

Foreign Contribution (Regulation) Act, 2010



Important Definitions –

1) Association – Section 2(1)(a)

“Association” means –

- a) an association of individuals, whether incorporated or not,
- b) having an office in India and includes a society, whether registered under the Societies Registration Act, 1860, or not, and
- c) any other organisation, by whatever name called

2) Candidate for election – Section 2(1)(d)

“Candidate for election” means a person who has been duly nominated as a candidate for election to any Legislature

3) Foreign company – Section 2(1)(g)

“Foreign company” means any company or association or body of individuals **incorporated outside India** and includes –

- a) a foreign company within the meaning of section 591 of the Companies Act, 1956
- b) a company which is a subsidiary of a foreign company;
- c) the registered office or principal place of business of a foreign company;
- d) a multi-national corporation.

Meaning of Multi-national corporation –

- a) has a subsidiary or a branch or a place of business in two or more countries or territories; or
- b) carries on business, or operates, in two or more countries or territories;

4) Foreign contribution – Section 2(1)(h)

“Foreign contribution” means –

- a) the donation,
 - b) delivery or
 - c) transfer
- } **made by any foreign source**
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- of **any article**, not being an 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 such sum as may be specified from time to time, by the Central Government
- of **any currency**, whether Indian or foreign;
- of **any security** as defined in section 2(h) of the Securities Contracts (Regulation) Act, 1956 and includes any foreign security as defined in section 2(o) of the Foreign Exchange Management Act, 1999.

5) Foreign hospitality – Section 2(1)(i)

“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.

6) Foreign source – Section 2(1)(j)

“Foreign source” includes –

- a) the Government of any foreign country or territory and any agency of such Government;
- b) 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 specify
- c) a foreign company;
- d) a corporation, not being a foreign company, incorporated in a foreign country or territory;
- e) a multi-national corporation
- f) a company in which 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 –
 - the Government of a foreign country or territory;
 - the citizens of a foreign country or territory;
 - corporations incorporated in a foreign country or territory;
 - trusts, societies or other associations of individuals, formed or registered in a foreign country or territory;
 - foreign company;
- g) a trade union in any foreign country or territory whether registered or not;
- h) a foreign trust or a foreign foundation or such trust or foundation mainly financed by a foreign country or territory;
- i) a society, club or other association of individuals formed or registered outside India;
- j) a citizen of a foreign country.

7) Political party – Section 2(1)(n)

“Political party” means –

- a) an association or body of individual citizens of India –
 - to be registered with the Election Commission of India as a political party under section 29A of the Representation of the People Act, 1951; or
 - which has set up candidates for election to any Legislature, but is not so registered or deemed to be registered under the Election Symbols (Reservation and Allotment) Order, 1968;
- b) a political party mentioned in column 2 of Table 1 and Table 2 to the notification of the Election Commission of India dated the 8th August, 2002

Which are the organisations/individuals specifically debarred from receiving foreign contribution?

The following are the persons prohibited from accepting foreign contribution –

- 1) Candidate for election;
- 2) Correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper;
- 3) Judge, government servant or employee of any entity controlled or owned by the Government;
- 4) Public Servant
- 5) Member of any Legislature;
- 6) Political party or office bearers;
- 7) Organisations of a political nature;
- 8) Associations or companies engaged in the production or broadcast of audio news or audiovisual news or current affairs programmes through any electronic mode;
- 9) Correspondent or columnist, cartoonist, editor, owner of the association or company mentioned above (point 7)

All the above persons are prohibited (debarred) from accepting contribution from foreign source.

Important Points –

- 1) Any person who is –
 - a) resident of India or
 - b) citizen of India residing outside Indiashall not accept any foreign contribution on behalf of any person who is prohibited to accept foreign contribution.
- 2) Any person who is resident of India shall not deliver any currency (whether Indian or foreign), to any person if he knows that such person will transfer the currency to any person who is prohibited to accept foreign contribution.
- 3) Any citizen of India residing outside India shall not deliver any currency (whether Indian or foreign) which he has accepted from foreign source to any person who is prohibited to accept foreign contribution or to any person who will deliver currency to any person who is prohibited to accept foreign contribution

Power of Central Government to prohibit receipt of foreign contribution – Section 9

- 1) **CG has the power to –**
 - a) prohibit any person or organisation, from accepting any foreign contribution who are not specified in section 3
 - b) Require any person to take registration for obtaining foreign contribution
 - c) Require any person to furnish returns and information as may be specified.
- 2) **Prohibition to accept foreign contribution will be made if CG is satisfied that –**

Acceptance of foreign contribution or the acceptance of foreign hospitality is likely to affect prejudicially the sovereignty and integrity of India; or public interest; or freedom or fairness of election

to any Legislature; or friendly relations with any foreign State; or harmony between religious, racial, social, linguistic or regional groups, castes or communities.

Person to whom section 3 does not apply – Section 4

Section 3 shall not apply to any foreign contribution accepted if such contribution is received –

- 1) by way of salary, wages or other remuneration for him or any other persons working for him from any foreign source;
- 2) by way of payment for any import or export;
- 3) as an agent of a foreign source for any transaction made by such foreign source with the CG or SG;
- 4) by way of a gift received by him as a member of any Indian delegation subject to the rules made by CG
- 5) from his relative;
- 6) any contribution received as per the FEMA, 1999
- 7) by way of any scholarship, stipend or any other similar payment.

Procedure to notify an organization of a political nature – Section 5

CG has the power to notify any organization as a organization of political nature if the activities of the organisation or the ideology propagated by the organisation or the programme of the organization is like a political party.

Restriction on acceptance of foreign hospitality – Section 6

- 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 shall not accept any foreign hospitality while visiting any country or territory outside India.
- However, foreign hospitality can be accepted after taking approval from CG.



Important Point –

- Approval of CG for receiving foreign hospitality shall not be required in case of any medical emergency or sudden illness during visit to outside India.
- In this case, person receiving foreign hospitality shall give intimation to CG regarding receipt of such foreign hospitality

Prohibition to transfer foreign contribution to other person – Section 7

- **A person who is** registered and granted a certificate or has obtained prior permission under the Act for receiving foreign contribution shall not transfer such foreign contribution to any other person.

Utilization of foreign contribution – Section 8

- Every registered person who has certificate of registration or who has permission to receive foreign contribution shall use such contribution only for the purpose allowed

- Every registered person who has certificate of registration or who has permission to receive foreign contribution shall not defray maximum 20% of such contribution, received in a financial year, to meet administrative expenses.
- Administrative expenses exceeding 20% of such contribution may be defrayed with prior approval of the Central Government

Power to prohibit payment of currency received in contravention of the Act – Section 10

- ✓ If CG is satisfied that any person has received currency (whether Indian or Foreign) and such currency was received in contravention of the Act then CG will prohibit such person from paying, delivering, transferring or dealing in currency.
- ✓ CG will issue prohibition order in writing.

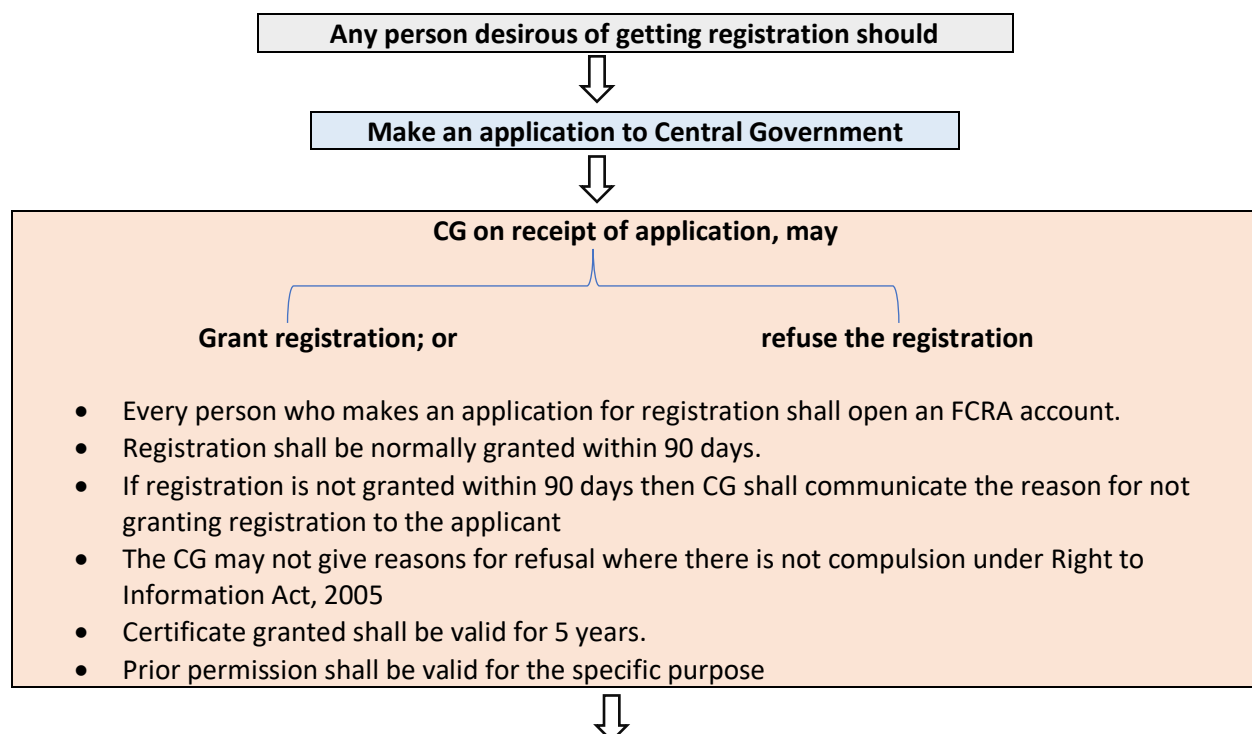
Registration of certain persons with Central Government – Section 11

- 1) Any person having a definite **cultural, economic, educational, religious or social programme** shall accept foreign contribution if such person obtains a certificate of registration from the Central Government.

However, if such person does not have certificate of registration then before accepting foreign contribution, such person should obtain prior approval of CG and such approval shall be valid for the specific purpose for which it is obtained.

- 2) **If any person has been found guilty under the provisions of this Act then the** unutilised or unreceived amount of foreign contribution shall not be utilised or received without the prior approval of the Central Government.

Grant of certificate of registration – Section 12



Conditions for granting certificate of registration –

- A) the person making an application for registration –
- 1) is not fictitious or benami;
 - 2) has not been prosecuted or convicted for indulging in activities aimed at conversion through inducement or force, from one religious faith to another;
 - 3) has not been prosecuted or convicted for creating communal tension or disharmony in part of the country;
 - 4) has not been found guilty of diversion or mis-utilisation of its funds;
 - 5) is not engaged or likely to engage in propagation of sedition or advocate violent methods to achieve its ends;
 - 6) is not likely to use the foreign contribution for personal gains or divert it for undesirable purposes;
 - 7) has not contravened any of the provisions of this Act;
 - 8) has not been prohibited from accepting foreign contribution;
- B) the person making an application for registration has undertaken activity for the benefit of the society for which the foreign contribution is proposed to be utilised;
- C) the person making an application has prepared a reasonable project for the benefit of the society;
- D) in case the person being an individual, such individual has neither been convicted under any law nor any prosecution for any offence pending against him;
- E) in case the person being other than an individual, any of its directors or office bearers has neither been convicted under any law nor any prosecution for any offence is pending against him;
- F) the acceptance of foreign contribution by the person should not be against –
- 1) the sovereignty and integrity of India; or
 - 2) the security, strategic, scientific or economic interest of the State; or
 - 3) the public interest; or
 - 4) freedom or fairness of election to any Legislature; or
 - 5) friendly relation with any foreign State; or
 - 6) harmony between religious, racial, social, linguistic, regional groups, castes or communities;
- G) the acceptance of foreign contribution –
- 1) shall not lead to incitement of an offence;
 - 2) shall not endanger the life or physical safety of any person.



Suspension of certificate – Section 13

- CG shall have the power to suspend the certificate of registration.
- Maximum period of suspension = **180 days**
- every person whose certificate has been suspended shall not receive any foreign contribution during the period of suspension of certificate.
- Foreign contribution already received shall be utilized with the approval of CG



Cancellation of certificate – Section 14

Certificate may be cancelled if –

- 1) The holder had made any statement which was false or incorrect at the time of making the application;
- 2) The holder has violated terms and conditions of registration;
- 3) If CG thinks it is necessary to cancel the certificate in the public interest;
- 4) The holder has violated the provisions of the Act;
- 5) The holder of the certificate has not engaged in any activity in its chosen field for the benefit of the society for 2 consecutive years or has become defunct.

Note –

- Opportunity of being heard should be given before cancellation;
- If certificate of any person has been cancelled then such person, shall not be eligible for registration or grant of prior permission for a period of three years from the date of cancellation of such certificate.



Surrender of certificate – Section 14A

- CG may allow any person to surrender their certificate of registration if they wish to surrender.
- For surrendering certificate, application should be made to CG.
- CG may allow surrender if it is satisfied that the provisions of the Act has not been contravened

Power of Central Government to require Aadhaar number, etc., as identification document. – Section 12A

CG may require that any person who makes application for obtaining registration or renewal of registration to submit aadhaar number of all their office bearers as identification document.

Renewal of certificate – Section 16

Every person who has been granted a certificate can renew such certificate within six months before the expiry of the period of the certificate

Application for renewal should be made to CG



CG on receipt of application, may

Renew certificate; or

reject the application for renewal

- Renewal shall be normally granted within 90 days.
- If renewal is not granted within 90 days then CG shall communicate the reason for not granting registration to the applicant
- Renewal shall be valid for 5 years

Accounts, Intimation, Audit and Disposal of Assets –

A) Foreign contribution through scheduled bank – Section 17

- 1) Every person who has been granted certificate or prior permission under section 12 shall receive foreign contribution only in an account designated as “FCRA Account” which shall be opened by him in such branch of the State Bank of India at New Delhi
- 2) Such person may also open another “FCRA Account” in any of the scheduled bank of his choice for the purpose of keeping or utilising the foreign contribution which has been received from his “FCRA Account’ in specified branch of State Bank of India at New Delhi
- 3) No funds other than foreign contribution shall be received or deposited in any such account.

B) Intimation – Section 18

Every person who has been granted a certificate or given prior permission to receive foreign contribution shall notify CG following –

- a) Amount received;
- b) Source from where foreign contribution is received;
- c) How foreign contribution was received;
- d) Purpose for which it was received.

C) Order for Audit of accounts – Section 20

- 1) Where any person who has been granted a certificate or given prior permission fails to give any intimation or gives false intimation and CG has the reason to believe that provisions of this Act is contravened then CG may order audit of accounts or any other books of such person
- 2) Audit shall be done by gazetted officer, holding a Group A post under the Central Government or any other officer as CG may think fit.

D) Intimation by candidate for election – Section 21

Every candidate for election, who had received any foreign contribution, at any time within one hundred and eighty days immediately preceding the date on which he is duly nominated as such candidate, shall give an intimation about the details of foreign contribution to the Central Government.

Inspection – Section 23

- ✓ If CG thinks that any provisions of the Act has been contravened by any person then it may order inspection of any account or records maintained by such person.
- ✓ Inspection should be done by gazetted officer, holding a Group A post under the Central Government or any other officer as CG may think fit
- ✓ Inspector will have the power to enter in any premises at any reasonable hour, before sunset and after sunrise, for the purpose of inspection.

Seizure of accounts or records – Section 24

- If after inspection, officer has any reasonable cause to believe that any person has contravened the provisions of the Act then inspecting officer may seize such account or record.

- The authorised officer shall return such account or record to the person from whom it was seized if no proceeding is brought within six months from the date of such seizure for the contravention disclosed by such account or record.

Adjudication of confiscation – Section 29

Any confiscation of article or currency or security, which is seized, may be done by Court of Session within the local limits of whose jurisdiction the seizure was made.

Appeal – Section 31

- Any person aggrieved by any order made under section 29 may prefer an appeal.
- Appeal should be made within 1 month. Extension of 1 month for filing further appeal may be granted.
- Where the order is made by Court of Session, appeal should be made to high court.
- Where the order is made by any officer, appeal should be made to Court of Session.

Penalty and Punishment – Section 34 and 35

Grounds	Penalty
If any person is prohibited to receive foreign contribution under section 10 but still pays, delivers, transfers or deals in any article or currency or security	imprisonment for a term which may extend to 3 years, or with fine, or with both. Court may levy additional fine which is equal to market value of the article or the amount of the currency or security
Accepting, or assisting any person, political party or organisation in accepting, any foreign contribution or any currency or security from a foreign source, in contravention of any provision of this Act	imprisonment for a term which may extend to 5 years, or with fine, or with both

Composition of certain offences – Section 41

- A) Following offence can be compounded under the Act –
- 1) Offence punishable with fine only;
 - 2) Offence punishable with fine or imprisonment;
 - 3) Offence punishable with fine or imprisonment or both.
- B) Following offence cannot be compounded under the Act –
- offence punishable with imprisonment only
- C) Offences should be compounded before institution of any prosecution.
- D) Offence once compounded cannot be compounded for next 3 years. It means same offence, if committed after 3 years will be treated as fresh offence.
- E) Once the offence is compounded then no proceedings shall be started for the offence.