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# **Foreign Contribution Regulation Act, 2010**

# Object and Purpose of FCRA, 2010

## Preamble

- To regulate the acceptance and utilisation of FC or foreign hospitality by certain individuals or associations or companies
- To prohibit acceptance and utilisation of FC or foreign hospitality for any activities detrimental to the **national interest** and for matters connected therewith or incidental thereto
- Preceded by the earlier Act, Foreign Contribution (Regulation) Act 1976, which was passed during the emergency to curb foreign interference in domestic politics
- The Act extends to the whole of India and also applies to citizens of India who are outside India. It also applies to branches and subsidiaries, outside India of companies registered/incorporated in India

# Scope of FCRA, 2010

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**Prohibition on  
certain persons  
from accepting FC**

**Restriction on  
certain persons  
from accepting  
foreign hospitality**

**Regulating acceptance  
of FC by persons  
having definite  
cultural, economic,  
educational, religious  
or social programme**

# Foreign Contribution (FC) – Section 2(1)(h) (1/2)

- Means any donation, delivery or transfer made by a Foreign Source of any article, currency or any security
- Covers contribution in cash or kind
- Covers Indian or foreign currency
- Wide definition, even covers advance or loan received from foreign source and indirect receipts from foreign source

# Foreign Contribution (FC) – Section 2(1)(h) (2/2)

## Exceptions

- Foreign contribution up to Rs. 1 lac from a relative. Contribution in excess of Rs. 1 lac is required to be reported to the central Government (Rule 6)
- Articles gifted for personal use, if market value of such article is not more than Rs. 1,00,000 (Rule 6A)
- Amount received from a foreign source by way of fees - including fees charged by educational institution in India from foreign students
- Amount received from a foreign source as cost in lieu of goods sold or services rendered in ordinary course of business, trade or commerce whether within or outside India

# Issues – ‘Cost in lieu of goods sold’

- What if the goods are sold or services rendered by adding a nominal margin?
- What if the NPO realizes some surplus during the course of conducting activities?
- Whether overheads to be included in cost?
- Example : A temple trust offering the facility of online Aarti at a charge

# Foreign Source – Section 2(1)(j)

- Any donation, delivery or transfer made by any **foreign source** is treated as **foreign contribution**
- Inclusive definition, covering-
  - i. a foreign government or its agency
  - ii. any international agency (other than certain specified agencies such as UN)
  - iii. foreign company, multi-national corporation
  - iv. any other foreign entity such as trade unions, trusts, societies, clubs, formed or registered outside India
  - v. Indian Company where more than 50% shares are held by foreign source if it is not within limits specified under FEMA
  - vi. foreign citizens

# Provisions of FCRA

The provisions of FCRA can be broadly classified in the following three categories:

1

- Blanket prohibition (barring certain specific exceptions) on certain persons from accepting FC

2

- Restriction on certain persons from accepting foreign hospitality

3

- Regulating the acceptance of FC by persons having a definite cultural, economic, educational, religious or social programme

# Blanket Prohibition – Section 3

- Persons who cannot accept FC-
  - i. Candidates for election
  - ii. Judges and Government servants
  - iii. Members of any legislature, which also includes Panchayat
  - iv. Political party and office bearer thereof, including any organization of a **political nature** as may be specified by the Central Government
  - v. 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 mode of mass communication
  - vi. Correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper or company
  - vii. Individuals or associations who have been prohibited from receiving FC

# Exceptions to Blanket Prohibition – Section 4

- FC can be accepted even by the prohibited category in the following situations-
  - i. Remuneration or in the ordinary course of business or in the course of international trade or commerce
  - ii. As an agent of a foreign source in relation to any transaction made by such foreign source with the Government
  - iii. Gift or presentation as a member of an Indian delegation- the gift/present should be accepted in conformity with the Government rules
  - iv. Receipts from a relative. Receipts above Rs 1 lac to be reported.
  - v. Any scholarship, stipend or any such payment

# Organisation of Political Nature – Section 5 & Rule 3

- Organisation having political objectives in its MOA or Bylaws
- Any Trade Union whose objectives include activities for promoting political goals
- Any voluntary action group with objectives of a political nature or which **comments** upon or participates in political activities
- Front or mass organisations like Students Unions, Workers' Unions, Youth Forums and Women's wing of a political party
- Organisation whose objectives include steps towards advancement of political interests of the organisation
- Any organisation, which habitually engages or employs methods of political action like 'bandh' or 'hartal', 'rasta roko', 'rail roko', 'jail bhara' etc to support public causes

# Restriction on Accepting Foreign Hospitality – Section 6

- Prohibition from accepting any foreign hospitality while visiting another country (except with prior permission of the Government)-
  - i. Members of the legislature
  - ii. Office bearers of a political party
  - iii. Judges and Government servants
- In case of medical emergency outside India, prior permission requirement is waived
- Foreign hospitality - Section 2(1)(i)

Any offer, not being a purely casual one, made in cash or kind by a foreign source for providing a person with the cost of travel to any foreign country or territory or with free boarding, lodging, transport or medical treatment
- However, what constitutes a “purely casual offer” is not clear

# Regulating the acceptance of FC by persons having a definite cultural, economic, educational, religious or social program (CEERS) – Section 11 and 12 (1/2)

- Any individual or organization carrying on a CEERS is prohibited from accepting FC
  - unless such person has obtained a certificate of registration or has obtained prior permission for accepting such contribution from the central government
- Applicable to NPOs as well as private limited company, LLP, partnership firm, HUF and individuals engaged in CEERS
- NPO eligible to receive FC cannot in turn transfer the same to any other person/entity
  - unless such other person is also registered or has obtained prior permission

## Regulating the acceptance of FC by persons having a definite CEERS program– Section 11 and 12 (2/2)

- Authorities have powers u/s 12(4) to deny registration or prior permission on the ground that the person or organization is working to the detriment of national interest. For example, (the list being only illustrative), the NPO should not be engaged in:
  - i. Religious conversion through inducement of force
  - ii. Creating communal tension or disharmony
  - iii. Propagation of sedition or advocating violent methods to achieve its ends,
  - iv. Activity to divert funds for undesirable purposes

# Types of Permission

- An association having a definite cultural, economic, educational, religious or social programme can receive foreign contribution after it obtains:
  - the **prior permission** of the Central Government
  - gets itself **registered** with the Central Government (permanent registration)

# Prior Approval

- Prior approval necessary before receiving each contribution
- Application to be filed in prescribed Form
- Prior approval is donor specific, donee specific and purpose specific
- Application should ordinarily be disposed off in 90 days

# Permanent Registration (1/2)

- Application for permanent registration to be filed in prescribed Form
- Registration to be ordinarily granted within 90 days
- Registration generally granted to associations with proven track record of at least 3 years
- Now Registration valid for only 5 years and renewal to be sought thereafter.
- Wide powers with Central Govt. to cancel registration

## Permanent Registration (2/2)

- Before granting registration, the Govt. to verify whether NPO has undertaken reasonable activity in its chosen field for the benefit of the society
- Application to be filed electronically followed by hard copy within 30 days
- If hard copy not filed within 30 days than request for registration/prior permission ceases and fresh form can be filed only after 6 months

# Renewal of Registration – Section 16 & Rule 12

Online renewal of registration every 5 years

Renewal application to be filed 6 months before expiry

Delayed application may be accepted only if sufficient grounds for such delay is explained in writing

Application cannot be filed beyond 12 months from the date of expiry of the earlier registration

Government has powers to suspend and under specific situations, cancel the certificate of registration

# Designated Bank Account – Section 17

- All FC must be received only in a single designated bank account
- Not permissible to open multiple bank accounts
- Any interest or income arising on FC and any income from sale of FCRA assets, investments or contribution in kind to be deposited in this account
- To facilitate transactions in far-flung project sites, more than one “**utilization accounts**” can be opened
- No local funds should be deposited in “utilization account”
- **Mixing of Funds**
  - i. Mixing of foreign funds and local funds is considered as a serious offence
  - ii. May also lead to cancellation of registration along with other monetary and non-monetary implications - including imprisonment up to 1 year

# Transfer of FC to other persons

- FC received by an entity should be utilised only for end use
- FC can be transferred to another person if such other person is also registered or has prior permission
- Transfer to non-approved persons cannot exceed 10% of the total value of FC received during the financial year and would require prior approval of the Central Government
- Such second transfer will have to be separately reported

# Maintenance of Accounts – Section 19, Rule 11 & 17

- Mandatory to maintain separate set of accounts and records, exclusively for FC received and utilised
- Separate salary register, fixed assets register, investment register etc. required to be maintained for FC
- Income and expenditure account, Balance Sheet, Receipts and Payments account to be audited and to be filed electronically by 31<sup>st</sup> December
- Form FC-4 to be filed giving details of each contribution received, the source, manner and purpose of receipt and manner of utilisation
- Even if no FC received, nil report has to be submitted

# All Information to be uploaded Electronically

- Accounts and all other information to be uploaded electronically
- Along with accounts, even bank statements duly certified by bank officials to be uploaded
- Darpan Id to be obtained for this purpose from NITI AYOOG
- Any change in name, address, composition of Trustees, Bank account, etc. to be intimated electronically within 15 days

# Foreigners on Board or Committees

- An organisation entitled to receive FC not allowed to appoint a foreign national (other than of Indian origin), as a member of the executive committee, governing board
- Foreign national cannot be Chief Functionary of such organisation
- Foreigners may be associated in a purely honorary capacity depending upon their stature in their field
- Foreigner may be permitted to join the governing board only by taking permission from an authority higher than the competent authority

# Administrative Expenses – Section 8 & Rule 5

- Administrative expenses from FC funds should **not exceed 50%** of the FC received during the year
- Expenses in excess of 50% can be defrayed only with the prior approval of the Central Government
- Administrative expenses are compared with FC received and not with FC utilised during the year.
- The rules define what constitutes administrative expenses. They include-
  - i. Salaries of members of the executive committee or governing council
  - ii. Salaries of management personnel
  - iii. Office expenses such as electricity, water charges, telephone charges, repairs to premises, stationery and printing charges, accounting expenses, legal and professional charges, rent of premises and so on

# Investment in Mutual Funds – Section 8 & Rule 4

- Prohibition of investment in speculative activities
- FC cannot be invested where there is an element of risk or volatility linked to market forces
- Investment in mutual funds or in shares specifically classified as speculative activity
- Investment in mutual fund schemes that only invest in Government bonds not permitted

# Fines and Punishment – Sections 33 to 41

## Offence

Seeks prior permission or registration by means of fraud, false representation or concealment of material facts

Accepting or assisting in accepting FC in contravention of the FCRA Act or Rules

Offences for which no separate penalty has been provided in the Act

## Fines and Punishment

Imprisonment up to 6 months and/or fine

Imprisonment up to 5 years and/or fine

Imprisonment up to 1 year and/or fine

- A second time defaulter in acceptance or utilisation of FC is debarred from accepting FC for 5 years from the date of the 2<sup>nd</sup> conviction
- The Ministry of Home Affairs issued a notification dated 5<sup>th</sup> June 2018 specifying the offences that can be compounded and the compounding penalty payable in each case

*Thank You*