

E-NEWSLETTER

FCRA DO(S) AND DON'T(S) – POST FCRA AMENDMENT 2020



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The Ministry of Home Affairs vide Gazetted Notification dated 29th September, 2020, have made the FCR Amendment Act, 2020 effective from the date of the issue of notification. Already with such draconian amendments passed by both the Houses of Parliament, there has been a drastic impact on the workings of thousands of voluntary organizations especially those working at grassroot levels for the needy and poor, and making it effective at such a short notice have brought the entire operations of FCRA Registered NGOs in the country at a complete halt.

However, the notification issued by the department on 13th October, 2020, was a little breather for such organizations. The department have granted a transition period upto 31st March, 2021 for opening of "FCRA Account" as mandated by the FCR Amendment Act, 2020. Although the subject of the notification read as "Procedure for opening and operating the designated FCRA Account.....", but in our opinion, through the notification, the department seek to provide clarification related to opening of account in the notified branch of SBI located at 11, Sansad Marg, New Delhi, the existing bank accounts, and receiving of foreign funds.

With so much of confusions and misleading informations being circulated around regarding what to do and what not post such amendments, the Team NGOenabler thought of providing more clarity and keeping it simple to understand by compiling it in the form of "FCRA Do's and Don'ts - post FCRA Amendment 2020"

FCRA DO(s) – WHAT THE ORGANIZATIONS SHOULD DO POST AMENDMENT?

1. STOP SUB-GRANTING EVEN TO FCRA REGISTERED NGOS

As it is previous to such amendment, FCRA Registered organizations could not grant donation to organizations other than those registered under FCRA. However, with the new amendments in place, such grants now cannot be transferred even to FCRA Registered organizations thereby wiping off the concept of second recipient. The organizations will now have to execute the projects directly without partnering with other organizations.

2. OPEN A FCRA ACCOUNT IN SBI, NEW DELHI

The new amendment have mandated each FCRA registered organization to open a "FCRA Account" in the notified branch (New Delhi Main Branch located at 11, Sansad Marg notified on 07th October, 2020) of SBI at New Delhi by 31st March, 2021. Henceforth, all foreign contributions have to be received only in such FCRA Account. The details of the branch was mentioned in the latest notification released.

3. REDUCE ADMINISTRATIVE EXPENDITURE FROM FC FUNDS

As per the new regulations, the spending on expenses of administrative nature have been capped to 20% compared to 50%. So, the organizations have to restructure and formulate their budget for various projects to keep the admin expenses within the prescribed new limit and focus more on the core activities thereby justifying the objective of the donor and the very purpose of donation.

4. OPEN SEPARATE UTILIZATION ACCOUNTS FOR EACH PROJECT

In our opinion and as also permitted by the erstwhile as well as amended FCRA regulations, the organizations should open separate utilization accounts for each project for better monitoring, more transparency and accountability towards donor and ease of maintaining records.

FCRA DO(S) – WHAT THE ORGANIZATIONS SHOULD DO

POST AMENDMENTS?



5. RETAIN EXISTING FCRA BANK ACCOUNT

As per the latest notification, the FCRA organizations can retain the existing designated bank account for the purpose of keeping and utilizing the funds thereof. In our opinion too, the FCRA organizations should retain the existing bank account so that it will be easier for them to transact and utilize the FCRA Funds, after transferring the amount from SBI, New Delhi to the existing account located at their own city.

6. BE MORE VIGILANT IN FCRA COMPLIANCES

As per the new amendment, even at the time of renewal, the inquiry might be conducted, if deemed so by the department to verify that the organization has been regular in complying with the provisions of the Act. So, now the FCRA organizations have to be more vigilant in complying with the FCRA norms including timely filing of quarterly intimations, annual return, renewal application, not mixing local funds with foreign funds and many more.

7. QUOTING THE AADHAR OF KEY FUNCTIONARIES

With the amendments, it is now mandatory to quote the Aadhar number by all on Governing Board. All the office bearers, directors and other key functionaries have to now hold a valid Aadhar card and quote the same at the time of making application for renewal, re/gistration or prior permission.

8. VISIT THE FCRA WEBSITE REGULARLY

It has been specifically instructed by the MHA department in its latest notification, that all FCRA registered organizations, should time and again visit the FCRA Portal for latest updates and notifications.

FCRA DON'T(S) – WHAT FCRA REGISTERED ORGANIZATIONS SHOULD AVOID?

1. SUB-GRANTING TO PARTNER ORGANIZATIONS

With the restriction imposed on transferring of foreign funds to any organization, it is clear that the organizations working collaboratively with their partner NGOs should immediately stop transferring funds by way of sub-grants and execute the projects directly, thus taking direct ownership.

2. RECEIVING FUNDS IN EXISTING DESIGNATED ACCOUNT

Although as per the latest notification, the FCRA Organizations can retain the existing FCRA account, but no foreign funds can be received directly in such account. All foreign contributions have to be credited directly to the account in SBI Branch of New Delhi, which can then be transferred to such existing account for utilization.

Note: The organizations can continue to receive the foreign funds in the existing account upto 31st March, 2021 or till the time the account is opened in New Delhi, whichever is earlier.

3. MIXING LOCAL AND FOREIGN FUNDS

In its latest notification, the department has yet again warned against depositing or crediting any funds other than foreign funds, whether it may be in the new FCRA Account, the existing FCRA Designated Account or the utilization accounts. So, the organizations should categorically restrict themselves from mixing local and foreign funds.

4. PHYSICAL VISIT TO NEW DELHI FOR OPENING OF BANK ACCOUNT

As part of the laid down procedures for opening of bank account in SBI, New Delhi, the organizations have been directed to visit the nearest or any branch of SBI in their city or state, which will facilitate and coordinate with the relevant branch and help them open the FCRA Account. No physical visit to New Delhi is required.