

AccountAble™

125. FCRA Bill 2006 – Part 4

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Changes affecting NPOs (contd.)

17. Auction of Assets

Another new provision¹ concerns disposal of FCRA assets. The Government will now have the 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.



¹ *Disposal of assets created out of foreign contribution.* 22. Where any person who was permitted to accept foreign contribution under this Act, ceases to exist or has become defunct, all the assets of such person shall be disposed of in accordance with the provisions contained in any law for the time being in force under which the person was registered or incorporated, and in the absence of any such law, the Central Government may, having regard to the nature of assets created out of foreign contribution received under this Act, by notification, specify that all such assets shall be disposed off by such authority, as it may specify, in such manner and procedure as may be prescribed.

However, this will apply only if:

(i) the NPO has become defunct or has ceased to exist; and,

(ii) there is no provision under the registering Act² for disposal of its assets.

18. The Offence of Falsification

The FCRA Bill also introduces a new Section 33³. Suppose a person has knowingly submitted a false annual return (presently FC-3) or has given a false intimation of receipts⁴. Or the person has tried to obtain FCRA registration or prior-permission through fraud, false information or by concealing important information. Then the person can be punished with imprisonment extending upto three years.

This provision is likely to affect the Chief Functionaries only, who normally sign the FC-3 or the application for registration.

² The Act under which the NPO was originally registered, such as the Societies Registration Act, 1860 or Bombay Public Trust Act, 1950, etc.

³ *Making of false statement, declaration or delivering false accounts.* 33. Any person, subject to this Act, who knowingly, -

(a) gives false intimation under sub-section (c) of section 9 or section 18; or

(b) seeks prior permission or registration by means of fraud, false representation or concealment of material fact,

shall, on conviction by a court, be liable to imprisonment for a term which may extend to three years or with fine or with both.

⁴ Under section 9(c) of FCRA Bill, 2006

19. Prohibitory Powers

Under the present FCRA (1976), the Government can direct that a particular person or association will need prior-permission to accept any foreign contribution. Once the FCRA 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 (whether registered under FCRA or not);
- 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 foreign contribution can be accepted from XYZ agency.

From an enforcement point of view, this provision⁵ is designed to help the Gov-



⁵ Section 11 (3) Notwithstanding anything contained in this Act, the Central Government may, by notification in the Official Gazette, specify –

ernment micro-manage the foreign contribution in a more efficient manner.

20. Compounding of Offences

The FCRA Bill 2006 also introduces a provision for compounding of offences⁶.

(i) the person or class of persons who shall obtain its prior permission before accepting the foreign contribution; or

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

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

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

⁶ *Composition of certain offences.* 41. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act (whether committed by an individual or association or any officer or employee thereof), not being an offence punishable with imprisonment only, may, before the institution of any prosecution, be compounded by such officers or authorities and for such sums as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(2) Nothing in sub-section (1) shall apply to an offence committed by an individual or association or its officer or other employee within a period of three years from the date on which a similar offence committed by it or him was compounded under this section.

Explanation. – for the purposes of this section, any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence.

(3) Every officer or authority referred to in sub-section (1) shall exercise the powers to compound an offence, subject to the direc-

However, unlike compounding of interest, this will not increase an offence. On the other hand, it will help both the NPO and the Department avoid costly litigation.

What does this mean? Suppose an offence is committed for which a fine or other similar penalty is prescribed. Instead of going to court and facing a fine, the NPO will have the option to apply for compounding. The Department will then levy a compounding fee. By paying the fee, the NPO will be able to avoid being prosecuted.

This is somewhat similar to the traffic challan. If you are caught jumping a red-light or speeding, then you have

tion, control and supervision of the Central Government.

(4) Every application for the compounding of an offence shall be made to the officer or authority referred to in sub-section (1) in such form and manner along with such fees as may be prescribed.

(5) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, against the offender in relation to whom the offence is so compounded.

(6) Every officer or authority referred to in sub-section (1) while dealing with a proposal for the compounding of an offence for a default in compliance with any provision of this Act which requires by an individual or association or its officer or other employee to obtain permission or file or register with, or deliver or send to, the Central Government or any prescribed authority any return, account or other document, may, direct, by order, if he or it thinks fit to do so, any individual or association or its officer or other employee to file or register with, such return, account or other document within such time as may be specified in the order.

the option of settling the same by paying a compounding fee. This is commonly known as a traffic challan. If you don't pay the fee, then your driving license is seized and you need to appear for court hearings. Most people prefer to settle by paying the challan amount instead.

21. Passing on the Funds

Under the present FCRA (1976), 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.

The FCRA Bill, 2006 makes this position stronger by introducing a specific provision⁷.

22. Appeal to Government

A new provision⁸ in FCRA Bill, 2006 relates to revision of orders. Under this

⁷ 'Prohibition to transfer foreign contribution to other person. 7. No person who-

(a) is registered and granted the certificate or obtained prior permission under this Act; and

(b) receives any foreign contribution,

shall transfer such foreign contribution to any other person unless such other person is also registered and granted the certificate or obtained the prior permission under this Act.'

⁸ 'Revision of orders by Central Government. 32. (1) The Central Government, may, either of its own motion or on an application



provision, the Government can revise an order, which it had issued earlier.

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

for revision by the person registered under this Act, for revision, call for and examine 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 Central Government 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 Central Government 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 Central Government 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 or an appeal has been filed under this Act.

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

FCRA 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 of receipt of the order 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 while applying for revision.

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