

FOREIGN CONTRIBUTION (REGULATION) AMENDMENT BILL, 2020
(AMENDMENT BILL, 2020 PASSED BY THE LOK SABHA ON 22 SEPTEMBER 2020)

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Objectives of FCRA

❑ Foreign Contribution Regulation Act, 2010, Objectives:

- To prohibit on certain persons from accepting foreign contribution
- To restrict certain persons from accepting foreign hospitality
- To regulate the acceptance of foreign contribution by persons having a definite cultural, economic, educational, religious or social programme

Prohibition to Accept Foreign Contribution

- ❑ The amendments proposed by the Bill and its impact on persons / entities / organisations registered or approved under FCRA 2010 (or seeking registration or approval under FCRA 2010) (hereinafter referred to as “organisation(s)”) are analysed below:
 - Amendment to section 3 - Prohibition to accept foreign contribution ('FC')
 - Presently, amongst others, FC cannot be accepted by a Judge, Government servant or employee of any corporation or any other body controlled or owned by the Government.
 - It is proposed to include a Public Servant (as defined under the Indian Penal Code – refer Annexure-I) in the list of persons prohibited from receiving FC. Further, the term corporation is defined to mean a corporation owned or controlled by the Government and includes a Government company as per section 2(45) of the Companies Act, 2013.

Prohibition to Transfer FC to Other Person

❑ Substitution of section 7 - Prohibition to transfer FC to other person

- Presently, FC received by a registered organisation under FCRA 2010, can be transferred to another person, only if such other person is also a registered organisation under FCRA 2010. Transfer of FC to a person who is not a registered organisation under FCRA 2010 would require prior approval of the Central Government (CG).
- It is proposed that FC received by a registered organisation under FCRA 2010, cannot be transferred to another person, even if such other person is a registered organisation under FCRA 2010.

Restriction to Utilize FC for Administrative Purpose

❑ Amendment to section 8 - Restriction to utilize FC for administrative purpose

- Presently, a registered organisation which receives FC in a financial year, shall not spend more than 50% of such FC to meet administrative expenses. However, administrative expenses in excess of 50% may be incurred with prior approval of the CG.
- It is proposed to reduce the cap of 50% on administrative expenses to 20%.

Registration of certain persons with CG.

❑ Amendment to section 11 – Registration of certain persons with CG.

- Presently, if any registered organisation permitted to receive FC is found guilty of violation of FCRA 2010 or FCRA 1976, the unutilised amount or amount yet to be received of FC cannot be utilised or received without the prior approval of the CG.
- It is proposed that the implication on the person found guilty will continue as presently provided. However, in case of a registered organisation where, on the basis of any information or report and after holding a summary inquiry, the CG has reason to believe that such organisation has violated provisions of FCRA 2010, it may direct the organisation to not utilise the unutilised amount or not receive the balance part of FC, without prior approval from the CG. Such action can be taken even where further enquiry into the matter is pending.

Aadhaar Number as Identification Document

- ❑ Insertion of section 12A – Power of CG to require Aadhaar number, etc., as identification document.
 - Presently, FCRA 2010 does not mandate any specific identification document for office bearers or Directors or other key Functionaries ('key personnel') of any organisation, whether such individual is Indian or foreign.
 - It is proposed that any organisation seeking prior permission or approval or making application for grant or renewal of certificate, shall be required to provide as identification document, the Aadhaar number of all its Indian key personnel and copy of the Passport or Overseas Citizen of India Card, in case of a key personnel who is a foreigner.

Suspension of Certificate

❑ Amendment to section 13 – Suspension of Certificate

- Presently, with regard to a registered organisation in whose case the question of cancelling registration certificate on account of violation of FCRA 2010 is under consideration, the CG can suspend the registration for a period, which cannot exceed 180 days.
- It is proposed that in addition to the initial outer limit of 180 days, the registration can now be suspended for a further period which cannot exceed 180 days.
- The proposed amendment will empower the CG to suspend the registration of an organisation contravening the FCRA for a total period not exceeding 360 days (180 + 180) instead of the earlier limit of 180 days.

Surrender of certificate

□ Insertion of section 14A – Surrender of certificate

- Presently, there is no provision for a registered organisation to voluntarily surrender its FCRA registration.
- It is proposed that a registered organisation can now surrender its FCRA registration certificate provided the CG is satisfied that such organisation has not contravened any provisions of FCRA 2010. Further, on surrender, the management of unutilised FC and asset, if any, created out of such FC would vest with the prescribed authority.

Renewal of certificate

❑ Amendment to section 16 – Renewal of certificate

- Presently as per FCRA rules, a registration certificate issued to an organisation is required to be renewed after 5 years of its date of issue. FCRA 2010 does not prescribe any conditions to be fulfilled for granting renewal of registration certificate.
- It is proposed that the CG will renew the certificate once it is satisfied that the organisation has fulfilled all the requisite conditions applicable for granting a fresh registration certificate to any organisation.

FC through Scheduled Bank

- ❑ Substitution of section 17 – FC through scheduled bank (Related amendment to section 12 Grant of certificate of registration)
 - Presently, a registered organisation can receive FC in a single account only maintained through a branch of any bank as may be specified in the application for grant of certificate. The person can then open one or more accounts in one or more banks for utilising the FC received for undertaking projects. The concerned bank would report details of the FC received to the authorities in such form and manner as may be prescribed.
 - It is proposed that a registered organisation will open an “FCRA account” with designated branch of SBI at New Delhi and receive FC in India only through this account. The FC so received can then be transferred to another FCRA account in India with any scheduled bank for maintaining funds or their utilisation. Subsequently, funds kept in FCRA account with SBI in New Delhi or FCRA account with such other bank can be transferred to one or more accounts in one or more scheduled banks for utilisation towards projects. Designated SBI branch at New Delhi would report details of the FC received to the authorities in such form and manner as may be prescribed. The details of FCRA account with SBI at New Delhi would now need to be provided with the application for registration under section 12.

Annexure I – Definition of ‘Public Servant’

- ❑ Public Servant as defined under Section 21 of The Indian Penal Code:
- ❑ “The words "public servant" denote a person falling under any of the descriptions hereinafter following, namely:
- ❑ Every Commissioned Officer in the Military, [Naval or Air] Forces
- ❑ Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;]
- ❑ Every officer of a Court of Justice [(including a liquidator, receiver or commissioner)] whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorised by a Court of Justice to perform any of such duties;

Definition of 'Public Servant'

- ❑ Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant;
- ❑ Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;
- ❑ Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;
- ❑ Every officer of [the Government] whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;
- ❑ Every officer whose duty it is as such officer, to take, receive, keep or expend any property on behalf of [the Government], or to make any survey, assessment or contract on behalf of [the Government], or to execute any revenue-process, or to investigate, or to report, on any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of [the Government], or to prevent the infraction of any law for the protection of the pecuniary interests of [the Government] ;

Definition of 'Public Servant'

- ❑ Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;
- ❑ Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;]
- ❑ Every person --
- ❑ a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government
- ❑ b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956)”



THANK YOU