

## In this issue

Changes affecting NPOs (contd.) .....	1
12. FCRA Cancellation .....	1
13. Fifty Percent for Administration .....	2
14. Changes in Governing Body .....	3
15. Report from Banks.....	3
16. Utilisation Record .....	4

Continued from AccountAble 123...

## Changes affecting NPOs (contd.)

### 12. FCRA Cancellation

The present FCRA (1976) 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 contribution<sup>1</sup>. Of course, in practice, this has the same effect as cancellation of FCRA registration.

The new FCRA Bill introduces a proper provision for cancellation of FCRA registration. It also lays down clear grounds for this<sup>2</sup>. Once the FCRA reg-



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

What happens to the money and the assets with the NPO at the time of cancellation? These will come into the custody of the Government. The Government will then manage this money<sup>3</sup>.

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(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 eligible for registration or grant of prior permission for a period of three years from the date of cancellation of such certificate.

<sup>3</sup> *Management of foreign contribution of person whose certificate has been cancelled.* 15. (1) The foreign contribution and assets created out of 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) may, if it considers necessary and in public interest, manage the activities of the person referred to in that sub-section for such period and in such manner, as the Central Government may direct and such authority may utilize the foreign contribution or dispose of the assets created of it in case adequate funds are not available for running such activity.

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<sup>1</sup> Section 10 of FCRA, 1976

<sup>2</sup> *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 Central Government, it is necessary in the public interest to cancel the certificate; or

Later, if the concerned NPO is granted registration again, then the Government will be required to return the balance money and assets<sup>4</sup>.

### 13. Fifty Percent for Administration

This is a unique feature of the FCRA Bill 2006. NPOs are expected not to spend more than 50% of the foreign contribution on administration<sup>5</sup>. In case the expenditure exceeds fifty percent, prior-approval of the Government will be needed.

How will you calculate administrative expenses? Well, the Government will make rules for this<sup>6</sup>.

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<sup>4</sup> Section 15(3), FCRA Bill 2006

<sup>5</sup> *Restriction to utilize foreign contribution for administrative purpose.* 8. (1) Every person, who is registered and granted a certificate or given 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;

Provided that any foreign contribution or any income arising out of it shall not be used for speculative business;

(b) shall not defray as far as possible such sum, not exceeding fifty per cent of such contribution, received in a financial year, to meet administrative expenses.

Provided that administrative expenses exceeding fifty per cent of such contribution may be defrayed with prior approval of the Central Government.

<sup>6</sup> Section 8 (2) The Central Government may prescribe the elements which shall be included in the administrative expenses and the manner in which the administrative expenses referred to in sub-section (1) shall be calculated.

Why does the Government want to get involved in something as complicated as this?

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.

It should also be noted that the Government proposes to prescribe elements, which may be included in calculating administrative expenses. This can lead to serious differences between some of the NPOs and the Government.

For instance, the Government may say that all salaries and consultancy fees are to be included under administration for this purpose. If an NPO is mostly working on education or advocacy, then most of its expenses are likely to be on salaries. In such a case, it will face enormous difficulties in meeting the salary bill.

This may lead to all kinds of unethical financial practices, such as inflated billing for materials and direct programs. The consequences for ethical accounting movement

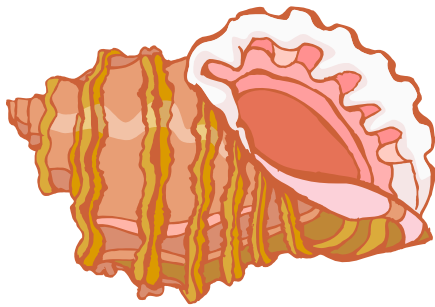


among NPOs could be devastating.

Thus, if this provision is to be implemented smoothly, the Department will have to continue to show the kind of good judgement and restraint that it has shown in the past. However, as this cannot be ensured under all administrations, it would be worthwhile for the Government to think again about this provision.

#### 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 was meant as a safeguard against 'sale' of



shell NPOs after they get FCRA registration.

However, this change caused a lot of confusion among other NPOs as well. Some of them started avoiding elections in order to escape this provision.

The new FCRA Bill does not make any mention of this provision. What could be the reason for this omission? Well, if the Government is going to revalidate the FCRA registration every five years, then 'sale' of NPOs can easily be kept under check. Therefore, there would be

no need for this restrictive condition in the new Bill.

#### 15. Report from Banks

Under the present FCRA, 1976, banks were asked to send periodic information on amount of foreign funds credited to an NPO's bank account. This role will be formalised under the new FCRA<sup>7</sup>.

The banks now will have to file regular reports with FCRA Department. These reports will show details of funds received and other relevant particulars. The detailed formats for this would be included in the rules<sup>8</sup>.

In addition, NPOs will need to submit a certified copy of their bank statement along with the annual return (presently

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<sup>7</sup> *Foreign contribution through scheduled bank.* 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.

(2) Every bank or authorized person in foreign exchange shall report to such authority as may be specified –

- (a) the amount of foreign remittance;
- (b) the source and manner in which the foreign remittance was received; and
- (c) other particulars,

in such form and manner as may be prescribed.

<sup>8</sup> Section 48(2)(q) of the FCRA Bill, 2006

form FC-3). This copy will have to be certified as true by the bank<sup>9</sup>.

NPOs will still be required to maintain a primary designated bank account for receiving all foreign remittances. However, in a major relaxation, they will be



able to open multiple secondary accounts in banks for *utilising* the foreign contribution<sup>10</sup>.

## 16. 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 FCRA Bill talks<sup>11</sup> about a record showing the foreign contribution received and how it has been utilised. This appears to include foreign contribution in kind as well as in currency.

<sup>9</sup> Section 18(2) of FCRA Bill, 2006.

<sup>10</sup> Discussed separately in AccountAble 122

<sup>11</sup> *Maintenance of accounts.* 19. Every person who has been granted a certificate or given prior approval under this Act shall maintain, in such form and 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.

The nature of this requirement will probably become clearer when related rules are framed.

*Continued in AccountAble 125...*

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