

Social Sector Hotline

November 16, 2006

INVESTMENT IN "SPECULATIVE BUSINESSES" OUT OF BOUNDS FOR FOREIGN CONTRIBUTIONS

A sense of disappointment is pervading the social sector in India at the Government of India's ("Government") proposal in the new Foreign Contribution (Regulation) Bill, 2006 ("Bill"), to disallow authorised recipients to invest foreign contributions or any income arising from it in "speculative businesses" (see our previous Hotline, *Tighter controls for foreign contributions*, circulated on November 11, 2006. The Bill will be introduced for consideration in the imminent winter session of the Lok Sabha, the lower house of the Indian Parliament.

Currently, any not-for-profit entity registered under the Income Tax Act, 1961 ("IT Act") for tax exemptions (upon compliance with certain conditions prescribed under the IT Act), are permitted to invest their corpus, whether built from domestic or foreign sources, only in specified investments. Given the prevailing liberalized economy, there may have been some anticipation that the scope for investment of such funds would be expanded by the Government to enable non-profits to take advantage of the boom in the capital market. This proposal puts paid to any such hopes, at least in respect of foreign contributions, currently amounting to over INR 70 billion received annually by over 35,000 entities registered under the current Foreign Contribution (Regulation) Act, 1976 ("FCRA").

The Ministry of Finance ("MoF") is reportedly not in favour of the proposal. In its opinion, capital market investment could be a pragmatic way to park the funds before they are disbursed for charitable purposes. The MoF has also pointed out that the term "speculative businesses" is not clearly defined, and could be open to "subjective interpretation". A source from the Ministry of Home Affairs has informed the Government that the term "speculative investment" would be defined by the Rules to be notified after the Bill ripens into an Act.

The Government's intention is apparently to firm up regulatory controls on foreign contributions. The Bill reflects its apprehensions in this age of terrorism that some foreign contributions are being channeled for purposes other than charity and social welfare and seeks to keep an eagle eye on the trail of the utilization of foreign contributions. The Government has indicated that it will enlist the help of the central Intelligence Bureau and the investigative unit, the Research and Analysis Wing, to monitor the "real objective" of the donors.

Genuine non-profits may seek some comfort in knowing that such regulatory controls and restrictions are targeted at those entities that are merely a cover for more nefarious activities. The well-intentioned Bill, if passed, may well result in the social sector being recognized as one of the cleanest sectors in the Indian economic scenario.

- Rina Kamath & Daksha Baxi

Source: *The Economic Times, Mumbai edition, November 16, 2006*

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