

Bill No. CXII of 2006

THE FOREIGN CONTRIBUTION (REGULATION) BILL, 2006

A

BILL

to consolidate the law to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain individuals or associations or companies and to prohibit acceptance and utilisation of foreign contribution or foreign hospitality for any activities detrimental to the national interest and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

5 1. (1) This Act may be called the Foreign Contribution (Regulation) Act, 2006.

(2) It extends to the whole of India, and it shall also apply to—

(a) citizens of India outside India; and

Short title,
extent,
application
and com-
mencement.

(b) associates branches or subsidiaries, outside India, of companies or bodies corporate, registered or incorporated in India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions.

2. (1) In this Act, unless the context otherwise requires, —

(a) "association" means an association of individuals, whether incorporated or not, having an office in India and includes a society, whether registered under the Societies Registration Act, 1860, or not, and any other organisation, by whatever name called; 21 of 1860.

(b) "authorised person in foreign exchange" means an authorised person referred to in clause (c) of section 2 of the Foreign Exchange Management Act, 1999; 42 of 1999.

(c) "bank" means a banking company as referred to in clause (c) of section 5 of the Banking Regulation Act, 1949; 10 of 1949.

(d) "candidate for election" means a person who has been duly nominated as a candidate for election to any Legislature;

(e) "certificate" means certificate of registration granted under sub-section (3) of section 12; 20

(f) "company" shall have the meaning assigned to it under clause (17) of section 2 of the Income-tax Act, 1961; 43 of 1961.

(g) "foreign company" means any company or association or body of individuals incorporated outside India and includes—

(i) a foreign company within the meaning of section 591 of the Companies Act, 1956; 25 of 1956.

(ii) a company which is a subsidiary of a foreign company;

(iii) the registered office or principal place of business of a foreign company referred to in sub-clause (i) or company referred to in sub-clause (ii);

(iv) a multi-national corporation. 30

Explanation.— For the purposes of this sub-clause, a corporation incorporated in a foreign country or territory shall be deemed to be a multi-national corporation if such corporation, —

(a) has a subsidiary or a branch or a place of business in two or more countries or territories; or 31

(b) carries on business, or otherwise operates, in two or more countries or territories;

(h) "foreign contribution" means the donation, delivery or transfer made by any foreign source,—

(i) of any article, not being an article given to a person as a gift for his personal use, if the market value, in India, of such article, on the date of such gift, is not more than such sum as may be specified from time to time, by the Central Government by the rules made by it in this behalf; 40

(ii) of any currency, whether Indian or foreign;

(iii) security as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 and includes any foreign security as defined in clause (o) of section 2 of the Foreign Exchange Management Act, 1999. 45 of 1999.

Explanation 1.— A donation, delivery or transfer of any article, currency or foreign security referred to in this clause by any person who has received it from any foreign source, either directly or through one or more persons, shall also be deemed to be foreign contribution within the meaning of this clause.

5[~] *Explanation 2.*— The interest accrued on the foreign contribution deposited in any bank referred to in sub-section (1) of section 17 or any other income derived from the foreign contribution or interest thereon shall also be deemed to be foreign contribution within the meaning of this clause.

10 *Explanation 3.*— Any amount received, by any person from any foreign source in India, by way of fee (including fees charged by an educational institution in India from foreign student) or towards cost in lieu of goods or services rendered by such person in the ordinary course of his business, trade or commerce whether within India or outside India or any contribution received from an agent of a foreign source towards such fee or cost shall be excluded from the definition of foreign contribution
15 within the meaning of this clause.

(i) "foreign hospitality" means any offer, not being a purely casual one, made in cash or kind by a foreign source for providing a person with the costs of travel to any foreign country or territory or with free boarding, lodging, transport or medical treatment.

20 (j) "foreign source" includes, —

(i) the Government of any foreign country or territory and any agency of such Government;

25 (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;

30 (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, 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;

35 (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;

40 (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;

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

(x) a citizen of a foreign country;

(k) "Legislature" means —

(A) either House of Parliament;

(B) the Legislative Assembly of a State, or in the case of a State having a Legislative Council, either House of the Legislature of that State;

(C) Legislative Assembly of a Union territory constituted under the Government of Union Territories Act, 1963; 20 of 1963.

(D) Legislative Assembly for the National Capital Territory of Delhi referred to in the Government of National Capital Territory of Delhi Act, 1991; 1 of 1992.

(E) Municipal Corporations in metropolitan areas as defined in the Code of Criminal Procedure, 1973; 10 2 of 1974.

(F) District Councils and Regional Councils in the States of Assam, Meghalaya, Tripura and Mizoram as provided in the Sixth Schedule to the Constitution; or

(G) any other elective body as may be notified by the Central Government, as the case may be; 15

(l) "notification" means notification published in the Official Gazette and the expression "notify" shall be construed accordingly;

(m) "person" includes—

(i) an individual;

(ii) a Hindu undivided family; 20

(iii) an association;

(iv) a company registered under section 25 of the Companies Act, 1956; 1 of 1956.

(n) "political party" means—

(i) an association or body of individual citizens of India—

(A) to be registered with the Election Commission of India as a political party under section 29A of the Representation of the People Act, 1951; or 25 43 of 1951.

(B) which has set up candidates for election to any Legislature, but is not so registered or deemed to be registered under the Election Symbols (Reservation and Allotment) Order, 1968; 30

(ii) a political party mentioned in column 2 of Table 1 and Table 2 to the notification of the Election Commission of India No.56/J&K/02, dated the 8th August, 2002, as in force for the time being;

(o) "prescribed" means prescribed by rules made under this Act;

(p) "prescribed authority" means an authority specified as such by rules made by the Central Government under this Act; 35

(q) "registered newspaper" means a newspaper registered under the Press and Registration of Books Act, 1867; 25 of 1867.

(r) "relative" has the meaning assigned to it in clause (41) of section 2 of the Companies Act, 1956; 40 1 of 1956.

(s) "scheduled bank" shall have the meaning assigned to it under clause (e) of section 2 of the Reserve Bank of India Act, 1934; 2 of 1934.

- 1 of 1956. (t) "subsidiary" and "associate" shall have the meanings, respectively assigned to them in the Companies Act, 1956;
- 16 of 1926. (u) "trade union" means a trade union registered under the Trade Unions Act, 1926;
- 5 (2) Words and expressions used herein and not defined in this Act but defined in the Representation of the People Act, 1950 or the Representation of the People Act, 1951 or the Foreign Exchange Management Act, 1999 shall have the meanings respectively assigned to them in those Acts.
- 43 of 1950.
43 of 1951.
42 of 1999.

CHAPTER II

16 REGULATION OF FOREIGN CONTRIBUTION AND FOREIGN HOSPITALITY

3. (1) No foreign contribution shall be accepted by any—

Prohibition to accept foreign contribution.

(a) candidate for election;

(b) correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper;

15 (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;

20 (f) organisation of a political nature as may be specified under sub-section (1) of section 5 by the Central Government;

21 of 2000. (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 clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000 or any other mode of mass communication;

25 (h) correspondent or columnist, cartoonist, editor, owner of the association or company referred to in clause (g).

1 of 1956. 30 *Explanation.*— In clause (c) and section 6, the expression "corporation" means a corporation owned or controlled by the Government and includes a Government company as defined in section 617 of the Companies Act, 1956.

(2) (a) No person, resident in India, and no citizen of India resident outside India, shall accept any foreign contribution, or acquire or agree to acquire any currency from a foreign source, on behalf of any political party, or any person referred to in sub-section (1), or both.

35 (b) No person, resident in India, shall deliver any currency, whether Indian or foreign, which has been accepted from any foreign source, to any person if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to any political party or any person referred to in sub-section (1), or both.

40 (c) No citizen of India resident outside India shall deliver any currency, whether Indian or foreign, which has been accepted from any foreign source, to—

(i) any political party or any person referred to in sub-section (1), or both; or

45 (ii) any other person, if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to a political party or to any person referred to in sub-section (1), or both.

(3) No person receiving any currency, whether Indian or foreign, from a foreign source on behalf of any person or class of persons, referred to in section 9, shall deliver such currency —

(a) to any person other than a person for which it was received, or

(b) to any other person, if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to a person other than the person for which such currency was received. 5

Persons to whom section 3 shall not apply.

4. Nothing contained in section 3 shall apply to the acceptance, by any person specified in that section, of any foreign contribution where such contribution is accepted by him, subject to the provisions of section 10,— 10

(a) by way of salary, wages or other remuneration due to him or to any group of persons working under him, from any foreign source or by way of payment in the ordinary course of business transacted in India by such foreign source; or

(b) by way of payment, in the course of international trade or commerce, or in the ordinary course of business transacted by him outside India; or 15

(c) as an agent of a foreign source in relation to any transaction made by such foreign source with the Central Government or State Government; or

(d) by way of a gift or presentation made to him as a member of any Indian delegation, provided that such gift or present was accepted in accordance with the rules made by the Central Government with regard to the acceptance or retention of such gift or presentation; or 20

(e) from his relative; or

(f) by way of remittance received, in the ordinary course of business through any official channel, post office, or any authorised person in foreign exchange under the Foreign Exchange Management Act, 1999: 25

42 of 1999.

Provided that in case any foreign contribution received by any person specified under section 3, for any of the purposes other than those specified under this section, such contribution shall be deemed to have been accepted in contravention of the provisions of section 3.

Procedure to notify an organisation of a political nature.

5.(1) The Central Government may, having regard to the activities of the organisation or the ideology propagated by the organisation or the programme of the organisation or the association of the organisations with the activities of any political party, by an order published in the Official Gazette, specify such organisation as an organisation of a political nature not being a political party, referred to in clause (f) of sub-section (1) of section 3. 30

(2) Before making an order under sub-section (1), the Central Government shall give the organisation in respect of whom the order is proposed to be made, a notice in writing informing it of the ground or grounds, on which it is proposed to be specified as an organisation of political nature under that sub-section: 35

Provided that the Central Government may, by rules made by it, specify the ground or grounds on which an organisation shall be specified as an organisation of a political nature. 40

(3) The organisation to whom a notice has been served under sub-section (2), 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 under sub-section (1): 45

Provided that the Central Government may entertain the representation after the expiry of the said period of thirty days, if it is satisfied that the organisation was prevented by sufficient cause from making the representation within thirty days.

5 (4) The Central Government may, if it considers it appropriate, forward the representation referred to in sub-section (3) to any authority to report on such representation.

(5) The Central Government may, after considering the representation and the report of the authority referred to in sub-section (4), specify such organisation as an organisation of a political nature not being a political party and make an order under sub-section (1) accordingly.

10 6. No member of a Legislature or office-bearer of a political party or Judge or Government servant or employee of any corporation or any other body owned or controlled by the Government shall, while visiting any country or territory outside India, accept, except with the prior permission of the Central Government, any foreign hospitality: Restriction on acceptance of foreign hospitality.

15 Provided that it shall not be necessary to obtain any such permission for an emergent medical aid needed on account of sudden illness contracted during a visit outside India, but, where such foreign hospitality has been received, the person receiving such hospitality shall give, within one month from the date of receipt of such hospitality an intimation to the Central Government as to the receipt of such hospitality, and the source from which, and the manner in which, such hospitality was received by him.

20 7. No person who — Prohibition to transfer foreign contribution to other person.

(a) is registered and granted a certificate or obtained prior permission under this Act; and

(b) receives any foreign contribution,

25 shall transfer such foreign contribution to any other person unless such other person is also registered and granted the certificate or obtained the prior permission under this Act.

30 8. (1) Every person, who is registered and granted a certificate or given prior permission under this Act and receives any foreign contribution,— Restriction to utilise foreign contribution for administrative purpose.

(a) shall utilise such contribution for the purposes for which the contribution has been received:

Provided that any foreign contribution or any income arising out of it shall not be used for speculative business;

(b) shall not defray as far as possible such sum, not exceeding fifty per cent. of such contribution, received in a financial year, to meet administrative expenses:

35 Provided that administrative expenses exceeding fifty per cent. of such contribution may be defrayed with prior approval of the Central Government.

(2) The Central Government may prescribe the elements which shall be included in the administrative expenses and the manner in which the administrative expenses referred to in sub-section (1) shall be calculated.

40 9. The Central Government may—

(a) prohibit any person or organisation not specified in section 3, from accepting any foreign contribution;

45 (b) require any person or class of persons, not specified in section 6, to obtain prior permission of the Central Government before accepting any foreign hospitality;

Power of Central Government to prohibit receipt of foreign contribution, etc., in certain cases.

(c) require any person or class of persons not specified in section 11, to furnish intimation within such time and in such manner as may be prescribed as to the amount of any foreign contribution received by such person or class of persons as the case may be, and the source from which and the manner in which such contribution was received and the purpose for which and the manner in which such foreign contribution was utilised; 5

(d) without prejudice to the provisions of sub-section (1) of section 11, require any person or class of persons specified in that sub-section to obtain prior permission of the Central Government before accepting any foreign contribution;

(e) require any person or class of persons, not specified in section 6, to furnish intimation, within such time and in such manner as may be prescribed, as to the receipt of any foreign hospitality, the source from which and the manner in which such hospitality was received: 10

Provided that no such prohibition or requirement shall be made unless the Central Government is satisfied that the acceptance of foreign contribution by such person or class of persons, as the case may be, or the acceptance of foreign hospitality by such person, is likely to affect prejudicially— 15

(i) the sovereignty and integrity of India; or

(ii) public interest; or

(iii) freedom or fairness of election to any Legislature; or 20

(iv) friendly relations with any foreign State; or

(v) harmony between religious, racial, social, linguistic or regional groups, castes or communities.

Power to prohibit payment of currency received in contravention of the Act.

10. Where the Central Government is satisfied, after making such inquiry as it may deem fit, that any person has in his custody or control any article or currency, whether Indian or foreign, which has been accepted by such person in contravention of any of the provisions of this Act, it may, by order in writing, prohibit such person from paying, delivering, transferring or otherwise dealing with, in any manner whatsoever, such article or currency save in accordance with the written orders of the Central Government and a copy of such order shall be served upon the person so prohibited in the prescribed manner, and thereupon the provisions of sub-sections (2), (3), (4) and (5) of section 7 of the Unlawful Activities (Prevention) Act, 1967 shall, so far as may be, apply to, or in relation to, such article or currency and references in the said sub-sections to moneys, securities or credits shall be construed as references to such article or currency. 25 30 37 of 1967.

CHAPTER III

REGISTRATION

Registration of certain persons with Central Government.

11. (1) Save as otherwise provided in this Act, no person having a definite cultural, economic, educational, religious or social programme shall accept foreign contribution unless such person obtains a certificate of registration from the Central Government: 35

Provided that any association registered with the Central Government under section 6 or granted prior permission under that section of the Foreign Contribution (Regulation) Act, 1976, as it stood immediately before the commencement of this Act, shall be deemed to have been registered or granted prior permission, as the case may be, under this Act and such registration shall be valid for a period of five years from the date on which this section comes into force. 40 49 of 1976.

(2) Every person referred to in sub-section (1) may, if it is not registered with the Central Government under that sub-section, accept any foreign contribution only after 45

obtaining the prior permission of the Central Government and such prior permission shall be valid for the specific purpose for which it is obtained and from specific source:

49 of 1976. 5 Provided that if the person referred to in sub-sections (1) and (2) has been found guilty of violation of any of the provisions of this Act or the Foreign Contribution (Regulation) Act, 1976, the unutilised or unreceived amount of foreign contribution shall not be utilised or received, as the case may be, without the prior approval of the Central Government.

(3) Notwithstanding anything contained in this Act, the Central Government may, by notification in the Official Gazette, specify—

10 (i) the person or class of persons who shall obtain its prior permission before accepting the foreign contribution; or

(ii) the area or areas in which the foreign contribution shall be accepted and utilised with the prior permission of the Central Government;

15 (iii) the purpose or purposes for which the foreign contribution shall be utilised with the prior permission of the Central Government; or

(iv) the source or sources from which the foreign contribution shall be accepted with the prior permission of the Central Government.

20 12. (1) An application by a person, referred to in section 11 for grant of certificate or giving prior permission, shall be made to the Central Government in such form and manner and along with such fee, as may be prescribed.

Grant of certificate of registration.

(2) On receipt of an application under sub-section (1), the Central Government shall, by an order, if the application is not in the prescribed form or does not contain any of the particulars specified in that form, reject the application.

25 (3) If on receipt of an application for grant of certificate or giving of prior permission and after making such inquiry as the Central Government deems fit, it is satisfied that —

(a) the person making an application for registration or giving of prior permission under sub-section (1),—

(i) is not fictitious or benami;

30 (ii) has not indulged in activities aimed at conversion through inducement or force, either directly or indirectly, from one religious faith to another;

(iii) has not created communal tension or disharmony in any specified district or any other part of the country;

(iv) has not been found guilty of diversion or mis-utilisation of its funds;

35 (v) is not engaged or likely to engage to propagate sedition or advocate violent methods to achieve its ends;

(vi) is not likely to use the foreign contribution for personal gains or divert it for undesirable purposes;

(vii) has not contravened any of the provisions of this Act;

40 (viii) whose certificate has been suspended and such suspension of certificate continues;

(ix) was previously granted certificate which had been cancelled before three years from the date of the application for grant of certificate or registration;

(x) has not been prohibited from accepting foreign contribution;

45 (b) the person making an application for registration under sub-section (1) has undertaken meaningful activity in its chosen field for the benefit of the people for which the foreign contribution is proposed to be utilised; or

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