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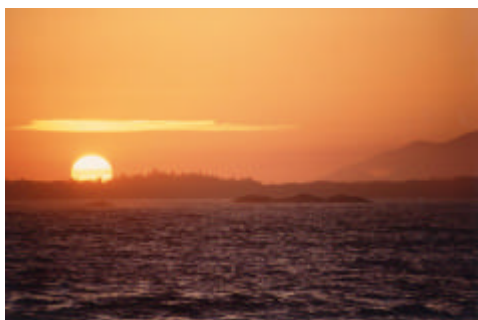
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## Changes affecting NPOs (contd.)

### 23. Sunset Clauses

What will happen to the present FCRA? It will be withdrawn once the new Bill is passed<sup>1</sup>. NPOs registered under the existing FCRA will be automatically



registered under the new Act. This will be valid for a period of five years. A prior-permission issued under the present FCRA, will continue to be valid under the new FCRA also.

### Other Changes

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

#### 1. Gifts for Personal Use

The FCRA Bill, 2006 also proposes a

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<sup>1</sup> *Repeal and saving.* Section 54 (1) The Foreign Contribution (Regulation) Act, 1976 (hereafter referred to as the repealed Act) is hereby repealed.

more flexible limit on this from the present Rs.1,000. This limit will be notified by the Government from time to time. 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 the notified limit.

#### 2. Receipts from Relatives

Certain persons in sensitive public positions cannot receive foreign contribution. This provision has been carried over from the present FCRA, without any change<sup>2</sup>.

However, these persons can receive gifts from their relatives. This is also a 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 FCRA Bill 2006 both these requirements will be removed. No intimation will be required. Also, no permission will be required, irrespective of the value of the gift.

Who is a relative? The definition is provided in Section 2(41) of the Companies Act, 1956. The definition is very wide and includes blood-relatives as well as relatives by marriage.

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<sup>2</sup> Except for extending the restriction to persons in electronic media

### 3. Electronic Media

As mentioned in an earlier issue of AccountAble<sup>3</sup>, FCRA 1976 does not cover electronic media. After the electronic media was opened to private sector in 1990s, this could have become a loop-hole.

The FCRA Bill 2006 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.

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.

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<sup>3</sup> AccountAble 55: Puzzles of FCRA, page 2

The clause<sup>4</sup> covers 'other electronic forms' as defined in section 2(1)(r) of the Information Technology Act, 2000. It also goes to include any other mode of mass communication. This clearly means that news weblogs (blogs) and internet news-sites can no longer be funded by foreign contribution.

However, the clause does leave out some important categories. These include: syndicates, broadcasters, content carriers, producers, news anchors, directors, consultants, and contractors, among others. The clause also does not cover collection and gathering of news, for sale or supply to newspapers and electronic media.

However, 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.

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<sup>4</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, or any other electronic form as defined in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000 or any other mode of mass communication;

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

#### 4. Organisations of a Political Nature

The restrictions on organisations of a political nature<sup>5</sup> have been amplified. Presently, these organisations are allowed to receive foreign contribution, only after getting prior-permission in each case. Once FCRA Bill becomes law, the option for prior-permission<sup>6</sup> will not be available. Thus, such organisations will not be able to access foreign contribution at all.

What kinds 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>7</sup> are:

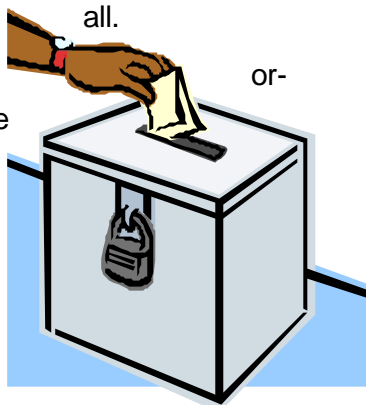
- All India Democratic Women's Association (AIDWA), 23, Vithal Bhai Patel House, Rafi Marg, New Delhi
- Anand Marg, Kolkata, West Bengal
- Dalit Panthers, Wadala, Mumbai, Maharashtra
- Institute of Indian Labour, Kolkata, West Bengal
- National Students Union of India

<sup>5</sup> Section 3 (1) No foreign contribution shall be accepted by any - ...

(f) organisation of a political nature as may be specified under sub-section (1) of section 5 by the Central Government; ...

<sup>6</sup> Presently granted against form FC-1

<sup>7</sup> Based on list updated till 31-May-98



(l), 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, Maharashtra
- Seva Dharam Mission, Varanasi, Uttar Pradesh
- Shiromani Gurudwara Prabhandak Committee (SGPC), Golden Temple, Amritsar, Punjab
- 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, Kolkata, West Bengal

In an improvement over the present FCRA 1976, the new Bill lays down detailed procedure<sup>8</sup> to be followed be-

<sup>8</sup> Procedure to notify an organization of a political nature. 5. (1) The Central Government may, having regard to the activities of the organisation or the ideology propagated by the organisation or the programme of the organisation or the association of the organisations with the activities of any political party, by an order published in the Official Gazette, specify such organisation as an organisation of a political nature not being a political party, referred to in clause (f) of sub-section (1) of section 3.

(2) Before making an order under sub-section (1), the Central Government shall give the organisation in respect of whom the order is proposed to be made, a notice in writing informing it of the ground or grounds, on which it is proposed to be specified as an organisation of political nature under that sub-section:

fore an organisation is declared to be one of political nature.

#### Related AccountAble Issues:

116: History of FCRA

96: Introduction to FCRA

22: Mysteries of FCRA

55: Puzzles of FCRA

54: Fund Raising and FCRA

127: FCRA Bill 2006: Analysis – 1

128: FCRA Bill 2006: Analysis – 2

#### Other References:

1. AccountAble Handbook FCRA, AccountAid India, New Delhi, 2004
2. A Handbook on FCRA, The Ministry of Home Affairs, Government of India &

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Provided that the Central Government may, by rules made by it, specify the ground or grounds on which an organisation shall be specified as an organisation of a political nature.

(3) The organisation to whom a notice has been served under sub-section (2), may, within a period of thirty days from the date of the notice, make a representation to the Central Government giving reasons for not specifying such organisation as an organisation under sub-section (1):

Provided that the Central Government may entertain the representation after the expiry of the said period of thirty days, if it is satisfied that the organisation was prevented by sufficient cause from making the representation within thirty days.

(4) The Central Government may, if it considers it appropriate, forward the representation referred to in sub-section (3) to any authority to report on such representation.

(5) The Central Government may, after considering the representation and the report of the authority referred to in sub-section (4), specify such organisation as an organisation of a political nature not being a political party and make an order under sub-section (1) accordingly.

The Institute of Chartered Accountants of India, 2005

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