

Funder Roundtable on Indian FCRA Amendments 2020

Summary of Discussion

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On September 20, 2020, the lower house of the Indian parliament passed a bill amending the Foreign Contribution Regulation Act (FCRA), signaling a significant shift in how foreign funding is regulated in the country. The bill has since become law after the president assented on September 28, 2020 and went into effect September 29, 2020. The onerous amendments to an already burdensome law will have [negative consequences for any funders outside of India](#) that support Indian nonprofits.

Join the Council on Foundations and the International Center for Not-for-profit Law (ICNL) as the amendments are discussed and learn from peer funders about how the changes to FCRA will impact your work.

Moderator

- [Brian Kastner](#), Manager, Global Philanthropy | Council on Foundations

Speakers

- [Julie Hunter](#), Legal Advisor – Asia & the Pacific | ICNL
- [Noshir Dadrawala](#), CEO | Centre for Advancement in Philanthropy
- [John Hecklinger](#), President and CEO | Global Fund for Children
- [Seema Nair](#), Program Officer for India | Fund for Global Human Rights

What are the amendments? (taken from [Centre for Advancement of Philanthropy](#))

1. **No-sub-granting**

No organisation which is registered and granted a certificate or has obtained prior permission under FCRA and receives any foreign contribution, shall transfer such foreign contribution to any other organisation.

This means an institution registered or having prior permission under FCRA cannot make sub-grant/s to any other institution from foreign contributions received in its designated FCRA Bank account even if the second recipient or sub-grantee has registration or prior permission under FCRA.

This amendment will be a major blow to NGOs working collaboratively on projects and programs.

This may also place 'foreign funding agencies' or 'foreign grant -making organizations' registered under FCRA in difficulty.

2. Cap on admin expenditure

Currently institutions are allowed to spend up to fifty per cent of foreign funds received during the fiscal year on admin expenditure. The Bill now proposes to **reduce it to twenty percent**.

This amendment will be a major blow to organisations in terms of payment of salaries, professional fees, utility bills, travel and other such expenditure.

3. Suspension in case of contravention

If the Ministry of Home Affairs “on the basis of any information or report, and after holding a summary inquiry, has reason to believe that a person (person includes an association) who has been granted prior permission has contravened any of the provisions of this Act, it may, pending any further inquiry, direct that such person (or association) shall not utilize the unutilized foreign contribution or receive the remaining portion of foreign contribution which has not been received or, as the case may be, any additional foreign contribution, without prior approval of the Central Government.”

In other words, MHA will have the power to freeze the FCRA Bank account in case of any contravention of the FCRA law. (Even if the violation is not proven and is just an allegation and an initial hearing).

4. Aadhaar of Board Members & Copy of passport and OCI card

Organisations applying for registration, prior permission or renewal of FCRA registration shall be required to “provide as identification document, **the Aadhaar number of all its office bearers or Directors or other key functionaries**, by whatever name called, issued under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, or a copy of the Passport or Overseas Citizen of India Card, in case of a foreigner.”.

5. Suspension of registration

Currently the FCRA registration of an organization which violates the provisions of FCRA may be suspended for “such period **not exceeding** one hundred and eighty days as may be specified”.

The Bill proposes to amend this to “one hundred and eighty days, or such further period, not exceeding one hundred and eighty days, as may be specified”.

This amendment will empower MHA to suspend FCRA registration of an organization for more than six months.

6. Voluntary surrendering FCRA registration – Boon or Bane?

Under current law there is no provision for an organization to voluntarily surrender its FCRA registration.

The Bill now proposes that on a request being made in this behalf by the organization, MHA may permit any organization to surrender the certificate granted under this Act, if, after making such inquiry as it deems fit, MHA is satisfied that such organization has not contravened any of the provisions of FCRA, and **the management of foreign contribution and asset, if any, created out of such contribution has been vested in the competent authority as provided in Section 15(1)**.

While this amendment will prove to be a boon for organisations no longer interested in receipt of foreign funds, it will be a bane for organisations which may have created assets (e.g. schools, hospitals, vocational training centers) out of foreign funds.

On surrendering FCRA registration, assets created out of foreign contributions may also have to be surrendered to the competent government authority.

7. Inquiry before renewal of FCRA

Generally, renewal of FCRA registration has been relatively easy for organisations who have been compliant with requirements under FCRA such as filing annual returns in online Form FC-4, quarterly intimation etc.

However, it is proposed now that MHA, before renewing the certificate, shall make such inquiry, as it deems fit, to satisfy itself that such organization has fulfilled all conditions specified under Section 12(4) of FCRA 2010.

8. FCRA Bank Account with State Bank of India

Currently organisations are required to open their designated FCRA Bank account with any Core Banking Compliant Bank integrated with the Public Financial Management Systems (PFMS).

The Bill now proposes that organisations granted registration or prior permission under FCRA shall receive foreign contribution only in an account designated as “FCRA Account” by the bank, which shall be opened by him for the purpose of remittances of foreign contribution in **such branch of the State Bank of India at New Delhi**, as the Central Government may, by notification, specify in this behalf, provided that such organization may also open another FCRA Account in any other scheduled bank of their choice for the purpose of keeping or utilizing the foreign contribution which has been received from the FCRA Account in the specified branch of State Bank of India at New Delhi.

Thus, from the requirement of having designated FCRA Bank account with any Core Banking Compliant Bank integrated with the Public Financial Management Systems (PFMS) it has now been narrowed down to **such branch of the State Bank of India at New Delhi**.

The Bill also makes it incumbent on the specified branch of the State Bank of India at New Delhi or the branch of the scheduled bank where the organization has opened the foreign contribution account to report to the government of India, the prescribed amount of foreign remittance; the source and manner in which the foreign remittance was received; and other particulars, in such form and manner as may be prescribed.’

FAQs

1. Should I stop making grants to Indian NGOs?

- The short answer, is yes. In this transitional period before rules are released from the government, current guidance from experts is that you should suspend any grantmaking. As soon as rules are released that

provide details on how the amendments will be enforced, it may be advisable to resume grantmaking.

2. Is it possible to sub-contract with NGOs rather than make grants?

- It is possible, but it is also likely that the government will see this as an attempt to hide or disguise a charitable grant, so it is not recommended.

3. What should I do about existing grants or projects? Can they proceed as planned?

- Grants that were made before this law was passed should be fine. Foreign funds residing in previously-sanctioned bank accounts should still be accessible and able to be utilized by nonprofit partners. There are however some concerns to note: (1) if these existing funds were intended to be used for sub-grants, they should no longer be utilized for that purpose given the ban on sub-grants is now in place, (2) if the organization in receipt of existing foreign funds has already exceeded the 20% cap on administrative expenses, it may be best if the organization utilizes the remaining funds on purely programmatic activities.

4. Regarding the 20% administrative cap, is that for the fiscal year or per grant?

- The law stipulates the cap is for the fiscal year, but it may be difficult for nonprofits to track this if they receive multiple foreign grants. Funders can speak with their partners and consider building the 20% cap into new grant agreements, or work with other funders to fund different parts of the organization to ensure it is adequately staffed and supported.

5. Is there potential for funders to get in trouble under the new law?

- While it is more likely that your partners in India will get into hot water, it is also possible that your organization could. FCRA violations compound and require fees to be paid by the Indian partner organization and could ultimately result in them losing their registration. It is not unheard of to end up on a list of banned funders.

6. Where can I find more information about banned NGOs?

- FCRA maintains a list that can be found here:
https://fcraonline.nic.in/fc8_cancel_query.aspx

7. Where can I find more information about penalties?

- The most recent document can be found here:
https://fcraonline.nic.in/Home/PDF_Doc/doc%206-4.pdf
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Other Resources

- The Times of India: [FCRA law could dry up money for less popular causes, shut shut small NGOs down, says Ingrid Srinath](#)
- Alliance Magazine: [FCRA Bill's impact on civil society in India](#)
- Centre for Social Impact and Philanthropy at Ashoka University: [How the Proposed FCRA Amendments Hurt India's Development and Democracy](#)
- VANI (India's NGO Association): [Request to refer FCRA bill, 2020 to a Select/Standing Committee of the Parliament](#)