

A STUDY ON FOREIGN CONTRIBUTION (REGULATION) ACT, 2010

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ABSTRACT

Globalization refers to the combination of economies of the world through uninhibited trade and monetary flows, as also via mutual change of technology & information. With the initiation of globalization, the witnessed has a huge surge of foreign direct investment (FDI) inflows for the duration of the beyond many years. A strong increase within the range of FDI initiatives in India is a clean indication that international investors view the country as an attractive funding destination. But this massive flow of funding has imposed massive pressure of responsibility at the authorities and Regulators.¹The foreign Contribution (regulation) Act, 2010 came into force impact from 1st of May 2011, the foreign Contribution (regulation) Act, 1976 stands repealed. As towards the 32 sections in the since repealed Act, the new foreign Contribution (regulation) Act, 2010 contains of 54 sections. The FC(R) Act, 2010, among others, has provided for broader applicability, consisting of people, Hindu Undivided family (HUF), affiliation and a section 25 company, and has eliminated inadequacies and sensible difficulties in management of the certain provisions of the earlier Act. The simple cause of Act is to consolidate the law to regulate the recognition and utilization of foreign contribution or foreign hospitality by some individuals or institutions or companies and to prohibit recognition and utilization of foreign contribution or foreign hospitality for any activities adverse to the national interest and for subjects linked therewith or incidental thereto.

This article is aimed toward improving the understanding profile on the numerous components of the provisions and amendments inside the Act. This is a small manual to the Act to facilitate the contributors and others interested to better admire the regulations and covenants of the foreign Contribution (regulation) Act 2010. So it categories into four different parts where the first part is the introduction, in addition second part is considering on its Silent features then after the third

part is a brief summary on its history and some amendments and last part is the conclusion of this entire article.

Key words- Foreign Contribution (Regulation) Act 2010, FCRA, and Foreign direct investment

INTRODUCTION

²Foreign contribution as defined in Section 2(1)(h) of Foreign Contribution Regulation Act, 2010- “Foreign Contribution” means that any foreign source delivers, transfer or contribute any assets or donation-

1. 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 by the rules made by it in this behalf.
2. of any currency, whether Indian or foreign;
3. of any 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.

A donation, delivery or transfer of any article, forex or foreign safety cited in this clause through any individual who has obtained it from any foreign source, both at once or via one or more individual, shall additionally be deemed to be foreign contribution with the meaning of this clause.

It can also be figure out that the interest gathered at the foreign contribution deposited in any bank noted in sub-section ³(1) of Section 17 or any other earnings derived from the foreign contribution or interest thereon shall also be deemed to be foreign contribution. AndAny amount received, by using any individual from any foreign source in India, with the aid of manner of fee (which include fees charged by using an educational group in India from foreign students) or

²https://fcraonline.nic.in/home/PDF_Doc/FC-RegulationAct-2010-C.pdf

³<https://www.lexology.com/library/detail.aspx?g=f86ace93-2a47-4ed0-a88a-d54912e1c0e0>

toward price in lieu of goods or services rendered by such person within the everyday path of his business, alternate or trade whether inside India or outside India or any contribution acquired from an agent or a foreign supply toward such fee or cost shall be excluded from the definition of foreign contribution.

Here “Person” refers to-

- An individual
- A Joint Hindi family
- An association and
- A company that registered under section 8 of Companies Act, 2013

The Foreign Contribution (Regulation) Act, 2010 is an Act that 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.

Any “individual” can get hold of foreign contribution on the basis of these to following situations:-

- a) It must have a definite cultural, financial, educational, religious or social programme.
- b) It must acquire the FCRA registration / prior permission from the central authorities
- c) It must no longer be prohibited under section 3 of FCRA, 2010.

And as described in section ⁴3(1) of FCRA, 2010, the following are prohibited to obtain foreign contribution:

1. Candidate for election;
2. Correspondent, columnist, cartoonist, editor, proprietor, printer or writer of a registered newspaper;

⁴https://fcraonline.nic.in/home/PDF_Doc/FC-RegulationAct-2010-C.pdf

3. Judge, government servant or worker of any organization or every other frame controlled or owned by way of the authorities;
4. Member of any legislature;
5. Political party or office bearer thereof;
6. Agency of a political nature as may be exact under sub-section (1) of section 5 via the central authorities.
7. Association or company engaged within the manufacturing or broadcast of audio information or audio visual news or current affairs programmes via any digital mode, or any other electronic form as described in clause (r) of sub-section (1) of section 2 of the information technology Act, 2000 or some other mode of mass communication;
8. Correspondent or columnist, cartoonist, editor, proprietor of the affiliation or corporation referred to in point (7).
9. People or institutions who have been prohibited from receiving foreign contribution

The flow of foreign contribution to India is regulated under Foreign Contribution (Regulation) Act, 2010, Foreign Contribution (Regulation) Rules 2011 and other notification orders etc, issued there under from time to time.

BRILLOPEDIA

SILENT FEATURES OF FCRA, 2010

Here some silent features of FCRA, 2010 are as follow:-

1. A provision turned for the cancellation of registrations of NGOs if the home Ministry believes that the organization is political and no longer neutral.
2. The registration certificates granted to the NGOs under the 2010 act came with 5-year validity.
3. A provision became inserted mentioning that the assets of the person that has turn out to be defunct desires to be disposed of in a way said through the authorities.
4. A separate account needs to be maintained by means of the organizations to deposit the foreign Contributions received and no other funds besides for foreign Contributions shall be deposited in that account.

5. Every bank would be obligated to record to the prescribed authority, the amount of foreign remittances acquired and other associated info inclusive of the source, manner of receipt and so on.

HISTORY AND AMENDMENTS

⁵In 1984, the law became amended to make it obligatory for NGOs (non-profit organizations) to register earlier than receiving any foreign donations. They may also not switch that money to other NGOs (non-profits organization) who were now not registered under the Act. After the modifications added approximately with the aid of the 1984 amendments, the FCRA Act got here to be perceived as a law focusing on NGOs (non-profit organizations) with foreign contributions.

In 2010, the 1976 Act changed into repealed and replaced by means of foreign Contribution (regulation) Act, 2010 alongside the foreign Contribution (regulation) guidelines, 2011. The cause of the 2010 Act, as its preamble specifies, was to:

- Regulate the acceptance and utilization of “foreign contribution or foreign hospitality” via certain people or institutions or organizations.
- Prohibit such acceptance and utilization for any activities adverse to the national interest.

In 2018 the parliament permitted an amendment that changed the definition of the term “foreign source” and made foreign funding to political parties legal retrospectively.

CURRENT AMENDMENT IN FCRA

⁶The foreign Contribution (regulation) amendment bill, 2020 introduced in Lok Sabha on 20 September 2020 and after being passed by way of each houses of the parliament, it came into force on 29 September 2020. The amendment bill widely redefines terms associated with

⁵ <https://factly.in/the-history-of-fcra-and-the-trends-in-fcra-registration-cancellations/>

⁶ <https://prsindia.org/billtrack/the-foreign-contribution-regulation-amendment-bill-2020>

acceptance, transfer, and utilization of foreign contributions under the foreign Contribution (regulation) Act, 2010 and the terms are-

- ✓ Prohibition on accepting Foreign Contribution
- ✓ Aadhar for registration
- ✓ Transfer of Foreign Contribution
- ✓ Reduction on use of Foreign Contribution for administrative purposes
- ✓ Designated FCRA account
- ✓ Restriction in utilization of foreign contribution
- ✓ Suspension of registration
- ✓ Renewal of license
- ✓ Surrender of Certificate

THE OBJECTIVE OF THIS BILL

- To modify non-governmental organizations by using making them accountable and obvious.
- To regulate religious conversions supported through foreign finances.
- To develop the definition of the “authorities servant” category to consist of “public servants” some of the people who can't acquire foreign finances.

FOREIGN FUNDS AND NGOs

⁷There are 3 ways that an NGO ought to satisfy earlier than applying to be registered under the FCRA – it have to were in existence for at least three years, it must have executed significant work in its area, and it need to have spent at the least ₹10,00,000 in over the 3 years before placing its application. The registration certificate is legitimate for five years and ought to be renewed thereafter. But, other NGOs which can be yet not valid to be registered under FCRA may additionally request earlier approval to receive a foreign fund. The approval, if granted, is

⁷<https://ngosindia.com/>

legitimate till the fund is obtained and completely utilized. And all funds that an NGO gets should be used only for the objective for which they were acquired and they need to not be used for speculative activities as identified under the Act. aside from within the case of prior approval of the Authority, this sort of fund ought to not be given or transferred to any entity that is not registered under FCRA or does no longer have previous approval under the Act. Every asset bought with this fund ought to be in the name of the NGO to which the fund turned into granted and not its office bearers or members.

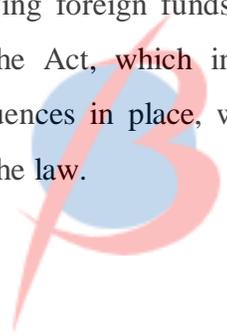
PURPOSE

The primary reason behind putting in of this Act is to mitigate the risk of money laundering, cut down the inflow and outflow of Black cash and financing for any illegal activities. There are numerous NGOs, that when being registered under this Act, do not submit their annual returns fastidiously. It's far for this reason that they generate cash for doubtful purposes which are held to be non-complying with the norms of this Act.

CONCLUSION

There are distinctive enactments under which NGOs are registered for different purposes. They're an entity with legal existence and have a regulatory framework under specific Acts. Additionally they face diverse complications in law. Studies have observed out that most of the people of NGOs do now not follow the rules and regulations established under exceptional enactments of various Acts. Even though the wide variety of NGOs is increasing every day, it's miles turning into greater difficult to govern their increase in an effective manner. Regulation of foreign contribution and foreign hospitality became essential for the sovereignty and integrity of India, political interest, freedom of election in any legislature, friendly relation with the foreign country, and concord among race, social, faith, or religious companies or communities.

For better understanding here is a case of association for Democratic Reforms and another v. Union of India and others, it was observed that the ⁸BJP and Congress received funds for violating the regulations under this Act. Giving preference only to the political element of the case may be very risky for the economic system at huge and the Supreme Court held that it is violation of Article 14 of the constitution. And also in case of RamkrishnaDalmia in 1958 it was held with the aid of the Supreme Court that any law made cannot be put to use as well as abuse. Like some other Act, FCRA also has both pros and cons but the government have to place emphasis most effective on the national agenda of the provisions within the Act. As in November 2019 it was stated that over 1,800 NGOs and educational institutes had been found to be in violation of legal guidelines referring to foreign investment. They were banned with the aid of the government from in addition receiving foreign funds for the year. This indicates that the authority is serious about enforcing the Act, which in itself is comforting. With greater awareness and perhaps placing consequences in place, we can similarly ensure that personal entities don't indulge in such misuse of the law.



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⁸ <https://www.rksassociate.com/foreign-contribution-regulation-act-an-analysis-of-law-as-it-is/>