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Foreign Contribution (Regulation) Amendment Act, 2020

The Foreign Contribution (Regulation) Amendment Bill, 2020 passed by the Parliament received assent of the President on 28 September, 2020, aims to amend the Foreign Contribution (Regulation) Act, 2010

Background:

The Foreign Contribution (Regulation) Act, 2010 ('**FCRA**) was enacted in 2010 to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain individuals or associations or companies and to prohibit acceptance and utilisation of foreign contribution or foreign hospitality for any activities detrimental to national interest and for matters connected therewith or incidental thereto.

During the period between 2011 and 2019, the Central Government under FCRA have cancelled certificates of registration of more than 20,000 recipient organisations, including non-governmental organisations, on account of misappropriation or mis-utilisation of foreign contribution.

Further, the Central Government keeping in view the above, and with the need to strengthen the FCRA Act and ensure transparency, introduced the Foreign Contribution Regulation (Amendment), Bill 2020 (the Bill). The Bill was passed by the Parliament and received assent of President on 28 September 2020 and is now enacted as the Foreign Contribution (Regulation) Amendment Act, 2020 ("FCR Amendment Act")

Additionally, Ministry of Home Affairs through its notification dated September 29, 2020 has appointed September 29, 2020 as the date on which the provisions of FCR Amendment Act, shall come into force.

Highlights of the FCR Amendment Act are summarised below:

Prohibition to accept foreign contribution:

The FCR Amendment Act proposes amendment in clause (c) of sub-section (1) of section 3 of the FCRA by including **"public servant as defined in Section 21 of the Indian Penal Code" and "corporation owned or controlled by the government and which includes the government company as defined in clause (45) of Section 2 of the Companies Act, 2013"** among the list of entities who would not be eligible to receive foreign contribution.

Prohibition on transfer of foreign contribution:

Section 7 of the existing FCRA provides that foreign contribution cannot be transferred to any other person unless such person is also registered to accept foreign contribution (or has obtained prior permission under the FCRA to obtain foreign contribution). The FCR Amendment Act proposes amendment by way of prohibiting any transfer of foreign contribution to any other person.

Reduction on use of foreign contribution for administrative purposes:

Under Section 8 of FCRA , every person, who is registered and granted a certificate or given prior permission under FCRA and receives any foreign contribution, are allowed to spend up to 50% of foreign funds received during the fiscal year on admin expenditure. The FCR Amendment Act proposes to reduce the said limit to 20%.

Restriction in utilisation of foreign contribution:

Under the FCRA, if a person accepting foreign contribution is found guilty of violating FCRA, the unutilised or unreceived foreign contribution may be utilised or received, only with the prior approval of the Central Government.

The FCR Amendment Act now proposes 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 the amended FCRA , 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.

Aadhaar for registration:

The FCR Amendment Act now proposes that for any organisation applying for registration, prior permission or renewal of FCRA registration shall be required to provide as identification document, the Aadhaar number 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 Passport or Overseas Citizen of India Card, in case of a foreigner.

Suspension of registration:

As per Section 13 of FCRA, the government may suspend the registration of an organisation which violates the provisions of FCRA for “such period not exceeding one hundred and eighty days as may be specified. The FCR Amendment Act proposes to amend this provision to “one hundred and eighty days, or such further period, not exceeding one hundred and eighty days, as may be specified”.

Voluntary Surrender of certificate:

At present there is no provision in FCRA which permits an organisation to voluntarily surrender its FCRA registration.

The FCR Amendment Act now proposes that on a request being made in this behalf by the organisation/ any person, the Central Government may permit any organisation to surrender the certificate granted under this Act, if, after making such inquiry as it deems fit, it is satisfied that such organisation has not contravened any of the provisions of FCRA, and the management of foreign contribution and asset, if any, created out of such contribution, has been vested in the competent authority.

Renewal of License:

Under the existing FCRA, every person who has been given a certificate of registration, must renew the certificate within six months of expiration subject to submission of certain declaration on compliance of FCRA.

The FCR Amendment Act now proposes that the Central Government before renewing the certificate, can make such inquiry, as it deems fit, to satisfy itself that such organisation has fulfilled all conditions specified in the amended FCRA.

FCRA Account:

Under the existing FCRA, a registered person must accept foreign contribution only in a single branch of a scheduled bank specified by them. However, they may open more accounts in other banks for utilisation of the contribution.

The FCR Amendment Act now proposes that that every person who has been granted certificate or prior permission under FCRA, 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, as the Central Government may, by notification, specify. It has, however, allowed the organisation to transfer these funds from the above mentioned designated account to another FCRA account opened with any of the scheduled bank of their choice, for the purpose of keeping or utilising the foreign contribution or to any other account opened with any other scheduled bank of their choice for the purpose of utilising the foreign contribution.

Conclusion:

The FCR Amendment Act will streamline the provisions of the FCRA by strengthening the compliance mechanism, enhance transparency and accountability in the receipt and utilisation of foreign contribution and facilitate genuine non-governmental organisations or associations working for the welfare of the society.

However, reducing the cap on administrative expenses and restriction on transfer of foreign contribution may affect small non-profit organisations.

Source: Foreign Contribution (Regulation) Amendment Act, 2020 as notified by Government of India on 28 September 2020.
Ministry of Home Affairs through its notification dated September 29, 2020