

FOREIGN CONTRIBUTION REGULATION ACT, 2020

GUIDANCE MANUAL

INVESTMENT BANKING FUNDING CONTRIBUTION VOLUNTARY CENTRALIZED MANUAL COLLABORATIVE CHALLENGES SOLUTIONS OVERSEAS APPROACHES ORGANIZATIONAL REGULATING GAZETTE EFFORTS FOREIGN LAW



VANI
Celebrating 30 Years
VOICE OF THE VOLUNTARY SECTOR



INDIVIDUELL MÄNNISKOHJÄLP
SWEDISH DEVELOPMENT PARTNER



FOREIGN CONTRIBUTION REGULATION ACT, 2020

GUIDANCE MANUAL

INVESTMENT BANKING
REGULATING FUNDING
GAZETTE CONTRIBUTION
VOLUNTARY
CENTRALIZED
LAW MANUAL
EFFORTS COLLABORATIVE
FOREIGN CHALLENGES
SOLUTIONS
OVERSEAS
APPROACHES
ORGANIZATIONAL

PREFACE



The Foreign Contribution Regulation Act (FCRA) has been functional as a security law since 1978, undergoing several changes in its architecture over the last 4 decades. The act has been used for monitoring and regulating foreign funding to non-profit entities that are primarily engaged in development and relief. In 2020, the Act underwent through a complete overhaul in terms of ending collaborative approaches utilized by different entities for achieving common objectives. It limited the scope for administrative expenditure which meant curtailment of staff costs and inward organizational investment. It has made centralized banking as the core process of receiving funding from overseas. Over the last decade Act, in its approach is strict and does not provide room for appeal and redressal thereby making it a daunting challenge for voluntary organizations based outside metropolitan cities- difficult to comply with. The lack of capacity support and a limited understanding of non-profit accounting with respect to foreign contributions by experts has negatively impacted the large tracts of Indian voluntary sector community. Efforts rolled out to capacitate organizations to adhere to the letter and spirit of the law have effective to a certain level but still leave room for doubt for organizations when they file for returns or renewal. Similarly, the new banking provisions were embroiled in chaos and utter disappointment as banking staff trying to link accounts to SBI headquarters in NDMB were hesitant, unaware, and confused about the process, which again, adversely impacted voluntary organizations. The gaps stand exposed and reconcile these- an effort is being drawn out by this manual to systematically present the challenges and solutions, synthesized from various webinars and meetings which will help voluntary organizations in becoming sure and confident about FCRA. The manual aims to provide a detailed understanding for organizations in becoming more compliant and knowledgeable about FCRA 2020 and will certainly aid them in becoming effective in FCRA management. For writing this report, I thank Arjun Phillips, Program Manager, VANI and to Swedish Partner IM in supporting this document.

Harsh Jaitli

CEO, VANI



CONTENTS

PREFACE.....	v
Objective of the Manual.....	2
Chapter 1: Introduction to FCRA, 2020	3
Background	3
Impact Analysis	4
Chapter 2: SBI BANKING.....	5
Working of FCRA Banking for Voluntary Organizations after 28 September 2020	6
Account Opening Form (AOF).....	6
Filing of FC-6C	7
Another FCRA Account	7
Conversion of Another FCRA Account to Utilization Account	7
Utilization Account	8
Challenges of Organizations in Opening designated SBI, NDMB Account	8
Possible Solutions	8
DARPAN, Aadhar Card and PAN.....	9
Chapter 3: Filing Annual Returns FC-4	10
Step wise filing of FC-4.....	10
Points to remember when filing FC-4	12
Problems in FC-4.....	12
Chapter 4: Renewal of FCRA License.....	13
Renewal Process.....	13
Requirements	13
Affidavit.....	14
Step wise process for filing Renewal.....	15
Charter for Auditors	15
Chapter 5: General Challenges in FCRA	16
Examining the Nature of Foreign Contribution	16
Governance in FCRA registered organizations	16
Board Approval delays	17
FCRA Activities.....	17
Local Account Mixing.....	17
Treatment for programmatic and administration expenses after FCRA Amendment, 2020:	18
Challenges faced by organizations in SBI, NDMB	18
Forms to Remember.....	19

OBJECTIVE OF THE MANUAL

The objective of manual is to compile various provisions and clauses of FCRA, Amendment, 2020 to provide simplistic information for organizations to follow and comply with. The FCRA Amendment, 2020 introduced many core changes to the application of the foreign donation regulatory regime. Ever since its introduction, it has unleashed operational challenges which have inhibited organizations operationally and are continuing to make them face uphill challenges. With the intent to document these challenges and provide solutions the manual aims to step wise detail various provisions of the Act on three core areas-

1. SBI Banking: Steps for opening bank account, challenges in opening bank account, filing FC-6C, Scope and Information on “Another FCRA Account” etc.
2. Annual Returns: Filing FC-4, steps to follow, challenges in darpan details, challenges in filling wrong information, updating donor information etc.
3. Renewal: Steps to fill for renewal, FC-3C, Challenges and solutions
4. Administrative Expenditure: How to ensure expenses do not cross 20% threshold, solutions to manage expenses
5. Charter for CA’s, vouching verification
6. Solutions for correcting information, communication with MHA etc

The need is felt for such a manual across the sector given the ambiguous language used in the law which confused organizations. The manual will first detail the FCRA law, its purpose, brief history and its scope as a regulatory law. In the second part it will extensively deal with the law’s operational provisions introduced in 2020. Third part will detail solutions to the challenges, for example problems faced when filing renewal, things to remember when applying for new bank account etc. The presentation of the manual will be in a problem-solution format. This is designed deliberately keeping in view that many grassroots organizations do not have requisite wherewithal to understand and process the new FCRA Amendment, 2020. Simplistic, diagrammatically appealing explainers will be provided to ease the understandability for the organizations.

The manual only sets to offer solutions to organizations and touches upon the operational issues entailing the amendment. It does not seek to provide critical commentary on the spirit of the law but is intended to provide information to organizations and enlist many challenges they face in FCRA, 2020. Neither will the manual be used for advocacy purposes.

CHAPTER 1: INTRODUCTION TO FCRA, 2020

The chapter discusses the various provisions introduced in FCRA Amendment Act, 2020. It provides basics of FCRA and its applicability and its impact on voluntary organizations.

Some Basics

- Purpose of Foreign Contribution Regulation Act: To regulate and control foreign funding to non-profit agencies registered in India
- Limitations Placed: funded money cannot be used for political, religious and journalism
- How does it work: Non-profit agency seeking foreign donation for a specific project or interest has to register for a FCRA license with Ministry of Home Affairs (MHA). Every five years the organization must apply for renewal of the licenses, subject to scrutiny and investigation of FCRA department under MHA.
- Requirements for FCRA license: An organization has to first apply for license, after which it has to maintain a designated account for inflow of foreign funds and one for utilizing them for project expenditure.
- Provision for receiving funds when there is no FCRA license: An organization can apply under the prior permission category to obtain permission from FCRA department to receive funds for one-time purpose only.
- Ramifications of not complying with FCRA law: Cancellation of FCRA license-which means that the organization cannot receive funds for project work. Secondly, investigating agencies and FCRA department can seize assets of organization if found in violation of certain sections of the law.
- Redressal System in FCRA: There is no scope for appellate and adjudication in FCRA related matters. Strict compliance and yearly submission has to be thoroughly maintained by the organization.

Background

The government of India introduced FCRA, 2020 bill on September 20th, after which it became an Act on 28th September 2020. Previously the Act was amended in 2010, when it installed a 5-year renewal period for voluntary organizations and included 50% administrative expenditure for organizations. After 2014, numerous changes were introduced which ranged from changing the sequence of forms, digital application, having FCRA bank accounts with PFMS compliant banks etc.

In 2019, the FCRA department issued a guideline that all organizations when submitting their annual returns should have an attached affidavit that declares at its board members are not involved in any kind of anti-national, religious conversion activities or should not have gone to jail. In 2020, after the amendment it introduced a charter for chartered accountants which mandated auditors to follow certain guidelines and parameters when conducting FCRA audits for organizations. However, the recently amended Act introduced on 20th September 2020, contained three major changes which delivered changes to the existing law namely

1. Ceasing all forms of sub-granting after 29th September 2020
2. Capping Administrative expenditure from 50% to 20%
3. Opening of a new designated account for FCRA at SBI, New Delhi Main Branch
4. Requirement of new FCRA designated account for renewal purposes

The FCRA Amendment carries wide ranging ramifications for the voluntary sector-The amendment restricts administration expenditures of organizations to 20%. It centralizes banking of all organizations under one designated bank for real time monitoring. Gives range of powers for government to seize properties and assets of voluntary organizations.



Impact Analysis

The FCRA, 2020 amendment critically affects intra-collaborations with national voluntary organizations which are compliant with FCRA regulations as it ends sub-granting which was the primary mode of voluntary sector networks and project execution. Many organizations are involved in working in partnerships and sub-granting was a preferred mode for implementing projects. Health, Water, Education, Livelihood and Governance are areas where sub-granting was prominent since working with partners for greater impact and larger geographical coverage was easily achieved. Now this has been put to end with new amendment thereby closing all opportunities for grassroot organizations to work on specific projects in specific locations.

Secondly, the law limits administrative expenditure of organizations to a meagre 20%. Administrative expenditure covers expenditure borne by organizations on the human resource, physical and institutional upkeep of the organization. This includes expenditure on organizational assets, furniture, vehicles for projects, non-project personnel, cost for litigation, cost of research and data collection, rent of measure, water, electricity and other costs. To simply put, all expenses that are not provided by any donor and borne by the organization itself are administrative costs. Capping of administrative costs will affect stable employment of many personnel that are included in projects, those whose salaries are not provided by any donors. Limitation in administrative expenditure affects research activities of CSOs to undertake. Many voluntary organizations are taking up research to augment their policy advocacy at the local and national level. For this employment of field staff is critical. A large impact of this amendment is seen leading to unemployment of development professionals/ frontline workers especially those involved in covid-19 relief work. It should be noted that voluntary organization employees are part of the 35% of formal workforce in the country (Periodic Labor Force Survey, May 2019) and are supported by various projects for their livelihoods

Thirdly, the opening of a new designated account at State Bank of India, New Delhi Main Branch (NDMB) centralized banking for all FCRA organizations as they have to open a new designated account at SBI, NDMB (while they can surrender or still use their previous designated account). The impact of this act was very tough on organizations outside metropolises as they went by the assurance of the Minister of State (Home Affairs) in Parliament who while introducing the amendment assured that organizations can approach their local branches and put in a request for opening their bank accounts, after which the request will be forwarded by the local SBI branch to NDMB. This process was one of the most grueling for voluntary organizations as many local SBI branches were not unable to open the bank accounts or facilitate the requests (account opening forms) despite numerous communique/ orders by SBI NDMB. The worry grew manifold when the date for applying for designated account was provided as 31st March 2021. Compounded to this was the numerous documentation problems that required signatures of board members and their accounts in SBI banks which glaringly became administrative challenges for many voluntary organizations.

CHAPTER 2: SBI BANKING

The chapter discusses the various provisions introduced under SBI banking provisions and filing FC-6C intimation to FCRA department under Ministry of Home Affairs.

The FCRA Amendment Act, 2020 introduced a new banking regime for voluntary organizations. It noted-

'17. (1) Every person who has been granted certificate or prior permission under section 12 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 person may also open another "FCRA Account" in any of the scheduled bank of his choice for the purpose of keeping or utilising the foreign contribution which has been received from his "FCRA Account" in the specified branch of State Bank of India at New Delhi:

Provided further that such person may also open one or more accounts in one or more scheduled banks of his choice to which he may transfer for utilising any foreign contribution received by him in his "FCRA Account" in the specified branch of the State Bank of India at New Delhi or kept by him in another "FCRA Account" in a scheduled bank of his choice: Provided also that no funds other than foreign contribution shall be received or deposited in any such account.

(2) The specified branch of the State Bank of India at New Delhi or the branch of the scheduled bank where the person referred to in sub-section (1) has opened his foreign contribution account or the authorised person in foreign exchange, shall report to such authority as may be specified,—

(a) the prescribed amount of foreign remittance; Insertion of new section 14A. Surrender of certificate. Amendment of section 15. Amendment of section 16. Substitution of new section for section 17. Foreign contribution through scheduled bank.

(b) the source and manner in which the foreign remittance was received;

and (c) other particulars, in such form and manner as may be prescribed¹.

New Designated Account for receipt of foreign funds:

This means that voluntary organizations must open a new FCRA designated account at SBI, NDMB branch for the purposes of receiving fund remittances. Existing designated accounts in different banks are no longer eligible to be utilized for receiving foreign funds and must be converted into either- "Another FCRA Account" or a "Utilization Account". The Standard Operating Procedure (SOP) issued by SBI, NDMB notes-

The amended Foreign Contribution (Regulation) Act, 2010 mandates that every person/NGO/Association (hereinafter referred to as an "entity") that have been granted FCRA certificate of registration or prior permission u/s 12 of the Act shall open an "FCRA Account" at specified branch of State Bank of India in New Delhi. The Central Government vide notification dated 07.10.2020 has notified New Delhi Main Branch (henceforth NDMB) of SBI, 11, Sansad Marg, New Delhi-110001 as specified branch.

2. Presently, there are approximately 23,000 entities which have got a Certificate of Registration or prior permission to receive foreign contribution. They now have to open a "FCRA Account" for inward remittance of any foreign contribution at the aforementioned specified branch (i.e. NDMB) on or before 31.03.2021. From the date of opening of "FCRA Account" in NDMB or from 31.03.2021, whichever is earlier, no inward remittance will be allowed in any account other than that opened in NDMB.

¹ FCRA Amendment, 2020, Gazette Notification https://fcraonline.nic.in/Home/PDF_Doc/fc_amend_07102020_1.pdf

Working of FCRA Banking for Voluntary Organizations after 28 September 2020

The amendment introduced a new designated account for receiving remittances and funding. Up till now organizations were using a designated account in different PFMS compliant banks. However, the amended act required them they had to close this account as a designated account which meant they could not receive funds into this account. Voluntary organizations could use this designated account till 31st March 2021. This meant that they before 31 March 2021, organizations were required to put in their papers for opening the new designated FCRA account at SBI NDMB. It should be noted that this amendment that prompted change in designated accounts was for organizations that already had FCRA registration. For those that had applied for FCRA license, they will be requiring an SBI designated account for all purposes of receiving funds.

Most organizations were not allowed to use their funds or transfer them to their utilization account after applying for a new designated account at SBI, NDMB.

The process of applying for designated account at SBI, NDMB is provided as follows-

1. Firstly, an organization had to approach the local SBI branch, preferably a large SBI bank in its area to open a new designated account at NDMB SBI by filling the Account Opening Form (AOF) and submitting KYC of board members. After which the organization's account will be sent to NDMB SBI as new bank account request.
2. After this the organization will be provided an acknowledgement of their NDMB SBI account by SBI, NDMB on their email
3. Thereafter the organization will have to sit with their finance/auditor and fill in their FC-6C which is going automatically going to provide information about existing designated account.
4. After this the organization will have to update their new bank information details which will require information on the new SBI designated account such as Account number, IFSC code etc which will be made available by NDMB.
5. After this an option will be provided to the organization to make the previous account a utilization account or "Another FCRA Account"
6. Thereafter which the organization must attach signed documents from the bank about their previous designated account becoming the new utilization account and then submit on the FCRA portal.

Account Opening Form (AOF)

Is a detailed form that can be downloaded from SBI bank account. Organizations have to approach nearest SBI branch (preferably large in ones in their areas) attached with details of their board members in Annexure 4 along with AOF. The Act and rules require that the board members should be key decision-making members of the organizations i.e. those who are signatories. Additionally, they need to provide their CIF number which is generated for those having an SBI current or savings account. However, those not having a SBI account can generate their CIF number by filing Annexure 4 and getting a username and password rather than go for a lengthy process of applying for a new SBI current/saving account for an individual. Many organizations faced a challenge in convincing their board members to open a new SBI account.

Submitting Board Resolution: Organizations submitting AOF for bank account must also include a resolution for the intent to open a new FCRA bank account at SBI, NDMB by a board resolution containing signatures of board members who are part of the quorum as indicated in the organization's Memorandum.

Filing of FC-6C

FC-6C update is a mandatory compliance under FCRA Amendment Act, 2020 which requires an organization to update the detail of its new SBI designated account on their FCRA portal. Organizations must, themselves file information with the FCRA department of MHA on the details of its new bank account opened at SBI NDMB. Failure to do this will invite penal action from the department in the future. For example, an organization receives confirmation letter from SBI, NDMB on its new designated bank account. Immediately afterwards it does not inform MHA by not filing FC-6C and continues to receive foreign funds into its account then it will be liable to face prosecution by the MHA. FC-6C contains input boxes where organization has to first update its designated bank account and then provide information on its Another FCRA Account and Utilization Account. When opening the online application user is pinged with information on its existing designated bank account, after which they have to e

Another FCRA Account²

The Amendment introduced the term “Another FCRA Account” which confused many organizations as to whether they have to open another account or is it referring to the new SBI designated account. Neither of these is the purpose of the account. The main objective of the FCRA department is to let organizations continue with their existing designated account and have provided them

Another FCRA Account, refers to the existing designated account that was being used by FCRA registered organizations for receiving funds. The FCRA, Amendment Act, 2020 identifies it as “Another FCRA Account” and provides it a purpose only to keep FCRA money. This means that organizations, once they have received FCRA funds into their SBI designated account can transfer that fund into “Another FCRA Account” only for storing purposes.

The following provides information on what “Another FCRA Account” is not-

1. It is not the SBI NDMB account indicated in the amended act
2. It is not a utilization account for debiting funds for project work
3. It is not a new bank account to be opened by the organization
4. It is not to be used for crediting of foreign funds by the organization

Usage: The Another FCRA Account usage is minimum and can be used for the following purposes-

- General refunds from FCRA money (made to staff and employees)
- Taxation Refunds
- Liquidation of Fixed Deposits
- Proceeds from Investments and assets

In short, Another FCRA Account is a general-purpose account mostly used for bearing out common expenses and proceeds that are foreign designated money/funds. For example, assets sold by organization that were foreign funded from which sale proceeds can be deposited in Another FCRA Account.

It is important to remember that while filing FC-6C i.e. intimation of updating FCRA bank account, details of “Another FCRA Account” have to be filled by the organization. In case the organization does not wish to continue it as “Another FCRA Account” it can convert it into a utilization account.

Conversion of Another FCRA Account to Utilization Account

FCRA department provides a provision of converting Another FCRA Account into a Utilization Account. For this a letter must be sought by the organization from its existing bank having a statement that the organization now so wishes to use it for project utilization purposes and therefore change its character as a utilization account.

² Procedure for opening FCRA Account at SBI, NDMB https://fcraonline.nic.in/home/PDF_Doc/fc_notice_13102020.pdf

Utilization Account

An organization is expected to maintain a utilization account for debiting to its project related expenses. Utilization Accounts are used as transfer accounts from where funds can be moved from designated accounts into these utilization accounts. The amendment allows organizations to retain their existing utilization accounts and provides no specific instruction on their change of nature.

Challenges of Organizations in Opening designated SBI, NDMB Account

Many organizations during the course of the discussion shared their challenges which had hampered them in opening NDMB accounts. These are provided below-

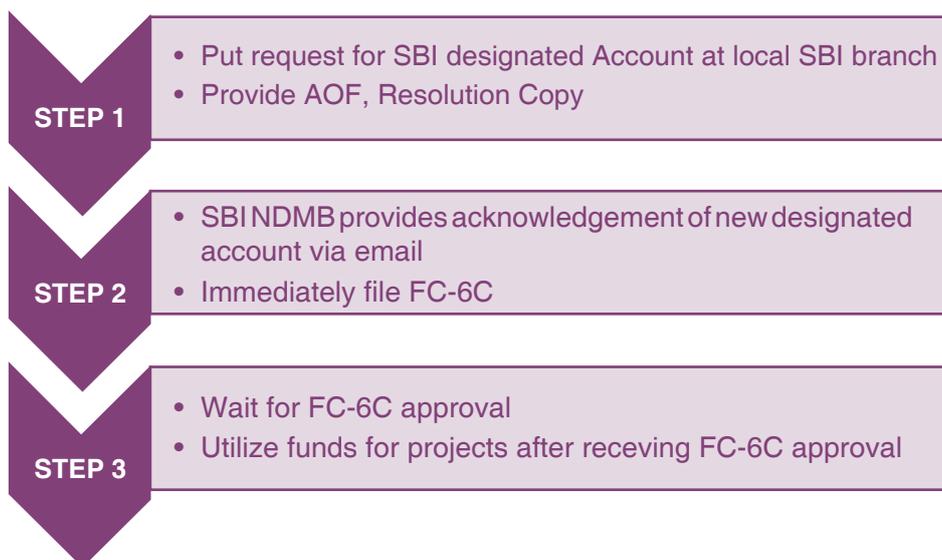
- Some banks are KYC verification through in person signature especially when board members reside in different locations and is proving difficult for them to travel
- Banks are demanding signatures of all board members on Resolution copy which is becoming difficult for organizations to procure.
- Branch officers are wrongly opening FCRA accounts in their local branches and are unaware of the linking procedure at SBI NDMB
- FC-6C is not being processed by MHA, which are posing problems for organizations to utilize funds for projects owing to mismatch in DARPAN details of board members (PAN and AADHAR)

Possible Solutions

These are solutions which have been collected by VANI, provided by CSOs and experts which were helpful in closing the various operational gaps

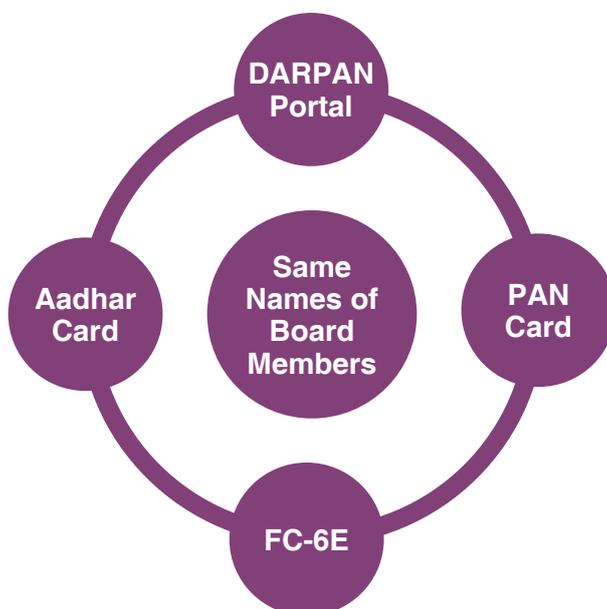
- With regards to facing an uphill task in approaching local branches to open NDMB account an organization can request SBI NDMB to issue order to local bank if they are hesitant to open account
- It is wiser to cc all information/correspondence with SBI NDMB and local branch when confronted with hesitancy by the bank in opening the account.
- In all cases, banks have to follow directives issued by local SBI bank account for example- signatures of quorum on resolution. This is non-negotiable
- Many organizations have told that many local branches are receptive to the idea of getting board members for KYC verification through whatsapp video
- If board members do not want to open SBI account for CIF number, they can approach local SBI banks and get their userid (filing annexure 4 and KYC) by saying they want to open FC account after which CIF number will be issued
- If an organization is opening savings account make sure to submit 12A because savings A/c is usually opened for a charitable organization.

Step Wise diagram of SBI Banking for FCRA Amendment Act, 2020



DARPAN, Aadhar Card and PAN

A lot of organizations are not filing proper information in the KYC (annexure 4) of their board members. Many have discrepancies related to the names. As observed many people have different names in different documents. A lot of board members in voluntary organizations have provided different names in bank accounts, AADHAR, PAN etc. This may have potential to create problems for the organization. Organizations should ensure that these discrepancies are duly updated on FC-6E of DARPAN portal before filing for KYC. It is to be remembered that DARPAN, Aadhar PAN CARD should contain the same names. It is to be remembered that DARPAN ID is essential for filing all forms and hence its details should be timely updated.



Different names on AADHAR and PAN

An organization faced considerable problem when applying for new SBI bank account as one of the board member was different on DARPAN, different on Aadhar and different on PAN. The organization applied late for their new designated account and had to request the board member to provide the same name on the two official documents of Aadhar and PAN. The process took a lot of time and the organization could not file their AOF and open their new SBI account.

CHAPTER 3: FILING ANNUAL RETURNS FC-4

The chapter discusses on the manner and provision to file FC-4 Annual Returns via a walk-through and detailed steps to be followed.

FCRA annual returns detail the different foreign fund utilized by an organization in a year. It is a yearly statement provided by an organization to FCRA department, Ministry of Home Affairs and requires organizations to provide a list of attachments when filing it. Organizations having FCRA registration need to provide the Annual Return even if they have not received any fund. This is a mandatory compliance under the law and must be fulfilled by the organization, otherwise future penal action may be initiated by the department. Annual Return filing process is a difficult and tiresome, which requires careful entry by an organization since there is no roll back or scope for correction in the form. FCRA Annual Returns are submitted using the FC-4 form available online. The return is digital and must not be submitted physically.

FC-4 Returns

Aadhar Update: It is a prerequisite for everyone to update Aadhar number of all board members. Only Persons of Indian Origin who do not have Aadhar are required to provide their passport copy or OCI card (for board member details)

Organizations need to be cognizant of the fact that DARPAN id is a must for filing FCRA form which can be done by updating DARPAN profile on the NITI Ayog website.

DARPAN was made mandatory in 2017, required for filing annual returns. However in March 2018, its mandatory provision was removed but after that it has become essential for filing Annual Returns, Renewal and Other FCRA compliances.

Step wise filing of FC-4

The following demonstrate the steps required in filing FC-4. This detailed walkthrough helps organizations in understanding the various aspects of FC-4 form.

When filing returns there are two types of returns

1. FC-1 for Contribution in Kind (PART B) which comes to include shares, software contributed by foreign source to an organization
2. FC-4 for Annual Returns

FC-4 for Annual Return (primarily details information on Money or Kind)

FC-4 has login id and password. An organization must fill and file online. FC-4 should also include value of FC-1. No organizations should send FC-4 by post

FC-4 optional to file even if it is cancelled but will not ensure re-validity.

When an organization logs on FC-4 they will find on the header a sequence of steps organizations have to follow this is Screen 1. At the start of filling the form block year and figure of Foreign contribution received has to be filled. Bifurcation from foreign source (outside India), Local source (Indian organizations having FCRA money).

On the 2nd screen details of foreign contribution received in cash/kind (value), interest earned on FC money. Information here mostly includes other receipts from project/activities: money earned from FCRA created assets not donor related contribution. Sale of FDs can be included in question 9 of the form of second screen

3rd screen organization will show the cumulative purpose wise amount of foreign contribution donation received only for thematic limbs for which FCRA registration has been provided

In the 4th screen details has to be provided donor wise- donor name and type. For online fundraising this information has to be collected and presented otherwise underreporting can result in scrutiny and cancellation.

In 5th screen automatically will display FC receipts. A tally will be displayed cumulative purpose wise.

In the 6th screen, organizations has to provide detail about social development projects which will include name of project, address, location of the project which has to be filled in the return properly. New projects can be added in this under EDIT button

In the 7th screen details of total utilizations of foreign contribution will be asked. Organizations have to fill utilization for projects, total administrative expenditure under Rule 5 of FCRR,2020. Additionally, details of people working as foreigners have to be provided (board members, people on payroll)

In the 8th screen, asset utilization details have to be provided (fresh assets purchased by the organization)

In the 9th screen, SBI FCRA account details will be asked. It is essential that organizations open their NDMB SBI and then file FC-6C and reflect details in FC-4.

In the 10th screen, details about Another FCRA account are asked where organizations have to provide info on this second level account where they can only keep the contributions but not utilize them. Organizations should use Another FCRA account for utilization purposes and if they want to surrender this account and continue with their old utilization account then they will have to file FC-6D.

In the 11th screen details about FCRA utilization account is asked.

In the 12th screen, (UNDER REPORT) organizations are required to fill a declaration in YES/NO format. Questions such as if any contributions have been transferred to any other organizations. If it is before 29th September, organizations have to check box YES and provide the detail and the date. After the amendment intra organizational has been disallowed. Other questions include transfer to non-FCRA accounts, information of jail time of any board member, asset misnomers, domestic contribution submitted in FC account, wrong bank account used for receipt of contribution, utilizing FC money for any other objective (opposed to FC registration of organization), has the organization expended more than 20% but if it is above 50% in accordance with pre-amendment rules organizations should provide details and write that the date and period. Benami organizational support by FC organization, details about FC money used outside India-this means that projects/workshops conducted outside India. (No amounts have to be provided)/. It should be remembered that wrong information will result in action by MHA against the organization

In the 13th screen – organizations are asked about subgranting before 29.09.2020. Organizations should provide FCRA number along with person/association also to provide date when the transfer took place.

In the 14th screen, information about unutilized FC is asked-fixed deposits information

In the 16th screen information about land/building is required to be filled by the organization

In the 17th screen Final submission is asked where the organizations are clearly informed not to provide non-defective documents which will result in non-submission of FC-4 return. Documents required for uploading-

- Signatures and Seal
- Audited FCRA financial statements
- CA certificate (with UDIN)
- Attested Bank statements

Points to remember when filing FC-4

- Audited statements to be uploaded should only cover FCRA funds only. Many organizations tend to show their books of accounts also detailing local/Indian money usage which is not required.
- Important to put Balance Sheet, Receipts and Payments account, Income and Expenditure Account as attachments to your FC-4 Return
- Uploading quarterly details on website
- Nil Return has to be filed no need for audited account and CA certificate

Problems in FC-4

Many organizations face the challenge of filing FC-4 which has resulted in creating problems for them. These are some points they should remember when filing the returns-

- An organization cannot file negative balances in FCRA. This is a common practice among organization as they tend to transfer from one project to another to makeup for the negatives for showing in their annual return
- There is no scope for revision in FC-4. An organization has to write an email to FCRA support team intimating errors with extensive follow up. Organizations have to communicate with the given email id's in the support webpage of fcraonlineservice.in
- Problems for uploading. Many organizations face the challenge of uploading large pdf files it is better to compress these files on smallpdf.com and then proceed to upload
- Some organizations submitted FC-4 before they had applied for their SBI NDMB and as such it is advised that there is no need to revise FC-4 since an FC-4 once submitted will not be revised again.



CA certificate for FC-4

It is compulsory to provide UDIN in CA certificate when uploading FC-4 return. The UDIN number is provided to Chartered Accountants for undertaking audits. This number is essential and a requirement when filing for FCRA Annual Return

CHAPTER 4: RENEWAL OF FCRA LICENSE

The chapter discusses on renewing FCRA license, its process and documents required

Under FCRA, 2010 all registered organizations (under the Act) must file for renewal of their licenses every five years. In 2011, automatic renewal was provided by FCRA department and the first renewal cycle came into implementation in June 2015. In June 2021, the second renewal cycle will enter and organizations that received renewal in 2015 have to once again apply for their licenses. The process is a detailed and a cumbersome investigation undertaken by the department, mainly looking into the past five year activities of the organization after which renewal may be provided or rejected. In the first cycle, it was that many organizations were not provided renewal because of their non-compliance with the FCRA law such non-filing of returns, wrong information provided in income and expenditure, balance sheet and undertaking activities which were not their stated objectives (as provided in their FCRA thematic registration and MoU of the organization).

Renewal Process

Every five years, FCRA licensed organizations must file for renewal of their FCRA before six months of their expiry date. For example, many organizations have their licenses cancelling in different months, but they have to apply before six months not before six months or more. It will be important to remember that the organization will have to have its new SBI NDMB account while filing for renewal on FC-3C

Requirements for renewal

Before filing for renewal, organization should first update board member details by filing FC-6E. A new requirement for affidavits has been instituted by the department, organizations will have to remember to solicit affidavits from board members before updating FC-6E for board members otherwise it will not be able to inputted in the portal. Organizations should also update Chief Functionary details, make sure to file overdues and pending approvals. Organizations will also have to remember to have their DARPAN id (if they do not have it) and update Aadhar numbers of the board members. Email Id and Mobile number provided by the organization should be correct as there is no chance for rollback. Once renewal is filed, organization may get emails from the department for queries. Organizations should be checking their emails regularly for any such queries until renewal is provided.

Documents required for Renewal

- Registration Certificate (Self Attested)
- MOU of the organization/trust deed (Self Attested)
- FCRA registration/renewal certificate (Self-Attested)
- DARPAN ID
- Individual Affidavit from all board members
- JPG Images of Organization seal and CEO signature

Affidavit

Introduced in 2019 it is a mandatory requirement for the organization and is a form of declaration that its board members are not part of anti-India activities. All board members have to sign a Pro-Forma 'AA' available on fcraonlineservices.in, get it printed on a Rs. 10 stamp paper and attach it with FC-3C form. Organizations need to get it individually signed by all members. It is a mandatory compliance since it penalizes organization for providing false information. The following is the format of the affidavit:

"Proforma 'AA'
(See rules 9, 12, Forms FC-3A, FC-3B and FC-3C)

[To be executed by each office bearer and key functionary and member individually on non-judicial stamp paper of Rs.10/- and attested by a Notary Public or 1st Class Magistrate]

AFFIDAVIT

I, (name of the Chief Functionary / Chairperson/ President/Secretary/ Chief Executive Officer/ Managing Director/office bearer/key functionary/member), son/daughter/wife of, resident of, having Aadhaar Number /PAN Card Number / Passport Number / Voter Identity Card Number/ Driving Licence Number as the identity proof, do hereby solemnly affirm on oath that I am the Chief Functionary / Chairperson/ President/Secretary/ Chief Executive Officer/ Managing Director/office bearer/ key functionary/ member (whichever is applicable) of (name of the applicant organisation), having its registered office at, and I have read and understood the provisions of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) and confirm that all the conditions as stipulated in sub-section (4) of section 12 of the said Act are fulfilled.

2. I also undertake to report to the Secretary to the Government of India, Ministry of Home Affairs, Foreigners Division (Foreign Contribution Regulation Act Wing) about any violation of the provisions of sub-section (4) of section 12 of the Foreign Contribution (Regulation) Act, 2010 by the applicant organisation or any of its members or office bearers or key functionaries that comes to my knowledge.

3. I also understand that submission of any false or misleading information shall be punishable under the applicable law.

Place: _____
Date: _____

Deponent

VERIFICATION

I,, above named deponent do hereby verify that the contents of the aforesaid paragraphs 1 to 3 are true to the best of my knowledge and nothing has been concealed therefrom.

Verified at on this theday of

Place: _____
Date: _____

Avoidance for cancellation of Renewal

- Organizations should not have foreigners of their board, neither they should have non-residents
- Active political agents should not be on the board
- There should not be a common CEO of more than organizations (Aadhar used as filtration process)
- Overspending in Administration Expenses if it is more than 50% in 2019-20 and more than 20% in 2020-21

Enquiry before renewal

- Organizations may be subjected to enquiries if they are involved in benami, conversion, mismanagement of funds etc
- Secondly, organizations should be undertaking reasonable activity that is funds spent for activities for which grants are provided
- Organization should not have been prosecuted/convicted nor should be involved in anti-national activities

What is to be done before renewal

- Complete mega funded projects before renewal. It is better not to credit large amounts before applying for renewal as this may be reasonable case for denying renewal.
- Reducing fixed costs if there are delays in renewals.

Delayed Application

Organizations can submit delayed application with Rs. 5000 fee. FCRA license ceases on date of expiry. FCRA assets come under the control of government. Rule 12(5) stipulates that organizations cannot use existing FCRA money.

Step wise process for filing Renewal

The following is a walkthrough of the renewal process

1. Organizations will have to select Renewal on FC-3C
2. Once selected the next screen will display organizational details on record. There is a computer glitch on the portal where it is displaying that organization has to apply before 30/00/2021 which should be avoided. After this organization has to click on the option "Click for Renewal" below the screen.
3. The next screen displays "Details of Office Bearers or key functionaries of the association". Here the detail of board members is displayed automatically. Option for Edit/Delete is provided.
4. On the next screen, check boxes are provided where questions of past convictions and anti-national are asked. They are declarations.
5. On the next screen details of designated SBI NDMB account have to be provided by the organization
6. On the next screen-details of Another FCRA account and Utilization Account
7. Once the updates are provided organizations will have to scan and upload the documents asked by the portal. Make sure to compress the file before uploading the files. Affidavit upload screen will appear. Correct information has to be provided.
8. Before submitting the renewal application, Save DATA, draft copy will be downloadable. Chief Functionary has to sign of the application and then proceed to submit application

Charter for Auditors

On 5th February 2021, the FCRA department released a charter for Cas. This mandated all CA's to examine all vouchers and books of accounts and obliged to conduct performance and forensic audit which means deep-dive examination of books conducted on an investigative basis. CA's are also mandated to check frauds and mismanagement and will burden organizations with time, resources etc as many CA's will have to conduct these investigative audits.

CHAPTER 5: GENERAL CHALLENGES IN FCRA

The chapter discusses various challenges in FCRA from time to time

It has been observed that many organizations continue to have problems in understanding the scope and working of FCRA law in general. The chapter deals with the numerous day to day challenges that organizations face in FCRA. The chapter looks at the various aspects of the FCRA operational challenges as many of these questions have emerged from numerous consultations of VANI over the last two years and are burning problems for organizations.

Examining the Nature of Foreign Contribution:

It is important to distinguish the characteristic feature of what constitutes foreign contribution or fund. Numerous organizations are unable to identify foreign fund owing to simplistic understanding of the law. For example, a Rs. 2000 note given by a foreigner can be FC money but \$100 given by a NRI cannot be FC money. The basic theory of FCRA rests on the premise that if the contribution is provided by a person is an Indian passport holder then it is Indian money, if he/she is not an Indian passport holder then the money is categorized as foreign in nature and has to be filed under FCRA. Therefore, the identifying feature of foreign money is the Indian passport of that particular person.

Similarly companies registered in India but working as subsidiaries of foreign companies providing foreign contribution will also be regulated under FCRA (such as Microsoft), this is important to consider as company contribution to voluntary organization may be perceived as CSR money. However, if it is from foreign subsidiary of a multinational/ foreign company then it is FCRA money.

Governance in FCRA registered organizations

Board: Change in board (even if >50%) should be desirably intimated to FCRA department within 15 days under Form FC-6E. Many organizations do not intimate the department regarding this change and face action by the department in terms of audit enquiry or investigation. A 50% change means, change in management and an organization is required to make application to FCRA department of MHA through the required form after which approval is provided by the department via registered mail of the organization.

Avoidance of foreigners on board: No board member should be a foreigner (identifier as holding foreign passport) except a Person of Indian Origin (PIO) or Overseas Citizen of India (OCI) (should be avoided). NRIs can be board members, however the only problem comes at the time of verification during registration, prior permission (verification not in the case of renewal)

Organizations are expected that no politician, journalist, government officer should be on board as this goes against the preamble of the FCRA.

It is desirable that Chief Functionary should not be the Chief Functionary of other FC organizations. A chief functionary should only be in one organization while he/she can serve as a board member of other organizations. For ease of filing DARPAN details, it is desirable that persons should be on not more than 2 to 3 boards of different organizations.

Board Approval delays

Delay by department in approving change of board members has affected many organizations who intimated changes in July 2019. This will aggravate in coming months given the renewal of FC licenses.

Bank Approval delays

A similar delay problem was encountered in change of bank account. Many organizations filed FC-C6 in 2018 for change in bank accounts, however due to the change in forms many of them were automatically removed from the system and are not showing pending. Now the new form is FC-6C and this has to be submitted as a new application along with previous copy of FC-6C. FC-6C is not being processed by FCRA department, MHA after 31st April 2021. For this

FCRA Activities

Organizations as far as possible should be avoiding political, media activities, commenting on social media if they are registered FCRA organization. Many organizations should also avoid payments to politicians and sitting officers in government of India for consultancy and advocacy work.

Keeping activities limited to registered thematic limbs of Cultural, Religious, Educational, Economic and Social. FCRA license should be limited to only the limbs professed and registered by the organization. Future problem may arise if an organization working on different limb undertakes a different activity, while this has been a ground for advancing action against certain organizations and is not a blanket diktat over all organizations but there should be a degree of avoiding working on divergent activities. Also, FC-4 is available publicly and public scrutiny has increased this may create future grounds for penalization by the department.

If in case an organization wants to work more than its registered limbs, then Form FC 6B has to be filed. Unfortunately Form FC-6B is not available on FCRA site. If due to some reasons one is unable to file intimation like FC-6E or 6B, it is suggested to replicate the form on a plain paper and submit by email and registered post and intimate information that we are unable to file the form. The onus shifts to the department for this technical glitch in the system.

Local Account Mixing

In some cases for voluntary organization local accounts are being used for paying FC funds, or conduct intra-banking activities that causes mixing of FC with local funds. Many times, FCRA department sends request to re-validate FCRA because it has been suspended due to this mixing and may be grounds for cancellation of license, imposition of penalty and non-renewal of license. In some cases, local bank accounts (containing Indian money) have been frozen by the FCRA department.

When filing FC-4, local sources should include INGO subsidiaries donors who working in India and providing foreign grant to the organization whereas international donors should involve agencies that are geographically outside India.

When it comes to maintaining accounts, banks should be given a letter that secondary accounts should be credited money from the main account designated account which is SBI NDMB now. For opening secondary/utilization account Form FC-6D must be used after approval from FCRA department.



Some points to remember

- Utilization of previous funds after expiry of FCRA is allowed and should be shown under FC-4.
- Cash payments should be avoided but if necessary only Rs. 10,000/-
- A donor deducted TDS on FC-money informing the implementing organization they can transfer it to FC account. There are two ways to get the refund

a) By filing ITR-7 and giving FC bank account number if this is the only TDS

b) However, if its mixed refund, in which it is mixed with interest and refund, it should be transferred to main bank account and the portion of TDS can be deposited in FC account. One may require CA certificate for this for banking purposes

Treatment for programmatic and administration expenses after FCRA Amendment, 2020:

Organizations should be careful in not mixing programmatic and administrative expenses as these two are completely different.

For treatment of assets charged under specific projects such as mobile phone, vehicle etc. they should all come under program expenses. However, if they are used for normal office use then they come under the administration expenses. To differentiate between these expenses it is required that the organizations should maintain a log sheet where they can show the chargeability towards different uses and provide it to FCRA department officers if an enquiry is conducted for mixing of programmatic and administrative expenditures

Challenges faced by organizations in SBI, NDMB

1. An organization conveyed their experience of depositing their FCRA contribution in their local bank account

Solution- It was informed, that the organization will have to immediately inform both donor and bank about this mistake. Organization will have to request bank to send it back to donor and donor has to re-credit the amount into their bank account

2. An organization accepted FCRA contribution after applying for NDMB SBI

Solution- The law stipulates that once application is submitted for SBI NDMB all intake of transactions should stop. You can utilize but not accept new contribution.

Forms to Remember

FC-1: Intimation to the Central Government of receipt of foreign contribution by way of gift from relative by an individual / foreign contribution in the form of articles/ securities/ by a candidate for election

FC-2: Application for seeking prior permission of the Central Government to accept foreign hospitality

FC-3A: Application for 'registration' under Foreign Contribution (Regulation) Act, for the acceptance of foreign contribution by an Person/association having definite cultural, economic, educational, religious or social programme

FC-3B: Application for 'prior permission' under the Foreign Contribution (Regulation) Act, for the acceptance of foreign contribution by a person/association having definite cultural, economic, educational, religious or social programme

FC-3C: Application for 'renewal' under Foreign Contribution (Regulation) Act, 2010 for the acceptance of foreign contribution by an person/association having definite cultural, economic, educational, religious or social programme

FC-4: Account of Foreign Contribution (FC) for the year ending on the 31st March (Annual Returns)

FC-6A: Intimation under the Foreign Contribution (Regulation) Rules, 2011 to the Central Government regarding Change of name / address in respect of the person/association granted registration/ prior permission under the Foreign Contribution (Regulation) Act, 2010

FC-6B: Intimation under Foreign Contribution (Regulation) Rules, 2011 to the Central Government regarding Change of nature, aims and objects and registration with local/relevant authorities in respect of the person/association granted registration/ prior permission under the Foreign Contribution (Regulation) Act, 2010

FC-6C: Intimation under Foreign Contribution (Regulation) Rules, 2011 of the designated "FCRA Account" in the State Bank of India, New Delhi Main Branch, 11, Sansad Marg, New Delhi and change of another "FCRA Account" of choice, if any, under section 17 of the Foreign Contribution (Regulation) Act, 2010 in respect of the person/association granted registration/ prior permission under the Act.

FC-6D: Intimation under of the Foreign Contribution (Regulation) Rules, 2011 to the Central Government regarding opening of additional FC-utilisation account in respect of the person/ association granted registration/ prior permission under the Foreign Contribution (Regulation) Act, 2010

FC-6E: Intimation under the Foreign Contribution (Regulation) Rules, 2011 to the Central Government regarding Change in key members in respect of the person/association granted registration/ prior permission under the Foreign Contribution (Regulation) Act, 2010

FC-7: Surrender of certificate of registration to the Central Government under section 14A of the Foreign Contribution (Regulation) Act

About Voluntary Action Network India (VANI)

VANI is a national network of Indian Voluntary Development Organisations (VDOs). Currently VANI has 540 members with an outreach to around 10,000 VDOs across India. The membership of VANI ranges from grass roots to the national organizations. The members work on a range of priority development issues of the government including education, health, nutrition, integrated child development, livelihood, skill development, environment, natural resource management, climate change, water and sanitation, emergency response and preparedness, agriculture, poverty and so on, in some of the most remote areas of the country. In the year 2017-18 our network collectively reached out to over 32 million people belonging to vulnerable and marginalized groups including children, disabled people, women, elderly, farmers, dalit, tribals, disaster survivors, unemployed, youth, LGBT, sex workers etc. VANI through its efforts and strategies aims to build a strong civil society sector not only at national but regional and local level as well.

VANI was set up with the mission to promote voluntarism, create space for the sector by fostering value based voluntary action. VANI's interventions are focused to strengthen the external and internal enabling environment. To ensure the external enabling environment, VANI conducts evidence-based advocacy which includes regulatory frameworks and resource generation. In order to achieve this VANI works with the government, private sector, bilateral, multilaterals and other stakeholders. For strengthening the internal enabling environment, VANI works towards building resilience and promoting accountability, transparency and compliance through the interactive educational events and information dissemination. VANI strives to become a resource centre by conducting evidence-based research; publishing studies, articles and reports not only at state level but national and global level as well.