

**A Study on
Foreign Contribution
Regulation Act, 1976 –
An Analysis, Commentary and
Review**



The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

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FOREWORD

India has a plethora of laws governing several areas of economic activity, covering diverse fields. They affect various facets of economic activity in significant ways. Foreign Contribution (Regulation) Act, 1976 is one of them which regulates acceptance and utilization of foreign contribution in the country or foreign hospitality by certain persons or associations. This Act provides an enabling environment to ensure that the Rule of Law is not subverted by any vested foreign interests.

I feel that this legislation provides scope and opportunity to Chartered Accountants to facilitate timely and qualitatively better disclosure of foreign contributions by the recipients to the Regulatory Authorities. I am confident that this publication will facilitate our members in carrying out their professional endeavours, pursuits and roles.

In the context of the changes and developments taken place subsequent to the last edition, the Committee on Economic and Commercial Laws decided to revise the publication to bridge the knowledge gap in this vital legislation. The revised, updated and enlarged edition is being published as **“A Study on Foreign Contribution Regulation Act, 1976 – An Analysis, Commentary and Review”**.

I wish to place on record my appreciation to CA. Jayant P. Gokhale, Chairman, Committee on Economic and Commercial Laws and its members for their invaluable contribution in the revision of this publication.

I hope the members and other readers would find this publication immensely useful and it would serve as a handy tool in rendering the professional services.

CA. Uttam Prakash Agarwal

President, ICAI

New Delhi
Date : 09.02.2010

PREFACE

Foreign contribution (Regulation) Act 1976 is the legislation which regulates acceptance and utilization of foreign contributions in the country and foreign hospitality by certain persons, with a view to ensure that parliamentary institutions, political associations and academic and other voluntary organizations as well as individuals working in the important areas of national life may function effectively.

Members of CA Community have a greater role and sacred duty to ensure that the laws of the land are not only respected totally but also followed in letter and spirit. To facilitate our members to keep up to date with the latest developments in the Economic and Commercial Laws, the Committee undertook the exercise to revising the publication – A Study on Foreign Contribution (Regulation) Act, 1976. Dr. G. Raghavan, the author of this publication has painstakingly prepared the updated material. This publication is aimed at enhancing the knowledge profile on the various aspects of the provisions of the Act. We, the professional members of CA profession will need to respect and meet the requirements under the various provisions of the Act.

I place on record my gratitude for the support and guidance of CA. Uttam Prakash Agarwal, President, ICAI and CA. Amarjit Chopra, Vice President, ICAI in bringing out this book. I also acknowledge the contribution of CA. J. Venkateswarlu, Vice-Chairman of the Committee and the Members of the Committee for their valuable involvement in various endeavours including this publication.

I hope that the readers would find the study interesting and useful and relevant for their professional work.

CA. Jayant P. Gokhale

Chairman

Committee on Economic and Commercial Laws

New Delhi

Date : 06.01.2010

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CHAPTER 1

INTRODUCTION

In India, the Foreign Contribution (Regulation) Act, 1976 was envisaged to prevent the flow of foreign funds to political parties in India. It was brought in after a big controversy erupted in 1967 over the possible use of foreign funds in parliamentary elections.

The Foreign Contribution (Regulation) Act, 1976 is internal security legislation and is not regulated by RBI. It is regulated by the Ministry of Home Affairs, Government of India.

In 1985, FCRA was amended [vide the Foreign Contribution (Regulation) Amendment Act, 1985 which was later repealed by Repealing and Amending Act, 2001] to regulate the flow of funds to charitable organizations., more closely, based on the findings of the Kudal Commission, and certain important changes were made:

- (a) Funds received by subsequent recipient were brought within under the purview of the Act.
- (b) Definition of political parties was enlarged.
- (c) Section 6(1) was amended to ensure that foreign funds were received only after registration, and only through designated bank accounts.
- (d) Section 15A was inserted to empower Central Government to inspect and audit books of accounts of organisations.
- (e) Section 25A was inserted to ensure that acceptance of foreign funds was prohibited for 3 years after second conviction.

PREAMBLE

The preamble to the Foreign Contribution (Regulation) Act, 1976 reads as under:

“An act to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain persons or associations, with a view to

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ensuring that parliamentary institutions, political associations and academic and other voluntary organisations as well as individuals working in the important areas of national life may function in a manner consistent with the values of a sovereign democratic republic, and for matters connected therewith or incidental thereto.”

What is a Foreign Contribution?

A foreign contribution means the donation, delivery or transfer, made by any foreign source of any

- a) article, not given to a person as a gift for personal use, if the market value, in India, of such article exceeds one thousand rupees;
- b) currency, whether Indian or foreign; or,
- c) foreign security

What is a Foreign Source?

A foreign source includes the government of any foreign country or territory or its agency; an international agency; a foreign company; and citizen of a foreign country. Agencies of the United Nations, World Bank and some other International agencies/multilateral organisations are exempted from the definition of 'foreign source'.

What is not a Foreign Contribution?

Contributions made by a citizen of India living in another country (i.e. Non-Resident Indian), from his personal savings, through the normal banking channels, is not treated as a foreign contribution. However, while accepting any donations from such NRI, it is advisable to obtain his passport details to ascertain that he/she is an Indian passport holder.

CHAPTER 2

OVERVIEW OF THE FOREIGN CONTRIBUTION (REGULATION) ACT, 1976

The Foreign Contribution (Regulation) Act, 1976 was passed by the Indian Parliament and received the assent of the President of India on 31st March, 1976. The Act consists of three Chapters containing 32 sections.

The provisions of the Foreign Contribution Regulation Act, 1976 extend to the whole of India, including the State of Jammu and Kashmir. The Act also applies to:

- a. citizens of India outside India; and
- b. associates, branches or subsidiaries, outside India of companies or bodies corporate, registered or incorporated in India.

The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force.

KEY DEFINITIONS

ASSOCIATION {Section 2 (1) (a)}

"**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 organization, by whatever name called.

FOREIGN CONTRIBUTION {Section 2 (1) (c)}

"**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, does not exceed one thousand rupees;
- ii. of any currency, whether Indian or foreign;

iii. of any foreign security.

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.

FOREIGN HOSPITALITY {Sec 2(1) (d)}

“**Foreign hospitality**” means any offer, not being a purely casual one, made by a foreign source for providing a person with the cost of travel to any foreign country or territory or with free board, lodging, transport or medical treatment.

FOREIGN SOURCE {Sec 2(1) (e)}

“**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 specialized agencies, the World Bank, International Monetary Fund or such other agency as the Central Government may, by notification in the Official Gazette, specify in this behalf;
- iii. a foreign company within the meaning of section 591 of the Companies Act, and also includes :
 - a. a company which is a subsidiary of a foreign company, and
 - b. a multinational corporation within the meaning of this Act,
- iv. a corporation, not being a foreign company, incorporated in a foreign country or territory;
- v. a multinational corporation within the meaning of this Act;
- vi. a company within the meaning of the Companies Act, 1956, if 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. governments of a foreign country or territory
 - b. 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,
- vii. a trade union in any foreign country or territory, whether or not registered in such foreign country or territory;
- viii. a foreign trust by whatever name called, or a foreign foundation which is either in the nature of trust or is 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, but does not include any foreign institution which has been permitted by the Central Government by notification in the Official Gazette, to carry on its activities in India.

Deemed Multinational Corporation

For the purpose of this Act, a corporation incorporated in a foreign country or territory shall be deemed to be a multinational corporation if such corporation:

- i. has a subsidiary or a branch or a place of business in two or more countries or territories; or
- ii. carries on business, or otherwise operates, in two or more countries or territories.

Regulation of foreign contribution and foreign hospitality

A foreign contribution means the donation, the delivery or transfer made by any foreign source of (i) 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 does not exceed one thousand rupees, (ii) any currency whether Indian or foreign and (iii) any foreign security as defined in Foreign Exchange Management Act.

The expressions donation and delivery are not defined in this Act or any other complementary acts. Therefore, it is necessary to consider their dictionary or practical definitions and understanding only. Obviously the

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coverage of this Act is very wide and encompasses almost every kind of transfer of funds from a foreign source.

Currency includes all currency notes, postal orders, money orders, cheques, drafts, travelers cheques, letters of credits, bills of exchange and promissory notes, credit cards of such other similar instruments, in vogue, approved and notified. It is to be particularly recognized that even Indian currency is covered under the Act. What is important is not the currency, but the source. If the source is foreign, the Act will apply even if the currency is Indian. In the same vein, foreign currency received from an Indian source would not be covered under the Act.

Foreign security has been explained as any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency and includes securities expressed in foreign currency but where redemption or any form of return, such as interest or dividend is payable in Indian currency.

Loans or an advance from out of foreign contribution to an individual or an organisation that is not permitted/registered under the Act is not permissible. Here the process of loans or advances would be treated as delivery or transfer and would therefore attract provisions of the Act.

The Act requires that separate accounts are to be maintained in respect of foreign contribution so as to maintain their character and ensure tracking. So the Act prohibits they be mixed with local funds. However, loaning or advancing from / to local funds to / from foreign contribution account, if they are kept at a minimum and if they are repaid as soon as possible, is permitted.

Any subsequent recipients—persons who receive contributions from out a foreign contribution received by another person—also need either prior permission or registration under the Act.

Sections 4(1) and 10(a) provide that foreign contribution cannot be accepted by:

- (i) a candidate for election;
- (ii) Correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper;

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- (iii) judge, government servant or employee of any Corporation;
- (iv) Member of any legislature;
- (v) Political party or office bearer thereof; and
- (vi) Individuals or associations specifically notified under section 10 (a) of Foreign Contribution (Regulation) Act, 1976 who have been prohibited from receiving foreign contribution.

The question of prior permission or registration under foreign contributions regulation act does not arise in these cases.

However, these persons may receive foreign contributions if they are from their relatives with prior permission of the central government. However, no such permission is required if the amount of foreign contribution received by them from their relatives does not exceed, in value, Rs.8,000 per annum and an intimation is given by them to the central government as to the amount received, the source from which and the manner in which it was received and the purpose for which and the manner in which was utilized by them.

What is a gift?

It includes any present, contribution, souvenir, reward, bequest, award, donation, endowment, grant or offering.

Who are not permitted to accept any gift and presentation?

No

- candidate for election
- correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper
- judge
- government servant
- employee of any corporation
- member of any legislature
- political party or office bearer thereof

Who is a member of any Indian delegation may accept any foreign contribution by way of a gift or presentation made to him as a member of such delegation provided that such a gift or present is accepted in accordance with the regulations made by the Central Government with regard to the acceptance or retention of such a gift or presentation.

Deposit of gifts, presentations, retention

Every gift or presentation received by such person from any foreign source shall be deposited by him, with the Central Government, within thirty days from the date of intimation by him of such receipt.

The Toshakhana in the Ministry of External Affairs will assess its market value in the country of origin. And the person shall be intimated in writing of such assessment. Every such gift or presentation, the market value in the country of origin of which, as assessed, does not exceed three thousand rupees shall be returned to such person for retention by him.

Where more than one gift or presentation is received by such person while he is in one delegation, such person is entitled to retain only one such gift or presentation.

Where more than one gift or presentation has been received by such person, while he is one delegation, and the aggregate market value in India, of all such gifts or presentations, does not exceed Rs. 3,000 as determined by the leader of the Indian delegation, such person may retain all such gifts/presentations.

Every such gift or presentation, the market value in the country of origin of which, as assessed, exceeds three thousand rupees shall be retained in the Toshakhana.

Such person shall have the option to be exercised by him within thirty days from the date of receipt by him of the intimation to purchase such gift or presentation on payment of the difference between the market value in the country of origin of such gift or presentation as assessed and three thousand rupees. The option once exercised shall be final.

Reporting requirement

Where such person receives any foreign contribution by way of gift or presentation, he shall within thirty days of the receipt thereof intimate the Central Government in writing:

- the fact of his having received such gift or presentation
- the foreign source from which it is received
- its approximate market value in the country of origin
- the place in which, and the date on which it is received, and
- such other details relating thereto as he may, in the circumstances consider appropriate

In case where such person receives such a gift or presentation while he is visiting any foreign country or territory outside India, such intimation may be made by him within thirty days from the date of his return to India.

Political organizations

Section 5(1) of the Act stipulates that an organisation of a political nature not being a political party shall not accept any foreign contribution except with the prior permission of the central government.

Organisations of a political nature not being a political party means such organisation as 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 organisation with the activities of any political party, by an order published in the official gazette specify in this behalf.

Section 5(2) (a) further provides that except with the prior permission of the central government, no person resident in India, and no Indian citizen, resident outside India, shall accept any foreign contribution, or acquire or agree to acquire any foreign currency on behalf of a political organisation.

The Act further provides that except with the prior approval of the central government 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 organisation or to any person if he knows or has

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reasonable cause to believe that such person intends or is likely to deliver such currency to a political organization [Section 5(2)(c)].

Application for seeking prior permission to accept foreign contribution by or on behalf of an organisation of political nature not being a political party shall be made in FC-1

Certain associations and persons receiving foreign contribution to give intimation to the Central Government

Section 6(1) provides that every organization having a definite cultural, economic, educational, religious or social programme shall accept foreign contribution unless such association —

- a. Registers itself with the Central Government in accordance with the rules made under this Act; and
- b. agrees to receive such foreign contributions only through such one of the branches of a bank as it may specify in its application for such registration.

Once this has been designated, receipt of foreign contributions through another bank account is a serious violation. Care should be taken to ensure this.

Every such association 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 shall also give, within such time and in such manner as may be prescribed, an intimation to the Central Government as to the amount of 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 it [Section 6(1A)].

Application for seeking prior permission to accept foreign contribution by an association having a definite cultural, economic, educational, religious or social programme shall be made in Form FC- IA.

An intimation as to the receipt of foreign contribution by an association mentioned in sub-sections (1) and (1A) of section 6 shall be given every year beginning on the 1st day of April in Form FC-3 in duplicate within nine

months of the closure of the year [amended by Foreign Contribution Amendment Rules, 2008]

Further, Section 6(2) provides that 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 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. [Form FC-4, within fifteen days from the date on which he is duly nominated as a candidate for election].

Recipients of scholarships (Section 7)

The Act requires that every citizen of India receiving any scholarship, stipend or any payment of a like nature from any foreign source shall intimate within the prescribed period and in the prescribed format [FC-5]. This form should be submitted within 30 days of receipt from the foreign source. However, if the value of such scholarship, stipend or other payment does from the foreign source does not exceed Rs.36,000 per academic year, then the report is not necessary. In calculating the value –

- (a) the amount received by the citizen for the purchase of books, clothing and equipment and for sightseeing in a foreign country or territory shall be taken into account but
- (b) the amount spent in travel by air in economy class from India to a foreign country or territory and back to India from such foreign country or territory, and the amount spent by the foreign source in respect of such citizen towards tuition and other fees, shall not be taken into account.

[As laid down in Rule 4(c) and 5 of the Foreign Contribution (Regulation) Rules 1976]

Persons to whom Section 4 shall not apply (Section 8)

Nothing contained in section 4 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 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 regulations made by the Central Government with regard to the acceptance or retention of such gift or presentation; or
- (e) from his relative when such foreign contribution has been received with the previous permission of the Central Government.

Provided that no such permission shall be required if the amount of foreign contribution received by him from his relative does not exceed, in value, eight thousand rupees per annum and an intimation is given by him to the Central Government as to the amount received, the source from which and the manner in which it was received and the purpose for which and the manner in which it was utilised by him;

- (f) by way of remittance received, in the ordinary course of business, through any official channel, post office, or any authorised dealer in foreign exchange under the Foreign Exchange Regulation Act, 1973 (46 of 1973).

Explanation- In this Act, the expression 'relative' has the meaning assigned to it in the Companies Act, 1956 (1 of 1956).

Acceptance of Foreign Hospitality (Section 9)

No:

- member of a legislature
- office-bearer of a political party
- judge
- government servant or
- employee of any corporation

while visiting any country or territory outside India, accept, shall except with the prior permission of the Central Government any foreign hospitality

Exceptions

However, it is not necessary to obtain any such permission for an emergent medical aid needed on account of sudden illness contracted during a visit outside India.

Reporting requirement

Where any foreign hospitality is 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.

Maintenance of Accounts

Section 13 of the Foreign Contribution (Regulation) Act, 1976 requires that every association, referred to in section 6, to maintain prescribed records of:

- an account of any foreign contribution received by it and
- a record as to the manner in which such contribution has been utilized by it.

Rule 8 requires a separate set of accounts and records shall be maintained, exclusively for foreign contribution received and utilized.

- Form FC-6
- Cash book

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- Ledger account on double entry basis
- Form FC-7

It also specifies period of maintenance, certification requirements and submission to authorities.

Rule 8 also requires:

- Accounts shall be maintained on a yearly basis, commencing on the 1st day of [April] each year;
- Such yearly account, shall be duly certified by a Chartered Accountant and,
- shall be furnished in duplicate, to the Secretary to the Government of India, in the Ministry of Home Affairs, New Delhi within nine months [amended vide Foreign Contribution Amendment Rules, 2008] of the closure of the year.

Audit of accounts

Alongwith filing an annual return, an audit report is also required with audited receipts, payments and balance sheets for foreign contributions. Also, there are requirements to file audited accounts with the government registrar or commissioner under the registering statute. Receipt & Payment account should give a clear picture of all the financial dealings of the association in respect of its foreign contribution accounts. It is a summary of actual cash receipts and payments which is extracted from the cash book and the ledger. All cash received and paid during the financial year, whether on account of capital or revenue, would be reflected in this account.

Representations

Seizure of Article or Currency on contravention of provisions of the Act (Section 16)

As per section 16 if any gazetted officer has any reason to believe that any person has in his possession or control any article exceeding rupees one thousand in value, or currency, whether Indian or foreign, in relation to which any provision of this Act has been, or is being, contravened, he may seize such article or currency.

Confiscation of such article and things (Section 18)

As per section 18 any article or currency which is seized shall be liable to confiscation if such article or currency has been adjudged to have been received or obtained in contravention of this Act.

Reasonable opportunity to be heard (Section 20)

As per section 20, 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 has been seized.

Violations

As per Section 27 of the Act, no court shall take any cognizance of an offence under the Act except with the previous sanction of the Central Government (or any officer so authorized by the Central Government).

Section 28 specifically provides for investigation of any violation or offence under the Act by such authority as the Central Government may specify in this behalf and the authority so specified shall have all the powers which an officer in charge of a Police Station has while making an investigation into an offence or violation.

Section 29 further provides a comfort that no suit or other legal proceedings shall be initiated or lie against the Central Government in respect of any loss or damage caused or likely to be caused including status and standing of the person or organisation concerned by anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made there under.

POSSIBLE VIOLATIONS OR OFFENCES UNDER THE ACT

1. Politician / journalist / judge / government servant / employee of corporation / political party or office bearer accepting foreign contributions
2. Politicians / journalist / judge / government servant / employee of corporation accepting foreign contribution in excess of Rs.8,000 from relative as gift without prior permission
3. Politician / journalist / judge / government servant / employee of corporation accepting foreign contribution not exceeding Rs.8,000 from relative but does not give intimation to Central Government

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4. Indian resident / citizen accepting foreign contribution for any politician / journalist / judge / government servant / employee of corporation / political party or office bearer
5. Indian resident / citizen delivers or assists in delivery of foreign contribution (currency) to any politician / journalist / judge / government servant / employee of corporation / political party or office bearer
6. Indian resident / citizen accepting foreign contribution for a political organisation
7. Indian resident / citizen delivers or assists in delivery of foreign contribution (currency) to political organisation
8. Indian citizen receiving scholarship, stipend or payment of like nature exceeding Rs.36,000 during an academic year and failing to file Form FC-5
9. Persons who receives foreign contribution for one association delivers it or assists in its delivery to another association
10. Person who transfers or deals with foreign contribution despite being specifically prohibited payment of the same as per Section 12 of the Act
11. Person who accepts or assists another person to accept foreign contribution in violation of the Act
12. A candidate for election who receives foreign contribution within 180 days preceding date of nomination as candidate but fails to file required intimation
13. Political organisation accepting foreign contribution without prior permission of Central Government
14. Member of a Legislature / office bearer of a political party / judge / government servant / employee of corporation accepts foreign hospitality except in case of medical emergency
15. Member of a Legislature / office bearer of a political party / judge / government servant / employee of a corporation accepts foreign hospitality in case of medical emergency but does not give intimation to Central Government within 30 days

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16. Unregistered association accepts foreign contribution without prior permission
17. Registered association accepts foreign contribution through mode other than through designated bank account
18. Registered association failing to file Form FC-3 within prescribed time or in prescribed manner
19. Registered association filing Form FC-3 with false information
20. Association which is registered under the ACT or an association which has prior permission to receive foreign contribution does not maintain prescribed accounts and records

CHAPTER 3

DO'S AND DON'TS

1. No candidate for election / correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper / judge or government servant or employee of any corporation (owned / controlled by government) / member of legislature / political party or office-bearer thereof shall accept foreign contribution.
2. No person resident in India or no citizen of India resident outside India shall accept foreign contribution on behalf of persons / organizations in Item 1 above or to any person who is likely to deliver such contribution to persons / organizations in Item 1 above.
3. No person shall deliver any currency which has been accepted from a foreign source to any person who is likely to deliver such currency to persons / organizations in Item 1 above.
4. No citizen of India resident outside India shall deliver any currency to persons in Item 1 above or to any person who is likely to deliver to persons in Item 1 above.
5. No person receiving foreign contribution on behalf of any association shall deliver to persons / organizations in Item 1 above or to any person who is likely to deliver to persons / organizations in Item 1 above.
6. Organisations of political nature not being a political party cannot accept foreign contribution except without prior permission of Central Government.
7. Certain associations having a definite cultural, economic, educational, religious or social programme shall accept foreign contribution after registering with Central Government agrees to receive only through one of the branches of bank specified for this purpose, and every such association receiving foreign contribution to give intimation to the Central Government.

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8. Every association should intimate to Central Government – amount of foreign contribution received, source, manner of receipt, purposes for which and manner in which it is spent.
9. Central Government by notification in the Official Gazette direct such associations not to accept foreign contributions.
10. Every candidate for election who receives foreign contribution, within 180 days proceeding the date on which he is nominated, shall – intimate to Central Government foreign contribution received, source, manner of receipt, purpose and manner of utilization.
11. Recipients of scholarships, stipend or any payment of a like nature from any foreign source to give intimation to the Central Government.
12. No member of a legislature, office bearer of a political party, judge, government servant or employee of any corporation shall, while visiting any country or territory outside India, accept, except with the prior permission of the Central Government, any foreign hospitality. Foreign hospitality means any offer not being a casual one made by a foreign source for providing a person with the costs of travel to any foreign country or territory or with the board, lodging, transport or medical treatment.
13. Application to be made in prescribed form for obtaining prior permission to accept foreign contribution / hospitality: Every individual, association, organisation or other person, who is required to obtain the prior permission of Central Government to accept any foreign contribution or hospitality, shall before the acceptance of any such contribution or hospitality make an application for such permission to the Central Government in such form and in such manner as may be prescribed.
14. Recipients of foreign contribution to maintain accounts: An account of any foreign contribution received and also a record as to the manner in which such contribution has been utilized.
15. Any person specified in Item 1 above, who is a member of any Indian delegation may accept any foreign contribution by way of a gift or presentation made to him as a member of such delegation subject to provisions of Foreign Contribution (Acceptance or retention of gifts or presentations) Regulations 1978.

16. A minister may retain a gift or presentation made to him / her provided the value of the gift assessed does not exceed Rupees five thousand only.
17. Where such person under Item 15 above receives any contribution by way of gift or presentation he shall, within 30 days of the receipt thereof or within 30 days from the date of his return to India, intimate to the leader of the Indian delegation, the Secretary to Government of India in the Ministry of Home Affairs, Ministry of External Affairs and the Ministry of Government of India sponsoring the delegation of which he is a member, in writing – the fact of his having received gift or presentation, the foreign source from which it is received and its approximate value in the country of origin, the place in which and the date on which it is received.
18. The requirements contained in Item 17 above shall be complied with by such person if the leader of the Indian delegation is of the opinion that the market value, in India, of such gifts or presentations exceeds Rs.1000 and the said leader directs in writing to such person to comply with such of the requirements of these regulations.
19. Every gift or presentation received by such person from any foreign source shall be deposited by him with the Secretary to the Government of India in the Ministry or the Department which had sponsored the delegation of which he was the member, within thirty days from the date of intimation by him of such receipt.
20. Every such gift or presentation the market value in the country of origin does not exceed three thousand rupees shall be returned to such person for retention by him.
21. Where more than one such gift or presentation is received by such person while he is with one delegation, such person be entitled to retain only one such gift or presentation.
22. Where more than one gift or presentation has been received by such person, while he is with one delegation, and the aggregate market value in India of all such gifts or presentations does not exceed Rs.1,000 as determined by the leader of the Indian delegation, such person may retain all such gifts / presentations.

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23. Every such gift or presentation the market value in the country of origin exceeds Rupees three thousands shall be retained in the Toshakhana.
24. Such person shall have the option (which shall be final) that exercised by him within thirty days from the date of receipt by him of the intimation to purchase such gift or presentation on payment of the difference between the market value in the country of origin of such gift or presentation and three thousand rupees.

CHAPTER 4

FORMS

Form	Description
FC-1	Application for seeking prior permission of the Central Government for accepting foreign contribution by or on behalf of an organisation of political nature not being a political party (Rule 3a)
FC-1A	Form of application for seeking prior permission from the Central Government under the Foreign Contribution Regulation Act, 1976 (herein after referred to as 'the Act' for the acceptance of foreign contribution by an association having a definite cultural, economic, educational, religious or social programme (Rule 3aa)
FC-2	Application for seeking prior permission of the Central Government to accept foreign hospitality (Section 9 read with Sections 10.d and 11.1 of the Act)
FC-3	Account of Foreign Contribution of the year ending 31 st March.... (Rule 4a) <i>With the certificate to be given by Chartered Accountant (Rule 4a)</i>
FC-4	Intimation to the Central Government of receipt of foreign contribution received by a candidate for election (Rule 4b)
FC-5	Intimation to the Central Government of receipt of scholarship, stipend or any payment of a like nature from a foreign source (Rule 4c)
FC-6	Foreign Contribution (Articles) Account
FC-7	Foreign Contribution (Securities) Account
FC-8	Form of application for seeking registration with the Central Government under the Foreign Contribution Regulation Act 1976 for the purpose of acceptance of foreign contribution by an association having a definite cultural, economic, educational, religious or social programme –(Rule 3A)

Form FC-1

Application details:

Application for seeking prior permission of the Central Government for accepting foreign contribution by or on behalf of an organisation of political nature not being a political party (Rule 3a).

Section 5 (1) and 5 (2) (a) of the Foreign Contribution Regulations Act 1976.

Clarifications

As per Rule 3(a) of Foreign Contribution (Regulation) Rules 1976, an application for obtaining prior permission of the Central Government to receive foreign contribution under sub section (1) of Section 5 or clause (a) of sub section (2) of that section shall be made in form FC-1.

As per sub section (1) of Section 5 of the Foreign Contribution Regulation Act 1976, no organisation of a political nature not being a political party shall accept any foreign contribution except with the prior permission of the Central Government.

As per clause (a) of sub section (2) of Section 5 of the Foreign Contribution Regulation Act, except with the prior permission of the Central Government, 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 foreign currency on behalf of an organisation referred to in sub section (1) above.

Checklist for filling in the application

- a) The organisation's names, present and permanent address, including registered address, are to be furnished in the appropriate columns. Actually an officer of the Government of India has to visit the organization on the address furnished and to check and make enquiries.
- b) In the place meant for the particulars of the person applying for and on behalf of the organisation, the particulars of the Chief Executive Officer or similarly named chief functionary of the organisation are only to be given.
- c) The organisation's registration number and date with the concerned Government Department are to be furnished compulsorily.

- d) Under the column details of the contribution to be received, the foreign currency and the total amount to be received are to be furnished.
- e) Under the mode / channel of receipt, details of how the funds would be received are to be furnished. For example, electronic transfer or demand draft through banking channel, etc.
- f) Under the purpose column, full details of the purpose for which the foreign contribution is being received should be furnished. It is required that the purpose be specific and clear, the exact area to be covered and details of actual work should be furnished.
- g) The aims, objectives, memorandum of association, or trust deed should be furnished in detail. It would be better to enclose these details as well.
- h) Full details of the office bearers of the organisation are to be furnished.
- i) Central Government would grant permission only if it is totally satisfied with the credentials of the foreign prospective donor. Hence it would be better to give complete information about the donors. The requisite information may be collected from the donor directly as it would confirm the arrangement.
- j) It is required that the applicant organisation should furnish its connection / relationship with the foreign source, and how the connection was secured.
- k) If any other information is meant to facilitate the process and grant of permission by the Central Government, it should be furnished at the appropriate place.

Form FC-1A

Application details

Form of application for seeking prior permission from the Central Government under the Foreign Contribution Regulation Act, 1976 (herein after referred to as 'the Act' for the acceptance of foreign contribution by an association having a definite cultural, economic, educational, religious or social programme (Rule 3aa).

Clarifications

As per Rule 3(aa) of Foreign Contribution (Regulation) Rules 1976, an application for obtaining prior permission of the Central Government to receive foreign contribution under proviso to sub section (1) of Section 6, or under sub section (1A) of that section or clause (b) of Section 10, shall be made in Form FC-1A.

As per sub section (1) of Section 6 of the Foreign Contribution Regulation Act 1976, no association other than an organisation referred to sub section (1) of Section 5 having a definite cultural, economic, educational, religious or social programme shall accept foreign contribution unless such organisation registers itself with the Central Government in accordance with the rules made under this Act and agrees to receive such foreign contributions only through such one of the branches of a bank as it may specify in its application for such registration.

As per clause (b) of Section 10 of the Foreign Contribution Regulation Act, (power of Central Government to prohibit receipt of foreign contributions etc in certain cases) the Central Government may (without prejudice to the provisions of sub section (1) of section 6 require any association specified in that sub section to obtain prior permission of the Central Government before accepting any foreign contribution.

Checklist for filling in the application

- a) The Chief Executive Officer or similarly named chief functionary of the organisation should make out the application in his name. He should be an office bearer of the organisation and authorized to make out this application through a resolution of the Governing Body of the organisation.

- b) The organisation's name and its present and permanent address, including registered address, are to be furnished in the appropriate columns. Actually an Officer of the Government of India would visit it on the given address to check if it is correct.
- c) The details of the registration of the Society, Trust or Charitable Organisation under Section 25 of the Companies' Act 1956 should be furnished in the application.
- d) The classification of the organisation should be very clearly declared and specified in the application. The organisation's objectives and activities are very important and these should be on the basis of the classification given in the application.
- e) The objectives of the organisation should be furnished in the application form. These should be as they are stated in the memorandum of association or similar other documents, as the case may be.
- f) Full details of the members of the Governing Body or a similar responsible set up should be furnished in the application. If the members are related to each other, this should also be reported in the application. (The prosecution or conviction of any member of the Governing Body shall be given only if he is related to the officials responsible for the execution of the work of either this organisation or of any other organization). Details of prosecution or conviction of people in their personal capacity need not be furnished.
- g) If the organisation is an associate of a foreign organisation or another organisation which is already registered under the Act, the full name, address of the foreign organisation or the mother organisation which is already registered should be furnished.
- h) In case the organisation has already been registered under the Act, but its registration has subsequently been cancelled for any reason, this should be reported in the application.
- i) In case the Central Government has invoked its powers under Section 10(b) and required the organisation to obtain prior permission before accepting any foreign contribution, this should be reported in the application.

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- j) In case the organisation has made any previous application, its details should be furnished in the application form.
- k) In case the organisation has any close links with another organisation, whose application has been rejected or prohibited from accepting foreign contribution, the same should be reported in the application.
- l) Close links: Majority of Governing Body members are common or common control or close financial dealings or common office and staff, (not clear: to be restated).
- m) Details of previous prior permission received should be furnished. Foreign contributions received and utilized and FC-3 submitted or pending to be submitted for the current year should be furnished in the application.
- n) In case foreign contribution has been accepted without prior permission, it should be reported in the application.
- o) Details of publications (books) brought out by the organisation which is registered under the Press and Registration of Books Act should be provided.
- p) Details regarding the organisation over the past three years should be reported. Annual reports brought out by the organisation should be enclosed.
- q) The value, manner/form in which and the purpose for which the foreign contributions are to be received should be furnished in the application form. It is better to enclose a copy of the project proposal as approved and cleared by the foreign donor.
- r) In case contributions are to be received from another organisation, which has been registered under the Act, full details of this organisation, its project proposal and break up are also to be furnished.
- s) The applicant should designate a particular bank account for receipt and utilization of the foreign contribution to be received.
- t) Full details of the foreign donor are to be furnished. It is only when the Central Government is totally satisfied about the foreign donor that permission to receive foreign contribution would be granted. Hence it would be better to get the details from the donor.

- u) An incomplete application would be summarily rejected. Hence utmost care should be taken while filling the application.
- v) In case the space against any column is insufficient, a separate annexure should be attached.
- w) The Chief Executive Officer or similarly named chief functionary of the organisation should make out the application in his name. He should be an office bearer of the organisation and be authorized to make out this application through a resolution of the Governing Body of the organization.

Form FC-2

Application details

Application for seeking prior permission of the Central Government to accept foreign hospitality (Section 9 read with Sections 10.d and 11.1 of the Act)

Clarifications

As per Section 9 of the Act, no member of a Legislature, office-bearer of a political party, judge, government servant or employee of any corporation shall, while visiting any country or territory outside India, accept, except with the prior permission of the Central Government, any foreign hospitality.

As per Section 10.d of the Act, the Central Government may require any person or class of persons, not specified in Section 9, to obtain prior permission of the Central Government before accepting any foreign hospitality.

As per Section 11.1 of the Act, every individual, association, organisation or other person, who is required by or under this Act to obtain the prior permission of the Central Government to accept any foreign contribution or foreign hospitality, shall, before the acceptance of any such contribution or hospitality, make an application for such permission to the Central Government in such form and in such manner as may be prescribed.

Checklist for filling in the application

- a) The personal particulars of the applicant should be furnished in detail in the application.
- b) Details of travel from the date of departure till the date of arrival should be furnished in the tabular form provided in the application.
- c) The countries and places where the foreign hospitality is to be accepted should be furnished in the relevant column.
- d) Duration and purpose of the visit to the country where foreign hospitality is to be accepted should be given in detail.
- e) In case the applicant is an organisation, the aims and objectives of the organisation, memorandum of association or trust deed should be

furnished along with full details of the important office bearers of the organisation.

- f) Since the Central Government would grant permission only when it is satisfied, it would be better to get the details of the foreign hospitality provider itself to ensure their correctness and completeness.
- g) In case the hospitality provider is not located or residing in the country where the applicant is visiting, details regarding this are to be furnished.
- h) Full details of foreign hospitality proposed to be accepted along with specific dates with specific details including value of the hospitality should also be furnished. Approximate expenditure to be incurred on the hospitality should also be furnished.
- i) The nature of connection between the applicant and hospitality provider should be given in the relevant space.

Form FC-3

Application details

Account of Foreign Contribution of the year ending 31st March.... (Rule 4a)
With the certificate to be given by Chartered Accountant (Rule 4a)

Clarifications

As per Rule 4a of the Foreign Contribution Regulation Rules 1976, an intimation as to the receipt of foreign contribution by an association shall be given every financial year in Form FC-3 in duplicate within four months of the closure of the year.

Checklist for filling in the application

- a) Full details of the applicant should be furnished without any ambiguity as provided / furnished in the application for registration or prior permission.
- b) Details of FCRA registration number and date as given in the FCRA registration should be furnished.
- c) In case prior permission has been obtained for receipt of foreign contribution, then the letter granting permission, with reference number and date, should be mentioned. If prior permission has been obtained several times, details in respect of each one of them should be provided.
- d) Details regarding the nature of the organisation – whether cultural, economic, educational, religious or social—should be furnished.
- e) If religious, then the name of the religion should be declared.
- f) The total amount of foreign contribution received during the year should be furnished.
- g) The interest earned on the savings in the bank account or on the investments made from the foreign contributions received should be reported.
- h) Foreign contribution during the year should be reported purpose-wise (as classified in the FC-3 form) with details like opening balance, receipts, utilisation and closing balance. The details furnished should tally with the figures reported in the previous year. Break up details of foreign contributions received in cash and in kind should be reported. Details of

foreign contributions received should be bifurcated into those received directly from the foreign donor and those received through another organisation/person. The actual amount spent or utilized should be mentioned in the application form. These figures should tally with the figures in the Receipts and Payments account. The value of the items (kind portion) received and utilized should be furnished.

- i) Designated bank account number (through which the foreign contributions were received during the year) should be furnished.
- j) Donor-wise breakup of the foreign contributions received during the year should be furnished: name and address of the donor, the purpose for which the contribution is given, the date of receipt and the amount received--with regard to institutional donors, regardless of the amount of contribution and regardless of whether it is received as a first recipient or as second / subsequent recipient.
- k) With regard to individual donors, only when the total amount of foreign contribution during a particular financial year exceeds Rs.1 lakh, regardless of whether they are received as a first recipient or as second / subsequent recipient, should be reported. In case the amount is less than Rs.1 lakh during a year, only the purpose of the contribution and the amount has to be given.
- l) Country-wise breakup of the foreign contribution received should be furnished. With regard to interest earned, amount received by way of sale of assets purchased out of foreign contributions received either during the year under report or in the previous years should be shown under the country India.
- m) The Chief Executive Officer or similarly named chief functionary of the organisation should make out the application in his name. He should be an office bearer of the organisation and authorized to make out this application through a resolution of the Governing Body of the organisation.
- n) In the space provided for chartered accountant's certificate, which should be signed by him, the following details are to be furnished:
 - name of the association / organisation

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- its full address
- its registration number under Societies Registration Act
- the State of Registration
- the financial year for which the Form FC-3 is being prepared and submitted
- the total foreign contribution brought forward at the beginning of the year
- the total foreign contribution received during the year
- the total foreign contribution unutilized at the end of the year
- the name and address of the firm of the Chartered Accountant
- Registration number of the Chartered Accountant and duly certified and signed by the Chartered Accountant

Form FC-4

Application details

Intimation to the Central Government of receipt of foreign contribution received by a candidate for election (Rule 4b).

Clarifications

As per Rule 4b of the Foreign Contribution Regulation Rules 1976, an intimation as to the receipt of foreign contribution by a candidate for election, shall be given in Form FC-4, within fifteen days from the date on which he is duly nominated as a candidate for election.

Checklist for filling in the application

- a) Full details of the applicant should be furnished without any ambiguity
- b) Date of nomination as a candidate to a Legislature should be furnished
- c) Complete details of foreign contributions received during the 180 days preceding the date of nomination must be given
- d) Details of the foreign contributions like date and number of cheque / demand draft, name of the bank on which it was drawn and the amount in Rupees
- e) In case the contribution was received in kind, details of the item received in kind received and its value should be furnished
- f) Mode of receipt (through bank account or in cash or kind) should be furnished
- g) Reasons for which the foreign contribution has been received should be furnished. Of course the purpose should not be one that would influence the election process
- h) Individual donor-wise particulars – individual or organisation – should be furnished
- i) Details of the connection with the foreign source should be furnished
- j) Details of actual utilisation of the contribution should be furnished: specific details of purpose and the manner of utilisation

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- k) The declaration in the form FC-4 should be signed by the candidate in the presence of a Class I Gazetted Officer or a 1st Class Magistrate who is required to sign the certificate below the declaration. It may be noted that the officer or the Magistrate is not certifying the contents or correctness of the form but only the signature of the candidate

Form FC-5

Application details

Intimation to the Central Government of receipt of scholarship, stipend or any payment of a like nature from a foreign source (Rule 4c).

Clarifications

As per Rule 4c of the Foreign Contribution Regulation Rules 1976, an intimation as to the receipt of any scholarship, stipend or any payment of a like nature, from any foreign source shall be given in form FC-5 within 30 days of receipt of such scholarship, stipend or payment of a like nature.

Checklist for filling in the application

- a) Full and accurate personal details of the applicant should be furnished in the relevant columns
- b) Specific details of the occupation / profession – for example – student pursuing business management at the University of New York – should be furnished
- c) If the donor is an individual, his personal particulars including name, present and permanent address, nationality and profession should be furnished
- d) If the donor is not an individual but an organisation or institution, full name and complete address, aims and objectives and principal office bearers particulars should be furnished
- e) Break up of scholarship amount should be furnished and this tally with the letter of scholarship sanction issued by the organisation or individual.
- f) Details of the cheque / demand draft like date and number, bank on whom it is drawn, amount in Rupees, whether received in cash or through bank account should be furnished
- g) Reasons for the grant of scholarship should be furnished.
- h) Applicants stay abroad – duration – should be furnished with dates and this should tally with the passport details

Application details

Foreign Contribution (Articles) Account (Rule 8 (a)).

Clarifications

As per Rule 8 (a), a separate set of accounts and records shall be maintained, exclusively for foreign contribution received and utilized in Form FC-6 where the foreign contribution relates only to articles.

Checklist for filling in the application

- a) For each category of articles FC-6 form should be filled in and maintained for easy identification
- b) Date of receipt of the article should be given
- c) The full name, address of the donor should be furnished
- d) The mode of receipt of the item should be furnished – like by courier, by hand delivery, by lorry, by train, by air, by sea, etc. It would be better to furnish additional details like courier consignment number, lorry receipt number, airway bill number, bill of lading number, truck number, train details, etc
- e) The purpose for which the article has been given should be furnished – say for free distribution amongst the poor, for use in a particular project, for official use, etc.
- f) The exact quantity (number) of the article received should be furnished.
- g) The approximate value of the article received should be furnished.
- h) The date of intimation to the Central Government should be furnished. Since there is no separate intimation to be sent to Central Government, the date of dispatch of FC-3 may be mentioned here
- i) Date of actual utilization of the article received should be furnished. If required, separate sheet may be used to furnish the dates of utilization in the case of a particular lot of the article received and utilized on different dates

- j) The full name and address of the recipient of the article should be furnished – either by donation, transfer or sale. It would be better if a separate sheet is used to furnish the details in the case of a particular lot of the article received and donated/transferred/sold to different recipients
- k) The purpose for which the article has been donated / transferred / sold to different recipients should be furnished. It should be remembered that the article should be used only for the purpose for which the article has been received. A cross verification / confirmation of the relevant column in FC-3 may be undertaken
- l) In case the articles are consumed by the association (or the organisation receiving the article in the first place) then it should be recorded in FC-6. The sale price should also be recorded. A cross reference could be the cash remitted or the cheques deposited in the bank and cash book / bank book would have corresponding entries as well
- m) In case the articles are sold then their details should be furnished. These sale proceeds should tally with the figures be reported in FC-3
- n) In case the articles are transferred to another organisation, it should be recorded in FC-6
- o) The closing balance of the article should be furnished. This balance to be running figure, each time reworking as and when fresh articles are received.
- p) At regular intervals the articles in hand and the balance shown in the FC-6 should be verified and certified

Form FC-7

Application details

Foreign Contribution (Securities) Account (Rule 8 (c)).

Clarifications

As per Rule 8 (c) of the Foreign Contribution Regulation Rules 1976, a separate set of accounts and records shall be maintained exclusively for foreign contribution received and utilized and reported in FC-7 where the foreign contribution relates to foreign securities.

Checklist for filling in the application

- a) FC 7 should be maintained for each variety of security separately – nature of security and nominal value of each security
- b) Full name and address of the person from whom the security was received should be furnished
- c) Distinguishing number of each security should be recorded in FC-7
- d) Total number of securities received and held should be recorded along with total nominal value thereof
- e) Particulars of permission of the Reserve Bank of India to acquire and or to hold the security should be recorded
- f) Particulars of intimation sent to the Central Government should be mentioned. Since there is no separate intimation to be sent to Central Government, the date of dispatch of FC-3 may be mentioned here
- g) Dividend or interest received on the securities should be furnished. These details would be cross verified with the bank account and / or reporting in the FC-3 for the relevant period
- h) Date up to which dividend or interest has been received should be recorded
- i) Name and address of the person to whom the securities have been sold or transferred should be mentioned along with total number of securities transferred or sold along with distinguishing number, total nominal value should be furnished

- j) Particulars of permission of the Reserve Bank of India to sell / transfer the securities should be furnished
- k) Particulars of the report mailed to Central Government – FC 3 and date – should be mentioned. A cross reference to the foreign contribution under currency account should be cited

Form FC-8

Application details

Form of application for seeking registration with the Central Government under the Foreign Contribution Regulation Act 1976 for the purpose of acceptance of foreign contribution by an association having a definite cultural, economic, educational, religious or social programme (Rule 3A).

Clarifications

As per Rule 3 A of the Foreign Contribution Regulation Rules 1976, an application for registration of an association for acceptance of foreign contribution shall be made in Form FC-8.

Checklist for filling in the application

- a) The application should be made by the Chief Executive Officer or the Chief Functionary of the Association and he should be specifically authorized by the Governing Body of the Association to do so
- b) Full particulars of the association should be furnished in the application basing on which there may be a physical verification by the Central Government
- c) Relevant registration details of the association like society, trust or charitable company (under section 25 of the Companies Act 1956) should be furnished
- d) The classification of the association should be clearly indicated
- e) The main aims and objects of the association should be furnished. This should be in accordance with the details furnished already in the Memorandum of Association or Trust Deed
- f) The main object and definite programme for which the foreign contribution is to be accepted / utilized should be furnished
- g) Details of all members of the Governing Body should be furnished along with their designations and positions held
- h) In case of any of the office bearers have been prosecuted and convicted in the discharge of his official functions, the details should be furnished

- i) In case the association is affiliated or is a branch of or unit of a foreign organisation or another organisation which is already registered under the Act, the name and address of the foreign organisation or the other organisation should be furnished
- j) Details of previous permission granted if any by the Central Government to the association should be furnished
- k) Details of FC 3 submitted and accounts in relation to such earlier permission should be furnished
- l) In case any foreign contribution has been accepted in the past without any prior permission, the details should be furnished. It may be noted this would be viewed very seriously by the Central Government
- m) Details of any publication brought out which is registered under the Press and Registration of Books Act should be furnished
- n) Details of any previous application made for registration under the Act to the Central Government should be furnished
- o) Details of the association's close links with another organisation which has been refused registration or prohibited from accepting foreign contributions should be furnished
- p) Detailed activities of the association during the past three years should be furnished
- q) Audited balance sheet, P&L / Receipts and Payments Account / Income and Expenditure account should be furnished with the application
- r) Details of geographical area of active operation of the association should be furnished
- s) In case the association has been specified as an organisation of a political nature the order number and date should be furnished
- t) A particular bank account should be designated for receipt and utilization of the foreign contribution should be furnished in the application
- u) A recommendation from the district collector, department of a state government or ministry / department of the central government should be attached

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- v) As mentioned in the beginning, the application should be signed by the Chief Executive Officer of the Chief Functionary and he should be specifically authorized to do so by the Governing Body of the Association.

CHAPTER 5

CHECKLIST FOR ENSURING PROPER SUBMISSION OF APPLICATIONS

Under the provisions of the Foreign Contribution (Regulation) Act, 1976, for acceptance of foreign contribution

1. Eligible category
An association with a definite cultural, economic, educational, religious or social programme
2. Types of permission
 - (i) Registration under section 6(1)(a); and,
 - (ii) Prior permission under section 6 (1A).
3. Application form
 - (i) For grant of registration in form FC – 8; and,
 - (ii) For grant of prior permission in form FC – 1A.

4. Essential requirements

- **Bank account**

Open a separate bank account for the receipt and utilisation of foreign contribution in a bank of your choice and furnish particulars of the same at the appropriate place.

Note: Do not deposit any local funds, other than the essential initial deposit specified by the bank for opening an account, in this account.

- **Documents**

Remember to enclose copies of the following documents with your application:

- (i) A certified copy of registration certificate or Trust deed, as the case may be;

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- (ii) Details of activities during the last three years;
- (iii) Copies of audited statement of accounts for the past three years (Asset and Liabilities, Receipt and Payment, Income and Expenditure);
- (iv) Commitment letter from foreign donor specifying the amount of foreign contribution (only with prior permission application);
- (v) A copy of the project for which foreign contribution was solicited/is being offered (only with prior permission application);
- (vi) If functioning as editor, owner, printer or publisher of a publication registered under the Press and Registration of Books Act, 1867, a certificate from the Press Registrar that the publication is not a newspaper in terms of section 1(1) of the said Act.

5. Miscellaneous

Furnish information exactly in the manner asked for in the form, especially the names and addresses of the members of the Executive Committee/ Governing Council, etc.

6. Chartered Accountants / Banks

- i) Chartered Accountants, before certifying the accounts of an association in Form FC – 3, must ensure that they have been prepared in accordance with the provisions of the Foreign Contribution (Regulation) Act, 1976 and the Rules framed there-under.
- ii) No bank should credit any foreign contribution to the account of an association / organisation unless it produces documentary proof of having obtained registration/prior permission from the Central Government for the same. Crediting of foreign contribution by a bank to the account of an association / organisation that has not obtained registration or prior permission from the Central Government constitutes a violation and will render the defaulting bank liable for action by the Reserve Bank of India.

COMMON GROUNDS FOR REJECTION OF APPLICATIONS UNDER FCRA

To remove certain lacunae noticed during administration of the FCRA and the Rules made there under, certain guidelines were laid down for considering applications for grant of prior permission/registration under the Act. Some of the common grounds for rejection of applications are enlisted below as illustrations to bring in transparency and benefit the applicants in taking due care and caution:

- If the association is not registered under the Societies Registration Act, 1860 or the Indian Trusts Act, 1882 or section 25 of the Companies Act, 1956.
- If any of the office bearers/trustees, including the chief functionary, is a foreign national, other than of Indian origin.
- If the association has a single office bearer/member.
- If the association is found to have been formed for personal gain or for diversion of the funds for undesirable purposes.
- If the association is found to be fictitious or 'benami' in nature.
- If the credibility of any member of the governing body is in doubt.
- If the association has close links with another association which has been refused registration under FCRA or prohibited under FCRA or violated the provisions of FCRA.
- If the association has links with any banned organisations.
- If the principal office bearers of the association have been convicted by any court of law under any act or if a prosecution for any offence is pending against them.

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- If the principal office bearers of the association have been found guilty of diversion or misutilisation of funds of the said association or any other association in the past.
- If the activities of the association are found to be aimed at conversion through inducement or force, either directly or indirectly, from one religious faith to another.
- If the association is found to propagate sedition or to advocate violent methods to achieve its ends.
- If the association is found to be creating communal tensions or disharmony.
- If the office bearers of the association are also office bearers of another association and one of these associations has come to adverse notice.
- If the association's Printed work is not certified by the Press registrar of India not to be a newspaper in terms of section 1(1) of the Press Registration of Books Act, 1867.
- If the source of foreign contribution is found to be adverse to the interests of the country.
- If the acceptance of foreign contribution by the association is likely to be prejudicial to (a) the sovereignty and integrity of India;
 - (b) free and fair elections to any Legislature or House of Parliament;
 - (c) public interest;
 - (d) friendly relations with a foreign state; or (e) harmony between any religious, social, linguistic, regional groups, caste or community.
- If the association has not filed its annual FC-3 returns, of receipt and utilization of foreign contribution received with prior permission, within the stipulated period.
- If the association has violated any provisions of the Act or Rules in the preceding three years and the said violation has not been remedied or rectified.

Common Grounds for Rejection of Applications Under FCRA

- 1. Additional grounds for rejection of applications for Registration.**
 - If the association is not in existence for three years at least.
 - If the association has not carried on any activity in its chosen field during the last three years.
 - If the association has not received foreign contribution, with prior permission, during the preceding three years.
 - If the association has not made any substantial contribution, excluding expenditure on administration, (Rs.6,00,000 over a period of three years or Rs.2,00,000 per year) in its field of interest.
- 2. Additional grounds for rejection of applications for Prior Permission**
 - If the application is not accompanied by the 'commitment letter' of the donor.
 - If the application is not accompanied by the copy of project for which foreign contribution was solicited/is being offered.

ILLUSTRATIVE LIST OF PERMITTED PROGRAMS

The illustrative programs permitted to be carried out by associations having different nature are indicated below:

1. Religious

- Celebrations of religious functions/festivals, etc.
- Construction/repair/maintenance of places of worship, religious schools.
- Education of priests and preachers; (dissemination of the message of good will etc. from their holy books).
- Publication and distribution of religious books/ literature.
- Maintenance of priests / preachers / other religious functionaries.
- Any other activities related to the above.

2. Educational

- Construction and maintenance of school/college.
- Construction and running of hostel for poor students.
- Grant of stipend/Scholarship/assistance in cash and kind to poor/deserving children.
- Purchase and supply of educational material: books, notebooks, etc.
- Conducting adult literacy programs.
- Conducting Research.
- Education/Schools for the mentally challenged.
- Non-formal education projects/coaching classes.

- Any other activities related to the above.

3. Economic

Following activities (Not being commercial or profit making activities)

- Micro-finance projects, including setting up banking co-operative and self-help groups.
- Self-sustaining income generation projects/Schemes.
- Agricultural activity.
- Rural Development.
- Animal husbandry projects.
- Setting up and running handicraft centre/cottage and khadi industry/social forestry projects.
- Vocational training, tailoring, motor repairs, computers, etc.
- Any other activities related to the above, not being commercial activities.

4. Social

- Construction/Running of Hospital/dispensary/clinic.
- Construction of community halls, etc.
- Construction and Management of old age home.
- Welfare of the aged widows.
- Construction and Management of Orphanage.
- Welfare of the orphans.
- Construction and Management of dharamshala /shelter.
- Holding of free medical/health/family welfare/immunisation camps.
- Supply of free medicine, and medical aids, including hearing aids, visual aids, family planning aids, etc.
- Provision of aids, such as Tricycles, callipers etc. to the handicapped.
- Treatment/Rehabilitation of drug addicts.

Illustrative List of Permitted Programs

- Welfare/Empowerment of women.
- Welfare of children.
- Provision of free clothing/food/to the poor. Needy and destitute.
- Relief/Rehabilitation of victims of natural calamities.
- Help to the victims of riots/other disturbances.
- Digging of bore wells.
- Sanitation, including community toilets, etc.
- Awareness camp/Seminar/workshop/meeting/conference.
- Providing free legal aid/Running legal aid centre.
- Holding sports meet.
- Awareness about Acquired Immune Deficiency Syndrome (AIDS)/ Treatment and rehabilitation of persons affected by AIDS.
- Welfare of the physically and mentally challenged.
- Welfare of the Schedules Castes.
- Welfare of the Scheduled Tribes.
- Welfare of the Backward Classes.
- Environmental programs.
- Survey for Socio-economic and other welfare programs.
- Preservation & maintenance of Wild Life.
- Preservation of Natural Resources.
- Awareness against social evils.
- Rehabilitation of victims of heinous crimes.
- Rehabilitation of beggars, bootleggers, child labour, etc.
- Creating awareness of Government schemes & Law to general public.
- Any other activities related to the above.

5. Cultural

- Celebration of national events (Independence/Republic day/festivals).
- Theatre/Films, etc.
- Maintenance of places of historical and cultural importance.
- Preservation of ancient/tribal art forms.
- Preservation & promotion of Cultural Heritage & Literature of India.
- Cultural shows.
- Any other activities related to the above.

CHAPTER 8

EXEMPTED AGENCIES

List of agencies of the United Nations and other international agencies and organisations notified by the Central Government to be not covered by the definition of 'foreign source', under section 2(1)(e)(ii) of the Foreign Contribution (Regulation) Act, 1976.

The United Nations System

I. Secretariat

- Office of Internal Oversight Services, New York.
- Office of Legal Affairs, New York.
- Department of Political Affairs, New York.
- Department for Disarmament Affairs, New York.
- Department of Peacekeeping Operations, New York.
- Office for the Coordination of Humanitarian Affairs, New York.
- Department of Economic and Social Affairs, New York.
- Department for General Assembly Affairs and Conference Services, New York.
- Department of Public Information, New York.
- Department of Management, New York.
- United Nations Office at Geneva.
- United Nations Office at Vienna.
- United Nations Office at Nairobi.

II. Bodies of the United Nations

- International Research and Training Institute for the Advancement of Women (INSTRAW), Santo Domingo, Dominican Republic.

- Joint United Nations Programme on HIV/AIDS (UNAIDS), Geneva.
- Office of the UN High Commissioner for Human Rights (OHCHR), Geneva.
- Office of the UN High Commissioner for Refugees (UNHCR), Geneva.
- United Nations Capital Development Fund (UNCDF), New York.
- United Nations Conference on Trade and Development (UNCTAD), Geneva.
- United Nations Development Fund for Women (UNIFEM), New York.
- United Nations Institute for Disarmament Research (UNIDIR), Geneva.
- United Nations Institute for Training and Research (UNITAR), Geneva.
- United Nations Interregional Crime and Justice Research Institute (UNICRI), Rome.
- United Nations Office for Project Services (UNOPS), New York.
- United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), Gaza and Amman.
- United Nations Research Institute for Social Development (UNRISD), Geneva.
- United Nations University (UNU), Tokyo.
- United Nations Volunteers (UNV), Bonn.

III. Funds and Programs

- United Nations Children's Fund (UNICEF), New York.
- United Nations Development Programme (UNDP), New York.
- United Nations Environment Programme (UNEP), Nairobi.
- United Nations International Drug Control Programme (UNDCP), Vienna.
- United Nations Population Fund (UNFPA), New York.
- World Food Programme (WFP), Rome.

IV. Regional Commissions

- Economic Commission for Africa (ECA), Addis Ababa, Ethiopia.
- Economic Commission for Asia and the Pacific (ESCAP), Bangkok, Thailand.
- Economic Commission for Europe (ECE), Geneva.
- Economic Commission for Latin America and the Caribbean (ECLAC), Santiago, Chile.
- Economic Commission for Western Asia (ESCWA), Beirut, Lebanon.

V. Law of the Sea Treaty Bodies

- International Seabed Authority, Kingston.
- International Tribunal for the Law of the Sea, Hamburg.
- Commission on the Limits of the Continental Shelf, United Nations Divisions for Ocean Affairs and the Law of the Sea, New York.

VI. Environmental Bodies

- Secretariat of the United Nations Framework Convention on Climate Change (UNFCCC), Bonn.
- Intergovernmental Panel on Climate Change (IPCC), Geneva.
- Ozone Secretariat to the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substance that Deplete the Ozone Layer, Nairobi.
- Secretariat of the Convention on Biological Diversity (CBD), Montreal.
- Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Geneva.
- UNEP/CMS Secretariat of the Convention on the Conservation of Migratory Species of Wild Animals (CMS or Bonn Convention), Bonn.
- Secretariat of the Basel Convention on the Control of Trans-boundary Movements of Hazardous Wastes and their Disposal, Geneva.

- Secretariat of the United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought /or Desertification, especially in Africa (CCD), Bonn.
- Global Environment Facility, Washington D.C.
- Bureau (Secretariat) of the Convention on Wetlands (Ramsar), Gland, Switzerland.

VII. SPECIALISED AGENCIES

- International Labour Organisation (ILO), Geneva.
- Food and Agriculture Organization (FAO), Rome.
- United Nations Educational, Scientific and Cultural Organisation (UNESCO), Paris.
- International Civil Aviation Organisation (ICAO), Montreal.
- World Health Organisation, Geneva.
- Universal Postal Union (UPO), Berne, Switzerland.
- International Telecommunication Union (ITU), Geneva.
- World Meteorological Organization (WMO), Geneva.
- International Maritime Organization (IMO), London.
- World Intellectual Property Organization (WIPO), Geneva.
- International Fund for Agricultural Development (IFAD), Rome.
- United Nations Industrial Development Organisation (UNIDO), Vienna.

VIII. The World Bank Group

- International Bank for Reconstruction and Development (IBRD), Washington D.C.
- International Development Association (IDA), Washington D.C.
- International Monetary Fund (IMF), Washington D.C.
- International Finance Corporation (IFC), Washington D.C.
- Associated Organisations of World Bank Group:

- International Centre for the settlement of Investment Disputes (ICSID), Washington D.C.
- Multilateral Investment Guarantee Agency (MIGA), Washington D.C.
- Consultative Group on International Agricultural Research (CGIAR), Washington D.C. (It has 16 Research centres)
- International Plant Genetic Resource Institute (IPGRI), Rome.
- International Wheat and Maize Improvement Centre (CIMMYT), Mexico.
- International Centre for Living Aquatic Resource Management (ICLARM), Philippines.
- International Irrigation Management Institute (IIMI), Colombo.
- International Food Policy Research Institute (IFPRI), Washington D.C.
- International Centre of Research in Agro-forestry (ICRAF), Nairobi.
- International Centre for Agricultural Research in Dry Areas (ICARDA), Syria.
- International Centre for Tropical Agriculture (CIAT), Columbia.
- International livestock Research Institute (ILRI), Nairobi.
- West Africa Development Association (WARDA), Abidjan.
- International Service Of National Agricultural Research (ISNAR), The Netherlands.
- International Crops Research Institute For the Semi-Arid Tropics (ICRISAT), Hyderabad.
- International Rice Research Institute, Manila, Philippines.
- International Potato Centre, Peru.
- Centre for International Forestry Research (CIFOR), Indonesia.
- International Institute of Tropical Agriculture (IITA), Nigeria.

IX. Regional Development Banks

- African development Bank (ADB), Abidjan.

- Inter-American Development Bank (IDB), Washington D.C.
- Asian Development Bank (ADB), Manila.
- Caribbean Development Bank (CDB), St. Michael, Barbados.

X. Other Bodies Related to United Nations

- International Atomic Energy Agency (IAEA), Vienna.
- Organisation for the Prohibition of Chemical Weapons (OPCW), The Hague.
- Provisional Technical Secretariat (PTS) for the Comprehensive Nuclear Test Ban Treaty Organization (CTBTO), Vienna.
- International Consultative Group on Food Irradiation (ICGFI), Vienna.
- International Narcotics Control Board (INCB), Vienna.
- International Trade Centre UNCTAD/WTO (ITC), Geneva.
- International Union for the Protection of New Varieties of Plants (UPOV), Geneva.
- World Tourism Organisation (WTO/OMT), Madrid.
- World Food Council (WFC).
- United Nations Social Defence Research Institute (UNSDRI).
- United Nations Statistical Office (UNSCO).
- Other International organisations
- United Nations Outer Space Committee.
- International Sugar Organisation, London.
- Asian Productivity Organisation, Tokyo.
- Asian and Pacific Development Administration, Kuala Lumpur.
- Asian African Legal Consultative Committee, New Delhi.
- Asia/Pacific Cultural Centre for UNESCO (ACCU), Japan.
- Commonwealth Secretariat, London.
- Afro-Asian Rural Reconstruction Organisation (AARRO), New Delhi.

Exempted Agencies

- Centre on Integrated Rural Development for Asia and the Pacific, (CIRDAP), Dhaka.
- International Centre for Genetic Engineering and Biotechnology (ICGEB), New Delhi.
- Asia and Pacific Centre of Transfer of Technology (APCTT), New Delhi.
- Centre for Science and Technology of the Non-Aligned and Other Developing Countries (NAM S&T Centre), New Delhi.
- Commonwealth Agricultural Bureaux International (CABI), UK.
- The Asia Pacific Association of Agricultural Research Institution (APAARI), Bangkok.
- The Regional Co-ordination centre for Research and Development of coarse Grains, Pulses, Roots and Tubercrops in the Humid Tropics of Asia and the Pacific (CGPRT Centre), Indonesia.
- The Regional Network for Agriculture Machinery (RNAM), Bangkok.
- Commission on Genetic Resources for Food and Agriculture (CGRFA), Rome.
- The International Seeds Testing Association (ISTA), Zurich.
- International Water Management Institute (IMI), Sri Lanka.

(Notified in the Gazette of India, Extraordinary, Part II-Section 3- Sub-section (ii) vide S.O. No. 1014 (E) dated the 13th November, 2000).

CHAPTER 9

FCRA ON-LINE SERVICES

To facilitate the recipients of foreign contributions, Ministry of Home Affairs, Government of India has introduced online services.

These services include the following:

- Instructions for filing online grant of registration in FC-8 Form
- Online filing of applications for grant of registration under FC(R) Act 1976 (FC-8 form)
- Instructions for filing online application for grant of Prior Permission (FC-1A) Form
- Online filing of applications for grant of Prior Permission under FC(R) Act 1976 (FC-1A Form)
- Instructions for online filing of annual accounts in FC-3 Form
- Online filing of annual account in FC-3 Form

The links for availing these services are as follows:

FCRA Online Services	http://mha.nic.in/fcraweb/fc_online.htm
Online filing of annual account in FC-3 Form	http://mha.nic.in/fcraweb/fc_login.aspx
Instructions for online filing of annual accounts in FC-3 Form	http://mha.nic.in/fcraweb/fc_fc3_help.htm
Online filing of applications for grant of registration under FCR Act 1976 (FC-8 form)	http://mha.nic.in/fcraweb/fc_login.aspx

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Instructions for filing online grant of registration in FC-8 Form	http://mha.nic.in/fcweb/fc_fc8_help.htm
Online filing of applications of grant of Prior Permission under FC(R) Act 1976 (FC-1A Form)	http://mha.nic.in/fcweb/fc_login.aspx
Instructions for filing online application for grant of Prior Permission (FC-1A) Form	http://mha.nic.in/fcweb/fc1A_help.htm

LEGISLATIVE PROPOSALS

Enacted in the year 1976 Foreign Contribution Regulation Act (FCRA) 1976 is an act that tends to regulate the flow of foreign funding to the voluntary sector. In 1984-85, the FCRA was comprehensively amended. In June 2004, the Home Ministry decided to amend the existing FCRA 1976 in the light of growing threat to the internal security and quantum jump in foreign contribution. On June 24 and 25 (2005), Ministry of Home Affairs and The Institute of Chartered Accountants organised first ever seminar on FCRA, 1976. The Seminar appeared to be a curtain raiser on FCMC Bill.

The GOI proposed a draft Bill, namely the Foreign Contribution Management and Control Bill 2005 (Please see annexure). The MHA viewed this Bill as necessary to smoothen the functioning of NGOs without compromising national security. However, some analysts of the proposed Bill viewed that it aimed to put stricter control mechanisms on NGOs. Some of the critically viewed features of the proposed Bill were:

- The requirement for re-registration of already registered organizations within two years instead of allowing those who have got the approval to receive foreign contributions automatically
- The necessity for associations to obtain a renewal certificate every five years.
- Provisions such as the suspension and cancellation of registration certificate
- A restriction on associations not to exceed 30% of the total contribution on administrative expenses.
- A restriction on foreign funding to organizations of political nature without defining clearly what are the criteria of being an organization of political nature

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- The emphasis (section 11 (3) (a-d)) that the central government can specify, by the notification in the Official Gazette, who should receive foreign contributions, from whom the funds are received, in which broad areas such funds can be utilized and for what purposes
- These provisions not only restrict the foreign funding to NGOs but also violate their civil and political rights and intend to control its operations.

The Government of India decided to withdraw this bill and to come out with a comprehensive bill in its place.

Accordingly, the Minister of State for Home Affairs introduced in the Rajya Sabha on 18th December 2006 the Foreign Contribution (Regulation) Bill, 2006 (Please see annexure). The Bill seeks to regulate the acceptance, utilization and accounting of foreign contribution and acceptance of foreign hospitality by a person or an association and repeal the existing Foreign Contribution (Regulation) Act, 1976 (FCRA).

The salient features of the Bill are as follows:

The preamble has been reworded to prohibit acceptance and utilization of foreign contribution or foreign hospitality for any activities detrimental to the national interest

- Any amount received by any person from any foreign source by way of fee, payment in lieu of certain services rendered, etc. will be excluded from the definition of foreign contribution.
- Organizations of political nature, not being political parties, will be placed in the prohibited category for accepting foreign contribution.
- 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 mode of mass communication and correspondent or columnist, cartoonist, editor, owner of such Association or company will now be placed in prohibited category for accepting foreign contribution.
- Use of foreign contribution or any income arising out of it for speculative business will be prescribed.

- Administrative expenses have been capped at fifty percent of the foreign contribution and any such expenses beyond that limit may be incurred only with the prior approval of the Central Government.
- Provision is made to specify the persons who can, and the areas where, the purpose for which, and the sources from which foreign contribution can be accepted only with prior permission of the Central Government.
- Registration will be granted for a period of five years with a provision for automatic renewal for a period of five years to all applicants except those who are defaulters.
- A specified fee will be charged for registration, grant of prior permission and renewal.
- Reasons for rejection of registration/prior permission will be conveyed to the applicants to ensure greater transparency and accountability. This will be in harmony with the provisions laid down under the Right to Information Act, 2005.
- Registration certificate can be suspended for a maximum period of 180 days.
- Provisions have been made for cancellation of registration after giving reasonable opportunity for hearing.
- Foreign contribution will have to be received through a single bank account. However, unlike the present Act, the recipient organization would be permitted to open one or more account in one or more Scheduled Banks to utilize the foreign contribution.
- Countrywide information/database about receipt of foreign remittances more than a specific amount, or suspicious transactions received by a person/association through banking channels shall be created, for keeping a watch over receipt and utilization of such foreign contributions.
- Registration received by fraud, misrepresentation or false documents have been made punishable with imprisonment up to 5 years.

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- Provision has been made for disposal of assets created out of foreign contribution of defunct/inoperative organizations as per the prescribed procedure.
- Provision has been made for compounding of certain offences under the Bill.

It is expected that the new law and its effective implementation through utilization of tools of information and communication technology (ICT) will put in place a more efficient system to regulate the acceptance, utilization and accounting of foreign contribution in the country by ensuring greater accountability transparency and simplification.

The Foreign Contribution (Regulation) Bill, 2006 as introduced in Rajya Sabha on 18 December, 2006 and pending therein has been referred to Department-related Parliamentary Standing Committee on Home Affairs for examination and report.

FREQUENTLY ASKED QUESTIONS

1. What is a foreign contribution?

Foreign contribution means the donation, delivery or transfer, made by any foreign source of any (a) article, not given to a person as a gift, for personal use, if the market value, in India, of such article exceeds one thousand rupees (b) currency, whether Indian or foreign or (c) foreign security as defined in Foreign Exchange Management Act.

2. What is a foreign source?

Foreign source means the government of any foreign country or territory or its agency; international agency; a foreign company; citizen of a foreign country.

3. Who cannot receive foreign contributions?

Foreign contribution cannot be accepted by a candidate for election; correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper; judge, government servant or employee of any corporation; member of any legislature; political party or office bearer thereof.

4. Who can receive foreign contributions?

An association having a definite cultural, economic, educational, religious or social programme can receive foreign contribution after it obtains the prior permission of the Central Government, or gets itself registered with the Central Government.

5. What are the forms prescribed under FCRA and brief description of each?

FC-1 - Application for seeking prior permission of the Central Government for accepting foreign contribution by or on behalf of an organisation of political nature not being a political party (Rule 3a).

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FC-1A - Form of application for seeking prior permission from the Central Government under the Foreign Contribution Regulation Act, 1976 (herein after referred to as 'the Act' for the acceptance of foreign contribution by an association having a definite cultural, economic, educational, religious or social programme (Rule 3aa).

FC-2 - Application for seeking prior permission of the Central Government to accept foreign hospitality (Section 9 read with Sections 10.d and 11.1 of the Act).

FC-3 - Account of Foreign Contribution of the year ending 31st March.... (Rule 4a) *With the certificate to be given by Chartered Accountant* (Rule 4a).

FC-4 - Intimation to the Central Government of receipt of foreign contribution received by a candidate for election (Rule 4b).

FC-5 - Intimation to the Central Government of receipt of scholarship, stipend or any payment of a like nature from a foreign source (Rule 4c).

FC-6 - Foreign Contribution (Articles) Account.

FC-7 - Foreign Contribution (Securities) Account.

FC-8 - Form of application for seeking registration with the Central Government under the Foreign Contribution Regulation Act 1976 for the purpose of acceptance of foreign contribution by an association having a definite cultural, economic, educational, religious or social programme –(Rule 3A).

6. What is a designated bank account under FCRA?

An association granted prior permission or registration under the Act can receive the foreign contribution and subsequently utilize it using a single designated bank account, as intimated in the application form. No local funds can be deposited in this bank account.

7. Maintenance of accounts

An association granted prior permission or registration under the Act must maintain a separate set of accounts and records exclusively for the foreign contribution received and utilized in the prescribed manner.

8. Receipt of scholarships

A citizen of India receiving any scholarship, stipend or any payment of a like nature from any foreign source is required to give, within thirty days of such a receipt, an intimation to the Central Government as to the amount of the scholarship, stipend or other payment received; the foreign source from which and the purpose for which, such scholarship, stipend or other payment has been or is being received.

9. Time taken to dispose of application by Ministry

An application for registration is normally disposed of within six months. An application seeking prior permission is disposed of within 90/120 days.

It is advisable to obtain a certificate, in the format incorporated at the end of the application, from any of the competent authority mentioned therein: viz., Any concerned- Collector of District, Department of the State Government; Ministry/Department of the Government of India.

10. Where should the application be sent ?

An application (one copy only) for seeking prior permission or registration is to be sent by registered post to the Secretary, Ministry of Home Affairs, Foreigners Division, Lok Nayak Bhavan, Khan Market, New Delhi 110 003.

11. What is the proper filing of application?

- To familiarize with the provisions of the Act and fill the relevant application form with due care. To furnish information exactly in the manner stated in the form, as incomplete application will be summarily rejected.
- An association permitted to accept foreign contribution is required to submit an annual return duly certified by a Chartered Accountant, giving details of the receipt and purpose-wise utilization of the foreign contribution. The return is to be filed for every year (1st April to 31st March) within a period of four months from the closure of the year, i.e. by 31st July each year.
- Only the correct and current forms should be used. The forms can be obtained free of cost from the Ministry. The forms are also available on the Ministry of Home Affairs' web-site.

- Whoever accepts or assists any person, political party or organisation in accepting any foreign contribution or any currency from a foreign source, in contravention of the provisions of the Act or the rules made there under, shall be punishable with imprisonment for a term which may extend to five years, or with fine or with both.

12. What is the procedure for filing of application?

The following is the checklist for ensuring proper submission of applications, under the provisions of the Act for acceptance of foreign contribution

- Eligible category - An association with a definite cultural, economic, educational, religious or social programme
- Types of permission – Registration under Section 6(1)(a) and Prior permission under Section 6(1A)
- Application form – For grant of registration in form FC-8 and for grant of prior permission FC-1A
- Essential requirements
 - a. Bank account: To open a separate bank account for the receipt and utilization of foreign contribution in a bank of the recipient's choice and furnish particulars of the same at the appropriate place – no local funds can be deposited in this designated bank account other than the essential initial deposit specified by the bank for opening this account
 - b. Documents: (i) certified copy of registration certificate or trust deed as the case may be (ii) details of activities during the last three years (iii) copies of audited statement of accounts for the past three years (assets and liabilities, receipt and payment, income and expenditure) (iv) commitment letter from foreign donor specifying the amount of foreign contribution (only with prior permission application) (v) copy of project for which foreign contribution was solicited / is being solicited (only with prior permission application) (vi) if functioning as editor, owner, printer or publisher of a publication registered under the Press and Registration of Books Act 1867, a certificate from the Press

Registrar that the publication is not a newspaper in terms of Section 1(1) of the said Act

- **Miscellaneous:** Furnish information exactly in the manner asked for in the form, especially the names and addresses of the members of the Executive Committee/Governing Council, etc.
- **Banks:** No bank should credit any foreign contribution to the account of an association / organisation unless it produces documentary proof of having obtained registration / prior permission from the Central Government for the same. Crediting of foreign contribution by a bank to the account of an association / organisation that has not obtained a registration or prior permission from the Central Government constitutes a violation and will render the defaulting bank liable for action by the Reserve Bank of India.
- **Chartered accountants:** Chartered Accountants, before certifying the accounts of an association in form FC-3, must ensure that they have been prepared in accordance with the provisions of the Act and the rules framed there under.

13. How to treat a remittance received from a non-resident Indian ?

Non-resident Indians do not fall within the definition of foreign source; therefore, Non-Resident Indians are not a foreign source and amounts received from them will not rank as foreign contributions.

14 Is Rupee remittance from a foreign source a foreign contribution?

Whether a remittance received is a foreign contribution or not is dependant on the source and not on the currency. Hence if the source is foreign, if the remittance is received either in foreign currency or in rupee will be treated as foreign contribution.

15. Can a registered association receive foreign contributions through any bank account other than the designated bank account?

A registered association which has been granted registration under the Act is permitted to receive foreign contributions only through the designated bank account that has been intimated / reported / specified in the application for registration. This account will be designated by the Ministry while granting

registration. Foreign contributions received through accounts other than designated accounts will be treated as violation and this could be resulting in prosecution being launched by the Government.

16. Can foreign contributions be received by a registered association through its designated bank account and then be transferred to any other bank account?

The association has been granted registration under the Act to receive foreign contributions only through the designated bank account that has been specified in the application for registration and which has been designated so by the Government.

The Act also prescribes that a separate set of accounts and records shall be maintained exclusively for foreign contributions received and utilized.

In case the registered association manages more than one project at the same time at different places, it can maintain separate accounts for each of these projects; the foreign contribution received through the designated bank account can be transferred to these project wise individual accounts for easy operation and utilization. It should only be borne in mind that proper accounts and records should be maintained for each of these individual projects. These additional bank accounts opened for each of these individual projects also should be exclusively used for foreign contributions.

The Act does not thus therefore technically prohibit or restrict opening and maintaining more than one bank account for utilization of foreign contributions received.

17. Where a donor insists that a separate bank account should be maintained in relation to funds sent by it, can such a separate bank account be opened?

Subject to clarifications furnished in the above question 15, separate account for a particular donor can be maintained if it is for a specific project and if this project is entirely funded by this particular donor. Therefore, it would be advisable to explain this position to the foreign donor and convince him that separate accounts and details can be furnished in a separate ledger account with the association for recording all the details of the contributions and transactions put through in particular reference to this donor.

18. Should bank interest on funds lying in the designated bank account be treated as foreign contribution?

Since the interest is earned on the foreign contributions received, equity demands interest earned on them is also treated on par with foreign contributions.

19. Should interest earned on investments made out of foreign contributions also be treated as foreign contributions?

Since the interest is earned on the foreign contributions, received, equity demands interest earned on them is also treated on par with foreign contributions.

20. Should sale proceeds of assets originally purchased out of foreign contributions be treated as foreign contribution?

Since at the time of purchasing the assets, the foreign contribution account would have been debited, when they are sold, they should be receipted under foreign contribution account only. The sale proceeds of assets originally purchased out of foreign contributions would thus receive foreign contribution status.

21. Can loans be given from local fund to FCRA fund or vice versa?

Only criteria or requirement is maintenance of separate account foreign contributions for recording the transactions. The Act does not specifically prohibit loaning of foreign contributions, but when they are repaid, they should be accounted under foreign contributions. It would be advisable to restrict such loan transactions to the barest minimum.

22. How should credit or revolving funds be treated in FCRA records?

When credit facilities are extended, they would be debited to foreign contributions account and when they are recovered they would be accounted under foreign contributions once again.

23. What books of accounts of required to be maintained for meeting the requirements of the FCRA?

The Act requires maintenance of a designated account, separate books and records for the transactions put through (foreign contributions received and

utilized) and for reporting on a yearly basis – 1st April to 31st March – before 31st July every year.

24. By when is the annual return in Form FC-3 be filed? What are the documents to be filed along with the said return?

31st July every year for the period 1st April of the previous year to 31st March of the current year.

The documents to be submitted are:

- Duly filled in and signed FC-3, which must be certified by a Chartered Accountant
- It must be filed on or before 31st July every year for the preceding financial year
- Audited balance sheet and receipts and payments account
- Country-wise receipts and donor-wise receipts of foreign contribution
- These documents should be filed in duplicate with the Ministry
- The returns must be filed in every year, even if no foreign contribution has been received during the preceding financial year

25. Where and how is the annual return to be sent?

The annual return as described above should be sent to the FCRA Division, Ministry of Home Affairs, Government of India, New Delhi, preferably through registered post or speed post and acknowledgement obtained and retained.

26. Is form FC-6 required to be checked by the auditor? Is it required to be filed with the FCRA department?

Actually FC-6 is required to be maintained for receipt and utilization of articles received as foreign contribution. It must be maintained by the registered association. And it need not be filled with the Ministry. However, the details alone furnished in the FC-6 will be forming a part of the FC-3 furnished to the Ministry every year. And since FC-6 is a transaction record and which details are carried forward to in FC-3, the auditor will check the details therein and satisfy himself.

27. How many times can prior permission be applied for? Can a second prior permission be applied for when the amount received against the first has not yet been fully utilized?

It can be applied any number of times. It may be noted that even when an associated has been registered and obtained prior permission for one project, it can apply for a second project prior permission – for receiving foreign contribution for the second project. Many projects can be undertaken by the registered at the same time and it can receive foreign contribution for these projects once it has been granted permission by the Ministry for each of these projects.

28. Can the amount committed against a prior permission be received in installments?

The prior permission is only for receiving foreign contribution; it can be received either in one installment or many installments. Only thing to be borne in mind is that these installments should be received through only the designated bank accounts.

29. What is the form to be submitted in order to apply for prior permission? What are the documents that should accompany the application?

Application for prior permission to receive foreign contribution should be applied in form FC-1.

FC-1A to be used for receiving foreign contribution under proviso.

FC-2 to be submitted for accepting foreign hospitality.

30. What are the remedies available if the application for prior permission is rejected?

- Abide by the rejection
- Ascertain / identify the reasons for rejection and make efforts to rectify the deficiencies and resubmit application
- Appeal in a Court contesting the rejection

31. When can registration under the FCRA be applied for? What is the form to be submitted in order to apply for registration? What are the documents that should accompany the application?

There is no time limit prescribed for submission of an application for registration. However, it is the experience that the Ministry does not normally consider applications from associations which have not been in existence for less than three years. However, exceptional cases can be taken up with the Ministry suitably substantiating the requirement of registration.

The application should be made out in FC-8, and the required documents are:

- Certified copy of registration certificate or trust deed or Memorandum and Articles of Association
 - Activities of the Association
 - Audited financial statements: balance sheet, profit & loss account / receipts & payments accounts along with audit reports– for the last three years
 - If functioning as editor, owner, printer or publisher of a publication which is registered under the Press and Registration of Books Act, a certificate from the Press Registrar that the publication is not a newspaper in terms of the said Act
 - The certificate of recommendation duly signed by Collector of the District, Department of the State Government or Ministry / Department of Government of India

32. What are the remedies available if the application for registration is rejected?

- Abide by the rejection
- Ascertain / identify the reasons for rejection and make efforts to rectify the deficiencies and resubmit application
- Appeal in a Court contesting the rejection

33. What are the routine requirements to be borne in mind in the case of a registered organisation?

- Foreign contributions should be received and utilised only through designated bank account
- Separate set of accounts and records should be exclusively for foreign contributions received and utilized
- These books should be maintained on double entry books basis for the period 1st April to 31st March (financial year basis)
- These books should be audited
- Audited financial statements – balance sheet and receipts/payments account – should be submitted to the Ministry along with FC-3 duly filled in, signed by the association and certified by the auditor should be submitted on or before 31st July every year for the preceding financial year
- In case articles are received by way of foreign contribution, separate records must be maintained in FC-6

34. Is any action required to be taken if there is any change in the name or address or aims and objects of the association?

It should be duly reported to the Ministry, as and when the changes take place as per the undertaking provided in FC-8 for registration.

35. Is any action required to be taken in case of change in the office bearers of the association?

It should be duly reported to the Ministry as and when the changes take place as per the undertaking provided in FC-8 for registration.

36. Can the designated bank account be changed? If yes, what are the requirements?

It can be changed only after reporting to the Ministry and after receipt of their approval. The reasons for this change should be justified to the Ministry.

37. To whom all this act is applicable?

This Act extends to the whole of India and it shall also apply to the citizens of India outside India and associates, branches or subsidiaries, outside India, or companies or bodies corporate, registered or incorporated in India.

38. What is the definition of an association as per this Act?

An 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.

39. Who is a candidate for election as per this Act?

A candidate for election means a person who has been duly nominated as a candidate for election to any legislature.

And legislature means

Either House of Parliament

- 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
- Legislative Assembly of a Union Territory constituted under the Government of Union Territories Act 1963
- Municipal Corporations in metropolitan areas as defined in the Code of Criminal Procedure 1973
- District Councils and Regional Councils in the States of Assam and Meghalaya and in the Union Territory of Mizoram as provided for in the Sixth Schedule to the Constitution
- Any other elective body as may be notified by the Central Government as the case may be.

40. What are the various forms of foreign contribution as per this Act?

Foreign contribution means the donation, delivery or transfer made 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, does not exceed Rs.1,000
- of any currency, whether Indian or Foreign
- of any foreign security as defined in the Foreign Exchange Management Act, 1999

41. What are the various foreign sources defined as per this Act?

Foreign source includes:

- The Government of any foreign country or territory and any agency of such government
- 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 in the Official Gazette, specify in this behalf
- A foreign company within the meaning of Section 591 of the Companies Act 1956 and also includes a company which is a subsidiary of a foreign company and a multi national corporation within the meaning of this Act
- A corporation not being a foreign company, incorporated in a foreign country or territory
- A multinational corporation within the meaning of this Act
- A company within the meaning of Companies Act 1956, if 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 – government of a foreign country or territory, citizens of a foreign country or territory, corporations incorporated in a foreign country or territory, trusts, societies or other associations of individuals (whether incorporated or not) formed or registered in a foreign country or territory
- A trade union in any foreign country or territory, whether or not registered in such foreign country of territory

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- A foreign trust by whatever name called, or a foreign foundation which is either in the nature of a trust or is mainly financed by a foreign country or territory
- A society, club or association of individuals formed or registered outside India
- A citizen of foreign country

But does not include any foreign institution which has been permitted by the Central Government by notification in the Official Gazette to carry on its activities in India.

42. How a political party is defined in this Act?

Political party means:

- an association or body of individual citizens of India – which is or is deemed to be, registered with the Election Commission of India as a political party under the Election Symbol Order 1968 as in force for the time being or which has set up candidates for election to any Legislature but is not so registered or deemed to be registered under the Election Symbols Order 1968
- a political party mentioned in the Column 1 of Table 1 to the notification of the Election Commission of India dated 27th September 1984 as in force for the time being

43. What are direct and indirect foreign contributions?

If a foreign contribution is received from the foreign source directly, then it is called direct foreign contribution.

If the foreign contribution is received through one or more intermediary but not directly from the foreign source, then it is called indirect foreign contribution. Even if the intermediaries are not foreign, if the original source is foreign, then it would be treated as indirect foreign contribution.

44. Who are all barred from receiving foreign contribution?

The following individuals and organisations have been barred from receiving foreign contributions:

- Candidate for election
- Correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper
- Judge, government servant or employee of any corporation
- Member of any Legislature
- Political party or office bearer thereof

45. How an organisation can receive foreign contribution through prior permission?

Organisations:

- Receipt of foreign contribution by an organisation through prior permission
- Receipt of foreign contribution by an organisation by registering itself with the Ministry

Conditions:

- Designated bank account
- Returns to be filed

Eligibility for registration:

- The activities of the organisation should be cultural or economic or educational or religious or social
- It should have been in existence for at least three years
- The organisation is not of a political nature
- Bank account is designated for receipt of foreign contributions

46. What are the specified activities for an organisation to fall into for receiving foreign contribution?

Cultural, Economic, Educational, Religious or Social.

47. What really constitute the mode or medium of foreign contribution?

Donation, delivery or transfer constitute the mode or medium of foreign contribution.

48. What are the powers of the Central Government to prohibit receipt of foreign contribution?

- Prohibit any association or any person from accepting foreign contribution
- Require the association to obtain prior permission from the Central Government before accepting foreign contributions
- Require any person to furnish intimation within prescribed time and in the manner prescribed as to the amount of any foreign contribution received, source from where received, the purpose for which received and the manner in which it was utilized
- Require any person to obtain prior permission from Central Government before accepting any foreign hospitality
- Require any person to furnish details of hospitalities received and enjoyed within prescribed time

Basically these powers are exercised

- In the interest of sovereignty and integrity of India
- In the public interest
- Freedom or fairness of election to any legislature
- Friendly relations with any foreign state
- Harmony between religious, racial, linguistic or regional groups, castes or communities

49. Who is a resident of India for the purpose of this Act?

The definition of a resident of India is as per provisions of FEMA, relevant portions of which are reproduced below

Person resident in India means:

- A.** A person residing in India for more than one hundred and eighty two days during the course of the preceding financial year but does not include
1. a person who has gone out of India or who stays outside India in either case
 - for or on taking up employment outside India or
 - for carrying out on outside India a business or vocation outside India or
 - for any other purpose in such circumstances as would indicate his intention to stay outside India for an uncertain period
 2. a person who has come to or stay in India, in either case, otherwise than
 - for or on taking up employment in India or
 - for carrying on in India a business or vocation in India or
 - for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period
- B.** Any person or body corporate registered or incorporated in India
- C.** An office, branch or agency in India owned or controlled by a person resident outside India
- D.** An office branch or agency outside India owned or controlled by a person resident in India

50. Who is a citizen of India for the purpose of this Act?

For the purpose of this Act, the definition of an Indian citizen is as per the Citizenship Act. The relevant portions are reproduced below

Citizenship by birth

Every person born in India

- on or after 26th January 1950, but before the commencement of the Citizenship Amendment Act 1986,

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- on or after such commencement and either of whose parents is a citizen of India at the time of his birth, shall be citizen of India by birth

A person shall not be such a citizen by virtue of the above provision if at the time of his birth

- his father possesses such immunity from suits and legal process as is accorded to an envoy of a foreign sovereign power accredited to the President of India and is not a citizen of India; or
- his father is an enemy alien and the birth occurs in a place then under occupation by the enemy

Citizenship by descent

A person born outside India

- on or after 26th January 1950, but before the commencement of the Citizenship Amendment Act 1992 shall be citizen of India by descent if his father is a citizen of India at the time of his birth
- on or after such commencement shall be a citizen of India by descent if either of his parents is a citizen of India at the time of his birth

Provided that if the father of such a person referred to was a citizen of India by descent only, that person shall not be a citizen of India by virtue of this section unless

- his birth is registered at an Indian consulate within one year of its occurrence or the commencement of this Act, whichever is later, or, with the permission of the Central Government, after the expiry of the said period, or
- his father is at the time of his birth, in service under a Government in India

Provided further that if either of the parents of such a person referred to was a citizen of India by descent only, that person shall not be a citizen of India by virtue of this section unless

- his birth is registered at an Indian consulate within one year of its occurrence or the commencement of the Citizenship Amendment Act 1992 which ever is later, or with the permission of the Central Government, after the expiry of the said period or

- either of his parents at the time of his birth, in service under a Government in India

If the Central Government so desires, a birth shall be deemed for the purposes of this section to have been registered with its permission, notwithstanding that its permission was not obtained before the registration.

For the purposes of the proviso any person born outside undivided India who was, or was deemed to be, a citizen of India at the commencement of the Constitution shall be deemed to be a citizen of India by descent only.

Citizenship by registration

Subject to the provisions of this section and such conditions and restrictions as may be prescribed, the prescribed authority may, on application made in this behalf, register as a citizen of India any person who is not already such citizen by virtue of the Constitution or by virtue of any of the other provisions of this Act and belongs to any of the following categories

- persons of Indian origin who are ordinarily resident in India and have been resident for five years immediately before making an application for registration
- persons of Indian origin who are ordinarily resident in any country or place outside undivided India
- persons who are or have been married to citizens of India and are ordinarily resident in India and have been so resident for five years immediately before making an application for registration
- minor children of persons who are citizens of India and
- persons of full age and capacity who are citizens of a country specified in the first schedule

Provided that in prescribing the conditions and restrictions subject to which persons of any such country may be registered as citizens of India under this clause, the Central Government shall have due regard to the conditions subject to which citizens of India may by law or practice of that country become citizens of that country by registration.

Citizenship by naturalization

Where an application is made in the prescribed manner by any person of full age and capacity who is not a citizen of a country specified in the first schedule for the grant of a certificate of naturalization to him, the Central Government may if satisfied that the applicant is qualified for naturalization under the provisions of the third schedule, grant to him a certificate of naturalization.

Provided that if in the opinion of the Central Government the applicant is a person who has rendered distinguished service to the cause of science, philosophy, art, literature, world peace or human progress generally, it may waive all or any of the conditions specified in the third schedule.

The person to whom a certificate of naturalization is granted shall on taking the oath of allegiance in the form specified in the second schedule, be a citizen of India by naturalization as from the date on which that certificate is granted.

51. Who is a relative for the purpose of this Act?

A relation as defined in the Companies Act, 1956. The same is applied, relevant portions of which are reproduced below:

Meaning of relative

The expression relative has the meaning referred to it in the Companies Act 1956. It has been defined in Section 6 as follows:

A person shall be deemed to be a relative of another, if and only if

- they are members of a Hindu Undivided Family
- they are husband and wife or
- the one is related to other in the manner indicated below
 - father
 - mother including step mother
 - son including step son
 - son's wife
 - daughter including step daughter

Frequently Asked Questions

- father's father
- father's mother
- mother's father
- mother's mother
- son's son
- son's son's wife
- son's daughter
- son's daughter's husband
- daughter's husband
- daughter's son
- daughter's son's wife
- daughter's daughter
- daughter's daughter's husband
- brother including step brother
- brother's wife
- sister including step sister
- sister's husband

IMPORTANT JUDICIAL PRONOUNCEMENT

The law is of a recent origin (enacted in 1976). Hence there are not many legal cases and legal pronouncements available on the subject law. It may also be due to the very clear and precise requirements spelt out in the law, making it unnecessary for any possible litigants to approach the Courts for any interpretation. The very fact that there are not many legal cases and pronouncements on the subject law points out that there is clarity in the purpose and requirements on the foreign contributions.

The Act gives required powers to the Central Government to control, manage, and regulate receipt of foreign contributions and also their utilization. Thus one can safely conclude, as of now, there are not many loopholes or any grey areas in the legislation warranting clarifications or interpretations.

However, there are two landmark judgements in cases involving Foreign Contribution Regulation Act. One is delivered by the Hon'ble Madras High Court and the other by the Hon'ble Supreme Court of India.

Brief details of these judgements are:

Hon'ble Madras High Court

1. Usmania Trust, Coimbatore (Registered) Vs. Union of India (1991)

Any applicant organization desirous of getting required registration for receiving foreign contribution can apply to the Ministry of Home Affairs; it is a right given under the Foreign Contribution Regulation Act. The Court has held that the Government cannot deny this arbitrarily. The Court has further noted in this case that the Government has passed a cryptic or laconic order, without assigning any reason for rejection of the application. The Court has stated that the Government should consider granting of any registration under the Act, taking note of the object and purpose of the applicant organization and for what purpose the amount is sought by way for foreign contribution from a foreign source. Finally, the Court has set aside the

impugned order of rejection and directed the Central Government to consider the issue after giving an opportunity to the petitioner and pass orders on merits.

Foreign Contribution Regulation Act 1976 provides for receipt of foreign contribution by organizations which have not been prohibited specifically by the Central Government. However, they are to apply to the Central Government in the prescribed format for prior permission. There was a prevailing view that the Central Government can accept or reject such applications for registration without assigning any reason whatsoever.

However, this view was challenged in the Court and the Court has held that the Central Government does not have any powers to pass such cryptic or laconic orders without assigning any reasons for the rejection of applications for registration. The Court has held that the Central Government should provide sufficient opportunity to the applicant organization before granting or rejecting registration requests.

This is a landmark judgement in the administration of Foreign Contribution Regulation Act 1976.

Hon'ble Supreme Court

2. M.Kurien, Chief Functionary of the Cross Vs. Union of India (2001)

Foreign Contribution Regulation Act 1976 Sections 6 (1) (b) and 23 – Receipt of contribution and depositing the same in a bank other than the bank indicated in the application form FC-1, would be a violation of the provisions of Section 6(1) (b) itself in as much as no association is entitled to accept foreign contribution, unless the association agrees to receive the foreign contribution only through such one of the branches of the bank, as it may specify in the application for registration – The violation being a violation of the provisions of Section 6 (1) (b), it would constitute an offence under Section 23.

Foreign Contribution Regulation Act 1976 – Sections 6 (1) (b) and 23 – Foreign Contribution Regulation Rules 1976 – Form FC-1 prescribed under Rule 3 for obtaining permission to receive foreign contribution is statutory form – Violation of the terms of form constitutes an offence under Section 6 and 23.

It was held that a conjoint reading of Section 6 (1) (b) and Section 23 of the Act read with Section 3 (a) and the prescribed form FC-1, required to be filed, seeking permission of the Central Government for accepting foreign contribution would unequivocally indicate that the contravention and / or violation of any terms and conditions contained in the very application form, would constitute the contravention of the provisions of the Rules made under the Act and as such would be punishable under Section 23 of the Act. The Act has been enacted to regulate the acceptance and utilization of foreign contribution or foreign hospitality by persons or associations with a view to ensure that parliamentary institutions, political associations and other voluntary organizations may function in a manner consistent with the values of a sovereign democratic republic. Any contravention of the provisions of the Act or the Rules made there under should be strictly construed and on being so construed, if an applicant indicates the mode or channel of foreign contribution in his application and in violation of the same receives through a different mode or channel, that would constitute an infraction of the relevant provisions of the Rules and such infraction must be held to be punishable under Section 23 of the Act.

This is yet another land mark judgement in the interpretation and administration of Foreign Contribution Regulation Act 1976.

CHAPTER 13

INTERNATIONAL SCENARIO

Every country - developed or developing, democratic capitalist or communist – has its own decrees, legislations or regulations to control, regulate and manage contributions, donations, gifts and presents from foreign nationals and non residents. In this chapter, some comparable legislations, provisions and regulations prevailing in some select countries are covered to familiarize with them.

United States of America

The ban on political contributions and expenditures by foreign nationals in the United States of America was first enacted in 1966, as part of the amendments to the Foreign Agents Registration Act (FARA), an “internal security” statute. The goal of the FARA was to minimize foreign intervention in U.S. elections by establishing a series of limitations on foreign nationals. These included registration requirements for the agents of foreign principals and a general prohibition on political contributions by foreign nationals. In 1974, the prohibition was incorporated into the Federal Election Campaign Act (the FECA), giving the Federal Election Commission (FEC) jurisdiction over its enforcement and interpretation.

The Federal Election Campaign Act (FECA) prohibits any foreign national from contributing, donating or spending funds in connection with any federal, state, or local election in the United States, either directly or indirectly. It is also unlawful to help foreign nationals violate that ban or to solicit, receive or accept contributions or donations from them. Persons who knowingly and willfully engage in these activities may be subject to fines and/or imprisonment.

The Act prohibits knowingly soliciting, accepting or receiving contributions or donations from foreign nationals. In this context, “knowingly” means that a person:

A Study on Foreign Contribution Regulation Act, 1976

- Has actual knowledge that the funds solicited, accepted, or received are from a foreign national;
- Is aware of facts that would lead a reasonable person to believe that the funds solicited, accepted, or received are likely to be from a foreign national;
- Is aware of facts that would lead a reasonable person to inquire whether the source of the funds solicited, accepted or received is a foreign national.

Pertinent facts that may lead to inquiry by the recipient include, but are not limited to the following: A donor or contributor uses a foreign passport, provides a foreign address, makes a contribution from a foreign bank, or resides abroad. Obtaining a copy of a current and valid U.S. passport would satisfy the duty to inquire whether the funds solicited, accepted, or received are from a foreign national.

People's Republic of China

The People's Bank of China, February 27, 1996 has laid down very clear and precise guidelines on the use of foreign exchange vide its Administrative Regulations on Foreign Exchange Conversion, Sales and Payment in Experimental Regions.

China released a detailed regulation on the management of large-volume foreign exchange transactions in financial institutions very recently. The regulation, published on the website of the State Administration of Foreign Exchange on 26th October 2004, but and effective since October 12, is aimed at tightening the monitoring of suspicious foreign exchange transactions. The rule also adds a new weapon to the Chinese financial authorities' arsenal in the anti-money laundering war. The regulation sets detailed criteria for the foreign exchange watchdog and the public security agency to judge whether a transaction should be reported, and if it demands close attention. It also provides for suspected money laundering cases to be dealt with efficiently. The regulation also clarifies the liabilities of relevant financial institutions on the matter as well as the procedure for handling reports. It says that financial institutions should improve their internal control mechanisms against money laundering and appoint special agencies or individuals to look after the matter. The institutions should try to get sufficient information of the credit

status of the clients in foreign exchange business, and implement their obligations in reporting, and tracing suspected crimes. Large-volume foreign exchange transactions refer to daily cash transactions of US\$10,000 or more by an individual or an enterprise, as well as non-cash daily transactions that are worth US\$100,000 or more by an individual or US\$500,000 or more by an enterprise, the rules said. But exceptions will be allowed in certain cases, when such transactions do not need to be reported. The onus of conforming to and confirming the nature of transaction as genuine and permitted will therefore naturally be falling on the recipients of such foreign remittances. Again, since all foreign exchange transactions are to be routed through banking channels, the banks will also be required to satisfy themselves on the genuineness of such transactions.

United Kingdom

The Political Parties, Elections and Referendum Act came into force in February 2001, forcing all parties to publicly declare the names and contributions of donors giving Stg.Pds.5,000 or more and outlawing all donations from overseas. This law banning foreign donations to political parties was brought in after successive funding scandals rocked the United Kingdom. Only individuals on the UK electoral roll and UK-registered companies, trade unions, partnerships and trusts can donate. If parties fail to return prohibited donations within 30 days, they can be made to and can face prosecution. This Act covers in detail registration and finances of political parties and donations and expenditure for political parties in addition to provisions with regard to setting up of an Election Commission.

The UK Act is more elaborate when compared with equivalent legislations in other countries. A sample of the coverage is furnished below:

- Financial structure of registered party, adoption of scheme and accounting units.
- Statement of accounts, annual statements of accounts, annual audits, supplementary provisions about auditors, delivery of statements of accounts, public inspection of parties' statements of accounts, criminal penalty for failure to submit proper statement of accounts, revision of statements of accounts, revision of defective statements of accounts.

- Control of donations to registered parties and their members, sponsorships, payments, services not to be regarded as donations, value of donations, restrictions on donations to registered parties, permissible donations, permissible donors, payments which are (or are not) to be treated as donations by permissible donors, acceptance or return of donations, return of donations where donor unidentified, forfeiture of certain donations, forfeiture of donations made by impermissible or unidentifiable donors.
- Offences concerned with evasion of restrictions on donations, reporting of donations to registered parties, quarterly donation reports, weekly donation reports during general election periods, submission of donation reports to Election Commission, declaration by treasurer in donation report, reports to be made by donors, reporting of multiple small donations.
- Register of donations, register of recordable donations, control of donations to individuals and members of associations, donations to recognized third parties, control of donations to recognized third parties, donations to permitted participants, control of donations to candidates, control of political donations, control of political donations by companies, disclosure of political donations and expenditure.

Singapore

Singapore has more stringent legislation to prohibit donations to political parties, political associations, and candidates in parliamentary election or presidential elections by persons and bodies who are not permissible donors. It also requires political parties, associations and candidates to report large donations that they have received. The Political Donations Act was passed by Singapore Parliament in May 2000. The Political Donations Act seeks to prevent foreign groups from interfering in domestic politics through donations to political associations, parliamentary election candidates and presidential election candidates. The Act prohibits political parties, organizations gazetted as political associations under the Act and candidates of parliamentary or presidential elections from accepting donations from persons or bodies that are not permissible donors. It also requires political parties, organizations gazetted as political associations under the Act and election candidates to

report large donations that they have received. The Act and its subsidiary legislation came into operation on 15th February, 2001.

The Bill aims to prohibit political parties, political associations and candidates from accepting donations from foreign sources by treating these as impermissible. Political parties, political associations and candidates are allowed to accept donations, so long as these come from permissible sources. Similar to the approach taken in the UK Bill, Singapore has chosen to define who is a permissible source or who the permissible donors are because it is easier to define who is permissible rather than who is impermissible. Any donations other than those from the defined permissible sources would constitute impermissible donations. If political parties, associations or candidates receive any donations from impermissible sources, they would have to return the donation to the donor. If they are unable to do so, they would have to surrender the donation to the Government's Consolidated Fund. Political parties and associations and candidates would also be required to report large donations, to ensure that they keep proper records of these donations.

The Singapore legislation clearly deals with the definition of donations and how the donations are valued. These provisions are adapted from the UK Political Parties, Elections and Referendums Bill. Donations are defined broadly to include all goods or services, such as any gifts of money or property, subscription and affiliation fees, loans, property, services and other facilities provided to the candidate or political association that are not on commercial terms. For example, if the goods or services are rendered to a political association at less than commercial rates, the value of the donation would be the difference between the actual cost to the association and the cost which the association would have incurred if it had been provided on commercial terms. Donations would not include any notional benefits of airtime during lawful party political broadcasts, or any postage-free elections communications authorized by written law. These benefits are granted by or pursuant to our written laws, and would not be considered as donations.

Like the UK Bill, donations would also not include any voluntary services by an individual. It is neither practical nor feasible to put a value to voluntary services. For example, if an individual contributes, in his own time, professional services within his own sphere of expertise, such as accounting expertise, to a political party, this service would not be regarded as a

donation. He could be self-employed, or he could take leave from his employer to provide his service to the political party. As long as he volunteers his services in his own time, it would not be regarded as a donation. However, if the individual is paid by his employer while providing services to a political party, the services would count as a donation by the employer to the political party. The value of the donation is the commercial rate of providing the services.

This legislation aims to keep foreign interference out of Singapore's domestic political process. It does not prevent political associations and candidates from accepting donations, so long as the donations are from Singaporeans or Singapore-controlled companies.

Zimbabwe

The Political Parties (Finance) Act prohibits political parties and candidates for public office from receiving funds from foreign donors, whether channeled directly or indirectly. There is a presumption that donations accepted by a member of a party were accepted by the party itself, unless the receiver failed to disclose the donation to the party. Contravention of this provision is punishable with a fine equal to the value of the donation, or Z\$100 000 (whichever is the greater amount) and the forfeiture of the donation to the State. If the donation is returned to the donor within 30 days of the donation being made, the donation is deemed not have been made. The law further provides that no foreign citizens may solicit donations for a political party or candidate, with the same penalties applying for contravention of this provision as for the receiving of foreign funds.

Canada

The extant regulations stipulate

- No foreign donations are allowed to fund political parties
- Maximum amount for permitted individual donation is \$5,000
- Maximum amount for permitted corporate or trade-union donation is only \$1,000
- Minimum amount that must be disclosed is \$200 for parties and candidates (and third parties that spend over \$500) must disclose identity of all contributions over \$200 from a single source

- Expenditure limits are Pre-selection: 20% of election expenses in that district during the last general election. Candidates: sliding scale. \$41,450 for 25,000 electors + \$0.52 per additional elector. Parties: \$0.70 per elector in constituencies contested. Third parties: \$150,000 including no more than \$3,000 in a particular constituency race

Australia

Unlike a number of other countries, foreign donations are not banned in any Australian jurisdiction.

The extant regulations stipulate

- Foreign donations allowed, no limits to amounts donated
- Maximum amount for individual donation, No maximum amount
- Maximum amount for corporate or trade-union donation, No maximum amount
- Minimum amount that must be disclosed. Donors can contribute up to \$1,500 before any declaration is made
- Expenditure limits, No maximum amount

Awareness has already been raised and there is a demand for legislation on political donations. There is a view that some donors specifically tie large donations to the pursuit of specific outcomes they want achieved in their self-interest. To combat this form of corruption there is a felt need for a comprehensive regulatory system that legally requires the publication of explicit details of the true sources of donations to political parties. It is only then that one will be able to properly prevent, or at least discourage, corrupt, illegal or improper conduct in the formulation or execution of public policy. Such mechanisms of accountability would see a revival of faith in the integrity of the political system amongst the wider public and the protection of politicians from the undue influence of donors.

Council of Europe

The Committee of Ministers of the Council of Europe has adopted in its 835th meeting on 8th April 2003 certain common rules against corruption in the funding of political parties and electoral campaigns in the member states. Considering that political parties are a fundamental element of the

democratic systems of states and are an essential tool of expression of the political will of citizens, considering that political parties and electoral campaigns funding in all states should be subject to standards in order to prevent and fight against the phenomenon of corruption, convinced that corruption represents a serious threat to the rule of law and convinced that raising public awareness on the issue of prevention and fight against corruption in the field of funding of political parties is essential to the good functioning of democratic institutions. The Committee of Ministers therefore recommended that the governments of member states adopt, in their national legal systems, rules against corruption in the funding of political parties and electoral campaigns which are inspired by the common rules which include

- External sources of funding of political parties
- Definition of donation to a political party
- General principles of donations
- Tax deductibility of donations
- Donations by legal entities
- Donations to entities connected with a political party
- Donations from foreign donors

ROLE OF CHARTERED ACCOUNTANTS

The role of chartered accountants has been undergoing a sea change. What was once a regulatory function has now evolved to a compendium of roles dealing with finance. Globalization and diversification of work have now become an integral part of chartered accountancy scope. For the voluntary sector, FCRA remains the most mysterious piece of law. Partly this is due to the manner in which it has been interpreted at different times and partly it is due to the secrecy surrounding its implementation.

The work of many Indian NGO's is dependent on foreign funds. And they live under a constant fear of FCRA -- for they do not know when their FCRA number may be snatched away. Also, the role of chartered accountants comes to play when "Money Laundering" laws are in place in India and the fact that NGO's are targets. The term Money laundering is typically used to refer to any financial transaction that is not kept transparent. Needless to say, the practice is illegal and large penalties, fines or imprisonment may ensue.

Scope

A Chartered Accountant has an important role to play under the Foreign Contribution (Regulation) Act, 1976. The areas in which Chartered Accountants can play important roles includes application and administration of the principles of FCRA and guiding NGO's.

Following are broad areas wherein CA's can play important role.

1. Application
2. Maintenance of Accounts
3. Audit of Accounts, Furnishing Returns.
4. Representation
5. Charter for Chartered Accountants
6. Filing of Returns
7. Preparation of Balance Sheet

8. Certification
9. Secretarial practice

1. Application

Relevant provisions under FCRA

Section 11 – Prior permission from Central Government

Every individual, association, organization or other person, who is required by or under this act to obtain the prior permission of the central government to accept any

- foreign contribution or
- foreign hospitality,

shall before the acceptance of any such contribution or hospitality, make an application for such permission to the Central Government in such form and in such manner as may be prescribed.

Rule 3 – Prescribed form for obtaining prior permission from Central Government

As per Rule 3 of the Foreign Contribution (Regulation) Rules, 1976, an application for obtaining prior permission of the Central Government shall be made in Form FC-1 or Form FC-1A or Form FC-2.

Rule 3A - Prescribed form for registration of Association

Rule 3A - An application for registration of an association referred to in sub section (1) of section 6 for acceptance of foreign contribution shall be made in Form FC-8.

Rule 4 – Intimation in certain cases

Intimation is required to be given of:

- i. foreign contribution received by an association referred to in sub-sections (1) and (1A) of section 6 every year beginning on the 1st day of April in Form FC-3 in duplicate within [four months] of the closure of the year. Provided that a nil report shall also be furnished.
- ii. The intimation to be furnished for the year beginning on the 1st day of April, 1991, shall also include the receipt and utilization of foreign

- contribution during the period commencing from January 1, 1991 and ending on March 31, 1991
- iii. foreign contribution received by a candidate for election, referred to in sub-section (2) of section 6, shall be given in Form FC-4 within fifteen days from the date on which he is duly nominated as a candidate for election;
 - iv. any scholarship, stipend or any payment of a like nature, received from any foreign source in relation to which an intimation is required to be given under sub-section (1) of section 7, shall be given in Form FC-5, within thirty days of receipt of such scholarship, stipend or payment of a like nature.
 - v. Provided that where the person receiving the scholarship, stipend or any payment of a like nature is residing outside India, the intimation shall be given within sixty days from the date of receipt of such scholarship, stipend or other payment of a like nature.
 - vi. foreign hospitality received, referred to in the proviso to section 9, shall be given on plain paper within thirty days from the date of receipt of such hospitality specifying the particulars as to the receipt of such hospitality and the source from which and the manner in which such hospitality was received.

2. Maintenance of accounts

Section 13 of the Foreign Contribution (Regulation) Act, 1976 requires that every association, referred to in section 6, to maintain prescribed records of

- on account of any foreign contribution received by it and
- a record as to the manner in which such contribution has been utilized by it.

Rule 8 requires a separate set of accounts and records shall be maintained, exclusively for foreign contribution received and utilized.

- Form FC-6
- Cash book
- Ledger account on double entry basis
- Form FC-7

It also specifies period of maintenance, certification requirements and submission to authorities.

Rule 8 also requires:

- Accounts shall be maintained on a yearly basis commencing on the 1st day of [April] each year.
- Such yearly account, shall be duly certified by a Chartered Accountant and,
- shall be furnished in duplicate, to the Secretary to the Government of India, in the Ministry of Home Affairs, New Delhi within [four months] of the closure of the year.

3. Audit of accounts

Along with, filing an annual return, an audit report is also required with audited receipts, payments and balance sheets for foreign contributions. Also, there are requirements to file audited accounts with the government registrar or commissioner under the registering statute. Receipt & Payment account should give a clear picture of all the financial dealings of the association in respect of its foreign contribution accounts. It is a summary of actual cash receipts and payments which is extracted from the cash book and the ledger. All cash received and paid during the financial year, whether on account of capital or revenue would be reflected in this account.

4. Representations

Section 16 of FCRA – Seizure of Article or Currency on contravention of provisions of the Act.

Section 18 of FCRA – Confiscation of such article and things.

Section 20 of FCRA – Reasonable opportunity to be heard.

5. Charter of Chartered Accountants

Since the FCRA is a national security legislation, NGO's are required to exercise extreme care and caution in dealing with foreign contribution from the time of its receipt to its final utilization. As Chartered Accountants do audit of accounts of NGOs, and they certify the accounts before being

submitted to the FCRA division, Chartered Accountants are required to provide meaningful guidance to the NGOs.

Following guidance and assistance may be provided by CA's to NGOs:

- a) To verify whether the associations are eligible to receive foreign contribution.
- b) To guide the applicant organization to apply to the home ministry for necessary registration/prior permission.
- c) To assist in the proper maintenance of prescribed books of accounts.
- d) To furnish the required certificate in the prescribed format after careful scrutiny of the accounts of the NGO.
- e) Before certifying the accounts of an association in FC-3 return, the CA concerned must insure that accounts have been prepared in accordance with the provisions of FC(R) Act, 1976 and Rule framed there under.

6. Filing of returns

An association permitted to accept foreign contribution is required to submit in duplicate

- i. Annual return in Form FC-3
- ii. Statement of Receipt and Payment
- iii. Balance sheet

The above documents need to be duly certified by a chartered accountant.

The return is to be filed for every year (1st April to 31st March) within a period of four months from the closure of the year i.e. by 31st July of each year. The return is to be submitted, in Form FC-3. This return contains information on foreign assistance received and used during the year as well as the balance in hand at the end of the year.

The return is reviewed by the FCRA section in the Ministry of Home Affairs to ensure that funds are not used for political or anti-national activities. The accounts and the return are not open to public, though the ministry tables a report containing annually in Parliament. Finally, there are requirements to file audited accounts with the government registrar or commissioner under the registering statute.

This returns contains information on foreign assistance received and used during the year as well as the balance in hand at the end of the year. The return is reviewed by the FCRA section in the Ministry of Home Affairs to ensure that funds are not used for political or anti-national activities. The accounts and the return are not open to public, though the ministry tables a report containing annually in Parliament. Finally there are requirements to file audited accounts with the government registrar or commissioner under the registering statute.

7. Preparation of balance sheet

Main purpose of Incorporating the provisions of a balance sheet under FCRA are as follows:

- i. To know how much expenditure has been incurred towards acquisition of capital assets.
- ii. Serves as a check over the transfer of assets to other Associations.
- iii. Will reveal if there is any disposal of an asset.
- iv. Balance sheet should be drawn carefully so that only the foreign contribution component is taken in to account.
- v. Only foreign contribution account balance sheet is required to be submitted.
- vi. Separate schedule of Fixed Assets should be enclosed with the balance sheet.
- vii. No depreciation needs to be charged while preparing the balance sheet.
- viii. Balance sheet should invariably be certified by the Chartered Accountant.

8. Certification

Chartered Accountants, before certifying the accounts of an association in Form FC-3, must ensure that they have been prepared in accordance with the provisions of the Foreign Contribution (Regulation) Act, 1976 and the Rules framed there-under. Crediting of foreign contribution by a bank to the account of an association organisation that has not obtained registration or

prior permission from the Central Government constitutes a violation and will render the defaulting bank liable for action by the RBI.

9. Secretarial Practice

The following services can be extended by Chartered Accountants in their secretarial practice.

- i. To guide the intending organizations on the receipt and utilization of foreign contribution.
- ii. To guide the intending organizations on their eligibility criteria.
- iii. To guide the intending organizations after satisfying their eligibility to receive foreign contribution, facilitate the organisation to apply for registration.
- iv. To guide the intending certain select organizations after satisfying their eligibility to receive foreign contribution, facilitate the organisation to apply for prior permission.
- v. To facilitate the politicians / journalists /judges / government servants / employees of corporations / political parties or office bearers in accepting gift from close relatives not exceeding Rs.8,000 without prior permission and reporting to Central Government in the forms prescribed.
- vi. To facilitate Indian students in receiving scholarship, stipend or payment of like nature exceeding Rs.36,000 during an academic year and helping them to file Form FC-5.
- vii. To facilitate a candidate for election who receives foreign contribution within 180 days preceding the date of nomination as a candidate for election in filing the required intimation with the authorities concerned.
- viii. To facilitate political organizations to seek prior permission of Central Government to accept foreign contribution.
- ix. To facilitate a member of a legislature / office bearer of a political party / judge / government servant / employee of a corporation who accepts foreign hospitality in case of medical emergency to give intimation to Central Government within 30 days of accepting such hospitality.

A Study on Foreign Contribution Regulation Act, 1976

- x. To facilitate unregistered association to obtain prior permission to accept foreign contribution.
- xi. To facilitate registered associations in filing Form FC-3 correctly within the prescribed time and in prescribed manner.
- xii. To facilitate associations who are registered under the ACT to receive foreign contribution to maintain prescribed accounts and records properly.
- xiii. To attest in the form FC-3 to be submitted every year after satisfying with the contents of the form and also after verification of the proper books and records maintained by the associations / organizations.

ANNEXURE-I

THE FOREIGN CONTRIBUTION (REGULATION) ACT, 1976 (No. 49 of 1976)

[31st March, 1976.]

An Act to regulate the acceptance and utilization of foreign contribution or foreign hospitality by certain persons or associations, with a view to ensuring that parliamentary institutions, political associations and academic and other voluntary organizations as well as individuals working in the important areas of national life may function in a manner consistent with the values of a sovereign democratic republic, and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Twenty-seventh years of the Republic of India as follows:

CHAPTER I - Preliminary

1. Short title, extent, application and commencement – Short title,
extent,
application and
commencement
 - (1) This Act may be called the Foreign Contribution (Regulation) Act, 1976.
 - (2) It extends to the whole of India, and it shall also apply to –
 - (a) citizens of India outside India; and
 - (b) associates, branches or subsidiaries, outside India, of companies or bodies corporate, registered or incorporated in India.
 - (3) It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint.
2. Definitions – Definitions.
 - (1) In this Act, unless the context otherwise requires, –
 - (a) 'association' means an association of individuals, whether incorporate or not,

21 of 1860.

¹ 5-8-1976 vide notification No. G.S.R. 755(E) dated the 5th August, 1976.

² Ins. By Act 1 of 1985, s.2 (w.e.f. 20-10-1984)

having an office in India and includes a society, whether registered under the Societies Registration Act, 1860, or not, any other organization by whatever name called;

(b) 'candidate for election' means a person who has been duly nominated as a candidate for election to any Legislature;

(c) 'foreign contribution' means the donation, delivery or transfer made by any 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, does not exceed one thousand rupees;

(ii) of any currency, whether Indian or foreign;

(iii) of any foreign security as defined in clause (i) of Section 2 of the Foreign Exchange Regulation Act, 1973 (46 of 1973);

46 of 1973. ²[Explanation. - 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;]

(d) 'foreign hospitality' means any offer, not being a purely casual one, made by a foreign source for providing a person with the cost of travel to any foreign country or territory or with free board, lodging, transport or medical treatment;

(e) 'foreign source' includes —

(i) the Government of any foreign country or territory and any agency of such Government,

- 1 of 1956.
- (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 in the Official Gazette, specify in this behalf,
 - (iii) a foreign company within the meaning of section 591 of the Companies Act, 1956 and also include—
 - (a) a company which is a subsidiary of a foreign company, and
 - (b) a multi-national corporation within the meaning of this Act,
 - (iv) a corporation, not being a foreign company, incorporated in a foreign country or territory,
 - (v) a multi-national corporation within the meaning of this, Act,
- 1 of 1956.
- (vi) a company within the meaning of the Companies Act, 1956, if 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) Government of a foreign country or territory,
 - (b) 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,

- (vii) a trade union in any country or territory, whether or not registered in such foreign country or territory,
 - (viii) a foreign trust by whatever name called, or a foreign foundation which is either in the nature of trust or is 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, but does not include any foreign institution which has been permitted by the Central Government, by a notification in the Official Gazette, to carry on its activities in India;
- (f) 'Legislature' means –
- (i) either House of Parliament,
 - (ii) 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,
 - (iii) Legislative Assembly of a Union 20 of 1963. territory constituted under the Government of Union Territories Act, 1963,
 - (iv) The Metropolitan Council of Delhi 19 of 1966. constituted under section 3 of the Delhi Administration Act, 1966,
 - (v) Municipal Corporations in 2 of 1974. metropolitan areas as defined in the code of Criminal Procedure, 1973,
 - (vi) District Councils and Regional Councils in the State of Assam and

Meghalaya and in the Union territory of Mizoram as provided in the Sixth Schedule to the Constitution, or

(vii) any other elective body as may be notified by the Central government, as the case may be;

¹[(g) 'political party' means –

(i) an association or body of individual citizens of India –

(1) which is, or is deemed to be, registered with the Election Commission of India as a political party under the Election Symbols (Reservation and Allotment) Order, 1968, as in force for the time being; or

(2) 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 1 of Table 1 to the notification of the Election Commission of India No. 56/J&K/84 dated the 27th September, 1984, as in force for the time being;]

(h) 'prescribed' means prescribed by rules made under this Act;

(i) 'registered newspaper' means a newspaper registered under the Press and Registration of Books Act, 1867.

(j) 'subsidiary' and 'associate' have the meanings, respectively, assigned to them in the Companies Act, 1956.

¹ Subs. By Act 1 of 1985, s. 2, for cl. (g) (w.e.f., 20-10.1984)

- (k) 'trade union' means a trade union registered under the Trade Unions Act, 1926.

Explanation – For the purposes of this Act, 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 more countries or territories;
- 46 of 1973. (2) Words and expressions used herein and not defined but defined in the Foreign Exchange Regulation Act, 1973, have the meaning respectively assigned to them in that Act,
- 46 of 1973. (3) Words and expressions used herein and not defined in this Act or in the Foreign Exchange Regulation Act, 1973, but defined in the Representation of the People Act, 1950, or the Representation of the People Act, 1951, have the meanings respectively assigned to them in such Act.
- 43 of 1950.
- 43 of 1951
3. The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force.

Application of other laws not barred.

CHAPTER II - Regulation of foreign Contribution and Foreign Hospitality

4. (1) No foreign contribution shall be accepted by any –
- (a) candidate for election,
- (b) correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper,

Candidate for election, etc., not to accept foreign contribution.

- (c) ¹[Judge, Government servant] or employee of any corporation,
- (d) member of any Legislature,
- (e) political party or office-bearer thereof.

1 of 1956. Explanation – In clause (c) and in section 9, 'corporation' means a corporation owned or controlled by Government and includes a Government company as defined in section 617 of the Companies Act, 1956.

- (2) (a) 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 referred to in sub-section (1), or both.
- (b) 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 referred to in sub-section (1) or both.
- (c) No citizen of India resident outside India shall deliver any currency, whether Indian or foreign, which has been accepted from any foreign source, to –
 - (i) any political party or any person referred to in sub-section (1), or both, or
 - (ii) any other person, if he knows or has reasonable cause to believe that

¹ Subs. By s.3, *ibid.*, for "Government servant" (w.e.f., 20-10-1984)

such other person intends, or is likely, to deliver such currency to a political party or to any person referred to in sub-section (1), or both.

(3) No person receiving any currency, whether Indian or foreign, from a foreign source on behalf of any association, referred to in sub-section (1) of section 6, shall deliver such currency –

(i) to any association or organization other than the association for which it was received, or

(ii) 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 an association other than the association for which such currency was received.

5. (1) No organization of a political nature, not being a political party, shall, accept any foreign contribution except with the prior permission of the Central Government.

Organisation of a political nature not to accept foreign contribution except with the prior permission of the Central Government.

Explanation – For purpose of this section, “organization of a political nature not being a political party” means such organization as the Central Government may, having regard to the activities of the organization or the ideology propagated by the organization or the programme of the organization or the association of the organization with activities of any political party, by an order published in the Official Gazette, specify in this behalf.

(2) (a) Except with the prior permission of the Central Government, 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 foreign currency, on behalf of an organization referred to in sub-section (1).
- (b) Except with the prior permission of the Central Government, no person, resident in India, shall deliver any foreign currency 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 an organization referred to in sub-section (1).
- (c) Except with the prior approval of the Central Government, no citizen of India, resident outside India, shall deliver any currency, whether Indian or foreign, which has been accepted from any foreign source, to –
- (i) any organization referred to in sub-section (1), or
 - (ii) any person, if he knows or has reasonable cause to believe that such person intends, or is likely, to deliver such currency to an organization referred to in sub-section (1).

Where such association obtains any foreign contribution through any branch [6.¹ (1) No association [other than an organization referred to in sub-section.

- (1) of section 5] having a definite cultural, economic, educational, religious or social programme shall accept foreign contribution unless such association –
- Certain associations and persons receiving

¹ Subs. by Act 1 of 1985, s.4. for sub-section (1)(w.e.f. 1-1-1985).

- (a) registers itself with the Central Government in accordance with the rules made under this Act,; and
- (b) agrees to receive such foreign contribution only through such one of the branches of a bank as it may specify in its application for such registration, and every association so registered shall give within such time in such manner as may be prescribed, an intimation to 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 purposed for which and the manner in which such foreign contribution was utilized by it :

foreign contribution to give intimation to the Central Government.

Provided that other than branch of the bank through which it has agreed to receive foreign contribution or fails to give such intimation within the prescribed time or in the prescribed manner, or gives any intimation which is false, the Central Government may, by notification in the Official Gazette, direct that such association shall not, after the date of issue of such notification, accept any foreign contribution without the prior permission of the Central Government.

- (1A) Every association 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 shall also give, within such time and in such manner as may be prescribed, an intimation to the Central Government as to the amount of 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 it.

- (2) Every candidate for election, who has 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 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.

Recipients of scholarships, etc., to give intimation to the Central Government.

7. (1) Every citizen of India receiving any scholarship, stipend or any payment of like nature from any source shall give, within such time and in such manner as may be prescribed, an intimation to the Central Government as to the amount of the scholarship, stipend or other payment received by him and the foreign source from which, and the purpose for which, such scholarship stipend or other payment has been, or is being, received by him.
- (2) Where any recurring payments are being received by any citizen of India from any foreign source by way of scholarship, stipend or other payment, it shall be sufficient if the intimation referred to in sub-section (1) includes a precise information as to the intervals at which, and the purpose for which, such recurring payments will be received by such citizen of India.

(3) It shall not be necessary to give such intimation as is referred to in sub-section (1) or sub-section (2) in relation to scholarships, stipends or payments of a like nature, if the annual value of such scholarships, stipend or other payments does not exceed such limits as the Central Government may by rules made under this Act, specify in this behalf.

Persons to whom section 4 shall not apply.

8. Nothing contained in section 4 shall apply to 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 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 regulations made by the Central Government with regard to the acceptance or retention of such gift or presentation; or

(e) from his relative when such foreign contribution has been received with the

previous permission of the Central Government.

Provided that no such permission shall be required if the amount of foreign contribution received by him from his relative does not exceed in value, eight thousand rupees per annum and an intimation is given by him to the Central Government as to the amount received, the source from which and the manner in which it was received and the purpose for which and the manner in which it was utilised by him;

- (f) by way of remittance received, in the ordinary course of business through any official channel, post office, or in any authorised dealer in foreign exchange under the Foreign Exchange Regulation Act, 1973.

Explanation – In this Act, the expression “relative” has the meaning assigned to it in the Companies Act, 1956.

Restrictions on acceptance of foreign hospitality.

9. No member of a Legislature, office bearer of a political party, ¹[Judge, Government servant] or employee of any corporation shall, while visiting any country or territory outside India, accept, except with the prior permission of the Central Government, any foreign hospitality :

Provided that 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 and intimation to the Central Government as to the receipt of such hospitality, and the source

¹ Subs. by Act 1 of 1985, s 5, for “Government servant” (w.e.f. 20-10-1984)

from which, and the manner in which such hospitality was received by him.

Power of
Central
Government

10. The Central Government may –

- (a) prohibit any association, not specified in section 4, or any person, from accepting any foreign contribution;
- (b) ¹[without prejudice to the provisions of sub-section (1) of section 6 require any association specified in that sub-section], to obtain prior permission of the Central Government before accepting any foreign contribution;
- (c) require any person or class of person or any association, not being an association specified in section 6, 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 or association, 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) require any person or class of persons, not specified in section 9, to obtain prior permission of the Central Government before accepting any foreign hospitality;
- (e) require any person or class of persons, not specified in section 9, 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:

to prohibit
receipt of
foreign
contribution,
etc., in certain
cause.

¹ Subs. by S. 6, *ibid.* for 'require any association, specified in section 6" (w.e.f., 1-1-1985).

Provided that no such prohibition or requirement shall be made unless the Central Government is satisfied that the acceptance of foreign contribution by such association or persons or class of persons, as the case may be, the acceptance of foreign hospitality by such person, is likely to affect prejudicially –

- (i) the sovereignty and integrity of India; or
- (ii) the public interest; or
- (iii) freedom or fairness of election to any Legislature ; or
- (iv) friendly relations with any foreign State; or
- (v) harmony between religious, racial, linguistic or regional groups castes or communities.

Application to be made in prescribed form for obtaining prior permission to accept foreign contribution or hospitality.

11. (1) Every individual, association, organization or other person, who is required by or under this Act to obtain the prior permission of the Central Government to accept any foreign contribution or hospitality, shall, before the acceptance or any such contribution or hospitality, make an application for such permission to the Central Government in such form and in such manner as may be prescribed.
- (2) If an application referred to in sub-section (1) is not disposed of within ninety days from the date of receipt of such application, the permission prayed for in such application shall, on the expiry of the said period of ninety days, be deemed to have been granted by the Central Government;

Provided that, where, in relation to an application, the Central Government has informed the applicant the special difficulties by reason of which his application cannot be disposed of within the said period of ninety days, such application shall not, until the expiry of a

further period of thirty days, be deemed to have been granted by the Central Government.

CHAPTER III – Miscellaneous

- 37 of 1967.
12. 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, 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 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, and thereupon the provisions of sub-section (2), (3), (4) and (5) of section 7 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967) shall, so far as may be, apply to, or in relation to, such article or currency and references in the said sub-sections to moneys, securities or credits shall be construed as references to such article or currency.
13. Every association, referred to in section 6, shall maintain, in such form and in such manner as may be prescribed –
- (a) an account of any foreign contribution received by it, and
 - (b) a record as to the manner in which such contribution has been utilised by it.
14. If the Central Government has, for any reason, to be recorded in writing, any ground to suspect
- Power to prohibit payment of currency received in contravention of the Act.
- Recipients of foreign contribution to maintain accounts etc.
- Inspection of accounts or records.

¹ Subs. by Act 1 of 1985, s. 7, for "Class I Post" (w.e.f. 20-1-1984).

that any provision of this Act has been, or is being contravened by –

- (a) any political party, or
- (b) any person, or
- (c) any organization, or
- (d) any association,

it may, by general or special order, authorise such gazetted officer, holding a ¹[Group A post], as it may think fit (hereinafter referred to as the authorised officer), to inspect any account or record maintained by such political party, person, organization or association, as the case may be, and thereupon every such authorised 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 :

Provided that no gazetted officer shall be authorised to inspect the account or record maintained by a political party, unless he has been holding a Group A post in connection with the affairs of the Union, or a state, for not less than ten years.

15. If, after inspection of an account or record referred to in section 14, the authorized officer has any reasonable cause to believe that any provision of this 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 in which any proceeding is brought for such contravention:

Seizure of accounts or records.

Provided that the authorised officer shall return such account or record to the person from whom it was seized if no proceeding is brought within

¹ Ins. by s. 8 *ibid.* (w.e.f. 20-10-1984)

six months from the date of such seizure for the contravention disclosed by such account or record.

- ¹[15A. Where any organization or association fails to furnish any returns under this Act within the time specified therefore or the returns so furnished are not in accordance with the law or if, after inspection of such returns, the Central Government has any reasonable cause to believe that any provision of this act has been, or is being, contravened, that Government may, by general or special order, authorise such gazetted officer, holding a Group A post, as it may think fit, to audit any books of account kept or maintained by such organization or association as the case may be, 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 :
- Audit of accounts.
- Provided that any information obtained from such audit shall be kept confidential and shall not be disclosed except for the purposes of this Act.]

Seizure of article or currency received in contravention of the Act.

16. If any gazetted officer, authorised in this behalf by the Central Government, by general or special order, has any reason to believe that any person has in his possession or control any article exceeding rupees one thousand in value, or currency, whether Indian or foreign, in relation to which any provision of this Act has been, or is being, contravened, he may seize such article or currency.

Seizure to be made in accordance with the Code of Criminal Procedure, 1973.

17. Every seizure made under this Act shall be made in accordance with the provision of section 100 of the Code of Criminal Procedure, 1973. ^{2 of 1974.}

- Confiscation of article or currency obtained in contravention of the Act.
18. Any article or currency which is seized under section 16 shall be liable to confiscation if such article or currency has been adjudged under section 19 to have been received or obtained in contravention of this Act.
- Adjudication of confiscation.
19. Any confiscation referred to in section 18 may be adjudged –
- (a) without limit, by the Court of Session within the local limits of whose jurisdiction the seizure was made; and
 - (b) 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, specify in this behalf.
- Opportunity to be given before adjudication of confiscation.
20. 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 has been seized.
- Appeal
21. (1) Any person aggrieved by any order made under section 19 may prefer any appeal, –
- (a) where the order has been made by the Court of Session, to the High Court to which such Court is subordinate; or
 - (b) where the order has been made by any officer specified under clause (b) of section 19, 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:
- Provided that 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.

- (2) Any organization referred to in section 5, or any person or association referred to in section 9 or section 10, aggrieved by an order made in pursuance of the Explanation to sub-section (1) of section 5 or by an order of the Central Government refusing to give permission, or by any order made by the Central Government, under section 5 or section 9 or section 10, as the case may be, may within sixty days from the date of such order prefer an appeal against such order to the High Court within the local limits of whose jurisdiction the applicant ordinarily resides or carries on business or personally works for gain, or, where the appellant is an organization or association, the principal office of such organization or association is located.
- (3) Every appeal preferred under this section shall be deemed to be an appeal from an original decree and the provisions of Order 5 of 1908. 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 for article or currency obtained in contravention of section 12.

22. If any person, on whom any prohibitory order has been served under section 12, pays, delivers, transfers or otherwise deals with, in any manner whatsoever, any article or currency, 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; and notwithstanding anything contained in the Code of Criminal Procedure, 1973, 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 in respect of which the prohibitory order has been contravened by him or such part thereof as the court may deem fit.

Punishment for the contravention of any provision of the Act.

23. (1) Whoever accepts, or assists any person, political party or organization in accepting, any foreign contribution or any currency from a foreign source, in contravention of any provision of this Act or any rule made thereunder, shall be punished with imprisonment for a term which may extend to five years, or with fine, or with both.
- (2) whoever accepts any foreign hospitality in contravention of any provision of this Act or any rule made thereunder shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

Power to impose additional fine where article or currency is not available for confiscation.

24. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Court trying a person, who, in relation to any article or currency, whether Indian or foreign, does or omits to do any act which act or omission would render such article or currency liable to confiscation under this Act, may, in the event of the conviction of such person for the act or omission aforesaid, impose on such person a fine not exceeding five times the value of the article or currency or one thousand rupees, whichever is more, if such article or currency is not available for confiscation, and fine so imposed shall be in addition to any other fine which may be imposed on such person under this Act.

2 of 1974.

Penalty for offences where

25. Whoever fails to comply with any provision of this

no separate punishment has been provided.

Act for which no separate penalty has been provided in this Act shall be punished with imprisonment for a term which may extend to one year, or with fine not exceeding one thousand rupees, or with both.

Prohibition of acceptance of foreign contribution.

¹[25A. Notwithstanding anything contained in this Act, whoever, having been convicted of any offence under sub-section (1) of section 23 or section 25, in so far as such offence relates to the acceptance or utilization of foreign contribution, is again convicted of such offence shall not accept any foreign contribution for a period of three years from the date of the subsequent conviction.]

Offences by companies.

26. (1) where an offence under this Act or any rule made thereunder 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:

Provided that nothing contained in this Sub-section shall render such person 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.

(2) Notwithstanding anything contained in sub-section (1), Where an offence under this Act or any rule made thereunder has been committed by the consent or connivance or, or is attributable to any neglect on the part

¹ Ins. By Act 1 of 1985, s. 9, (w.e.f. 20-10-1984).

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.

Explanation – For the purposes of this section –

(a) “company” means any body corporate and includes a firm, society, trade union or other association of individuals; and

(b) “director” in relation to a firm, society, trade union or other association of individual, means a partner in the firm or a member of the governing body of such society, trade union or other association of individuals.

Bar to prosecution of offences under the Act.

27. No court shall take cognisance of any offence under this Act, except with the previous sanction of the Central Government or any officer authorised by that Government in this behalf.

Investigation into cases under the Act.

28. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act may also be investigated into by such authority as the Central Government may specify in this behalf and the authority so specified shall have all the powers which an officer-in-charge of a police station has while making an investigation into a cognisable offence. 2 of 1974.

Protection of action taken in good faith.

29. No suit or other legal proceedings shall lie against the Central Government in respect of any loss or damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of the provisions of this Act or, any rule or order made thereunder.

Power to make rules.

30. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:
- (a) the time within which, and the manner in which, intimation is to be given by an association referred to in section 6, with regard to the foreign contribution received by it;
 - (b) the limits up to which receipt of scholarships, stipends or payments of like nature need not be intimated to the Central Government;
 - (c) the time within which, and the manner in which, intimation is to be given by persons receiving any scholarships, stipend or any payment of a like nature from a foreign source;
 - (d) the time within which, and the manner in which a candidate for election should give intimation as to the amount of foreign contribution received by him at any time within one hundred and eighty days from the date when he became such a candidate.
 - (e) the form and manner in which an application shall be made for obtaining prior permission of the Central Government to receive foreign contribution or foreign hospitality.
 - (f) the manner of service of the prohibitory order made under section 12;
 - (g) the form and manner in which account or record referred to in section 13 shall be maintained;
 - (h) the limits up to which an officer, not below the rank of an Assistant Sessions

Judge, may make adjudication of confiscation;

(i) any other matter which is required to be, or may be prescribed.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power to exempt.

31. If the Central Government is of opinion that it is necessary or expedient in the interests of the general public so to do, it may, by order and subject to such conditions as may be specified in the order, exempt any association (not being a political party), organization or any individual (not being a candidate for election) from the operation of all or any of the provisions of this Act and may, as often as may be necessary, revoke or modify such order.

Act not to apply to Government transactions.

32. Nothing contained in this Act shall apply to any transaction between the Government of India and the Government of any foreign country or territory.

ANNEXURE - II

THE FOREIGN CONTRIBUTION (REGULATION) RULES, 1976¹

(As amended upto 26th July 2001)

In exercise of the powers conferred by section 30 of the Foreign Contribution (Regulation) Act, 1976, (49 of 1976), the Central Government hereby makes the following rules, namely: -

Short title and commencement

1. (1) These rules may be called the Foreign Contribution (Regulation) Rules, 1976.

(2). They shall come into force on the 5th day of August, 1976.

Definitions.
49 of 1976

2. In these rules unless the context otherwise requires, -

(a) "Act" means the Foreign Contribution (Regulation) Act, 1976;

(b) "Form" means a form appended to these rules;

(c) "Section" means a section of the Act;

²(d) "Year" means the accounting year commencing from the 1st April and ending on 31st day of March of the next calendar year].

Application for obtaining prior permission to receive foreign contribution or foreign hospitality.

3. An application for obtaining prior permission of the Central Government to-

(a) receive foreign contribution under sub-section (1) of section 5, or clause (a) of sub-section (2) of that section, shall be made in Form FC-1;

³(aa) receive foreign contribution under proviso to sub-section (1) of section 6, or under sub-section (1A) of that section or clause (b) of section 10,

¹ Vide G.S.R. 756(E), dated the 5th August, 1976 Published in the Gazette of India, Extra Ordinary, Part II, Section 3(ii), P.2188.

² Ins. by G.S.R. 179(E), dated 25-3-1991.

³ Ins. by G.S.R. 755(E), dated 5-11-1984.

shall be made in Form FC-1A;

- (b) accept foreign hospitality under section 9 [or clause (d) of section 10]⁴, shall be made in Form FC-2.

Application for registration.

- ⁵3A. An application for registration of an association referred to in subsection (1) of section 6 for acceptance of foreign contribution shall be made in Form FC-8.

4. (1) An intimation as to the receipt of-

Intimation regarding receipt of foreign contribution or scholarship or stipend or any payment of a like nature or foreign hospitality.

⁶(a) foreign contribution by an association referred to in sub-sections (1) and (1A) of section 6 shall be given every year beginning on the 1st day of April in Form FC-3 in duplicate⁶ [within four months] of the closure of the year.

Provided that a 'NIL' report shall also be furnished. The intimation to be furnished for the year beginning on the 1st day of April, 1991 shall also include the receipt and utilisation of foreign contribution during the period commencing from 1st January, 1991 and ending on 31st March, 1991.}

- (b) foreign contribution by a candidate for election, referred to in subsection (2) of section 6 shall be given in Form FC-4 within fifteen days from the date on which he is duly nominated as a candidate for election.

- (c) any scholarship, stipend or any payment of a like nature from any foreign source in relation to which an intimation is required to be given under subsection (1) of section 7, shall be given in Form FC-5, within thirty days of receipt of such scholarship, stipend or payment of a like nature;

Provided that where the person receiving the

⁴ Ins. by SO 860(E), dated 29-12-1977.

⁵ Ins. by G.S.R. 755(E), dated 5-11-1984.

⁶ Ins. by G.S.R. 592 (E), dated 27-12-1996.

scholarship, stipend or any payment of a like nature is residing outside India, the intimation shall be given within sixty days from the date of receipt of such scholarship, stipend or other payment of a like nature;

- (d) foreign hospitality referred to in the proviso to section 9, shall be given on plain paper within thirty days from the date of receipt of such hospitality specifying the particulars as to the receipt of such hospitality and the source from which, and the manner in which such hospitality was received.
- 6. Any application or intimation referred to in⁷ [rule 3, rule 3A or rule 4], as the case may be, shall be made or given to the Secretary to the Government of India in the Ministry of Home Affairs, New Delhi, and such application or intimation shall be sent by registered post.
- 7. A prohibitory order under section 12 or any other order or direction made or issued under the Act, shall be served on the person concerned in the following manner, that is to say, -
 - (a) by delivering or tendering it to that person or to his duly authorized agent, or
 - (b) by sending it to him by registered post with acknowledgement due to the address of his last known place of residence or the place where he carries on, or is known to have last carried on business, or the place where he personally works for gain or is known to have last worked for gain, and in case the person is an organisation or an association, to the last known address of the office of such organisation or association;

⁷ Subs. by G.S.R. 860 (E) dated 29-12-1977.

- (c) if it cannot be served in any of the manner aforesaid, by affixing it on the outer door or some other conspicuous part of the premises in which that person resides, or carries on, or is known to have last carried on business, or personally works for gain, or is known to have last worked personally for gain, and in case the person is an organisation or an association, on the outer door or some other conspicuous part of the premises in which the office of that organisation or association is located, or is known to have been last located and the written report whereof should be witnessed by at least two person.
- Authority to whom an application or intimation to be sent.
8. (1) A separate set of accounts and records shall be maintained, exclusively for foreign contribution received and utilised-
- Manner of service of prohibitory order or any other order or direction.
- (a) in Form FC-6, where the foreign contribution relates only to articles as referred to in item (1) of sub-clause (c) of clause (1) of section 2;
- Maintenance of accounts.
- (b) in the cash book and ledger account on double entry basis, where the foreign contribution relates to currency received and utilised, and a separate bank account shall be maintained in respect of such contribution;
- (c) in Form FC-7, where the foreign contribution relates to foreign securities.
- ⁸(2) Every account specified in sub-rule (1) shall be maintained on an yearly basis, commencing on the 1st day of⁹ [April] each year and every such yearly account, duly

⁸ Subs by SO 860 (E), dated 29-12-1977.

⁹ Subs. by G.S.R. 179 (E), dated 25-3-1991.

certified by a chartered accountant¹⁰ [in Form FC-3 alongwith a balance sheet and statement of receipt and payment] shall be furnished in duplicate, to the Secretary to the Government of India, in the Ministry of Home Affairs, New Delhi, within¹¹ [four months] of the closure of the year.}

38 of 1949.

Explanation – In this rule, “chartered accountant” has the meaning assigned to it in the Chartered Accountants Act, 1949.

Limits upto which an officer, not below the rank of an Assistant Sessions Judge may make adjudication or confiscation.

9. An officer referred in clause (b) of section 19 may adjudge confiscation in relation to any article or currency seized under section 16, if the value of such article or the amount of such currency exceeds one thousand rupees but does not exceed fifty thousand rupees.

¹⁰ Subs. by G.S.R. 755 (E), dated 5-11-1984.

¹¹ Subs. by G.S.R. 592 (E), dated 27-12-1996.

Note- Forms FC-3, FC-1A and FC-8 substituted vide notification No. 8(E) dated 4.1.99. Form FC-3 and Forms FC-1A and FC-8 further modified vide notification No. GSR 63(E) dated 24.1.2000 and GSR No. 557(E) dated 26.7.2001.

ANNEXURE - III

Foreign Contribution (Acceptance or Retention of Gifts or Presentations) Regulations, 1978 ¹

[SO 402(E), dated 22-6-1978]

In pursuance of clause (d) of section 8 of the Foreign Contribution (Regulation) Act, 1976 (49 of 1976), the Central Government hereby makes the following regulations with regard to the acceptance or retention of foreign contribution by way of a gift or presentation made to any person specified in section 4 as a member of any Indian delegation, namely:—

Short title and commencement.

1. (1) These regulations may be called the Foreign Contribution (Acceptance or Retention of Gifts or Presentations) Regulations, 1978.
- (2) They shall come into force on the date of their publication in the Official Gazette.

Definitions.

2. In these regulations, unless the context otherwise requires,—
 - (a) "Act" means the Foreign Contribution (Regulation) Act, 1976 (49 of 1976);
 - (b) words and expressions used in these regulations and not defined but defined in the Act shall have the meanings respectively assigned to them in the Act.

Regulation of acceptance or retention of foreign contribution by way of gift or presentation.

3. (1) Any person specified in section 4 of the Act who is a member of any Indian delegation may accept any foreign contribution by way of a gift or presentation made to him as a member of such delegation (hereinafter referred to as such person), subject to the provisions of this regulation:

¹ [Provided that a Minister may retain a gift or presentation made to him/her provided the value of the gift assessed under sub-regulation (5) does not exceed five thousand rupees.]

- (2) Where such person receives any foreign contribution by way of gift or presentation, he shall, within thirty days of the receipt thereof, intimate to ²[the leader of the Indian delegation], the Secretary to the Government of India in the Ministry of Home Affairs, Ministry of External Affairs and the Ministry of the Government of India sponsoring the delegation of which he is a member, in writing,—
- (a) the fact of his having received such gift or presentation,
 - (b) the foreign source from which it is received,
 - (c) its approximate market value in the country of origin,
 - (d) the place in which, and the date on which, it is received, and
 - (e) such other details relating thereto as he may, in the circumstances, consider appropriate:³
- (3) Every gift or presentation received by such person from any foreign source shall be deposited by him with the Secretary to the Government of India in the Ministry or the Department which had sponsored the delegation of which he was the member, within thirty days from the date of intimation by him of such receipt under sub-regulation (2).
- (4) The Secretary to the Government of India, referred to in sub-regulation (3), shall forward every such gift or presentation deposited with him to the *Toshakhana* in the Ministry of External Affairs for assessment of its market value in the country of origin.
- (5) Such assessment shall be made within thirty days from the date of receipt of the gift or presentation in the *Toshakhana*, in accordance with the rules applicable, for the time being in force, to the valuation of articles in the *Toshakhana*, and such person shall be intimated in writing of such assessment forthwith.

² **Provided** that in a case where such person received such gift or presentation while he is visiting any foreign country or territory outside India, such intimation may be made by him within thirty days from the date of his return to India :

³ [**Provided further** that the requirements contained in these regulations shall be complied with by such person if the leader of the Indian delegation is of the opinion that the market value, in India, of such gift(s) or presentation(s) exceeds Rs. 1,000 and the said leader directs in writing to such person to comply with such of the requirements of these regulations, as may be applicable, in his case.]

(6) If any question arises relating to the assessment so made under sub-regulation (5) it shall be referred to the Central Government who shall decide the same.

(7) Every such gift or presentation, the market value in the country of origin of which, as assessed under sub-regulation (5), does not exceed three thousand rupees, shall be returned to such person for retention by him :

Provided that where more than one such gift or presentation is received by such person while he is in one delegation, such person be entitled to retain only one such gift or presentation :

Provided further that where more than one gift or presentation has been received by such person, while he is in one delegation, and the aggregate market value in India, of all such gifts or presentations, does not exceed Rs. 1,000 as determined by the leader of the Indian delegation, such person may retain all such gifts/presentations.]

(8) Every such gift or presentation, the market value in the country of origin of which, as assessed under sub-regulation (5), exceeds three thousand rupees shall be retained in the *Toshakhana* :

Provided such person shall have the option, that exercised by him within thirty days from the date of receipt by him of the intimation under sub-regulation (5), to purchase such gift or presentation on payment of the difference between the market value in the country of origin of such gift or presentation, as assessed under sub-regulation (5) and three thousand rupees:

Provided further that the option once exercised under this sub-regulation shall be final.

ANNEXURE - IV

The Foreign Contribution (Management and Control) Bill, 2005 – Referred to the Group of Ministers by the Cabinet. Comments/views of various stakeholders be sent to Shri Anuj Sharma, Deputy Secretary (FC), Ministry of Home Affairs, Jaiselmer House, New Delhi-11001 by 31st July, 2005

A

BILL

to consolidate the law relating to 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 anti-national activities, and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-fifth Year of the Republic of India as follows:-

CHAPTER I - PRELIMINARY

- | | |
|--|---|
| 1. (1) This Act may be called the Foreign Contribution (Management and Control) Act, 2005. | Short title, extent, application and commencement |
| (2) It extends to the whole of India, and it shall also apply to- | |
| (a) citizens of India outside India; and | |
| (b) associates branches or subsidiaries, outside India, of companies or bodies corporate, registered or incorporated in India. | |
| (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint: Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision. | |

- Definitions 2. (1) In this Act, unless the context otherwise requires,-
- (a) "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 but does not include any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956 or a society owned or controlled by the Central Government or a State Government;

- (b) "candidate for election" means a person who has been duly nominated as a candidate for election to any Legislature;
- (c) "certificate" means certificate of registration granted under sub-section (3) of section 12;
- (d) "company" shall have the meaning assigned to it under clause (17) of section 2 of the Income Tax Act, 1961;
- (e) "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;
 - (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 clause (i) or company referred to in clause (ii);
 - (iv) a multi-national corporation.

Explanation.- For the purposes of this 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;

- (f) "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 ten thousand rupees, as the Central Government may, from time to time, specify by rules made by it in this behalf;
 - (ii) of any currency, whether Indian or foreign; 42 of 1999.
 - (iii) of 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 (2) 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 for attending any conference held in India or as subscription for a journal or printed material published in India or as tuition fee for studies in an educational institution in India or in lieu of services rendered by such person, shall be excluded from the foreign contribution within the meaning of this clause.

- (g) "foreign hospitality" means any offer, not being a purely casual one, made by a foreign source for, -
 - (i) providing a person with the costs of travel to any foreign country or territory or with free boarding, lodging, transport or medical treatment;

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- (ii) giving any amount to a person in lieu of free boarding, lodging, transport or medical treatment referred to in sub-clause (i); 42 of 1999
- (h) "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;
 - (v) a multi-national corporation referred to in sub-clause (iv) of clause (d);
 - (vi) is 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) Government of a foreign country or territory;
 - (B) 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 by whatever name called, or a foreign foundation which is either in the nature of a trust or is 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;
 - (i) "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 ^{20 of 1963} House of the Legislature of that State;
 - (C) Legislative Assembly of a Union territory constituted under the Government of Union ^{1 of 1992} Territories Act, 1963;
 - (D) Legislative Assembly for the National Capital Territory of Delhi referred to in the Government of ^{2 of 1974.} National Capital Territory of Delhi Act, 1991;
 - (E) Municipal Corporations in metropolitan areas as defined in the Code of Criminal Procedure, 1973;
 - (F) District Councils and Regional Councils in the States of Assam, Meghalaya, Tripura and Mizoram as provided in the Sixth Schedule to the Constitution; or
 - (E) any other elective body as may be notified by the Central Government, as the case may be;
 - (j) "notification" means notification published in the Official Gazette and the expression "notify" shall be construed accordingly;
 - (k) "person" includes-
 - (i) an individual; ^{43 of 1951.}
 - (ii) a Hindu undivided family;
 - (iii) an association;
 - (iv) a company;
 - (l) "political party" means-
 - (i) an association or body of individual citizens of India-
 - (A) registered with the Election Commission of

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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;
- (C) which has set up candidates for election to any Legislature, but is not registered or deemed to be registered;
- (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/96, dated the 5th August, 1996, as in force for the time being; 25 of 1867.
- (m) "prescribed" means prescribed by rules made under this Act;
- (n) "prescribed authority" means an authority specified as such by rules made by the Central Government under this Act; 1 of 1956.
- (o) "registered newspaper" means a newspaper registered under the Press and Registration of Books Act, 1867;
- (p) "Registering Authority" means an authority specified as such by rules made by the Central Government under this Act; 2 of 1934.
- (q) "relative" has the meaning assigned to it in clause (41) of section 2 of the Companies Act, 1956;
- (r) "scheduled bank" shall have the meaning assigned to it under clause (e) of section 2 of the Reserve Bank of India Act, 1934; 1 of 1956.
- (s) "specified area" means any State/Union Territory or part thereof and border districts/coastal districts/tribal districts/tribal areas, as may be notified as such by the Central Government; 16 of 1926.
- (t) "subsidiary" and "associate" shall have the meanings respectively assigned to them in the Companies Act, 43 of 1950

1956;

(u) "trade union" means a trade union registered under the 43 of 1951. Trade Unions Act, 1926.

(2) Words and expressions used herein and not 42 of 1999. 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 same meanings respectively assigned to them in those Acts.

CHAPTER II - REGULATION OF FOREIGN CONTRIBUTION AND FOREIGN HOSPITALITY

Prohibition to accept foreign contribution

3. (1) No foreign contribution shall be accepted by any
- (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 corporation,
 - (d) member of any Legislature,
 - (e) political party or office-bearer thereof.
 - (f) organisation of a political nature as may be specified under sub-section (1) of section 5 by the Central Government;
 - (g) association or company engaged in the production or broadcast of audio news or audio visual news or current affairs programmes through any electronic mode;
 - (h) correspondent or editor of the association or company referred to in clause (g).

Explanation. - In clause (c) and section 6, the expression 1 of 1956. "corporation" means a corporation owned or controlled by Government and includes a Government company as defined in section 617 of the Companies Act, 1956.

(2) (a) 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 referred to in sub-section (1), or both.

(b) 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 referred to in sub-section (1), or both.

(c) No citizen of India resident outside India shall deliver any currency, whether Indian or foreign, which has been accepted from any foreign source, to-

(i) any political party or any person referred to in sub-section (1), or both; or

(ii) 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 referred to in sub-section (1), or both.

(3) 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 –

42 of 1999.

(a) to any person other than a person for which it was received, or

(b) 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.

Persons to whom section 3 shall not apply.

4. 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

Procedure to
notify an
organisation
of a political
nature.

accepted by him, -

- (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
 - (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.
5. (1) 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.
- (2) Before making an order under sub-section (1), the Central Government shall give the organisation in respect of whom the order is

proposed to be made a notice in writing informing it of the ground or grounds, on which it is proposed to be specified an organisation of political nature under that sub-section:

Provided that the Central Government may, by rules made by it, specify the ground or grounds on which an organisation shall be specified as an organisation of a political nature.

- (3) The organisation to whom a notice has been served under sub-section (2), may, within a period of thirty days from the date of the notice, make a representation to the Central Government giving reasons for not specifying such organisation as an organisation under sub-section (1):

Provided that the Central Government may entertain the representation after the expiry of the said period of thirty days, if it is satisfied that the organisation was prevented by sufficient cause from making the representation within thirty days.

- (4) The Central Government may, if it considers it appropriate, forward the representation referred to in sub-section (3) to any authority to report on such representation.
- (5) The Central Government shall, after considering the representation and the report of the authority referred to in sub-section (4), specify such organisation as an organisation of a political nature not being a political party and make an order under sub-section (1) accordingly.

Restriction on acceptance of foreign hospitality.

6. No member of a Legislature or office-bearer of a political party or Judge or Government servant or employee of any corporation shall, while visiting any country or territory outside India, accept, except with the prior permission of the Central Government, any foreign hospitality:

Provided that 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.

7. No person who -
- (a) is either registered and granted a certificate or granted prior permission under Chapter III of this Act; and
 - (b) receives any foreign contribution, shall transfer such foreign contribution to any other person unless such other person is also either registered and granted a certificate or granted prior permission under Chapter III of this Act.

Restriction to utilise foreign contribution for administrative purpose.

8. (1) Every person who is registered and granted a certificate or granted prior permission under this Act and receives any foreign contribution, -
- (a) shall utilise such contribution for the purposes for which the contribution has been received;
 - (b) shall not defray such sum, not more than thirty per cent of such contribution as may be prescribed, to meet administrative expenses:
- (2) The Central Government may prescribe the manner in which the administrative expenses referred to in sub-section (1) shall be calculated.

Power of Central Government to prohibit receipt of foreign contribution

9. The Central Government may-
- (a) prohibit any person or organisation not specified in section 3, from accepting any

etc., in certain cases.

foreign contribution;

- (b) 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;
- (c) 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;
- (d) 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:
Provided that 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, the acceptance of foreign hospitality by such person, is likely to affect prejudicially -
 - (i) the sovereignty and integrity of India; or
 - (ii) the public interest; or
 - (iii) freedom or fairness of election to any Legislature; or
 - (iv) friendly relations with any foreign State; or
 - (v) harmony between religious, racial, social, linguistic or regional groups, castes or communities.

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

10. 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, 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 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, and thereupon the provisions of sub- sections (2), (3), (4) and (5) of section 7 of the Unlawful Activities (Prevention) Act, 1967 shall, so far as may be, apply to, or in relation to, such article or currency and references in the said sub-sections to moneys, securities or credits shall be construed as references to such article or currency. ^{37 of 1967.}

CHAPTER III - REGISTRATION

Registration of certain persons with Registering Authority.

- 11 (1) Save as otherwise provided in this Act, no person having a definite cultural, economic, educational, religious or social programme shall accept foreign contribution unless such person obtains a certificate of registration from the Registering Authority:
- Provided that any association registered with the Central Government under section 6 of the Foreign Contribution (Regulation) Act, 1976, as it stood immediately before the commencement of this Act, shall obtain within two years of the commencement of this Act a certificate in accordance with the provisions contained in section 12: ^{49 of 1976}
- Provided further that any foreign contribution received by such association during the said two years shall be deemed to have been received by

it under this Act.

- (2) Every person referred to in sub-section (1) may, if he is not registered with the Registering Authority under that sub-section, accept any foreign contribution only after obtaining the prior permission of the Registering Authority.
- (3) Notwithstanding anything contained in this Act, the Central Government may, by notification in the Official Gazette, specify –
 - (a) the person or class of persons registered under sub-section (1) who shall obtain its prior permission before accepting the foreign contribution; or
 - (b) the area or areas in which the foreign contribution shall be accepted and utilised with the prior permission of the Central Government;
 - (c) the purpose or purposes for which the foreign contribution shall be utilised with the prior permission of the Central Government; or
 - (d) 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.

12. (1) An application by a person referred to in section 11(1) for grant of certificate or in section 11(2) for grant of prior permission shall be made to the Registering Authority in such form and manner and along with such fee, as may be prescribed. Provided that in case the Registering Authority is the Central Government, the applicant shall submit the application to the prescribed authority which shall forward the same with its recommendations to the Central Government.
- (2) On receipt of such application, the Registering Authority shall, if the application is not in the prescribed form or does not contain any of the

particulars specified in that form, reject the application.

- (3) If on receipt of an application for registration or prior permission and after making such inquiry as the Registering Authority deems fit, it is satisfied that –
- (a) the person making an application under subsection (1), –
 - (i) is not fictitious or benami;
 - (ii) has undertaken meaningful activity in its chosen field for the benefit of the people living in the district for which the foreign contribution is proposed to be utilised; or
 - (iii) has prepared a meaningful project for the benefit of the people living in the district for which the foreign contribution is proposed to be utilised;
 - (iv) has not indulged in activities aimed at conversion through inducement or force, either directly or indirectly, from one religious faith to another;
 - (v) has not created communal tension or disharmony in any specified area or any other part of the country;
 - (vi) has not been found guilty of diversion or mis-utilisation of its funds or
 - (vii) is not engaged or likely to engage to propagate sedition or advocate violent methods to achieve its ends;
 - (viii) is not likely to use the foreign contribution for personal use or divert it for undesirable purposes;
 - (ix) has not contravened any of the provisions of this Act;
 - (x) his certificate has neither been suspended nor cancelled earlier;
 - (xi) has not been prohibited earlier from

- accepting foreign contribution;
- (b) 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 is pending against him;
- (c) in case of 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;
- (d) 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 public interest; or
 - (iii) freedom or fairness of election to any Legislature; or
 - (iv) friendly relation with any foreign State; or
 - (v) harmony between religious, racial, social, linguistic, regional groups, castes or communities, the Registering Authority may register such person and grant him a certificate of registration or prior permission, as the case may be, subject to such terms and conditions as it may deem fit.
- (4) Where the Registering Authority refuses registration or prior permission, it shall record the reasons for such refusal and furnish a copy thereof to the applicant:
- (5) Any person aggrieved by the decision of the Registering Authority refusing registration or prior permission may, within thirty days on which a copy of the decision refusing registration or prior permission is received by him, appeal to the Central Government in such form and manner and along with such fee as may be prescribed.

- (6) The decision of the Central Government on such appeal shall be final.
- (7) The certificate of registration granted under sub-section (3) shall be valid for a period of five years, and the prior permission will be valid for the specific amount for the said purpose.
- Suspension of certificate.
13. (1) Where the Registering Authority, 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 ninety days as may be specified in the order.
- (2) Where the Registering Authority (not being the Central Government) orders suspension of the certificate under sub-section (1) above, shall, within a period of 10 days from the date of issue of such order, send a detailed report to the Central Government in the matter.
- (3) Every person whose certificate has been suspended shall -
- (a) not receive any foreign contribution during the period of suspension of certificate;
- (b) utilize, in the prescribed manner, the foreign contribution in his custody with the prior approval of the Registering Authority.
- Cancellation of certificate
14. (1) 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 Registering Authority, 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.

(2) No order of cancellation of certificate under this section shall be made unless the person concerned has been given a reasonable opportunity of being heard.

(3) Any person whose certificate has been cancelled under this section shall not be eligible for registration for a period of three years from the date of cancellation of such certificate.

(4) Any person aggrieved by an order of the Central Government, canceling the certificate, may within thirty days on which a copy of the decision canceling the certificate of registration is received by him, appeal to the Central Government in such form and manner and alongwith such fee as may be prescribed.

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

15. (1) 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.

(2) The authority referred to in sub-section (1) shall manage the foreign contribution of the persons referred to in sub-section (1) in such manner and subject to such conditions as may be prescribed.

Renewal of certificate.

16. (1) Every person who has been granted a certificate under section 12 shall have such certificate renewed within two years before the expiry of the period of the certificate.

(2) The application for renewal of the certificate shall be made to the Registering Authority in such form and manner and accompanied by such fee as

may be prescribed.

- (3) The Registering Authority may renew the certificate subject to such terms and conditions as it may deem fit and grant a certificate of renewal for a period of five years.

CHAPTER IV - ACCOUNTS, INTIMATION, AUDIT AND DISPOSAL OF ASSETS ETC.

Foreign contribution through scheduled bank.

17. (1) No scheduled bank shall allow credit of foreign contribution to the account or withdrawal of foreign contribution from the account of a person referred to in section 11, unless such person has obtained a certificate of registration or prior permission under section 12.

- (2) Every person who has been granted a certificate of registration or prior permission under section 12 shall receive foreign contribution in a single account only through such one of the branches of a scheduled bank in the State as it may specify in his application for grant of certificate of registration or prior permission:

Provided that such person may open one or more accounts in one or more scheduled banks for utilising the foreign contribution received by him:

Provided further that no funds other than foreign contribution shall be received or deposited in such account or accounts.

- (3) Every scheduled bank receiving foreign contribution under sub-section (2) shall intimate in such manner and at such interval as may be prescribed, to the Registering Authority the details of all foreign contribution received in the account referred to in sub-section (2) and amount transferred to the account or accounts referred to in the first proviso to sub-section (2) or withdrawn from such account or accounts.

Intimation.

18. Every person who has been granted certificate of registration or prior permission under the Act shall

give, within such time and in such manner as may be prescribed, an intimation to the Central Government, the prescribed authority, 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.

Maintenance of accounts.

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

Audit of accounts.

20. Where any person who has been granted certificate of registration or prior permission under this Act fails to furnish any intimation under this Act within the time specified therefor or the intimation so furnished is not in accordance with law or if, after inspection of such intimation, the Registering Authority has any reasonable cause to believe that any provision of this Act has been, or is being, contravened, that Authority may, by general or special order, authorise such gazetted officer, holding a Group A post, 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:
- Provided that any information obtained from such audit shall be kept confidential and shall not be disclosed except for the purposes of this Act.

Intimation by candidate for election.

21. 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 prescribed authority 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

22. The Central Government may, having regard to the nature of assets created out of the foreign contribution received under this Act, by notification, specify such assets which shall be disposed of and in such manner as it may, from time to time, determine after following the procedure as may be prescribed by it.

CHAPTER V - INSPECTION, SEARCH AND SEIZURE

Inspection of accounts or records.

23. 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-
- (a) any political party, or
 - (b) any person, or
 - (c) any organisation, or
 - (d) any association,

it may, by general or special order, authorise such gazetted officer, holding a Group A post, as it may think fit (hereinafter referred to as the authorised officer), to inspect any account or record maintained by such political party, person, organisation or association, as the case may be, and thereupon every such authorised 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.

24. If, after inspection of an account or record referred to in section 23, the authorised officer has any reasonable cause to believe that any provision of this 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:

Provided that 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.

Seizure of article or currency received in contravention of the Act.

25. If any gazetted officer, authorised in this behalf by the Central Government, by general or special order, has any reason to believe that any person has in his possession or control any article exceeding the value specified in sub-clause (i) of clause (f) of sub-section (1) of section 2 or currency whether Indian or foreign, in relation to which any provision of this Act has been or is being, contravened, he may seize such article or currency.

Disposal of seized article or currency.

26. (1) The Central Government, may, having regard to the value of article or currency their vulnerability to theft or any relevant consideration, by notification, specify such article or currency which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner, as the Central Government may, from time to time, determine after following the procedure hereinafter specified.

(2) The article or currency seized shall be forwarded without unnecessary delay to the officer-in-charge of the nearest police station.

(3) Where any article or currency has been seized and forwarded to the officer-in-charge of the nearest police station, the officer referred to in sub-section (1) shall prepare an inventory of such article or currency containing such details relating to their description, value or such other identifying particulars as the officer referred to in that sub-section may consider relevant to the identity of the article or the currency and make an application to

any Magistrate for the purposes of certifying the correctness of the inventory so prepared.

(4) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.

1 of 1872.

(5) Notwithstanding anything contained in the Indian Evidence Act, 1872 or the Code of Criminal Procedure, 1973, every court trying an offence under this Act, shall treat the inventory, as certified by the Magistrate, as primary evidence in respect of such offence.

2 of 1974.

(6) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Court of Session or Assistant Session Judge having jurisdiction for adjudging the confiscation under section 30.

Seizure to be made in accordance with Code of Criminal Procedure, 1973.

27. The provisions of the Code of Criminal Procedure, 1973 shall apply in so far as they are not inconsistent with the provisions of this Act to all seizures made under this Act.

2 of 1974.

CHAPTER VI - ADJUDICATION

Confiscation of article or currency obtained in contravention of the Act.

28. Any article or currency which is seized under section 25 shall be liable to confiscation if such article or currency has been adjudged under section 29 to have been received or obtained in contravention of this Act.

Adjudication of confiscation.

29. (1) Any confiscation referred to in section 28 may be adjudged-

(a) without limit, by the Court of Session within the local limits of whose jurisdiction the seizure was made; and

(b) 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, specify in this behalf.

(2) When an adjudication under sub-section (1) is concluded by the Court of Session or Assistant Sessions Judge, as the case may be, the Sessions Judge or Assistant Sessions Judge may make such order as he thinks fit for the disposal by confiscation or delivery of seized article or currency, as the case may be, to any person claiming to be entitled to possession thereof or otherwise, or which has been used for the commission of any offence under this Act.

Procedure
for
confiscation

30. 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 has been seized.

CHAPTER VII - APPEAL AND REVISION

Appeal

31. (1) Any person aggrieved by any order made under section 29 may prefer an appeal,-

(a) where the order has been made by the Court of Session, to the High Court to which such Court is subordinate; or

(b) where the order has been made by any officer specified under clause (b) of section 29, 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:

Provided that 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.

(2) Any organisation referred to in clause (f) of sub-section (1) of section 3, or any person or association referred to in section 6 or section 9,

aggrieved by an order made in pursuance of section 5 or by an order of the Central Government refusing to give permission, or by any order made by the Registering Authority being the Central Government under sub-section (2) or sub-section (4) of section 12, or sub-section (1) of section 14, as the case may be, may, within sixty days from the date of such order, prefer an appeal against such order to the High Court within the local limits of whose jurisdiction the appellant ordinarily resides or carries on business or personally works for gain, or, where the appellant is an organisation or association, the principal office of such organisation or association is located. ^{5 of 1908.}

(3) 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.

Revision of orders by Central Government or prescribed authority.

32. (1) The Registering Authority, may, either of its own motion or on an application by the person registered under this Act, for revision, call for the record of any proceeding under this Act in which any such order has been passed by it and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such order thereon as it thinks fit.
- (2) The Registering Authority shall not of its own motion revise any order under this section if the order has been made more than one year previously.
- (3) In the case of an application for revision under this section by the person referred to in sub-section (1), the application must be made within one year from the date on which the order in

question was communicated to him or the date on which he otherwise came to know of it, whichever is earlier:

Provided that the Registering Authority may, if it is satisfied that such person was prevented by sufficient cause from making the application within that period, admit an application made after the expiry of that period.

- (4) The Registering Authority shall not revise any order where an appeal against the order lies but has not been made and the time within which such appeal may be made has not expired or such person has not waived his right of appeal.
- (5) Every application by such person for revision under this section shall be accompanied by such fee, as may be prescribed. Explanation. - An order by the Registering Authority declining to interfere shall, for the purposes of this section, be deemed not to be an order prejudicial to such person.

CHAPTER VIII - OFFENCES AND PENALTIES

Making of false statement, declaration or delivering false accounts.

33. Any person, subject to this Act, who commits any of the following offences, that is to say, -
 - (a) in any intimation, book or declaration made or signed by him, or of the contents of which it is his duty to ascertain the accuracy, knowingly makes, or is privy to the making of, any false or fraudulent statement; or
 - (b) in any intimation, book or declaration of the description mentioned in clause(a) knowingly makes, or is privy to the making of, any omission, with intent to defraud; or
 - (c) knowingly and with intent to defraud, suppresses, defaces, alters or makes away with any document which it is his duty to preserve or produce; or
 - (d) where it is his official duty to make a declaration respecting any matter, knowingly makes a false

declaration; or

- (e) obtains for himself, or for any other person, any advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record, or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement shall, on conviction by a court, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

Penalty for article or currency obtained in contravention of section 10.

34. If 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, 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; and notwithstanding anything contained in the Code of Criminal Procedure, 1973, 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 in respect of which the prohibitory order has been contravened by him or such part thereof as the court may deem fit. ^{2 of 1974.}

Punishment for contravention of any provision of the Act.

35. Whoever accepts, or assists any person, political party or organisation in accepting, any foreign contribution or any currency from a foreign source, in contravention of any provision of this Act or any rule or order made thereunder, shall be punished with imprisonment for a term which may extend to five years, or with fine, or with both.

Power to impose additional fine where article or currency is

36. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Court trying a person, who, in relation to any article or currency, whether Indian or foreign, does or omits to do any act which act ^{2 of 1974.}

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- not available for confiscation or omission would render such article or currency liable to confiscation under this Act, may, in the event of the conviction of such person for the act or omission aforesaid, impose on such person a fine not exceeding five times the value of the article or currency or one thousand rupees, whichever is more, if such article or currency is not available for confiscation, and the fine so imposed shall be in addition to any other fine which may be imposed on such person under this Act.
- Penalty for offences where no separate punishment has been provided. 37. Whoever fails to comply with any provision of this Act for which no separate penalty has been provided in this Act shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.
- Penalty for second and subsequent offence. 38. Notwithstanding anything contained in this Act, whoever, having been convicted of any offence under section 36 or section 38, in so far as such offence relates to the acceptance or utilization of foreign contribution, is again convicted of such offence shall not accept any foreign contribution for a period of three years from the date of the subsequent conviction.
- Offences by companies. 39. (1) Where an offence under this Act or any rule or order made thereunder 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:
Provided that nothing contained in this sub-section shall render such person 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.
- (2) Notwithstanding anything contained in sub-section

(1), where an offence under this Act or any rule or order made thereunder 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.

Explanation.- For the purposes of this section,-

- (a) "company" means any body corporate and includes a firm, society, trade union or other association of individuals; and
- (b) "director", in relation to a firm, society, trade union or other association of individuals, means a partner in the firm or a member of the governing body of such society, trade union or other association of individuals.

Bar to prosecution of offences under the Act.

40. No court shall take cognisance of any offence under this Act, except with the previous sanction of the Central Government or any officer authorised by that Government in this behalf.

CHAPTER IX - MISCELLANEOUS

Power of Central Government and prescribed authority to call for information or document.

41. Any officer referred to in section 23 who is authorised in this behalf by the Central Government, may, during the course of any inspection of any account or record maintained by any political party, person, organisation or association in connection with the contravention of any provision of this Act, -
- (a) call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of this Act or rule or order made thereunder.
 - (b) require any person to produce or deliver any document or thing useful or relevant to such

- inspection;
- (c) examine any person acquainted with the facts and circumstances of the case.
- Investigation into cases under the Act. 42. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act may also be investigated into by such authority as the Central Government may specify in this behalf and the authority so specified shall have all the powers which an officer-in-charge of a police station has while making an investigation into a cognisable offence. ^{2 of 1974.}
- Returns by prescribed authority to Central Government. 43. The prescribed authority shall furnish to the Central Government at such time and in such form and manner such returns and statements as may be prescribed.
- Protection of action taken in good faith. 44. No suit or other legal proceedings shall lie against the Central Government or the prescribed authority or any of its officers in respect of any loss or damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of the provisions of this Act or, any rule or order made thereunder.
- Power of Central Government to give directions. 45. The Central Government may give such directions as it may deem necessary –
- (a) to the prescribed authority, or any other authority or any person or class of persons regarding the carrying into execution of the provisions of this Act, and
- (b) as to the manner in which foreign contribution shall be received and the purpose for which such foreign contribution shall be utilised by any person; and the prescribed authority, or any authority or any person or class of persons shall comply with such directions.
- Delegation of powers. 46. The Central Government may, by notification, delegate, subject to such conditions and limitations as may be specified in the notification, such of its powers

and functions under this Act (except the power to make rules) as it may deem necessary to the prescribed authority or any other authority.

Power to
make rules.

47. (1) The Central Government may, by notification, make rules for carrying out the purposes of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
- (a) the value of the article not exceeding ten thousand rupees under sub-clause (i) of clause (f) of section 2;
 - (b) the authority which may be specified as prescribed under clause (n) of section 2;
 - (c) acceptance or retention of gift or presentation under clause (d) of section 4;
 - (d) ground or grounds on which an organisation may be specified as an organisation of political nature under sub-section (2) of section 5;
 - (e) the percentage of administrative expenses not exceeding thirty per cent as may be prescribed under sub-section (1) of section 8;
 - (f) the manner in which the administrative expenses shall be calculated under sub-section (2) of section 8;
 - (g) the time within which and the manner in which any person or class of persons or an association may be required to furnish intimation regarding the amount of foreign contribution received under clause (b) of section 9;
 - (h) the time within which and the manner in which any person or class of persons may be required to furnish intimation regarding foreign

- hospitality under clause (d) of section 9;
- (i) the manner in which the copy of written order of the Central Government shall be served upon any person under section 10;
 - (j) the form and particulars to be contained in the application for grant of certificate of registration or grant of prior permission under sub-section 1 of section 12;
 - (k) the fee to be accompanied by the application under sub-section (1) of section 12;
 - (l) the form and manner in which the aggrieved person may appeal under sub-section (5) of section 12;
 - (m) fee for appeal under sub-section (5) of section 12;
 - (n) the manner of utilising the foreign contribution under clause (b) of sub-section (2) of section 13;
 - (o) the form and manner in which the aggrieved person may appeal under sub-section (4) of section 14;
 - (p) fee for appeal under sub-section (4) of section 14;
 - (q) the authority with whom the foreign contribution to be vested under sub-section (1) of section 15;
 - (r) the manner in which and subject to conditions with which the foreign contribution shall be managed under sub-section (2) of section 15;
 - (s) the form and the manner in which the application for a renewal of certificate of registration shall be made under sub-section (2) of section 16;
 - (t) the fee to be accompanied by the application for renewal of certificate under sub-section (2) of section 16;
 - (u) the manner in which and the interval at which

the details of all foreign contribution received by every scheduled bank to be intimated under sub-section (3) of section 17;

- (v) the manner in which person who has been granted certificate of registration or granted prior permission under this Act shall submit intimation under section 18;
- (w) the manner in which account of any foreign contribution and the manner in which such contribution has been utilised shall be maintained under section 19;
- (x) the manner by which a candidate for election shall give intimation under section 21;
- (y) the manner in which assets shall be disposed of by the Central Government under section 22;
- (z) the limits subject to which any confiscation referred to in section 28 may be prescribed under clause (b) of section 29;
- (za) the fee to be accompanied by every application for revision under sub-section (5) of section 32;
- (zb) the form and manner in which and the time within which returns and statements to be furnished by the prescribed authority under section 43;
- (zc) any other matter which is required to be, or may be prescribed.

Orders and rules to be laid before Parliament.

48. Every order under section 5 and every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the order or rule or

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both Houses agree that the order or rule should not be made, the order or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that order or rule.

- Power to exempt in certain cases.
49. If the Central Government is of opinion that it is necessary or expedient in the interests of the general public so to do, it may, by order and subject to such conditions as may be specified in the order, exempt any person or association (not being a political party), organisation or any individual (not being a candidate for election) from the operation of all or any of the provisions of this Act and may, as often as may be necessary, revoke or modify such order.
- Act not to apply to certain Government transactions
50. Nothing contained in this Act shall apply to any transaction between the Government of India and the Government of any foreign country or territory.
- Application of other laws not barred.
51. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.
- Power to remove difficulties.
52. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:
Provided that no order shall be made under this section after the expiry of two years from the commencement of this Act.
- (2) Every order made under this section shall be laid, as soon, as may be after it is made, before each House of Parliament.
- Repeal and saving.
53. (1) The Foreign Contribution (Regulation) Act, 1976^{49 of 1976} (hereinafter referred to as the repealed Act) is hereby repealed.

- (2) Notwithstanding such repeal,-
- (a) anything done or any action taken or purported to have been done or taken under the repealed Act shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;
 - (b) any organisation of a political nature, not being a political party, to whom the prior permission was granted under section 5 of the repealed Act, shall continue to be the organisation of a political nature, not being a political party, under clause (f) of sub-section (1) section 3 of this Act, till such permission is withdrawn by the Central Government;
 - (c) permission to accept foreign hospitality granted under section 9 of the repealed Act shall be deemed to be the permission granted under section 6 of this Act until such permission is withdrawn by the Central Government;
 - (d) any association prohibited from accepting any foreign contribution under clause (a) of section 10 of the repealed Act, in so far as it is not inconsistent with the provisions of this Act, shall be deemed to be an association prohibited from accepting any foreign contribution under section 9 of this Act;
 - (e) permission obtained under clause (b) of section 10 of the repealed Act shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to be the permission until such permission is withdrawn by the Central Government;
 - (f) any order issued under section 12 of the repealed Act shall be deemed to be an order issued under section 10 of this Act;

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- (g) any order issued under section 31 of the repealed Act exempting any association or any individual shall be deemed to be an order under section 49 of this Act till such order is varied or revoked. ^{10 of 1897}
- (3) Save as provided in sub-section (2), mention of particular matters in that sub-section shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897, with regard to the effect of repeal.

ANNEXURE-V

THE FOREIGN CONTRIBUTION (REGULATION) BILL, 2006

A BILL

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 the national interest and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Fifty –seventh Year of the Republic of India as follows:

CHAPTER I - PRELIMINARY

1. (1) This Act may be called the Foreign Contribution (Regulation) Act, 2006. Short title, extent, application and commencement.
- (2) It extends to the whole of India, and its shall also apply to—
 - (a) citizens of India outside India; and
 - (b) associates branches or subsidiaries, outside India, of companies or bodies corporate, registered or incorporated in India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

- Definitions.
2. (1) In this Act, unless the context otherwise requires,—
 - (a) “association” means an association of individuals, whether incorporated or not, having an office in India and includes a society, whether registered under the 21 of 1860.

Societies Registration Act, 1860 , or not, and any other organization, by whatever name called;

(b) “authorised person in foreign exchange” means an authorised person referred to in clause (c) of section 2 of the Foreign Exchange Management Act, 1999; ^{42 of 1999.}

(c) “bank” means a banking company as referred to in clause (c) of section 5 of the Banking Regulation Act, 1949; ^{10 of 1949.}

(d) “candidate for election” means a person who has been duly nominated as a candidate for election to any Legislature;

(e) “certificate” means certificate of registration granted under sub-section (3) of section 12;

(f) “company” shall have the meaning assigned to it under clause (17) of section. 2 of the Income-tax Act, 1961; ^{43 of 1961.}

(g) “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 principle 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;

(h) “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) security as defined in clause (h) ^{42 of 1999.} 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.

- (i) "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.
- (j) "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 specialized 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;
 - (v) a multi-national corporation referred to in sub-clause (iv) of clause (g);

1 of 1956.

(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;

(k) "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 ^{20 of 1963.}

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; ^{1 of 1992.}

(E) Municipal Corporations in metropolitan areas as defined in the Code of Criminal Procedure, 1973; ^{2 of 1974.}

(F) District Councils and Regional Councils in the State of Assam, Meghalaya, Tripura and Mizoram as provided in the Sixth Schedule to the Constitution; or

(G) any other elective body as may be notified by the Central Government, as the case may be;

(I) "notification" means notification published in the Official Gazette and the expression "notify" shall be construed accordingly;

(m) "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; ^{1 of 1956.}

(n) "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 ^{43 of 1951.}

(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;

(o) "prescribed" means prescribed by rules made under this Act;

(p) "prescribed authority" means an authority specified as such by rules made by the Central Government under this Act;

(q) "registered newspaper" means a newspaper registered under the Press and Registration of Books Act, 1867;

(r) "relative" has the meaning assigned to it in clause (41) of section 2 of the Companies Act, 1956;

(s) "scheduled bank" shall have the meaning assigned to it under clause (e) of section 2 of the Reserve Bank of India Act, 1934;

1 of 1956.

(t) "subsidiary" and "associate" shall have the meanings, respectively assigned to them in the Companies Act, 1956;

16 of 1926.

(u) "trade union" means a trade union registered under the Trade Unions Act, 1926;

43 of 1950.

43 of 1951.

42 of 1999.

(2) 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.

CHAPTER II - REGULATION OF FOREIGN CONTRIBUTION AND FOREIGN HOSPITALITY

3. (1) No foreign contribution shall be accepted by any—
- Prohibition to accept 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 corporation or any other body controlled or owned by the Government;
 - (d) member of any Legislature;
 - (e) political party or office-bearer thereof;
 - (f) organization of a political nature as may be specified under sub-section (l) of section 5 by the Central Government;
 - (g) 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 (l) of section 2 of the Information Technology Act, 2000 or any other mode of mass communication;
 - (h) correspondent or columnist, cartoonist, editor, owner of the association or company referred to in clause (g).

21 of 2000.

1 of 1956.

Explanation—In clause (c) and section 6, the expression “corporation” means a corporation owned or controlled by the Government and includes a Government company as defined in section 617 of the Companies Act, 1956.

- (2) (a) 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 referred to in sub-section (1), or both.
- (b) 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 referred to in sub-section (1), or both.
- (c) No citizen of India resident outside India shall deliver any currency, whether Indian or foreign, which has been accepted from any foreign source, to—
- (i) any political party or any person referred to in sub-section (1), or both; or
- (ii) 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 referred to in sub-section (1), or both.
- (3) 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—
- (a) to any person other than a person for which it was received, or
- (b) 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.

Persons to whom section 3 shall not apply.

4. 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 or 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;^{42 of 1999.}

Provided that 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.

5. (1) The Central Government may, having regard to the activities of the organization or the ideology propagated by the organization or the programme of the organization or the association of the organizations with the activities of any political party, by an order published in the Official Gazette, specify such organization as an organization of a political nature not being a political party, referred to in clause (f) of sub-section (1) of section 3.
- (2) Before making an order under sub-section (1), the Central Government shall give the organization in respect of whom the order is proposed to be made, a notice in writing informing it of the ground or grounds, on which it is proposed to be specified as an organization of political nature under that sub-section:

Provided that the Central Government may, by rules made by it, specify the ground or grounds on which an organization shall be specified as an organization of a political nature.

- (3) The organization to whom a notice has been served under sub-section (2), may, within a period of thirty days from the date of the notice, make a representation to the Central Government giving reasons for not specifying such organization as an organization under sub-section (1):

Provided that the Central Government may entertain the representation after the expiry of

the said period of thirty days, if it is satisfied that the organization was prevented by sufficient cause from making the representation within thirty days.

(4) The Central Government may, if it considers it appropriate, forward the representation referred to in sub-section (3) to any authority to report on such representation.

(5) The Central Government may, after considering the representation and the report of the authority referred to in sub-section (4), specify such organization as an organization of a political nature not being a political party and make an order under sub-section (1) accordingly

6. 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 :

Restriction on acceptance of foreign hospitality.

Provided that 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.

7. No person who—

(a) is registered and granted a certificate or obtained prior permission under this Act; and

Prohibition to transfer foreign contribution to other person.

(b) receives any foreign contribution, shall transfer such foreign contribution to any other person unless such other person is also registered and granted the certificate or obtained the prior permission under this Act.

8. (1) Every person, who is registered and granted a certificate or given prior permission under this Act and receives any foreign contribution, —

Restriction to utilise foreign contribution for administrative purpose.

(a) shall utilise such contribution for the purposes for which the contribution has been received;

Provided that any foreign contribution or any income arising out of it shall not be used for speculative business;

(b) 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;

Provided that administrative expenses exceeding fifty per cent, of such contribution may be defrayed with prior approval of the Central Government.

(2) The Central Government may prescribe the elements which shall be include in the administrative expenses and the manner in which the administrative expenses referred to in sub-section (1) shall be calculated.

9. The Central Government may—

Power of Central Government to prohibit receipt of foreign contribution, etc., in certain cases.

(a) prohibit any person or organization 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 the 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;

Provided that 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—

- (i) the sovereignty and integrity of India; or
- (ii) public interest; or
- (iii) freedom or fairness of election to any Legislature; or
- (iv) friendly relations with any foreign State; or
- (v) harmony between religious, racial, social, linguistic or regional groups, castes or

communities.

- Power to prohibit payment of currency received in contravention of the Act,
10. 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, 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 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, and thereupon the provisions of sub-sections (2), (3), (4) and (5) of section 7 of the Unlawful Activities (Prevention) Act, 1967 shall, so far as may be, apply to, or in relation to, such article or currency and references in the said sub-sections to moneys, securities or credits shall be construed as references to such article or currency.
- 37 of 1967.

CHAPTER III - REGISTRATION

- Registration of certain persons with Central Government
11. (1) Save as otherwise provided in this Act, no person having a definite cultural, economic, educational, religious or social programme shall accept foreign contribution unless such person obtains a certificate of registration from the Central Government:
- Provided 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
- 49 of 1976.

this section comes into force.

- (2) 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 specific source:

49 of 1976

Provided that 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.

- (3) Notwithstanding anything contained in this Act, the Central Government may, by notification in the Official Gazette, specify—
- (i) the person or class of persons who shall obtain its prior permission before accepting the foreign contribution; or
 - (ii) the area or areas in which the foreign contribution shall be accepted and utilised with the prior permission of the Central Government;
 - (iii) the purpose or purposes for which the foreign contribution shall be utilised with the prior permission of the Central Government; or
 - (iv) the source or sources from which the foreign contribution shall be accepted with the prior permission of the Central Government.

12. (1) An application by a person, referred to in section 11 for grant of certificate or giving

Grant of certificate of registration.

prior permission, shall be made to the Central Government in such form and manner and along with such fee, as may be prescribed.

- (2) On receipt of an application under sub-section (1), 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.
- (3) If on receipt of an application for grant of certificate or giving of prior permission and after making such inquiry as the Central Government deems fit, it is satisfied that—
 - (a) the person making an application for registration or giving of prior permission under sub-section (1), —
 - (i) is not fictitious or benami;
 - (ii) has not indulged in activities aimed at conversion through inducement or force, either directly or indirectly, from one religious faith to another;
 - (iii) has not created communal tension or disharmony in any specified district or any other part of the country;
 - (iv) has not been found guilty of diversion or mis-utilisation of its funds;
 - (v) is not engaged or likely to engage to propagate 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) whose certificate has been suspended

and such suspension of certificate continues;

(ix) was previously granted certificate which had been cancelled before three years from the date of the application for grant of certificate or registration;

(x) has not been prohibited from accepting foreign contribution;

(b) the person making an application for registration under sub-section (1) has undertaken meaningful activity in its chosen field for the, benefit of the people for which the foreign contribution is proposed to be utilised; or

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ARRANGEMENT OF CLASSES

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5. Procedure to notify an organization of a political nature.
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 - (c) the person making an application for giving prior permission under sub-section (1) has prepared a meaningful project for the benefit of the people 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 of 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, the Central Government may 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.
- (4) Where the Central Government refuses the grant of certificate or does not give prior permission, it shall record the reasons for such refusal or for not giving of prior permission in its order made for such refusal or not giving prior permission and furnish a copy thereof to the applicant:

Provided that the Central Government may not communicate the reasons for refusal for grant of certificate or for not giving of prior permission to the applicant under this section in cases where there is no obligation to give any information or documents or records or papers under the Right to Information Act, 2005. ^{22 of 2005.}

- (5) The certificate granted under sub-section (3) 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 13. (1) Where the Central Government, for reasons to be recorded in writing, is satisfied that pending consideration of the question of canceling 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 on hundred and eighty days as may be specified in the order.
- (2) Every person whose certificate has been suspended shall—
- (a) not receive any foreign contribution during the period of suspension of certificate:
- Provided that the Central Government, on an application made by such person, if it considers appropriate, allow of any foreign contribution by such person on such terms and conditions as it may specify;
- (b) utilise, in the prescribed manner, the foreign contribution in his custody with the prior approval of the Central Government.
14. (1) The Central Government may, if it is satisfied after making such inquiry as it may deem fit, by an order, cancel the certificate if—
- Cancellation of certificate
- (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.

- (2) No order of cancellation of certificate under this section shall be made unless the person concerned has been given a reasonable opportunity of being heard.
- (3) Any person whose certificate has been cancelled under this section 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.
15. (1) 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.
- (2) The authority referred to in sub-section (1) 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 and such authority may utilise the foreign contribution or dispose of the assets created of it in case adequate funds are not available for running such activity.
- (3) The authority referred to in sub-section (1) shall return the foreign contribution and the assets vested upon it under that sub-section to the person referred to in the said sub-section if such person is subsequently

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

registered under this Act.

16. (1) 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. Renewal of certificate
- (2) 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.
- (3) The Central Government shall renew the certificate subject to such terms and conditions as it may deem fit and grant a certificate of renewal for a period of five years;

Provided that 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.

CHAPTER IV - ACCOUNTS, INTIMATION, AUDIT AND DISPOSAL OF ASSETS, ETC.

17. (1) Every person who has been granted a certificate or given prior permission under section 12 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; Foreign contribution through scheduled bank.

Provided that such person may open one or more accounts in one or more banks for utilising the foreign contribution received by him:

Provided further that no funds other than foreign contribution shall be received or deposited in such account or accounts.

- (2) Every bank or authorised person in foreign exchange shall report to such authority as may be specified—

- (a) the amount of foreign remittance;
 - (b) the source and manner in which the foreign remittance was received; and
 - (c) other particulars, in such form and manner as may be prescribed.
- Intimation. 18. (1) Every person who has been granted a certificate or given prior approval under this Act shall give, 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.
- (2) Every person receiving foreign contribution shall 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 under sub-section (1).
- Maintenance of accounts. 19. Every person who has been granted a certificate or given prior approval under this Act shall maintain, in such form and manner as may be prescribed,—
- (a) an account of any foreign contribution received by him; and
 - (b) a record as to the manner in which such contribution has been utilised by him.
- Audit of accounts. 20. Where any person who has been granted a certificate or given prior permission, fails to furnish any intimation under this Act 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 this 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 organization, 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:

Provided that any information obtained from such audit shall be kept confidential and shall not be disclosed except for the purposes of this Act.

Intimation by candidate for election.

21. 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

22. 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, and 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.

CHAPTER V - INSPECTION, SEARCH AND SEIZURE

23. 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—
- (a) any political party, or
 - (b) any person, or
 - (c) any organization, or
 - (d) 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 organization, as it may think fit (hereinafter referred to as the inspecting officer), to inspect any account or record maintained by such political party, person, organization 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.
24. If, after inspection of an account or record referred to in section 23, the inspecting officer has any reasonable cause to believe that any provision of this 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,

Inspection of accounts or records.

Seizure of accounts or records

authority or tribunal in which any proceeding is brought for such contravention:

Provided that 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.

25. If any gazetted officer, authorised in this behalf by the Central Government by general or special order, has any reason to believe that any person has in his possession or control any article exceeding the value specified in sub-clause (i) of clause (h) of sub-section (1) of section 2 or currency or security whether Indian or foreign, in relation to which any provision of this Act has been or is being, contravened, he may seize such article or currency or security. Seizure of article or currency or security received in contravention of the Act
26. (1) The Central Government, may, having regard to the value of article or currency or security, their vulnerability to theft or any relevant consideration, by notification, specify such article or currency or security which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner, as the Central Government may, from time to time, determine after following the procedure hereinafter specified. Disposal of seized article or currency or security.
- (2) The article or currency or security seized shall be forwarded without unnecessary delay to such officer as may be specified.
- (3) Where any article or currency or security has been seized and forwarded to such officer, the officer referred to in sub-section (1), shall prepare an inventory of such article or currency or security containing such details relating to their description, value or such other identifying particulars as

2 of 1974

the officer referred to in that sub-section may consider relevant to the identity of the article or the currency or security and make an application to any Magistrate for the purposes of certifying the correctness of the inventory so prepared.

- (4) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.
- (5) Notwithstanding anything contained in the Indian Evidence Act, 1872 or the Code of Criminal Procedure, 1973, every court trying an offence under this Act, shall treat the inventory, as certified by the Magistrate, as primary evidence in respect of such offence.
- (6) Every officer acting under sub-section (3) shall forthwith report the seizure to the Court of Session or Assistant Session Judge having jurisdiction for adjudging the confiscation under section 29.

Seizure to be made in accordance with. Act 2 of 1974.

27. The provisions of the Code Criminal Procedure, 1973 shall apply in so far as they are not inconsistent with the provisions of this Act to all seizures made under this Act.

CHAPTER VI - ADJUDICATION

Confiscation of article or currency or security obtained in contravention of the Act.

28. Any article or currency or security which is seized under section 25 shall be liable to confiscation if such article or currency or security has been adjudged under section 29 to have been received or obtained in contravention of this Act.

Adjudication of confiscation.

29. (1) Any confiscation referred to in section 28 may be adjudged—
 - (a) without limit, by the Court of Session within the local limits of whose jurisdiction the seizure was made; and
 - (b) 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, specify in this behalf.

- (2) When an adjudication under sub-section (1) is concluded by the Court of Session or Assistant Session Judge, as the case may be, the Sessions Judge or Assistant Sessions Judge may make such order as he thinks fit for the disposal by confiscation or delivery of seized article or currency or security, as the case may be, to any person claiming to be entitled to possession thereof or otherwise, or which has been used for the commission of any offence under this Act.

Procedure
for
confiscation.

30. No order of adjudication 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.

CHAPTER VII - APPEAL AND REVISION

Appeal.

31. (1) Any person aggrieved by any order made under section 29 may prefer an appeal—
- (a) where the order has been made by the Court of Session, to the High Court to which such Court is subordinate; or
 - (b) Where the order has been made by any officer specified under clause (b) of sub-section (1) of section 29, 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:

Provided that the appellate court may, if it is satisfied that the appellant 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.

5 of 1908.

(2) Any organization referred to in clause (f) of sub-section (1) of section 3, or any person or association referred to in section 6 or section 9, aggrieved by an order made in pursuance of section 5 or by an order of the Central Government refusing to give permission under this Act, or by any order made by the Central Government under sub-section (2) or sub-section (4) of section 12, or sub-section (1) of section 14, as the case may be, may within sixty days from the date of such order, prefer an appeal against such order to the High Court within the local limits of whose jurisdiction the appellant ordinarily resides or carries on business or personally works for gain, or, where the appellant is an organization or association, the principal office of such organization or association is located.

(3) 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.

32. (1) The Central Government, may, either of its own motion or on an application for revision by the person registered under this Act, for revision, call for and examine the record of any proceeding under this Act in which any such order has been passed by it and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such order thereon as it thinks fit.

Revision of orders
by central
Government.

- (2) The Central Government shall not of its own motion revise any order under this section if the order has been made more than one year previously.
- (3) In the case of an application for revision under this section by the person referred to in sub-section (1), the application must be made within one year from the date on which the order in question was communicated to him or the date on which he otherwise came to know of it, whichever is earlier:

Provided that the Central Government may, if it is satisfied that such person was prevented by sufficient cause from making the application within that period, admit an application made after the expiry of that period.

- (4) The Central Government shall not revise any order where an appeal against the order lies but has not been made and the time within which such appeal may be made has not expired or such person has not waived his right of appeal or an appeal has been filed under this Act.
- (5) Every application by such person for revision under this section shall be accompanied by such fee, as may be prescribed.

Explanation—An order by the Central Government declining to interfere shall, for the purposes of this section, be deemed not to be an order prejudicial to such person.

CHAPTER VIII - OFFENCES AND PENALTIES

33. Any person, subject to this Act, who knowingly,—

- (a) gives false intimation under sub-section (c) of section 9 or section 18; or
- (b) seeks prior permission or registration by

Making of false statement, declaration or delivering false accounts.

A Study on Foreign Contribution Regulation Act, 1976

means of fraud, false representation or concealment of material fact, shall, on conviction by a court, be liable to imprisonment for a term which may extend to three years or with fine or with both.

- 2 of 1974.
34. If 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; and notwithstanding anything contained in the Code of Criminal Procedure, 1973, 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 of security in respect of which the prohibitory order has been contravened by him or such part thereof as the court may deem fit.
- Punishment for contravention of any provision of the Act.
35. Whoever accepts, or assists any person, political party or organization 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, shall be punished with imprisonment for a term which may extend to five years, or with fine, or with both.
- Power to impose additional fine where article or currency or security is not available for confiscation.
36. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the court trying a person, who, in relation to any article or currency or security, whether Indian or foreign, does or omits to do any act which act or omission would render such article or currency or security liable to confiscation under this Act, may, in the event of the conviction of such person for the act or omission aforesaid, impose on such person a
- Penalty for article or currency or Security obtained in contravention of section 10.
- 2 of 1974

fine not exceeding five times the value of the article or currency or security or one thousand rupees, whichever is more, if such article or currency or security is not available for confiscation, and the fine so imposed shall be in addition to any other fine which may be imposed on such person under this Act.

Penalty for offences where no separate punishment has been provided.

37. Whoever fails to comply with any provision of this Act for which no separate penalty has been provided in this Act shall be punished with imprisonment for a term which may extend to one year, or with fine or with both.

Prohibition of acceptance of foreign contribution.

38. Notwithstanding anything contained in this Act, whoever, having been convicted of any offence under section 35 or section 37, in so far as such offence relates to the acceptance or utilisation of foreign contribution, is again convicted of such offence shall not accept any foreign contribution for a period of three years from the date of the subsequent conviction.

Offences by companies

39. (1) Where an offence under this Act or any rule or order made thereunder 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:

Provided that nothing contained in this subsection shall render such person 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.

(2) Notwithstanding anything contained in sub-

section (1), where an offence under this Act or any rule or order made thereunder 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, manger, 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.

Explanation—For the purposes of this section, —

- (a) “company” means any body corporate and includes a firm, society, trade union or other association of individuals; and
- (b) “director”, in relation to a firm, society, trade union or other association of individuals, means a partner in the firm or a member of the governing body of such society, trade union or other association of individuals.

Bar to prosecution of offences under the Act.

40. No court shall take cognizance of any offence under this Act, except with the previous sanction of the Central Government or any officer authorised by the Government in this behalf.

Composition of certain offences.

41. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, 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. 2 of 1974

(2) Nothing in sub-section (1) shall apply to an

offence committed by an individual or association or its officer or other employee within a period of three years from the date on which a similar offence committed by it or him was compounded under this section.

Explanation—For the purposes of this section, 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.

- (3) Every officer or authority referred to in sub-section (1) shall exercise the powers to compound an offence, subject to the direction, control and supervision of the Central Government.
- (4) 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 along with such fees as may be prescribed.
- (5) 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.
- (6) Every officer or authority referred to in sub-section (1) while dealing with a proposal 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.

CHAPTER IX - MISCELLANEOUS

42. Any inspecting officer referred to in section 23 who is authorised in this behalf by the Central Government may, during the course of any inspection of any account or record maintained by any political party, person, organization or association in connection with the contravention of any provision of this Act, —
- Power to call for information or document.
- (a) call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of this Act or rule order made thereunder;
 - (b) require any person to produce or deliver any document or thing useful or relevant to such inspection;
 - (c) examine any person acquainted with the facts and circumstances of the case related to the inspection.
- 2 of 1974. 43. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act may also be investigated into by such authority as the Central Government may specify in this behalf and the authority so specified shall have all the powers which an officer-in-charge of a police station has while making an investigation into a cognizable offence.
- Investigation into cases under the Act.
44. The prescribed authority shall furnish to the Central Government at such time and in such form and manner such returns and statements as may be prescribed.
- Returns by prescribed authority to Central Government.
45. No suit or other legal proceedings shall lie against the Central Government or the authority referred to section 44 or any of its officers in respect of any loss or damage caused or likely to be caused by anything which is in good faith
- Protection of action taken in good faith.

- done or intended to be done in pursuance of the provisions of this Act or, any rule or order made thereunder.
- Power of Central Government to give directions. 46. The Central Government may give such directions as it may deem necessary to any other authority or any person or class of persons regarding the carrying into execution of the provisions of this Act.
- Delegation of powers. 47. The Central Government may, by notification, direct that any of its powers or functions under this Act, except power to make rule under section 22, shall, in relation to such matters and subject to such conditions, if any, may be specified in the notification, be exercised or discharged also by such authority as may be specified.
- Power to make rules 48. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—
- (a) the value of the article which may be specified under sub-clause (i) of clause (h) of sub-section (1) of section 2;
 - (b) the authority which may be specified under clause (p) of sub-section (1) of section 2;
 - (c) acceptance or retention of gift or presentation under clause (d) of section 4;
 - (d) ground or grounds on which an organization may be specified as an organization of political nature under sub-section (2) of section 5;
 - (e) the manner in which the administrative expenses shall be calculated under sub-

- section (2) of section 8;
- (f) the time within which and manner in which any person or class of persons or an association may be required to furnish intimation regarding the amount of foreign contribution received under clause (c) of section 9;
 - (g) the time within which and manner in which any person or class of persons may be required to furnish intimation regarding foreign hospitality under clause (e) of section 9;
 - (h) the manner in which the copy of the order of the Central Government shall be served upon any person under section 10;
 - (i) the form and manner in which the application for grant of certificate of registration or giving of prior permission under sub-section (1) of section 12;
 - (j) the fee to be accompanied by the application under sub-section (1) of section 12;
 - (k) the terms and conditions for granting a certificate or giving prior permission under clause (g) of sub-section (3) of section 12;
 - (l) the manner of utilising the foreign contribution under clause (b) of sub-section (2) of section 13;
 - (m) the authority with whom the foreign contribution to be vested under sub-section (1) of section 15;
 - (n) the period within which and the manner in which the foreign contribution shall be managed under sub-section (2) of section 15;
 - (o) the form and manner in which the

- application for renewal of certificate of registration shall be made under sub-section (2) of section 16;
- (p) the fee to be accompanied by the application for renewal of certificate under sub-section (2) of section 16;
 - (q) the form, and manner in which the foreign remittance received in any of the accounts of the bank or authorised person in foreign exchange which shall be reported under sub-section (2) of section 17;
 - (r) the time within which and manner in which the person who has been granted certificate of registration or given prior permission under this Act shall give intimation under section 18;
 - (s) the form and manner in which account of any foreign contribution and the manner in which such contribution has been utilised shall be maintained under section 19;
 - (t) the time within which and manner in which a candidate for election shall give intimation under section 21;
 - (u) the manner and procedure to be followed in disposing of the assets under section 22;
 - (v) the limits subject to which any confiscation may be adjudged under clause (b) of sub-section (1) of section 29;
 - (w) the fee to be accompanied along with every application for revision under sub-section (5) of section 32;
 - (x) the form and manner for making of an application for compounding of an offence and the fees therefor under sub-

- section (4) of section 41;
- (y) the form and manner in which and the time within which returns and statements to be furnished by the prescribed authority under section 44;
 - (z) any other matter which is required to be, or may be prescribed.
49. Every order made under section 5 and every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each house of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, Both Houses agree in making any modification in the order or rule or both Houses agree that the order or rule should not be made, the order or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity or anything previously done under that order or rule.
50. If the Central Government is of opinion that it is necessary or expedient in the interests of the general public so to do, it may, by order and subject to such conditions as may be specified in the order, exempt any person or association or organization (not being a political party), or any individual (not being a candidate for election) from the operation of all or any or the provisions of this Act and may, as often as may be necessary, revoke or modify such order.
51. Nothing contained in this Act shall apply to any transaction between the Government of India and the Government of any foreign country or

Orders and rules to be laid before Parliament

Power to exempt in certain cases

Act not to apply to certain Government transactions.

territory.

52. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Application of other laws not barred.

53. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Power to remove difficulties

Provided that no order shall be made under this section after the expiry of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Repeal and saving.

54 (1) The Foreign Contribution (Regulation) Act, 1976 (hereafter referred to as the repealed Act) is hereby repealed.

49 of 1976

(2) Notwithstanding such repeal—

(a) anything done or any action taken or purported to have been done or taken under the repealed Act shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

(b) any organization of a political nature, not being a political party, to whom the prior permission was granted under section 5 of the repealed Act, shall continue to be the organization of a political nature, not being a political party, under clause (f) of sub-section (1) section 3 of this Act, till such permission is withdrawn by the Central Government;

- (c) permission to accept foreign hospitality granted under section 9 of the repealed Act shall be deemed to be the permission granted under section 6 of this Act until such permission is withdraw by the Central Government;
 - (d) any association prohibited from accepting any foreign contribution under clause (a) of section 10 of the repealed Act, in so far as it is not inconsistent with the provisions of this Act, shall be deemed to be an association prohibited from accepting any foreign contribution under section 9 of this Act;
 - (e) permission obtained under clause (b) of section 10 of the repealed Act shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to be the permission until such permission is withdrawn by the Central Government;
 - (f) any order issued under section 12 of the repealed Act shall be deemed to be an order issued under section 10 of this Act;
 - (g) any order issued under section 31 of the repealed Act exempting any association or any individual shall be deemed to be an order under section 50 of this Act till such order is varied or revoked. 10 of 1897.
- (3) Save as provided in sub-section (2), mention of particular matters in that sub-section shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1987, with regard to the effect of repeal.

STATEMENT OF OBJECTS AND REASONS

1. 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 our 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 a sovereign democratic republic. The Act was amended in 1984 to extend the provisions of the Act 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 associations receiving foreign contribution.
2. 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 existing Act. Therefore, it has been thought appropriate to replace the present Act by a new legislation to regulate the acceptance, utilization and accounting of foreign contribution and acceptance of foreign hospitality by a person or an association.
3. The Foreign Contribution (Regulation) Bill, 2006 provides, *inter alia*, to—
 - (i) consolidate the law to regulate, acceptance and utilization of foreign contribution or foreign hospitality and prohibit the same for any activities detrimental to the national interests;
 - (ii) prohibit organizations of political nature, not being political parties from receiving foreign contribution;
 - (iii) bring associations engaged in production or broadcast of audio news or audio visual news or current affairs through any electronic mode under the purview of the Bill;
 - (iv) prohibit the use of foreign contribution for any speculative business;
 - (v) cap administrative expenses at fifty per cent. of the receipt of foreign contribution;

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- (vi) exclude foreign funds received from relatives living abroad;
 - (vii) make provision for intimating grounds for refusal of registration or prior permission under the Bill;
 - (viii) provide arrangement for sharing of information on receipt of foreign remittances by the concerned agencies to strengthen monitoring;
 - (ix) make registration to be valid for five years with a provision for renewal thereof, and also to provide for cancellation or suspension of registration;
 - (x) make provision for compounding of certain offences.
4. The Bill seeks to achieve the above objective.

New Delhi;
The 12th December, 2006.

SHIRAJ V. PATIL

Notes on Clauses

Clause 2.—This clause defines various expressions occurring in the Bill.

Clause 3.—This clause, *inter alia*, provides for prohibition to accept foreign contribution by certain persons or associations, namely, 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 Government, member of any Legislature, political party or office-bearer thereof, organization of a political nature as may be specified by the Central Government; or association or a 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; or correspondent or columnist, cartoonist, editor, owner of the said association or the company. This clause further prohibits acceptance of any foreign contribution or any foreign currency on behalf of any political party or a person referred to in sub-clause (i) of this clause. It is further provided that any currency whether Indian or foreign which has been accepted from any foreign source shall not be delivered to any person if such person intends, or is likely, to deliver such currency to any political party or any of the aforesaid person.

Clause 4.—This clause provides that the prohibition to accept foreign contribution under clause 3 shall not apply in case where such contribution is accepted by way of salary, wages or other remuneration from any foreign source or by way of payment in the ordinary course or business transacted in India by the foreign source; or by way of payment in the course of international trade or commerce or in the ordinary course of business transacted outside India or as an agent of foreign source in relation to any transaction made by such foreign source with the Central Government; or State Government or by way of gift or presentation made to him as a member of any Indian delegation if such gift or present was in accordance with the rules made by the Central Government with regard to the acceptance or retention of such gift or presentation; 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; or by way or payment received from the relative of any person referred to in clause 3. However, in case any foreign contribution received by any person specified under clause 3 of the Bill for any of the purposes other than those specified under this clause, such contribution shall be deemed to have accepted in contravention of the provisions of clause 3.

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Clause 5.—Item (f) of sub-clause (1) of clause 3 prohibits acceptance of foreign contribution by any organization of a political nature specified by the Central Government. This clause lays down the procedure to notify an organization of a political nature referred to in the said item (f). This clause provides that the Central Government may, having regard to the activities of the organization or the ideology propagated by the organization or the programme of the organization or the association of the organizations with the activities of any political party, by an order published in the Official Gazette, specify such organization as an organization of a political nature not being a political party. Before making an order, the Central Government shall give the organization in respect of whom the order is proposed to be made a notice in writing informing it of the ground or grounds, on which it is proposed to be specified an organization of a political nature. However, the Central Government may, by rules made by it, specify the ground or grounds on which an organization shall be specified as an organization of a political nature. The organization to whom a notice has been served may, within a period of thirty days from the date of the notice, make a representation to the Central Government giving reasons for not specifying such organization as an organization of a political nature. The Central Government may forward the representation to any authority to report on such representation. The Central Government shall, after considering the representation and the report of the authority, specify such organization as an organization of a political nature not being a political party.

Clause 6.—This clause provides for restriction on acceptance of foreign hospitality. It provides that no member of a Legislature or officer-bearer of a political party or Judge or Government servant or employee or any corporation 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. 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.

Clause 7. —This clause prohibits the transfer of foreign contribution to any other person. It provides that no person who is registered or has obtained prior permission under the proposed legislation and receives any foreign contribution, shall transfer such foreign contribution to any other person unless such other

person is also registered or obtained prior permission under the proposed legislation.

Clause 8. —This clause contains restriction to utilise foreign contribution for administrative purposes. This clause provides that every person, who is registered or has obtained prior permission under the proposed legislation and receives any foreign contribution, shall utilise such contribution for the purposes for which the contribution is received and any foreign contribution or any income arising out of its shall not be used for speculative business. It further provides that such person shall not defray as far as possible such sum, not exceeding fifty per cent. thereof received in a financial year to meet administrative expenses. However, any sum exceeding fifty per cent. of such contribution may be defrayed with prior approval of the Central Government. This clause also confers power upon the Central Government to prescribe the expenses which shall be included in the administrative expenses and the manner in which the administrative expenses referred to in sub-section (1) shall be calculated.

Clause 9. —This clause confers power upon the Central Government to (a) prohibit any person or organization not specified in clause 3 from accepting any foreign contribution; (b) require any person or class of persons not specified in clause 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 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; (c) require any person or class of persons not specified in clause 6 to obtain prior permission of the Central Government before accepting any foreign hospitality; (d) require any person or class of persons specified in sub-clause (1) of clause 11 to obtain prior permission of the Central Government before accepting any foreign contribution; (e) require any person or class of persons, not specified in clause 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 or the acceptance or foreign hospitality by such person, is likely to affect prejudicially the sovereignty and integrity of India; or the 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.

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Clause 10. —This clause confers power upon the Central Government to prohibit payment of currency received in contravention of the proposed legislation. It provides that where the Central Government is satisfied, after making such enquiry as it may deem fit, that any person has in his custody or control of any article or currency, whether Indian or foreign which has been accepted by such person in contravention of any of the provisions of the proposed legislation, 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 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, and thereupon the provisions of sub-sections (2), (3), (4) and (5) of section 7 of the Unlawful Activities (Prevention) Act, 1967 shall, so far as may be, apply to, or in relation to, such article or currency and references in the said sub-clauses to moneys, securities or credits shall be construed as references to such article or currency.

Clauses 11. —This clause contains provisions relating to registration of certain persons with the Central Government. This clause provides that no person having a definite cultural, economic, educational, religious or social programmes shall accept foreign contribution unless such person obtains a certificate of registration from the Central Government. However 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.

However, if a person referred to in this sub-clause is not registered with the Central Government, such person may accept any foreign contribution only after obtaining the prior permission from the Central Government and such prior permission shall be valid for the specific purpose for which it is obtained and for specific source from which it is obtained. If the person referred to in sub-clause (1) or sub-clause (2) has been found guilty of violation of any 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.

This clause also confers powers upon the Central Government to specify by a notification in the Official Gazette, a person or class or persons who, the area or areas in which, the purpose or purposes for which, the source or sources from

which, the foreign contribution shall be accepted and utilised only after obtaining its prior permission.

Clause 12. —This clause contains provisions relating to procedure for grant of certificate of registration. It provides that every application, for grant of certificate or giving prior permission, shall be made to the Central Government in such form and manner and accompanied by such fee as may be specified in rules made by the Central Government. The Central Government shall, 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 registration and after making such inquiry as the Central Government deems fit, it is satisfied that the applicant fulfils the requirements mentioned in items (a) to (g) of sub-clause (3) of this clause, it may register such person and grant him a certificate of registration or give prior permission subject to such terms and conditions as it may deem fit. The conditions in said clauses (a) to (g) of said sub-clause (3), *inter alia*, provides that the acceptance of foreign contribution by the person is not likely to affect prejudicially (i) the sovereignty and integrity of India; or (ii) the security, strategy, scientific or economic interest of the State; or (iii) the public interest; or (iv) freedom or fairness or election to any Legislature; (v) friendly relation with any foreign State; or (vi) harmony between religious, racial, social, linguistic, regional groups, castes or communities and the acceptance of foreign contribution, shall not lead to incitement of an offence; or shall not endanger the life or physical safety of any person.

This clause also provides that where the Central Government refuses registration or does not give prior permission, it shall record the reasons for such refusal or for not giving of prior permission and furnish a copy thereof to the applicant. However, the Central Government may not communicate the reasons for refusal or giving of prior permission to the applicant under this clause in cases where there is no obligation to give any information or papers under the Right to Information Act, 2005. The certificate of registration 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.

Clause 13. —This clause contains provisions relating to suspension of certificate of registration. The clause confers power upon the Central Government to suspend the certificate of registration up to one hundred and eighty days, as may be specified in the order. Every person whose certificate has been suspended shall not receive any foreign contribution during the period of the suspension of the certificate and shall utilise the foreign contribution in his custody with the prior

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approval of the Central Government. However, the Central Government, on an application made by such person, may allow receipt of any foreign contribution on such terms and conditions as it may specify.

Clause 14. —This clause contains provisions relating to cancellation of certificate of registration. The Central Government, may if it is satisfied, after making such inquiry as it may deem fit, by order, cancel the certificate if the holder of the certificate has made a statement in the application for the grant of certificate or renewal thereof, which is incorrect or false; or violated any of the terms and conditions of the certificate or renewal thereof; or violated any of the provisions of proposed legislation or rules or order made thereunder. No order of cancellation of certificate shall be made unless the person concerned has been 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.

Clause 15. —This clause contains provisions relating to management of foreign contribution of every person whose certificate has been cancelled. It provides that the foreign contribution and assets created out of the foreign contribution in the custody of every person whose certificate has been cancelled shall vest in such authority as may be specified by rules made by the Central Government. The authority may, if it considers necessary and in public interest, manage the activities of the person and such authority may utilise the foreign contribution or dispose of the assets created of it in case adequate funds are not available for running such activity. The authority referred to in sub-clause (1) of this clause shall return the foreign contribution and the assets vested upon it under that sub-clause to the person referred to in the said sub-clause if such person is subsequently registered under this Act.

Clause 16. —This clause contains provisions relating to renewal of certificate. It provides that every person who has been granted a certificate of registration shall renew his certificate within six months before the expiry of the period of the certificate. The application for renewal or 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 may renew the certificate of registration subject to such terms and conditions as it may deem fit and grant a certificate of renewal for a period of five years. The Central Government may refuse to renew the certificate in case where a person has violated any of the provisions of proposed legislation or the rules made thereunder.

Clause 17. —This clause contains provisions relating to foreign contribution through scheduled bank. It provides that every person who has been granted a

certificate or given prior permission under clause 12 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. No funds other than foreign contribution shall be received or deposited in such account or accounts.

This clause also provides that every bank or authorised person in foreign exchange shall report to such authority as may be specified, (a) the amount of foreign remittance; (b) the source and manner in which the foreign contribution was received; and (c) other particulars, in such form and manner as may be specified by rules made by the Central Government.

Clause 18. —This clause contains provisions relating to giving of intimation to the Central Government, and such other authority as may be specified by the Central Government. Every person who has been granted a certificate of registration or given prior approval under the proposed legislation shall give an intimation, within such time and in such manner as may be prescribed, to the Central Government, and such other authority as may be specified by the Central Government giving details of the amount of each 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.

It further provides that every person receiving contribution shall submit a copy of a statement duly certified by officer of the bank or authorised person in foreign exchange to the Central Government along with the intimation under section 18.

Clause 19. —This clause contains provisions relating to maintenance of accounts by every person who has been granted a certificate of registration or given prior permission under the proposed legislation. Every such person shall 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.

Clause 20. —This clause contains provisions relating to audit of accounts. It provides that where any person who has been granted a certificate of registration or given prior permission fails to furnish any intimation under the proposed legislation within the time specified therefore 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 proposed legislation has been, or is being, contravened, the Central Government may, by

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general or special order, authorise such gazetted officer, holding a Group A post under the Central Government or any other officer or authority or organization, 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. Any information obtained from such audit shall be kept confidential and shall not be disclosed except for the purposes of the proposed legislation.

Clause 21. —This clause contains provisions relating to intimation by candidate for election. This clause 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, to give, within such time and in such manner as may be prescribed, an intimation to the Central Government or the 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.

Clause 22. —This clause contains provisions relating to disposal of assets treated out of foreign contribution. This clause provides that where any person who was permitted to accept foreign contribution, ceases to exist or has become defunct, all the assets of such person shall be disposed off in accordance with the provisions contained in any law for the time being in force and 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 the proposed legislation, 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.

Clause 23. —This clause contains provisions relating to inspection of accounts or records. It provides that if the Central Government suspect on the ground that any provision of the proposed legislation has been or is being, contravened by (a) any political party; or (b) any person, or (c) any organization, or (d) any association, it may authorise such gazetted officer holding a Group A post under the Central Government or such other officer or authority or organization as it may think fit to inspect any account or record maintained by such political party, person, organisations or association, as the case may be, and thereupon every such authorised officer shall have the right to enter in or upon any premises for the purpose of inspecting the said account or record.

Clause 24. —This clause contains provisions relating to seizure of accounts or records. It provides that if, after inspection of an account or record, the authorised officer has any reasonable cause to believe that any provision of proposed legislation 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. However, 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.

Clause 25. —This clause contains provisions relating to seizure of article or currency or security received in contravention of the proposed legislation. It provides that if any gazetted officer, authorised in this behalf by the Central Government, has any reason to believe that any person has in his possession or control any article exceeding the value specified, or currency or security whether Indian or foreign, in relation to which any provision of the proposed legislation has been or is being, contravened, he may seize such article or currency or security.

Clause 26. —This clause contains provisions relating to disposal of seized article or currency or security. It provides that the Central Government may, having regard to the value of article or currency or security, their vulnerability to the theft or any other relevant consideration, by notification, specify such article or currency or security which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner, as the Central Government may, from time to time, determine after following the procedure specified in the said clause.

Clause 27. —This clause provides that the provisions of the Code of Criminal Procedure, 1973 shall apply in so far as they are not inconsistent with the provisions of this Act to all seizures made under the proposed legislation.

Clause 28. —This clause contains provisions relating to confiscation of article or currency or security obtained in contravention of the proposed legislation. Any article or currency or security which is seized under clause 25 shall be liable to confiscation if such article or currency or security has been adjudged under clause 29 to have been received or obtained in contravention of the proposed legislation.

Clause 29. —This clause contains provisions relating to adjudication of confiscation. Any confiscation referred to in clause 28 may be adjudged without

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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, specify in this behalf.

Clause 30.—This clause contains provisions relating to procedure for confiscation. This clause 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.

Clause 31. —This clause contains provisions relating to appeal. This clause, *inter alia*, provides that any person aggrieved by any order made under clause 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 under sub-clause (b) of clause 29, to the Court of Session within the local limits of whose jurisdiction such order or adjudication of confiscation was made.

Clause 32. —This clause contains provisions relating to revision of orders by the Central Government. This clause, *inter alia*, provides that the Central Government, may, either of its own motion or on an application for revision by the person registered under the proposed legislation, for revision, call for the record of any proceeding in which any such order has been passed by it and may make such inquiry or cause such inquiry to be made and, subject to the provisions of proposed legislation, may pass such order thereon as it thinks fit. The Central Government shall not of its own motion revise any order under this clause if the order has been made more than one year previously. In the case of an application for revision under this section by the person referred to in sub-clause (1), the application must be made within one year from the date on which the order was communicated to him or the date on which he otherwise came to know of it, whichever is earlier. However, the Central Government may, if it is satisfied that such person was prevented by sufficient cause from making the application within that period, admit an application made after the expiry of that period. The Central Government shall not revise any order where an appeal against the order lies but has not been made and the time within which such appeal may be made has not expired or such person has not waived his right of appeal. Every application by such person for revision under this clause shall be accompanied by such fee, as may be prescribed.

Clause 33. —This clause provides for punishment for making of false statement, declaration or delivering false accounts. It provides that any person, subject to

the provisions of the proposed legislation, who knowingly, (a) gives a false intimation under clause 9 or clause 18; or (b) seeks prior permission or registration by means of fraud, false representation or concealment or material fact, shall, on conviction by a court, be liable to imprisonment for a term which may extend to three years or with fine or with both.

Clause 34. —This clause provides for penalty for article or currency or security obtained in contravention of clause 10. It provides that if any person, on whom any prohibitory order has been served under clause 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.

Clause 35.—This clause provides punishment for contravention of any provision of the proposed legislation. It provides that whoever accepts, or assists any person, political party or organization in accepting any foreign contribution or any currency or security from a foreign source in contravention of any provision of the proposed legislation or any rule or order made thereunder, shall be punished with imprisonment for a term which may extend to five years, or with fine, or with both.

Clause 36. —This clause confers power upon the court to impose additional fine where article or currency or security is not available for confiscation.

Clause 37. —This clause provides for penalty for offences where no separate punishment has been provided under the proposed legislation.

Clause 38. —This clause prohibits acceptance of foreign contribution for a period of three years by any person in case of second or subsequent conviction under the proposed legislation.

Clause 39. —This clause contains provisions relating to offences by companies. Where an offence under the proposed legislation or any rule or order made thereunder has been committed by 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 be liable to any punishment if he proves that the offence was committed without his knowledge or

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that he had exercised all due diligence to prevent the commission of such offence.

If further provides that where an offence under the proposed legislation or any rule or order made thereunder has been committed by 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.

Clause 40. —This clause contains provisions relating to bar on prosecution of offences under the proposed legislation. It provides that no court shall take cognizance of any offence under the proposed legislation, except with the previous sanction of the Central Government or any officer authorised by that Government in this behalf.

Clause 41. —This clause contains provisions relating to certain offences. It provides that any offence punishable under the proposed legislation (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, notwithstanding anything contained in the Code of Criminal Procedure, 1973, compounded by such officers or authorities and for such amount as the Central Government may, by notification in the Official Gazette, specify in this behalf.

It further provides that no offence shall be compounded if such offence is committed by an individual or association or its officer or other employee within a period of three years from the date on which a similar offence committed by it or him was compounded under this clause. It also provides that 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.

It also provides that every officer or authority referred to in sub-clause (1) of this clause while dealing with a proposal for the compounding of an offence for a default in compliance with any provision of proposed legislation 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.

Clause 42. —This clause confers power upon the inspecting officer referred to in clause 23 to call for information or require any person to produce or deliver any document as he thinks useful or relevant to the inspection under the proposed legislation. It also confers power upon the said officer to examine any person acquainted with the facts and circumstances of the case.

Clause 43. —This clause provides that any offence punishable under the proposed legislation may also be investigated into by such authority as the Central Government may specify in this behalf and the authority so specified shall have all the powers which an officer-in-charge of a police station has while making an investigation into a cognizable offence.

Clause 44. —This clause requires that the prescribed authority shall furnish to the Central Government at such time and in such form and manner such returns and statements as may be prescribed.

Clause 45. —This clause protects the action taken in good faith by the Central Government or the prescribed authority or any of its officers. It provides that no suit or other legal proceedings shall lie against the Central Government or the prescribed authority or any of its officers in respect of any loss or damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of the provisions of proposed legislation or any rule or order made thereunder.

Clause 46. —This clause confers power upon the Central Government to give such directions as it may deem necessary to any other authority or any person or class of persons regarding the carrying into execution of the provisions of the proposed legislation.

Clause 47. —This clause contains provisions relating to delegation of powers. It provides that the Central Government may, by notification, delegate, subject to such conditions and limitations as may be specified in the notification, such of its powers and functions under the proposed legislation (except the power to make rules) as it may deem necessary to such authority as may be specified.

Clause 48. —This clause confers power upon the Central Government to make rules for carrying out the provisions of the proposed legislation, and in particular for matters specified in sub-clause (2) of the said clause.

Clause 49. —This clause requires laying of orders made under clause 5 and the rules made under the proposed legislation before each House or Parliament.

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Clause 50. —This clause confers power upon the Central Government to grant exemption in certain cases. It provides that if the Central Government is of the opinion that it is necessary or expedient in the interests of the general public so to do, it may, by order and subject to such conditions as may be specified in the order, exempt any person or association or organization (not being a political party), or any individual (not being a candidate for election) from the operation of all or any of the provisions of the proposed legislation and may, as often as may be necessary, revoke or modify such order.

Clause 51. —This clause provides that the provisions of the proposed legislation shall not apply to any transaction between the Government of India and the Government of any foreign country or territory.

Clause 52. —This clause provides that the provisions of the proposed legislation shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Clause 53. —This clause confers power upon the Central Government to remove difficulties arising in giving effect to the proposed legislation. It provides that if any difficulty arises in giving effect to the provisions of the proposed legislation, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of the proposed legislation as may appear to be necessary for removing the difficulty. However, no order shall be made under this clause after the expiry of two years from the commencement of the proposed legislation. Every order made shall be laid, as soon as may be after it is made, before each House of Parliament.

Clause 54. —This clause proposes to repeal the Foreign Contribution (Regulation) Act, 1976 and save certain matters specified in sub-clause (2) of the said clause.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 5 of the Bill confers power upon the Central Government to issue orders to specify the organisation referred to in the clause as an organisation of a political nature not being a political party referred to in clause 3(1).

2. Clause 48 of the Bill confers power upon the Central Government to make rules for carrying out the provisions of the proposed legislation. The matters in respect of which rules may be made relate, *inter alia*, to the value of the article and the authority which may be specified under clause 2(1); acceptance or retention of gift or presentation under clause 4; ground or grounds on which an organisation may be specified as an organisation of political nature under clause 5(2); the manner in which the administrative expenses shall be calculated under clause 8(2); the time within which and manner in which any person or class of persons or an association may be required to furnish intimation regarding the amount of foreign contribution received under clause 9; the time within which and manner in which any person or class of persons may be required to furnish intimation regarding foreign hospitality under clause 9; the manner in which the copy of the order of the Central Government shall be served upon any person under clause 10; the form and manner in which the application for grant of certificate of registration or giving of prior permission and fee therefor under clause 12(1); the terms and conditions for granting a certificate or giving prior permission under clause 12 (3); the manner of utilising the foreign contribution under clause 13(2); the authority with whom the foreign contribution to be vested under clause 15(1); the period within which and the manner in which the foreign contribution shall be managed under clause 15(2); the form and manner in which the application for renewal of certificate of registration shall be made and the fees therefor under clause 16(2); the form and manner in which the foreign remittance received in any of the accounts of the bank or authorised person in foreign exchange which shall be reported under clause 17(2); the time within which and the manner in which the person who has been granted certificate of registration or given prior permission shall give intimation under clause 18; the form and manner in which account of any foreign contribution and the manner in which such contribution has been utilised shall be maintained under clause 19; the time within which and manner in which a candidate for election shall give intimation under clause 21; the manner and procedure to be followed in disposing of the assets under clause 22; the limits subject to which any confiscation may be adjudged under clause 29(1); the fee to be accompanied along with every application for revision under clause 32(5); the form and manner for making of an

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application for compounding of an offence and the fees therefor under clause 41(4); the form and manner in which and the time within which returns and statements to be furnished by the prescribed authority under clause 44; any other matter which is required to be, or may be prescribed.

3. The matters in respect of which orders may be issued and the rules may be made by the Central Government are generally matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

RAJYA SABHA

A BILL

To consolidate the law 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.

(Shri Shivraj Vishwanath Patil, Minister of Home Affairs)

