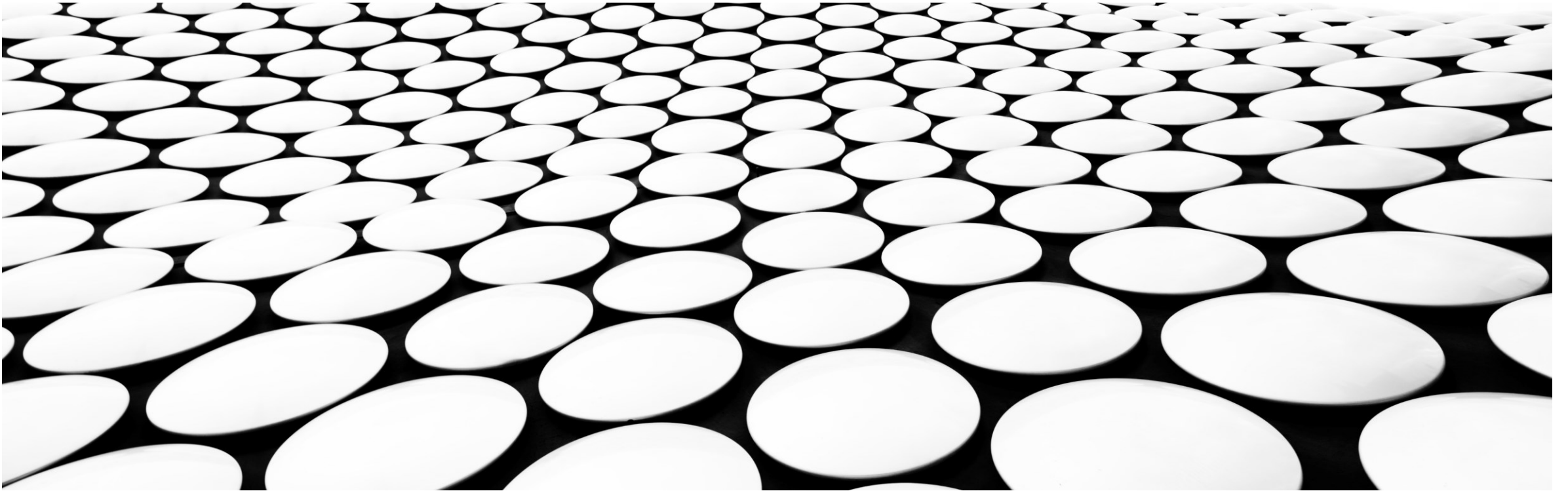


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# **THE FOREIGN CONTRIBUTION (REGULATION) AMENDMENT ACT, 2020**



# A BRIEF TIMELINE OF THE FC(R) ACT

## 1976

- Enacted by the Indira Gandhi-led Government to **prohibit** electoral candidates, political parties, judges from accepting foreign contribution.

## 1985

- The 1976 Act was amended to introduce, inter alia, **registration** for non-profit organisations.

## 2010

- The original Act was revamped to
- (i) **regulate** the acceptance and utilisation of contribution, and
- (ii) **prohibit** acceptance and utilisation of contribution for any activities detrimental to the national interest.

## 2020

- The 2010 Act has been further amended to impose stricter controls and **prune** possibilities of malpractices or diversion of foreign funds.

# KEY PROVISIONS OF THE FC(R) ACT, 2010

- Prohibited receipt of foreign contribution or foreign hospitality, whether directly or indirectly through any other person or entity, by electoral candidates, members of Parliament or Legislatures, judges, political parties and their officers, organisations of political nature, correspondents, columnists, cartoonists, editors, owners of newspapers and radio/news channels. There were certain reasonable exceptions such as payment of remuneration or other transactions in the ordinary course of business.
- Prohibited the transfer of any amount received as foreign contribution to any person who is not registered thereunder.
- The Act also bestowed powers upon the Central Government to prohibit any person or organisation from receiving foreign contribution, or suspend or cancel its registration, if it is likely to be detrimental to the sovereignty and integrity of India, public interest, friendly relations with any foreign State or to harm religious, social or communal harmony.

# IMPLICATIONS OF THE FC(R) ACT ON NON-PROFIT ORGANISATIONS

- The original FC(R) Act, 1976 allowed non-profit organisations, having a definite cultural, economic, educational, religious or social programme, other than political organisations to receive foreign contribution freely, for their activities. However, such organisations were required to file an intimation to the Central Government regarding the receipt and utilisation of such contribution.
- It was noticed that organisations were irregular in furnishing such intimation. Hence, the FC(R) Amendment Act was passed in 1985 to effectively monitor the receipt of foreign contribution. Under this Act,
  - Provisions were introduced for **Registration** of non-profit organisations for receipt of foreign contribution or obtaining **Prior Permission** for organisations that were not registered.
  - The definition of Foreign Contribution was expanded to include donations received from other organisation out of the foreign contribution received by that organisation.

# IMPLICATIONS OF THE FC(R) ACT ON NON-PROFIT ORGANISATIONS

- In the year 2010, the provisions of the FC(R) Act, 1976 and the FC(R) Amendment Act, 1985, were repealed.
- An altogether new Foreign Contribution (Regulation) Act, 2010 was introduced with the objective of
  - consolidating the law to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain individuals or associations or companies, and
  - Prohibiting the 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.
- This Act introduced the concept of **Renewal of FCRA Registration after every 5 years.**
- It also introduced the limitation on utilisation of foreign contribution for administrative purposes to a maximum of 50% of such contribution.
- Further, it **prohibited the transfer** of any amount received as foreign contribution **to any person who is not registered** thereunder



# AMENDMENTS INTRODUCED BY THE 2020 ACT

The Foreign Contribution (Regulation) Amendment Act, 2020 has introduced certain crucial changes in the functioning and administration of activities under this Act.

We will understand the important changes vis-à-vis the existing 2010 Act.

# PROHIBITION ON CERTAIN PERSONS FOR ACCEPTING FOREIGN CONTRIBUTION

## Existing Provisions

- The 2010 Act prohibited persons such as electoral candidates, political parties, members of Parliament and Legislature, judges, government servants and correspondents, columnists and cartoonists of newspapers and broadcasting channels from receiving foreign contribution.

## Amended Provisions

- Prohibited persons have been extended to include all “public servants”, i.e. every person, officer or arbitrator performing any duty under the Central or State Governments.
- It also prohibits employees of Government companies or corporations from accepting such contribution.

# POWER OF INQUIRY ON RENEWAL OF REGISTRATION

## Existing Provisions

- The process of renewal of registration was essentially a procedural activity.
- Registration was renewed on the basis of past records and periodical returns.

## Amended Provisions

- The Central Government now has the power to conduct fresh inquiry at the time of renewal of registration.



# PROHIBITION ON TRANSFER OF FOREIGN CONTRIBUTION

## Existing Provisions

- A registered person receiving foreign contribution can transfer the same to any other entity that is registered under the Act or has obtained prior permission.

## Amended Provisions

- The transfer of any foreign contribution has been completely prohibited.
- Hence, the recipient has to either utilise the contribution by itself or return it to the donor.

# RESTRICTION ON USE FOR ADMINISTRATIVE PURPOSES

## Existing Provisions

- The existing Act has restricted the use of foreign contribution for administrative purposes to 50% of the contribution received.

## Amended Provisions

- The use of foreign contribution for administrative purposes is restricted to 20% of the contribution received during the financial year.

# POWER TO CEASE THE RECEIPT OR UTILISATION OF FOREIGN CONTRIBUTION

## Existing Provisions

- The Central Government has the power to stop a person having prior permission from receiving or utilising foreign contribution, if it is found guilty of contravening the provisions of this Act.

## Amended Provisions

- The Central Government now has the power to stop a person from receiving and utilising the contribution even on the basis of any information, after conducting a summary inquiry; even if not yet proven guilty.

# AMENDMENTS IN REGISTRATION REQUIREMENTS

Every person applying for registration, prior permission or renewal of registration shall be required to provide **Aadhaar Number** of all office bearers or a copy of passport or OCI card, in case of a non-resident.

Every person applying for registration under the Act shall be required to open a bank account with a scheduled bank in the prescribed manner.

# DURATION OF SUSPENSION OF CERTIFICATE

## Existing Provisions

- The Central Government has the power to suspend the registration certificate for a period of 180 days.
- No foreign contribution can be received or utilised during this period.

## Amended Provisions

- The Central Government now has the power to suspend the certificate for a further period of 180 days, i.e. 180 + 180 = 360 days, for reasons to be recorded in writing, in certain cases.

# SURRENDER OF CERTIFICATE OF REGISTRATION

The amended Act has introduced a new provision, whereby, a registered person can make an application for surrender of registration certificate.

On an application for surrender, if the Central Government is satisfied that the person/entity has not contravened any provisions of the Act, it may allow the surrender of the certificate.

Upon surrender, the management and custody of the assets created out of such contribution shall be vested in such authority as may be prescribed.

# OPENING OF AN ACCOUNT WITH A SCHEDULED BANK FOR RECEIPT AND UTILISATION OF FOREIGN CONTRIBUTION

Every person who has been granted registration or prior permission shall receive foreign contribution only in the designated FCRA Account.

Such account shall be opened only with the State Bank of India, New Delhi Main Branch, on or before 31<sup>st</sup> March 2021.

The registered person may have one or more accounts with other scheduled banks for keeping and utilising such foreign contribution.

# RENEWAL OF FC(R)A REGISTRATION – 2020-21

- All existing FCRA Registrations were last renewed in the year 2016. The next renewal will be due in October 2021.
- To avoid last-minute rush, the FCRA Wing has **opened the renewal window from 21-10-2020**, i.e. 1 year before the date of expiry.
- Documents required for filing renewal applications:
  - Certificate of Registration under Bombay Public Trusts Act or Societies Act; 12AA Certificate and FCRA Certificates
  - Details of existing FC bank accounts
  - Copy of Trust Deed
  - Aadhaar Card and PAN Card of all trustees
  - A Notarised Affidavit in the prescribed format, bearing a stamp of Rs. 50.
  - Resolution of the Trust on letter head of the Trust for renewal of FCRA registration, signed by all the existing trustees
  - Signature of the Chief Functionary and Seal of the Association on a blank page



# RENEWAL OF FC(R)A REGISTRATION – 2020-21

## Format of Resolution – To be signed by all the existing trustees

- <<Name of Trust>>, a trust registered in Gujarat under the Gujarat Public Trusts Act, 1950 (Bom. XXIX of 1950) and having its address at <<Address of Registered Office with PIN Code>>, unanimously resolves as follows:
- Resolved that, <<Name of Chief Functionary>> s/o <<Father's Name>>, the Chief Functionary of the Trust, is hereby authorized to do all acts, deeds, matters and things as deemed necessary, proper or desirable and to sign and execute all necessary documents, application and returns, along with filling necessary forms for registration under the Foreign Contribution (Regulation) Act, 2010 and to appear before government authorities.
- Further resolved that <<Name of Chief Functionary>> s/o <<Father's Name>>, the Chief Functionary of the Trust, is hereby authorized to submit the said resolution to the concerned department.

# RENEWAL OF FC(R)A REGISTRATION – 2020-21

## Format of Notarised Affidavit – To be executed by the Chief Functionary and each Trustee on Stamped Paper of Rs. 50

- I, <<Name>>, s/o <<Father's Name>>, the <<Designation>>, Resident of <<Address of Trustee with PIN Code>>, having Aadhar Number <<Aadhaar Number>> as the identity proof, do hereby solemnly affirm that I am the <<Designation>> of <<Name of Trust>> having its registered office at <<Address of Registered Office with PIN Code>>.
- I have read and understood the provisions of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) and confirm that all the conditions as stipulated in sub-section (4) of section 12 of the said Act are fulfilled.
- I also undertake to report to the Secretary to the Government of India, Ministry of Home Affairs, Foreigners Division (Foreign Contribution Regulation Act Wing) about any violation of the provisions of sub-section (4) of section 12 of the Foreign Contribution (Regulation) Act, 2010 by the Applicant organisation or any of its members or office bearers or key functionaries that come to my knowledge.
- I also understand that submission of any false or misleading information shall be punishable under the applicable law.

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