

Key Highlights of the Foreign Contribution (Regulation) Amendment Act, 2020 (Amendment Act)

The original Foreign Contribution Regulation Act (FCRA) was introduced in the year 1976 with the primary objective to keep a check on foreign influence in the social, political, religious and economic structure within India, which Act was repealed in 2010 with the introduction of Foreign Contribution (Regulation) Act, 2010 which was a more stringent law requiring greater compliances. The Amendment Act effective from September 29, 2020 is far more restrictive and regulatory in nature with the intent to restrict and control the use of foreign funds thereby enhancing transparency and accountability. Its key highlights are as follows,

Widening the sphere of “persons” prohibited from acceptance of foreign contributions. FCRA, 2010 prohibited certain persons to accept any foreign contribution like election candidates, editors /owners /publishers of a newspaper, judges, members of any legislature, political parties, employees of corporation controlled by government etc. FCRA, 2020 now extends such prohibitions to “Public Servants” as defined under the Indian Penal Code, 1860.

1. “Public Servant” included in the list of Persons prohibited from accepting foreign contributions, which earlier prohibited Judges, Government Servants or Employees of any Corporation or any other body controlled or owned by the Government [Section 3].

Further, FCRA, 2020 has widened the meaning of “Corporation” which are restricted from accepting foreign contributions to include Government Company as defined in section 2(45) [3] of the Companies Act, 2013.

2. Prohibition on transfer of foreign contributions from one FCRA registered organization to another FCRA registered organization, which was permitted under FCRA, 2010 provided both the entities / organizations were registered with Ministry of Home Affairs (MHA) [Section 7].
3. Utilization of foreign contributions towards administrative expenses limited to twenty percent (20%) of the total foreign contribution received against the earlier permitted limit of fifty percent (50%) [Section 8].
4. In the eventuality of “Summary Inquiry” for determining contraventions under “Prior Permission”, the entity / organization shall not be permitted to utilize the contributions received nor be able to receive additional foreign contribution till the Inquiry concludes [Section 11]. Earlier, a person was prohibited to utilise / receive foreign contribution only if such person was guilty under FCRA.

5. Opening of FCRA Bank Account has been made mandatory prior to applying for “Registration” or “Prior Permission”. This amendment seems more of procedural nature since the online FCRA application mandatorily requires stating the FCRA bank account number [Section 12].
6. AADHAR Card has been made mandatory for Trustees/Members of the Entity/Organization applying for FCRA registration/prior permission. For Foreign Nationals including NRI/OCI Trustees/Members, Passport/OCI card has to be mandatorily stated in the application form [Section 12A].
7. Ministry of Home Affairs, Government of India has the powers to suspend the certificate of registration for a period of 360 days till the investigation is concluded. The earlier period of suspension was limited to 180 days [Section 13].
8. An Entity/Organization can apply for surrender of the FCRA registration “*suo moto*”. There was no option for surrender but only cancellation on the instructions of MHA in the earlier provision [Section 14A]. The management of the foreign contribution and related assets will then vest with the prescribed authority after the surrender.
9. On the surrender / cancellation of the FCRA registration, the assets of the Entity / Organization shall vest with the Bank with which the entity has maintained the FCRA account. Thus, even in the case of surrender, the unutilized portion of the foreign contribution shall not be permitted to be remitted back [Section 15].
10. Renewal Certificate shall be issued by the MHA subject to inquiry / investigation post application for renewal. The earlier provisions only required the renewal application to be submitted 6 months prior to the date of expiry of the registration but did not state about inquiry prior to renewal [Section 16].

FCRA 2020, had enabled Central Government that before renewing any certificate, it may conduct any enquiry it may deem fit to satisfy that such person is not: –

- Fictitious or benami
- prosecuted or convicted for indulging in activities aimed at conversion through inducement or force from one religious faith to another or for creating communal tension in India.
- has not been found guilty or diversion or mis-utilisation of its funds or been prohibited from accepting foreign contribution.
- Is not engaged or likely to engage in propagation of sedition or advocate violent methods to achieve its ends;
- Is not likely to use the foreign contribution for personal gains or divert it for undesirable purposes;

– Has not contravened any of the provisions of this Act.

11. The Primary “FCRA Account” to be opened with State Bank of India, New Delhi Main Branch at 11, Sansad Marg, New Delhi 110001. Thereafter, the foreign contributions can be transferred to any other designated FCRA account held with Bank / opened with a Bank as per the Scheduled Banks, listed by MHA. The earlier provisions permitted the registered entities / organizations to open a FCRA bank account with any of the Scheduled Banks prescribed by MHA and did not restrict it to a particular branch or bank [*Section 17*].

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For further analysis and discussion, you may please reach out to us.

VATSARAJ & Co.

Chartered Accountants

1st Floor, Fort Chambers,
C-Block, 65, Tamarind Lane,
Fort, Mumbai 400 023
Tel. no. +91-22-22653931
+91-22-22635488

4th Floor, Bharat House,
104, Mumbai Samachar Marg,
Fort, Mumbai 400 002
Tel. no. +91-22-40693900/39
e-mail: admin@vatsarajco.com