



## Key Provisions of the FCRA 2020 Amendments

A new law amending the Indian Foreign Contribution Regulation Act (“FCRA”) was enacted by the Indian Parliament last week and signed into law by the President of India on September 28, 2020. This law amends the previous FCRA legislation from 2010, which regulates the acceptance and use of foreign contributions by Indian individuals, associations and companies, including Indian charities. Foreign contributions in this context are primarily cash (any currency) and securities donations/transfers to an Indian entity from a foreign source.

The following summarizes some of the key components of the FCRA amendments.

### Who is affected by the FCRA amendments?

- All organizations regulated under the FCRA law are potentially impacted. The amended provisions apply to all “non-profit” entities registered and operating in India that receive foreign grants/funding to advance their missions. In addition, Indian nonprofits that do not receive foreign funding directly, but that rely on grants from Indian nonprofits who receive foreign funds, are also impacted.
- Foreign funders that provide grants or other funding to FCRA-registered entities in India, especially where the grant agreement contemplated that the funds would be regranted to other charities operating in India, such as smaller local charities, are also impacted by this change.

### What are some of the key FCRA amendments?

- **Prohibition on transferring foreign contributions:** Foreign contributions can no longer be transferred to other organizations. Thus, foreign funders can no longer continue the common practice of providing one large grant to an Indian charity with the expectation that it will regrant the funds to smaller, local Indian charities. **Indian organizations holding funds that were intended to be sub-granted must reconsider how they might accomplish the intended charitable purposes under the changed circumstances.**
- **Information requirements for registration:** Any organization seeking registration under FCRA (either prior permission or renewal) must provide identification information for key functionaries – i.e., unique identification number (“Aadhaar”) for Indian citizens or passport details for foreign individuals.
- **Lower limit on use of foreign contributions for administrative expenses:** There is a new limit on the percentage of foreign funding allowed to be used for administrative purposes, including non-program staff salaries. The limit is now 20% (of the overall foreign contribution), compared to 50% under the previous rules. This could present particular challenges this year because the provision is coming into effect mid-year, when administrative expenditures may already be at or over this annual threshold amount.
- **Required deposit of foreign funds into a designated FCRA account maintained with the State Bank of India:** The existing law provided that foreign funding must be deposited in a designated FCRA Account. The new law further requires that foreign funding for an Indian nonprofit must be deposited into a designated FCRA account with a specified branch of the State bank of India in New Delhi which has yet to be specified. Once specified, all charities who intend to receive foreign funds will need to open a new FCRA account with the specified bank branch. However, until the new branch of State Bank of India is specified and a new account opened, it is likely to be difficult to transfer funds to Indian nonprofits. Any funds transferred by a US funder to the Indian nonprofit’s existing FCRA account is likely to be held, as the bank would not be able to credit the funds to the Indian nonprofit’s current FCRA account.
- **Enhanced powers for authorities to take actions related to non-compliance:** If an entity is suspected of violating any FCRA provisions, the authorities may “freeze” the organization’s remaining foreign funds pending completion of an investigation or may suspend the organization’s registration for up to one year. Some organizations worry that without their registration or access to their funds, will effectively be out of business before the investigation is over.



Additional administrative requirements related to banking, registration, and suspension/revocation were also made.

### **When do these changes go into effect?**

The new provisions of the law became effective September 29, 2020. Foreign funders should avoid sending funds to Indian nonprofits until the new FCRA bank account is opened and may need to work with their Indian grantees to determine what adjustments to existing grant arrangements need to be revised in light of the new provisions.