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MINISTRY OF HOME AFFAIRS IMPOSES ADDITIONAL COMPLIANCES FOR SEEKING FOREIGN CONTRIBUTIONS

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Introduction

The Ministry of Home Affairs has notified the Foreign Contribution (Regulation) (Second Amendment) Rules on 16 September 2019 ("**Amendment Rules**") amending the Foreign Contribution (Regulation) Rules, 2011 ("**FCRA Rules**") under the Foreign Contributions (Regulation) Act, 2010 ("**FCRA**").

Pursuant to the Amendment Rules:

- An application being made by a person having a definite cultural, economic, educational, religious or social programme for (i) obtaining certificate of registration for accepting foreign contribution, or (ii) a renewal of the registration granted under (i), or (iii) a one-time permission for accepting foreign contribution, will now have to be supported by (a) an affidavit executed by each office bearer and key functionary and member of such applicant person (each a "**Key Person**") and (b) a declaration by the 'chief functionary' of the applicant, certifying that the Key Persons fulfil certain conditions under the FCRA.
- Such affidavit requires the declarant to confirm, amongst other things, that the applicant is not: (i) fictitious or benami; (ii) prosecuted/convicted for inducing or forcing religious conversions; (iii) prosecuted/convicted for creating communal tension/disharmony; (iv) guilty of mis-utilisation or diversion of funds; (v) engaged/ likely to engage in propagation of seditious or violent acts; (vi) using/proposing to use any such foreign contribution for personal gains or divert them for undesirable purposes; (vii) violative of the FCRA; and (viii) prohibited from accepting foreign contributions ("**Disqualified Activities**").
- In case of receipt of foreign hospitality (during a visit abroad) exceeding INR 1,00,000 towards emergent medical aid on account of sudden illness, the timeline for making mandatory disclosures to the government regarding source of funds, approximate value in Indian rupees and purpose and manner of utilisation ("**Mandatory Disclosures**"), has been reduced from 60 days to 30 days from the date of receipt of such foreign hospitality.
- The value of gifts (value in India) provided to a person for personal use that are excluded from being construed as 'foreign contributions' has been increased from INR 25,000 to INR 1,00,000.

Background

The FCRA was enacted in 2010 with the primary objective of regulating the acceptance and utilisation of foreign contributions or foreign hospitality by certain individuals or associations or companies in India. In 2011, the FCRA Rules were promulgated to set out the procedures for obtaining such registrations, along with mandatory disclosures to be made by applicants, which rules have been periodically amended to strengthen and better achieve the objectives of FCRA.

Key highlights of the amendment

- Mandatory declarations along with applications.
 - Under the FCRA, any person seeking foreign contributions is mandated to obtain:
 - (i) for cases where the applicant is likely to seek foreign contributions multiples times, a certificate of registration from the government (such registration is to be applied for under Form FC-3A as per Rule 9 of the FCRA Rules); or
 - (ii) for cases of one-off foreign contributions, a prior permission from the government to obtain foreign contributions for a specific purpose, from a specific source (to be applied for under Form FC-3B as per Rule 9 of the FCRA Rules).
 - Following the amendment brought about, forms FC-3A, FC-3B and form FC-3C (renewal of existing registration) are to be supplemented with affidavits from the applicant's Key Persons in a prescribed form (to be executed on a non-judicial stamp paper of INR 10 (Indian Rupees Ten and attested by a public notary or First Class Magistrate) (the "**Affidavit**") stating such Key Person's association with the applicant along with confirmation regarding the non-applicability of the Disqualified Activities along with fulfilment of conditions under Section 12 (4) of FCRA which requires the applicant to:
 - have undertaken reasonable activity in the field he seeks to obtain the registration for;
 - have prepared a reasonable project for the benefit of the society, for which the foreign contribution is proposed to be used (under form FC-3B);
 - not have been convicted for any offence under any law or have any prosecution for any offence pending against him/her (also applicable to the Key Persons of the applicant);
 - undertake that the foreign contribution sought, if accepted is not likely to prejudicially affect: (a) the sovereignty and integrity of India; (b) India's security or strategic, scientific or economic interest; (c) public interest; (d) election processes; (e) international relations; or (f) social and communal harmony in India including between religious, racial, social, linguistic, regional groups, castes and communities in India; and
 - undertake that the contribution so made shall not lead to or incite any offences or endangerment of the life or physical safety of any other person.

- Increase of threshold for 'gifts' given for personal use:

Previously, personal gifts whose market value in India on the date of such gift exceeded INR 25,000 (Indian Rupees Twenty-Five Thousand only), were considered to be a foreign contribution under the FCRA; which threshold has now been increased to INR 1,00,000 (Indian Rupees One Lakh only).

Comment

The introduction of FCRA brought a regulatory framework for receipt of foreign contributions in India to fund socially beneficial programmes. Though the additional reporting increases the burden on the applicants along with the relevant processing authority, the amendments brought about by the Amendment Rules are in keeping with the objectives of FCRA along with the Government of India's recent emphasis on the need to monitor foreign funds more strictly with additional accountability for such funds given the changing landscape of international relations and increasing global threats. It is a significant step to track funds and avoid any misutilisation of funds thereby also ensuring that such funds are utilised for objectives and purposes that are genuinely beneficial to the society at large.

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