

De Jure

October 8, 2020

Key Insights on the FCRA Amendment ACT, 2020



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Foreign contribution in India is regulated and monitored by the Government of India under the provisions of the Foreign Contribution Regulation Act, 2010 (the "**FCRA Act 2010**"). The FCRA Act 2010 provides for the manner in which foreign contribution or foreign hospitality are permitted to be accepted and utilised by individuals, associations and companies in India. To prevent misuse of funds, strengthen national security and compliance mechanism, enhance transparency and accountability in the hands of the recipient of the foreign contribution, the Government felt the need to make certain amends to the FCRA Act 2010. The Government of India thereafter introduced the Foreign Contribution (Regulation) Amendment Bill, 2020 that ("**FCRA Bill**") which received the assent of the Rajya Sabha on September 21, 2020 and of the Lok Sabha on September 23, 2020 raising concerns among the non-government organisations receiving foreign contribution in India. This FCRA Bill thereafter received the assent of the Presidents on September 28, 2020 notifying the effectiveness of the Foreign Contribution Regulation Amendment Act, 2020 ("**FCRA Amendment Act**") from September 29, 2020.

We set out below a tabular representation of the key highlights of the changes made pursuant to the FCRA Amendment Act:

Section/ Regulation	FCRA Act, 2010	Changes pursuant to FCRA Amendment Act
1. Restriction on acceptance of foreign contribution		
Substitution of Section 3	As per Section 3(1)(c) of the FCRA Act 2010, <i>"(1) No foreign contribution shall be accepted by any—</i>	Revised Section 3(1)(c) pursuant to FCRA Amendment Act, <i>"(1) No foreign contribution shall be accepted by any—</i>

Section/ Regulation	FCRA Act, 2010	Changes pursuant to FCRA Amendment Act
	<p><i>(c) Judge, Government servant or employee of any corporation or any other body controlled or owned by the Government;"</i></p> <p>RA Insight: Under the FCRA Act 2010 certain persons like election candidates, editor or publisher of a newspaper, judges, government servants, members of any legislature, and political parties, among others are prohibited to accept any foreign contribution. The FCRA Amendment Act amends to include public servants (as defined under Section 21 of the Indian Penal Code) as an exclusion for acceptance of foreign contribution.</p>	<p><i>(c) public servant, Judge, Government servant or employee of any corporation or any other body controlled or owned by the Government;"</i></p>
<p>2. Transfer of foreign contribution</p>		
<p>Substitution of Section 7</p>	<p>As per Section 7 of the FCRA Act 2010,</p> <p><i>"No person who—</i></p> <p><i>(a) is registered and granted a certificate or has obtained prior permission under this Act; and</i></p> <p><i>(b) receives any foreign contribution, shall transfer such foreign contribution to any other person unless such other person is also registered and had been granted the certificate or obtained the prior permission under this Act:</i></p> <p><i>Provided that such person may transfer, with the prior approval of the Central Government, a part of such foreign contribution to any other person who has not been granted a certificate or</i></p>	<p>Revised Section 7 pursuant to FCRA Amendment Act,</p> <p><i>"No person who—</i></p> <p><i>(a) is registered and granted a certificate or has obtained prior permission under this Act; and</i></p> <p><i>(b) receives any foreign contribution,</i></p> <p><i>shall transfer such foreign contribution to any other person."</i></p>

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	<i>obtained permission under this Act in accordance with the rules made by the Central Government."</i>	
	<p>RA Insight: Under the FCRA Act 2010, a person who has received foreign contribution cannot transfer to any other person unless such person is also registered to accept a foreign contribution or has obtained prior permission from the Central Government to obtain foreign contribution. The FCRA Amendment Act amends this to restrict the transfer of foreign contribution to any other person irrespective of whether the intended transferee (whether Indian or foreign national) is registered under the FCRA Act 2010 or has sought prior permission from the Central Government. The term 'person' under the FCRA Act 2010 includes an individual, an association, or a registered company. Pursuant to the said amendment, the Government has restricted NGOs from acting as intermediary partners through whom foreign contribution is received and later transferred to smaller NGOs for social projects. This amendment may not only have severe implications for NGOs who largely depend upon sub granting from other NGOs but also widely impact the current contracts pursuant to which the later has received foreign funds for sub-granting.</p>	
<p>3. Reduction in prescribed limit for administrative expenditure</p>		
Amendment of Section 8	As per Section 8 of the FCRA Act 2010, the prescribed limit for utilisation of administrative expenses as provided under Rule 5 of the FCRA Rules, 2011 is 'fifty percent (50%)'.	Revised limit – twenty percent (20%)
	<p>RA Insight: Reduction in the cap from 50% to 20% for administrative expenditure may pose as a challenge to many non-government organisation as the term 'administrative expenses' under Rule 5 of the FCRA Rules, 2011 is a laundry list which includes payment of salaries, wages of members of executive committee, cost of accounting, cost of writing and filings reports. Although certain large-scale NGOs having sizable workforce</p>	

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	<p>may face challenges, the said amendment was much required from the prospective of capping unnecessary administrative expenditure, thereby ensuring that the funds forming part of foreign contribution are utilised for the objective for which they were primarily received.</p>	
<p>4. Restriction in utilisation of foreign contribution</p>		
<p>Substitution in proviso to Section 11 (2)</p>	<p>As per the proviso to Section 11(2), <i>"Provided that if the person referred to in sub-sections (1) and (2) has been found guilty"</i></p>	<p>Revised proviso to Section 11(2), <i>"Provided that the Central Government, on the basis of any information or report, and after holding a summary inquiry, has reason to believe that a person who has been granted prior permission has contravened any of the provisions of this Act, it may, pending any further inquiry, direct that such person shall not utilise the unutilised foreign contribution or receive the remaining portion of foreign contribution which has not been received or, as the case may be, any additional foreign contribution, without prior approval of the Central Government:</i> <i>Provided further that if the person referred to in sub-section (1) or in this sub-section has been found guilty"</i></p>
<p>RA Insight: The FCRA Amendment Act provides that the Government may also restrict usage of unutilised foreign contribution for persons who have been granted prior permission to receive such contribution, based on a summary inquiry, and pending any further inquiry, if the Government believes that such person has</p>		

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		<p>contravened provisions of the Act. The FCRA Amendment Act presently does not provide how the Government would be dealing with such unutilised foreign contribution in the event the Person has been proven guilty where the Person has already committed utilisation for a particular activity. We believe the rules pursuant to the said amendment would bring in clarity in relation to such mechanism.</p>
5. Requirement of Aadhaar		
Insertion of new Section 12A	--	<p>The FCRA Amendment Act has incorporated an additional compliance that any person seeking prior permission, registration or renewal of registration must provide Aadhaar number of all its office bearers, directors or key functionaries, as an identification document or a copy of the passport or the Overseas Citizen of India card for identification in case of a foreigner</p>
6. Suspension of Registration		
Amendment of Section 13	Current period: one hundred and eighty (180) days	Revised period: additional one hundred and eighty (180) days
7. Surrender of Certificate		
Insertion of new Section 14A	--	<p>The FCRA Amendment Act has inserted a new provision allowing that on a request being made, the central Government may permit to a person to surrender their registration certificate. The central Government may grant such permission if, post an inquiry, it is satisfied</p>

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		that such person has not contravened any provisions of the Act, and the management of its foreign contribution and assets if any, created out of such contribution has been vested in an authority prescribed by the Government.
8. FCRA Account		
Substitution of new Section 17	--	The FCRA Amendment Act provides that foreign contribution must be received only in an account designated by the bank as "FCRA account" in such branch of the State Bank of India, New Delhi, as notified by the central Government. Other than the foreign contribution, no other funds should be received or deposited in this account.
	<p>RA Insight: In order to bring about greater governance and transparency for the receipt and utilisation of foreign contribution in India, the Government introduced the new Section 17. With centralising the inflow of funds that may be classified as a 'foreign contribution' under the FCRA Act 2010 in to a designated bank account in a State Bank of India branch in the state of Delhi only, the Government would be in a position to monitor the movement of funds. Even though the centralisation of funds may be considered as a welcoming move, the same may have to be relooked based on several ground level challenges such as practical difficulty to open bank account in a particular state (Delhi) in the event the recipient of foreign contribution belongs to other states (say Maharashtra).</p>	

CONCLUSION

With the FCRA Amendment Act now being effective, we hope that the Government of India may soon bring in the amended FCRA Rules to address observations highlighted by the industry to tackle zero level difficulties in implementation of the FCRA Amendment Act.

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