



THE INSTITUTE OF  
Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

# **SUPPLEMENT EXECUTIVE PROGRAMME (NEW SYLLABUS)**

*for*

*June, 2022 Examination*

## **ECONOMIC BUSINESS AND COMMERCIAL LAWS**

### **MODULE 2**

### **PAPER 7**

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## **Lesson 4**

### **FOREIGN CONTRIBUTION (REGULATION) ACT, 2010**

#### **Foreign Contribution (Regulation) Amendment Act, 2020**

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 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 as under:—***

- (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 of 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 of 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.

***Details of the Foreign Contribution (Regulation) Amendment Act, 2020 inter alia, are as under:—***

## **Prohibition to Accept 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 (45 of 1860).

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.

### **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 per cent.*** of such contribution, received in a financial year, to meet administrative expenses:

Provided that administrative expenses exceeding twenty per cent. 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.

### **Registration of Certain Persons with Central Government**

Section 11(1) provides that 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:

It may be noted 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.

Section 11(2) states that 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 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 the specific source:

However, the Central Government, on the basis of any information or report, and after holding a summary inquiry, has reason to believe that a person who has been granted prior permission has contravened any of the provisions of this Act, it may, pending any further inquiry, direct that such person shall not utilise the unutilised foreign contribution or receive the remaining portion of foreign contribution which has not been received or, as the case may be, any additional foreign contribution, without prior approval of the Central Government:

Provided further that if the person referred to in sub-section (1) or sub-section (2) has been found guilty of violation of any of the provisions of the 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.

According to Section 11(3) of the Act, notwithstanding anything contained in the Act, the Central Government may, by notification in the Official Gazette, specify—

- (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; or
- (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.

### **Grant of Certificate of Registration**

According to Section 12 of the Act:

(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.

(1A) Every person who makes an application under sub-section (1) shall be required to open “FCRA Account” in the manner specified in section 17 and mention details of such account in his application.

(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.

(3) If on receipt of an application for grant of certificate or giving prior permission and after making such inquiry as the Central Government deems fit, it is of the opinion that the conditions specified in sub-section (4) are satisfied, it may, ordinarily within ninety days from the date of receipt of application under sub-section (1), register such person and grant him a certificate or give him prior permission, as the case may be, subject to such terms and conditions as may be prescribed.

Provided that in case the Central Government does not grant, within the said period of ninety days, a certificate or give prior permission, it shall communicate the reasons therefor to the applicant:

Provided further that a person shall not be eligible for grant of certificate or giving prior permission, if his certificate has been suspended and such suspension of certificate continues on the date of making application.

(4) The following shall be the conditions for the purposes of sub-section (3), namely:—

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

- (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;

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

(c) the person making an application for giving prior permission under sub-section (1) has prepared a reasonable project for the benefit of the society for which the foreign contribution is proposed to be utilised;

(d) in case 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 pending against him;

(e) in case 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;

(f) the acceptance of foreign contribution by the person referred to in sub-section (1) is not likely to affect prejudicially—

- (i) the sovereignty and integrity of India; or
- (ii) the security, strategic, scientific or economic interest of the State; or
- (iii) the public interest; or (iv) freedom or fairness of election to any Legislature; or
- (iv) friendly relation with any foreign State; or
- (v) harmony between religious, racial, social, linguistic, regional groups, castes or communities;

(g) the acceptance of foreign contribution referred to in sub-section (1),—

- (i) shall not lead to incitement of an offence;
- (ii) shall not endanger the life or physical safety of any person.

(5) Where the Central Government refuses the grant of certificate or does not give prior permission, it shall record in its order the reasons therefor and furnish a copy thereof to the applicant.

Provided that the Central Government may not communicate the reasons for refusal for grant of certificate or for not giving prior permission to the applicant under this section in cases where there is no obligation to give any information or documents or records or papers under the Right to Information Act, 2005 (22 of 2005).

(6) The certificate granted under sub-section (3) shall be valid for a period of **five years** and the prior permission shall be valid for the specific purpose or specific amount of foreign contribution proposed to be received, as the case may be.

### **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.

### **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 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.

to 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,
- in such form and manner as may be prescribed.

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## Lesson 5

### Foreign Direct Investment Policy & Procedure

#### 1. Review of Foreign Direct Investment (FDI) Policy on Telecom Sector.

The Government of India has reviewed the extant FDI policy on Telecom sector and has made the following amendment under the Consolidated FDI Policy Circular of 2020:

##### ***Telecom Services***

In Telecom Services (including Telecom Infrastructure Providers Category-I) 100% Automatic All telecom services including Telecom Infrastructure Providers Category-I, viz. Basic, Cellular, Unified Access Services, Unified license (Access services), Unified License, National/International Long Distance, Commercial V-Sat, Public Mobile Radio Trunked Services (PMRTS), Global Mobile Personal Communications Services (GMPCS), all types of ISP licenses, Voice Mail/Audiotex/UMS, Resale of IPLC, Mobile Number Portability services, Infrastructure Provider Category-I (providing dark fibre, right of way, duct space, tower), Other Service Providers and such other services as may be permitted by the Department of Telecommunications (DoT), 100% FDI is allowed under Automatic Route.

*Other Conditions:* The licensing, security and any other terms and conditions as specified by Department of Telecommunications from time to time, shall be observed by licensee/entities providing services as referred in above, as well as investors

For Details: <https://dipp.gov.in/sites/default/files/pn1-2021.PDF>

## **2. Review of Foreign Direct Investment (FDI) policy on Petroleum & Natural Gas Sector.**

The Government of India has reviewed the extant FDI policy on Petroleum & Natural Gas sector and has made the following amendment in the Consolidated FDI Policy Circular of 2020:

### ***Petroleum & Natural Gas***

Exploration activities of oil and natural gas fields, infrastructure related to marketing of petroleum products and natural gas, marketing of natural gas and petroleum products, petroleum product pipelines, natural gas/pipelines, LNG Regasification infrastructure, market study and formulation and Petroleum refining in the private sector, subject to the existing sectoral policy and regulatory framework in the oil marketing sector and the policy of the Government on private participation in exploration of oil and the discovered fields Of national oil companies, 100% FDI is allowed under Automatic Route.

Petroleum refining by the Public Sector Undertakings (PSU), without any disinvestment or dilution of domestic equity in the existing PSUs, 49% FDI is allowed under Automatic Route.

It may be noted that foreign investment up to 100% under the automatic route is allowed in case an 'in-principle' approval for strategic disinvestment of a PSU has been granted by the Government.

For Details: <https://dpiit.gov.in/sites/default/files/pn3-2021.PDF>

# Lesson 13

## Consumer Protection Act, 2019

### Consumer Protection (Jurisdiction of the District Commission, the State Commission and the National Commission) Rules, 2021

Central Government vide its notification dated 30th December, 2021 notified Consumer Protection (Jurisdiction of the District Commission, the State Commission and the National Commission) Rules, 2021.

With notification of the aforementioned rules, the new pecuniary jurisdiction, subject to other provisions of the Act, shall be as under:

1. **District Commissions** shall have jurisdiction to entertain complaints where value of the goods or services paid as consideration **does not exceed 50 lakh rupees**.
2. **State Commissions** shall have jurisdiction to entertain complaints where value of the goods or services paid as consideration **exceeds 50 lakh rupees but does not exceed 2 crore rupees**.
3. **National Commission** shall have jurisdiction to entertain complaints where value of the goods or services paid as consideration **exceeds 2 crore rupees**.

For Details: <https://consumeraffairs.nic.in/sites/default/files/232278.pdf>

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