

Detailed note on implications of the FCRA Bill 2020

The Ministry of Home Affairs (MHA) has proposed amendments in the FCRA act through the foreign contribution (Regulation) Amendment Bill, 2020. The bill has been introduced in Lok Sabha on September, 20, 2020. The matter will be discussed in Rajya Sabha this week. Below are the implications of the key changes proposed:

1. Disallowing Re-Granting: Section 7 of the FCRA act 2010 states that the FC funds could be transferred or re-granted to another organization which is registered or having prior permission under FCRA. Secondly, it also stated that such funds could be transferred to an organization not registered under FCRA with the prior approval of the central government. The proposed amendment states that organizations would not be entitled to transfer or sub-grant any of the FC funds to any organization, whether registered or unregistered under FCRA.

The umbrella NGO approach has been withdrawn, which will affect many large national level organisations funding hundreds of downstream organisations.

This amendment is a deviation from the normally accepted norms of charitable activity; the Supreme Court and other Courts of India had in the past ruled that working through another organisation is on par with direct implementation of activities. This dictum will no longer apply to FC registered organisations.

2. Revised Limit of Administrative Expenditure: Currently the administrative expenditure in any year should not exceed 50% of the total FC funds received in that year. The draft bill has proposed to revise the ceiling limit of admin expenses to 20% of the total foreign funds received in a particular year. Reducing the ceiling limit will lead to loss of jobs in the non-profit sector.

3. FCRA bank account with State Bank of India: Currently, FCRA registered organizations can open designated bank accounts as well as utilization bank accounts bank account with any core banking compliant bank integrated with the public financial management systems (PFMS). The proposed bill states that the designated bank account, in which all the foreign contributions are received, should be opened in the specified branch of State Bank of India as the central government may by the notification specify in this behalf. However, the utilization bank accounts can be opened in any scheduled bank compliant with PFMS regulations.

The rationale of asking all the NGOs from all over the country to open a bank account in a particular bank in New Delhi is probably an effort to create another layer for receipt of foreign contribution for monitoring purposes. This law is likely to cause operational and procedural hassles to institutions located outside New Delhi.

4. Suspension in case of Violations: Currently FCRA 2010 provides the power to the Central Government to suspend the registration pending cancellation of certificate, for a period up to 180 days. The proposed amendment states that period of suspension can be further extended for a period of 180 days. In other words, the period of suspension can be extended to a period of 360 days from the date of the issue of the order.

This amendment will create lots of hardship to those NGOs whose registration is restored after

completion of the suspension proceedings, as during the suspension period, bank accounts are frozen and the NGO virtually comes to a standstill. There is a provision for getting approval for use of 25% of the available funds during the suspension period, but normally such approvals are not given in time.

5. Aadhar of Board members and copy of passport and OCI card: It is proposed that Aadhar card is mandatory for FCRA registration/prior approval /FCRA renewal for all the board members (office bearers, directors and key functionaries) in their application to MHA. A copy of passport for OCI is required. The current FCRA form states that Aadhar number is optional. Government already collects enough information on Board Members and Chief Functionary.

6. Surrender of FCRA Registration: Currently there is no provision for surrender of FCRA Certificate. The Bill allows voluntary surrender, however, surrender can only take place after MHA is satisfied that there were no violations of the FCRA provisions. Importantly, the assets created from the FC contributions and unutilized FC funds can be vested to the prescribed government authority.