

# FOREIGN EXCHANGE MANAGEMENT [FOREIGN CONTRIBUTION (REGULATION) ACT, 2010] Section II

## LESSON OUTLINE

- Objective of FCRA
- Foreign contribution
- Foreign Source
- Foreign hospitality
- Regulation of foreign contribution and foreign hospitality
- Certificate of Registration
- Application for Renewal
- Renewal of Certificate
- Cancellation of Certificate
- Management of Foreign Contribution
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- Inspection
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- Adjudication
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## LEARNING OBJECTIVES

Foreign Contribution (Regulation) Act, 2010 is internal security legislation and regulated by Ministry of Home Affairs which prohibits certain classes of persons from receiving 'foreign contribution'. It also restricts certain classes of persons from accepting foreign hospitality while visiting any country or territory outside India, without the prior permission of the Central Government. The Act provides that persons having definite cultural, economic, educational, religious and social programmes should get themselves registered with the Government of India before accepting any 'foreign contribution'. "Foreign contribution" means the donation, delivery or transfer made by any foreign source 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; of any currency, whether Indian or foreign; any security as defined under Securities Contracts (Regulation) Act, 1956 and the Foreign Exchange Management Act, 1999.

The Act mandates that every bank or authorized person in foreign exchange shall report to specified authority, the prescribed amount of foreign remittance, source and manner in which foreign remittance was received and other particulars in such form and manner as may be prescribed. The object of the study is to familiarize the students with the legal requirements stipulated under the FCRA, 2010.

The object of the Foreign Contribution (Regulation) Act, 2010 is 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 the national interest and for matters connected therewith or incidental thereto.

## INTRODUCTION

The Foreign Contribution (Regulation) Act, 1976 was enacted to regulate the acceptance and utilization of foreign contribution or hospitality with a view to ensuring that the Parliamentary institutions, political associations, academic and other voluntary organizations as well as individuals working in important areas of national life may function in a manner consistent with the values of sovereign democratic republic. The Act was amended in 1984 to extend its provisions to cover second and subsequent recipients of foreign contribution and to the members of higher judiciary, besides introducing the system of grant of registration to the association receiving foreign contribution.

Significant developments have taken place since 1984 such as change in internal security scenario, an increased influence of voluntary organizations, spread of use of communication and information technology, quantum jump in the amount of foreign contribution being received, and large scale growth in the number of registered organizations. This has necessitated large scale changes in the Act of 1976 and therefore, it was thought appropriate to replace the FCRA, 1976 by a new legislation to regulate the acceptance and utilization of foreign contribution and foreign hospitality by a person or association.

The Foreign Contribution (Regulation) Act, 2010 has come into effect from May 1, 2011. The Ministry of Home Affairs has issued the necessary Gazette Notification vide S.O. 999 (E) dated the 29th April, 2011 in this regard. The Ministry of Home Affairs has also issued a Gazette Notification vide G.S.R. 349 (E) dated the 29th April, 2011 notifying the Foreign Contribution (Regulation) Rules, 2011 made under section 48 of FCRA, 2010. The FCR Rules, 2011 have come into force simultaneously with FCRA, 2010.

## DEFINITIONS

The definitions of the following terms used in the statute are relevant for understanding the operative provisions of the Foreign Contribution (Regulation) Act, 2010.

**“Association”** means an association of individuals, whether incorporated or not, having an office in India and includes a society, whether registered under the Societies Registration Act, 1860, or not, and any other organisation, by whatever name called [Section 2(1)(a)]

**“Authorised person in foreign exchange”** means an authorised person referred to in clause (c) of section 2 of the Foreign Exchange Management Act, 1999 [Section 2(1)(b)]

**“Bank”** means a banking company as referred to in clause (c) of section 5 of the Banking Regulation Act, 1949 [Section 2(1)(c)]

**“Candidate for election”** means a person who has been duly nominated as a candidate for election to any Legislature [Section 2(1)(d)]

**“Certificate”** means certificate of registration granted under sub-section (3) of section 12 [Section 2(1)(e)]

**“Company”** shall have the meaning assigned to it under clause (17) of section 2 of the Income-tax Act, 1961 Section 2(1)(f);

**“Foreign company”** means any company or association or body of individuals incorporated outside India and includes—

- (i) a foreign company within the meaning of section 591 of the Companies Act, 1956 (1 of 1956);

- (ii) a company which is a subsidiary of a foreign company;
- (iii) the registered office or principal place of business of a foreign company referred to in sub clause (i) or company referred to in sub-clause (ii);
- (iv) a multi-national corporation.

*Explanation.*— For the purposes of this sub-clause, a corporation incorporated in a foreign country or territory shall be deemed to be a multi-national corporation if such corporation, —

- (a) has a subsidiary or a branch or a place of business in two or more countries or territories; or
- (b) carries on business, or otherwise operates, in two or more countries or territories; [Section 2(1)(g)]

**“Foreign contribution”** means the donation, delivery or transfer made by any foreign source,—

- (i) 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;
- (ii) of any currency, whether Indian or foreign;
- (iii) 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.

*Explanation 1.*— A donation, delivery or transfer of any article, currency or foreign security referred to in this clause by 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 within the meaning of this clause.

*Explanation 2.*— The interest accrued on the foreign contribution deposited in any bank referred to in sub-section (1) of section 17 or any other income derived from the foreign contribution or interest thereon shall also be deemed to be foreign contribution within the meaning of this clause.

*Explanation 3.*— 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 of a foreign source towards such fee or cost shall be excluded from the definition of foreign contribution within the meaning of this clause [Section 2(1)(h)].

**“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 costs of travel to any foreign country or territory or with free boarding, lodging, transport or medical treatment [Section 2(1)(i)].

**“Foreign source”** 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 specialised 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;

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- (v) a multi-national corporation referred to in sub-clause (iv) of clause (g);
- (vi) a company within the meaning of the Companies Act, 1956 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:—
  - (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 of individuals formed or registered outside India;
- (x) a citizen of a foreign country[ Section 2(1)(j)]

**“Legislature”** means —

- (A) either House of Parliament;
- (B) the Legislative Assembly of a State, or in the case of a State having a Legislative Council, either House of the Legislature of that State;
- (C) Legislative Assembly of a Union territory constituted under the Government of Union Territories Act, 1963;
- (D) Legislative Assembly for the National Capital Territory of Delhi referred to in the Government of National Capital Territory of Delhi Act, 1991;
- (E) Municipality as defined in clause (e) of article 243P of the Constitution;
- (F) District Councils and Regional Councils in the States of Assam, Meghalaya, Tripura and Mizoram as provided in the Sixth Schedule to the Constitution[ Section 2(1)(k)]

**“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 [Section 2(1)(m)]

**“Political party”** means—

- (i) an association or body of individual citizens of India—
  - (A) to be registered with the Election Commission of India as a political party under section 29A of the Representation of the People Act, 1951; or

- (B) which has set up candidates for election to any Legislature, but is not so registered or deemed to be registered under the Election Symbols (Reservation and Allotment) Order, 1968;
- (ii) a political party mentioned in column 2 of Table 1 and Table 2 to the notification of the Election Commission of India No.56/J&K/02, dated the 8th August, 2002, as in force for the time being [Section 2(1)(n)]

It may be noted that Words and expressions used herein and not defined in this Act but defined in the Representation of the People Act, 1950 or the Representation of the People Act, 1951 or the Foreign Exchange Management Act, 1999 shall have the meanings respectively assigned to them in those Acts.

## **REGULATION OF FOREIGN CONTRIBUTION AND FOREIGN HOSPITALITY**

### **Prohibition to accept foreign contribution**

Section 3(1) of the Act, imposes restriction on acceptance of foreign contribution by candidate for election; correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper; Judge, Government servant or employee of any corporation or any other body controlled or owned by the Government; member of any Legislature; political party or office-bearer thereof; organisation of a political nature as may be specified by the Central Government; association or company engaged in the production or broadcast of audio news or audio visual news or current affairs programmes 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 or any other mode of mass communication; correspondent or columnist, cartoonist, editor, owner of the association or company. A "corporation" for the above purpose means a corporation owned or controlled by the Government and includes a Government company as defined in section 617 of the Companies Act, 1956.

Sub-section (2)(a) of Section 3 provides that no person, resident in India, and no citizen of India resident outside India, shall accept any foreign contribution, or acquire or agree to acquire any currency from a foreign source, on behalf of any political party, or any person, prohibited from accepting any foreign contribution.

Sub-section (2) (b) mandates that no person, resident in India, shall deliver any currency, whether Indian or foreign, which has been accepted from any foreign source, to any person if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to any political party or any person, prohibited from accepting any foreign contribution.

Section 3(2)(c) provides that no citizen of India resident outside India shall deliver any currency, whether Indian or foreign, which has been accepted from any foreign source, to any political party or any person specified in sub-section (1) of section 3, or both or any other person, if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to a political party or to any person specified in sub-section (1) of section 3, or both.

Section 3(3) provides that no person receiving any currency, whether Indian or foreign, from a foreign source on behalf of any person or class of persons, referred to in section 9, shall deliver such currency to any person other than a person for which it was received, or to any other person, if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to a person other than the person for which such currency was received.

### **Person to whom section 3 does not apply**

Section 4 provides that 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; or
- (g) by way of any scholarship, stipend or any payment of like nature:

Further in case any foreign contribution received by any person specified under section 3, for any of the purposes other than those specified under this section, such contribution shall be deemed to have been accepted in contravention of the provisions of section 3.

### **Procedure to notify an organization of a political nature**

Section 5(1) provides that the Central Government may, having regard to the activities of the organisation or the ideology propagated by the organisation or the programme of the organisation or the association of the organisations with the activities of any political party, by an order published in the Official Gazette, specify such organisation as an organisation of a political nature not being a political party, referred to in clause (f) of sub-section (1) of section 3. Further, the Central Government may, frame the guidelines specifying the ground or grounds on which an organisation shall be specified as an organisation of a political nature.

### **Restriction on acceptance of foreign hospitality**

Section 6 prohibits acceptance of foreign hospitality by certain persons except with the prior permission of Central Government. Accordingly no 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, accept, except with the prior permission of the Central Government, any foreign hospitality.

However, it shall not be necessary to obtain any such permission for an emergent medical aid needed on account of sudden illness contracted during a visit outside India, but, where such foreign hospitality has been received, the person receiving such hospitality shall give, within one month from the date of receipt of such hospitality an intimation to the Central Government as to the receipt of such hospitality, and the source from which, and the manner in which, such hospitality was received by him.

### Prohibition to transfer foreign contribution to other person

Section 7 prohibits the transfer of foreign contribution to other person. Accordingly, no person who is registered and granted a certificate or has obtained prior permission under the Act; and receives any foreign contribution, shall transfer such foreign contribution to any other person unless such other person is also registered and had been granted the certificate or obtained the prior permission under the Act.

However, such person may transfer, with the prior approval of the Central Government, a part of such foreign contribution to any other person who has not been granted a certificate or obtained permission under the Act in accordance with the rules made by the Central Government.

#### **Which are the organisations/individuals specifically debarred from receiving foreign contribution?**

*The following are the persons prohibited from accepting 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 entity controlled or owned by the Government;
- (d) Member of any Legislature;
- (e) Political party or office bearers thereof;
- (f) Organisations of a political nature as may be specified;
- (g) Associations or companies engaged in the production or broadcast of audio news or audiovisual news or current affairs programmes through any electronic mode or form or any other mode of mass communication;
- (h) Correspondent or columnist, cartoonist, editor, owner of the association or company referred to in (g) above.



### Utilization of foreign contribution

Section 8 (1)(a) provides that every person, who is registered and granted a certificate or given prior permission under the Act and receives any foreign contribution, shall utilise such contribution for the purposes for which the contribution has been received. Further any foreign contribution or any income arising out of it shall not be used for speculative business and that the Central Government shall, by rules, specify the activities or business which shall be construed as speculative business for the purpose of this section.

Section 8 (1) (b) provides that every person, who is registered and granted a certificate or given prior permission under this Act and receives any foreign contribution, shall not defray as far as possible such sum, not exceeding fifty per cent of such contribution, received in a financial year, to meet administrative expenses. Further administrative expenses exceeding fifty per cent of such contribution may be defrayed with prior approval of the Central Government.

The Central Government prescribes the elements which shall be included in the administrative expenses and the manner in which the administrative expenses shall be calculated.

### Power of Central Government to prohibit receipt of foreign contribution

Section 9 deals with power of Central Government to prohibit receipt of foreign contribution, etc., in certain cases. Accordingly, the Central Government has been empowered to -

- (a) prohibit any person or organisation not specified in section 3, from accepting any foreign contribution;
- (b) require any person or class of persons, not specified in section 6, to obtain prior permission of the Central Government before accepting any foreign hospitality;
- (c) require any person or class of persons not specified in section 11, to furnish intimation within such time and in such manner as may be prescribed as to the amount of any foreign contribution received by such person or class of persons as the case may be, and the source from which and the manner in which such contribution was received and the purpose for which and the manner in which such foreign contribution was utilised;
- (d) without prejudice to the provisions of sub-section (1) of section 11, require any person or class of persons specified in that sub-section to obtain prior permission of the Central Government before accepting any foreign contribution;
- (e) require any person or class of persons, not specified in section 6, to furnish intimation, within such time and in such manner as may be prescribed, as to the receipt of any foreign hospitality, the source from which and the manner in which such hospitality was received.

However, no such prohibition or requirement shall be made unless the Central Government is satisfied that the acceptance of foreign contribution by such person or class of persons, as the case may be, or the acceptance of foreign hospitality by such person, is likely to affect prejudicially the sovereignty and integrity of India; or public interest; or freedom or fairness of election to any Legislature; or friendly relations with any foreign State; or harmony between religious, racial, social, linguistic or regional groups, castes or communities.

### Power to prohibit payment of currency received in contravention of the Act

Section 10 provides that where the Central Government is satisfied, after making such inquiry as it may deem fit, that any person has in his custody or control any article or currency or security, whether Indian or foreign, which has been accepted by such person in contravention of any of the provisions of this Act, it may, by order in writing, prohibit such person from paying, delivering, transferring or otherwise dealing with, in any manner whatsoever, such article or currency or security save in accordance with the written orders of the Central Government and a copy of such order shall be served upon the person so prohibited in the prescribed manner.

#### **Who can receive foreign contribution?**

*An association having a definite cultural, economic, educational, religious or social programme shall accept foreign contribution unless such person obtains a certificate of registration / prior permission from the Central Government.*



### Registration of certain persons with Central Government

Section 11(1) requires that person having a definite cultural, economic, educational, religious or social

programme shall accept foreign contribution if such person obtains a certificate of registration from the Central Government.

It may be noted that any association registered with the Central Government under section 6 or granted prior permission under that section of the Foreign Contribution (Regulation) Act, 1976, as it stood immediately before the commencement of this Act, shall be deemed to have been registered or granted prior permission, as the case may be, under this Act and such registration shall be valid for a period of five years from the date on which this section comes into force.

Sub-section (2) of Section 11 provides that every person referred to in sub-section (1) may, if it is not registered with the Central Government under that sub-section, accept any foreign contribution only after obtaining the prior permission of the Central Government and such prior permission shall be valid for the specific purpose for which it is obtained and from the specific source. Further if the person referred to in sub-sections (1) and (2) has been found guilty of violation of any of the provisions of this Act or the Foreign Contribution (Regulation) Act, 1976, the unutilised or unreceived amount of foreign contribution shall not be utilised or received, as the case may be, without the prior approval of the Central Government.

Sub-section (3) of Section 11 provides that the Central Government may, by notification in the Official Gazette, specify the person or class of persons who shall obtain its prior permission before accepting the foreign contribution; or the area or areas in which the foreign contribution shall be accepted and utilised with the prior permission of the Central Government; or the purpose or purposes for which the foreign contribution shall be utilised with the prior permission of the Central Government; or the source or sources from which the foreign contribution shall be accepted with the prior permission of the Central Government.

### **Grant of certificate of registration**

Section 12(1) provides that an application by a person for grant of certificate or giving prior permission, shall be made to the Central Government in such form and manner and alongwith such fee, as may be prescribed. On receipt of an application, the Central Government shall, by an order, if the application is not in the prescribed form or does not contain any of the particulars specified in that form, reject the application. 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 sub-section (4) 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. In case the Central Government does not grant, within the said period of ninety days, a certificate or give prior permission, it shall communicate the reasons therefor to the applicant and that a person shall not be eligible for grant of certificate or giving prior permission, if his certificate has been suspended and such suspension of certificate continues on the date of making application.

Sub-section (4) of Section 12 provides following conditions for granting certificate of registration :—

- (a) the person making an application for registration or grant of prior permission under sub-section (1),—
- (i) is not fictitious or benami;
  - (ii) has not been prosecuted or convicted for indulging in activities aimed at conversion through inducement or force, either directly or indirectly, from one religious faith to another;
  - (iii) has not been prosecuted or convicted for creating communal tension or disharmony in any specified district or any other part of the country;
  - (iv) has not been found guilty or diversion or mis-utilisation of its funds;

- (v) is not engaged or likely to engage in propagation of sedition or advocate violent methods to achieve its ends;
  - (vi) is not likely to use the foreign contribution for personal gains or divert it for undesirable purposes;
  - (vii) has not contravened any of the provisions of this Act;
  - (viii) has not been prohibited from accepting foreign contribution;
- (b) the person making an application for registration under sub-section (1) has undertaken reasonable activity in its chosen field for the benefit of the society for which the foreign contribution is proposed to be utilised;
- (c) the person making an application for giving prior permission under sub-section (1) has prepared a reasonable project for the benefit of the society for which the foreign contribution is proposed to be utilised;
- (d) in case the person being an individual, such individual has neither been convicted under any law for the time being in force nor any prosecution for any offence pending against him;
- (e) in case the person being other than an individual, any of its directors or office bearers has neither been convicted under any law for the time being in force nor any prosecution for any offence is pending against him;
- (f) the acceptance of foreign contribution by the person referred to in sub-section (1) is not likely to affect prejudicially—
- (i) the sovereignty and integrity of India; or
  - (ii) the security, strategic, scientific or economic interest of the State; or
  - (iii) the public interest; or
  - (iv) freedom or fairness of election to any Legislature; or
  - (v) friendly relation with any foreign State; or
  - (vi) harmony between religious, racial, social, linguistic, regional groups, castes or communities;
- (g) the acceptance of foreign contribution referred to in sub-section (1),—
- (i) shall not lead to incitement of an offence;
  - (ii) shall not endanger the life or physical safety of any person.

Where the Central Government refuses the grant of certificate or does not give prior permission, it shall record in its order the reasons therefor and furnish a copy thereof to the applicant. The Central Government may not communicate the reasons for refusal for grant of certificate or for not giving prior permission to the applicant under this section in cases where is no obligation to give any information or documents or records or papers under the Right to Information Act, 2005.

 *It may be noted that the certificate granted shall be valid for a period of five years and the prior permission shall be valid for the specific purpose or specific amount of foreign contribution proposed to be received, as the case may be.*

### Suspension of certificate

Section 13 (1) provides that where the Central Government, for reasons to be recorded in writing, is satisfied that pending consideration of the question of cancelling the certificate on any of the grounds mentioned in sub-section (1) of section 14, it is necessary so to do, it may, by order in writing, suspend the certificate for such period not exceeding one hundred and eighty days as may be specified in the order.

Further every person whose certificate has been suspended shall not receive any foreign contribution during the period of suspension of certificate. However, the Central Government, on an application made by such person, if it considers appropriate, allow receipt of any foreign contribution by such person on such terms and conditions as it may specify.

Every person whose certificate has been suspended shall utilise, in the prescribed manner, the foreign contribution in his custody with the prior approval of the Central Government.

### Cancellation of certificate

Section 14 empowers the Central Government to cancel the certificate. Accordingly, the Central Government may, if it is satisfied after making such inquiry as it may deem fit, by an order, cancel the certificate if —

- (a) the holder of the certificate has made a statement in, or in relation to, the application for the grant of registration or renewal thereof, which is incorrect or false; or
- (b) the holder of the certificate has violated any of the terms and conditions of the certificate or renewal thereof; or
- (c) in the opinion of the Central Government, it is necessary in the public interest to cancel the certificate; or
- (d) the holder of certificate has violated any of the provisions of this Act or rules or order made thereunder; or
- (e) if the holder of the certificate has not been engaged in any reasonable activity in its chosen field for the benefit of the society for two consecutive years or has become defunct.

Before passing an order of cancellation of certificate, the person concerned would be given a reasonable opportunity of being heard. Any person, whose certificate has been cancelled, shall not be eligible for registration or grant of prior permission for a period of three years from the date of cancellation of such certificate.

### Management of foreign contribution of person whose certificate has been cancelled

Section 15 provides that the foreign contribution and assets created out of the foreign contribution in the custody of every person whose certificate has been cancelled under section 14 shall vest in such authority as may be prescribed.

The authority may, if it considers necessary and in public interest, manage the activities of the person referred to in that sub-section for such period and in such manner, as the Central Government may direct. Such authority may utilise the foreign contribution or dispose of the assets created out of it in case adequate funds are not available for running such activity. The authority shall return the foreign contribution and the assets vested upon it to the person, if such person is subsequently registered under this Act.

### Renewal of certificate



*Every person who has been granted a certificate under section 12 shall have such certificate renewed within six months before the expiry of the period of the certificate [Section 16].*

## **Application for Renewal**

The application for renewal of the certificate shall be made to the Central Government in such form and manner and accompanied by such fee as may be prescribed. The Central Government shall renew the certificate, ordinarily within ninety days from the date of receipt of application for renewal of certificate subject to such terms and conditions as it may deem fit and grant a certificate of renewal for a period of five years. In case the Central Government does not renew the certificate within the said period of ninety days, it shall communicate the reasons therefor to the applicant. The Central Government may refuse to renew the certificate in case where a person has violated any of the provisions of this Act or rules made thereunder.

## **ACCOUNTS, INTIMATION, AUDIT AND DISPOSAL OF ASSETS**

### ***Foreign contribution through scheduled bank***

Section 17 provides that every person who has been granted a certificate or given prior permission shall receive foreign contribution in a single account only through such one of the branches of a bank as he may specify in his application for grant of certificate.

However, such person may open one or more accounts in one or more banks for utilising the foreign contribution received by him. Further no funds other than foreign contribution shall be received or deposited in such account or accounts.

Every bank or authorised person in foreign exchange shall report to such authority as may be specified amount of foreign remittance; the source and manner in which the foreign remittance was received; and other particulars, in such form and manner as may be prescribed.

### ***Intimation***

Section 18 requires every person who has been granted a certificate or given prior approval to provide within such time and in such manner as may be prescribed, an intimation to the Central Government, and such other authority as may be specified by the Central Government, as to the amount of each foreign contribution received by it, 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.

Every person receiving foreign contribution is required to submit a copy of a statement indicating therein the particulars of foreign contribution received duly certified by officer of the bank or authorised person in foreign exchange and furnish the same to the Central Government along with the intimation.

### ***Maintenance of accounts***

Section 19 requires every person who has been granted a certificate or given prior approval to maintain, in such form and manner as may be prescribed, an account of any foreign contribution received by him; and a record as to the manner in which such contribution has been utilised by him.

### ***Order for Audit of accounts***

Section 20 provides that where any person who has been granted a certificate or given prior permission, fails to furnish any intimation within the time specified therefor or the intimation so furnished is not in accordance with law or if, after inspection of such intimation, the Central Government has any reasonable cause to believe that any provision of Act has been, or is being, contravened, the Central Government may, by general or special order, authorise such gazetted officer, holding a Group A post under the Central Government or any other officer or authority or organisation, as it may think fit, to audit any books of account

kept or maintained by such person and thereupon every such officer shall have the right to enter in or upon any premises at any reasonable hour, before sunset and after sunrise, for the purpose of auditing the said books of account and any information obtained from such audit shall be kept confidential and shall not be disclosed except for the purposes of the Act.

### ***Intimation by candidate for election***

Section 21 requires 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.

### ***Disposal of assets created out of foreign contribution***

Section 22 provides that where any person who was permitted to accept foreign contribution under this Act, ceases to exist or has become defunct, all the assets of such person shall be disposed of in accordance with the provisions contained in any law for the time being in force under which the person was registered or incorporated. In the absence of any such law, the Central Government may, having regard to the nature of assets created out of foreign contribution received under this Act, by notification, specify that all such assets shall be disposed off by such authority, as it may specify, in such manner and procedure as may be prescribed.

## **INSPECTION, SEARCH AND SEIZURE**

Section 23 provides that if the Central Government has, for any reason, to be recorded in writing, any ground to suspect that any provision of this Act has been or is being, contravened by any political party; or any person; or any organisation; or any association, it may, by general or special order, authorise such gazetted officer, holding a Group A post under the Central Government or such other officer or authority or organisation, as it may think fit, to inspect any account or record maintained by such political party, person, organisation or association, as the case may be, and thereupon every such inspecting officer shall have the right to enter in or upon any premises at any reasonable hour, before sunset and after sunrise, for the purpose of inspecting the said account or record.

### **Seizure of accounts or records**

Section 24 provides that if, after inspection of an account or record, the inspecting officer has any reasonable cause to believe that any provision of the Act or of any other law relating to foreign exchange has been, or is being, contravened, he may seize such account or record and produce the same before the court, authority or tribunal in which any proceeding is brought for such contravention. Further, the authorised officer shall return such account or record to the person from whom it was seized if no proceeding is brought within six months from the date of such seizure for the contravention disclosed by such account or record.

### **Adjudication of confiscation**

Section 29 dealing with adjudication of confiscation, provides that any confiscation article or currency or security which is seized may be adjudged without limit, by the Court of Session within the local limits of whose jurisdiction the seizure was made; and subject to such limits as may be prescribed, by such officer, not below the rank of an Assistant Sessions Judge, as the Central Government may, by notification in the Official Gazette.

Section 30 provides that no order of adjudication of confiscation shall be made unless a reasonable opportunity of making a representation against such confiscation has been given to the person from whom any article or currency or security has been seized.

### **Appeal**

Section 31 deals with appeals and provides that any person aggrieved by any order made under section 29 may prefer an appeal, where the order has been made by the Court of Session, to the High Court to which such Court is subordinate; or where the order has been made by any officer specified, to the Court of Session within the local limits of whose jurisdiction such order of adjudication of confiscation was made, within one month from the date of communication to such person of the order.

Further the appellate court may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of one month, allow such appeal to be preferred within a further period of one month, but not thereafter.

Every appeal preferred under this section shall be deemed to be an appeal from an original decree and the provisions of Order XLI of the First Schedule to the Code of Civil Procedure, 1908, shall, as far as may be, apply thereto as they apply to an appeal from an original decree.

### **Penalty and Punishment**

Section 34 prescribes for penalty on any person, on whom any prohibitory order has been served under section 10, pays, delivers, transfers or otherwise deals with, in any manner whatsoever, any article or currency or security, whether Indian or foreign, in contravention of such prohibitory order, he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

The court trying such contravention may also impose on the person convicted an additional fine equivalent to the market value of the article or the amount of the currency or security in respect of which the prohibitory order has been contravened by him or such part thereof as the court may deem fit.

Section 35 provides for punishment with imprisonment for a term which may extend to five years, or with fine, or with both for accepting, or assisting any person, political party or organisation in accepting, any foreign contribution or any currency or security from a foreign source, in contravention of any provision of this Act or any rule or order made thereunder.

### **Offences by companies**

Section 39 deals with offences by companies and provides that where an offence has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. However, such person shall not liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

Further in the case an offence has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

### **Composition of certain offences**

Section 41 (1) provides that any offence punishable under this Act (whether committed by an individual or association or any officer or employee thereof), not being an offence punishable with imprisonment only, may, before the institution of any prosecution, be compounded by such officers or authorities and for such sums as the Central Government may, by notification in the Official Gazette, specify in this behalf.

Section 41(2) provides that any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence.

Every officer or authority shall exercise the powers to compound an offence, subject to the direction, control and supervision of the Central Government. Every application for the compounding of an offence shall be made to the officer or authority referred to in sub-section (1) in such form and manner alongwith such fee as may be prescribed. Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, against the offender in relation to whom the offence is so compounded.

Every officer or authority while dealing with an application for the compounding of an offence for a default in compliance with any provision of this Act which requires by an individual or association or its officer or other employee to obtain permission or file or register with, or deliver or send to, the Central Government or any prescribed authority any return, account or other document, may, direct, by order, if he or it thinks fit to do so, any individual or association or its officer or other employee to file or register with, such return, account or other document within such time as may be specified in the order.

### **LESSON ROUND UP**

- FCRA, 2010 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 the national interest and for matters connected therewith or incidental thereto.
- The Act provides that persons having definite cultural, economic, educational, religious and social programmes should get themselves registered with the Government of India before accepting any 'foreign contribution'. In case a person falling in the above category is not registered with the Central Government, it can accept foreign contribution only after obtaining prior permission of the Central Government.
- Central Government is empowered to prohibit any person or organisation not specified in the Act from accepting any foreign contribution and to require any person or class of persons, not specified in it to obtain prior permission of the Central Government before accepting any foreign hospitality.
- Associations which were granted certificates of registration, such registration shall be valid for a period of five years.
- Any offence punishable under this act (whether committed by an individual or association or any officer or employee thereof), not being an offence punishable with imprisonment only, may, before the institution of any prosecution, be compounded by such officers or authorities and for such sums as the central government may, by notification in the official gazette, specify in this behalf.

### **SELF TEST QUESTIONS**

1. How does the FCRA, 2010 seeks to regulate the receipt of foreign contribution and foreign hospitality?
2. Define 'foreign contribution' and 'foreign source'.
3. Discuss the provisions of FCRA relevant to exemptions from acceptance of foreign contribution.
4. Explain the concept of 'organisation of a political nature' under the Foreign Contribution (Regulation) Act, 2010.
5. Discuss the powers of Central Government under FCRA to prohibit receipt of foreign contribution.