

# AccountAble™

123. FCRA Bill 2006 – Part 2

Mar- 06 / रा. फाल्गुन १९२७ ; Released: Feb - 07

## In this issue

Changes affecting NPOs (contd.) .....	1
6. Grounds for Rejection.....	1
7. FCRA Renewal.....	2
8. Prior Permission .....	2
9. Individuals with a Program .....	3
10. Fellowships .....	3
11. Suspension of FCRA Certificate .....	4

Continued from AccountAble 122...

## Changes affecting NPOs (contd.)

### 6. Grounds for Rejection

One of the problems under present FCRA (1976) is that you never know why you have been refused registration<sup>1</sup>. There have been some cases where the applicants have gone to court over this.

In the new Bill, grounds for rejection have been specifically listed<sup>2</sup>:

- (i) a fictitious or *benami*<sup>3</sup> applicant;
- (ii) has indulged in activities aimed at religious conversion through inducement or force;
- (iii) has created communal tension or disharmony;
- (iv) has been found guilty of diversion or mis-utilisation of its funds;
- (v) is engaged or likely to engage to propagate sedition or advocate violent

<sup>1</sup> In a welcome change, the FCRA Department has explained that an application for registration may be refused for any of at least twenty-three reasons (A Handbook on FCRA, June 2005).

<sup>2</sup> Section 12(3), FCRA Bill 2006

<sup>3</sup> Where the real identity of the person is kept hidden

methods to achieve its ends;

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

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

(viii) whose FCRA certificate is under suspension;

(ix) whose FCRA certificate was cancelled within three years of application;

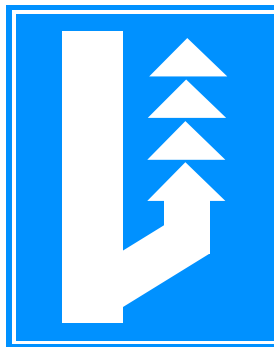
(x) has been prohibited from accepting foreign contribution;

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

(xii) 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;

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

- the sovereignty and integrity of India; or
- the security, strategic, scientific or economic interest of the State; 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.

(xiv) acceptance of the contribution shall result in an offence or endanger someone's life or physical safety.

Further, permanent FCRA registration will be given only to those NPOs who have carried out meaningful activity in their chosen field.

In case of prior-permission, the requirement of meaningful activity has been dropped. It will be sufficient if the NPO has prepared a meaningful project. This provision, if implemented properly, may make it easier for new NGOs to access foreign funds.

Apart from the above, the application will also be rejected if it is not in the prescribed form, or is incomplete<sup>4</sup>.

And, finally, a very welcome change is that the reasons for rejection will be shared with the applicant in writing<sup>5</sup>. This is a little like giving you a recycled gift. The reasons will be shared only if the information could have anyways been obtained under Right to Information Act, 2005! However, this will certainly be more convenient than applying for it under Right to Information Act.



<sup>4</sup> Section 12(2) of FCRA Bill, 2006

<sup>5</sup> Section 12(4) of FCRA Bill, 2006

## 7. FCRA Renewal

Under the new Bill, FCRA registration will be given for five years at a time. The FCRA registration will have to be renewed every five years. The renewal will be automatic if the paperwork is satisfactory. However, if an NPO has violated any FCRA provisions, then the renewal can be refused.

The renewal process can be started any time during the last six months of registration<sup>6</sup>. This is designed to ensure that an NPO can secure its renewal well in time.

The requirement for renewal is seen as worrisome by many NPOs, as it introduces an element of uncertainty for continuation of their work.

## 8. Prior Permission

The facility of prior-permission has been retained in the existing form<sup>7</sup>. The

<sup>6</sup> *'Renewal of certificate.* 16. (1) Every person who has been granted a certificate under section 12 shall have such certificate renewed within six months before the expiry of the period of the certificate. ...

(3) The Central Government shall 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.'

Provided that the Central Government may refuse to renew the certificate in case where a person has violated any of the provisions of this Act or rules made thereunder.

<sup>7</sup> Section 11(2): Every person referred to in sub-section (1) may, if it is not registered with the Central Government under that sub-section, accept any foreign contribution only after obtaining the prior permission of the Central Government and such prior permission shall be valid for the specific

Bill also clarifies that prior-permission will be valid only for the specified purpose and the specified source.

Presently, there is a maximum time limit of 90/120 days for processing the application.

The new Bill does not mention

any time limit for this. It is not clear whether this time limit will be brought in through the rules or will be ignored altogether.



### 9. Individuals with a Program

Under the present FCRA (1976), only organisations are required to get FCRA registration. This happens if they have a definite cultural, economic, educational, religious or social program<sup>8</sup>.

Under the new FCRA, the requirement covers all persons having such a program<sup>9</sup>. Who is a person? According to the Bill<sup>10</sup>, “person” includes-

---

purpose for which it is obtained and from specific source.

<sup>8</sup> 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.

<sup>9</sup> *Registration of certain persons with Central Government.* 11. (1) Save 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

(i) an individual;

(ii) a Hindu undivided family;

(iii) an association;

(iv) a company registered under section 25 of the Companies Act, 1956;’

While the last two were already covered in the present definition of an ‘association’, the Bill has added an individual and an HUF<sup>11</sup> to the list.

However, by specifying the type of company<sup>12</sup> (sec.25), the Bill also makes an important exclusion: a company with a cultural, economic, educational, or social program will not be covered by FCRA if it does not get itself registered under section 25 of Companies Act!

### 10. Fellowships

Under the present FCRA, people receiving scholarship or stipend of more than Rs.36,000 per year from foreign source are required to report it to the Government<sup>13</sup>.

In the new FCRA Bill, there is no such requirement. However, as the new FCRA Bill will also cover individuals, it is not clear whether people getting stipends or scholarships will still be covered anyway.

---

obtains a certificate of registration from the Central Government....

<sup>10</sup> Section 2(1)(m) of FCRA Bill 2006

<sup>11</sup> Hindu Undivided Family, a traditional joint family, which is recognized legally as a business unit assessable to tax.

<sup>12</sup> Not-for-profit companies obtain a license under sec. 25, and become eligible for tax-exemption etc. A company not licensed under section 25 will have to pay tax on any profits.

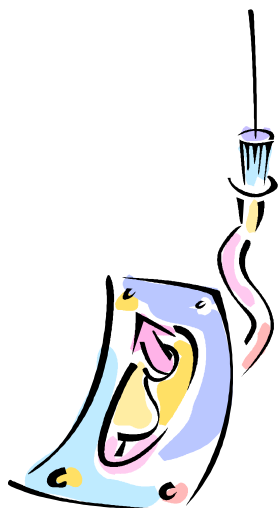
<sup>13</sup> Section 7, Rule 5 of FCRA, 1976

## 11. Suspension of FCRA Certificate

The process of cancellation may take some time. In the meanwhile, the Bill provides for suspension of FCRA registration. This suspension can be for a maximum period of 180 days.

During the suspension, the organisation cannot accept any foreign contribution without prior-approval in each case.

What happens to the amount already received? This also can be utilised only with prior-approval of FCRA Department<sup>14</sup>.



<sup>14</sup> *Suspension of certificate.* 13. (1) Where the Central Government, for reasons to be recorded in writing, is satisfied that pending consideration of the question of canceling the certificate on any of the grounds mentioned 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 one hundred and eighty days as may be specified in the order. ...

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

(a) not receive any foreign contribution during the period of suspension of certificate; Provided that the Central Government, on an application made by such person, if it considers appropriate, allow receipt of any foreign contribution by such person on such terms and conditions as it may specify;

*Continued in AccountAble 124...*

**What is AccountAble:** Each issue of 'AccountAble' covers a different topic related to NGO regulation or accounting and is mailed to about 3,500 persons in NGOs, Agencies and audit firms. AccountAid encourages reproduction or re-distribution of 'AccountAble' in workshops or NGO newsletters for non-commercial use, provided the source is acknowledged.

**Interpretation of law:** Interpretation of law given here is of a general nature. Please consult your advisors before taking any important decision.

**AccountAble on the Web:** All the past issues of 'AccountAble' are available on our web-site [www.accountaid.net](http://www.accountaid.net).

**AccountAble by e-mail:** To get e-mail notification about uploading of new AccountAble issues, send a blank e-mail to [accountable-subscribe@topica.com](mailto:accountable-subscribe@topica.com).

**AccountAble in Hindi:** अकाउण्टेबल हिन्दी में 'लेखा-योग' के नाम से उपलब्ध है।

**AccountAid Capsules:** Short items of information on NGO accounting and related issues. To subscribe, send e-mail to [accountaid-subscribe@topica.com](mailto:accountaid-subscribe@topica.com).

**Questions?:** Your questions, comments and suggestions can be sent to AccountAid India, 55-B, Pocket C, Siddharth Extension, New Delhi-110 014; Phone: 011-2634 3128; Ph./Fax: 011-2634 6041; e-mail: [accountaid@vsnl.com](mailto:accountaid@vsnl.com) [accountaid@gmail.com](mailto:accountaid@gmail.com)

© AccountAid™ India विक्रम संवत् २०६३ फाल्गुन, Feb 2007 CE

Printed and published by Sh. Anil Baranwal for AccountAid India, New Delhi. Ph. 26343128, Ph./Fax 26346041 and printed at Chanakya Mudrak Pvt. Ltd., New Delhi. Ph.: 41420316, 25927951

For private circulation only.

dSA/rCM,VS,AB/sCM/cAB,SA/fAB/cpSA

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