

## OVERVIEW OF LAWS RELATING TO CHARITABLE ORGANISATIONS IN INDIA



**CA. Rajkumar S. Adukia**  
**B.Com (Hons.), FCA, ACS, ACWA, LL.B,**  
**DIPR, DLL & LP, MBA, IFRS(UK)**  
**098200 61049/09323061049**  
**email id: rajkumarradukia@caaa.in**  
**Website: www.caaa.in**

To download information on various subjects visit [www.caaa.in](http://www.caaa.in)

To receive regular updates kindly send test email to

[rajkumarfca-subscribe@yahoogroups.com](mailto:rajkumarfca-subscribe@yahoogroups.com)

[rajkumarfca+subscribe@googlegroups.com](mailto:rajkumarfca+subscribe@googlegroups.com)

### INTRODUCTION

India has an ancient history of society based on the concept of philanthropy. Vedas, a large body of texts originating in ancient India are the oldest scriptures of Hinduism. The Rig Veda, one out of the four Vedas, refers to some elements of collective social entrepreneurship which manifested in the form of charity as a duty and responsibility of a conscious human being. During the reign of the Mauryas and Guptas (4th century BC to 5th century AD) and even later, a strong village community based on collective entrepreneurship and social collectiveness was in existence across the country. These practices of philanthropy and a strong and collective community life transformed into the modern concept of social capital.

The word "charity" entered the English language through the Old French word "*charité*" which was derived from the Latin word "*caritas*". Originally in Latin the word *caritas* meant preciousness, dearness, high price. From this, in Christian theology, *caritas* became the standard Latin translation for the Greek word *agape*, meaning an unlimited loving-kindness to all others, such as the love of God. *Agape* was not primarily about good works and giving to the poor, although in English the word 'charity' has steadily

acquired this as its primary meaning, wherein it was first used in Old French at least since the year 1200 A.D.

Charity is giving voluntarily to those in need. It covers the giving of both money, and of the self through service to the needy. Charity is defined as - relief of the poor, education, medical relief, and the advancement of any other object of general public utility not involving the carrying on of any activity for profit. The term is also used to denote an institution or organization, which helps those in need.

## **EVOLUTION AND GROWTH OF CHARITABLE ORGANISATIONS IN INDIA**

Though the roots of charity are to be found in religious belief and practice, charitable trusts and voluntary organizations are India's secular and institutional manifestation.

India has a long history of civil society. Voluntary organizations were active in cultural promotion, education, health, and natural disaster relief as early as the medieval era. Religious organizations also took up work to help the poor to improve their condition.

Towards the end of the 19th century the corporate community in India also began setting up organizations dedicated to the welfare and development of the underprivileged and a large number of Corporate Trusts and Societies came into existence.

During the 19th and early 20th century these voluntary organizations received legal recognition as the Government enacted various laws such as the Societies Registration Act of 1860, The Religious Endowments Act of 1863, The Indian Trusts Act of 1882 and the Charitable Endowments Act of 1890. Such enactments gave public recognition to the intention of the founders and extended the protection of the law to their income and property, however these enactments were rather mild and did not impose strong regulatory controls. The British Government later added two more legislations i.e. the Charitable and Religious Trusts Act, 1920 and (ii) the Trade Unions Act, 1926.

The Income Tax had been introduced in 1860, and in 1922, the government granted 50% tax exemption to individuals on donations for charitable purposes. The Government of independent India continued and extended the tax concessions given earlier only to individuals, to companies making charitable contributions. The Income Tax Act of 1961 further broadened the definition of charitable purpose. Section 2(15) of the Act defines the expression "charitable purpose".

All Charitable organizations may exist as non-profit companies, societies or trusts. However, structure or management is not the essence of the charitable organization. It

is the objectives, which distinguish a charitable organization from a business organization.

## **MEANING OF CHARITABLE ORGANISATION**

Charitable organization is an organization which has an objective of charitable purpose. Trusts, foundations, unincorporated associations and in some jurisdictions specific types of companies, may be established for a charitable purpose or may acquire such purpose after establishment. Charitable organisations are non-profit organizations; however, not all non-profit organizations are charitable organizations. Some charitable organizations may be established by companies as part of tax planning strategies.

The primary function of a charitable organisation is to give benefit to the public by performing worthy causes that helps the public at large. Also all the operations performed by those organizations are legal and their policy goes in tune with the general public policy.

Charitable organisations usually have an active way to raise funds through a campaign or conducting programmes. Its functions can range from helping others in times of disaster, giving financial aid, medical services, public works and conducting human right activities. They generally function as a welfare organisation and work for the improvement of the society through their charitable function.

### **Definition of Charitable Purpose**

Public charitable trusts, by definition, must be created for the benefit of the public. Societies likewise may be registered for charitable purposes. Section 25 companies are formed for the limited purposes of "promoting commerce, art, science, religion, charity or any other useful object."

In law, the concept of "charitable purpose" has a meaning which is not quite the same as in normal language.

According to Section 2(15) of the Income Tax Act, 1961, Charitable purposes include "relief of the poor, education, medical relief, and the advancement of any other object of general public utility." Finance (No.2) Act, 2009 added the "preservation of environment (including watersheds, forests, and wildlife) and preservation of monuments or places or objects of artistic or historic interest" to the list of charitable purposes. Finance Act, 2008 limited the definition of "charitable purpose," by stating that if the "advancement of any other object of general public utility" involves undertaking any trade, commerce,

or business activities, or rendering any related service for a fee or any other condition (irrespective of use, application, or retention of income arising from such activities), it will not be considered a "charitable purpose." The Finance Act 2010, retrospectively effective from April 1, 2009, provided some relief by exempting the aggregate value of receipts from such activities up to one million rupees. Organizations established for and running programs for relief of poverty, education, and medical relief are not affected by the amendments of 2009 or 2010.

Section 2(15) defines the expression "charitable purpose" in an inclusive manner. The aforesaid definition is not exhaustive and, therefore, purposes similar to the purposes mentioned in the aforesaid definition will also constitute charitable purposes. Further, the words "any other object of general public utility" are of wide import. However, the object should not be of utility for only a few persons.

According to Section 9(1) of the Bombay Public Trusts Act, 1950, "charitable purpose includes: 1) relief of poverty or distress 2) education 3) medical relief 3A) provision for facilities for recreation or other leisure time occupation (including assistance for such provision), if the facilities are provided in the interest of social welfare and public benefit 4) the advancement of any other object of general public utility, but does not include a purpose which relates exclusively to religious teaching or worship."

The definition of charitable purpose is broad enough to cover activities other than direct relief of distress due to poverty or calamities. It includes education, medical relief, and the advancement of any other object of general public utility such as promotion and preservation of the arts.

### **Characteristics of a Charitable Organisation**

1. Formal:

A charitable organisation should be institutionalized and registered, and should have well defined program objectives as well as rules and regulations of governance.

2. Private:

It is important that a charitable organisation be institutionally separate from the Government.

3. Self-governing:

A charitable organisation is usually managed by 'Board of Trustees' or 'Governing Council' and not controlled from the outside. Key participants in the

management of a charitable organisation are supposed to act in fiduciary capacity.

4. Not for profit:

A charitable organisation cannot distribute profits. It can earn and retain a profit, which is referred to as surplus.

5. Voluntary:

Some meaningful voluntary participation in the activities and management of the organization is important for an organization to be classified as charitable organisation.

6. Non-religious:

A charitable organisation should not be involved in promoting religious worship or religious education. However, pure service oriented organizations affiliated to religious organizations can be covered.

7. Non-political:

A charitable organisation cannot be affiliated to any political party.

8. Works for public benefit:

A charitable organisation should not serve private cause and public element for its activities is very important.

### **Important Points to Remember**

There are Alternative names used for referring to Charities in India

- NPO - Not for Profit Organisation
- NGO - Non-governmental organization
- VO - Voluntary organization
- CSO - Civil society organization
- CBO - Community based organization
- Charitable organization
- TSO - Third sector organization

However, whatever the term used to describe a charitable organization, a few important points must be remembered with regard to the charity sector:

- There is no single piece of legislation, which comprehensively governs the sector and similarly no single regulator exists in India, in contrast to other countries where a Charity Commissioner regulates the individual organizations on nationwide basis.
- Charities can be formed in multiple ways and may be subject to various acts of legislation. It is the choice of the persons forming the charity to decide which form to take.
- Different legal provisions exist at the national and state level. Some states in India have enacted their own law to govern certain forms of charities.
- Nonprofit organizations are not permitted to be involved in any 'political activity'. Bombay Public Trusts Act even puts 'political education' outside the scope of 'charitable purpose'. However Section 20 of the Societies Registration Act, 1860 allows registration of a society whose object may be 'diffusion of political education'.
- India, being a secular state, does not allow distinction of caste, colour and creed in formation of a charity. However, it is possible to create a valid trust for the benefit of a particular section of the community. Although, this kind of trust would not enjoy income tax exemption.
- Religious trusts established for the benefit of a particular religious community are also not exempt from income tax.

### **Forms of Activities of Charity**

Non-profit organizations in India today encompass a wide-range of activities, including designing and implementing innovative programs in various sectors of development, research, documentation, and training and advocacy. They range from very small people's organizations to highly sophisticated and technologically advanced research and health care or educational institutions.

Some form of activities of charitable organizations include:

1. Advocacy - Charitable organisations working on advocacy or campaigning on issues or causes and they do not implement programs.
2. Consultancy / Research Organizations - Charitable organisation working on social and development research as well as consultancy.
3. Training / Capacity Building Organizations - Charitable organisation helping other charity organizations by training & capacity building.
4. Networking Organizations - Charitable organisations providing networking opportunities in a specific field.

5. Mother NGOs - These charitable organisations have a work focus, but instead of implementing projects, they identify projects and monitor, evaluate and build capacities of participating NGOs.
6. Grass root Organizations -Charitable organisations working directly with the community
7. City Based Organizations - These Charitable organisations restrict their focus to cities.
8. National Organizations - Charitable organisations with national presence.
9. Self Help Groups - Formed by beneficiary communities, typically women who come together in a group of 10 plus.
10. Religious NGOs

## **LAWS GOVERNING CHARITABLE ORGANISATIONS IN INDIA**

Charities can be formed in multiple ways and may be subject to various acts of legislation. The right of all citizens to form associations or unions is guaranteed by the Constitution of India, Article 19(1)(c). "Charities and charitable institutions, charitable and religious endowments and religious institutions" is a subject of the Concurrent list of the Seventh Schedule to the Constitution of India, where both the Centre and the States are competent to legislate and regulate charitable organisations. Under Schedule VII of the Indian Constitution, the subject 'Trust and Trustees' finds mention at Entry No.10 in the Concurrent List and 'Charities & Charitable Institutions, Charitable and religious endowments and religious institutions' find place at Entry No.28 of this list.

The legal framework for the charity sector in India is quite complex with a number of different acts of legislation governing it in their own way. There are three basic legal forms of charitable entities under Indian law: trusts, societies, and section 25 companies. The legal framework governing the charitable institution will depend on the form of business organization the charitable institution takes. There is no comprehensive central law for legal incorporation of nonprofit organizations which applies to trusts, registered societies and section 25 companies alike.

If the charitable institution is formed as a Public Trust, it will be governed by the Public Trust Act applicable in the relevant State. However, if no Public Trust Act exists in that state, then the applicable legislation will be the Indian Trusts Act 1882.

If the charitable institution is formed as a Society, it will be governed by the Societies Registration Act, 1860. The charitable institution can also be formed as a non-profit company under section 25 of the Companies Act, 1956.

Apart from the above legislations, the Income Tax Act 1961 will be applicable to charitable institutions. And in the case of foreign contributions to these charitable institutions, the Foreign Contribution (Regulation) Act, 2010 will be applicable. Apart from the above, various laws are applicable to Trusts, Societies and Wakfs.

Also, various State Laws are applicable to Charitable Institutions. For example, all public charitable trusts in the state of Maharashtra are governed by the Bombay Public Trusts Act, 1950. The same Act, with minor changes, is also operational in the state of Gujarat. Rajasthan, too, has a Trusts Act of 1959, while Madhya Pradesh had an Act of 1951. In certain southern states like Andhra Pradesh, there are endowment Acts, while a number of northern and north-eastern states in India have no trust Act at all. Even the capital of India- New Delhi-has no trust Act.

Moreover, many state and central government agencies have regulatory authority over these not-for-profit entities. For example, all not-for-profit organizations are required to file annual tax returns and audited account statements with various agencies. At the state level, these agencies include the Charity Commissioner (for trusts), the Registrar of Societies (referred to in some states by different titles, including the Registrar of Joint Stock Companies), and the Registrar of Companies (for section 25 companies). At the national or federal level, the regulatory bodies include the income tax department and Ministry of Home Affairs (only for not-for-profit organizations receiving foreign contributions).

### **Main laws governing the charity sector**

- 1) Constitution of India Articles 19(1)(c)
- 2) Indian Trusts Act, 1882 (applicable for private trusts)
- 3) Public Trusts Acts of various states in India.
- 4) The Societies Registration Act, 1860
- 5) The Companies Act, 1956
- 6) Income Tax Act, 1961
- 7) Foreign Contribution (Regulation) Act, 2010

### **Other Laws governing Charity Sector**

#### **Societies**

- 8) Religious Societies Act, 1880

- 9) Religious Institutions (Prevention of Misuse) Act 1988
- 10) The Rajasthan Societies Registration Act, 1958
- 11) The Karnataka Societies Registration Act, 1960
- 12) The West Bengal Societies Registration Act, 1961
- 13) The Madhya Pradesh Registration Adhiniyam, 1961
- 14) The Tamil Nadu Societies Registration Act, 1975
- 15) Manipur Societies Registration Act, 1989
- 16) The Jammu – Kashmir Societies Registration Act, 1998
- 17) Societies Registration (Uttar Pradesh Amendment) Act, 2000

### **Trusts**

- 18) Charitable and Religious Trusts Act, 1920
- 19) Religious Endowments Act, 1863
- 20) Charitable Endowments Act 1890
- 21) Hindu Religious and Charitable Endowments Act 1951
- 22) Official Trustees Act, 1913
- 23) Civil Procedure Code, 1908
- 24) Registration Act, 1908
- 25) Indian Stamp Act, 1899

### **Wakfs**

- 26) Mussalman Wakf Act, 1923
- 27) Mussalman Wakf Validating Act, 1913
- 28) Mussalman Wakf Validating Act, 1930
- 29) Wakf Act, 1995

## **State Acts**

- 30) Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
- 31) Bihar Hindu Religious Trusts Act, 1950
- 32) Bombay Public Trusts Act, 1950
- 33) Bombay Public Trusts Rules, 1951
- 34) Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997
- 35) Karnataka Hindu Religious Institutions and Charitable Endowments Rules, 2002
- 36) Kerala Travancore-Cochin Hindu Religious Institutions Act, 1950
- 37) Orissa Hindu Religious Endowments Act, 1951
- 38) Rajasthan Public Trust Act, 1959
- 39) Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959
- 40) The Madras Hindu Religious And Charitable Endowments Act, 1951
- 41) Uttar Pradesh Charitable Endowments (Extension of Powers) Act, 1950
- 42) Charitable Endowments (U.P. Amendment) Act, 1952
- 43) United Provinces Charitable Endowments Rules, 1943
- 44) Religious Endowments (Uttar Pradesh Amendment) Act, 1951
- 45) Uttar Pradesh Hindu Religious Institutions (Prevention of Dissipation of Properties) (Repeal) Act, 2000

The Madhya Pradesh Public Trusts Act, 1951 has been repealed by the Bombay Public Trusts (Unification and Amendment) Act, 1959-(Bombay Act No. VI of 1960).

## **Constitutional Provisions with regard to Charitable Organisations**

The Indian Constitution provides a distinct legal space to social capital / civil society institutions (a) through its Article on the right to form associations or unions – Article 19 (1)(c);

(b) through Article 43 which talks of States making endeavor to promote cooperatives in

rural areas; and

(c) through explicit mention in entries made in the Seventh Schedule.

The Relevant Entries in the Seventh Schedule to the Constitution are as follows:

- The Union list (List I)
  - Entry 43 - "Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including co-operative societies".
  - Entry 44 - "Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities".
- The State list (List II)
  - Entry 32 - "Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies".
- The Concurrent List (List III)
  - Entry 10 - "Trusts and Trustees"
  - Entry 28 - "Charities and charitable institutions, charitable and religious endowments and religious institutions".

Since forming Associations is a Constitutional right under Article 19(1)(c) of the Indian Constitution, it is quite feasible to set up a non-profit/voluntary organisation without any kind of registration or recognition under any of the entries mentioned above. In fact, some of the community based organisations like village committees, small religious groups and many Resident Welfare Associations function in this manner. However, when it comes to claiming exemptions under the Income Tax Act, 1961 and for availing of other benefits from the Government, there is insistence on formal registration.

## **FORMATION AND REGISTRATION OF THE VARIOUS FORMS OF CHARITABLE ORGANISATIONS**

There are three types of legal forms of charitable organisations under Indian law: trusts, societies, and section 25 companies: -

- Charitable Trust settled by a settlor by a Trust Deed or under a Will - Trusts and charitable institutions registered under the Indian Trusts Act, 1882; Charitable Endowments Act, 1890; the Bombay Public Trusts Act, 1950; and similar other State Acts.
- Charitable institution can be formed by registering as a company u/s. 25 of the Companies Act, 1956, as non-profit company (without addition to their name, the word "Limited" or "Private Limited") - Non-profit companies incorporated under Section 25 of the Companies Act, 1956.
- Charitable or religious institution / association can be formed as a society - Societies registered under the Societies Registration Act, 1860.

Public charitable trusts, by definition, must be created for the benefit of the public. Societies likewise may be registered for charitable purposes. Section 25 companies are formed for the limited purposes of "promoting commerce, art, science, religion, charity or any other useful object."

## **FOREIGN CONTRIBUTIONS TO CHARITABLE ORGANISATIONS**

Organizations having a definite cultural / social/ educational religious /economic object were allowed to accept foreign contribution only after registering itself with the Central Government as per the provision of the Foreign Contribution (Regulation) Act, 1976 (FCRA). The main purpose of the Act was to curb the use of foreign funds and hospitality for nefarious and anti-national purposes.

However, the Foreign Contribution (Regulation) Act 2010 (FCRA 2010) was passed to replace the Foreign Contribution (Regulation) Act 1976. The FCRA 2010 was passed by Rajya Sabha on 19th August 2010 and received the assent of the President on 26<sup>th</sup> September, 2010.

The Foreign Contribution (Regulation) Act, 2010 came into effect from May 1, 2011. The Ministry of Home Affairs has issued the necessary Gazette Notification vide S.O. 999 (E) dated the 29th April, 2011 in this regard. Consequently, the earlier Act, viz., the Foreign Contribution (Regulation) Act, 1976 has been repealed.

The Ministry of Home Affairs had also issued a Gazette Notification vide G.S.R. 349 (E) dated the 29th April, 2011 notifying the Foreign Contribution (Regulation) Rules, 2011 made under section 48 of FCRA, 2010. The FCR Rules, 2011 have come into force simultaneously with FCRA, 2010 i.e w.e.f 1st May, 2011.

The new FCRA, 2010 has a much broader applicability; it is applicable to individuals, Hindu Undivided Family (HUF), Association and a section 25 company.

### **Salient Features of the Act**

Any association granted prior permission or registered with the Central Government under Section 6 or under the repealed FCRA, 1976, shall be deemed to have been granted prior permission or registered, as the case may be, under FCRA, 2010 and such registration shall be valid for a period of five years from the date on which the new Act has come into force.

While the provisions of the repealed FCRA, 1976 have generally been retained, the FCRA, 2010 is an improvement over the repealed Act as more stringent provisions have been made in order to prevent misutilisation of the foreign contribution received by the associations.

Any organisation of a political nature and any association or company engaged in the production and broadcast of audio or audio visual news or current affairs programme have been placed in the category prohibited to accept foreign contribution.

A new provision has been introduced to the effect that no person who receives foreign contribution as per provisions of this Act, shall transfer to other person unless that person is also authorized to receive foreign contribution as per rules made by the Central Government.

Another new provision has been made to the effect that foreign contribution shall be utilized for the purpose for which it has been received and such contribution can be used for administrative expenses up to 50% of such contribution received in a financial year. However, administrative expenses exceeding fifty per cent of the contribution to be defrayed with the prior approval of the Central Government.

New provisions have been made for suspension as well as cancellation of registration granted for violation of the provisions of the Act. Such provisions did not exist in the repealed Act.

New provision has also been made for management of foreign contribution and assets created out of such contribution of persons whose certificates have been cancelled.

Under the repealed Act, there was no time limit regarding the validity of registration certificate granted to the associations etc. for accepting foreign contribution. FCRA, 2010 provides that the certificate granted shall be valid for a period of five years and the prior permission shall be valid for the specific purpose or specific amount of foreign

contribution for which permission was granted. Further, every person who has been granted a certificate shall renew it within six months before the expiry of the period of certificate.

No funds other than foreign contribution shall be deposited in the FC account to be separately maintained by the associations etc. Every bank shall report to such authority, as may be prescribed, the amount of foreign remittance received, sources and manner and other particulars.

Provision has been made for inspection of accounts if the registered person or person to whom prior permission has been granted fails to furnish or the intimation given is not in accordance with law.

A new provision has been introduced to the effect that the assets of any person who has become defunct shall be disposed of in such manner as may be, specified by the Central Government.

A new provision has been introduced to the effect that any person, who knowingly gives false intimation and seeks prior permission or registration by means of fraud, false representation or concealment of material fact, shall, on conviction by Court, would be liable to imprisonment for a term which may extend to six months or fine or with both.

Any person contravening the provisions of the Act shall be punishable with imprisonment for a term which may extend to five years or with fine or with both.

### **Salient Features of the Rules**

Guidelines for declaration of an organisation to be of a political nature, not being a political party have been prescribed.

Activities to be treated as speculative activities have been defined.

Expenditure constituting 'Administrative expenses' has been clearly defined.

Modalities for submission of application for obtaining registration or prior permission to receive foreign contribution have been given in detail in the Rules and Forms for filing the applications.

The applications for obtaining registration or prior permission shall have to be made electronically on-line, and shall have to be followed by forwarding the hard copy of the on-line application, duly signed, together with the required documents within thirty

days of the submission of the on-line application, failing which the request of the person shall be deemed to have ceased.

Any person whose request has ceased shall be able to prefer a fresh on-line application only after six months from the date of cessation of the previous application.

No person would be permitted to prefer a second application for registration or prior permission within a period of six months after submitting an application either for the grant of prior permission for the same project or for registration.

A new provision has been made for submission application fee. The fee for obtaining registration or prior permission would be Rs. 2000/- and Rs. 1000/- respectively.

Applications made for registration or prior permission under the repealed FCRA, 1976 but not disposed of before the date of commencement of these rules shall be deemed to be an application for registration or prior permission, as the case may be, under the new Rules, subject to the condition that the applicant furnishes the prescribed fees for such registration or prior permission, as the case may be.

Every person who has been granted registration or prior permission shall maintain a separate set of accounts and records, exclusively, for the foreign contribution received and utilised.

Every certificate of registration issued to a person shall be liable to be renewed after the expiry of five years from the date of its issue on proper application and application for its renewal shall have to be made in the prescribed form accompanied by a fee of Rs.500/- six months before the date of expiry of the certificate of registration. A person implementing an ongoing multi-year project shall apply for renewal twelve months before the date of expiry of the certificate of registration.

In case no application for renewal of registration is received or such application is not accompanied by the requisite fee, the validity of the certificate of registration of such person shall be deemed to have ceased from the date of completion of the period of five years from the date of the grant of registration. If the validity of the certificate of registration of a person has ceased in accordance with the provisions of these rules, a fresh request for the grant of a certificate of registration may be made by the person to the Central Government as per the provisions of the Rules.

In case a person who has been granted a certificate of registration or prior permission receives foreign contribution in excess of one crore rupees, or equivalent thereto, in a financial year, he/it shall place the summary data on receipts and utilisation of the foreign contribution pertaining to the year of receipt as well as for one year thereafter in

the public domain. Besides, the Central Government shall also display or upload the summary data of such persons on its website for information of the general public.

In case the certificate of registration is suspended under the relevant provisions the Act, up to twenty-five per cent of the unutilised amount may be spent, with the prior approval of the Central Government, for the declared aims and objects for which the foreign contribution was received. The remaining seventy-five per cent of the unutilised foreign contribution shall be utilised only after revocation of suspension of the certificate of registration.

The amount of foreign contribution lying unutilised in the exclusive foreign contribution bank account of a person whose certificate of registration has been cancelled shall vest with the banking authority concerned till the Central Government issues further directions in the matter.

If a person whose certificate of registration has been cancelled transfers/has transferred the foreign contribution to any other person, the provisions of sub-rule (1) of this rule shall apply to the person to whom the fund has been transferred.

Every bank shall send a report to the Central Government within thirty days of any transaction in respect of receipt of foreign contribution by any person who is required to obtain a certificate of registration or prior permission under the Act, but who was not granted such certificate or prior permission as on the date of receipt of such remittance. The report shall contain the details regarding name and address of the donor, name and address of the recipient, account number, name of the Bank and Branch, amount of foreign contribution (in foreign currency as well as Indian Rupees), date of receipt, manner of receipt of foreign contribution (cash/cheque/electronic transfer etc.).

The bank shall also send a report containing the above details to the Central Government within thirty days from the date of such last transaction in respect of receipt of any foreign contribution in excess of one crore rupees or equivalent thereto in a single transaction or in transactions within a duration of thirty days, by any person, whether registered or not under the Act.

Every person who receives foreign contribution under the Act shall submit a report, duly certified by a chartered accountant, in the prescribed Form, accompanied by an income and expenditure statement, receipt and payment account, and balance sheet for every financial year beginning on the 1st day of April within nine months of the closure of the financial year, to the Secretary to the Government of India, Ministry of Home Affairs, New Delhi. The annual return in the prescribed Form shall reflect the foreign contribution received in the exclusive bank account and include the details in respect of the funds transferred to other bank accounts for utilisation. If the foreign contribution

relates to articles or foreign securities, the intimation shall be submitted in the prescribed Forms.

Every such return in shall also be accompanied by a copy of a statement of account from the bank where the exclusive foreign contribution account is maintained by the person, duly certified by an officer of such bank. The accounting statements referred to above shall be preserved by the person for a period of six years. A 'NIL' report shall be furnished even if no foreign contribution is received during a financial year.

Foreign contribution received by a candidate for election, referred to in section 21, shall be furnished in the prescribed Form within forty-five days from the date on which he is duly nominated as a candidate for election.

An application for revision of an order passed by the competent authority under the Act shall be made to the Secretary, Ministry of Home Affairs, Government of India, New Delhi on a plain paper. It shall be accompanied by a fee of Rs.1000/-

An application for the compounding of an offence may be made to the Secretary, Ministry of Home Affairs, on a plain paper and shall be accompanied by a fee of Rs.1000/-.

The Central Bureau of Investigation or any other Government investigating agency that conducts any investigation under the Act shall furnish reports to the Central Government, on a quarterly basis, indicating the status of each case that was entrusted to it, including information regarding the case number, date of registration, date of filing charge sheet, court before which it has been filed, progress of trial, date of judgment and the conclusion of each case.

Any information or intimation about political or speculative activities of a person shall be furnished to the Secretary to the Government of India in the Ministry of Home Affairs, New Delhi. Such information or intimation shall be sent by registered post.

Any person intending to transfer the foreign contribution may make an application to the Central Government in the prescribed Form. The Central Government may permit the transfer in respect of a person who has been granted the certificate of registration or prior permission under, in case the recipient person has not been proceeded against under any provision of the Act. Any transfer of foreign contribution shall be reflected in the prescribed returns by the transferor and the recipient.

In case the foreign contribution is proposed to be transferred to a person who has not been granted a certificate of registration or prior permission by the Central Government, the person concerned may apply for permission to the Central

Government to transfer a part of the foreign contribution, not exceeding ten per cent, of the total value of the foreign contribution received. The application shall be countersigned by the District Magistrate having jurisdiction in the place where the transferred funds are sought to be utilised. The District Magistrate concerned shall take an appropriate decision in the matter within sixty days of the receipt of such request from the person. The donor shall not transfer any foreign contribution until the Central Government has approved the transfer.

---

### **About the Author**

#### ***Rajkumar S. Adukia***

*B. Com (Hons.), FCA, ACS, AICWA, LL.B, M.B.A, Dip IFRS (UK), Dip LL & LW*

*Senior Partner, Adukia & Associates, Chartered Accountants*

*Meridien Apts, Bldg 1, Office no. 3 to 6*

*Veera Desai Road, Andheri (West)*

*Mumbai 400 058*

*Mobile 098200 61049/093230 61049*

*Fax 26765579*

*Email [rajkumarfca@gmail.com](mailto:rajkumarfca@gmail.com)*

*Mr.Rajkumar S Adukia is an eminent business consultant, academician, writer, and speaker. A senior partner of Adukia & Associates he has authored more than 34 books on a wide range of subjects. His books on IFRS namely, "Encyclopedia on IFRS (3000 pages) and The Handbook on IFRS (1000 pages) has served number of professionals who are on the lookout for a practical guidance on IFRS. The book on "Professional Opportunities for Chartered Accountants" is a handy tool and ready referencer to all Chartered Accountants.*

*In addition to being a Chartered Accountant, Company Secretary, Cost Accountant, MBA, Dip IFR (UK), Mr. Adukia also holds a Degree in Law and Diploma in LaborLaws. He has been involved in the activities of the Institute of Chartered Accountants of India (ICAI) since 1984 as a convenor of Kalbadevi CPE study circle. He was the Chairman of the Western Region of Institute of Chartered Accountants of India in 1997 and has been actively involved in various committees of ICAI. He became a member of*

*the Central Council in 1998 and ever since he has worked tirelessly towards knowledge sharing, professional development and enhancing professional opportunities for members. He is a regular contributor to the various committees of the ICAI. He is currently the Chairman of Committee for Members in Industry and Internal Audit Standard Board of ICAI.*

*Mr. Adukia is a rank holder from Bombay University. He did his graduation from Sydenham College of Commerce & Economics. He received a Gold Medal for highest marks in Accountancy & Auditing in the Examination. He passed the Chartered Accountancy with 1st Rank in Inter CA & 6th Rank in Final CA, and 3rd Rank in Final Cost Accountancy Course in 1983. He started his practice as a Chartered Accountant on 1st July 1983, in the three decades following which he left no stone unturned, be it academic expertise or professional development. His level of knowledge, source of information, professional expertise spread across a wide range of subjects has made him a strong and sought after professional in every form of professional assignment.*

*He has been coordinating with various professional institutions, associations' universities, University Grants Commission and other educational institutions. Besides he has actively participated with accountability and standards-setting organizations in India and at the international level. He was a member of J.J. Irani committee which drafted Companies Bill 2008. He is also member of Secretarial Standards Board of ICSI. He represented ASSOCHAM as member of Cost Accounting Standards Board of ICWAI. He was a member of working group of Competition Commission of India, National Housing Bank, NABARD, RBI, CBI etc.*

*He has served on the Board of Directors in the capacity of independent director at BOI Asset management Co. Ltd, Bharat Sanchar Nigam Limited and SBI Mutual Funds Management Pvt Ltd. He was also a member of the London Fraud Investigation Team.*

*Mr. Rajkumar Adukia specializes in IFRS, Enterprise Risk Management, Internal Audit, Business Advisory and Planning, Commercial Law Compliance, XBRL, Labor Laws, Real Estate, Foreign Exchange Management, Insurance, Project Work, Carbon Credit, Taxation and Trusts. His clientele include large corporations, owner-managed companies, small manufacturers, service businesses, property management and construction, exporters and importers, and professionals. He has undertaken specific assignments on fraud investigation and reporting in the corporate sector and has developed background material on the same.*

*Based on his rich experience, he has written numerous articles on critical aspects of finance-accounting, auditing, taxation, valuation, public finance. His authoritative articles appear regularly in financial papers like Business India, Financial Express, Economic Times and other professional / business magazines. He has authored several accounting and auditing manuals. He has authored books on vast range of topics including IFRS, Internal Audit, Bank Audit, Green Audit, SEZ, CARO, PMLA, Antidumping, Income Tax Search, Survey and Seizure, Real Estate etc. His books are known for their practicality and for their proactive approaches to meeting practice needs.*

*Mr. Rajkumar is a frequent speaker on trade and finance at seminars and conferences organized by the Institute of Chartered Accountants of India, various Chambers of Commerce, Income Tax Offices and other Professional Associations. He has also lectured at the S.P. Jain Institute of Management, Intensive Coaching Classes for Inter & Final CA students and Direct Taxes Regional Training Institute of CBDT. He also develops and delivers short courses, seminars and workshops on changes and opportunities in trade and finance. He has extensive experience as a speaker, moderator and panelist at workshops and conferences held for both students and professionals both nationally and internationally.. Mr. Adukia has delivered lectures abroad at forums of International Federation of Accountants and has travelled across countries for professional work.*

***Professional Association:*** *Mr. Rajkumar S Adukia with his well chartered approach towards professional assignments has explored every possible opportunity in the fields of business and profession. Interested professionals are welcome to share their thoughts in this regard.*