

The Good, The Bad & The Ugly

- The FCRA Bill 2010

The Foreign Contribution (Regulation) Bill 2010 has recently been passed by both Houses of the Indian Parliament. It now merely awaits the assent of the President and a Gazette Notification to be enacted into Law.

Let us examine the “Good, the Bad, and the Ugly” aspects of this proposed legislation.

The Good

Charitable organizations will be allowed to maintain multiple bank accounts for management and utilization of FCRA funds provided only one bank account is maintained for receiving all foreign contribution.

Both, ‘Registration’ and ‘Prior Permission’ shall be granted or rejected within a period of 90 days from the date of receipt of application. Currently this time frame is stipulated only for applications for Prior Permission.

Presently foreign contribution cannot be transferred to organizations which are not registered nor have prior permission under FCRA. FCRA 2010 will now allow such transfer with ‘Prior Approval’. However, the rules in this regard are yet to be framed.

The Bad

Under FCRA 2010, ‘Foreign Company’ is defined and under the definition given u/s 2(g), Indian companies are not included. However, u/s 2(j) ‘foreign source’ includes an Indian company if more than 50% of its equity is held by foreigners. This dichotomy is confusing!

The definition of ‘foreign contribution’ includes various types of foreign receipts. It does not distinguish between commercial receipts and voluntary contributions. In fact, Explanation 3 to section 2(h) excludes income from business, trade or commerce. This section states that any fee or cost against business, trade or commerce shall not be considered as foreign contribution. In

other words, such receipts can be treated as local income. However this provision is in conflict with the amended section 2(15) of the Income Tax Act which prohibits trade or business related receipts above Rs.10 lakhs. NGO are therefore urged to exercise caution.

Section 3 specifies persons who are ineligible to receive foreign contribution. To the existing list a few more have been added. Of particular concern is the inclusion of, “Organization of a political nature”. The term ‘Political Nature’ has not been defined.

The Ugly

Section 8 states that the administrative expenses shall not exceed 50% and any expenditure of administrative nature in excess of 50% shall be defrayed with prior approval of the Central Government.

Registration under FCRA will require renewal every 5 years! However, the Act has provided relief to all the existing NGOs for the first 5 years from the date of enactment. In other words, all existing NGOs will be required to renew their registration at the end of the period of 5 years from the date of enactment of FCRA 2010. According to Section 16 of the proposed Act, all NGOs should apply for renewal of the certificate within 6 months prior to the expiry of the 5 years period.

Sweeping powers have been given to the authorities for rejecting applications for prior permission or registration. Take for example, under Section 12, “the applicant should not have been prosecuted or convicted for indulging in activities aimed at conversion or creating communal tension”. Inclusion of the term ‘prosecuted’ is of tremendous concern since it implies that even if there is a false or frivolous legal proceeding going on registration could be denied.

Registration may be cancelled for various reasons including lack of activity for a period of 2 years. Currently NGOs have been enjoying the benefit of keeping their registered status alive by simply filing ‘Nil’ returns despite not receiving or utilizing foreign funds for many years.

Also, any organization whose certificate has been cancelled / revoked shall not be eligible for registration or prior permission for a period of 3 years from the date of cancellation.

FCRA 2010 further provides that after cancellation of registration certificate, all the foreign contribution and assets thereof (created since the inception of the organization) shall vest with such authority as may be prescribed. The government authorities shall take charge of the foreign contribution and the FC assets till the registration is restored.

Noshir H. Dadrawala
Chief Executive
Centre for Advancement of Philanthropy
Mumbai, India
noshir101@gmail.com