

OFFENCES & PENALTIES UNDER FCRA

Common offences subject to severe penalty

NGO's receiving foreign contributions should guard against violating the provisions of FCRA. The following are a few common offences, which are subject to severe penalty and punishment:

- (i) NGO's accepting foreign contribution without registration or prior permission.
- (ii) NGO's having FCRA registration but receiving foreign contribution in different bank accounts.
- (iii) NGO's having FCRA registration and not filing annual return in FC-3 Form.
- (iv) NGO's having FCRA registration filing false information in the annual return.
- (v) NGO's with FCRA registration or prior permission not maintaining the required books of account.
- (vi) NGO's receiving foreign contribution on behalf of other NGO's not having FCRA registration.
- (vii) Not filing nil return in the year when foreign contribution is received.
- (viii) Diversion of funds for the purposes other than for which they were received.

Press note dated 09.01.1998 issued by Ministry of Home Affairs : Ministry of Home Affairs (FCRA division) in its press note dated 09.01.1998 [refer Annex. 44.1] has clarify that the above mentioned offences would be treated as violation of FCRA attracting severe penalties. The relevant extract of the press note is as under:

“Non-submission of the return in time; furnishing of false information; mis-utilisation or diversion of foreign contribution for purposes other than those for which such contribution was received; transfer of contribution to any other organisation who have not been permitted to receive foreign contribution either by way of registration or prior permission, constitute a violation of the provisions of the Act and attract penal action”.

Seizure and confiscation

Under FCRA the Central Government has the power of seizing and confiscating articles and currency if held in contravention.

The statutory provisions : The relevant sections are as under :

“Section 16 : Seizure of article or currency received in contravention of the Act : If any gazetted officer, authorised in this behalf by the Central Government, by general or special order, has any reason to believe that any person has in his possession or control any article exceeding rupees one thousand in value, or currency, whether Indian or foreign, in relation to which any provision of this Act has been, or is being contravened, he may seize such article or currency.

Section 17 : Seizure to be made in accordance with the Code of Criminal Procedure, 1973 : Every seizure made under this Act shall be made in accordance with the provision of section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

Section 18 : Confiscation of article or currency obtained in contravention of the Act : Any article or currency which is seized under section 16 shall be liable to confiscation if such article or

currency has been adjudged under section 19 to have been received or obtained in contravention of this Act.

Section 19 : Adjudication of confiscation : Any confiscation referred to in section 18 may be adjudged :

(a) without limit, by the Court of Session within the local limits of whose jurisdiction the seizure was made; and

(b) subject to such limit as may be prescribed, by such officer not below the rank of an Assistant Sessions Judge, as the Central Governments may, by notification in the Official Gazette, specify in this behalf.

Section 20 : Opportunity to be given before adjudication of confiscation : No order of adjudication of confiscation shall be made unless a reasonable opportunity of making a representation against such confiscation has been given to the person from whom any article or currency has been seized."

Seizure during audit inspection - Normally officers appointed by the Central Government to carry out inspection of accounts and records under section 14 are also authorised with the powers under section 16. Therefore while inspecting records under section 14, an authorised officer may make seizure of currency or article if he has reasonable cause to believe that the organisation/person is in possession of currency/article in contravention of FCRA. For instance if an organisation receives foreign contribution without having registration or prior permission, then even if the amount is kept in bank, it will be deemed to be in the possession of the organisation and consequently seizure can be made.

Procedure for seizure - The provisions of section 17 require that the seizure has to be made in accordance with section 100 of the Code of Criminal Procedure where extensive powers have been provided to the authorised officer including the power of searching a premises, carrying out physical search, if required, break open any door or window etc. All searches have to be made in presence of two or more local inhabitants and two independent witnesses should also be there as signatories to the seizure list.

Confiscation of seized articles - The articles or currency seized is liable to be confiscated if it is adjudged to have been received in contravention of FCRA by the Court of Session within the local limit of whose jurisdiction the seizure was made. There is no monetary limit set to the powers of the court of session under section 19. The confiscation proceedings are criminal proceedings by nature. However by virtue of section 20 the accused organisation/person is entitled to a reasonable opportunity of being heard before any order against it is made. In case of confiscation of seized article under section 19, the organisation can appeal within one month of receiving the confiscation order, in the Court of Session within the local limits under whose jurisdiction such order of adjudication of confiscation was made or to the High Court.

Persons liable for punishments under FCRA

The following persons may be liable to penalties and punishments depending on the nature of the offences:

- NGO
- Chief Functionary
- Governing body members
- Other officers
- Other persons who indulge.

Penalties and punishments

12.4 Under FCRA laws, severe penalties and punishments are specified which can be invoked depending on the nature and quantum of the offence and the persons involved.

The following are the possible penalties under FCRA:

- (i) seizure and confiscation of foreign contribution receipts.
- (ii) fine up to 5 times the value of the foreign contribution spent.
- (iii) inspection and seizure of accounts and records.
- (iv) compulsory prior permission requirement even if the NGO is registered under FCRA.

Overall Summary

12.5 To sum up the discussions :

- (i) Violation of FCRA can attract severe penalties which could be as under :
 - (a) seizure and confiscation of foreign contribution receipts.
 - (b) Fine upto 5 times the value of the foreign contribution spent.
 - (c) inspection and seizure of accounts and records.
 - (d) compulsory prior permission requirement even if the NGO is registered under FCRA.
 - (e) imprisonment upto 5 years and/or fine.
 - (f) prohibition on accepting foreign contribution for 3 years for persons convicted twice.