Foreign Contribution (Regulation) Act, 2010 (FCRA)
Introduction

Regulation of Foreign Exchange in India

**Trade / Business**
- to control such trading / business transactions
- Regulated by Reserve Bank of India
- Regulation: Foreign Exchange Management Act, 1999 (FEMA)

**Charity**
- to regulate such unilateral / charity transactions
- Regulated by Ministry of Home Affairs, New Delhi
- Regulation: Foreign Contribution (Regulation) Act, 2010 (FCRA)
Introduction (Cont.)

- FCRA is a national security legislation to consolidate the law to regulate the acceptance and utilization of Foreign Contribution

- Effective from May 1, 2011

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- Objective:
  - Removing the difficulties faced by stakeholders in the repealed FCRA, 1976
  - Increasing transparency and accountability of NGOs / NPOs
  - Prevention of mis-utilization of foreign currency
Introduction (Cont.)

- Applicability:
  - Whole of India
  - Citizens of India outside India
  - Associate branches or subsidiaries outside India of companies or body corporates, registered or incorporated in India

- Not Applicable to:
  - Transactions between Government of India and Government of any other country
‘Foreign Contribution’ (FC) means:

- Any donation, delivery or transfer, generating from a foreign source, of any:
  - Currency, Indian or Foreign
  - Security
  - Donation of any article on lease by foreign source without any consideration
  - Article, if the market value of the article is more than Rs.25,000

FC also includes:

- Interest earned on FC
- Income generated from the assets created from FC
- Infusion of foreign share capital in a Company registered under Section 8 of the Companies Act, 2013 (Section 25 of the erstwhile Act)
- Unsecured loans / loans at subsidized rate from foreign source
Definitions (Cont.)

FC does not include:

- Earning from foreign clients in lieu of goods sold or service rendered in the course of ordinary business, trade or commerce
- Donations by NRI but excluding donation by persons of Indian origin having foreign nationality
- Fulfillment of contractual obligations
Definitions (Cont.)

Foreign Source means:

- Government of any foreign country and its agency
- international agencies
- foreign Company and any corporation incorporated in a foreign country
- MNC
- foreign citizen
- trade union in any foreign country
- foreign trust or foundation mainly financed by foreign territory
- Society / Club / Association of individual formed/registered outside India
- Indian company having more than ½ of its share capital held by any of the above (held singly or in aggregate)
Foreign Source does not include

- The United Nations, World Bank, IMF and other international agencies designated by the Government
- Non-Resident Indians making contributions from their personal savings through normal banking channels
Registration

- FCRA application consists of two kinds:

  1) Regular registration
     - Blanket permission for inward remittance(s) during the registration validity
     - Ex post facto reporting requirements
     - Registration is valid for a period of 5 years
     - Application for renewal of registration should be made 6 months before the date of expiry of registration (12 months in case of ongoing multi-year project)

  2) Prior permission
     - Permission required for every inward remittance
     - Permission applicable even if the remittance is from the same donor and / or for the same project
Reporting Requirements
Annual

- Form FC 6 (Receipt of Foreign Currency)
  - Required within 9 months of the end of a given financial year
  - Accompanied by income & expenditure statement, receipt / payment account, balance sheet, and authorized bank account statement for the designated FCRA account
  - Must include receipts and transfers in and out of the designated bank account
  - Must be certified by a Chartered Accountant

If no foreign contribution is received or utilized during the year, ‘Nil Report’ is required to be filed
Reporting Requirements (Cont.)

- Form FC 7 (Receipt of Articles)
  - Filed in lieu of FC 6 if contributions were only in the form of articles, not currency

- Form FC 8 (Receipt of Securities)
  - Filed in lieu of FC 6 if contributions were in the form of foreign securities
Reporting Requirements (Cont.)

Other

- Gifts from relatives in excess of Rs. 1 Lakh must be reported by filing form FC 1 within 30 days of the gift.

- Organizations receiving foreign contributions in excess of Rs. 1 Crore or equivalent in a financial year must report the same in the public domain i.e. online, by listing records of the receipt and utilization of the funds. These would also be listed by the Ministry of Home Affairs on its website.
Acceptance of FC

❖ Persons who cannot accept FC:
  o Candidate for election
  o Correspondent, columnist, cartoonist, editor, owner, printer or publisher of registered newspaper
  o Judge, Government Servant or employee of any Body controlled or owned by the Govt.
  o Member of any legislature including Panchayat
  o Political party or its office bearer
  o Organization of political nature specified by the Govt.
  o Association / company engaged in production / broadcast of audio / audio visual news or current affairs programme through any mode of mass communication
Acceptance of FC (Cont.)

- Person otherwise prohibited for acceptance of FC may accept FC
  - By way of salary, wages or other remuneration
  - By way of payment in the course of international trade or commerce
  - As an agent of foreign source for transaction made by such foreign source with Central / State Govt.
  - By way of gift as a member of Indian delegation
  - From relative (less than Rs. 1 lakh in a year)
  - By way of remittance received in ordinary course of business
  - By way of scholarship, stipend, etc.
Conditions on Acceptance of FC

- FC received should be deposited only in the designated FC bank account
- Association should keep record of all FC clearly indicating the names of the donors, their locations and the purpose
- FC can be considered as Corpus donation only with the written consent of the donor
- Donation received through donation box should be treated as FC if received in Foreign Currency
Utilization of FC

- FC should be utilized for the purpose it has been received
- Not more than 50% of FC received should be utilized for administrative expenses without the prior approval of the Central Government
- FC can not be invested in speculative business like mutual funds. However, it can be invested in Bank / Govt. approved financial institutions which guarantee a fixed return
- Every assets purchased / acquired should be in the name of the association
- Interest earned on FC should be utilized towards its activities / projects of the association
Restriction on transfer of FC

- FC can be transferred to only those associations who have been granted registration / Prior Permission

- FC, less than 10% of the total FC received in a financial year, may be transferred to an association not granted registration / Prior Permission only after obtaining the permission of the Central Govt. by filling Form FC 10

- However, approval not required if such FC is transferred to Self Help Groups (SHGs) / individuals beneficiaries for the end utilization of FC received or the FC received is for definite programme for providing some direct financial assistance as charity

- In case of extending loans to SHGs / Community Based Organization (CBO), approval of the Government is required
Maintenance of Accounts

- There should be a separate FC designated account in the bank. FC cannot be deposited or utilized from the bank account used for local / domestic funds.
- Associations are required to maintain a separate set of account or records exclusively for the FC received and utilized.
- Any standard or acceptable method of accounting can be used for maintaining books of account for FCRA purposes.
- Local / domestic contribution should never be mixed up with FC.
- All accounting statements, annual return and copy of statement of account from the bank regarding the exclusive FC account accompanying the annual returns should be preserved at least for a period of six years.
- Associations should maintain separate register of investments and every register of investment must be submitted for audit.
Maintenance of FC Accounts (Cont.)

- All funds like General Fund, created from FC are to be reflected in the FC books of account

- Any asset created / purchased out of FC is FC asset and should be recorded in the FC books of account
Offences and Penalties

- Central Govt. may search and seize accounts / records based on suspicion of violations of FCRA
- Monies obtained illegally may be seized and re-distributed according to Govt. procedures, and the organization may be blacklisted
- Fines and imprisonment may be levied against individuals (including directors of companies) who furnish false information on FCRA applications or reports, accept funds in contravention of FCRA provisions, or assists an organization in violating the FCRA
- In the event of failure to pay the penalty, for whatever reason, necessary action for prosecution will be initiated
- Where an offence has been compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence
Offences and Penalties (Cont.)

- Receipt of FC in the account through electronic transfer even without the knowledge of the association is violation of the Act.
- However, if offence is committed within a period of 3 years from the date on which similar offence committed was compounded, the provision of compounding the later offence is not available.
- Offences that can not be compounded are liable to investigation and prosecution by CBI or State Police depending upon amount of FC involved.
Cancellation of Registration

- The Govt. may cancel the certificate of registration, after giving reasonable opportunity to the association, on the following grounds:
  - Making incorrect / false statement for seeking registration or renewal
  - Violation of any of the terms and conditions of certificate or its renewal
  - Violation of any of the provisions of the Act or Rules
  - If in the opinion of the Govt. it is necessary to cancel the certificate in public interest
  - If the association has not been engaged in any reasonable opportunity in its chosen field for the benefit of the society for two consecutive years or has become defunct

- Cancellation of certificate debars the association for new registration or grant of PP for a period of 3 years

- Unutilized FC in the designated account will vest with the concerned Bank till the Govt. issues further directions in the matter
Suspension of Registration

- If the Govt. is satisfied that pending consideration of the question of cancellation of registration for any of the grounds for cancellation under the Act, it may, after recording reasons, order suspension of registration for a period not exceeding 180 days.

- During suspension period:
  - the association cannot receive FC. However, if the Govt. considers appropriate, it may allow receipt of FC on any specified terms and conditions.
  - up to 25% of the unutilized amount may be spent only after the prior approval of the Govt. The remaining 75% can be spent only after the revocation of suspension of the certificate.
Recent News

- **Greenpeace India’s registration cancelled**
  
  By PTI | 6 Nov, 2015, 05.03PM IST

- **Ford Foundation funding to non-FCRA NGOs, Teesta Setalvad’s Sabrang Trust**
  
  PTI May 5, 2015, 04.24PM IST

- **Govt cancels registration of 4,470 NGOs in fresh crackdown**
  
  Source: Zee News Tuesday, June 9, 2015 21.40 IST