



Since last decade the flow of foreign funds has tremendously increased in India. As per the figures reported by Ministry of Home affairs, the amount of foreign contribution received in India has increased from 1865 crores in 1993-94 to 5000 crores in 2002-03. This is one of the major factors that has highlighted the presence and role of voluntary sector in India and the fact has been well recognized by the Government of India.

At the same time, the Ministry of Home affairs is concerned about the regulation and management of foreign funds. At present, the flow of foreign contribution is

existence for nearly 29 years. During this period, certain shortcomings and lacunae have been noticed in the implementation of the Act. We have received suggestions from various quarters for improvement in the implementation of the Act, which have been duly considered and we are in the process of replacing the FCRA with a new law which would take care of concerns and interest of various stakeholders.” With this, Government has indicated its intention to replace FCRA with a new act.

Now, Government has introduced a new bill namely Foreign Contribution (Management and Control) Bill, 2005. This

The Foreign Contribution (Management and Control) Bill, 2005 and The Foreign Contribution (Regulation) Act, 1976 - A Comparison

regulated by Foreign Contribution (Regulation) Act, 1976 (FCRA). As FCRA was never designed for NPOs, its practical implementation created various problems. In the words of Hon’ble Minister of Home Affairs, “FCRA has been in

bill is eventually expected to replace FCRA. At present, it is in draft stage and has been uploaded in the website of Ministry of Home Affairs for public response. Then, it will be sent to various stakeholders before presenting to Parliament.

1. Object of the Act

The object of the two acts has changed. The present FCRA was aimed to ensure that foreign funds do not affect the sovereignty and integrity of the country. However, new FCMC shifts the focus of the act to curb the use of foreign funds for anti-national activities. Although the rationale articulated earlier for bringing a new act was to facilitate and improve the financial management of NPOs who don't even report to the FCRA department, the core object of FCMC seems to ultimately prohibit anti-national activities.

2. Change in Registration Authority

Under FCRA, any organisation having a definite cultural, social, educational, religious or economic programme is eligible to accept foreign contribution after getting itself registered with the *Central Government*. The FCRA department has centralized office at Delhi. This certain times created lot of problems for the NPOs situated in far off places.

The new FCMC changes the registration authority from Central Government to

'Registering Authority'. It seems that Government is interested in decentralization of registration once FCMC comes into force. The application for registration and prior permission shall then be submitted to the Registering Authority.

3. Registration Procedures

Under the new FCMC, any association already registered with the Central Government under section 6 of FCRA, will also have to obtain a certificate of registration under FCMC within 2 years of the commencement of the Act.

Some Features of FCMC Bill....

- ❖ Re-registration under the proposed act even for already registered associations.
- ❖ Registration valid for five years.
- ❖ Fees to be paid with application for registration and appeals.
- ❖ Administration expenses restricted upto 30% of F.C.
- ❖ Manner and procedures for assets disposal.
- ❖ Interest earned on FC shall be FC.

The registration granted under FCRA is generally permanent in nature unless Central Government revokes it. However, FCMC provides that the certificate of registration granted by the Registration Authority shall be valid for a period of five years.

4. Renewal of registration

As already stated that FCMC registration will be given for a period of five years. The FCMC registration will have to be renewed every five years. The renewal

process can be started anytime after three years of registration are over.

5. Prior-permission

FCRA allowed the organisation not registered under the Act to obtain prior permission of the Central Government to receive foreign funds. The provision of prior permission has been retained in FCMC and provides that if the organisation is not registered under the Act, it can obtain prior permission of the Registering Authority to receive foreign funds. Presently under FCRA, there is a limit of 90 days (or 120 days in case of delay) for processing of application by Central Government. However, the new FCMC doesn't mention any time limit for processing of application.

Also under FCMC, the Central Government may by notification in the Official Gazette, specify certain persons already registered under section 11 (1) of FCMC to again obtain prior permission before accepting foreign contribution. It can also specify the areas, purposes and sources from which the foreign contribution can be accepted and utilized with the prior permission of Central Government.

6. Fees to be deposited for registration, appeal etc.

FCMC Bill also stipulates payment of fees while making application for regular registration under section 11 (1), prior

permission under section 11 (2), appeal against refusal of registration or cancellation of FCMC registration and renewal of registration.

The amount of the fee has not been stated in FCMC but is expected to be prescribed by the Govt.

7. Additional conditions for grant of registration and prior permission

The FCRA does not explicitly provide the grounds on which the registration and prior permission can be refused by the Central Government. However, FCMC states that the Registering Authority will make enquiries as it may deem fit and satisfy itself that the person making application -

- (i) is not fictitious or benami;
- (ii) has undertaken meaningful activity in its chosen field for the benefit of the people;
- (iii) has prepared a meaningful project for the benefit of the people;
- (iv) has not indulged in activities aimed at conversion through inducement or force from one religious faith to another;
- (v) has not created communal tension or disharmony;
- (vi) has not been found guilty of diversion or mis-utilisation of its funds or

- (vii) is not engaged or likely to engage to propagate sedition or advocate violent methods to achieve its ends;
- (viii) is not likely to use the foreign contribution for personal use or divert it for undesirable purposes;
- (ix) has not contravened any of the provisions of this Act;
- (x) his certificate has neither been suspended nor cancelled earlier;
- (xi) has not been prohibited earlier from accepting foreign contribution;

In case the person being an individual, such individual has neither been convicted under any law for the time being in force nor any prosecution for any offence is pending against him.

In case of the person being other than an individual, any of its directors or office bearers has neither been convicted under any law for the time being in force nor any prosecution for any offence is pending against him;

The Registering Authority will also satisfy itself that the acceptance of foreign contribution by the person is not likely to affect prejudicially –

- (i) the sovereignty and integrity of India; or

- (ii) the public interest; or
- (iii) freedom or fairness of election to any Legislature; or
- (iv) friendly relation with any foreign State; or
- (v) harmony between religious, racial, social, linguistic, regional groups, castes or communities,

In addition, if the application for registration or prior permission is not in prescribed format or is incomplete, the Registration Authority can reject the application.

FCMC also stipulates that in case Registering Authority refuses registration or prior permission, it shall record the reasons for such refusal and share a copy of the same with the applicant.

8. Prohibition to receive foreign contribution by certain persons/ organisations

Under FCRA, candidate for election; correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper; judge, Government servant or employee of any corporation, member of any Legislature and the political parties are debarred from receiving foreign funds. However, the organizations of political nature were allowed to receive foreign funds with prior permission of the Central Government. Under FCMC, the list of the organizations debarred from receiving



foreign contribution has been broadened to include the organizations of political nature; association or company engaged in production or broadcast of audio news or audio visual news or current affairs programmes through any electronic media and correspondent or editor of such association or company. Hence, the organizations of political nature are also debarred from receiving foreign contribution under FCMC.

9. Appeal against refusal to grant registration or prior permission

Under FCRA, there is no provision for making an appeal against the decision of Central Government to refuse the grant of registration or prior permission. FCMC provides that any person aggrieved by the decision of the Registering Authority refusing registration or prior permission may within thirty days appeal to the Central Government. However, the decision of Central Government on such appeal shall be final.

10. Interest earned on Foreign Contribution

FCR Act and Rules are silent for treatment of interest earned on foreign contribution. Indeed, this has always been a point of discussion whether the interest earned on foreign contribution received is a foreign contribution or not. However on July 26th, 2001, Form FC-3 was revised and it required the reporting of interest earned on foreign contribution funds. This helped clear the confusion to a large extent but

still some experts were of a different view. This confusion has been clarified by FCMC. In the definition of term 'Foreign Contribution' under section 2 (f), it has been specifically provided that interest earned on foreign contribution shall be treated as foreign contribution.

11. Any other income derived from Foreign Contribution or interest earned thereon.

Similarly, there is no provision under the FCRA which clarifies whether the income earned from foreign contribution shall be treated as foreign contribution or not. Under FCMC, the definition of 'Foreign Contribution' clearly provides that income earned from foreign contribution or interest earned thereon shall also be treated as foreign contribution. This would mean that income earned from training centers, shops, sale of assets acquired from foreign funds or interest earned on foreign funds shall also be treated as foreign contribution.

12. Restriction to utilise foreign contribution for administrative purposes

FCRA basically deals with receipt of foreign funds. It does not provide any specific provision for utilization of foreign funds although certain provisions of the Act and undertaking in Form FC 3 provide that the foreign funds should be utilized for the purpose for which the organisation was established. FCMC specifically provides under section 8 (1) that the foreign funds should be utilized for the purposes for



which the contribution has been received. Also a new provision has been added to provide that not more than 30% of the foreign contribution shall be utilized for meeting the administration expenses of the organisation. The manner in which administration expenses will be calculated shall be prescribed by the Central Government.

13. Disposal of assets created out of foreign contribution

FCRA is also silent about the disposal/sale of assets created out of foreign contribution. Under FCMC, it has been provided that the Central Government shall specify the assets which can be disposed off and the manner in which it can be disposed off.

However, under the current practices, the sale proceeds of assets created from foreign contribution are treated as foreign contribution.

14. Maintenance of Bank Accounts

FCRA requires that the organisation should receive the foreign contribution in one bank account with any bank. However, the act is silent about the utilisation of foreign contribution i.e. it is not clear whether the foreign contribution received in one designated bank account can subsequently be transferred to various project accounts for utilisation. Some experts are of the opinion that opening of various accounts at different places for utilisation of funds

is justifiable. However, others hold the opinion that foreign contribution should be received, held and spent from one designated bank account only. The above controversy has been resolved by FCMC bill by making a provision under section 17. It states that the organisation can receive foreign contribution in one bank account but it can open more than one bank account for utilisation of foreign contribution. Only they need to make sure that these bank accounts are used exclusively for FCRA funds.

Another addition in FCMC is that the bank account for receipt of foreign contribution should be with a scheduled bank or its branches only. Accordingly if the organisation has other accounts for spending of foreign contribution, the same should be with any scheduled bank or its branches.

15. Procedure for notifying an organisation to be political nature.

Under FCRA, the “organisation of a political nature, not being a political party” has been defined as such organisation as the Central Government may specify by an order published in the Official Gazette, 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 organisation with the activities of any political party. However, FCRA doesn't provide any procedure for the Central Government to specify an organisation to be of political nature.

FCMC also lays down the above definition for organizations of a political nature. However, it also provides the following procedure for notifying an organisation to be of political nature:

- 1) Before notifying an organisation to be of political nature, the Central Government shall give a notice in writing to the organisation informing the grounds on which it is proposed to be notified.
- 2) The organisation may within 30 days from the date of the notice, make a representation to the Central Government giving reasons for not specifying such organisation to be of political nature. The Government can provide additional time provided it is satisfied that the organisation has genuine reasons for delay.
- 3) The Central Government may send the representation to any authority to report on such representation, if it considers necessary.
- 4) After consideration of the representation and the report of the authority, Central Government will specify such organisation to be of political nature.

16. Prohibition to transfer foreign contribution to other persons

In FCR Act and Rules, there are certain provisions which indicate that the foreign

contribution can only be transferred to a person who is having registration or prior permission under the act. FCMC specifically prohibits a person who is either registered or granted prior permission and receives any foreign contribution, to transfer such foreign contribution to any other person unless such other person is also either registered or granted prior permission.

17. Cancellation and Suspension of Certificate

There is no explicit provision in FCRA which provides for circumstances under which certificate of registration can be cancelled or suspended. However, an organization can be put on the list of prior-permission or prohibited from accepting foreign contribution. Of course, in practice this has the same effect as cancellation of FCRA registration. FCMC Bill introduces a proper provision for cancellation of FCMC registration. It provides that certificate of registration will be cancelled if:

- a) the holder of the certificate has made a statement in 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 Registering Authority, it is necessary in the public interest to cancel the certificate; or



(d) the holder of certificate has violated any of the provisions of this Act or rules or order made there under.

prescribed. Such authority will manage the funds.

Once the FCMC registration is cancelled, the organisation or the person will be eligible for registration only after a period of three years. The foreign contribution in the custody of such person whose certificate has been cancelled, will come in the custody of such authority as may be

As the process of cancellation may take some time, FCMC provides for suspension of FCMC registration meanwhile. This suspension can be for a maximum period of 90 days. During this period, the organization can't receive any foreign contribution.

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