

8. FCRA Compliance

FCRA stands for Foreign Contribution (Regulation) Act. Passed in 1976 to monitor the flow of foreign funds to India, its provisions are unclear to most people. This makes it mystical and fearsome for most.

It is estimated that around 26,799 NGOs¹ are registered under FCRA. No all of these receive foreign funds. In 2001-02, about 15,000 NGOs reported that they had received about Rs. 4,800 crores.

Implementation of the FCRA is with Ministry of Home Affairs. It has only one central office but operates in close co-ordination with State Intelligence Bureau. Its office is located near Khan Market in central Delhi. There are limited visiting hours and you need to make a visitor's pass to go in. However, you can do most of your work through correspondence. The postal address is:

The Secretary, Govt. of India,
Ministry of Home Affairs,
(Internal Security Wing – FCRA),
9th Floor, Lok Nayak Bhawan,
Near Khan Market, New Delhi
Phone (Reception): 24697648, 24698251

When economic liberalisation started, FERA² provisions were gradually relaxed. This led to an expectation among NGOs that FCRA will also be scrapped or relaxed. This is very unlikely. The reason is that FERA is an economic legislation, whereas FCRA is designed for internal security. This is also the reason why FCRA implementation can not be transferred to Ministry of Finance.

a) Overview of FCRA

FCRA covers both NGOs as also public servants and political parties. While the provisions of the Act appear to be very simple, these are incredibly tight. There are three key phrases relevant to NGOs:

Foreign Source³ includes all foreigners and organisations which are controlled by foreigners. A company registered in India, but controlled by foreign shareholders⁴, will be a foreign source. A foreigner who has settled down in India, but does not have an Indian passport, will be a foreign source.

Foreign source does not include Indian citizens living or working abroad. It also does not include UNO, its agencies, World Bank and IMF. Apart from this some other organisations have also been notified by the Government as exempt from this definition⁵.

¹ By August 2003, including branch offices of funding agencies

² Foreign Exchange Regulation Act, 1973

³ For more information on this, please see AccountAble 84 at www.AccountAid.net.

⁴ More than 50% shares are held by foreigners

⁵ AccountAble nos. 40 and 41 provide a listing of foreign and non-foreign sources. Available at www.AccountAid.net

Foreign Contribution means any article, funds or shares received from a foreign source. Free contribution of services is not included in the definition.

Association means practically any organisation, whether registered or not, whether a society or not, which has an office in India. The definition is wide enough to include companies, business-houses, firms, clubs and even Mahila Mandals.

The Act then creates a sub-category of Associations. These are Associations which have a definite cultural, economic, educational, religious or social program. In practical terms, this means that all NGOs are covered.

For this sub-category, there is a restriction. They can not receive foreign contribution without registration under FCRA. If they are not registered, they should get prior-permission for each grant of foreign contribution.

b) Registration or Prior Permission

For getting registration under FCRA, you have to apply in form FC-8 to the FCRA office. Form FC-8 has been revised on 24th January 2000. Normally, NGOs who have been formed recently are not granted registration for at least three years.

If you can not get registration, you can apply for prior permission using form FC-1A. This application is usually processed within 90 or 120 days. Form FC-1A has been revised on 24th January 2000.

The Act prescribes severe penalties, including jail, for violation of FCRA provisions. Some orders of the FCRA office can be appealed in the High Court or sessions court.

c) Scholarship¹

If an individual receives more than Rs.36,000 in a year as scholarship or stipend etc. from a foreign source, then they have to give intimation to the FCRA office within 30 days of receipt. Form FC-5 is to be used for this.

d) Separate Bank Account

Before you apply for FCRA registration, you have to open a separate bank account. For opening the account, you can deposit a small amount from local funds. Do not use this account till you get FCRA registration. Once you are registered, you will have to use this exclusively for foreign contribution. You can not change this bank account unless the FCRA office gives you specific permission for change.

If you have received funds through prior-permission, these should also be deposited in a separate bank account. The number of this account is to be given in form FC-1A when applying for permission.

¹ For more information on this, see AccountAble 35 available at www.AccountAid.net.

e) Separate Books of Account

If you receive foreign funds, you have to maintain a separate set of books (cash book and ledgers) exclusively for such funds. Many funding agencies ask for separate accounts – this usually means separate ledger accounts. This does not mean you can open up separate FCRA cash book for each agency. The FCRA inspectors usually object if you have more than one cash book for FCRA.

If your FCRA project involves local contribution element, do not bring the local contribution into FCRA accounts – take this to your Indian cash book.

f) Maintaining FC-6¹

If you also receive foreign contribution in kind (materials etc.), you will have to maintain a kind of stock register (FC-6) for this. The format for this stock register is given in form FC-6. This register should be maintained in your office and need not be sent to FCRA office.

A summary of this register is incorporated each year in the form FC-3. This serves as a report to the FCRA.

g) Filing FC-3²

Once you are registered under FCRA, you have to file an annual return. The return contain information on how much funds and material you received from foreign sources during the period 1st April to 31st March next. This has to reach the FCRA office by 31st July each year. You have to file this form even if you did not receive any foreign contribution in the year.

NGOs which receive foreign funds or material under prior permission also have to file this form. They have to keep filing this form till all the funds received have been fully utilised.

For filing, use the latest form FC-3, revised in July-2001. Along with form FC-3, you have to file audited Balance Sheet and a Receipts & Payments Account. These should relate to FCRA funds only. Do not include Indian funds in this. Income & Expenditure account is not required.

Form FC-3 also includes an audit report by your auditors. This part should be filled and signed by them when they complete the audit.

Send the completed form along with the audited accounts to the FCRA office by registered post. Attach an A/D³ card so you can get proof of delivery. Send the form well in advance so it will be delivered by 31st July.

If you are unable to file the form by 31st July for any reason beyond your control, write a letter to FCRA office explaining the problem. Give the date when you think you will be

¹ For more on this topic, see AccountAble 58: Maintaining FC-6, available at www.AccountAid.net.

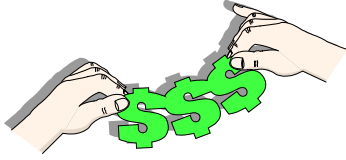
² For detailed guidance on this topic, see AccountAble issues numbered 20, 72 and 73, available at www.AccountAid.net.

³ Acknowledgement Due

able to send in the form. While there is no provision for extension of date, usually the Department does not take action against the NGO if there is a genuine reason for delay.

h) Transfers to non-FC organisations

Do not transfer FCRA funds under any circumstances to an NGO which does not have FCRA registration or prior permission. If the FCRA office finds out, you may lose your own FCRA registration and face other penalties.



Remember that it is illegal to use arrangements like legal project holder, cash transfers, shadow-lending, network funding etc. if the receiver does not have FCRA registration or prior permission. Also remember that FCRA investigation is not limited to account books – they can go the field and make inquiries. They also have access to information with local intelligence officials.

i) Bank Interest

Interest which you earn on FCRA bank account is treated as foreign contribution. This should be retained in your FCRA bank account and reported in FC-3. Similar rules apply to any interest earned on short-term deposits or investments created out of FCRA funds.

Sida requires that any interest earned on Sida funds should be set off against subsequent instalment or form part of Sida project funds and be used accordingly. Alternatively, Sida may direct you to refund the interest amount to Sida.