recipient organisation / its office bearers not being proceeded under the FCRA Act.

# MNCs / Indian companies as Foreign Source

---

## MNC

- A MultiNational Company or Corporation falls under the definition of Foreign company.
- Definition: A company incorporated in a foreign territory having
  - either a subsidiary or a branch or a place of business in to or more countries,
  - or carries on business / operations in two or more countries.

## Indian Companies as Foreign Source

- A company registered under Indian Companies Act 1956, where more than 50% of nominal value of share capital is held by
  - Govt of a foreign country
  - Citizens of a foreign country
  - Corporations incorporated in foreign country
  - Trusts, societies, foundations, association of persons registered in a foreign country
  - Foreign company



# Important Changes in organisation vis-à-vis FCRA

---

## Board

- ❑ As per the Undertaking given while applying for Registration (Form FC3)
- ❑ If any change in Board triggers replacement of 50% or more Board Members as given in the application to FCRA
- ❑ Take prior permission for such replacing the Board members from FCRA Dept.
- ❑ No funds to be accepted till such permission is granted.

## Changes in Name, constitution, etc.

- ❑ Intimate within 30 days of any change in name, address, registration, aims & objects

# Transfer of FCRA funds outside India

---

## Purposes for which funds can be transferred outside India

- ❑ Grants to NGOs outside country
- ❑ Grants to sister concerns outside country
- ❑ Payment for procurement of goods / services from outside India
- ❑ Payment for travel expenses of Indian Board members / staff

## FCRA Implications

- ❑ FCRA per se does not have any provision for not transferring any fund outside India, as long as it is properly disclosed

## Income Tax Implications

- ❑ For any transfer outside India specific CBDT permission required for utilisation of funds

## RBI Implications

- ❑ RBI approval not required for transfer of funds upto \$ 200,000 in a FY, except for restrictions under FEMA (currency transactions) rules 2000.

# Treatment of foreign funds as non-FCRA

---

- ❑ Funds rec'd from UN / Exempted Agencies (e.g Unicef, Commonwealth secretariat, Global Fund, etc.)
- ❑ Foreign Funds rec'd from Indian citizens, even if living in other countries
- ❑ Foreign funds rec'd towards fees for any course, conference, etc.
- ❑ Any foreign consultancy income or in lieu of services rendered by such persons in the ordinary course of business.

## Precautions

- ❑ Reimbursement of exps. by donor to be deposited in FCRA A/c.

Thank You.

