

## Foreign Contribution (Management and Control) Bill, 2005 - Implication on NGOs

- Sudhir Varma F. C. A., C. I. A (U.S.A.)

### BACKGROUND

Funds from outside India have played an important and a major role in development of the social sector in this country. It is estimated that more than Rs. 5,000 crores are received annually for charitable activities, research, development and capacity building. Government of India has been concerned to ensure that the money received by this sector is not utilized for any anti-government or anti national activities. In order to keep a control on these funds, in 1976 the government introduced "The Foreign Contribution (Regulation) Act". At the time when this Act was introduced, it was done in a hurry and more specifically to control funds coming into India for anti government activities. Because of the increasing threat from political opponents, the Act was drafted keeping this in mind and little thought was given to the working of NGO's in this country. The result was that NGO's have been facing many problems in their working under the FCRA and have been constantly demanding either amendments to the Act or a completely new Act. This pressure on the government has been further increased after FERA has been replaced by FEMA. Since both FERA and FCRA were dealing with foreign exchange, it was argued that on the same principles on which FERA has been diluted, the FCRA should also be diluted.

The government has been pondering over this issue for a long time and has finally introduced the Foreign Contribution (Management and Control) Bill, 2005. This Bill has created many apprehensions in the minds of people connected with the NGO's.

There are many issues, which are not clear from the Bill, and particularly since the Rules under the Act have not been drafted yet, many questions remain unanswered. These issues and concerns are increasing the insecurity in the minds of people connected with the NGO's. Many debates have been held and representations have also been made to the government at various levels and forums. The concerns have been communicated and we are hoping that they will be taken care of before the Bill is finally passed.

Let us understand the implications of the new FC(M&C) Bill, 2005. These can be broadly categorized under the following heads: -

1. Registrations
2. Renewals
3. Utilizations of funds
4. Suspension / Cancellation

### 1. REGISTRATIONS

The first implication of the new bill is that all existing NGO's will have to re-register themselves under the new Act. This means that the old registration will not hold good under the new Act. The NGO's have been given a time of two years to get the new registration but the norms and rules for registration have not yet been defined. This means that there cannot be an assumption that if you are registered under the FCRA, you will get registration under the FC(M&C). This leaves the NGO's with a lot of uncertainty and insecurity.

The new registrations have been made valid for a restricted period of 5 years only. This means that after every 5 years, the NGO's have to go back to the concerned authorities for renewal. The renewal is also not automatic or cannot be assumed. The working of the NGO's will be appraised and then renewals shall be granted. This will greatly affect continuing projects like running of hospitals, educational institutions or vocational training centers etc. This provision can restrict the scope of activity and the planning process in many ways.

New entrants in the development sector have not been encouraged. Only those NGO's would be entitled for registration that have done meaningful activity in the field. This has been a great constraint for people working in the NGO sector but who wanted to branch out on their own.

If registration is refused to any NGO, a provision for appeal has been provided in the Bill. Also reasons of refusal are to be communicated. However, no time period has been provided within which these appeals would be decided. If there is undue delay in deciding the appeal, the NGO can lose important opportunities to implement their projects.

For the first time, a fee has been prescribed which must be paid while applying for registration.

## **2. RENEWALS**

While registrations are valid for a period of 5 years, applications for renewal can be made after 3 years i.e. 2 years in advance. If this is the time expected to be taken by the

government for granting a renewal, there can be many problems for NGO's who apply in the later part of the 5<sup>th</sup> year of their registration.

No time frame has been laid out for the disposal of renewal applications. It is not clear as to when an NGO should apply for renewal so that they can obtain it in time before their registration expires.

However, if there is a gap of time from the date of expiry of registration and the granting of renewal, nothing has been prescribed as to how the NGO should deal with this situation or worse, how the government will treat this gap. There are many instances where there is a regular flow of funds required for ongoing projects and whether NGO's would be entitled to receive funds during this gap is an important concern.

We are also not clear whether the new registrations will be granted from the date of application or on the basis of financial years. This will also affect the period of renewals.

There are more than 30,000 registrations under FCRA and if they are to be registered again together, the government will need adequate machinery to grant these registrations IN TIME and also renew these registrations every 5 years IN TIME.

## **3. UTILIZATIONS OF FUNDS**

Multiple bank accounts for Foreign Contribution (FC) Funds have been permitted under the new Bill. This provision alone solves many operational problems of NGO's. Many of these NGO's work all over the

country and particularly in smaller towns and villages. They were finding many problems in reaching funds to the project areas under the existing provisions of FCRA. But there are some rules, which have been framed but do not seem to hamper the working of NGO's. The condition to receive FC Funds in only one bank account as registered with the authorities will continue but what has been allowed is that funds can be subsequently transferred to other bank accounts for different locations and different projects. These subsequent bank accounts will be covered under the FC(M&C) but no amounts can be credited to these bank accounts other than transfer of funds from the main FC(M&C) account. This facility can help the NGO maintain different bank accounts for different projects as well, which has been a long outstanding demand of many donor agencies who want their funds kept in a separate bank account. The facility of transferring funds to different locations through the banking channel is a great help in the working of NGO's.

The definition of FC Funds has been enlarged to include income earned from FC Funds. This means that all the interest, dividend or other returns that the NGO gets on the FC Funds would form a part of the FC Funds and would therefore be covered under the provisions of FC(M&C). However, distinction needs to be made between income earned from FC Funds and income earned from assets / facilities acquired from FC Funds. While there can be no problem in the former but in the latter case where incomes arise from assets / facilities acquired from FC Funds the said income cannot be practically reported and included alongwith the FC Funds. To illustrate

this point if a hospital acquires an equipment partly from FC Funds and partly through its own resources or local donations, how much of income from the equipment can be attributed to FC Funds can never be worked out.

It has been specifically provided that:

- a. FC funds can be used only for the purpose for which they have been received.
- b. Only 30% of FC Funds can be utilized for administration expenses.

What about FC Funds which are received for administration expenses? There are many NGO's who receive a core grant for administration expenses like rent, electricity, telephone and even salaries. A distinction has also not been made between administration expenses of a program and administration expenses for the institution. These situations need a clarification.

The Bill also provides that the government will intervene in matters relating to fixed assets acquired from FC Funds. The government shall decide the assets which can be disposed off, including the manner and procedure of disposal. Till now these decisions were left to the donor and the NGO.

#### ***1. SUSPENSION/ CANCELLATION***

The FC(M&C) authority has the power to suspend or cancel the registration of an NGO. The reasons given in the Bill on the basis of which suspension / cancellation can take place are quite wide and open to interpretation. A fear of misuse cannot

be ruled out. However, there is a provision that the NGO shall be given an opportunity before passing any such order.

A suspension of registration can be for 90 days.

An order of cancellation is effective for atleast 3 years before a new application for re-registration can be made.

On suspension / cancellation of registration the government has the authority to take charge of FC Funds with the NGO and can also seize assets acquired from FC Funds.

It has also been provided that no person can be an office bearer of an NGO who has either been prosecuted or there are proceedings pending against him in a court of law. It is ironical that if proceedings are pending in a court of law against an individual and he has not yet been convicted, he cannot be an office bearer of an NGO but he can be a parliamentarian of this country.

**CONCLUSION :**

From the reading of the FC(M&C) Bill,2005 the intent of the government is not clear. What appears is that the government wants

to have complete control over the funds received by the NGO's and some of the provisions in the Bill give the impression that once the funds come into India, they belong to the government and it becomes their responsibility to monitor the use of such funds. On the one hand the government justifies the FC(M&C) Funds on the grounds of national security to control anti-national activities and on the other hand they want to make provisions in the bill, which control the extent of money used for administration expenses, or to control money spent for personal gain of individuals. How these activities are anti-national and need to be controlled in the FC(M&C) is not clear.

The government must be more transparent in its intent and should simultaneously bring the Rules under the Act so that many of the questions and insecurities of the NGO's can be laid to rest.

*(The author is a practicing Chartered Accountant and has more than 25 years of experience in the development sector.)*

