

# AccountAble™

122. FCRA Bill 2006 – Part 1

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The Government has recently introduced a bill called Foreign Contribution (Regulation) Bill, 2006 in the Rajya Sabha. When the Bill is passed, it will replace the FCRA, 1976. This process may take a year or so.

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

### What happened to FCMC 2005?

Well, this is actually the FCMC bill only, with some modifications.

The confusion arises from renaming of the bill to FCRA Bill. Also, this is not an amending Act, as was thought initially. The new FCRA Bill 2006 will eventually replace the old FCRA 1976.

Talk of new wine in an old bottle. And this new brew is much more heady than the old one!



### 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 elections<sup>1</sup>.

The new FCRA shifts the focus of the Act from politics to activities detrimental to the national interest<sup>2</sup>.

### Activities detrimental to the National Interest

What activities are detrimental to the national interest? 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)(f)<sup>3</sup> of FCRA Bill 2006.

<sup>1</sup> 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 democratic republic, and for matters connected therewith or incidental thereto.'

<sup>2</sup> Preamble to the FCRA Bill 2006: 'A Bill to consolidate the law to regulate 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 any activities detrimental to the national interest and for matters connected therewith or incidental thereto.'

<sup>3</sup> Section 12(3)(f): '...the acceptance of foreign contribution by the person referred to in sub-section (1) is not likely to affect prejudicially-

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.

### NPOs in the Centrestage

FCRA was originally targeted at political parties. NPOs<sup>4</sup> 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 that would affect NPOs.

### Changes affecting NPOs

As the original FCRA (1976) was never designed for NPOs, its implementation created certain problems. Fortunately,

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

<sup>4</sup> The term NPOs includes public benefit organizations (NGOs), which are engaged in social action or relief of poverty etc, as well as other public utility organizations (educational, health and religious organizations), which are not treated as NGOs.

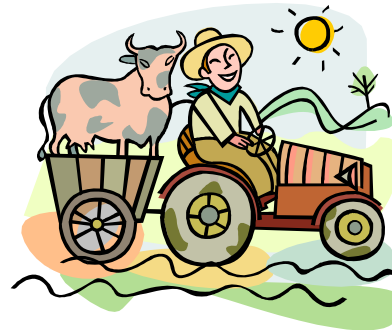
in most of these cases, the FCRA department acted with restraint and maturity. The new Bill makes an attempt to wrinkle out some of these problems:

### 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 explanation<sup>5</sup>. This explanation says that any bank interest earned on foreign contribution will also be treated as foreign contribution.

### 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

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<sup>5</sup> Explanation 2, section 2(1)(h) of FCRA Bill 2006: 'The interest accrued on the foreign contribution deposited in any bank referred to in sub-section (1) 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.'

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 FCRA (1976) strictly, then fees paid by a foreign student to the school would be covered by FCRA<sup>6</sup>. The new Bill takes care of this problem by inserting an explanation<sup>7</sup> to section 2(1)(h).

This means that if you provide some service to a foreign source, and receive fees against that, the receipt will not be treated as foreign contribution. The explanation covers all kinds of fees including conference fees, subscription to journals, tuition fees, consultancy services, etc. This will probably come as a relief<sup>8</sup> to many NPOs engaged in publication, research or training activities, as also to schools and colleges.

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<sup>6</sup> See AccountAble 55, page 1

<sup>7</sup> Explanation 3, section 2(1)(h): 'Any amount received, by any person from any foreign source in India, by way of fee (including fees charged by an educational institution in India from foreign student) or towards cost in lieu of goods or services rendered by such person in the ordinary course of his business, trade or commerce whether within India or outside India or any contribution received from an agent of a foreign source towards such fee or cost shall be excluded from the definition of foreign contribution within the meaning of this clause.'

<sup>8</sup> The explanation covers receipts from a foreign source based in India. It also covers receipts from an agent of a foreign source, which may be located outside India.

The explanation also covers sale of goods and materials. NPOs selling handicrafts at Dilli Haat will not need to worry about FCRA when a foreigner buys something from them.

However, this provision can also be misused. For instance, some clever person may export a container load of junk and receive a million dollars against the consignment<sup>9</sup>. What happens in such cases? To prevent such misuse, the explanation covers only the cost of such goods. Presumably, the profits from the sale may still be foreign contribution!

### 4. Multiple Bank Accounts

Under the present FCRA (1976), 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 endless practical hardships for multi-location

NPOs. Often cash has to be carried by hand to other locations, because of this restriction.



The proposed bill (FCRA 2006) 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 opera-

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<sup>9</sup> This scam is fairly well known in export circles.

tional needs. Only they need to make sure that these bank accounts are used exclusively for FCRA funds<sup>10</sup>.

### 5. Payment of Fees

A curious innovation in the FCRA Bill, 2006 is the introduction of fees. The Bill proposes separate fees for:

- FCRA registration or prior-permission<sup>11</sup>;
- renewal of FCRA certificate<sup>12</sup>;
- applying for revision of an order<sup>13</sup>;
- applying for compounding of an offence<sup>14</sup>.

Where does the bright idea for fees come from? Possibly, the Government is concerned about the expenditure incurred on maintenance of FCRA Department, and



<sup>10</sup> Section 17(1): 'Every person who has been granted a certificate or given prior permission under section 12 shall receive foreign contribution in a single account only through such one of the branches of a bank as he may specify in his application for grant of certificate:

Provided that such person may open one or more accounts in one or more 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.'

<sup>11</sup> Section 12(1)

<sup>12</sup> Section 16(2)

<sup>13</sup> Section 32(5)

<sup>14</sup> Section 41(4)

plans to recover part of the costs through levy of fees.

*Continued in AccountAble 123...*

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