# REGULATORY UPDATE

## The Foreign Contribution (Regulation) Amendment Act, 2020

# Introduction of the Foreign Contribution (Regulation) Amendment Act, 2020

The Central Government has laid down certain essential amendments in the Foreign Contribution (Regulation) Act, 2010 with the introduction of the Foreign Contribution (Regulation) Amendment Act, 2020, which has come into force with effect from September 28, 2020.

Here, Foreign Contribution refers to the donation or transfer of any currency or security or any article by a foreign source, defined under the Act.

Introduction of this 3rd Amendment in the Foreign Contribution (Regulation) Act, 2010, primarily, attempts to streamline the provisions of the said Act by strengthening the compliance mechanism, enhancing transparency and accountability in the receipt and utilization of foreign contribution worth thousands of crores of rupees every year and more importantly, facilitating genuine non-Governmental organizations or associations who are working for the welfare of the society.

With immense increase in the inflow of foreign contribution during the last decade, it becomes all the more important to ensure that the contribution is received and utilized for the purpose for which the same is intended. In consideration of the very intent and essence of the Act, this amendment attempts to ensure the same in true spirit, all for a noble reason.

Certain key changes brought in the law governing foreign contribution are as follows:

## a) Prohibition to "Public servants" from receiving foreign contribution

The Government adds 'Public Servants' to the list of the persons prohibited from accepting Foreign Contribution, wherein the Public Servant means a public servant as defined in section 21 of the Indian Penal Code.

## b) No transfer of Foreign Contribution to any unregistered person in any cases

The Amendment strictly prohibits transfer of foreign contribution received by any registered person to any unregistered person in any scenario. Prior to enactment of this amendment, the same was doable with the approval of the Central Government. This is to ensure effective utilization of the contribution for the purpose for which it is received.

**c) Lowering of the cap on administrative expenses out of the foreign contributions to 20% from 50%.**

With a view to ensure that the foreign contributions received are utilized for the core purpose for which the same is received, the Government has reduced the limit of administrative expenses out of the foreign contributions to 20 percent.

**d) Widening of the Central Government powers while making inquiry on receipt of foreign contributions**

Now, the Government can prohibit a person from utilizing/receiving the foreign contribution if, it has a reason to believe that any of the provisions of the Act are in contravention, upon having summary inquiry, even if the further inquiry is pending and the prior permission has been granted in the matter.

Earlier, this power to intervene on further utilization/receiving of foreign contribution could be exercised after completion of the entire inquiry and upon finding the person guilty of violation of any of the provisions of this Act. This will certainly help taking timely action and saving the unutilized and/or unreceived funds for true purpose.

Separately, now, the Central Government can suspend the Certificate under the provisions of the Act for a further period of 180 days making it for a total period of 360 days, as compared to 180 days in earlier Act.

Further, the Central Government also reserves the right to make an inquiry at the time of renewal of the registration and or permission for foreign contribution.

**e) Contribution to be received in the Account in State Bank of India only**

The Amendment makes it mandatory for opening of FCRA bank account in State Bank of India, Delhi for receipt of any foreign contribution.

Once the contribution is received in the SBI account, the recipient can transfer the same into any other account of the recipient for its effective utilization and use and the other Bank could be any of the Scheduled Bank only.

Here, the Account where the contribution is to hit from the original source will be uniform i.e. State Bank of India. This will enable the Government to keep a better track on all the inflow of foreign contribution into the Country.

## f) Aadhaar is required for Registration

While applying for permission/approval for receiving contribution under the Act, the requirement of Aadhaar has been made mandatory for all the Office Bearers and Directors of all the Organizations (including NGOs) as identification under the Act. In case of foreign nationals, the requirement of a passport or overseas citizen of India card is mandatory. The same is applicable in case of renewal of permissions and approvals.

## g) Now the Registration Certificates availed can be surrendered by the Applicants on their request

The amendment provides for a provision governing surrender of Registration Certificates upon request to Central Government. Prior to this, only the concept of cancellation of certificate was there under the Act and that was possible only after holding an inquiry into violations and contraventions by the recipient.

## Comments:

All these amendments made in the Act intended are welcome changes made to fulfil the need of the hour and effective and timely use of the foreign contribution for the welfare of the society as a whole.