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Newsflash: Overview of Foreign Contribution Regulations (FCRA) Amendment Bill, 2020

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For Client Circulation

23 September 2020

1.0 Background

In India, receipt of foreign contribution is regulated by Foreign Contribution Regulations Act, 2010 (FCRA). The annual inflow of foreign contribution has almost doubled between the years 2010 and 2019, but many recipients of foreign contribution have not utilised the same for the purpose for which they were registered or granted prior permission under the said Act. Many of them were also found wanting in ensuring basic statutory compliances such as submission of annual returns and maintenance of proper accounts. This has led to a situation where the Central Government had to cancel certificates of registration of more than 19,000 recipient organisations, including non-Governmental organisations, during the period between 2011 and 2019. The criminal investigations also had to be initiated against dozens of such non-Governmental organisations which indulged in outright misappropriation or mis-utilisation of foreign contribution.

In order to curb the malpractice and strengthen the administration of foreign contribution, the Government has now introduced a bill to amend the FCRA.

This newsflash provide information about the key amendments proposed by the said bill vis-à-vis the present corresponding provisions.

2.0 Major Changes

Particulars	Provisions Proposed under the Bill	Existing Provision
Prohibition on Inter-se transfer of Donations	<p>It is proposed that a person who is registered and granted a certificate or has obtained prior permission under FCRA and receives any foreign contribution, shall not transfer such foreign contribution to any other person.</p> <p>The proposed provision will mandatorily require the person receiving foreign contribution to utilize the same for achieving its objects.</p>	<p>At present, a person who is registered under FCRA or has obtained prior permission was permitted to transfer foreign contribution to such other person who is also registered and had been granted the certificate or obtained the prior permission under the FCRA.</p> <p>Further, it is also permissible with prior central government approval to transfer foreign contribution to a non-registered person who has not been granted a certificate or obtained permission under the FCRA.</p>
Cap on Administrative	It is proposed to reduce allowable expenditure towards administrative	At present, a registered person is allowed to spend 50% of foreign

Expenditure	activities to 20% of the foreign contribution.	contribution towards admin activities.
Manner of Receipt of foreign contribution	<p>It is proposed that a person who is registered under FCRA or who has prior approval shall henceforth receive foreign contribution only in an account designated as "FCRA Account" maintained with such branch of the State Bank of India at New Delhi, as the Central Government may specify.</p> <p>It is proposed that a person who is registered under FCRA or who has prior approval can also open another FCRA Account in any of the scheduled bank of his choice <u>for the purpose of keeping or utilising the foreign contribution</u> which has been received from the designated SBI account mentioned above.</p> <p>It is proposed that a person who is registered under FCRA or who has prior approval may also open one or more accounts in one or more scheduled banks of his choice to which he may <u>transfer for utilising any foreign contribution</u> received by him in his FCRA accounts mentioned in above paragraphs.</p> <p>With this amendment the Government will get details of all foreign donations of all registered persons / prior approval holders from SBI. The Government is also allowing flexibility to entities to transfer foreign contribution so received to 1 more FCRA account opened with any scheduled bank. The entities are also allowed to open one or more accounts with scheduled banks to transfer foreign contribution and utilize for its purpose.</p>	<p>As per existing law, the foreign contribution should be received only in the exclusive single FC account of any Bank (also called designated FC account), as mentioned in the order for registration or prior permission granted and should be separately maintained by the associations. However, one or more accounts (called Utilization Account) in one or more banks may be opened by the association for 'utilising' the foreign contribution after it has been received in the designated FCRA bank account.</p>
Public Servants prohibited from receiving foreign contribution	<p>The proposed bill prohibits public servants to receive foreign contribution.</p> <p>The definition of public servants is</p>	<p>No specific restriction exists on receipt of foreign contribution by public servants.</p>

	borrowed from section 21 of the Indian Penal Code which particularly includes people who are in Government employment.	
Inquiry before renewal of FCRA	It is proposed that prior to renewal of registration, Ministry of Home Affairs, shall make such inquiry, as it deems fit, to satisfy itself that such organization has fulfilled all conditions specified under Section 12(4) of FCRA 2010.	No specific provision exists enabling inquiry prior to renewal of registration.
Identification documents for office bearers or Directors or other key functionaries	It is proposed that organisations applying for registration, prior permission or renewal of FCRA registration shall be required to provide as identification document, <u>the Aadhaar number</u> 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 <u>Passport or Overseas Citizen of India Card</u> , in case of a <u>foreigner</u> .	No specific provision exists in this respect.
Suspension of registration	The Bill proposes to suspend FCRA registration of an organization which violates the provisions of FCRA by one hundred and eighty days, or such further period, not exceeding one hundred and eighty days, as may be specified.	The existing provisions states that the FCRA registration of an organization which violates the provisions of FCRA may be suspended for <i>such period not exceeding one hundred and eighty days</i> as may be specified.
Surrender of Registration Certificate	It is proposed to permit surrender of certificate by a registered person if, after making such inquiry as it deems fit, it is satisfied that such person has not contravened any of the provisions of this Act. On surrender, the management of foreign contribution and asset, if any, created out of such foreign contribution are to be vested with specified authority.	No specific provision exists for surrender of registration.

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This Newsflash has summarized on the provisions of the Foreign Contribution (Regulation) Amendment Bill 2020. It may be noted that nothing contained in this newsflash should be regarded as our opinion and facts of each case will need to be analyzed to ascertain applicability or otherwise of the said notification and appropriate professional advice should be sought for applicability of legal provisions based on specific facts. We are not responsible for any liability arising from any statements or errors contained in this newsflash.

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