

**SBS Hyderabad**  
**17th February, 2018**

# **FCRA – A Bird's Eye View**

**By**

***Sunil Reddy Sama***  
*First Year Intern*  
*M/s SBS and Company LLP*  
[\*sunils@sbsandco.com\*](mailto:sunils@sbsandco.com)

# Synopsis

---

- Introduction and Applicability
- Objective
- Important Definitions
- Prohibition to accept foreign contribution
- Non-applicability
- Registration
- Grant of certificate, suspension, cancellation and renewal of certificate
- Maintenance of accounts and Audit of accounts
- Offences and Penalties
- Miscellaneous Provisions
- Reporting in various forms under the Act

# Introduction and Applicability

## Name of the Act:

- This act may be called as “**The Foreign Contribution (Regulation) Act, 2010.**” It is often referred as “**FCRA**”.

## Applicability of the Act:

- It is applicable to whole of India and
- It shall also apply to
  - Citizen of India outside India and
  - Foreign associate branches or subsidiaries of companies or bodies corporate registered or incorporated in India.

# Objective

---

## ❑ Objective of the Act:

- It was enacted with the primary purpose of regulating the inflow of ***foreign contributions*** or ***foreign hospitality*** and
- To ensure that the received foreign contributions or foreign hospitality are not utilized for purposes other than those specified under the legislation.
  
- *All charitable organizations in India receiving foreign contributions come under the purview of this Act.*

# Important Definitions

## ❑ Foreign Contribution:

- “Foreign contribution” means donation, delivery or transfer made by any foreign source either directly or indirectly through one or more persons which

**includes**

- any article, not being given to a person as a gift for his personal use
- any currency, whether Indian or foreign
- any security and includes securities defined under clause (h) of Section 2 of The Securities Contracts (Regulation) Act,1956 and foreign securities defined under clause (o) of Section 2 of The Foreign Exchange Management Act,1999.
- interest accrued on the foreign contribution deposited in any bank referred in sub-section (1) of section 17 of this Act
- any other income derived from the foreign contribution

# Important Definitions

## ❑ Foreign Contribution:

excludes

- amount received from any foreign source by way of **fee** (including fees charged by an educational institution in India from a foreign student) or
- towards goods or services rendered in the **ordinary course of business**, trade or commerce whether **within India or outside India**
- any contribution received from an **agent of a foreign source towards such fee or cost** shall be excluded from the purview of the definition of foreign contribution.

## ❑ Foreign Hospitality:

- “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.

# Important Definitions

## ❑ Foreign source:

### It includes

- Government of any foreign country or territory and any agency of such government
- International agency not being United Nations or any of its specialised agencies, World Bank, International Monetary Fund (IMF) or *such other agency as Central Government may specify by notification in this behalf*
- Foreign company
- Corporation, not being a foreign company, incorporated in foreign country or territory
- Multi-national corporation
- Trade union in any foreign country or territory whether registered or not
- Foreign trust or foreign foundation mainly financed by foreign country or territory
- Society, club or other association of individuals formed or registered outside India
- Citizen of a foreign country

# Important Definitions

---

**but excludes**

- Indian subsidiary of Foreign Company has received FDI in compliance of FEMA Regulations



# Important Definitions

---

## ❑ Foreign Company:

- “Foreign Company” means any company or association or body of individuals incorporated outside India and includes
  - a. Foreign company within the meaning of section 2(42) of the Companies Act,2013
  - b. Subsidiary of a foreign company
  - c. Registered office or principal place of business of a foreign company referred in clause(a) and (b)
  - d. Multi-national corporation

# Important Definitions

## □ Person:

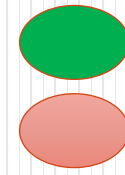
It includes

- an individual
- a Hindu undivided family (HUF)
- an association
- a company registered under section 8 of the Companies Act,2013.

## □ Multi-national corporation (MNC):

- “Multi-national corporation” means a corporation incorporated in a foreign country or territory shall be deemed to be MNC if such corporation
  - has a subsidiary or a branch or a place of business in two or more countries or territories or
  - carries on business or otherwise operates in two or more countries or territories

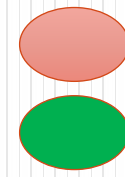
# Prohibition to accept Foreign Contribution



**SBS AND COMPANY LLP**  
CHARTERED ACCOUNTANTS  
CHARTERED ACCOUNTANTS

- No foreign contribution shall be accepted by any
  - a. Candidate for election
  - b. Editor, owner, printer or publisher of a newspaper registered under the Press and Registration of Books Act, 1867
  - c. Judge, Government servant or employee of any corporation or any other body controlled or owned by the Government
  - d. Member of any Legislature
  - e. Political party of office-bearer thereof
  - f. Organisation of a political nature
  - g. Association or company engaged in the production or broadcast of audio news or audio-visual news or current affairs programme through any electronic mode
  - h. Correspondent or editor or owner of the association mentioned in the clause (g)

# Prohibition to accept Foreign Contribution



**SBS AND COMPANY LLP**  
CHARTERED ACCOUNTANTS  
CHARTERED ACCOUNTANTS

- Person receiving any currency whether Indian or foreign from a foreign source on behalf of any persons or class of any persons shall not deliver
  - ❑ to any person other than a person for whom 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.

# Non-applicability of the Act

## ❑ Act shall not apply to the acceptance of foreign contribution

- 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 international trade or commerce or in the ordinary course of business transacted by him outside India or
- 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
- by way of a gift or presentation made to him as a member of any Indian delegation
- from his relative or
- 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
- by way of any scholarship, stipend or any payment of like nature.

# Registration under the Act

- Every person having a definite cultural, economic, educational, religious or social programme shall accept foreign contribution only upon obtaining the **“Certificate of registration”** from the Central Government.
- The registration is valid for a period of **five (5)** years from the date of registration.
- If any person is not registered with the Central Government and has received any foreign contribution, then only after obtaining **“Prior Permission”** of the Central Government contribution received shall be utilised.
- *“Prior permission shall be valid for the specific purpose or specific amount of foreign contribution proposed to be received.”*

# Registration under the Act

□ Central Government may by notification in the Official Gazette specify any

- person or class of persons who shall obtain;
- area or areas in which;
- purpose or purposes for which;
- source or sources from which

*foreign contribution shall be accepted with the prior permission of the Central Government.*

- In case any of the persons was found guilty of violation of the provisions of the Act, “*the unutilised or unreceived amount shall not be utilised or received without the prior approval of the Central Government.*”
- *Every person need to register in **DARPAN** before registering in **FCRA**. A unique ID will generated upon registering in **DARAPN** which need to be quoted in the FCRA Forms.*

# Grant of certificate of registration

Application for registration or prior permission to Central Government in the Form FC-3 and manner along with the prescribed fee



On receipt of application, Central Government shall accept the application if it is in the prescribed form and reject if it is not in the prescribed form



After making inquiry as the Central Government deems fit and upon satisfaction of the specific conditions, it may grant certificate within ninety (90) days from the date of receipt of application



In case Central Government does not grant the certificate within ninety (90) days reasons thereof shall be communicated to the applicant

***Note: Further a person shall not be eligible for grant of registration certificate or giving prior permission if his certificate has been suspended and the suspension of certificate continues as on the date of making the application for registration or prior permission.***



# Renewal of certificate

Certificate shall be renewed within six (6) months before the expiry of the period of the certificate

Application for renewal of the certificate shall be made to the Central Government in the Form FC-3 and manner along with the prescribed fee

Central Government shall renew certificate within ninety (90) days from the date of receipt of the renewal application and grant renewal certificate for five (5) years

In case Central Government does not grant the renewal certificate within ninety (90) days, reasons thereof shall be communicated to the applicant

Central Government may refuse to grant renewal certificate if the person has violated any of the provisions of this Act

# Suspension of certificate

---

- Central Government shall not suspend the certificate for a period exceeding one hundred and eighty **(180) days**.
- Person whose certificate has been suspended shall not receive any contribution during the period of suspension.
- During the period of suspension, if Central Government considers appropriate, may allow receipt of any foreign contribution on an application made by the person, with terms and conditions specified and utilise the foreign contribution in the prescribed manner with the prior approval of the Central Government.

# Cancellation of certificate

- ❑ Central Government may cancel the certificate if
  - any false statement has been made by the holder of the certificate in relation to registration or renewal
  - holder of the certificate has violated any terms and conditions of certificate or renewal
  - in the opinion of Central Government, it is not in the public interest
  - holder of the certificate has violated any of the provisions of this Act or rules or orders
  - holder of the certificate has not been engaged in any reasonable activity chosen for benefit of the society for **two (2) consecutive years** or has become **defunct**.
  
- ❑ Order of cancellation of certificate shall be made *only after giving a reasonable opportunity of being heard to the concerned person.*
  
- ❑ **Person whose certificate has been cancelled under this section shall not be eligible for registration or prior permission for three (3) years from the date of cancellation of the certificate.**

# Receipt of Foreign Contribution

- ❑ 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 specified in the application for registration.
- ❑ 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 the authority:
  - 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.

**Note:** *Person may open one or more accounts in one or more banks for utilising the foreign contribution received by him.*

# Intimation of Foreign Contribution

---

- Every person who has been granted a certificate or given prior approval shall give an intimation to the Central Government and such other authority as may be specified by the Central Government, within such time in Form FC-1 and such manner as may be prescribed.
- Person receiving foreign contribution shall submit a copy of statement indicating 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 made in the above clause.

## ❑ Maintenance of accounts:

- Every person who has been granted a certificate or prior permission under this Act, shall maintain in such form and manner as may be prescribed
  - an account of any foreign contribution received and
  - a record as to the manner in which such contribution has been utilised by him.

## ❑ Audit of Accounts:

- Where any person
  - fails to furnish any intimation within the time specified or
  - intimation so furnished is not in accordance with law or
- Central Government may authorise gazetted officer holding a **“Group A”** post under the Central Government to audit any books of account kept or maintained by the person and thereupon every such officer shall have the right to enter in or upon any premises at any reasonable hour for the purpose of audit.

# Miscellaneous provisions

---

- Act shall ***not*** apply to any transaction between the ***Government of India*** and the ***Government of any foreign country or territory***.
- The provisions of this Act shall be in addition and not in derogation of provisions of any other law for the time being in force.
- Where any person registered 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 of the act. In the absence of any specific law, Central Government may by notification specify the manner and procedure for the disposal of assets created out of foreign contribution.

# Offences and Penalties

## Section-33

### **Making of false statement, declaration or delivering false accounts**

- Liable to imprisonment for a term which may extend to six months or with fine or with both.

## Sectio-34

### **Penalty for foreign contribution obtained in contravention of section 10 of the Act**

- Imprisonment for a term which may extend to three years or with fine or with both and court 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 such part thereof as the court may deem fit.

## Section-35

### **Punishment for contravention of any provisions of the Act**

- Shall be punished with imprisonment for a term which may extend to five years or with fine or both.



## Section-37

### Penalty for offences where no separate punishment has been avoided

- Imprisonment for a term which may extend to one year or with fine or both.

## Section-38

### Prohibition of acceptance of foreign contribution

- Person once convicted under the section 35 or 37 and again convicted under the same sections shall not receive any foreign contribution for a period of **five (5) years** from the date of subsequent conviction.

# Reporting in various forms under the Act

Form Name	Purpose
Form FC-1	Intimation to the Central Government of receipt of foreign contribution by way of gift from relative by an individual or Foreign Contribution in the form of Articles or Securities or by a candidate for Election
Form FC-2	Application for seeking prior permission of the Central Government to accept foreign hospitality
Form FC-3	Application for FCRA Registration
Form FC-3	Application for FCRA Prior Permission
Form FC-3	Application for FCRA Renewal
Form FC-4	Intimation - Annual Returns
Form FC-5	Application for seeking permission for transfer of foreign contribution to other un-registered persons
Form FC-6	Intimation for change of association name or address or FC Receipt Bank or Utilisation Bank Accounts or Key Members

**Note:** For Forms visit <https://fcraonline.nic.in/home/Index.aspx>.

At

*Venue: SBS - Hyderabad*

**Thank you!!!**

**Sunil Reddy Sama**

*First year Intern*

*M/s SBS and Company LLP*

[sunils@sbsandco.com](mailto:sunils@sbsandco.com)

+91 9010612252

Our Presence: Hyderabad, Kurnool, Nellore, TADA, Vizag & Bengaluru: [info@sbsandco.com](mailto:info@sbsandco.com); 040-40183366

Disclaimer: Please logon to: <http://www.sbsandco.com/disclaimer/>



**Read our monthly SBS e-Journals**

[www.sbsandco.com/wiki](http://www.sbsandco.com/wiki)

[www.sbsandco.com/digest](http://www.sbsandco.com/digest)

