

DECEMBER-2020

Foreign Contribution Regulation (Amendment) Act, 2020 and its Implications



FCRA 2020

Persons registered under the Foreign Contribution (Regulation) Act, 2010 [\[1\]](#) , (including non-governmental organizations (NGOs) and non-profit organizations (NPOs) as well as pending and prospective applicants seeking registration, will now have to take appropriate steps to bring themselves in line with the recent amendments to the FCRA and the Rules thereunder.

The FCRA was enacted in order to regulate the acceptance and use of foreign contribution or foreign hospitality by individuals, associations and companies, and to prohibit acceptance and use of such contributions for activities detrimental to national interests.

Owing to the doubling of foreign funds received between the years 2010–2019, and underutilization of foreign funds for the intended purpose, the Foreign Contribution Regulation (Amendment) Act, 2020 (“the

Amendment”) was brought into force on 29 September 2020. The Amendment aims to streamline the provisions of the FCRA, strengthen *the compliance mechanism, and enhance transparency and accountability in the receipt and use of foreign contribution.*^[2] On 10 November 2020, the Foreign Contribution Regulation (Amendment) Rules 2020 (“Rules”)^[3] were also brought into force, prescribing the amended procedure and forms under the FCRA.^[4]

FCRA Amendment Act, 2020

The Amendment makes several changes to FCRA, notably by increasing the powers of the Central Government under the FCRA, imposing new compliances and restricting certain actions of Registered Persons. Some of the common concerns regarding the Amendment, the amended Rules and its implications are addressed below–

(i) Whom does the Amendment impact?

The Amendment impacts Registered Persons, persons seeking renewal of registration as well as pending and prospective applicants seeking fresh registration under the FCRA.

(ii) What is the impact of the Amendment on administrative expenses of a Registered Person?

The Amendment reduces the ceiling on use of the foreign contribution for administrative expenses from 50% to 20%. As per Rule 5(ii) administrative expenditure *inter alia* includes: “*all expenses towards hiring of personnel for management of the activities and salaries, wages or any kind of remuneration paid, including cost of travel, to such personnel*”.

This could prove to be particularly difficult for certain Registered Persons who rely heavily on these funds for defraying administrative expenses, including salaries.

(iii) What are the conditions introduced in the Amendment and amended Rules for opening of an FCRA Account?

The Amendment, read with the Rules centralizes the inflow of foreign funds in the country by requiring all Registered Persons to open a new “FCRA Account” at the SBI Main Branch, New Delhi for receipt of all foreign contributions. Prior to the amendment, such funds could be received in a bank account maintained with any of the scheduled banks.

The recipient is however permitted to open or operate another FCRA Account in any of the scheduled banks in India for the purpose of keeping or utilizing the foreign contribution, provided such funds are first received in FCRA Account maintained with the SBI Main Branch. No charges / fee etc. shall be levied on any transfer of foreign contribution from the FCRA Account maintained with the SBI Main Branch to the other FCRA Account(s) maintained with any other scheduled bank.[\[5\]](#)

To open the new account, persons need not visit the SBI Main branch in New Delhi. They may approach any SBI branch of their choice for taking action with regard to opening their new account with the SBI.

For those with prior registration under the FCRA, the FCRA Account is to be opened by 31 March 2021.[\[6\]](#) In case fresh applicants seeking registration or applicants seeking renewal or registration, the FCRA Account is to be opened prior to such application being made.

The intent of this amendment is to facilitate monitoring and surveillance of foreign contributions, by centralizing the inflow channel of such foreign funds.

(iv) What are the restrictions on transfer of foreign contributions introduced under the Amendment?

Prior to the amendment, Registered Persons were permitted to transfer foreign contributions received by them to other Registered Persons under the FCRA without any prior permission and even to unregistered persons with the permission of the Ministry of Home Affairs, Government of India.

The Amendment now entirely prohibits Registered Persons from transferring foreign contributions to any other person whatsoever. The foreign funds are to be utilized in compliance with and subject to the provisions of the Act.

This blanket prohibition may prove to be particularly detrimental to small scale NGOs/NPOs and collaborative projects which run with the support of financial aid from well-established NGOs/NPOs, receiving foreign contributions. A more balanced approach would have been to permit such transfers from one Registered Person to another on a case to case basis, with the prior approval of the Central Government.

(v) What are the implications of the Amendment on foreign contributions received by public servants?

The Amendment adds public servants, to the list of persons restricted from accepting foreign contributions under Section 3 of the FCRA. The term “public servant” will be as defined under Section 21 of the Indian Penal Code, 1860 and has a wider connotation than the previously used term “government servant”.

(vi) What is the provision for surrender of registration introduced by the Amendment?

The Amendment has added a new Section 14A empowering the Central Government of India to permit a Registered Person to voluntarily surrender their registration certificate, after making inquiry in this regard. In such cases, the management of the Registered Person’s foreign contribution and assets created out of such contributions shall be vested in an authority prescribed by the Government.

(vii) What do the amended Rules provide regarding procedure for renewal of registration?

The amended Rules provide that:

- an application for renewal of the registration certificate shall be made to the Central Government within six months from the date of expiry of the certificate of registration;

Update: The Ministry of Home Affairs, Government of India has published a Corrigendum bearing No. G.S.R. 17(E) dated 11 January 2021, clarifying that the word “from” in this provision to read “before”. This clarification brings it in line with the remaining provisions of the FCRA, the Rules and the Amendment. Consequently, an application for renewal of the registration certificate shall be made to the Central Government within six months **before** the date of expiry of the certificate of registration. The Corrigendum can be accessed here- <http://egazette.nic.in/WriteReadData/2021/224332.pdf>

- on the expiry of the validity of the registration certificate, no person can receive or utilize foreign contributions in the FCRA Account until the registration is renewed;
- if an application for renewal is not received before the expiry date of the registration certificate, the registration certificate shall be deemed to have ceased from the date of completion of five years from the date of grant of registration certificate;
- if the registration certificate is ceased then the amount of foreign contribution lying unutilized with the Registered Person, and any assets created out of foreign contribution will vest with the prescribed government authority under the Act until the certificate is renewed or fresh registration is granted.

(viii) What other additional requirements does the Amendment introduce for fresh applicants or persons seeking renewal of registration under the FCRA?

The Amendment requires fresh applicants seeking renewal of registration to now furnish Aadhar information or a copy of Passport/Overseas Citizens of India card (for foreigners) of its key functionaries, along with the applications for prior permission/approval under section 11, grant of registration certificate under section 12, and renewal of certificate under section 16.

(ix) What is the implication of non-compliance with the Act, Amendment and Rules?

- Under Section 14(1)(d) of the FCRA, the Central Government may, after inquiry, by an order, cancel the registration certificate of a Registered Person, if the holder of certificate has violated any of the provisions of the Act or Rules or order made thereunder. No such order can be passed without giving the Registered Person a reasonable opportunity of being heard. The Central Government usually issues a show cause notice to the Registered Person prior to passing such Order.
- The Amendment empowers the Central Government to suspend registration of a Registered Person under the FCRA for a period up to 360 days, pending consideration of cancellation of registration under Section 14. Prior to the amendment, this power of suspension was limited to a period of 180 days.
- The FCRA also provides for penalties for offences, specified therein. In case of contravention of any provision of the Act for which no specific penalty is provided, the same is punishable by imprisonment which may extend up to one year or with fine or both.

Conclusion

Several concerns have been raised over the FCRA Amendment and its restrictive impact on the functioning of Registered Persons, including NGOs and NPOs.

In light of the Amendment, Registered Persons and those seeking renewal of registration/fresh registration under the FCRA will have to revisit their functioning and take active steps to ensure compliance with new provisions of the FCRA and the Rules, to enable them to receive, or continue receiving foreign contributions.

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[1] Foreign Contribution (Regulation) Act, 2010,
https://fcraonline.nic.in/home/PDF_Doc/FC-RegulationAct-2010-C.pdf

[2] Foreign Contribution Regulation (Amendment) Act, 2020
https://fcraonline.nic.in/home/PDF_Doc/fc_amend_07102020_1.pdf

[3] the Foreign Contribution Regulation (Amendment) Rules 2020
https://fcraonline.nic.in/home/PDF_Doc/fc_rules_12112020.pdf

[4] Advisory on Compliance with the Amended FCRA and Rules,
https://fcraonline.nic.in/home/PDF_Doc/fc_advisory_27112020.pdf

[5] Standard Operating Procedure (SOP) to open and operate the “FCRA Account” ,
https://fcraonline.nic.in/home/PDF_Doc/fc_sop_20112020.pdf

[6] Public Notice on procedure for opening and operating “FCRA Account”
https://fcraonline.nic.in/home/PDF_Doc/fc_notice_13102020.pdf

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