

CLUSTER 15

The Foreign Contribution (Regulation) Act, 2010

1. **Mr. Peter, a Member of the Legislature in India, visited Sydney, Australia to attend World Trade Conference as a representative of Government of India after obtaining due permission of the Central Government as per the provisions of Foreign Contribution (Regulation) Act, 2010. His expenditure on foreign travel was borne by Bret Lee Limited, a foreign company. While attending the conference, Mr. Peter suddenly encountered chest pain and he was immediately admitted in the nearby hospital for medical care and treatment. The medical expenses of Rs.2,00,000/- was borne by Bret Lee Limited. Mr. Peter seeks your advice about the procedure to be followed in the above situation under the provisions of Foreign Contribution (Regulation) Act, 2010. Please advise suitably. [RTP Nov 2018]**

Ans.

1. Section 6 of the Foreign Contribution (Regulation) Act, 2010 prescribes that no member of a Legislature shall while visiting any country accept, except with the prior permission of the Central Government for any foreign hospitality.
2. Foreign Hospitality [as per Section 2(m)] 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 with free boarding lodging or medical treatment.
3. Therefore, prior approval is required from Central Government for the medical expenses. 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.
4. As per Rule 7 of *Foreign Contribution (Regulation) 2011*, foreign hospitality may be received by member of Legislature in the following manner.
5. In case of emergent medical aid needed on account of sudden illness during a visit abroad, the acceptance of foreign hospitality shall be required to be intimated to the Central Government within sixty days of such receipt giving full details including the source, approximate value in Indian Rupees, and the purpose for which and the manner in which it was utilized.
6. Hence, Mr. Peter has to follow the above procedure.

2. **X is an association having registration to transfer the Foreign Contribution received by it to another organization? Is the valid act of X? If yes, then what is the process to do so? Is there any restriction on transfer of funds to other organizations? [RTP May 2019]**

Ans. Yes, X can transfer the Foreign Contribution received by it to another organization as Section 7 of FCRA, 2010. According to the provision no person who—

- a. is registered and granted a certificate or has obtained prior permission under this Act; and
 - b. receives any foreign contribution,
- shall transfer such foreign contribution to any other person unless such other person is also registered and had been granted the certificate or obtained the prior permission under this Act:

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

Central Government."

Restrictions on transfer: *Rule 24 of FCRR, 2011*, prescribes the procedure for transferring foreign contribution to an unregistered person as under:

- (1) A person who has been granted a certificate of registration or prior permission under Section 11 and intends to transfer part of the foreign contribution received by him to a person who has not been granted a certificate of registration or prior permission under the Act, may transfer such foreign contribution to an extent not exceeding ten per cent of the total value thereof and for this purpose, make an application to the Central Government in the prescribed Form.
- (2) Every application made under sub-rule (1) shall be accompanied by a declaration to the effect that- (a) the amount proposed to be transferred during the financial year is less than ten per cent of the total value of the foreign contribution received by him during the financial year; (b) the transferor shall not transfer any amount of foreign contribution until the Central Government approves such transfer.
- (3) A person who has been granted a certificate of registration or prior permission under Section 11 shall not be required to seek the prior approval of the Central Government for transferring the foreign contribution received by him to another person who has been granted a certificate of registration or prior permission under the Act provided that the recipient has not been proceeded against under any of the provisions of the Act.
- (4) Both the transferor and the recipient shall be responsible for ensuring proper utilization of the foreign contribution so transferred and such transfer of foreign contribution shall be reflected in the returns in Form to be submitted by both the transferor and the recipient.

3. A foreign company, Max Ltd. was established by few Indians in Singapore. The management of the company used to donate a huge amount to the religious trust, in Mumbai, India. Enumerate in the given situation in the light of the Foreign Contribution and Regulation Act, 2010 whether the donation so made by Max Ltd. is a foreign contribution? Is the acceptance of such donation by the Religious trust is valid? [RTP Nov 2019]

Ans. As per the definition of Foreign Contribution given in Section 2(1)(h) of FCRA 2010, "Foreign contribution" means the donation, delivery or transfer made by any foreign source-

- (i) of any article, (except given as a gift for 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; security and includes any foreign security under the Foreign Exchange Management Act, 1999

As per explanation to the Section, a donation, delivery or transfer of any article, currency or foreign security so 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.

Whereas the foreign source as per the definition given in Section 2(j) of the FCRA includes a foreign company. Since the Max Ltd. is a foreign company, so donation made by the Max Ltd is a foreign contribution for the religious and charitable purpose.

Whereas, Religious Trust can accept foreign contribution with prior permission of Central Government, if it is not registered under the FCRA But, where if the Religious trust is registered under the FCRA [Section 11 of FCRA 2010], it may accept the foreign contribution within the limit without seeking prior permission.

4. A foreign co., Srikripa Ltd. established by few Indians in Singapore. Being a strong believer of Sai, the management of the company used to donate a huge amount to the Sai trust, in Mumbai, India. Enumerate in the given situation whether the donation so made by

Srikripa Ltd. is a foreign contribution. Is the acceptance of such donation by the Sai trust is valid [ICAI Mock Exam March 2019]

Ans. As per the definition of Foreign Contribution given in Section 2(1)(h) of FCRA, 2010, "Foreign contribution" means the donation, delivery or transfer made by any foreign source,—

(i) of any article, (except given as a gift for 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 and includes any foreign security under the Foreign Exchange Management Act, 1999.

As per explanation to the Section, 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. Whereas the foreign source as per the definition given in Section 2(j) of the FCRA includes a foreign company. Since the Srikripa Ltd. is a foreign company, so donation made by the Srikripa Ltd is a foreign contribution for the religious and charitable purpose. Whereas, Sai Trust can accept foreign contribution with prior permission of Central Government, if it is not registered under the FCRA. But where if the Sai trust is registered under the FCRA, [Section 11 of FCRA, 2010], it may accept the foreign contribution within the limit without seeking prior permission.

5. Mr. Indian received foreign contribution of amount 1.10 lakh from his relative residing abroad. Examine whether foreign remittances received by Mr. Indian to be treated as foreign contribution as per the FCRA, 2010 [ICAI Mock Exam Oct 2019]

Ans. No. As per Section 4(e) of FCRA, 2010 read with Rule 6 of FCRR, 2011, even the persons prohibited under Section 3, i.e., persons not permitted to accept foreign contribution, are allowed to accept foreign contribution from their relatives. However, in terms of Rule 6 of FCRR, 2011, any person receiving foreign contribution in excess of one lakh rupees or equivalent thereto in a financial year from any of his relatives shall inform the Central Government in prescribed Form within thirty days from the date of receipt of such contribution. So, Mr. Indian shall inform the Central Government of his receiving of the foreign contribution of 1.10 lakh from his relative due to receiving of foreign contribution in excess of 1 lakh rupees.

6. Do the following transactions amount to contravention of the Foreign Contribution (Regulation) Act, 2010? Give reasons in support of your answer and refer to relevant provisions: (i) Abhay, general secretary, LoktantrikSangathan, Moradabad (UP) receives a sum of US \$ 1,000 by way of payment in the ordinary course of business transacted by him in India.

(ii) Avtar, a government servant, is in receipt of contribution by way of gift as a member of Indian delegation.

(iii) Vidur, a District and Sessions Judge, accepts a diamond studded watch from his relative residing in UK.

(iv) Sanjay, a private school teacher, is given a gift by his student living in USA for his personal use and the market value of the article is Rs. 2,200 only. (CS (Executive) Dec. 2006)

Ans.

(i) Abhay is the general secretary of LoktantrikSangathan, Moradabad (UP). He is covered under Section 3 as he is the office bearer of a political party.

Any foreign contribution received from any foreign source in the ordinary course of business transacted in India is covered under Section 4. In the given case, Abhay has received US \$1,000 by way of payment in the ordinary course of business transacted in India. So, Abhay can avail of the benefit of Section 4. Accordingly, it is permissible for Abhay to receive US \$ 1,000, and so he has not contravened any provisions of the Act.

(ii) Avtar is a Government servant, and so he is covered under Section 3. As per Section 4, any person specified in Section 3 is allowed to receive foreign contribution by way of a gift or presentation made to him as a member of any Indian delegation, if such gift or present is accepted in accordance with the rules made by the Central Government in this regard.

In the given case, Avtar has received foreign contribution as a gift in the capacity of a member of Indian delegation. This is allowed as per Section 4, provided that Avtar shall comply with the rules made by the Central Government in this regard.

(iii) As per Section 2(1) (h) read with Rule 6A of the Foreign Contribution (Regulation) Rules, 2011, foreign contribution' does not include donation, delivery or transfer made by any foreign source, of any 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 Rs. 1,00,000 (Amended on 16-09-2019).

As per Section 4 read with Rule 6 of the Foreign Contribution (Regulation) Rules, 2011, a person specified under Section 3 is allowed to receive foreign contribution from his relative, subject to the condition that if the amount of foreign contribution received is Rs. 1 lakh or more during the financial year, he shall inform the Central Government in Form FC-1 within 30 days from the date of receipt of such foreign contribution.

In the given case, Vidur is a District and Sessions Judge, and so he is covered under Section 3.

Vidur has accepted a diamond studded watch from his relative residing in UK.

If the value of the watch in India as on the date of the gift is upto Rs. 1,00,000 (Amended on 16-09-2019), then, it would not amount to foreign contribution, and so provisions contained in the Act and the Rules shall not be attracted.

If the value of the watch in India as on the date of the gift exceeds Rs. 1,00,000 (Amended on 16-09-2019) but is less than Rs. 1 lakh, then, it would amount to foreign contribution, but this case would be covered under Section 4, and so Vidur can accept the gift. Also, Vidur shall not be required to inform the Central Government since the value of the watch is less than Rs. 1 lakh. If the value of the watch in India as on the date of the gift is Rs. 1 lakh or more, then, it would amount to foreign contribution, but this case would be covered under Section 4, and so Vidur can accept the gift. But, Vidur shall be required to inform the Central Government in Form FC-1 within 30 days since the value of the watch is Rs. 1 lakh or more.

(iv) In this case, Sanjay is a teacher in a private school, and so he is not covered under Section 3. Thus, there is no prohibition on Sanjay with respect to acceptance of foreign contribution.

Sanjay has accepted a gift from his student living in USA. The market value of the article gifted to Mr. Sanjay is Rs. 2,200.

Since the value in India of the article gifted to Sanjay as on the date of the gift is within the limit of Rs. 1,00,000 (Amended on 16-09-2019), it does not amount to foreign contribution, and so provisions contained in the Act and the Rules are not attracted. Accordingly, by accepting the gift valuing Rs. 2,200, Sanjay has not contravened any provision of the Act.

7. **Mr. Satish, General Secretary of a political party received an invitation from the American Labour Party. He wants to avail foreign hospitality. Define the term "foreign hospitality". In the light of the provisions of the Foreign Contribution (Regulation) Act, 2010, decide whether he can avail it. Discuss also the exception, if any, under which the provisions of the said Act may be relaxed. [CA Final May 2018]**

Ans. The given problem relates to Section 2(1)(i), Section 6 and Section 50 of the Foreign Contribution (Regulation) Act, 2010.

Definition of 'foreign hospitality'

The term 'foreign hospitality' has been defined under Section 2(1)(i) as follows:

'Foreign hospitality' means any offer made in cash or kind by a foreign source for providing a person with-

- (i) the cost of travel to any foreign country or territory;
- (ii) free boarding or lodging;
- (ii) free transport; or
- (iv) free medical treatment.

Any offer which is purely a 'casual one' shall not be termed as foreign hospitality.

As per Section 6, prior permission of the Central Government shall be required for accepting any foreign hospitality by any of the categories of persons specified in Section 6, while they are on visit to any country or territory outside India. Office-bearers of a political party are one of the persons specified in Section 6.

In the given case, Mr. Satish is the General Secretary of a political party. Since Mr. Satish is an office-bearer of a political party he can accept the foreign hospitality while on a visit to America, only after obtaining prior permission of the Central Government. For this purpose, he shall make an application in Form FC-2. The application must reach the Central Government ordinarily 2 weeks before the proposed date of the journey. Such application shall be accompanied by-

- (a) an invitation letter from the American Labour Party; and
- (b) administrative clearance of the Ministry or department concerned in case visit of Mr. Satish is sponsored by a Ministry or department of the Government.

Relaxation

Section 50 gives power to the Central Government to exempt any person or association or organisation or any individual from the operation of all or any of the provisions of this Act.

However, no exemption shall be given to a political party or a candidate for election.

The exemption may be subject to such conditions as may be specified by the Central Government in the order of exemption.

The Central Government may grant such exemption if it is of the opinion that it is necessary or expedient in the interests of the general public so to do.

Thus, the provisions of the Act may be relaxed by the Central Government in accordance with the provisions of Section 50.

8. **Ashok, a director of a public limited company, was on a business trip to USA. Suddenly, he developed chest pain there and was provided medical treatment in a hospital, the funds for which were provided by one John, a US national, who happened to be his friend. Did Ashok violate the provisions of the Foreign Contribution (Regulation) Act, 2010? Give reasons. [CS (Executive) June 2013]**

OR

Aditya, a director of Amex Ltd, visited Germany thrice in 2005 on invitations and free air-tickets, boarding and lodging extended to Amex Ltd. by the Chamber of Commerce and Industry, Germany. Has Aditya or the company contravened the provisions of the Foreign Contribution (Regulation) Act, 2010? Mention relevant provisions. [CS

(Executive) June 2006]

Ans.The given problem relates to Section 6 read with Section 2(1)) of the Foreign Contribution (Regulation) Act, 2010, as discussed below:

1. The term 'foreign hospitality' has been defined under Section 2(1)(i) as follows: 'Foreign hospitality' means any offer made in cash or kind by a foreign source for providing a person with-

- (i) the cost of travel to any foreign country or territory;
- (ii) free boarding or lodging;
- (iii) free transport; or
- (iv) free medical treatment.

Any offer which is purely a 'casual one' shall not be termed as foreign hospitality.

2. As per Section 6, prior permission of the Central Government shall be required for accepting any foreign hospitality by any of the following categories, persons, while they are on visit to any country or territory outside India:

- (a) Members of a Legislature
- (b) Office-bearers of a political party
- (c) Judges
- (d) Employees of any corporation or any other body owned or controlled by the Government
- (e) Government servants.

3. However, no permission of the Central Government shall be required under Section 6, if

- (i) any of the persons specified in Section 6 suddenly falls ill during a visit outside India; and
- (ii) he requires emergency medical aid

In such a case, the person receiving such hospitality shall give an intimation to the Central Government. The intimation shall be given within 1 month from the date of receipt of such hospitality.

In the given case, Mr. Ashok is a director of a public limited company. He is not covered under the categories of person specified under Section 6 of the Act. Thus, the provisions of Section 6 are not attracted to Mr. Ashok. Accordingly, Mr. Ashok can avail the foreign hospitality from his friend without attracting any provisions of the Act.

Thus, by availing the foreign hospitality, Mr. Ashok has not contravened any provisions of the Act.

9. An association registered under the Foreign Contribution (Regulation) Act, 2010 (the Act) received donation from a club registered in Singapore. The Association proposes to transfer 10% of the donation to "Home for Aged Society", an unregistered person and 15% to "Welfare Club" a registered person under the Act.

In the light of provisions of the Foreign Contribution (Regulation) Act, 2010 decide whether the association can carry out the above proposal and if so state the procedures to be followed under the said Act? [CA Final Nov 2018]

Ans.The given problem relates to Section 7 of the Foreign Contribution (Regulation) Act, 2010.

1. The association may transfer foreign contribution of 10% to "Home for Aged Society" (a person who has not been granted the certificate of registration or prior permission under Section 12 of the Act), if both the following conditions are satisfied:

- (a) The prior approval of the Central Government is obtained. The application for obtaining the prior approval of the Central Government shall be made in Form FC-5.
- (b) Such transfer is in accordance with the terms and conditions as may be prescribed by the Central Government. These, conditions are as follows (as per Rule 24 of the Foreign Contribution (Regulation) Rules, 2011):

- (i) The application made to the Central Government shall be accompanied by a

declaration to the effect that –

(A) the amount proposed to be transferred does not exceed 10% of the total value of the foreign contribution received by him during the financial year; and

(B) the transferor shall not transfer any amount of foreign contribution until the Central Government approves such transfer.

(ii) The recipient (viz. Home for Aged Society) has not been proceeded against under any of the provisions of the Act.

2. The association may transfer foreign contribution of 15% to "Welfare Club" (a person who has been granted the certificate of registration under Section 12 of the Act), if both the following conditions are satisfied:

(a) Both the transferor and the recipient (viz. Welfare Club) shall be responsible for ensuring proper utilisation of the foreign contribution so transferred.

(b) The transfer of foreign contribution shall be reflected in the returns in Form FC-4 to be submitted by both the transferor and the recipient (viz. Welfare Club).

10. An association registered under the Foreign Contribution (Regulation) Act, 2010 (the Act) received donation from a club registered in Singapore. The association proposes to invest portion of the donation in chits promising high returns.

In the light of provisions of the Foreign Contribution (Regulation) Act, 2010 decide whether the association can carry out the above proposal and if so, state the procedures to be followed under the said Act? [CA Final Nov 2018]

Ans. The given problem relates to Section 8 of the Foreign Contribution (Regulation) Act, 2010 read with Rule 4 of the Foreign Contribution (Regulation) Rules, 2011.

Provisions

1. As per Section 8, if a person, who has been granted a certificate of registration or prior permission under Section 12, receives any foreign contribution, he shall utilise such contribution for the purposes for which the contribution has been received.

2. Section 8 further provides that any foreign contribution or any income arising out of it shall not be used for speculative business.

As per Rule 4 of the Foreign Contribution (Regulation) Rules, 2011, following activities shall be treated as speculative activities:

(i) Any activity or investment that has an element of risk of appreciation or depreciation of the original investment, linked to market forces, including investment in mutual funds or in shares.

(ii) Participation in any scheme that promises high returns like investment in chits or land or similar assets not directly linked to the declared aims and objectives of the organisation or association.

Analysis

1. An association which has been granted a certificate of registration under Section 12 has received donation (viz. foreign contribution) from a club registered in Singapore. The association proposes to invest a portion of such donation in chits promising high returns. Such investment can be made by the association only if it is permitted in accordance with Section 8 read with Rule 4.

2. The proposed investment is in the chits promising high returns. Such investment is specifically covered in 'speculative activities' as per Rule 4.

Conclusion

The association cannot make investment of foreign contribution received by it in the chits promising high returns since it amounts to 'speculative activities' as per Rule 4, and investment in speculative activities is prohibited as per Section 8.

11. Sarva Kalyan Morcha, an organization pursuing a definite social programme, is in

receipt of \$5,000 from a charitable trust in Canada. Whether it amounts to contravention of the Foreign Contribution (Regulation) Act, 2010? Give reasons in support of your answer and refer to relevant provisions. [CS (Executive) Dec. 2006]

OR

Destitutes Rehabilitation (India), an NGO devoted to the cause of ameliorating the lot of destitutes and the needy, has been offered a contribution of \$5,000 by an American foundation. Mention the provisions of the Foreign Contribution (Regulation) Act, 2010 regulating the receipt of foreign contribution by an organization pursuing a definite social, cultural, economic, educational or religious programme. [CS (Executive) Dec. 2007]

OR

Ananda Swar Mondal, a cultural association in Kolkata formed for the sole purpose of promoting Rabindra Sangeet, has been offered gift of \$5,000 by a society in USA. Can the association receive it without violating the provisions of the Foreign Contribution (Regulation) Act, 2010? [CS (Executive) June 2005]

OR

Gurukul Vidyarthi Manch, a body formed for the purposes of imbibing patriotism and character-building among students, receives a grant of \$1,500 from Stuarts, a British-philanthropist. Does it violate the provisions of the Foreign Contribution (Regulation) Act, 2010? [CA (Executive) Dec. 2005]

Ans. The given problem relates to Section 11 of the Foreign Contribution (Regulation) Act, 2010.

As per Section 11, a person having a definite cultural, economic, educational, religious or social programme shall not accept foreign contribution unless such person-

- (a) obtains a certificate of registration from the Central Government; or
- (b) obtains the prior permission of the Central Government.

In the given case, Sarva Kalyan Morcha is an organisation pursuing a definite social programme, and so the provisions of Section 11 are applicable to it. Accordingly, Sarva Kalyan Morcha can accept foreign contribution of \$5,000 from a charitable trust in Canada only after obtaining-

- (a) a certificate of registration from the Central Government; or
- (b) the prior permission of the Central Government.

12. After giving a reasonable opportunity of being heard, Central Government cancelled the certification of registration of Coffeelicious Ltd., a company registered under FCRA on the ground of public interest. 2.5 years have passed since such cancellation. Company has submitted its written declaration not to involve in such activity again and request to restore the registration. Advise Coffeelicious Ltd. on its eligibility for re-registration or grant of prior permission.

Ans. The given problem relates to Section 14 of the Foreign Contribution (Regulation) Act, 2010.

1. As per Section 14, any person whose certificate of registration has been cancelled, shall not be eligible for registration or grant of prior permission for a period of 3 years from the date of cancellation of such certificate.
2. In the given case, a period of 3 years has not elapsed since the date of cancellation of certificate of registration of Coffeelicious Ltd.
3. Therefore, Coffeelicious Ltd. is not eligible to make an application to the Central Government for obtaining certificate of registration or prior permission.