

# Foreign Contribution (Regulation) Bill, 2006 - A Synopsis

*Government of India had introduced the Foreign Contribution (Management & Control) Bill, 2005 for public debate. As this Bill contained various provisions that were harsh, posing a lot of practical difficulties, the Voluntary Sector opposed it. The Government then replaced this FCMC Bill, 2005 with the present Bill called the Foreign Contribution (Regulation) Bill, 2006 which was introduced in the Rajya Sabha on 18<sup>th</sup> December 2006. This article is a synopsis of the various provisions of FCRA Bill, 2006.*

The Foreign Contribution (Regulation) Bill, 2006 has been proposed to consolidate the law to regulate 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 of foreign hospitality for any activities detrimental to the national interest and for matters connected therewith or incidental thereto. The bill has been divided into IX chapters which are stated below:

<b>Chapter-I:</b>	Preliminary (Includes Definition)
<b>Chapter-II:</b>	Regulation
<b>Chapter-III:</b>	Registration Procedure
<b>Chapter-IV:</b>	Accounts, Intimation, Audit and Disposal of Assets etc.
<b>Chapter-V:</b>	Inspection, Search and Seizure
<b>Chapter-VI:</b>	Adjudication
<b>Chapter-VII:</b>	Appeal and Revision
<b>Chapter-VIII:</b>	Offences and Penalties
<b>Chapter-IX:</b>	Miscellaneous

## Chapter - I

### Preliminary (Includes Definitions)

Chapter I contains the extent and application of the bill and includes the definitions.

Section 1 contains the extent and application of the bill.

The Act shall apply to:

- whole of India;
- citizens of India outside India;
- associates branches or subsidiaries outside India;
- companies or bodies corporate registered or incorporated in India.

Section 2 contains the definitions. Some of the important definitions are given below:

- As per Section 2(h) Foreign

Contribution means the donation, delivery or transfer made by any foreign source:

- of any article, not being given to the person as a gift for his personal use, if the market value of such article, in India, on the date of such gift is more than such sum as may be specified from time to time;
- of any currency, whether Indian or foreign;
- security as defined in Clause (h) of the section 2 of the Securities Contracts (Regulation) Act, 1956 and includes any Foreign Security as defined in Clause (O) of the section 2 of the Foreign Exchange Management Act, 1999.

**Foreign Contribution includes:**

- Interest earned on Foreign Contribution;
- Foreign Hospitality except a purely casual one.

**Foreign Contribution excludes:**

- Fee towards cost of services;

Section 2(j) contains the definition of Foreign Source.

**“Foreign Source” includes,-**

- (i) the Government of any foreign country or territory and any agency of such Government;
- (ii) any international agency, not being the United Nations or

any of its specialised agencies, the World Bank, International Monetary Fund or such other agency as the Central Government may, by notification, specify in this behalf;

- (iii) a foreign company;
- (iv) a corporation, not being a foreign company, incorporated in a foreign country or territory;
- (v) a multi-national corporation referred to in sub-clause (iv) of clause (g);
- (vi) a company within the meaning of the Companies Act 1956, (1 of 1956), and more than one-half of the nominal value of its share capital is held, either singly or in the aggregate, by one or more of the following, namely:-
  - (a) the Government of a foreign country or territory;
  - (b) the citizens of a foreign country or territory;
  - (c) corporations incorporated in a foreign country or territory;
  - (d) trusts, societies or other associations of individuals (whether incorporated or not), formed or registered in a foreign country or territory;
  - (e) foreign company;
- (vii) a trade union in any foreign country or territory, whether or not registered in such foreign country or territory;

(viii) a foreign trust or a foreign foundation, by whatever name called, or such trust or foundation mainly financed by a foreign country or territory;

(ix) a society, club or other association of individuals formed or registered outside India;

(x) a citizen of a foreign country;

- Section 2(m) contains the definition of “Person”

**“Person” includes-**

- an individual;
- a Hindu undivided family;
- an association;
- a company registered under section 25 of the Companies Act, 1956 (1 of 1956);

**Chapter - II Regulation of Foreign Contribution and Foreign Hospitality**

**Prohibition to accept Foreign Contribution (Section 3)**

The bill provides for prohibition to accept foreign contribution by certain persons or associations, namely:

- a) candidate for election;
- b) correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper;
- c) judge, Government servant or employee of any corporation or any other body controlled or owned by the Government;
- d) member of any Legislature;
- e) Political party or office-bearer thereof;

- f) organization of a political nature as may be specified by the Central Government;
- g) association or company engaged in the production or broadcast of audio news or audio visual news or current affairs programmes through any electronic mode, or any other electronic form as defined in section 2 of the Information Technology Act, 2000 or any other mode of mass communication;
- h) Correspondent or columnist, cartoonist, editor, owner of the association or company.

#### **Persons to whom Prohibition to accept Foreign Contribution does not apply (Section 4)**

The bill provides that prohibition to accept foreign contribution does not apply to cases where the contribution is accepted by way of:

- Salary, wages or other remuneration from any foreign source
- Payment in the ordinary course of business transacted in India by the foreign source
- Payment in the course of international trade or commerce or in the ordinary course of business transacted outside India or as an agent of foreign source in relation to any transaction made by such foreign source with the Central Government or State Government
- Gift or presentation made to him as a member of any Indian delegation if such gift or present was in accordance with the rules made by the Central Government
- Remittance received in the ordinary course of business through any official channel, post office or any authorized person in foreign exchange under the Foreign Exchange Management Act, 1999.

#### **Procedure to notify an Organisation of a Political Nature (Section 5)**

Section 3 (1) (f) of the Bill states that organizations of a political nature are prohibited from accepting foreign contribution. There is a laid down procedure by which an organization would be notified as an organisation of a political nature. It is described below:

- Having regard to the activities of the organisation or the ideology propagated by the organisation or the association of the organization with the activities of any political party, the Central Government may specify such organisation as an organisation of a political nature not being a political party.
- Before making an order, it shall give the organisation a notice in writing informing it of the ground or grounds, on which it is proposed to be, specified as an organization of a political nature
- The said organisation may, within a period of thirty days from the date of the notice, make a representation to the Central Government giving reasons for not specifying such organisation as an organisation of a political nature.
- The Central Government may forward the representation to

any authority to report on such representation.

- The Central Government shall, after considering the representation and the report of the authority, specify such organisation as an organisation of a political nature and not being a political party.

#### **Restriction on Acceptance of Foreign Hospitality (Section 6)**

As per the bill the following persons are restricted from accepting the foreign hospitality while visiting any country or territory outside India without the prior permission from the central government:

- Member of a Legislature
- Office-bearer of a political party
- Judge
- Government servant
- Employee of any corporation

However, it shall not be necessary to obtain permission if there is an emergent need for medical aid due to sudden illness contracted during a visit and the same shall be intimated to the Central Government within one month from the date of receipt of such hospitality.

#### **Prohibition of Transfer of Foreign Contribution to other persons (Section 7)**

No person who is registered or has obtained prior permission under the legislation and receives any foreign contribution can transfer such foreign contribution to any other person unless such other person is also registered or obtained prior permission under the proposed legislation.

### Restrictions to utilize Foreign Contribution for administrative purposes (Section 8)

As per the bill the contribution shall be utilized only for the purposes it has been received for and no person shall:

- utilize the foreign contribution for speculative business;
- defray the sum exceeding more than fifty per cent to meet the administrative expenses.

Also, the Central Government may prescribe the elements which shall be included in the administrative expenses and the manner in which they shall be calculated. However, any sum exceeding fifty per cent, may be defrayed with prior approval of the Central Government.

### Chapter - III Registration

#### Registration of certain persons with Central Government (Section 11)

- All the persons receiving foreign funds are required to get themselves registered and obtain a certificate of registration from the Central Government.
- If the person is not registered, such person is not allowed to accept any foreign contribution without the prior permission.
- If prior permission is given for a specific purpose, it should not be treated as permission for any other purpose.
- In cases of violation of the provisions and absence of permission, the unutilized and unreceived amount shall not be utilized and received.

#### Procedure for grant of Certificate of Registration (Section 12)

- Every application for grant of certificate of registration or giving prior permission shall be in the prescribed form and manner along with the fees as specified in the rules made by the Central Government. The same can be rejected if it is not in accordance with the rules.
- On receipt of an application for registration and after making an inquiry if, the Central Government is satisfied that the person making an application for registration or giving prior permission:
  - is not fictitious or benami;
  - has not indulged in activities aimed at conversion through inducement or force, either directly or indirectly, from one religion faith to another;
  - has not created communal tension or disharmony in any specified district or any other part of the country;
  - has been not found guilty of diversion or mis-utilisation of its funds;
  - is not engaged or likely to engage to propagate sedition or advocate violent methods to achieve its ends;
  - is not likely to use the foreign contribution for personal gains or divert it for undesirable purposes;
  - has not contravened any of the provisions of the Act;
  - whose certificate has been suspended and such suspension of certificate continues;

- was previously granted certificate which had been cancelled before three years from the date of the application of grant of certificate of registration
- has not been prohibited from accepting foreign contribution;
- has undertaken meaningful activity in its chosen field for the benefit of the people for which the foreign contribution is proposed to be utilized;
- has prepared a meaningful project for the benefit of the people for which the foreign contribution is proposed to be utilised;
- has neither been convicted under any law for the time being in force nor any prosecution for any offence pending against him; or the acceptance of foreign contribution by the person
- is not likely to affect prejudicially:
  - i) the sovereignty and integrity of India;
  - ii) the security, strategic, scientific or economic interest of the State;
  - iii) the public interest;
  - iv) freedom or fairness of election to any Legislature;
  - v) friendly relation with any foreign State;
  - vi) harmony between religious, racial, social, linguistic, regional groups, castes or communities;
- shall not lead to incitement of an offence;

- shall not endanger the life or physical safety of any person,

it may register such person and grant him a certificate of registration or give prior permission.

However, in cases where the registration is refused:

- the Government will record the reasons for such refusal in its order and furnish a copy to the applicant;
- Government may not communicate the reasons in cases where there is no reason to do so under R.T.I, 2005 (Sec. 22).

#### **Validity of the Certificate**

- the Certificate granted will be valid for a period of five years.
- Prior Permission shall be valid for the specific purpose or specific amount proposed to be received.

#### **Suspension of Certificate of Registration (Section 13)**

- The Central Government has the power to suspend the certificate of registration up to one hundred and eighty days.
- Any person whose certificate has been suspended can neither receive any foreign contribution during the period of the suspension of the certificate nor can utilize the foreign contribution in his custody without the prior approval of the Central Government.

#### **Cancellation of Certificate of Registration (Section 14)**

- The Central Government, after making an inquiry may, cancel the certificate, if the holder has made a statement in the application for the grant of certificate or renewal, which is:
  - incorrect or false;
  - violated any of the terms and conditions of the certificate or renewal;
  - violated any of the provisions of legislation;
- No order of cancellation of certificate shall be made unless the person concerned has been given a reasonable opportunity of being heard;
- Any person whose certificate has been cancelled shall not be eligible for registration or grant of prior permission for a period of three years from the date of cancellation of the certificate.

#### **Management of foreign contribution of person whose certificate has been cancelled (Section 15)**

- The foreign contribution and the assets created out of the foreign contribution in the custody of a person whose certificate has been cancelled shall vest in such authority as may be prescribed.
- In cases where the certificate is cancelled, the authority may manage the activities if it is in public interest or utilize the contribution or dispose of the assets if adequate funds are not available for running such activity.

#### **Renewal of Certificate (Section 16)**

- Every person who has been granted a certificate of registration shall get his certificate renewed within six months before the expiry of the period of the certificate.
- The application for renewal of certificate shall be made to the Central Government in such form and manner and accompanied by such fee as may be prescribed.
- The Central Government may renew the certificate of registration subject to such terms and conditions as it may deem fit and grant a certificate of renewal for a period of five years.
- The Central Government may refuse to renew the certificate in case the person has violated any of the provisions.

#### **Chapter IV - Accounts, Intimation, Audit and Disposal of Assets etc.**

#### **Foreign Contribution through Scheduled Bank (Section 17)**

- Every person who has been granted a certificate shall receive foreign contribution in a single account only through such one of the branches of a bank as he may specify in his application for grant of certificate.
- Such person may open one or more accounts in one or more banks for utilizing the foreign contribution received by him.
- No funds other than foreign contribution shall be received or deposited in such account or accounts.

- Every bank or authorized person in foreign exchange shall report to the authority in such form and manner as may be specified by rules made by the Central Government:

- (a) the amount of foreign remittance;
- (b) the source and manner in which the foreign contribution was received;
- (c) other particulars.

#### **Intimation (Section 18)**

- The person who has been granted prior permission shall intimate the authorities within time frame as to how much of foreign contribution is received, the source and the manner in which it is received and purpose for which it is utilized.
- He shall submit a copy of statement indicating particulars of Foreign Contribution duly certified by the bank along with intimation to the Central Government.

#### **Maintenance of Accounts (Section 19)**

Every person shall maintain an account of any foreign contribution received by him in such form and manner as may be prescribed, and a record as to the manner in which such contribution has been utilized by him.

#### **Audit of Accounts (Section 20)**

If the person has been granted certificate of registration or prior permission and fails to give intimation

about the amount of foreign contribution received or the source or the manner in which it is utilized, the Central Government may order the audit of any books of account kept or maintained by such person and the officer shall have the right to enter in or upon any premises.

#### **Disposal of Assets (Section 22)**

If any person, who was permitted to accept foreign contribution, ceases to exist or has become defunct, all the assets of such person shall be disposed of in accordance with the provisions contained in any law for the time in force. In case there is no law relating to the disposal of the assets, the same is done as per the rules specified by the Central Government.

### **Chapter - V - Inspection, Search and Seizure**

#### **Inspection of Accounts or Records (Section 23)**

As per the bill, if the Central Government suspects on certain ground that any provision of the proposed legislation has been or is being, contravened by:

- (a) any political party;
- (b) any person;
- (c) any organisation;
- (d) any association.

it may authorize the Gazetted Officer to inspect any account or record maintained by the above mentioned and shall have the right to enter in or upon any premises for the purpose of inspecting the said account or record.

#### **Seizure of Accounts or Records (Section 24)**

If, after inspection of an account or record, the authorized officer believes that any provisions of law relating to foreign exchange have been, contravened, he may seize such account or record and produce the same before the court, authority or tribunal in which any proceeding is brought.

However, the authorized officer shall return such account or record to the person if no proceeding is brought within six months from the date of such seizure for the contravention disclosed by such account or record.

#### **Seizure of Article or Currency or Security received in contravention of the Act (Section 25)**

If the Gazetted Officer has any reason to believe that any person has in his possession or control any article or currency or security exceeding the value specified, and any provision of the proposed legislation has been contravened, he may seize such article or currency or security.

#### **Disposal of seized article or currency or security (Section 26)**

- If the value of article or currency or security is such that it is vulnerable to theft or of any relevant consideration, the Central Government may, by order, specify it to be disposed off in the manner as may be prescribed.

- The article or currency or security seized shall be forwarded without unnecessary delay to the officer authorized by the Govt.
- The officer shall prepare an inventory of such article or currency or security containing details relating to their description, value or other identifying particulars as may be considered relevant to the identity of the article or the currency or security.

### **Chapter VI - Adjudication**

#### **Confiscation of Article or Currency or Security (Section 28)**

Any article or currency or security which is seized, shall be liable to confiscation if the same has been obtained in contravention of the proposed legislation.

#### **Adjudication of Confiscation (Section 29)**

Any confiscation may be adjudged by the Court of Session within the local limits of whose jurisdiction the seizure was made

However, no order of adjudication of confiscation shall be made unless the person is given a reasonable opportunity of being heard.

### **Chapter VII - Appeal and Revision**

#### **Appeal (Section 31)**

Any person aggrieved by any order made relating to adjudication of confiscation may prefer an appeal, where the order has been made by the Court of Session, to the High Court

to which such Court is subordinate or where the order has been made by any officer to the Court of Session within the local limits of whose jurisdiction such order of adjudication of confiscation was made.

Appeal should be preferred within one month from the date of communication to the person on whom the order is served.

### **Chapter VIII - Offences and Penalties**

#### **Punishment for making false intimation (Section 33)**

As per the Bill any person, who knowingly,

- (a) gives a false intimation;
- (b) seeks prior permission or registration by means of fraud, false representation or concealment of material fact, on conviction by a court, shall be liable to imprisonment for a term which may extend to three years or with fine or with both.

#### **Contravention of Prohibitory Orders (Section 34)**

According to the bill, if any person, on whom any prohibitory order has been served, pays, delivers, transfers or otherwise deals with, any article or currency or security, in contravention of such prohibitory order, he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

#### **Punishment for Contravention of Any Provisions (Section 35)**

As per the bill, whoever assists any

person, political party or organisation in accepting any foreign contribution or any currency or security from a foreign source in contravention of the provisions of the proposed legislation, he shall be punished with imprisonment for a term which may extend to five years, or with fine, or with both.

#### **Offence by Companies (Section 39)**

Where an offence has been committed by a company, every person who, at the time the offence was committed, was responsible to the company for the conduct of the business, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

However, such person shall not be liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

### **Chapter IX - Miscellaneous**

#### **Power to call for information or document (Section 42)**

Any Inspecting Officer, who is authorized by the Central Government, may, during the course of any inspection of any account or records maintained by political party, person, organizations or association in connection with the contravention of any of the provisions of the Act:

- call for information from any person for the purpose of satisfying whether there has been any contravention; of the provisions of the Act

- require any person to produce or deliver any document or thing useful or relevant to inspection;
- examine any person acquainted with the facts and circumstances of the cases related to inspection.

### **Investigation into cases (Section 43)**

Any offence punishable may be investigated into by the authority specified by the Central Government and shall have all the powers which an officer-in-charge of a police station has while making an investigation into a cognizable offence.

### **Returns by prescribed authority to the Central Government (Section 44)**

The prescribed authority shall furnish to the Central Government at such

time and in such form and manner such returns and statements as may be prescribed.

### **Protection of action taken in good faith (section 45)**

No suit or other legal proceedings shall lie against the Central Government or the authority or any of its officers in respect of any loss or damage caused or likely to be caused by anything which is done in good faith or intended to be done in pursuance of the provisions of the Act.

### **Power of the Central Government to give directions (Section 46)**

The Central Government may give such directions as it may deem necessary to any other authority or any person or classes of persons regarding the carrying into execution of the provisions of the Act.

### **Delegation of Powers (Section 47)**

The Central Government may, delegate, subject to certain conditions and limitations, some of its powers and functions to such authority as may be specified.

### **Exemptions (Section 50)**

If the Central Government is of the opinion that it is necessary or expedient in the interest of the general public to grant exemptions, it may, exempt any person or association or organisation (not being a political party), or any individual (not being a candidate for election) from the operation of all or any of the provisions of the proposed legislation and may, if necessary, revoke or modify such order.

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