



भारतीय रिज़र्व बैंक
RESERVE BANK OF INDIA
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UBD. CO. BPD. (PCB). No 28/12.05.001 / 2011-12

March 27, 2012

The Chief Executive Officers of
All Primary (Urban) Co-operative Banks

Dear Sir,

Guidelines issued under Section 36(1) (a) of the Banking Regulation Act, 1949 (AACS) - Implementation of the provisions of Foreign Contribution (Regulation) Act, 2010

The Reserve Bank, considering the public interest and on being satisfied that it is necessary so to do, in exercise of the powers conferred by Clause (a) of sub-section (1) of Section 36 of the Banking Regulation Act, 1949 (AACS) and of all the powers enabling it in this behalf, hereby issue the guidelines on Foreign Contribution (Regulation) Act, 2010 (the Act) and Foreign Contribution (Regulation) Rules, 2011 enclosed herewith, for compliance of all Primary (Urban) Co-operative Banks. With the coming into force of the Act, Foreign Contribution (Regulation) Act, 1976 stands repealed.

2. The salient features of the new Act are given in the Annex to this circular. This circular is intended only to serve as a guide to the UCBs for carrying out their obligations under the Act and the Rules made thereunder. In case of doubt, UCBs should make it a point to refer to the text of the Act and the Rules, and if found necessary, proper legal advice should be taken.

3. Please acknowledge receipt of this circular to the Regional Office concerned of this department.

Yours faithfully,

(A.Udgata)

Chief General Manager in-Charge

Encl: As above

GUIDELINES

Government of India, Ministry of Home Affairs has published a Notification S.O. 909 (E) dated the 29th April, 2011, in the Official Gazette bringing into force the Foreign Contribution (Regulation) Act, 2010 (“the Act”) with effect from May 1, 2011. A Gazette Notification **G.S.R. 349 (E)** dated the 29th April, 2011, has also been issued notifying the Foreign Contribution (Regulation) Rules, 2011 (“the Rules”) made under Section 48 of the Act. The Rules have come into force simultaneously with the Act. With the coming into force of the Act, Foreign Contribution (Regulation) Act, 1976 stands repealed. Therefore, it has now become necessary for the banks to ensure that the provisions of the new Act and the Rules made there under are fully complied with.

2. The Act prohibits certain classes of persons from receiving ‘foreign contribution’. It also restricts certain classes of persons from accepting foreign hospitality while visiting any country or territory outside India, without the prior permission of the Central Government. The Act provides that persons having definite cultural, economic, educational, religious and social programmes should get themselves registered with the Government of India before accepting any ‘foreign contribution’. In case a person falling in the above category is not registered with the Central Government, it can accept foreign contribution only after obtaining prior permission of the Central Government. Further, under the Act, the Central Government is empowered to prohibit any person or organisation not specified in the Act from accepting any foreign contribution and to require any person or class of persons, not specified in it to obtain prior permission of the Central Government before accepting any foreign hospitality.

3. The Act casts certain obligations on banks in relation to the receipt of foreign contributions. The Act stipulates that every person who has been granted a certificate of registration/prior permission as stipulated in the Act shall receive foreign contribution in a single account and only through such branches of a bank as may be specified in his application. It strictly prohibits the receipt or deposit of any other funds (other than foreign contribution) in such accounts. The Act mandates that every bank or authorized person in foreign exchange shall report to specified authority, the prescribed amount of foreign remittance, source and manner in which foreign remittance was received and other particulars in such form and manner as may be prescribed. Section 18 of the Act requires every person who has been granted a certificate of registration or prior permission under the Act to intimate the Central Government on the details provided therein in the manner stipulated therein. This intimation has to be accompanied by a copy of the statement indicating the particulars of foreign contribution received duly certified by an officer of the bank or authorized person in foreign exchange.

4. Associations which were granted certificates of registration or prior permission under Section 6 of the Foreign Contribution (Regulation) Act, 1976, will continue to be eligible to receive foreign contribution under the Act and such registration shall be valid for a

period of five years from the date on which the Act came into force. Any permission to accept foreign hospitality granted under Section 9 of the repealed Act would also be deemed to be the permission granted under the Act until such permission is withdrawn by the Central Government.

5. Reserve Bank had been issuing guidelines from to time under the Foreign Contribution Regulation Act, 1976 advising banks, that while accepting 'foreign contribution' for onward credit to the accounts of persons, it needs to be ensured that the concerned persons/organizations are registered with the Central Government or has the prior permission to receive such foreign contribution if required by law, and that no branch other than the specified branch accepts 'foreign contribution'. Banks were also advised to forward the report of receipts of such contributions to the Central Government. Some irregularities and deviations from the prescribed procedures were noticed in the implementation of the repealed enactment. Banks and Financial Institutions are required to strictly adhere to the provisions of the new Act while dealing with the receipt of foreign contributions.

6. The salient features of the new Act are given in the Annex to these guidelines. This circular is intended only to serve as a guide to the banks and Financial Institutions for carrying out their obligations under the Act and the Rules made thereunder. In case of doubt, banks and Financial Institutions should make it a point to refer to the text of the Act and the Rules, and if found necessary, proper legal advice should be taken.

Annex

1. Introduction

As the Preamble suggests, the Foreign Contribution (Regulation) Act, 2010, is intended to consolidate the law regulating 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. The Act extends to the whole of India, to its citizens outside India and also to associate branches or subsidiaries outside India, of companies or body corporate, registered or incorporated in India.

2. Prohibition on acceptance of foreign contribution

The Act stipulates that certain persons are totally barred from accepting any foreign contribution. The term 'foreign contribution' is defined in Clause (h) of Section 2 of the Act to mean the donation, delivery or transfer made by a foreign source of any article (not being an article of gift for personal use, the market value of which is not more than the specified amount), currency (whether Indian or foreign) or any security. The following are the persons prohibited from accepting foreign contribution:

- 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 entity controlled or owned by the Government;
- d. Member of any Legislature;
- e. Political party or office bearers thereof;
- f. Organisations of a political nature as may be specified;
- g. Associations or companies engaged in the production or broadcast of audio news or audiovisual news or current affairs programmes through any electronic mode or form or any other mode of mass communication;
- h. Correspondent or columnist, cartoonist, editor, owner of the association or company referred to in (g) above.

The Act empowers the Central Government to specify organizations as organizations of political nature by publication in the Official Gazette. Foreign contribution can however be accepted by the above-mentioned persons in the following specific cases:

- 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
- 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
- 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; or
- g. by way of any scholarship, stipend or any payment of like nature.

For appreciating the scope of the term 'foreign contribution', it is necessary to understand the meaning assigned by the Act to the term 'foreign source'. This term is given an inclusive definition, with a very wide coverage. Generally, it covers foreign governments and its agencies, any international agencies (other than certain specified agencies such as United Nations, World Bank, etc.), foreign citizens, foreign companies and foreign corporations, entities such as trade unions, trusts, societies, clubs, etc. formed or registered outside India.

3. Restrictions on acceptance of foreign hospitality

The Act imposes restrictions on acceptance of foreign hospitality by certain specified persons. It mandates that 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. However, such permission would not be necessary for an emergent medical aid needed on account of sudden illness contracted during a visit outside India. The term 'foreign hospitality' is defined to mean 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.

Apart from this, the Central Government is empowered to prohibit any person or organisation not specified in the Act from accepting any foreign contribution and to require any person or class of persons, not specified in the Act to obtain prior permission of the Central Government before accepting any foreign hospitality.

4. Registration for the acceptance of foreign contribution

Section 11 of the Act mandates that except as otherwise provided in the Act, no person having a definite cultural, economic, educational, religious or social program shall accept foreign contribution, unless such person obtains a certificate of registration from the Central Government. In case a person falling in the above category is not registered with the Central Government, it can accept foreign contribution only after obtaining prior permission of the Central Government. The Central Government can, by Notification in the Official Gazette, specify the person or class of persons who shall obtain its prior permission before accepting the foreign contribution, the areas in which such

contribution shall be accepted, the purpose for which foreign contribution shall be utilised and the sources from which foreign contribution shall be accepted. The Central Government is also authorised to suspend or cancel the registration so granted. Every person who has been granted a certificate under Section 12 shall have such certificate renewed within six months before the expiry of the period of the certificate.

5. Prohibitions and restrictions on receipt, transfer, utilization etc. of foreign contribution

The Act imposes a prohibition, on persons registered and granted certificate or has obtained prior permission under the Act, from transferring such contribution to any other person, unless such other person is also registered and had been granted a certificate or obtained the prior permission under the Act. Certain restrictions have been imposed on the utilisation of the foreign contribution received and the Act mandates that the foreign contribution shall be utilised only for the purposes for which contribution was received. No foreign contribution or any income arising out of it can be used for speculative purposes. Use of foreign contribution for defraying administrative expenses has been restricted by the Act.

The Act empowers the Central Government to prohibit any person or organisation not specified in Section 3 from accepting any foreign contribution and also to 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. 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 or security, whether Indian or foreign, which has been accepted by such person in contravention of any of the provisions of the 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 or security except in accordance with the written orders of the Central Government.

6. Foreign contribution to be received through a scheduled bank

Section of 17 is of special importance to bankers. It states that every person who has been granted a certificate or given prior permission under Section 12 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 can open one or more accounts in one or more banks for utilising the foreign contribution received by him. However, no funds other than foreign contribution shall be received or deposited in such account or accounts. The Act makes it mandatory for every bank or authorised person in foreign exchange to report to such specified authority (a) the prescribed amount of foreign remittance (b) the source and manner in which the foreign remittance was received and (c) other particulars, in such form and manner as may be prescribed.

Every person who has been granted a certificate or given prior approval under the Act has to give, within such time and in such manner as may be prescribed, an intimation to the Central Government, and such other authority as may be specified by the Central Government, as to the amount of each foreign contribution received by it, the source

from which and the manner in which such foreign contribution was received, and the purposes for which, and the manner in which such foreign contribution was utilised by him. Further, every person receiving foreign contribution has to submit a copy of a statement indicating therein the particulars of foreign contribution received, duly certified by officer of the bank or authorised person in foreign exchange, and furnish the same to the Central Government.

7. Maintenance of accounts and disposal of assets

Section 19 of the Act stipulates that every person who has been granted a certificate or given prior approval as above has to maintain accounts of the foreign contribution received and utilized in the prescribed manner. Where any person who was permitted to accept foreign contribution under the Act 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 being in force under which the person was registered or incorporated.

8. Powers of inspections and seizure

The Act empowers the Central Government to authorize inspection of accounts or records for verifying contravention of the provisions of the Act. It also provides for seizure of accounts and records and also articles or currency or security received in contravention of the provisions of the Act.

9. Miscellaneous Issues

The Act describes certain offences and the punishment/penalties for violation of its provisions. Section 37 of the Act provides that whoever fails to comply with any provision of the Act for which no separate penalty has been provided, shall be punished with imprisonment for a term which may extend to one year, or with fine or with both.

The Act provides that any offence punishable under the Act (whether committed by an individual or association or any officer or employee thereof), not being an offence punishable with imprisonment only, may, before the institution of any prosecution, be compounded by such officers or authorities and for such sums as the Central Government may, by Notification in the Official Gazette, specify in this behalf.

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

10. Rules framed under the Act

In exercise of the powers conferred by Section 48 of the Act, the Central Government has framed the Foreign Contribution (Regulation) Rules, 2011 for carrying out the provisions of the Act. The Rules, inter alia, provide for Guidelines for the Central

Government for declaration of an organisation to be of a political nature, the nature of activities which would be treated as speculative activities, what constitutes administrative expenses, procedure for availing of foreign hospitality by specified categories of persons, procedure relating to application for obtaining 'registration' or 'prior permission' to receive foreign contribution, whom to make application for compounding, procedure for transferring foreign contribution to other registered or unregistered persons, the Forms to be used for various purposes etc.

Rule 13 of the said Rules mandates that in case a person who has been granted a certificate of registration or prior permission receives foreign contribution in excess of one crore rupees, or equivalent thereto, in a financial year, he/it shall place the summary data on receipts and utilisation of the foreign contribution pertaining to the year of receipt as well as for one year thereafter, in the public domain.

It is important to note that in terms of Rule 15, the amount of foreign contribution lying, unutilised in the exclusive foreign contribution bank account of a person whose certificate of registration has been cancelled shall vest with the banking authority concerned till the Central Government issues further directions in the matter. In case a person whose certificate of registration has been cancelled transfers/has transferred the foreign contribution to any other person, the above condition would apply to the person to whom the fund has been transferred.

Rule 16 of the said Rules provides that every bank has to send a report to the Central Government within thirty days of any transaction in respect of receipt of foreign contribution by any person who is required to obtain a certificate of registration or prior permission under the Act, but who was not granted such certificate or prior permission as on the date of receipt of such remittance. Such report has to contain the following details:

- a. Name and address of the donor.
- b. Name and address of the recipient.
- c. Account number.
- d. Name of the Bank and Branch.
- e. Amount of foreign contribution (in foreign currency as well as Indian Rupees).
- f. Date of receipt.
- g. Manner of receipt of foreign contribution (cash/cheque/electronic transfer etc.):

It has been made a duty of the bank concerned to send a report to the Central Government within thirty days from the date of such last transaction in respect of receipt of any foreign contribution in excess of one crore rupees or equivalent thereto in a single transaction or in transactions within a duration of thirty days, by any person, whether registered or not under the Act, and such report also has to include the aforesaid details.