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Political and Charitable Contribution – Laws in India

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1. The Board of Directors of a public company, or of a private company which is a subsidiary of a public company, can contribute to charitable and other funds, even which are not directly related to the business of the company or the welfare of its employees. However, the aggregate of the amount of contribution, in any financial year, shall not exceed fifty thousand rupees (INR 50,000), or five per cent (5%), of its average net profits during the three financial years immediately preceding the date of the contribution. The quantum of the contribution shall be the greater of either of the above.

2. Incase the sum exceeds the above limit, consent of the shareholders will be required in a general meeting of the company by way of resolution and the total amount, which may be contributed to charitable and other funds in the financial year has to be specified.

3. Under Indian law, a government company or company which has been in existence for less than three financial years, is prohibited to contribute any amount, directly or indirectly to any political party or for any political purpose to any person.

4. Any company other than the above mentioned, may contribute to a political party or for any political purpose, an amount, directly or indirectly, subject to the condition that the aggregate of that amount contributed by the company in any financial year shall not exceed five per cent (5%) of its average net profits during the preceding three financial years. Such contribution shall be authorised by the Board of Directors.

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2 Sec 293 (1) (e), the Companies Act, 1956
3 "Political Party" means a political party registered under the Representation of the People Act, 1951
4 Sec 293 A, the Companies Act. 1956
5. Further, the Company is required to disclose in its profit and loss account such amount contributed by it to any political party or for any political purpose to any person or to any charitable organisation during the financial year to which that account relates, giving particulars of the total amount contributed and the name of the party, person or organisation to whom such amount has been contributed.

6. The Reserve Bank of India has issued guidelines requiring the Banks/Authorised Dealers that while accepting foreign contribution for onward credit to accounts of association or organization, it should be ensured that concerned association or organization is registered with Ministry of Home Affairs or has their prior permission to receive such foreign contribution as required under the Foreign Contribution (Regulation) Act, 1976 (FCRA).

7. Any donation, delivery or transfer of any article, currency or foreign security shall be deemed to be foreign contribution when received by any person from any foreign source, whether directly or indirectly, through one or more persons.

8. Such foreign contribution should be received only through the designated bank, the name of which has been specified in the application for registration submitted to the Ministry of Home Affairs.

9. Further, a candidate for election, a political party or an office-bearer thereof is prohibited from accepting any foreign contribution.

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5 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 Rs. 1000,
   (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.

6 Foreign Source’s definition is an inclusive one. It includes a foreign company incorporated outside India, which has established a place of business in India and also includes a company which is a subsidiary of a foreign company, a multi-national corporation and company of which more than one half of the nominal value of share capital is held by foreign citizens, corporations incorporated in a foreign country territory, a citizen of foreign country.
10. Organisation of political nature, not being a political party\(^7\) may accept any foreign contribution with prior permission of Central Government.

11. Under the Foreign Exchange laws of India, there is a specific provision stating a person may send into India foreign exchange without any limit and in any form other than currency notes, bank notes and travellers cheques\(^8\).

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\(^7\) Organisation of political nature not being a political party is defined to mean "organisation" notified as such by the Central Government in the Official Gazette, having regard to the activities 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.

\(^8\) Notification No. FEMA 6/2000 – RB – 03.05.2000