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## **FCRA- FOREIGN CONTRIBUTION REGULATION ACT, 2010**

Foreign Contribution Regulation Act, 2010 is an act which regulates the flow of foreign contribution or foreign hospitality in India. There are many persons as per Section 3 of the FCRA, 2010 Act which prohibits from accepting Foreign Contribution or Foreign Hospitality.

In this note, we have covered all the details and definitions regarding the FCRA, 2010. It contains-

- About FCRA, 2010
- Applicability of the Registration;
- Permission or Registration under FCRA;
- Returns under FCRA

## **About FCRA, 2010**

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### **What is FCRA, 2010?**

FCRA, 2010 has been enacted by the Parliament to consolidate the law to regulate the acceptance and utilization of foreign contribution or foreign hospitality by certain individuals or associations or companies and to prohibit acceptance and utilization of foreign contribution or foreign hospitality for any activities detrimental to national interest and for matters connected therewith or incidental thereto.

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### **What is Foreign Contribution?**

A donation, delivery or transfer of any article\*, currency or security as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 and includes any foreign security as defined in clause (o) of Section 2 of the Foreign Exchange Management Act, 1999 by any foreign source or any person who has received it from any foreign source, either directly or through one or more persons, shall also be deemed to be foreign contribution.

\*Article includes everything other than the gift for personal use, if the market value of the gift in



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India on the date of such gift is not more than the value prescribed by CG time to time (As per Foreign Contribution (Regulation) Amendment Rules, 2012 [G.S.R. 292 (E) dated 12th April, 2012] market value in India on the date of such gift does not exceed rupees twenty-five thousand).

The interest accrued on the foreign contribution deposited in bank or any other income derived from the foreign contribution or interest thereon shall also be deemed to be foreign contribution.

Exclude:-

Any amount received, by any person from any foreign source in India,

- by way of fee (including fees charged by an educational institution in India from foreign student) or
- towards cost in lieu of goods or services rendered by such person in the ordinary course of his business, trade or commerce whether within India or outside India or
- any contribution received from an agent or a foreign source towards such fee or cost.

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### **Who can receive Foreign Contribution?**

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Any "Person" can receive foreign contribution.

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### **Meaning of Person**

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"person" includes –

- (i) an individual;
- (ii) a Hindu undivided family;
- (iii) an association;
- (iv) a company registered under Section 25 of the Companies Act, 1956 (now Section 8 of Companies Act, 2013).

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### **Conditions for Foreign Contribution**

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- a) It must have a definite cultural, economic, educational, religious or social program.
- b) It must obtain the FCRA registration / prior permission from the Central Government
- c) It must not be prohibited under Section 3 of FCRA, 2010 which specify the prohibitions on receipt of Foreign Contribution.

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### **Who cannot Receive Foreign Contribution?**

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As defined in Section 3(1) of FCRA, 2010, the following are prohibited to receive foreign contribution:

- (a) candidate for election;
- (b) correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper;
- (c) Judge, Government servant or employee of any corporation or any other body controlled or owned by the Government;
- (d) member of any legislature;
- (e) political party or office bearer thereof;
- (f) Organization of a political nature as may be specified under sub-section (1) of Section 5 by the Central Government.



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- (g) association or company engaged in the production or broadcast of audio news or audio visual news or current affairs program through any electronic mode, or any other electronic form as defined in clause (r) of sub-section (1) of Section 2 of the Information Technology Act, 2000 ["electronic form" with reference to information, means any information generated, sent, received or stored in media, magnetic, optical, computer memory, micro film, computer generated micro fiche or similar device] or any other mode of mass communication;
- (h) Correspondent or columnist, cartoonist, editor, owner of the association or company referred to in point (g).

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### **Exemptions given from Section 3 of the FCRA, 2010**

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Nothing contained in section 3 shall apply to the acceptance, by any person specified in that section, of any foreign contribution where such contribution is accepted by him, subject to the provisions of section 10 —

- (a) by way of salary, wages or other remuneration due to him or to any group of persons working under him, from any foreign source or by way of payment in the ordinary course of business transacted in India by such foreign source; or
- (b) by way of payment, in the course of international trade or commerce, or in the ordinary course of business transacted by him outside India; or
- (c) as an agent of a foreign source in relation to any transaction made by such foreign source with the Central Government or State Government; or
- (d) by way of a gift or presentation made to him as a member of any Indian delegation, provided that such gift or present was accepted in accordance with the rules made by the Central Government with regard to the acceptance or retention of such gift or presentation; or
- (e) from his relative; or
- (f) by way of remittance received, in the ordinary course of business through any official channel, post office, or any authorised person in foreign exchange under the Foreign Exchange Management Act, 1999 (42 of 1999); or
- (g) by way of any scholarship, stipend or any payment of like nature.

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### **What is Foreign Source?**

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Foreign source, as defined in Section 2(1) (j) of FCRA, 2010 includes:-

- (i) the Government of any foreign country or territory and any agency of such Government;
- (ii) any international agency, not being the United Nations or any of its specialized agencies, the World Bank, International Monetary Fund or such other agency as the Central Government may, by notification, specify in this behalf;
- (iii) a foreign company;
- (iv) a corporation, not being a foreign company, incorporated in a foreign country or territory;
- (v) a multi-national corporation referred to in sub-clause (iv) of clause (g) of Sub-Section (1) of Section 2 of FCRA, 2010;
- (vi) a company within the meaning of the Companies Act, 1956 (Companies Act, 2013), and 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:-



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- a. the Government of a foreign country or territory;
  - b. the citizens of a foreign country or territory;
  - c. corporations incorporated in a foreign country or territory;
  - d. trusts, societies or other associations of individuals (whether incorporated or not), formed or registered in a foreign country or territory;
  - e. foreign company;
- (vii) a trade union in any foreign country or territory, whether or not registered in such foreign country or territory;
- (viii) a foreign trust or a foreign foundation, by whatever name called, or such trust or foundation mainly financed by a foreign country or territory;
- (ix) a society, club or other association or individuals formed or registered outside India;
- (x) a citizen of a foreign country.

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### **What is Foreign Hospitality?**

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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 cost of travel to any foreign country or territory or with free boarding, lodging, transport or medical treatment.

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## **Applicability**

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Any Person individual, Hindu Undivided Family, Association and Section 8 Company received foreign contribution for cultural, economic, educational, religious or social program purpose but not prohibited as per Section 3 of the FCRA, 2010 is required to obtained Registration under FCRA, 2010.

## **Permission or Registration under FCRA**

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There are two modes of obtaining permission to accept foreign contribution according to FCRA, 2010:

- i. Registration
- ii. Prior Permission

**REGISTRATION (FC-3A)**

**Fees:- INR 5,000/-**

For Registration there are pre-conditions, such as:-

1. An Association should be registered under any Act.
2. Association should be in existence for past 3 years;
3. Expenditure for or Amount spend in last past 3 years should not be less than 10 lacs.



4. It should not be prohibited under section 3 of FCRA, 2010.
5. No order should be passed against Association under Section 10 of the FCRA, 2010
6. Key Functionary should not be involved in any default and
7. In case is the Key Functionary is a current key functionary of any other association against whom an order under section 13 or 14 has passed, full details of order are required.
8. Details of all past Foreign Contribution should be maintained by Associate.
9. Consider Section 12(4) of the FCRA Act, 2010.
10. Atleast 3 committee members are required for FCRA Registration.

Please note that this is not checklist for required documents/information for obtaining Registration, it is just pre-conditions that is required to be taken into consideration before proceeding.

If on receipt of an application for grant of certificate or giving prior permission and after making such inquiry as the Central Government deems fit, it is of the opinion that the conditions specified in Section 12(4) of FCRA, 2010 are satisfied, it may, ordinarily within ninety days from the date of receipt of application register such person and grant him a certificate or give him prior permission, as the case may be, subject to such terms and conditions as may be prescribed.

#### PRIOR PERMISSION (FC-3B)

Fees: INR 3,000/-

For Prior Permission there are pre-conditions, such as:-

1. An Association should be registered under any Act.
2. Association should be in existence for past 3 years, if receiving contribution more than 50 Lacs.
3. Expenditure by the in past 3 years should not be less than 10 lacs.
4. It should not be prohibited under section 3 of FCRA,2010.
5. No order should be passed against Association under Section 10 of the FCRA, 2010
6. Key Functionary should not be involved in any default and
7. In case is the Key Functionary is a current key functionary of any other association against whom an order under section 13 or 14 has passed, full details of order are required.
8. Details of all past Foreign Contribution should be maintained by Associate.
9. Consider Section 12(4) of the FCRA Act, 2010.
10. Atleast 2 committee members are required for FCRA Registration.
11. Project Report is required to be draft before applying for Prior Permission.
12. Details of Donor along with amount of Contribution are required.

Please note that this is not checklist for required documents/information for seeking Prior Permission, it is just pre-conditions that is required to be taken into consideration before proceeding.



If on receipt of an application for grant of certificate or giving prior permission and after making such inquiry as the Central Government deems fit, it is of the opinion that the conditions specified in Section 121(4) of FCRA, 2010 are satisfied, it may, ordinarily within ninety days from the date of receipt of application register such person and grant him a certificate or give him prior permission, as the case may be, subject to such terms and conditions as may be prescribed.

#### APPLICATION FOR INTIMATION TO THE CENTRAL GOVERNMENT OF RECEIPT OF FOREIGN CONTRIBUTION (FC-1)

Any person receive foreign contribution in excess of 1 lacs or equivalent thereto in a financial year from any of the relatives shall inform the Central Government in Form FC-1 within 30 days from date of receipt of contribution.

Form FC-1 is required to be filed in the following cases:-

1. Online Filing for giving Intimation of receipt of foreign contribution by way of gift\* from relative by an individual; or
2. Online Filing for giving Intimation about Foreign Contribution by way of (Articles) from relative by an individual; or
3. Online Filing for giving Intimation about Foreign Contribution by way of (Securities); or
4. Online Filing for giving intimation to the Central Government of Receipt of Foreign Contribution received by a candidate for Election. [Although it is prohibited under Section 3 of FCRA,2010 to receive Foreign Contribution from Foreign Source but as per Section 21 of the Foreign Contribution (Regulation) Act, 2010 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, within such time and in such manner as may be prescribed, an intimation to the Central Government or prescribed authority or both as to the amount of foreign contribution received by him, the source from which, and the manner in which, such foreign contribution was received and the purposes for which and the manner in which such foreign contribution was utilised by him.]

\*In case of gift received to member of Indian Delegate from foreign source having market value of more than INR 5,000/- or received more than one gift having value more than INR 15,000/- has to submit the gift with the Ministry of Home Affairs.

Also, the Recipient has to furnish few details as per Foreign Contribution (Acceptance or Retention of Gifts or Presentations) Rules, 2012 within 30 days from date of receipt of gift or present to member of Indian Delegate.

#### Application for FCRA Hospitality (FC-2)

Any person belonging to any of the Categories specified in Section 6 of the FCRA, 2010 who wishes to avail of foreign Hospitality shall apply to the Central Government in Form FC-2 for prior Permission to accept such foreign hospitality.



For foreign hospitality availed in case of emergent medical aid situation, intimation to be given on plain paper to the Secretary, Ministry of Home Affairs in Form FC-2, within one month of such receipt of foreign hospitality.

As per Section 6 of FCRA, 2010 meaning of person are:-

- 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,

while visiting any country or territory outside India.

## Returns and Reporting under FCRA

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### **Reporting by Bank (If Certificate is not received on date of receipt of remittance):-**

Every Bank shall send a report to Central Government within 30 days of any transaction in respect of receipt of foreign contribution by any person who is required to obtain a certificate of registration or prior permission under the FCRA, 2010 but was not granted such certificate or prior permission as on the date of receipt of such remittance.

### **Annual Return :-**

Every person who receives foreign contribution under FCRA, 2010 shall submit a report in Form FC-4, accompanied with following documents every Financial Year within 9 months of closure of Financial Year :-

1. Duly signed and seal Chartered Accountant Certificate (with CA registration number);
2. Declaration Certificate of Chief Functionary (Chairperson/ President/ Secretary/ CEO/ MD);
3. Audited Statement of Accounts (It should contain Payment Account, Income and Expenditure Statement, and Balance Sheet);
4. Statement of Account from Bank duly certified by officer of such bank.

A nil report shall be furnished even if no foreign contribution is received during a Financial Year.