



FCRA REGISTRATION IN INDIA FOR BEGINNERS

The experts at Seamless explain how to give charitably under new regulations



To tackle social, climate, and economic issues, thousands of transactions between countries, places, and people happen daily. India is home to the most nonprofits in the world, yet the process of making charitable donations cross-border to these companies, societies, or public charitable trusts is complicated.

Those looking to receive donations from outside India need to guarantee full regulatory compliance with laws outlined by The Foreign Contribution Regulation Act (FCRA). Failure to comply with these regulations could lead to in-access of funding and the suspension of the organization's FCRA certificate – thereby threatening the status of non-governmental organisations (NGOs).

The FCRA imposed new regulations in September 2020 – changing the nature of charitable donations in India. Here's everything you need to know regarding the new application process and restrictions for charitable donors.



The FCRA

The FCRA regulates the flow of foreign funding into India. This means that all nonprofits in the country need to obtain valid FCRA Registration to legally receive charitable donations from outside sources.

On 28th September 2020, the FCRA requirements were tightened in response to India's new Foreign Contribution Amendment Act of the same year. The new changes include significant restrictions and new procedures regarding the application process.



Changes to the application process

Foreign donors need to understand the local context and application process for NGO's so they can properly differentiate between legal and non-legal companies and avoid incrimination. Before amendments, FCRA applicants needed to be registered under the Indians Trust Act (1882), the Societies Registration Act (1860), or as a Section 8 Company under the Companies Act (2013).

For an organisation seeking to apply for FCRA approval, the first step of the application was to complete an application for FCRA registration (Form FC – 3A) or FCRA prior permission (Form FC – 3B). Documents outlining the NGO's association address, registration date and number, nature of association, and the main object of the association needed to be provided. There was also an option to add Executive Committee details before providing bank details. Online payment was made to submit the application, from which point no changes were allowed to be made.

Here are the changes to the application process as of September 2020 that nonprofits need to abide by to retain legal status:

- The minimum spend on core activities for eligibility has increased to 15 Lakh across three financial years.

- The application fee for registration has increased to Rs. 10,000/-.
- The application fee for renewal has increased to Rs. 5,000/-.
- It is mandatory to have a Darpan ID to apply or renew an FCRA certificate.
- All foreign contributions can only be received in an account opened at State Bank of India, New Delhi Main Branch, 11, or Sansad Marg, New Delhi – 110001.
- It is mandatory to have an Aadhar card or Passport/OCI card to apply for or renew an FCRA certificate.
- Public servants are prohibited from accepting any foreign contributions.
- The Government may submit an inquiry to ensure that all conditions for FCRA certificate renewal are fulfilled.

In recent times, we have observed that the Ministry of Home Affairs is not approving applications for FCRA registrations and practically it is a major challenge to obtain it from the authorities.



Five important changes for those making donations

Here are some important changes for foreign donors looking to make charitable donations to Indian nonprofits:

Re-granting funds received from outside donors by one FCRA registered nonprofit to other registered nonprofits is prohibited

This means that foreign donors cannot rely on FCRA registered nonprofit intermediaries to oversee grant-making or local due diligence on their behalf. This is the case irrespective of whether the intermediary is validated via Expenditure Responsibility or Equivalency Determination.

Administrative expenses cannot exceed 20% of the total foreign contribution funds received by a nonprofit in that year

This amendment sees a reduction of 30% on the annual cap on administrative expenses covered by foreign funds – which was previously capped at 50%. Administrative expenses include:

- Legal and professional charges
- Rent charges for premises, utilities, or premise repairs
- Expenses towards the hiring, management, salaries, or wages of personnel.
- Remuneration or travel expenses
- Writing and filing costs
- Accounting and administrative costs

- Consumables expenses – including postal charges, utility charges, telephone charges, stationery and printing costs, office equipment costs.

All foreign funding must be received in the designated FCRA Accounts at the State Bank of India, NDMB

This amendment follows on from the previously outlined changes to the application process that state nonprofits to open and solely use a new designated FCRA Account with the State Bank of India, New Delhi Main Branch. It is now up to donor organisations to obtain proof from nonprofit grantees that show they have an eligible registered bank account.

Failure to comply may result in the suspension of FCRA registration for an extended period

The new law empowers the Indian Ministry of Home Affairs to implement suspensions that can exceed six months. This is a considerable increase from previous years, which stated that those in violation of FCRA provisions should receive a suspension of up to 180 days. This means that foreign donors may see donation plans or projects crumble as a result of exceedingly high suspension periods.

Nonprofits who are required to cancel or forfeit their FCRA registration due to non-compliance will also have to surrender foreign contributions or assets obtained using foreign contributions

The new FCRA regulations mean that donors may risk seeing contributions or assets created from these contributions fall under the authority of government-prescribed entities.



Conclusion

This article outlines how to give charitably to Indian nonprofit organisations as per the new FCRA regulations. In doing so, it also discusses the new registration processes for grantees and restrictions for foreign donors.

It is increasingly important that foreign donors improve their understanding of the local contexts and requirements for cross-border transactions in India.

This could seriously undermine a company's overseas nonprofit work or projects. For this reason, donor organisations need to support Indian grantees throughout the application process and beyond – making sure they comply with FCRA standards and local laws.

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