

Foreign Contribution (Regulation) Amendment Act, 2020 *Path Breaker or Deal Breaker?*

Snapshot

The origins of the Foreign Contribution Regulation Act (FCRA) introduced in the year 1976, during the Emergency-era was with the primary objective to keep a check on foreign influence in the social, political, religious, and economic structure within India. The 1976 legislation was subsequently repealed in 2010 with introduction of Foreign Contribution (Regulation) Act, 2010 (FCRA, 2010) which was a more stringent law, requiring greater compliances and stricter regulations.

The 2020 amendments issued vide the Foreign Contribution (Regulation) Amendment Act, 2020, effective from September 29, 2020 are far more restrictive and regulatory in nature than the FCRA, 2010. These amendments have been introduced with the intent to restrict and control the use of foreign funds by organizations and entities as well as monitor the way such entities function.

A brief snapshot of the various amendments brought in by way of the Foreign Contribution (Regulation) Amendment Act, 2020 are being enumerated below.

Background

The Foreign Contribution (Regulation) Act in its original avatar, was enacted in the year 1976 as Foreign Contribution (Regulation) Act, 1976 ("FCRA, 1976") under the aegis of the Ministry of Home Affairs ("MHA"). The purpose of the Act was to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain persons or associations.

FCRA, 1976 ran the course till 2010 when it was replaced with the Foreign Contribution (Regulation) Act, 2010 ("FCRA, 2010"). This original FCRA, 1976 was substantially amended with the introduction of the FCRA, 2010 which was expanded in its scope, to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain individuals, Associations, Companies and to prohibit acceptance and utilisation of foreign contribution or foreign hospitality for any activities detrimental to the national interest. Thus, the FCRA 2010 not only extended the scope of Persons covered under the Act but also restricted the Activities that could be undertaken/conducted by such persons.

Rationale of FCRA Act, 2020

The Ministry of Home Affairs has introduced the Foreign Contribution (Regulation) Amendment Act, 2020 ("Amendment Act, 2020) with some stringent as well as restrictive provisions, not only to streamline the provisions of the Principal Act by strengthening the compliance mechanism but for enhancing transparency and accountability in the receipt and utilisation of foreign contributions. It also seeks to facilitate genuine non-Governmental organisations or associations who are working for the welfare of the society. The Amendment Act, 2020 has come into effect from *September 29, 2020*.

Key Highlights of FCRA Act, 2020

- **"Public Servant"**¹ included in the list of Persons prohibited from accepting foreign contributions, which earlier prohibited Judges, Government Servants or Employees of any Corporation or any other body controlled or owned by the Government [*Section 3*].
- **Prohibition on transfer of foreign contributions** from one FCRA registered organization to another FCRA registered organization, which was permitted under FCRA, 2010 provided both the entities / organizations were registered with MHA [*Section 7*].
- Utilization of foreign contributions towards **administrative expenses limited** to twenty percent (20%) of the total foreign contribution received against the earlier permitted limit of fifty percent (50%) [*Section 8*].
- In the eventuality of **"Summary Inquiry"** for determining contraventions under *"Prior*

Permission", the entity / organization shall not be permitted to utilize the contributions received nor be able to receive additional foreign contribution till the Inquiry concludes [*Section 11*].

- **Opening of FCRA Bank Account** has been made mandatory prior to applying for "Registration" or "Prior Permission". This amendment seems more of procedural nature since the online FCRA application mandatorily requires stating the FCRA bank account number [*Section 12*].
- **AADHAR Card has been made mandatory** for Trustees/Members of the Entity/Organization applying for FCRA registration/prior permission. For Foreign Nationals including NRI/OCI Trustees/Members, Passport/OCI card has to be mandatorily stated in the application form [*Section 12A*].
- Ministry of Home Affairs, Government of India has the powers to **suspend the certificate of registration for a period of 360 days** till the investigation is concluded. The earlier period of suspension was limited to 180 days [*Section 13*].
- An Entity/Organization can apply for **surrender of the FCRA registration "suo moto"**. There was no option for surrender but only cancellation on the instructions of MHA in the earlier provision [*Section 14A*].
- On the surrender / cancellation of the FCRA registration, the **assets of the Entity / Organization shall vest with the Bank** with which the entity has maintained the FCRA account. Thus, even in the case of surrender, the unutilized

¹Public Servant as defined in Section 21 of the Indian Penal Code (IPC)

portion of the foreign contribution shall not be permitted to be remitted back [Section 15].

- **Renewal Certificate shall be issued by the MHA subject to inquiry** / investigation post application for renewal. The earlier provisions only required the renewal application to be submitted 6 months prior to the date of expiry of the registration but did not state about inquiry prior to renewal [Section 16].
- The Primary **"FCRA Account"** to be opened with **State Bank of India, New Delhi Main Branch** at 11, Sansad Marg, New Delhi 110 001. Thereafter the foreign contributions can be transferred to any other designated FCRA account held with a

Bank/opened with a Bank as per the Scheduled Banks, listed by MHA. The earlier provisions permitted the registered entities / organizations to open a FCRA bank account with any of the Scheduled Banks prescribed by MHA and did not restrict it to a particular branch or bank [Section 17].

This document is prepared exclusively for the benefit and use of the clients of K. C. Mehta & Co. This should not be used as a substitute for professional advice. Reasonable care has been taken for ensuring the accuracy and the authenticity of the contents of this alert. However, we do not take any responsibility for any error or omission contained therein on any account. It is recommended that the readers should take professional advice before acting on the same.

For further analysis and discussion, you may please reach out to us.

Locations

Ahmedabad

Arpit Jain

Level 11, Tower B,
Ratnaakar Nine Square,
Vastrapur,
Ahmedabad - 380 015

Phone: + 91 79 4910 2200
arpit.jain@kcmehta.com

Bengaluru

Payal Shah

19/4, Between 7th & 8th Cross,
Malleswaram,
Bengaluru - 560 003

Phone: +91 80 2356 1880
payal.shah@kcmehta.com

Mumbai

Vishal Doshi

508, The Summit Business Bay,
Nr. WEH Metro Station,
Gundavali, Andheri East,
Mumbai - 400069

Phone: +91 22 2612 5834
vishal.doshi@kcmehta.com

Vadodara

Milin Mehta

Meghdhanush,
Race Course,
Vadodara - 390 007

Phone: +91 265 2440400
milin.mehta@kcmehta.com

Independent Member of

B K R
INTERNATIONAL