

Law relating to Foreign Contribution Regulation

Lesson 6

KEY CONCEPTS

■ Foreign Contribution ■ Foreign Source ■ Foreign Hospitality ■ Political Party

Learning Objectives

To understand:

- Regulation of Foreign contribution, Foreign Source and Foreign Hospitality
- Who can and cannot receive foreign contribution
- Registration

Lesson Outline

- Foreign Contribution
- Regulation of Foreign Contribution and Foreign Hospitality
- Registration
- Certificate of Registration
- Cancellation of Certificate
- Application for Renewal
- Management of Foreign Contribution
- Renewal of Certificate
- Offences and Penalties
- Lesson Round-Up
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

- Foreign Contribution (Regulation) Act, 2010
- Foreign Contribution (Regulation) Rules, 2011

INTRODUCTION

The Foreign Contribution (Regulation) Act, 1976 was originally enacted to regulate the acceptance and utilization of foreign contribution or hospitality with a view to ensuring that the Parliamentary institutions, political associations, academic and other voluntary organizations as well as individuals working in important areas of national life may function in a manner consistent with the values of sovereign democratic republic.

The Act was amended in the year 1984 to extend its provisions to cover second and subsequent recipients of foreign contribution and to the members of higher judiciary, besides introducing the system of grant of registration to the association receiving foreign contribution.

Significant developments have taken place since 1984 such as change in internal security scenario, an increased influence of voluntary organizations, spread of use of communication and information technology, quantum jump in the amount of foreign contribution being received, and large scale growth in the number of registered organizations. This has necessitated large scale changes in the Act of 1976 and therefore, it was thought appropriate to replace the FCRA, 1976 by a new legislation Foreign Contribution (Regulation) Act, 2010 to regulate the acceptance and utilization of foreign contribution and foreign hospitality by a person or association.

The Foreign Contribution (Regulation) Act, 2010 has come into effect from May 1, 2011. The Ministry of Home Affairs had issued the necessary Gazette Notification vide S.O. 999 (E) dated the 29th April, 2011 in this regard. The Ministry of Home Affairs also issued a Gazette Notification vide G.S.R. 349 (E) dated the 29th April, 2011 notifying the Foreign Contribution (Regulation) Rules, 2011 made under section 48 of FCRA, 2010. The FCR Rules, 2011 have come into force simultaneously with FCRA, 2010.

The Foreign Contribution (Regulation) Act, 2010 was enacted 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.***

In the case of *Noel Harper & Ors vs. Union of India & Anr* judgement dated April 08, 2022, the Hon'ble Supreme Court while upholding the constitutional validity of Amendment Act 2020 observed that "philosophically, foreign contribution (donation) is akin to gratifying intoxicant replete with medicinal properties and may work like a nectar. However, it serves as a medicine so long as it is consumed (utilised) moderately and discreetly, for serving the larger cause of humanity. Otherwise, this artifice has the capability of inflicting pain, suffering and turmoil as being caused by the toxic substance (potent tool) – across the nation. In that, free and uncontrolled flow of foreign contribution has the potentials of impacting the sovereignty and integrity of the nation, its public order and also working against the interests of the general public."

To eradicate misuse and abuse of foreign contribution in the past, despite the firm regime in place in terms of the 2010 Act, the Parliament in its wisdom has now (vide Amendment Act of 2020) adopted the path of moderation by making it mandatory for all to accept foreign contribution only through one channel and to utilise the same "itself" for the purposes for which permission has been accorded. Undeniably, the sovereignty and integrity of India ought to prevail and the rights enshrined in Part III of the Constitution must give way to the interests of general public much less public order and the sovereignty and integrity

of the nation. It must be borne in mind that the legislation under consideration must be understood in the context of the underlying intent of insulating the democratic polity from the adverse influence of foreign contribution remitted by foreign sources.

Further, in order to streamline the provisions of the Foreign Contribution (Regulation) Act, 2010 by strengthening the compliance mechanism, enhancing transparency and accountability in the receipt and utilisation of foreign contribution worth thousands of crores of rupees every year and facilitating genuine non-Governmental organisations or associations who are working for the welfare of the society, Parliament enacted the Foreign Contribution (Regulation) Amendment Act, 2020.

The salient features of the Foreign Contribution (Regulation) Amendment Act, 2020 inter alia, are asunder: –

- (a) Amended Section 3(1) (c) of the Act to include “public servant” also within its ambit, to provide that no foreign contribution shall be accepted by any public servant;
- (b) Amended Section 7 of the Act to prohibit any transfer of foreign contribution to any association/ person;
- (c) Amended section 8(1) of the Act to reduce the limit for defraying administrative expenses from existing “fifty per cent.” to “twenty per cent.”;
- (d) Inserted of a new Section 12A empowering the Central Government to require Aadhaar number, etc., as identification document;
- (e) Inserted of a new Section 14A enabling the Central Government to permit any person to surrender the certificate granted under the Act;
- (f) Amended Section 17 of the Act to provide that every person who has been granted certificate or prior permission under section 12 shall receive foreign contribution only in an account designated as “FCRA Account” which shall be opened by him in such branch of the State Bank of India at New Delhi, as the Central Government may, by notification, specify and for other consequential matters relating thereto.

According to Section 2(2) of the Act, 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.

REGULATION OF FOREIGN CONTRIBUTION AND FOREIGN HOSPITALITY

What is foreign contribution?

“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;**
- (ii) **of any currency, whether Indian or foreign;**
- (iii) **of any 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.**

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.

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.*

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 within the meaning of this clause.*

Example-

A company 'XYZ' based in United States transferred Rs. 20,000 to a company 'ABC' in India by way of donation. The amount of Rs 20,000 shall be considered as foreign contribution in this case.

What is 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, 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;*
- 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.*

Example –

A company 'XYZ' based in United States transferred Rs. 20,000 to a company 'ABC' in India. The amount of company 'XYZ' based in United States shall be considered as foreign source in this case.

What is a foreign company?

“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 ;**
- (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.**

Example-

A company ‘XYZ’ a multi-national corporation having its office in United States transferred Rs. 20,000 to a company ‘ABC’ in India. The company ‘XYZ’ shall be considered a foreign company in this case.

Who can receive Foreign Contribution?

Any “Person” can receive foreign contribution subject to the following conditions:-

- It must have a definite cultural, economic, educational, religious or social programme.
- It must obtain the FCRA registration/prior permission from the Central Government
- It must not be prohibited under Section 3 of FCRA, 2010.

It maybe noted that –

“Person” includes –

- (i) an individual;
- (ii) a Hindu undivided family;
- (iii) an association;
- (iv) a company registered under section 25 of the Companies Act, 1956. [Section 2(m)]

Who cannot receive Foreign Contribution?

Section 3(1) prohibits following person to accept foreign contribution:

- (a) candidate for election;
- (b) correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper;
- (c) public servant, 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) organisation of a political nature as may be specified under section 5(1) 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(1)(r) 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 referred to in clause (g).

Explanation 1 – For the purpose of clause (c), “public servant” means a public servant as defined in section 21 of the Indian Penal Code.

Explanation 2. – 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 clause (45) of section 2 of the Companies Act, 2013.

Section 3(2) states that:

- (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.
- (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.
- (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
 - (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.

According to Section 3(3) of the Act, 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.

Persons to Whom Section 3 Shall Not Apply

According to Section 4 of the Act, 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, –

- (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.

It may be noted 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

According to Section 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. The Central Government may, by rules made by it, frame the guidelines specifying the ground or grounds on which an organisation shall be specified as an organisation of a political nature.

As per Section 5(2) of the Act, 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.

Section 5(3) states that 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). 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.

Section 5(4) provides that 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.

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.

Every order under sub-section (1) shall be made within a period of one hundred and twenty days from the date of issue of notice under sub-section (2). In case no order is made within the said period of one hundred and twenty days, the Central Government shall, after recording the reasons therefor, make an order under sub-section (1) within a period of sixty days from the expiry of the said period of one hundred and twenty days.

It may be noted that “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
 - (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;
- (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.

In the case of *Indian Social Action Forum (INSAF) vs. Union of India in Civil Appeal No.1510 of 2020* (Arising out of SLP (C) No.33928 of 2011) judgement dated March 06, 2020, Hon'ble Supreme Court of India inter-alia observed that "the object sought to be achieved by the Act is to ensure that Parliamentary institutions, political associations and academic and other voluntary organisations as well as individuals working in the important areas of national life should function in a manner consistent with the values of a sovereign democratic republic without being influenced by foreign contributions or foreign hospitality. The long title of the Act makes it clear that the regulation of acceptance and utilisation of foreign contribution is for the purpose of protecting national interest. Candidates for election and political parties or office bearers of political parties are barred from accepting any foreign contribution. The legislative intent is also to prohibit organisations of a political nature from receiving foreign contributions. It is clear that preventing foreign contribution into the political arena is the object sought to be achieved by the Act."

Further, Hon'ble Supreme Court of India inter-alia observed that prevention of foreign contributions routed through voluntary organisations which are not connected to party politics is the reason behind introduction of Section 3 (1) (f) and Section 5 of the Act. The Central Government is required to take into account the activities, ideology or the programme of the organisation including the association of the organisation with activities of any political party before declaring an organisation as an organisation of political nature not being a political party. Guidelines that are prescribed by the Rules indicate that only those organisations which are actively involved in politics or associated with political parties can be declared as organisations of a political nature. The question that falls for our consideration is whether the guidelines in Rule 3 suffer from vagueness and ambiguity and whether they can be stated to be conferring uncanalised power on the executive. According to Rule 3 (i) an organisation having avowed political objectives in its memorandum of association or bye laws is an organisation of a political nature. As the intention of the legislature is to prohibit foreign funds in active politics, an Association with avowed political objectives (i.e. to play a role in active politics or party politics) cannot be permitted access to foreign funds. There is no ambiguity in the provision and hence, cannot be termed as vague. Therefore, we find no substance in the contention of the Appellant that Rule 3 (i) is ultra vires the Act. A balance has to be drawn between the object that is sought to be achieved by the legislation and the rights of the voluntary organisations to have access to foreign funds. The purpose for which the statute prevents organisations of a political nature from receiving foreign funds is to ensure that the administration is not influenced by foreign funds. Prohibition from receiving foreign aid, either directly or indirectly, by those who are involved in active politics is to ensure that the values of a sovereign democratic republic are protected. On the other hand, such of those voluntary organisations which have absolutely no connection with either party politics or active politics cannot be denied access to foreign contributions. Therefore, such of those organisations which are working for the social and economic welfare of the society cannot be brought within the purview of the Act or the Rules by enlarging the scope of the term 'political interests'. We are of the opinion that the expression 'political interests' in Rule 3 (v) has to be construed to be in connection with active politics or party politics.

Restriction on Acceptance of Foreign Hospitality

According to Section 6 of the Act, 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:

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.

What is foreign hospitality?

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 freeboard, lodging, transport or medical treatment.

State the categories of persons requires prior approval from Ministry of Home Affairs before accepting Foreign Hospitality?

The following categories of persons require prior approval from Ministry of Home Affairs before accepting Foreign Hospitality:-

- ***Members of a Legislature***
- ***Office bearers of political parties***
- ***Judges***
- ***Government servants, Public Servants***
- ***Employees of any corporation or any other body owned or controlled by the Government.***

Provided that it shall not be necessary to obtain any such permission for an emergent medical aide 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 an intimation to the Central Government as to the receipt of such hospitality within one month from the date of receipt of such hospitality, and the source from which, and the manner in which, such hospitality was received.

Prohibition to Transfer Foreign Contribution to Other Person

Section 7 of the Act provides that person who:-

- (a) is registered and granted a certificate or has obtained prior permission under the Act; and
- (b) receives any foreign contribution,

shall not transfer such foreign contribution to any other person.

Restriction to Utilise Foreign Contribution for Administrative Purpose

According to Section 8 of the Act, every person, who is registered and granted a certificate or given prior permission under the Act and receives any foreign contribution, –

- (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:

Provided further that the Central Government shall, by rules, specify the activities or business which shall be construed as speculative business for the purpose of this section;

- (b) shall not defray as far as possible such sum, ***not exceeding twenty percent*** of such contribution, received in a financial year, to meet administrative expenses:

Provided that administrative expenses exceeding twenty percent of such contribution may be defrayed with prior approval of the Central Government.

The Central Government may prescribe the elements which shall be included in the administrative expenses and the manner in which the administrative expenses shall be calculated.

Power of Central Government to Prohibit Receipt of Foreign Contribution, etc., in Certain Cases

According to Section 9 of the Act, the Central Government may –

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

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 –

- (i) the sovereignty and integrity of India; or
- (ii) public interest; or
- (iii) freedom or fairness of election to any Legislature; or
- (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

Section 10 provides that 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 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 or security 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 or security and references in the said sub-sections to moneys, securities or credits shall be construed as references to such article or currency or security.

REGISTRATION***How does a person obtain permission to accept Foreign Contribution?***

There are two modes of obtaining permission to accept foreign contribution according to FCRA, 2010:

- i. Registration***
- ii. Prior Permission***

Eligibility Criteria for Grant of Registration

For grant of registration under FCRA, 2010, the association should:

- i. be registered under an existing statute like the Societies Registration Act, 1860 or the Indian Trusts Act, 1882 or section 25 of the Companies Act, 1956 (Now Section 8 of Companies Act, 2013) etc;
- ii. be in existence for at least three years and has undertaken reasonable activity in its chosen field for the benefit of the society for which the foreign contribution is proposed to be utilised. The applicant NGO/ association will be free to choose its items of expenditure (excluding the administrative expenditure as defined in Rule 5 of FCRR, 2011) to become eligible for the minimum threshold of Rs. 15.00 lakh spent during the last three years. If the association wants inclusion of its capital investment in assets like land, building, other permanent structures, vehicles, equipments etc, then the Chief Functionary shall have to give an undertaking that these assets shall be utilized only for the FCRA activities and they will not be diverted for any other purpose till FCRA registration of the NGO holds.

Eligibility Criteria for Grant of Prior Permission

An organization in formative stage is not eligible for certificate of registration. Such organization may apply for grant of prior permission under FCRA, 2010. Prior permission is granted for receipt of a specific amount from specific donor/donors for carrying out specific activities/projects. For this purpose, the association should meet following criteria:

- i. be registered under an existing statute like the Societies Registration Act, 1860 or the Indian Trusts Act, 1882 or section 25 of the Companies Act, 1956 (Now Section 8 of Companies Act, 2013) etc;
- ii. submit a specific commitment letter from the donor indicating the amount of foreign contribution and the purpose for which it is proposed to be given; and
- iii. For Indian recipient organizations and foreign donor organizations having common members.

FCRA Prior Permission shall be granted to the Indian recipient organizations subject to its satisfying the following:

- i. The Chief Functionary of the recipient Indian organization should not be a part of the donor organization.
- ii. At least 75% of the office-bearers/ members of the Governing body of the Indian recipient organization should not be members/employees of the foreign donor organization.
- iii. In case of foreign donor organization being a single person/individual that person should not be the Chief Functionary or office bearer of the recipient Indian organization.
- iv. In case of a single foreign donor, at least 75% office bearers/members of the governing body of the recipient organization should not be the family members and close relatives of the donor.

Conditions for the Grant of Registration and Prior Permission

In terms of Section 12 (4) of FCRA, 2010, the following shall be the conditions for the grant of registration and prior permission:

- a) The 'person' making an application for registration or grant of prior permission-
 - i. is not fictitious or benami;
 - ii. has not been prosecuted or convicted for indulging in activities aimed at conversion through inducement or force, either directly or indirectly, from one religious faith to another;
 - iii. has not been prosecuted or convicted for creating 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;
 - v. is not engaged or likely to engage in propagation of 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;
 - viii. has not been prohibited from accepting foreign contribution;
 - ix. the person being an individual, such individual has neither been convicted under any law for the time being in force nor any prosecution for any offence is pending against him;
 - x. the person being other than an individual, any of its directors or office bearers has neither been convicted under any law for the time being in force nor any prosecution for any offence is pending against him.
- b) the acceptance of foreign contribution by the association/ 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.
- c) the acceptance of foreign contribution-
 - i. shall not lead to incitement of an offence;
 - ii. shall not endanger the life or physical safety of any person.

Power of Central Government to require Aadhaar number, etc., as identification document

Section 12A provides that notwithstanding anything contained in the Act, the Central Government may require that any person who seeks prior permission or prior approval under section 11, or makes an application for grant of certificate under section 12, or, as the case may be, for renewal of certificate under section 16, shall provide as identification document, the Aadhaar number of all its office bearers or Directors or other key functionaries, by whatever name called, issued under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, or a copy of the Passport or Overseas Citizen of India Card, in case of a foreigner.

Suspension of Certificate

According to Section 13 of the Act, where the Central Government, for reasons to be recorded in writing, is satisfied that pending consideration of the question of cancelling the certificate on any of the grounds mentioned in section 14(1), it is necessary so to do, it may, by order in writing, suspend the certificate for a period of one hundred and eighty days, or such further period, not exceeding one hundred and eighty days, as may be specified in the order.

Every person whose certificate has been suspended shall not receive any foreign contribution during the period of suspension of certificate.

It may be noted that the Central Government, on an application made by such person, if it considers appropriate, allow receipt of any foreign contribution by such person on such terms and conditions as it may specify.

Every person whose certificate has been suspended shall utilise, in the prescribed manner, the foreign contribution in his custody with the prior approval of the Central Government.

Cancellation of Certificate

Section 14 provides that the Central Government may, if it is satisfied after making such inquiry as it may deem fit, by an order, cancel the certificate if –

- (1) the holder of the certificate has made a statement in, or in relation to, the application for the grant of registration or renewal thereof, which is incorrect or false; or
 - (i) the holder of the certificate has violated any of the terms and conditions of the certificate or renewal thereof; or
 - (ii) in the opinion of the Central Government, it is necessary in the public interest to cancel the certificate; or
 - (iii) the holder of certificate has violated any of the provisions of this Act or rules or order made thereunder; or
 - (iv) if the holder of the certificate has not been engaged in any reasonable activity in its chosen field for the benefit of the society for two consecutive years or has become defunct.
- (2) No order of cancellation of certificate under this section shall be made unless the person concerned has been given a reasonable opportunity of being heard.
- (3) Any person whose certificate has been cancelled under this section shall not be eligible for registration or grant of prior permission for a period of three years from the date of cancellation of such certificate.

Surrender of Certificate

Section 14A states that on a request being made in this behalf, the Central Government may permit any person to surrender the certificate granted under this Act, if, after making such inquiry as it deems fit, it is satisfied that such person has not contravened any of the provisions of this Act, and the management of foreign contribution and asset, if any, created out of such contribution has been vested in the authority as provided in section 15(1).

Management of Foreign Contribution of Person Whose Certificate has been Cancelled or Surrendered

Section 15(1) of the Act provides that the foreign contribution and assets created out of the foreign contribution in the custody of every person whose certificate has been cancelled under section 14 or surrendered under section 14A shall vest in such authority as may be prescribed.

The authority referred to in section 15 (1) above may, if it considers necessary and in public interest, manage the activities of the person referred to in that sub-section for such period and in such manner, as the Central Government may direct and such authority may utilise the foreign contribution or dispose of the assets created out of it in case adequate funds are not available for running such activity.

The authority referred to in section 15(1) shall return the foreign contribution and the assets vested upon it under that sub-section to the person referred to in the said sub-section if such person is subsequently registered under this Act.

Renewal of Certificate

Section 16 of the Act provides that 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.

It may be noted that the Central Government may, before renewing the certificate, make such inquiry, as it deems fit, to satisfy itself that such person has fulfilled all conditions specified in section 12(4).

The application for renewal of the 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 shall renew the certificate, ordinarily within ninety days from the date of receipt of application for renewal of certificate subject to such terms and conditions as it may deem fit and grant a certificate of renewal for a period of five years.

In case, the Central Government does not renew the certificate within the said period of ninety days, it shall communicate the reasons therefor to the applicant.

The Central Government may refuse to renew the certificate in case where a person has violated any of the provisions of this Act or rules made thereunder.

Foreign Contribution through Scheduled Bank

According to Section 17(1) of the Act, every person who has been granted certificate or prior permission under section 12 shall receive foreign contribution only in an account designated as "FCRA Account" by the bank, which shall be opened by him for the purpose of remittances of foreign contribution in such branch of the State Bank of India at New Delhi, as the Central Government may, by notification, specify in this behalf:

Provided that such person may also open another "FCRA Account" in any of the scheduled bank of his choice for the purpose of keeping or utilising the foreign contribution which has been received from his "FCRA Account" in the specified branch of State Bank of India at New Delhi.

Provided further that such person may also open one or more accounts in one or more scheduled banks of his choice to which he may transfer for utilising any foreign contribution received by him in his "FCRA Account" in the specified branch of the State Bank of India at New Delhi or kept by him in another "FCRA Account" in a scheduled bank of his choice.

Provided also that no funds other than foreign contribution shall be received or deposited in any such account.

Section 17 (2) states that the specified branch of the State Bank of India at New Delhi or the branch of the scheduled bank where the person referred to in sub-section (1) has opened his foreign contribution account or the authorised person in foreign exchange, shall report to such authority as may be specified, –

- (a) the prescribed amount of foreign remittance;
- (b) the source and manner in which the foreign remittance was received; and
- (c) other particulars;
- (d) in such form and manner as may be prescribed.

OFFENCES AND PENALTIES**Making of False Statement, Declaration or Delivering False Accounts**

As per Section 33 of the Act, any person, subject to this Act, who knowingly, –

- (i) gives false intimation under clause (c) of section 9 or section 18; or
- (ii) seeks prior permission or registration by means of fraud, false representation or concealment of material fact, shall, on conviction by a court, be liable to imprisonment for a term which may extend to six months or with fine or with both.

Penalty for Article or Currency or Security Obtained in Contravention of section 10

Section 34 provides that any person, on whom any prohibitory order has been served under section 10, pays, delivers, transfers or otherwise deals with, in any manner whatsoever, any article or currency or security, whether Indian or foreign, 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; and notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the court trying such contravention may also impose on the person convicted an additional fine equivalent to the market value of the article or the amount of the currency or security in respect of which the prohibitory order has been contravened by him or such part thereof as the court may deem fit.

Punishment for contravention of any provision of the Act

Section 35 states that whoever accepts, or assists any person, political party or organisation in accepting, any foreign contribution or any currency or security from a foreign source, in contravention of any provision of this Act or any rule or order made thereunder, shall be punished with imprisonment for a term which may extend to five years, or with fine, or with both.

Power to Impose Additional Fine where Article or Currency or Security is not Available for Confiscation

As per Section 36 of the Act, notwithstanding anything contained in the Code of Criminal Procedure, 1973, the court trying a person, who, in relation to any article or currency or security, whether Indian or foreign, does or omits to do any act which act or omission would render such article or currency or security liable to confiscation under this Act, may, in the event of the conviction of such person for the act or omission aforesaid, impose on such person a fine not exceeding five times the value of the article or currency or security or one thousand rupees, whichever is more, if such article or currency or security is not available for confiscation, and the fine so imposed shall be in addition to any other fine which may be imposed on such person under this Act.

Penalty for Offences Where No Separate Punishment Has Been Provided

As per Section 37 of the Act, whoever fails to comply with any provision of this Act for which no separate penalty has been provided in this Act shall be punished with imprisonment for a term which may extend to one year, or with fine or with both.

Prohibition of Acceptance of Foreign Contribution

Section 38 provides that notwithstanding anything contained in this Act, whoever, having been convicted of any offence under section 35 or section 37, in so far as such offence relates to the acceptance or utilisation of foreign contribution, is again convicted of such offence shall not accept any foreign contribution for a period of five years from the date of the subsequent conviction.

Offences by Companies

Section 39 provides that where an offence under this Act or any rule or order made thereunder has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render such person 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.

Notwithstanding anything contained above, where an offence under this Act or any rule or order made thereunder has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. – For the purposes of this section, –

- (i) “company” means any body corporate and includes a firm, society, trade union or other association of individuals; and
- (ii) “director”, in relation to a firm, society, trade union or other association of individuals, means a partner in the firm or a member of the governing body of such society, trade union or other association of individuals.

Bar on Prosecution of Offences under the Act

Section 40 states that no court shall take cognizance of any offence under this Act, except with the previous sanction of the Central Government or any officer authorised by that Government in this behalf.

Composition of Certain Offences

According to Section 41(1) of the Act, notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this 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.

Section 41(2) provides that nothing in sub-section (1) shall apply to an offence committed by an individual or association or its officer or other employee within a period of three years from the date on which a similar offence committed by it or him was compounded under this section.

Explanation. – For the purposes of this section, any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence.

As per Section 41(3), every officer or authority referred to in sub-section (1) shall exercise the powers to compound an offence, subject to the direction, control and supervision of the Central Government.

Every application for the compounding of an offence shall be made to the officer or authority referred to in sub-section (1) in such form and manner along with such fee as may be prescribed.

Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, against the offender in relation to whom the offence is so compounded.

Every officer or authority referred to in sub-section (1), while dealing with a proposal for the compounding of an offence for a default in compliance with any provision of this Act which requires by an individual or association or its officer or other employee to obtain permission or file or register with, or deliver or send to, the Central Government or any prescribed authority any return, account or other document, may, direct, by order, if he or it thinks fit to do so, any individual or association or its officer or other employee to file or register with, such return, account or other document within such time as may be specified in the order.

In the case of *Association for Democratic Reforms & Anr (Petitioners) Vs. Union of India (Respondent)*, W.P.(C) 9592/2015, Neutral Citation Number: 2023/DHC/000161 Date of decision: 10th January, 2023, Hon'ble Delhi High Court inter-alia observed that a perusal of the scheme of the Act shows that the Central Government plays an important role in enforcing and bringing into action the provisions of the FCRA. It has the power to delineate what organisations qualify as 'political' in nature so as to prohibit them from receiving foreign contribution. It also designates the authority which investigates offences under the FCRA. It is trite law that decisions taken by the Central Government are assumed to be bona fide in nature, unless something to the contrary is placed on record. It goes without saying the authority designated by the Central Government to investigate offences exercises a statutory power. It is trite law that when a body or person, as prescribed by the Central Government, passes an order under the FCRA, the law presumes that such order is bona fide. This Court cannot assume mala fides and misuse of power in such a situation, unless material to the contrary is placed on record. (*Refer to: MCD v. Qimat Rai Gupta, (2007) 7 SCC 309*). It is well settled that there is a presumption of constitutionality in favour of a Statute and mere apprehension that an Act is capable of being misused is no ground for replacing the wisdom of the legislature with that of the judiciary. The Apex Court on a number of occasions has reiterated that sweeping attacks made on the likelihood of misuse of a Statute, in the future, cannot succeed, and the occasion to complain only arises when such alleged misuse occurs. Hence, the mere possibility of a law being administered in a manner which may conflict with constitutional requirements does not render it invalid. The judiciary always circumspect in substituting its wisdom with that of the legislature. In light of this, the prayer made by the Writ Petitioner seeking a direction to constitute an independent Tribunal Committee to oversee the enforcement of FCRA cannot be accepted.

LESSON ROUND-UP

- FCRA, 2010 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.
- In order to streamline the provisions of the Foreign Contribution (Regulation) Act, 2010 by strengthening the compliance mechanism, enhancing transparency and accountability in the receipt and utilisation of foreign contribution worth thousands of crores of rupees every year and facilitating genuine non-Governmental organisations or associations who are working for the welfare of the society, Parliament enacted the Foreign Contribution (Regulation) Amendment Act, 2020.
- 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.

- 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.
- Associations which were granted certificates of registration, such registration shall be valid for a period of five years.
- Any offence punishable under this 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.

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)

1. How does the FCRA, 2010 seeks to regulate the receipt of foreign contribution and foreign hospitality?
2. Define ‘foreign contribution’ and ‘foreign source’.
3. Discuss the provisions of FCRA relevant to exemptions from acceptance of foreign contribution.
4. Explain the concept of ‘organisation of a political nature’ under the Foreign Contribution (Regulation) Act, 2010.
5. Discuss the powers of Central Government under FCRA to prohibit receipt of foreign contribution.

LIST OF FURTHER READINGS

- Bare Act - Foreign Contribution (Regulation) Act, 2010 and rules made thereunder.
- Foreign Contribution Regulation Law Manual – Taxmann Publications Private Limited

OTHER REFERENCES (INCLUDING WEBSITES / VIDEO LINKS)

- <https://www.mha.gov.in/en/divisionofmha/foreigners-division/foreign-contribution-regulation-act-fcra>
- <https://fcraonline.nic.in/home/index.aspx>