

AccountAble™

FCMC Bill 2005 - Part 2

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Changes affecting NPOs (contd.)

6. Decentralisation of FCRA

Another problem with the present FCRA has been its centralised administration at Delhi. This causes difficulties for people located in far-off places.

The FCMC Bill introduces the concept of 'Registering Authority' as distinct from the Central Government. It appears that the Government will decentralise registration and administration of FCRA once FCMC becomes an Act. This will probably be done by setting up regional FCRA offices.

7. Payment of Fees

A curious innovation in the FCMC Bill is the introduction of fees. The Bill proposes separate fees for:

- FCMC registration¹;
- appeal against refusal of FCMC registration²;
- renewal of FCMC certificate³;

¹ Section 12(1)

² Section 12(5)

³ Section 16(2)

- appeal against cancellation of FCMC certificate⁴; and for
- applying for revision of an order⁵.

Where does the idea for fees come from?



Possibly,

this is based on the fact that the Act is moving from 'regulation' to 'management and control'.

Therefore, the people are expected to pay for the services provided under the Act!

8. Thirty Percent for Administration

This is another unique feature of the Bill. The Government will have the power to prescribe the percentage⁶ that an NPO may spend on administration⁷.

⁴ Section 14(4)

⁵ Section 32(5)

⁶ Government can prescribe a limit not exceeding 30%.

⁷ *Restriction to utilize foreign contribution for administrative purpose.* 8. (1) Every person who is registered and granted a certificate or granted prior permission under this Act and receives any foreign contribution, -

(a) shall utilise such contribution for the purposes for which the contribution has been received;

(b) shall not defray such sum, not more than thirty per cent of such contribution as may be prescribed, to meet administrative expenses.

How will you late administrative expenses? Well, the Government will make rules for this⁸.



Why does the Government want to get involved in something as complicated⁹ as this? Possibly, this has to do with the new orientation of the Bill. This is also reflected in the new title: '...Management and Control...'

9. FCRA Renewal

Under the new Bill, FCMC registration will be given for five years at a time. The FCMC registration will have to be renewed every five years.

The renewal process can be started any time after three years are over¹⁰.

⁸ Section 8 (2) The Central Government may prescribe the manner in which the administrative expenses referred to in subsection (1) shall be calculated.

⁹ There have been some concerns in the FCRA Department about the high administrative expenses being reported in the new FC-3. However, no one really knows how much an NPO spends on administration. Partly this is because expenses are tracked using standard accounting heads, and not on the basis of *functional purpose* (administration, program, fund-raising, etc.) of an expense. A restrictive rule like this may probably lead to more innovative accounting, and a headache for auditors.

¹⁰ 'Renewal of certificate. 16. (1) Every person who has been granted a certificate under section 12 shall have such certificate renewed within two years before the expiry of the period of the certificate. ...

This is designed to ensure that an NPO can secure its renewal well in time. However, the need for asking NPOs to renew their FCMC registration is not clear.

10. FCRA Cancellation

The present Act has no formal provision for cancellation of FCRA registration. However, an organisation can be put on the list for prior-permission or prohibited from accepting foreign contribution¹¹. Of course, in practice, this has the same effect as cancellation of FCRA registration.

The FCMC Bill introduces a proper provision for cancellation of FCMC registration. It also lays down clear grounds for this¹². Once the FCMC reg-

(3) The Registering Authority may renew the certificate subject to such terms and conditions as it may deem fit and grant a certificate of renewal for a period of five years.'

¹¹ Section 10 of FCRA, 1976

¹² *Cancellation of certificate.* 14. (1) The Central Government may, if it is satisfied after making such inquiry as it may deem fit, by an order, cancel the certificate if -

(a) the holder of the certificate has made a statement in, or in relation to, the application for the grant of registration or renewal thereof, which is incorrect or false; or

(b) the holder of the certificate has violated any of the terms and conditions of the certificate or renewal thereof; or

(c) in the opinion of the Registering Authority, it is necessary in the public interest to cancel the certificate; or

(d) the holder of certificate has violated any of the provisions of this Act or rules or order made thereunder....

(3) Any person whose certificate has been cancelled under this section shall not be

istration is cancelled, it will not be renewed for at least three years.

What happens to the amount with the NGO at the time of cancellation? This money will come into the custody of the Government. The Government will then manage this money¹³.

11. Suspension of FCRA Certificate

The process of cancellation may take some time. In the meanwhile, the Bill provides for suspension of FCRC registration.

This suspension can be for a maximum period of 90 days. During the suspension, the organisation can not accept any foreign contribution.



What happens to the amount already received? This can be utilised only with prior-approval of FCRA Department¹⁴.

eligible for registration for a period of three years from the date of cancellation of such certificate.

¹³ *Management of foreign contribution of person whose certificate has been cancelled.* 15. (1) The foreign contribution in the custody of every person whose certificate has been cancelled under section 14 shall vest in such authority as may be prescribed.

(2) The authority referred to in sub-section (1) shall manage the foreign contribution of the persons referred to in sub-section (1) in such manner and subject to such conditions as may be prescribed.

¹⁴ *Suspension of certificate.* 13. (1) Where the Registering Authority, for reasons to be recorded in writing, is satisfied that pending consideration of the question of cancelling the certificate on any of the grounds men-

12. Prior Permission

The facility of prior-permission has been retained in the existing form¹⁵. Presently, there is a maximum time limit of 90/120 days for processing. However, the new Bill does not mention any time limit for processing the application.

13. Individuals with a Program

Under the present FCRA, only organisations are required to get FCRA registration. This happens if they have a definite cultural, economic, educational, religious or social program¹⁶.

Under the new FCRC, the requirement covers all persons having such a pro-

tioned in sub-section (1) of section 14, it is necessary so to do, it may, by order in writing, suspend the certificate for such period not exceeding ninety days as may be specified in the order. ...

(3) Every person whose certificate has been suspended shall -

(a) not receive any foreign contribution during the period of suspension of certificate;

(b) utilise, in the prescribed manner, the foreign contribution in his custody with the prior approval of the Registering Authority.

¹⁵ Section 11(2) Every person referred to in sub-section (1) may, if he is not registered with the Registering Authority under that sub-section, accept any foreign contribution only after obtaining the prior permission of the Registering Authority.

¹⁶ Organisations having other kinds of programs (e.g. health program, sports program, etc.) are not covered under FCRA. However, *none* of their objectives should be related to cultural, economic, educational, religious or social activities.

gram¹⁷. Who is a person? According to the Bill¹⁸, “person” includes-

- (i) an individual;
- (ii) a Hindu undivided family;
- (iii) an association;
- (iv) a company;

While the last two were already covered in the present definition of an ‘association’, the Bill has added an individual and an HUF¹⁹ to the list.

14. Changes in Governing Body

In 1996, the FCRA Department had modified form FC-8. Accordingly, FCRA



registration is frozen if the changes in Governing Body reached 50% of

the members. The registration remains frozen till the FCRA Department is satisfied about the new members. This change has caused a lot of confusion

¹⁷ Registration of certain persons with Registering Authority. 11 (1) Same as otherwise provided in this Act, no person having a definite cultural, economic, educational, religious or social programme shall accept foreign contribution unless such person obtains a certificate of registration from the Registering Authority....

¹⁸ Section 2(1)(k) of FCMC Bill

¹⁹ Hindu Undivided Family, a traditional joint family, which is recognized legally as a business unit assessable to tax.

among the NGOs, and some people have started avoiding elections.

The new FCMC does not make any mention of this provision. Presumably, this restriction will be lifted once the new FCMC Bill is passed.

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