

The Foreign Contribution (Regulation) Amendment Act, 2020 - Highlights

The Foreign Contribution (Regulation) Amendment Bill, 2020 was passed by both the Houses of the Parliament and received assent of the President of India on the 28th September 2020. The Foreign Contribution (Regulation) Amendment Act, 2020 (“FCRA Amendment Act”) has come into force on 29th September 2020. The FCRA Amendment Act amends the Foreign Contribution (Regulation) Act, 2010 (“FCRA or the Act”) which regulates the acceptance and utilisation of foreign contribution by individuals, associations, and companies.

The major highlights of the FCRA Amendment Act are as follows:

- i. **Prohibition on Public Servants to accept foreign contributions:** Under section 3 of the Act, certain persons are prohibited to accept any foreign contribution, such as, candidates contesting elections, correspondent, columnist, cartoonist, editor or publisher of a registered newspaper, judges, government servants, members of any legislature, and political parties, among others.

The FCRA Amendment Act amends clause (c) of section 3 (1) of the Act to add “public servants” as defined under the Indian Penal Code, 1860 to the list of persons prohibited to accept any foreign contributions under the Act. Earlier, the list of prohibited persons mentioned in clause (c) of section 3(1) of the Act comprised of Judges, Government servants or employees of any corporation or any other body controlled or owned by the Government. The object behind this is to ensure that any Public Servant does not receive any foreign contribution.

- ii. **Transfer of foreign contribution:** As per section 7 of the Act, no person who is registered under the Act or who has been granted prior permission under the Act and receives foreign contribution shall transfer such foreign contribution to any other person unless such person is also registered to accept foreign contribution or has obtained prior permission under the Act to receive foreign contribution.

The FCRA Amendment Act amends Section 7 of the Act by substituting a new section 7 which now altogether prohibits the transfer of foreign contribution to any other person. The term ‘person’ under the Act includes an individual, a Hindu undivided family, an association, or a registered company.

The object behind this is to curb the ongoing practice of transfer of foreign contribution from one entity to another as the same was resulting in misuse of the funds.

- iii. **FCRA Account:** As per section 17 of the Act, every person who has been granted certificate or given prior permission must receive foreign contribution only in a single branch of a scheduled bank as specified by them in their application for grant of certificate.

The FCRA Amendment Act amends section 17 of the Act to provide that every person who has been granted certificate or given prior permission 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 can 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.

Further, such person can also open one or more accounts in one or more scheduled banks in India 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 that no funds other than foreign contribution shall be received or deposited in any such account.

This is a measure to keep track of the FCRA accounts, source of foreign funding and its utilisation.

- iv. **Restriction of Utilisation:** Under the proviso to sub-section 2 of section 11 of the Act, if a person accepting foreign contribution is found guilty of violating any provisions of the Act or the Foreign Contribution (Regulation) Act, 1976, the unutilised or un received foreign contribution may be utilised or received, only with the prior approval of the Central Government.

Under the proviso to sub-section 2 of section 11 of the Act, the FCRA Amendment Act has added that if 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.

This is yet another measure to keep track of source of foreign funding and its utilisation.

- v. **Revision of limits for usage of foreign contribution for administrative purposes:** Under section 8 of the Act, a person who receives foreign contribution must use it only for the purpose for which the contribution is received. Further, they must not use more than 50% of the foreign contribution received in a financial year for meeting administrative expenses. The FCRA Amendment Act through an amendment to section 8 of the Act has reduced the limit of 50% to 20%.

This is a measure to curb the misuse of foreign funds as administrative expenses.

- vi. **Renewal of Certificate of Registration:** Under section 16 (1) of the Act, every person who has been given a certificate of registration must renew the certificate within six months before the expiry of period of such certificate.

The FCRA Amendment Act provides that a proviso shall be inserted after sub-section (1) of section 16 of the Act stating that the Government may conduct an inquiry before renewing the certificate to ensure that the person making the application: (i) is not fictitious or benami, (ii) has not been prosecuted or convicted for creating communal tension or indulging in activities aimed at religious conversion, and (iii) has not been found guilty of diversion or misutilisation of funds, (iv) shall not divert

the utilization of the funds for personal gains or any undesirable purposes and (v) is not prohibited from accepting such foreign contribution, among others conditions.

- vii. **Suspension of Registration:** Under section 13 of the Act, presently the Central Government may suspend the certificate of registration of a person for a period not exceeding one hundred and eighty days. The FCRA Amendment Act adds that such suspension can be for a period of one hundred and eighty days, or such further period, not exceeding one hundred and eighty days. Thus, the suspension can be extended up to an additional 180 days, that is, for the entire year itself.
- viii. **Registration under FCRA with Aadhaar made Compulsory:** Section 11 of the Act states that a person may accept foreign contribution if they have: (i) obtained a certificate of registration from the Central Government, or (ii) has obtained prior permission from the Central Government to accept foreign contribution. Section 12 of the Act states that any person seeking registration (or renewal of such registration) or prior permission for receiving foreign contribution must make an application to the Central Government in the prescribed manner.

The FCRA Amendment Act inserts section 12 A after section 12 of the Act which states 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 of the Act, or makes an application for grant of certificate under section 12 of the Act, or, as the case may be, for renewal of certificate under section 16 of the Act, 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.

- ix. **Surrender of Certificate:** The FCRA Amendment Act has inserted section 14A, allowing the Central Government to permit a person to surrender their registration certificate. The Central Government may do so if, post an inquiry, it is satisfied that such person has not contravened any provisions of the Act and the management of its foreign contribution and asset, if any, created out of such contribution has been vested in the authority as provided in sub-section (1) of section 15 of the Act.

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