

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

## Introduction

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 and it came into force on 9th day of September, 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.

## Prohibition to Accept Foreign Contribution

Section 3 prohibits following person to accept foreign contribution:

- (a) candidate for election;

\* Chittaranjan Pal, Assistant Director, The ICSI.

*Views expressed in the Article are the sole expression of the Author and may not express the views of the Institute.*

- (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).

It may be noted that 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).

### **Prohibition to Transfer Foreign Contribution to Other Person**

Section 7 of the 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:
- (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.

Any foreign contribution or any income arising out of it shall not be used for speculative business. Central Government shall, by rules, specify the activities or business which shall be construed as speculative business for the purpose of this section;

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.

### **Inquiry & Restriction by Central Government**

Section 11 empowers 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.

### **FCRA Account**

According to Section 12(1A) of the Act 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.

### **Power of Central Government to require Aadhaar number**

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.

### **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:

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:

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:

It may be noted that no funds other than foreign contribution shall be received or deposited in any such account.

Ministry of Home Affairs vide its Notification S.O. 3479(E) dated 7th October, 2020 specifies the State Bank of India, New Delhi Main Branch, 11, Sansad Marg, New Delhi -110001 as the branch for the above purposes.

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.

### **Conclusion**

The Foreign Contribution (Regulation) Amendment Act, 2020 definitely strengthen the compliance mechanism, enhancing transparency and accountability in the receipt and utilisation of foreign contribution worth thousands of crores of rupees every year and facilitate smooth functioning of genuine non-Governmental organisations or associations who are working for the welfare of the society.

\*\*\*