

NGOs and Foreign Contributions



CA. Y. Srinivas

(The author is a member of the Institute. He can be reached at srinivas.yanamandra@icicibank.com)

The ongoing international campaign against terrorist financing and money laundering has brought to light, instances of misuse of NGOs by terrorists and other criminals. Such instances have proved that NGOs, which receive foreign contributions or donations are more vulnerable to criminal misuse compared to other NGOs. This article provides an overview of the concept and complications of foreign contributions to NGOs from the Indian context.

The activities of Non-Government Organisations (NGOs) complement the activities of the governmental and business sectors in providing essential services, comfort and hope to those in need around the world. However, the ongoing international campaign against terrorist financing and money laundering has brought to light some instances of misuse of NGOs by terrorists/terrorist organisations and other criminals. Such instances have proved that NGOs that receive foreign contributions or donations are more vulnerable to criminal misuse compared to other NGOs. Such

a misuse not only facilitates terrorist/money-laundering activities but also undermines donor confidence and jeopardises the very integrity of NGOs.

Protecting NGOs from terrorist and criminal abuse is, therefore, both a critical component of the global fight against terrorism/money laundering and a necessary step to preserve the integrity of NGOs. Towards this end, various statutory pronouncements have been made in several countries, including India, casting several responsibilities on NGOs to monitor the origin and the end-use of foreign contributions. These responsibilities, while aimed at protecting the misuse of NGOs for criminal/terrorist purposes, may also sometimes create a burdensome environment for genuine NGOs. It should, therefore, be ensured by the governments and the regulatory bodies that the statutory/regulatory pronouncements, for regulating foreign contributions, are applied to NGOs in a risk-sensitive manner which do not create undue hardships to the genuine NGOs.

NGOs: Vulnerability to Terrorist Financing & Money Laundering

NGOs are vulnerable to abuse by terrorists/criminals for a variety of reasons. NGOs enjoy the public trust, have access to considerable sources of funds including foreign sources, and are often cash-intensive. Furthermore, some NGOs have a global presence that provides a framework for national and international operations and financial transactions, often within or near those areas that are most exposed to terrorist activity. Criminals and terrorist organisations have

taken advantage of these characteristics to infiltrate the sector and misuse NGO funds and operations to cover for or support terrorist/money laundering activities.

Internationally, the vulnerability of NGOs to the terrorist/criminal activity has been exposed several times in the past. The vulnerability is further demonstrated by the growing instances of foreign contributions to NGOs from various parts of the world. These foreign contributions, if not properly monitored and controlled by the government, regulators and NGOs themselves, might expose NGOs to money laundering and terrorist financing risks.

International Perspectives

International studies on understanding the vulnerability of NGOs for money laundering and terrorist financing are undertaken by the Financial Action Task Force (FATF). FATF is an international organisation established for the formulation of recommendations on policies and procedures to be adopted by the statutory and regulatory bodies the world over to combat the menaces of terrorist financing and money laundering. It has formulated 40 recommendations that represent international best practices of anti-money laundering and nine special recommendations for countering and combating the menace of terrorist financing. Special Recommendation VII (SR VII) deals with the instances of the misuse of Non-Profit Organisations (NPOs – organisations in the nature of NGOs) and the practices that can be adopted for preventing such misuse.

The SRVII of the FATF states that the measures adopted by countries to protect the NPO sector from terrorist abuse should not disrupt or discourage legitimate charitable activities. Rather, such measures should promote transparency and engender greater confidence in the sector, across the donor community

and with the general public, that charitable funds and services reach intended legitimate beneficiaries. Systems that promote achieving a high degree of transparency, integrity and public confidence in the management and functioning of all NPOs are integral to ensuring that the sector cannot be misused for terrorist financing.

INDIAN SCENARIO

a. Foreign Contributions Regulation Act, 1976

In India, the aspect of the Foreign Contributions, by associations such as NGOs, is regulated by the Foreign Contribution (Regulation) Act, 1976 (FCRA). The FCRA stipulates, in terms of Section 4 of the Act, that no foreign contribution shall be accepted by any candidate for election; correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper; judges, government servants or employees of any corporation; members of any legislature; political party or office bearer thereof.

Subsections (a) and (b) of Section 10 of the FCRA provide that the Central Government may prohibit any prescribed association or any person, from accepting any foreign contribution or require any association to obtain prior permission of the Central Government before accepting any foreign contribution. Section 5 of the FCRA also provides that no organization of a political nature, not being a political party can accept foreign contribution except with the prior permission of the Central Government.

The Act also provides that associations having a definite cultural, economic, educational, religious and social programme should get themselves registered with the Ministry of Home Affairs, Government of India, New Delhi before receiving any foreign contribution. Such foreign contributions should be received only through the designated bank

branch, the name of which has been specified in the application for registration submitted to the Ministry of Home Affairs. It is further laid down in the Act that any and every association referred to in sub-section (l) of Section (6) may, if it is not registered with the Central Government, accept any foreign contribution

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only after obtaining prior permission of the Central Government.

Once an NGO is registered under the FCRA, there are many things the NGO should do regularly to ensure that it retains the registration – designated bank account for foreign contributions, maintenance of books and accounts, audit and filing of prescribed returns at such periodical intervals as required under the FCRA.

b. FCRA and Obligations of Banks

The Reserve Bank of India has also issued detailed guidelines on the obligations of the banks in terms of the statutory provisions of the FCRA, vide its Master Circular dated August 11, 2005. Accordingly, the banks in India are required to ensure that the following responsibilities are duly discharged while dealing with Foreign Contributions covered under FCRA:

- Insisting on prior permission of the Central Government before accepting a foreign contribution in the accounts of entities covered under Section 4 and 5 of the FCRA;

- Affording credit of the proceeds of cheques/drafts representing foreign contribution only if the associations etc., as indicated in Section 6 of the Act, are registered with the Ministry of Home Affairs, Government of India;
- Insist on evidence of a communication from the Ministry of Home Affairs conveying prior permission of the Central Government for acceptance of specific amount of foreign contribution in case the association is not registered under the FCRA;
- Not affording credit to the bank account of such associations as they are not registered with the Ministry of Home Affairs separately for the purpose of accepting foreign contribution under the FCRA;
- Not affording direct credit to the account of such association as they have been directed to receive foreign contributions only after obtaining prior permission of the Central Government, unless such prior permission is in place;
- Not allowing the credit of the proceeds of the cheques/demand drafts, etc., to the organizations of a political nature, not being political parties (including their branches and units) unless a letter containing the prior permission of the Central Government under the FCRA is produced by such organizations;
- Noting the registration number as conveyed by the Ministry of Home Affairs to the various associations, in the relevant records, particularly in pages of ledgers in which the foreign contribution accounts of associations are maintained to ensure that no unwanted harassment is caused to such associations.

Interestingly, it may be noted that the revised guidelines of RBI on Know Your Customer prin-

principles and Anti-Money Laundering standards dated November 29, 2004, also requires the banks to consider NGOs, trusts and charities in receipt of donations as high risk customers. Accordingly, customers of these nature are required to be subjected to enhanced due diligence at the time of opening of the account and enhanced monitoring thereafter.

Issues and Concerns of NGOs in Regard to FCRA

For the purpose of the FCRA, the term 'Foreign Contribution' denotes donation, delivery or transfer made by any foreign source of any (a) article, not given to a person as a gift, for personal use, if the market value in India of such article exceeds one thousand rupees (b) currency, whether Indian or foreign or (c) foreign security as defined in Foreign Exchange Management Act. For this purpose, 'Foreign Source' means the government of any foreign country or territory or its agency; international agency; a foreign company; citizen of a foreign country. Accordingly, any contribution, donation, gift or presentation or transfer of a similar nature received from an Indian source – either an individual nor from Indian, association, organisation, society or trust is not foreign contribution.

A close examination of the above definition reveals that the term Foreign Contribution has been widely defined under the FCRA. This also includes any kind of remittance received from any foreign source as a Foreign Contribution, which requires to be routed through only a designated bank account. This may, at times, result in undue hardship to certain NGOs as follows:

- Case 1: An association in receipt of fees in foreign currency for its students who are supported by foreign nationals for a genuine charitable cause
- Case 2: A trade association, which organises trade fairs and seminars for promotion of indigenous products, is in receipt of delegate fees in foreign currency for its foreign delegates, who attend the fairs / seminars.
- Case 3: A Section 25 Company, running an educational institution, bringing out a research journal, subscribed by international scholars by paying their subscription fees in foreign currency.

The associations discussed in the three cases above are covered under the FCRA, and they have to maintain a designated bank account for receipt of the foreign remittances discussed above. This is due to the stricter interpretation of

the term foreign contribution under FCRA as donation, delivery or transfer from *any* foreign source. The associations may not regularly receive receipts and many a time, associations might not expect these types of foreign remittances also. But banks generally insist on a designated bank account in all these cases, as per the statutory and regulatory provisions discussed above. Non-compliance with these provisions, even for one-time cases, may result in delay in service to the persons sending the foreign remittance and also in certain cases, the person being benefited by such remittances.

One could clearly notice on reading of the provisions of the FCRA that the apparent purpose of the Act is not to regulate foreign inward remittances of this nature. However, there is no clarity on this issue at present and this results in undue hardship to genuine NGOs as discussed in the above case studies. This apparent undue hardship is widely discussed at many national forums and a clarification in respect of applicability of the provisions of FCRA to commercial receipts from foreign sources is long awaited.

In this connection, it may be mentioned that in the proposed Foreign Contribution (Management and Control) Bill, 2005 (FCMC Bill), the issue will be addressed by inserting clarificatory provisions to the term 'Foreign Contribution'. As per the proposed clarifications, any amount received, by any person from any foreign source in India, by way of fee for attending any conference held in India or as subscription for a journal or printed material published in India or as tuition fee for studies in an educational institution in India or in lieu of services rendered by such person, shall be excluded from the term 'foreign contribution'. This clarification is a welcome step and once the bill is made effective, may address the concerns of the genuine associations in receipt of commercial receipts in the nature of foreign

contributions such as those discussed in the above cases.

Conclusion

The main idea behind the statutory and the regulatory provisions governing the activities of NGOs, especially the activity of receiving foreign contributions, is to prevent their misuse for money laundering and terrorist financing activities. These statutory or regulatory provisions are not aimed at banning

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or prohibiting any foreign contribution for genuine purposes, but used only against those meant for individuals or associations in important areas of our national life, which are vulnerable to untoward purposes through foreign contributions.

The law enforcement authorities and the regulatory agencies should, therefore, ensure that the actions taken for this purpose should, to the extent reasonably possible, avoid any negative impact on innocent and legitimate beneficiaries of charitable activity. However, this interest cannot excuse the need to undertake immediate and effective actions to advance the immediate interest of halting terrorist financing or other forms of terrorist support provided by NGOs. This exercise requires balancing the requirement of subjecting NGOs in receipt of foreign contributions, to regulations for national interest and the requirement of fostering a conducive statutory and regulatory environment for NGOs to protect their charitable interests. □