

AccountAble™

FCMC Bill 2005 - Part 3

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In this issue

Changes affecting NPOs (contd.).....	1
15. Fellowships.....	1
16. Enhanced Role of Banks.....	1
17. Utilisation Record.....	2
18. Auction of Assets.....	2
19. The Offence of Falsification.....	2
20. Prohibitory Powers.....	3
21. Sunset Clauses.....	4

Continued from AccountAble 107...

Changes affecting NPOs (contd.)

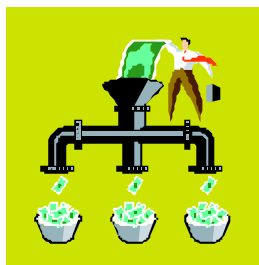
15. Fellowships

Under the present FCRA, people receiving scholarship or stipend of more than Rs.36,000 per year are required to report it to the Government¹.

In the new FCMC Bill, there is no such requirement.

16. Enhanced Role of Banks

The FCMC Bill proposes a formal role for banks in controlling flow of foreign contribution².



¹ Section 7, Rule 5 of FCRA, 1976

² *Foreign contribution through scheduled bank.* 17. (1) No scheduled bank shall allow credit of foreign contribution to the account or withdrawal of foreign contribution from the account of a person referred to in section 11, unless such person has obtained a certificate of registration or prior permission under section 12.

(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

Firstly, you can now receive and keep FCRA funds only in scheduled banks³.

Secondly, you can open multiple accounts in scheduled banks for *utilising* the foreign contribution⁴.

Thirdly, the banks now will have to file regular reports with FCMC Department. These reports will show details of funds received in the designated primary account. These will also show how much funds have been transferred to secondary bank accounts. Finally, the reports will show details of funds withdrawn from these accounts.

Fourthly, there is a specific provision prohibiting banks from allowing credit or withdrawal of foreign contribution to

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.

(3) Every scheduled bank receiving foreign contribution under sub-section (2) shall intimate in such manner and at such interval as may be prescribed, to the Registering Authority the details of all foreign contribution received in the account referred to in sub-section (2) and amount transferred to the account or accounts referred to in the first proviso to sub-section (2) or withdrawn from such account or accounts.

³ These banks are directly regulated by the Reserve Bank of India.

⁴ Discussed separately in AccountAble 106

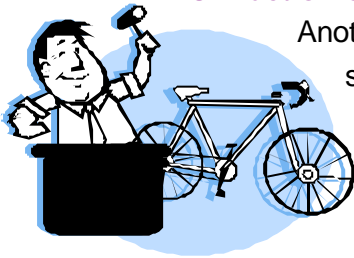
an account⁵, unless the concerned person has FCMC registration or prior permission.

17. Utilisation Record

Presently, every organisation registered under FCRA has to keep separate account books. In case, the contribution is in kind, then they have to maintain a register in form FC-6 also.

The FCMC Bill talks⁶ about a record showing how the foreign contribution has been utilised. This appears to include foreign contribution in kind as well as in currency. The nature of this requirement will probably become clearer when related rules are framed.

18. Auction of Assets



Another new provision⁷ concerns disposal of FCRA assets. The Government will

⁵ In case the person is required to get registration or permission under section 12

⁶ *Maintenance of accounts.* 19. Every person who has been granted certificate of registration or prior permission under this Act shall maintain, in such manner as may be prescribed, -

(a) an account of any foreign contribution received by him; and

(b) a record as to the manner in which such contribution has been utilised by him.

⁷ *Disposal of assets created out of foreign contribution* 22. The Central Government may, having regard to the nature of assets created out of the foreign contribution received under this Act, by notification, specify such assets which shall be disposed of and in such manner as it may, from time to time, determine after following the procedure as may be prescribed by it.

now have to power to direct that any particular assets, created from foreign contribution, should be disposed off. The procedure for this will also be prescribed by the Government.

19. The Offence of Falsification

The FCMC Bill also introduces a new Section 33⁸. Suppose a person has made a false statement, or has falsified any document, record, or account books, etc. Then the person can be

⁸ *Making of false statement, declaration or delivering false accounts.* 33. Any person, subject to this Act, who commits any of the following offences, that is to say, -

(a) in any intimation, book or declaration made or signed by him, or of the contents of which it is his duty to ascertain the accuracy, knowingly makes, or is privy to the making of, any false or fraudulent statement; or

(b) in any intimation, book or declaration of the description mentioned in clause(a) knowingly makes, or is privy to the making of, any omission, with intent to defraud; or

(c) knowingly and with intent to defraud, suppresses, defaces, alters or makes away with any document which it is his duty to preserve or produce; or

(d) where it is his official duty to make a declaration respecting any matter, knowingly makes a false declaration; or

(e) obtains for himself, or for any other person, any advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record, or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement shall, on conviction by a court, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

punished with imprisonment extending upto five years.

Suppose the person did not falsify the records, but was aware of it? In some cases, the person may still be held liable. This would happen if the person was bound to check the records properly or make sure that the documents were properly made out.



While the Bill does not say this clearly, this provision may cover persons such as accountants, chief functionaries and even auditors!

20. Prohibitory Powers

Under the present FCRA, the Government can direct that a particular person or association will need prior-permission to accept any foreign contribution. Once the FCMC Bill is passed, this power will be expanded substantially. The Government will be able to put the following on the prior-permission list:

- An entire class of persons or associations registered under section 12;
- Any geographical area;
- Any specific purpose;
- Any specific source.

How will this work in practice? The Government could say, for example, that no foreign contribution can be accepted by any religious organisation. Or it could say that no foreign contribution can be accepted for a particular state. Similarly, it could say that no for-

foreign contribution can be accepted from XYZ agency.

From an enforcement point of view, this provision⁹ is designed to help the Government micro-manage the foreign contribution in a more efficient manner.

A further extension of this power is contained in section 45¹⁰. This allows the Government to issue directions regarding how foreign contribution will be

⁹ Section 11 (3) Notwithstanding anything contained in this Act, the Central Government may, by notification in the Official Gazette, specify –

(a) the person or class of persons registered under subsection (1) who shall obtain its prior permission before accepting the foreign contribution; or

(b) the area or areas in which the foreign contribution shall be accepted and utilised with the prior permission of the Central Government;

(c) the purpose or purposes for which the foreign contribution shall be utilised with the prior permission of the Central Government; or

(d) the source or sources from which the foreign contribution shall be accepted with the prior permission of the Central Government

¹⁰ *Power of Central Government to give directions.* 45. The Central Government may give such directions as it may deem necessary –

(a) to the prescribed authority, or any other authority or any person or class of persons regarding the carrying into execution of the provisions of this Act, and

(b) as to the manner in which foreign contribution shall be received and the purpose for which such foreign contribution shall be utilised by any person; and the prescribed authority, or any authority or any person or class of persons shall comply with such directions.

received and the purpose for which it shall be utilised.

21. Sunset Clauses

What will happen to the present FCRA?

It will be withdrawn once the new Bill is passed. NGOs registered under the existing FCRA will be given some time for the changeover. There are two important provisions regarding this.



Grace Period for Registration under the New Act

NPOs which are already registered under the present Act, will not get automatic registration under the new Act. They will need to apply under section 12 and obtain a new certificate.

This must be done within two years from the date the new Act is implemented. This means that the present FCRA registration will be valid for another two years after the new Act is passed.

An interesting practical question arises. Once the Act is implemented, all NGOs already registered will apply again for FCRA registration. This may mean that some 15-20,000 organisations will apply for re-registration in about 3-6 months' time. How will the FCRA Department deal with this rush?

Applicability of other Provisions

What will happen to such NPOs during the grace period? They can continue to receive FCRA funds. However, any foreign contribution received during this

period will be treated as received under FCMA Act¹¹.

What does this mean in practice? Simply that such NPOs will have to file returns in the new formats. Also their transactions will be governed by new provisions.

Continued in AccountAble 109...

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¹¹ What happens to the unspent foreign contribution already in FCRA bank account? Will this also be governed by FCMA? The Bill is silent on this.