

Foreign Contribution (Management and Control) Bill, 2005

- An Analytical Review

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The Foreign Contribution (Management and Control) Bill, 2005 [FC(M&C)] is a bill to consolidate the law relating to the acceptance and utilization of foreign contribution or foreign hospitality by certain individuals or associations or companies and to prohibit acceptance and utilization of foreign contribution or foreign hospitality for anti-national activities, and for matters connected therewith or incidental thereto.

The FC(M&C) Bill 2005, at present, is in a draft stage and is available for public response in the website of the Ministry of Home Affairs. This will thereafter be presented to the parliament for enactment, thereby replacing the Foreign Contribution (Regulation) Act, 1976 (FCRA).

Important statistical information

To critically analyze the importance of replacing FCRA, 1976 by FCMC we need to see the flow of foreign contribution to the voluntary sector, its growth over the years and its ratio to the inflow of foreign money in the business sector.

The foreign contributions received by the NPO sector in the year 2002-03 were Rs.5000 crores. There has been a significant increase in the foreign contributions over the years. The receipts in the year 1993-94 were Rs.1865 crores only.

There are 30000 registered organizations in the voluntary sector although only

around 16000 organizations have reported their foreign contributions to the Ministry of Home Affairs in the year 2002-03.

Out of the 16000 returns received by the Ministry of Home Affairs, 15650 organisations have reported receipts of FC less than 1 crore in the year 2002-03. There were only 66 organisations that received FC in excess of Rs.10 crores in the year 2002-03.

FCRA vs FC(M&C)

Since the FC(M&C) Bill has been introduced, it will under all probability be passed in the parliament, with or without modifications, as an Act and will replace the existing FCRA. The endeavor of the representatives of the voluntary sector, professional accounting bodies like ICAI should therefore be to suggest suitable modifications in the proposed Bill so that the purpose of the Central Government in introducing the new Act is not lost and the functioning of the organizations in the sector is not made cumbersome.

There has already been a lot of initiative in this regard from various voluntary organizations and numerous representations have been made to the highest decision-making bodies in the Government. The purpose of this article is, therefore, to highlight the issues in the FC(M&C) Bill which would be welcome by the NPO sector, issues which could hamper the smooth functioning of the sector and those issues which have been left open-

ended by the bill and needs further clarification.

Welcome changes proposed by the FC(M&C) Bill

Foreign Contribution through scheduled bank (section 17):

It has been provided in the Bill that the organisation receiving foreign contribution may open one or more accounts in one or more scheduled banks for utilising the FC received. It has been provided further that no funds other than FC shall be received or deposited in such account or accounts.

Though the FCRA had also prescribed opening of a designated FC account for receiving foreign contribution, it is silent on the issue whether the foreign contribution received in the designated account can be subsequently transferred to various project accounts for utilization.

Thus the clarification provided in the FC(M&C) Bill is a welcome amendment as now there is no bar in transferring amounts received in the designated FC account to other FC accounts opened for the purpose of the projects that may be spread over the length and breadth of the country. It has also been clarified that no local money can be deposited in any of these accounts.

Explanations/ clarifications with respect to indirect foreign receipts (2nd recipients) and interest earnings to be part of FC, spelt out.

The FCRA is silent on the treatment of interest earned on foreign contribution, although Form FC-3 was revised in 2001 to include interest earned on FC bank accounts and FDs under FC receipts. This has been now clarified in FC(M&C) wherein in the definition of the term 'Foreign

Contribution', under section 2(f), it has been specifically provided that interest earned on foreign contribution shall be treated as foreign contribution.

Exclusions from FC w.r.t. fee received for attending conferences in India, subscription for printing journal in India clearly explained in Bill. (Explanation 2 & 3 to Section 2(1)(f)).

The FCRA was silent on the above issue. This clarification given in the Bill should ensure better management/ disclosure

Certificate of Registration (Section 12(4)).

Where the registering authority refuses registration or prior permission, it shall record reasons for such refusal and furnish a copy thereof to the applicant. Also, any person aggrieved by the decision of the Registering Authority may appeal to the Central Government.

Decentralization of registration

The Bill proposes to decentralize registration of the organizations. The FCRA allowed the registration of the organizations only with the Central Government having its office in New Delhi. The Bill proposes to appoint a "Registering Authority" which probably means having a better geographical coverage and would facilitate registration and other matters for organizations spread across the country.

Definition of "foreign contribution" includes transfer made by any foreign source of any article if the market value, in India, of such article is not more than Rs.10000/- (Rs.1000/- in the Act.)

Association does not include Government Companies and societies owned or controlled by Central/ State Government. (Section 2(1)(a)).

***Changes proposed in the Bill,
detrimental to the NPO sector***

*Restriction to use FC for administrative
purpose - Section 8(1a) and (2)*

FC(M&C) provides that the utilization of FC should be for the purposes for which it is received and not to charge more than 30% towards administrative costs. The Central Government will prescribe the manner in which the administrative costs will be calculated.

FCRA did not provide for such restrictions although it is inherent in the functioning of all voluntary sectors to restrict administrative costs. No specific percentages are specified but certain unwritten rules applied when it came to filing returns with authorities such as Income Tax etc.

Registration - Sec. 11(1)

Organizations already registered with the existing FCRA would be allowed a time period two years within which they have to obtain registration under the proposed bill.

Renewal of Certificate – Sec. 16

The certificate of Registration under the proposed bill shall be for a period of 5 years. Also, the organizations can get their certificates renewed within 2 years before the expiry of the period of certificate of registration.

The registration granted in FCRA is permanent in nature and therefore does not need to be renewed. This provision in the FC(M&C) could create hardships to the sector as a lot of time & effort would go in renewal and other administrative issues.

Prior permission

Sec.11 (3) would by notification in the official Gazette, specify the person or class of persons who can obtain prior permission; area or areas in which the FC shall be accepted and utilised; purpose or purposes for which the FC will be utilised and source and sources from where the FC shall be accepted. These restrictions are applicable even to an organization who may be already registered under section 11(1) of FC(M&C).

*Grant of certificate of Registration-
Sec12(1):*

The many criteria specified for granting registration includes that the person making the application:

- is not fictitious or benami;
- has undertaken meaningful activity in its chosen field for the benefit of the people;
- has prepared meaningful project;
- has not created communal tension;
- has not indulged in activities aimed at conversion through force from one religious faith to another;
- has not been found guilty of diversion or misutilisation of its funds;
- is not engaged or likely to engage or advocate violent methods to achieve its ends;
- is not likely to use the foreign contribution for personal use or divert it for undesirable purposes;
- has not contravened any of the provisions of the Act;
- his certificate has neither been suspended or cancelled earlier;
- has not been prohibited earlier from accepting foreign contribution.

The FCRA has no such written rules. Some of the above provisions, by using the words “likely”, makes it very vague and subjective and therefore could prove detrimental to the sector.

Disposal of assets created out of FC – Sec.22:

Under FC(M&C), it has been provided that the Central Government, having regard to nature of assets created out of FC, by notification, specify such assets which shall be disposed off and the manner in which it shall be disposed of.

The provision is very open ended in the sense it gives no clear directive as to the kind of fixed assets it is talking about, and how it will be disposed.

Provisions left open ended, requiring further clarification

FC(M&C) has specified that the Central Government has the power to make rules for carrying out the purposes of this Act. Out of the total 29 aspects of the FC(M&C) that the rules will address, the following needs immediate attention:

- The identity of the registering authority.
- The ground(s) on which an organization may be deemed to be of a political nature. Section 5(1) allows the Central Government to exercise its own discretion in determining whether the activities, ideology, programme or association with a political party, by any organization, warrant its notification in the Official Gazette as an

‘organisation of a political nature not being a political party’.

- The manner in which 30% of administrative expenses shall be calculated for purposes of utilizing foreign contributions.
- The manner of utilizing foreign contribution specified in section 13(3)(b) in the event of suspension of the registration certificate.
- The identity of the authority with whom foreign contributions of those whose certificate has been cancelled will be in custody and the manner in which such contributions will be managed.
- The manner in which assets shall be disposed of by the NPOs.
- The person or class of persons who can obtain prior permission; area or areas in which the FC shall be accepted and utilised; purpose or purposes for which the FC will be utilised and source and sources from where the FC shall be accepted.
- The fees to be deposited for registration, appeal etc. has not yet been specified.

The above issues are points to ponder. I still believe that taking an entirely negative view towards the proposed FC(M&C) Bill would not serve any purpose. Issues having adverse impact on the functioning of the sector need to be highlighted and taken up at the highest level. The large NGOs have had a number of forums in this regard and I believe that action has already been taken up. However, a representation by the accounting bodies such as the ICAI would be more than welcome.

Last Words

The fear that foreign funds are being used to subvert the security of the state is not well grounded ... so long as the laws requiring accountability and transparency from NGOs are applied firmly but fairly, the responsible organ will know whether any NGO, whether funded locally or from abroad, has used funds improperly. If it has, vigorous steps should be taken to correct the abuse and

preclude its repetition. Requiring advance approval for foreign grant is a wasteful, dilatory and excessively bureaucratic approach. (Extract from handbook on NGO – World Bank Report)

(The author is a practicing Chartered Accountant and he specialises in audit, risk analysis with long years of association with the development sector.)

FMSF bids farewell to Ms. Erika Maerke and welcomes Mr. Heiner Knauss of EED, Germany

Adieu Ms. Erika Maerke, Head, South and Middle Asia Desk, EED, Germany



Ms. Erika Maerke born in 1953 is a political scientist and has degree in Economics and Rural Sociology. She joined EZE for the first time in 1978. In between, she has taken breaks from her work to continue her studies and also to be associated with other research work. In 1993, she joined South and Middle Asia Desk of EZE as a Programme Officer. In 1998, she became the Head of the Desk. Now she has been appointed as Head, East, South East and Southern Africa Desk of EED. We at FMSF wish her all the success in her future endeavors.

Welcome Mr. Heiner Knauss, New Head of Asia/Pacific Desk, EED, Germany

Mr. Heiner Knauss takes over as the Head of Asia/Pacific Desk of EED upon the merger of South and Middle Asia Desk and the South East, East Asia and Pacific Desk of EED. Mr. Knauss, born in 1950 is a lawyer by profession. He joined EZE in 1983 in Latin America Desk. He has lived in Peru from 1980 till 1983 and in Zambia in East Africa from 1991 till 1994. From 1998, he has been working as Head, South East, East Asia and Pacific Desk of EED. We hope for a fruitful co-operation with Mr. Knauss in the future.

