


# FOREIGN CONTRIBUTION (REGULATION) ACT, 2010

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- **FCRA 1976 replaced by FCRA 2010.**
  - ***The rules under the Act are being framed.***

# Objective and Scope.....

- An Act to consolidate the law **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

# Applicability

- Whole of India and
  - citizens of India outside India and
  - Associates, branches or subsidiaries outside India of companies or bodies corporate, registered or incorporated in India.

# Amendments at a glance.....

Particulars	FCRA, 2010	FCRA, 1976
<b>Foreign contribution</b>	<b><u>Scope expanded</u></b> to include the securities as defined u/s 2 of the Securities Contracts (Regulation) Act, 1956 Clause(h) of sec.2	Only the foreign securities defined under FEMA are included Clause ( c ) of sec.2
<b>Prohibition to accept FC</b>	Various sub-clause added [sub clause (e), (f), (g), (h) of s.s(1) of sec.3 of FCRA, 2010 ]	-
<b>FC received from relative</b>	Sec. 3 - N.A.	Permitted only with prior permission of CG in case exceeding Rs. 8000/- p.a
<b>FC by way of scholarship, stipend or like payment</b>	Sec. 3 – N.A.	Intimation to CG required in case exceeding Rs. 36,000/- p.a

## Contd....

Particulars	FCRA, 2010	FCRA, 1976
<b>Validity of registration certificate</b>	<b>Five years</b>	<b>No end date</b>
<b>Validity of permission of CG</b>	valid for the specific purpose or specific amount of FC proposed to be received	valid for 5 years from the effective date.
<b>Utilisation of FC</b>	<b>Sec. 8(1)</b> provides for utilisation of FC only for the purpose for which it is received. Utilisation <b>for speculative purpose</b> prohibited	No corresponding provision

## Contd....

Particulars	FCRA, 2010	FCRA, 1976
Administrative expenses	<b>Section 8(2)</b> inserted to provide that person/association having registration under FCRA/ prior permission shall not defray more than 50% of the FC received in a financial year to administrative expenses unless <b>prior permission</b> is obtained	<b>No corresponding restriction.</b>

# Meaning of Foreign contribution.....

## As per Section 2 (h) of FCRA, 2010

"foreign contribution" means the donation, delivery or transfer made by any foreign source, of any -

- (i) **article**, other than the 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 the sum specified from time to time, by the Central Government by the rules;
- (ii) **currency**, whether Indian or foreign;
- (iii) **security** as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and includes any **foreign security** as defined in clause (o) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999).



## **“Foreign Contribution” includes....**

- ☐ Foreign contribution received **either directly or through one or more persons(Explanation 1).**
- ☐ The **interest accrued on the foreign contribution deposited** in any bank referred to in sec. 17(1) of FCRA, 2010 or any other income derived from the foreign contribution or interest thereon (**Explanation 2**).

## Exclusion from “Foreign Contribution”.....

### Any amount received, by any person

- i. from any foreign source in India, **by way of fee** (including fees charged by an educational institution in India from foreign student) or
- ii. 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
- iii. by way of contribution from an agent of a foreign source towards such fee or cost. (**Explanation 3 to clause(h) of sec. 2**)

# “Foreign Hospitality” .....

As per clause (i) of Sec. 2 of FCR Act:-

“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 free boarding, lodging, transport or medical treatment.

**Note:** *CG has the power u/s 9 to prohibit the receipt of foreign hospitality or requirement of prior permission/ intimation to CG where such acceptance is likely to be prejudicial to sovereignty and integrity of India, public interest, freedom or fairness of election, friendly relations or hamony.*

## Contd....

- 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, while visiting any country or territory outside India,

***not allowed to accept foreign hospitality , except with the **prior permission** of the Central Government [section6]***

**Except in some situations like illness, medical grounds where intimation can be given subsequently within 1 month**

## Foreign Source - clause(j) of Sec. 2....

- (i) Government of any foreign country or territory & 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;

Contd....

- (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 (1 of 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;

## Contd....

- (d) trusts, societies or other associations of individuals (whether incorporated or not), formed or registered in a foreign country or territory;
- (e) foreign company;
- (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, 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;

## Prohibition to accept foreign contribution- Sec. 3 of FCRA, 2010.....

### **(1) No foreign contribution shall be accepted by any-**

- a) candidate for election;
- b) correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper;
- c) 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;



## Contd....

- f) organisation of a **political nature** as may be specified under s.s(1) of sec. 5 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 clause (r) of sub-section (1) of sec. 2 of the Information Technology Act, 2000 (21 of 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).

Contd....

**Explanation:**

In **clause (c)**, the expression **"corporation"** means a corporation owned or controlled by the Government and includes a Government company as defined in sec. 617 of the Companies Act, 1956 (1 of 1956).

**Note:**

**The term 'Political Nature' as used in clause(f) has not been defined.**

## Pre-Conditions for receipt of foreign funds....

- 1) **FCRA Certificate, OR**
- 2) **Prior Permission from CG**

- **Application for FCRA certificate in Form FC-8— to home ministry alongwith:**
  - (i) Certified copy of registration certificate or Trust deed, as the case may be;
  - (ii) Details of activities during the last three years;
  - (iii) Copies of audited statement of accounts for the past 3 years (Asset and Liabilities, Receipt and Payment, Income and Expenditure)
- Application for prior permission for acceptance of FC – in Form **FC-1A** and for Foreign Hospitality- **FC-2**

# Registration under FCRA.....

- There is no specific time limit for making an application for registration.
- Both, 'Registration' and 'Prior Permission' shall be granted or rejected within a period of **90 days from the date of receipt of application**. Currently this time frame is stipulated only for applications for Prior Permission.

# *Renewal of Registration.....*

- Registration of NGOs to be renewed every 5 years.
- All existing NGOs have to renew their registration at the end of the period of 5 years from the date of enactment of FCRA 2010.
- **The application for the renewal must be made six months prior to the expiry.**

## Issues to be considered.....

- Whether **Transfer of FCRA funds to another organisation** not having FCRA registration is permissible?
  - ▣ Yes, but with **prior approval**.
- Whether provisions of FEMA need to be taken into consideration?
  - ▣ Yes- to transfer funds in foreign currency to other countries, they have to comply with the provisions of Foreign Exchange Management Act

## Issues to be considered.....

- **Is it necessary to obtain registration u/s 12A of the Income Tax Act in order to apply for registration under FCRA.-** not specified under law.
- **Will funds received from an NRI in foreign currency be considered as foreign contribution?-** No, NRI's are not covered within the definition of 'foreign source'. However, contribution given by the non-resident **foreign citizens** of Indian origin **through their NRE and FCNR accounts** maintained in India, the provisions of FCRA will be attracted and these contributions are to be treated as "Foreign Source". **Master Circular DBOD. AML. BC. No. 1 / 14.08.001 / 2010 – 11, dated 1-7-2010 by Dep. Of Banking Operations & Development, RBI**

## Issues to be considered.....

- What is the treatment of **undisclosed/anonymous donations**.  
*information to be obtained from designated bank , regarding the source of donation i.e. identity of donor, origin of country and same be intimated in Form FC-3*



## Some Important Points.....

- ❑ FC should be received only through the designated bank branch. However, multiple bank accounts can be opened for utilization of FC.[sec. 17]
- ❑ name of the Bank branch to be specified in the application for registration under FCRA.
- ❑ An association if **not** registered with the Central Government, can accept any foreign contribution only after obtaining prior permission of the CG.

Contd....

- Maintenance of FC accounts i.e of receipts of FC and manner of utilisation is mandatory [**sec.19**]
- Every organisation receiving foreign contributions is required to furnish a certificate from a chartered accountant in Form FC-3

## Contd....

- ❑ **'Foreign Contribution'** includes all kinds of foreign receipts. It does not distinguish between a commercial receipt or a voluntary contribution.
- ❑ During the course of audit and inspection of books of accounts, the authorised officer also has the power to seize the accounts and records in the presence of two independent witnesses. [**sec. 24**]

# Cancellation of FCRA certificate.....

- conditions under which FCRA certificate can be cancelled [Section 14]
  - *If organization is considered to be of political nature*
  - *failure to renew your registration after five years*
  - *Lack of reasonable activities for two years*
  - *providing false information*
  - *violating terms & conditions of filling returns*
  - *violating the acts and rules, and,*
  - *acting against public interest*

***Cancellation to be done after giving an opportunity of being heard.***

# Consequences of cancellation:

- ❑ *for 3 years neither new FCRA number can be applied for nor the association can ask for Prior Permission. [Section 15]*
- ❑ *All the FC and assets thereof (created since the inception of the organization) shall vest with such authority as may be prescribed till the registration is restored.*

# Audit Requirements.....

- The CG has the power to initiate audit under the following circumstances:
  - (a) if the organisation or the association fails to file any returns within the time limit specified.
  - (b) the returns submitted by the organisation are not in accordance with the law.
  - (c) if during the inspection/scrutiny of the returns submitted, the Central Government comes across any evidence or information which provides reasonable cause to believe that any provisions of the Act has been violated.

## *Mandatory Nature of Return.....*

- Even if FC not received during the year organisation having registration under FCRA should file the NIL Return.
- It is mandatory to file for FC-3 every year as long as the organisation wants to validly retain its registration.

# Repeal and Saving.....

## **Section 54:**

- ❑ The Foreign Contribution (Regulation) Act, 1976 (49 of 1976) is hereby repealed .
- ❑ However, acts done and FC/hospitality accepted under FCRA, 1976 shall be deemed to be done/ accepted under FCRA, 2010.
- ❑ Permission under FCRA, 1976 shall be deemed as permission under FCRA, 2010 until withdrawn.
- ❑ Order under FCRA, 1976 shall be deemed as order under FCRA, 2010.

***However, no gazetted notification till date for repeal***



# Complexities.....

- **Explanation 3 to section 2(h) (i.e meaning of FC)** excludes income from business, trade or commerce from being considered as foreign contribution. In other words, such receipts can be treated as local income. **However this provision is in conflict with the amended section 2(15) of the Income Tax Act which prohibits trade or business related receipts above Rs.10 lakhs in respect of specified activities.**
- Since utilisation of FC for speculative purpose is not permitted, **what constitutes speculation is not clarified.**

# FCRA funds of Trust

- Indian NGOs are not permitted to have activities or branches outside india, unless they are registered under section 10(23C)
- **FCRA funds of Indian NGOs cannot be utilised for activities outside India i.e only domestic funds can be used.**

# Circular DBOD. AML. BC. No. 1 / 14.08.001 / 2010 – 11, dated 1-7-2010, RBI

- Provides guidelines from advising the banks that while accepting foreign contribution for onward credit to the accounts of association/organisation, it should be ensured that the concerned association/organization is registered with Ministry of Home Affairs or has their prior permission to receive such foreign contribution as required under the Act.
- that no branch other than the designated branch accepts the foreign contribution.
- Banks advised to send a half-yearly report of receipt of such foreign contribution to Central Government.
- instructions are applicable to all the scheduled commercial banks (excluding RRBs) and all Financial Institutions

**THANK YOU!!!**

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