

Social Sector Hotline

November 11, 2006

TIGHTER CONTROLS FOR FOREIGN CONTRIBUTIONS

With a view to tightening control over the flow of foreign contributions to not-for-profit organizations in India, the central government ("CG") has given the green signal for the introduction of a new bill, the Foreign Contribution (Regulation) Bill, 2006 ("Bill"). The Bill seeks to repeal the Foreign Contribution (Regulation) Act, 1976 ("FCRA" or "Act") with a slew of more stringent measures to regulate the receipt, utilization and accounting of foreign contributions with greater efficiency. The changes are part of the measures to counter the financing of terrorist activities in the country.

AMONG THE PROPOSED CHANGES:

- Organizations of political nature (other than political parties) now face a complete ban from receiving foreign contributions. Under the FCRA, such organizations could receive foreign funding with the prior permission of the CG. Other organizations and individuals facing the ban are: associations or companies engaged in production or broadcast of audio news, or audio-visual news, or current affairs programs through the electronic media or any other mode of mass communication, and correspondents, columnists, cartoonists, editors, owners of associations or companies relating to mass communication.
- It will be mandatory for banks to submit annual reports to the government on foreign contributions deposited with them.
- Banks will be required to share information with the designated authority at more frequent intervals with regard to transactions that exceed a specified limit (suggested to be set at INR 500,000 in the first instance), or suspicious transactions. Repeated inward remittances from the same or different foreign sources would be treated as "suspicious transactions" in this context. The designated authority, in turn, would be required to convey such information to security agencies.
- IA registration fee will be imposed, and the period of registration validity will be limited to five years. Under the FCRA, no fee was charged and registrations, once granted, were permanent. However, registrations will be automatically renewed except in the case of defaulters.
- The CG will be empowered to lay down the process for disposal of assets created out of the foreign contributions when the organization is wound up.
- The Bill takes a sterner view of violations and introduces the concepts of cancelling and suspending registrations. The proposed suspension period is 180 days.
- Recipients would also be allowed to utilize the foreign contributions through more than one bank.
- The power of registration or the regulation shall not be delegated to district collectors as proposed earlier, but at the central level.
- A cap of 50 per cent on the utilization of funds for administrative purposes. There is, however, a provision that empowers the government to exempt non-government organizations from this limit on a case-to-case basis.
- While the Bill retains penal provisions stipulating imprisonment to offenders, it also provides for the compounding of certain offences where the accused may only be fined a cash penalty.
- Foreign contributions or any income arising from it cannot be used for speculative businesses.
- Amounts received from any foreign source as a fee or payment for services rendered would be excluded from the definition of "foreign contributions".

As a measure of sincerity of purpose, the Bill also provides for transparency in the process of registration, in that any rejection of an application will have to be accompanied by the grounds on which it has been rejected.

The Bill will be tabled before the Indian Parliament in its winter session that starts on November 22, 2006. It remains to be seen what form the act, when passed, will finally take.

While foreign not-for-profit organizations seeking to set up operations by establishing entities in India may find the proposed legislation somewhat daunting, they may derive some comfort from the fact that once registered under the new act, if passed, they will enjoy even greater credibility with contributors both at home and abroad.

- Rina Kamath & Daksha Baxi

Sources:
Hindustan Times, November 9, 2006

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The Financial Express, November 10, 2006

Business Standard, November 10, 2006

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