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SUMMARY COMPARISON OF  
THE PROPOSED FOREIGN FUNDING BILL WITH  
THE U.S. FOREIGN AGENTS REGISTRATION ACT AND  
SECTION 501(C)(3) OF THE U.S. INTERNAL REVENUE CODE

There follows a brief summary of the differences between the proposed Disclosure of Foreign Funding Act (FFB) and two pieces of U.S. legislation -- the Foreign Agents Registration Act (FARA) and section 501(c)(3) of the Internal Revenue Code -- to which the FFB has at times been compared.

In sum, we conclude that there is little if any substance to the comparisons, and that it is quite inappropriate to cite the two statutes as examples of U.S. legislation with an intent or impact similar to those of the FFB.

FARA. The law is intended essentially to provide public information on foreign efforts to lobby Congress for their own interests. It requires public disclosure of financial and other details of arrangements under which persons (mostly professional lobbyists and almost all highly paid) engage in propaganda and other efforts to influence U.S. policy on behalf of foreign governments or other parties. Even among this group, important classes of activity are exempted from the reporting requirement (e.g., lawyers acting for foreign principals in court or administrative proceedings). Persons receiving foreign funds but not involved in lobbying or similar political activities are wholly unaffected by FARA. In contrast to the FFB, there is little or no room for uncertainty as to whether a given person or group falls within the reporting requirement or not.

The investigative, enforcement and penalty provisions are far less wide-ranging than are those in the FFB, and police investigative and enforcement powers are sharply limited by the Constitution, the Administrative Procedures Act and other legal safeguards. Conviction for violation of the FARA in virtually every case requires proof of the willful performance of an act of material significance. Information gained may be shared with other state agencies -- but the use to which they may put such information is more limited than in South Africa as there is, for example, no U.S. equivalent to the Affected Organizations Act, and the various equivalents to the Fund-Raising Act are far less stringent and less stringently applied.

The contrast in impact between the FFB and the FARA is reflected in the character of those required to register under the FARA: the most recent information readily available is that some 21 law firms, public relations consultants and other organizations now report under FARA, with respect to a total of 22 South African clients: eleven represent the S.A. Government or Embassy, five S.A. industry groups, three the S.A. Tourist Corporation, two the ANC and one the S.A. Foundation.



Internal Revenue Code, Section 501(c)(3). This provision sets forth the conditions under which an organization qualifies for tax-free charitable status for its income and expenditures; it is related to, but separate from, the laws under which donations may be deducted from the donor's income tax. The law has no particular relationship to receipt of foreign funds, and the activities of the organization seeking this favorable tax treatment are not affected by whether or not it is successful in that effort, except insofar as those who do not receive exemption may be less attractive to donors. Qualifying groups must be "organized and operated exclusively" for charitable purposes, in which case the exemption is automatic; those engaging in propaganda or lobbying do not qualify for exemption. (The status of informational activities is the subject of continuing debate; it appears that at least some activities which might ordinarily be considered "propaganda or lobbying" are seen as consistent with receiving the tax benefit.)

The application of section 501(c)(3) to a given organization is entirely at the organization's option: there is no requirement that a group seek such favorable tax treatment and if it does not it need not of course provide any of the information which would be required under Section 501(c)(3) to support such a request.

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