

AccountAble™

FCMC Bill 2005 – Part 1

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The Government has recently released a draft of the Foreign Contribution (Management & Control) Bill, 2005. The Bill has been referred to a Group of Ministers. Public comments are also being invited¹. Later it will be tabled in the Parliament. This bill is eventually expected to replace the FCRA, 1976. This process may take one or two years.

In this issue of AccountAble, we discuss the changes that the new bill proposes.

Object of the Act

By far this is the most important change. All other changes flow from this.

The present FCRA was primarily aimed at ensuring that foreign funds do not affect Indian elections².

¹ Full text available at www.AccountAid.net and at <http://mha.nic.in/fcmc-bill-05.pdf>

² Preamble to the FCRA 1976: 'An act to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain persons or associations, with a view to ensuring that parliamentary institutions, political associations and academic and other voluntary organisations as well as individuals working in the important areas of national life may function in a manner consistent with the values of sovereign

The new FCMC shifts the focus of the Act from politics to anti-national activities³.

Anti-national Activities

What are anti-national activities? We all know this, but probably can not agree on a legal definition. The Bill also is silent on this. However, these appear to be the ones listed in section 10 of the present Act, which have been reproduced in section 12(3)(d)⁴ of FCMC.

A significant omission is terrorist activities. This phrase often crops up in informal discussions related to foreign funds. However, the word 'terrorism' does not occur anywhere in the new Bill.

democratic republic, and for matters connected therewith or incidental thereto.'

³ Preamble to the FCMC Bill 2005: 'A Bill to consolidate the law relating to the acceptance and utilisation of foreign contribution or foreign hospitality by certain individuals or associations or companies and to prohibit acceptance and utilisation of foreign contribution or foreign hospitality for anti-national activities, and for matters connected therewith or incidental thereto.'

⁴ Section 12(3)(d): '...the acceptance of foreign contribution by the person referred to in sub-section (1) is not likely to affect prejudicially-

- (i) the sovereignty and integrity of India; or
- (ii) the public interest; or
- (iii) freedom or fairness of election to any Legislature; or
- (iv) friendly relation with any foreign State; or
- (v) harmony between religious, racial, social, linguistic, regional groups, castes or communities...'

NPOs in the Centrestage

FCRA was originally targeted at political parties. NPOs were included in the original Act as a safety measure. Later, in 1984, the emphasis on NPOs increased. They were now asked to register under FCRA. Since then, some 30,000 NPOs have registered to receive foreign contribution. FCRA department now spends bulk of its time on giving FCRA registration to NPOs and on monitoring them.

This is reflected in the new Bill. The Bill addresses some of the key concerns voiced by NPOs. It also makes several other changes which would affect NPOs.

Changes affecting NPOs

As FCRA was never designed for NPOs, its implementation created certain problems. Fortunately, in most of these cases, the FCRA department acted with restraint and maturity. The new Bill proposes to wrinkle these out:

1. Interest on Foreign Contribution

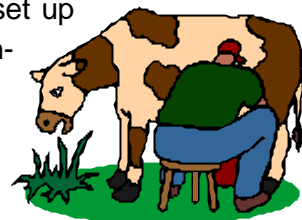
This used to cause a lot of confusion, till the FCRA Department revised form FC-3 in July 2001. This helped clear the confusion. However, some doubts persisted. These doubts will be set at rest with the new explanation⁵. This explanation says that any bank interest earned on foreign contribution will also be treated as foreign contribution.

⁵ Explanation 2, section 2(1)(f): 'The interest accrued on the foreign contribution deposited in any bank referred to in subsection (2) of section 17 or any other income derived from the foreign contribution or interest thereon shall also be deemed to be foreign contribution within the meaning of this clause.'

2. Income from Foreign Contribution

This may give rise to another doubt. What happens if we invest FCRA funds in a Government security or mutual fund? To cover this, the bill proposes that 'any income derived from foreign contribution' will also be treated as foreign contribution.

But what does this new phrase mean? Does it refer to income directly derived from foreign contribution? Or would it also cover income received indirectly from a project set up with foreign contribution? For example, if you buy ten cows with foreign contribution, then would the income from milk be foreign contribution?



Hopefully, the FCRA Department will leave this entertaining question to the judgement of accountants and auditors!

3. Fees etc.

If you interpret the present FCRA strictly, then fees paid by a foreign student to the school would be covered by FCRA⁶. The new Bill takes care of this problem by inserting an explanation⁷ to section 2(1)(f).

⁶ See AccountAble 55, page 1

⁷ Explanation 3, section 2(1)(f): '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 foreign contribution within the meaning of this clause.'

This means that if you provide some services to a foreign source, and receive fees against that, the fees will not be treated as foreign contribution. The explanation covers things like conference fees, subscription to journals, tuition fees, and even consultancy services. This will probably come as a relief⁸ to many NPOs engaged in publication, research or training activities, as also to schools and colleges.

One question that remains unanswered is the question of sale of materials. If you sell a book or a handicraft item to a foreigner, then is the sale price foreign contribution? Hopefully the Ministry will take a closer look at this, if for no other reason, then at least to encourage our traditional handicrafts!

4. Multiple Bank Accounts

Under the present FCRA, an NPO is required to receive and hold FCRA funds in one, specified bank account. If you move these funds to another bank account, you may receive a show-



cause notice. This has created unlimited practical hardships for multi-location NPOs. Often cash has to be carried by

hand to other locations, because of this restriction.

⁸ However, the phrase 'received...from a foreign source in India' may create some confusion. Does this mean that the foreign source should be located physically in India? If so, then it may still leave open the question of subscription charges from foreign-based subscribers or workshop fees from a non-resident foreign participant.

The proposed bill takes care of this problem. NPOs will be allowed to receive funds only in one designated bank account. However, afterwards they can move the funds to other bank accounts according to their operational needs. Only they need to make sure that these bank accounts are used exclusively for FCRA funds⁹.

5. Grounds for Rejection

One of the problems under present FCRA is that you never know why you have been refused registration¹⁰. There have been some cases where the applicants have gone to court over this.

In the new Bill, grounds for rejection have been specifically listed¹¹:

- (i) a fictitious or *benami*¹² applicant;
- (ii) has not undertaken meaningful activity in its chosen field; or

⁹ Section 17(2) 'Every person who has been granted a certificate of registration or prior permission under section 12 shall receive foreign contribution in a single account only through such one of the branches of a scheduled bank in the State as it may specify in his application for grant of certificate of registration or prior permission:

Provided that such person may open one or more accounts in one or more scheduled banks for utilising the foreign contribution received by him:

Provided further that no funds other than foreign contribution shall be received or deposited in such account or accounts.'

¹⁰ In a welcome change, the FCRA Department has recently disclosed that an application for registration may be refused for any of at least twenty-three reasons (A Handbook on FCRA, June 2005).

¹¹ Section 12(3), FCMC Bill

¹² Where the real identity of the person is kept hidden

(iii) has not prepared a meaningful project for the benefit of the people;

(iv) has indulged in activities aimed at religious conversion through inducement or force;

(v) has created communal tension or disharmony;



(vi) has been found guilty of diversion or mis-utilisation of its funds; or

(vii) is engaged or likely to engage to propagate sedition or advocate violent methods to achieve its ends;

(viii) is likely to use the foreign contribution for personal use or divert it for undesirable purposes;

(ix) has contravened any of the provisions of this Act;

(x) his FCRA certificate has been suspended or cancelled earlier;

(xi) has been prohibited earlier from accepting foreign contribution;

(xii) If the applicant is an individual, then he has either been convicted or any prosecution is pending against him;

(xiii) If the applicant is an organisation, then any of its directors or office bearers has either been convicted or any prosecution is pending against him;

(xiv) the acceptance of foreign contribution by the applicant is likely to affect prejudicially –

- the sovereignty and integrity of India; or
- the public interest; or
- freedom or fairness of election to any Legislature; or

- friendly relation with any foreign State; or
- harmony between religious, racial, social, linguistic, regional groups, castes or communities.

Apart from the above, the application will also be rejected if it is not in the prescribed form, or is incomplete¹³.

And, finally, a very welcome change is that the reasons for rejection will be shared with the applicant in writing¹⁴.

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¹³ Section 12(2) of FCMA Bill

¹⁴ Section 12(4) of FCMA Bill