

# AccountAble™

FCMC Bill 2005 Part 4

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## Changes affecting NPOs (contd.)

### 22. Passing on the Funds

Under the present FCRA, NPOs are not allowed to pass on foreign contribution to other NPOs, which do not have FCRA registration. However, this is not clearly specified in the Act, but is stated in the Ministry's letter of registration.



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The FCMC Bill will make this position stronger by introducing a specific provision<sup>1</sup>.

<sup>1</sup> 'Prohibition to transfer foreign contribution to other person. 7. No person who-

(a) is either registered and granted a certificate or granted prior permission under Chapter III of this Act; and

(b) receives any foreign contribution, shall transfer such foreign contribution to any other person unless such other person is also either registered and granted a certificate or granted prior permission under Chapter III of this Act.'

### 23. Appeal to Government

A new provision<sup>2</sup> in FCMC Bill relates to revision of orders. Under this provision, the Government can revise an order which it had issued earlier.

<sup>2</sup> 'Revision of orders by Central Government or prescribed authority. 32. (1) The Registering Authority, may, either of its own motion or on an application by the person registered under this Act, for revision, call for the record of any proceeding under this Act in which any such order has been passed by it and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such order thereon as it thinks fit.

(2) The Registering Authority shall not of its own motion revise any order under this section if the order has been made more than one year previously.

(3) In the case of an application for revision under this section by the person referred to in sub-section (1), the application must be made within one year from the date on which the order in question was communicated to him or the date on which he otherwise came to know of it, whichever is earlier:

Provided that the Registering Authority may, if it is satisfied that such person was prevented by sufficient cause from making the application within that period, admit an application made after the expiry of that period.

(4) The Registering Authority shall not revise any order where an appeal against the order lies but has not been made and the time within which such appeal may be made has not expired or such person has not waived his right of appeal.

(5) Every application by such person for revision under this section shall be accompanied by such fee, as may be prescribed....'

This can be done by the Government on its own. For this, there is a time limit of one year.

The revision can also be done if an FCMC registered organisation applies for revision. In such a case also, there is a time limit of one year. This will be calculated from the date the order was received by the organisation. In some cases, this time limit can be ignored by the Government.

As mentioned earlier, a fee will have to be paid to the Government for the appeal.



## Other Changes

There are other changes in the Bill which do not concern NPOs directly. These are discussed in the following paragraphs.

### 1. Association

The definition of 'association' is being revised to exclude Government NGOs and corporations<sup>3</sup>. This would mean that an organisation like CAPART

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<sup>3</sup> 'Definitions 2. (1) In this Act, unless the context otherwise requires, -

(a) "association" means an association of individuals, whether incorporated or not, having an office in India and includes a society, whether registered under the Societies Registration Act, 1860, or not, and any other organisation, by whatever name called but does not include any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956 or a society owned or controlled by the Central Government or a State Government;...

would not need FCMC registration to accept funds from a foreign source.

But what happens if such a Government society decides to pass on such funds to a normal NGO? Our reading is that FCMC would become applicable to such funds<sup>4</sup>.

### 2. Gifts for Personal Use

The FCMC Bill also proposes to raise the limit on this from the present Rs.1,000. A gift given to someone for his or her *personal* use will not be considered foreign contribution. However, the market value of the gift should not exceed Rs. 10,000<sup>5</sup>.

### 3. Receipts from Relatives

Certain persons in sensitive public positions can not receive foreign contribution. This provision has been carried over from the present FCRA, without any change<sup>6</sup>.

However, these persons can receive gifts from their relatives. This is also a

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<sup>4</sup> Explanation 1 to section 2(1)(f) – 'A donation, delivery or transfer of any article, currency or foreign security referred to in this clause by any person who has received it from any foreign source, either directly or through one or more persons, shall also be deemed to be foreign contribution within the meaning of this clause.'

<sup>5</sup> Section 2(1)(f)(i): '...of any article, not being an article given to a person as a gift for his personal use, if the market value, in India, of such article, on the date of such gift, is not more than ten thousand rupees, as the Central Government may, from time to time, specify by rules made by it in this behalf;...'

<sup>6</sup> Except for extending the restriction to persons in electronic media

carryover from the present FCRA. However, under the present FCRA, an intimation should be given to the Government when they receive such a gift. Further, permission from the Government is required if the gift is more than Rs.8,000 per year.

Under the new FCMC Bill, both these requirements will be removed. No intimation will be required. Also, no permission will be required, irrespective of the value of the gift.

#### 4. Electronic Media

As mentioned in an earlier issue of AccountAble<sup>7</sup>, FCRA does not cover electronic media. After the electronic media was opened to private sector in 1990s, this could have become a loophole.

The FCMC Bill proposes to rectify this. Accordingly, organisations that are producing or broadcasting news will be covered by the restriction.



This news may be audio or it may be audio-visual.

Also covered are organisations producing or broadcasting any programs on current affairs through an electronic mode.

Further, any correspondent or editor of such organisation is also prohibited from accepting foreign contribution.

What does this leave out? Well, organisations producing documentaries are not covered. However, these documentaries should not be related to current affairs.

<sup>7</sup> AccountAble 55: Puzzles of FCRA, page 2

What about broadcasting of news through the Internet? Such news does not fall in the category of audio news or audio-visual news. It would also not be classified as a current affairs program.

Surprisingly, owners of such organisations are not covered by the language of the section<sup>8</sup>. This is contrast with the language used in the preceding segment related to newspapers<sup>9</sup>.

A practical problem may arise due to structure of the section. Suppose an NGO wishes to produce a documentary on environmental issues. The documentary is being funded with foreign contribution. Would this NGO be able to approach a commercial studio which produces various kinds of programs, including audio-visual news? Would the payment of fees to the studio be foreign contribution? This is not clear from the language of the Bill.

#### 5. Organisations of a Political Nature

The restrictions on organisations of a political nature have been amplified. Presently, these organisations are d-

<sup>8</sup> 'Prohibition to accept foreign contribution 3. (1) No foreign contribution shall be accepted by any ...

(g) association or company engaged in the production or broadcast of audio news or audio visual news or current affairs programmes through any electronic mode;

(h) correspondent or editor of the association or company referred to in clause (g)....'

<sup>9</sup> 'Prohibition to accept foreign contribution 3. (1) No foreign contribution shall be accepted by any...

(b) correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper,...

lowed to receive foreign contribution, only after getting prior-permission in each case. Once FCMC Bill becomes law, the option for prior-permission<sup>10</sup> will not be available. Thus, such organisations will not be able to access foreign contribution at all.

What kind of organisations are considered to be organisations of a political nature? These are mainly student unions, trade unions, or organisations with links to a political party. Some examples<sup>11</sup> are:

- All India Democratic Women's Association (AIDWA), 23, Vithal Bhai Patel House Rafi marg, New Delhi
- National Students Union of India (I), 5, Raisina Road, New Delhi
- People's Union For Civil Liberties (PUCL), 8, Sahayog Apartments, Mayur Vihar, Phase-I, New Delhi
- Rashtriya Swayam Sewak Sangh (RSS), Hedgewar Bhavan, Nagpur
- Shiromani Gurudwara Prabhandak Committee (SGPC), Golden Temple, Amritsar
- Student Islamic Movement in India (SIMI), 151-C, Zakir Nagar, New Delhi
- Tabligh Jammat, Bangle Wali Masjid, Nizamuddin Basti, New Delhi
- William Carey Study & Research Centre, Calcutta

## Looking into the Future

FCMC Bill's potential for bureaucratic harassment is generating some concern in the NGO sector. The Bill is likely to see a lively debate, and some lobbying too.



One can also not be sure that the Bill will actually become law. Historically, this is the fourth attempt to strengthen FCRA since 1988. The other three did not see the light of the day, as the Government changed before the law could be passed!

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<sup>10</sup> Presently granted against form FC-1

<sup>11</sup> Based on list updated till 31-May-98