

Presentation at SRRF FCRA 2020 Amendments Webinar

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# **FCRA after 2020 Amendments**

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# Legislative Journey

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- FCRA Amendment Act 2020 was
  - Introduced in Lok Sabha on 20th Sept 2020
  - Passed by Lok Sabha on 21<sup>st</sup> Sept
  - Passed by Rajya Sabha on 23<sup>rd</sup> Sept
  - Notified in Gazette on 29<sup>th</sup> Sept 2020.
- Notification declaring SBI, Parliament Branch to become specified Branch for opening FCRA Bank a/c was brought out on 7<sup>th</sup> October 2020.

# Major Amendments

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- ❑ 'Public Servant' added as a prohibited person (S.3(1)(c))
- ❑ No transfer of funds to any other NGO (S.7)
- ❑ Administrative Exps. Limit reduced from 50% to 20% (S.8)
- ❑ Departmental Enquiry can become basis for prohibiting a person from use of funds rec'd. (S.11(2) proviso)
- ❑ Aadhar No. to be provided for all Trustees / Directors / Key Functionaries. (S.12A)
- ❑ FCRA registration can now be suspended upto 360 days. (S.13)
- ❑ Surrender of FCRA registration certificate. (S.14A).
- ❑ Power of making same enquiry at the time of renewal as done at the time of registration (S.16(1) proviso)
- ❑ Open FCRA Account in SBI, Parliament Street, New Delhi. (S.17)

# No Transfer of funds to another NGO (S.7)

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- ❑ Earlier as long as another NGO had a FCRA certificate, funds could be trfd, to another NGO, provided usual conditions of fund utilistion were followed.
- ❑ However effective 29<sup>th</sup> Sept'20, no NGO can transfer FC funds to another NGO.
- ❑ Likely outcomes, FCRA funds would shrink, Direct trf of funds, local fund trfs, direct implementation by larger NGOs, Sector likely to suffer stagnation.
- ❑ FCRA 2010 even envisaged trf of funds to small non-registered NGOs (Rule 24), though had become little fefunct, since no approvals were being given for quite sometime.

# Admin Funds reduced to 20%

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- ❑ Admin Exps. reduced from 50% to 20% of FC rec'd during the year.
- ❑ Definition of Admin Exps. Covered by Rule 5.
- ❑ Board Members: All salaries, travel expenses or any other remuneration given to Trustees / Board members.
- ❑ Senior Management Personnel (Personnel involved in management of NGO): Salaries, or any other benefit, travel expenses, recruitment exps. of such personnel. (Examples: Senior personnel like CEO, CFO, HR, Admin, etc)
- ❑ All expenses of place from where NGO is running: Rent, electricity, water charges, telephone, postal, repairs to premises, stationary & printing, office equipment repairs & other running exps.

# Admin Funds reduced to 20%

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- ❑ All costs of Accounts & support staff.
- ❑ Running & Maint. Of vehicles Costs
- ❑ Donor report writing, proposal writing, etc.
- ❑ Legal & Professional Charges
- ❑ Rent, repairs & utility costs ?
- ❑ **Above does not cover programme staff costs, except for senior staff.**
- ❑ **Proviso does allow exp. incurred directly in furtherance of stated objectives of the welfare organisation to be excluded.**

SOLUTION: Prepare an excel sheet, identify based on above analysis, what all can be regarded as expenditure towards programs to be excluded, unless specifically covered under one of the above clauses, should be treated as programmatic cost.

# Bank Account @ SBI, New Delhi

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- ❑ Parliament Street Branch has been named as the Bank, where all NGOs must open their FCRA Bank Account. (S.17)
- ❑ In addition to above NGO can maintain a Bank account, anywhere and in a bank where it can keep & utilise FCRA funds. It can also open one or more bank accounts in a scheduled bank to utilise funds.
- ❑ To contact SBI Parliament Street for further information, following are contact details  
Email: [agmcommercial.00691@sbi.co.in](mailto:agmcommercial.00691@sbi.co.in)  
Contact Nos: 011-23374142; 011-23374143; 011-23374184
- ❑ NGOs wanting to open bank a/c in their states, may contact any of the SBI Branch in their area, and ask them arrange for opening of account at SBI, Parliament Street.
- ❑ Fill up forms, submit them to your local branch. Authorised signatories would need to go to bank for signature verification.
- ❑ For any queries, SBI local branch or Parliament Street Branch may be contacted.

# Power to undertake Inspection at the time of Renewal

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- ❑ Renewal of FCRA Registration every 5 years
- ❑ Now FCRA Dept has power to undertake a similar inspection as done at the time of Registration / Prior permission. (S.16(1))
- ❑ This could delay renewal of FCRA process significantly.
- ❑ Renewal application should be filed at least 6 months prior to expiry of FCRA certificate date (Rule 12(2), Form FC-3C).
- ❑ Affidavits to be executed by each office bearer and key functionaries and member in proforma appended to the Rules.
- ❑ Aadhar No. to be provided for each office bearer, key functionaries, member at the time of Renewal, Registration, etc. (S.12A)



# Dept Enquiry could become basis for taking action

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- In case of a person who has Prior Permission, and based on some report, if the Dept conducts an internal enquiry and holds that person has contravened any of the FCRA provisions, such person would not be able to spend unutilised funds or receive any further funds under Prior permission. (S.11(2) – proviso)
- Earlier provision required the person to be 'found guilty' i.e. Only after a conviction in the court of law, action could be taken against such a person.

# Suspension period enhanced from 180 to 360 days

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- Before cancellation, FCRA Dept often suspends the registration of FCRA entities. Present rules allowed suspension for a period of maximum of 180 days.
- However under the amendment Act, this power has been increased from 180 to 360 days. (S.13(1))

# Public Servant

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- ❑ Public Servant has been added to list of Prohibited persons, who cannot receive FC. (S.3)
- ❑ Public Servant is as defined under Indian Penal Code.
- ❑ A Public servant as defined under IPC has very wide coverage. It covers not only Govt servants from central govt, but also all officers of court, govt servants working with any govt including state govts, municipalities, local bodies, etc.

# Surrender of FCRA Certificate

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- ❑ Under current legislation, there is no provision of surrender of FCRA.
- ❑ Many NGOs wish to surrender FCRA, however do not know how to go about it. Now new provision S.14A has been added to do the same.
- ❑ For the purpose NGO would need to formally make a request to FCRA Dept, (No Form).
- ❑ But only after the Dept has made an enquiry that no provisions have been contravened.
- ❑ All assets (incl. any funds) created from FC contributions would need to be managed by an official authorised by the Govt, that means assets would no longer belong to the NGO.
- ❑ Only after this Dept would write to the NGO to surrender its FCRA registration.

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# Questions ?

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