

AccountAble™

AccountAble 27 (rev): FCRA Renewal

March '16

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FCRA 2010 calls for renewal of FCRA registration every five years. There's been a lot of uncertainty about timeline for filing and renewal. FCRA rules ask you to file your renewal application 6-12 months before expiry. Therefore, most NGOs filed renewal application in form FC-5 in 2015. However, in Dec'15, the Department announced a change. All the people who had filed paper applications must now file these online in form FC-3.

This issue of AccountAble discusses the changed requirements, and offers some ideas for ensuring a proper application is filed.

BASICS

Validity

If you were already registered under FCRA on 1-May-2011, your FCRA registration is valid till 30-Apr-16.

If you received your FCRA registration after 1-May-2011, it will be valid for five years from date of registration. The date of the registration letter is normally treated as the date of FCRA registration.

Once your FCRA registration is renewed, it will again be valid for five years.

Online Application?

The renewal application is to be filed online (<https://fcraonline.nic.in>) in new form FC-3.

Last Date

Renewal applications should be filed six months before FCRA registration expires.

However, for organizations whose FCRA registration expires on 30-Apr-16, the filing date has been extended again to 30-Jun-16.

Which Login ID?

The renewal option is available only if you use the login ID and password provided by FCRA Department. If you create a new login ID yourself, you will not see the renewal option. Therefore, you must use the login ID and password given by FCRA Department.

People who've been filing annual FCRA returns online can use the same login ID and password. If you've been filing a paper FC-6 in past, check your files for a letter from FCRA giving the login ID and password.

If you don't have the login ID and password, send an email to support-fcra@gov.in. In the mail, mention name of your organization and FCRA registration number. Also enclose scanned copy of your FCRA registration letter.

FILLING UP FORM FC-3

The form is fairly short and simple. Fields which cannot be changed by you will appear in grey.

Logging In

Form for registration, prior-permission and renewal is a common form FC-3. Choose 'FCRA Renewal' when prompted for this choice.

Once you've logged in and chosen the renewal option, fill up the information under various tabs (numbers refer to FC-3 serial):

1. Details of Applicant

Provide organization's address and contact information here. Use this opportunity to update the information if there are any changes.

www.AccountAid.net

2. Details of Registration

These details are for your basic registration as a society, trust or non-profit company. If you are a charitable trust, you may not have a registration number. In such case, give the registration number of your trust deed.

If you are a society registered under Bombay Public Trust Act, you will have a society registration number as well as a Charities Commissioner number. In such case, mention 'Societies Registration Act, 1860' and your society registration number here.

What does place of registration mean? Mention the place or town where the basic registering authority is located.

FCRA registration number will show up as pre-filled, as online renewal option is already linked to your FCRA registration profile.

3. Nature of Association

Tick against the nature of the Association (Cultural, Religious, Educational, Economic, or Social). If you have multiple activities (e.g. Economic as well as Social), remember to tick against all. This is also a good chance to update your areas of work.

5. Office Bearers

Give details of all the members of Governing Board or Trustees.¹ Avoid using the NGO's address as the office or residential address for an office bearer, unless they actually work or stay on the campus. If a member is not related to anyone else on the Board, select 'self'.

Additional details are needed for foreigners on board (including PIO or OCI).²

7. Profile of Board Members

The form asks for information about any past convictions or prosecutions against any Board member. Also, if any of your board members is on board³ of another NGO, then this must be disclosed, along with name of the NGO.

8. Branch, Unit or Associate

If your organization is a branch, unit or an associate of a foreign organization, then disclosure is required.⁴

Similar disclosure is needed if your organization is a branch, unit or associate of an Indian NGO which has FCRA registration or prior-permission.

What does the term 'associate' mean? Any organization which has 'significant influence' over the NGO may be

treated as an associate. This may come through control over voting power or over decision-making through an agreement or a clause in the bylaws.⁵

9. Bank Details

You can add or update details of your FCRA bank accounts here. If you have changed your designated bank account, you should also separately file intimation in form FC-6.

Details of utilization bank accounts should be given under 9(b). If you do not have a separate utilization account, fill in the details of designated FCRA account again, so that the form is completed.

Enclosures

You need to upload the following:

1. Certificate of basic registration as society, trust or company (pdf, up to 1 MB)
2. Memorandum / Bylaws or Trust Deed (pdf, up to 5 MB)
3. FCRA registration certificate (pdf, up to 1 MB)
4. Scanned signature of Chief Functionary (jpg, up to 50



¹ Details of the Governing Body are needed - not of the General Body. The Governing Body usually has 5-7 members.

² NRIs should not be listed separately, unless they have taken up foreign citizenship. In such case, they become PIO (person of Indian origin).

³ Covers all forms of Board membership (simple member or office holder), as well non-Board association as Chief Functionary or Chief Patron.

⁴ Is your organization's name similar to a foreign organization who gives you lot of funds? You could be classified as branch of a foreign agency. In such a case, FCRA renewal could be more difficult.

⁵ Sec. 2(1)(t) of FCRA 2011, read with sec. 2(16) of Companies Act, 2013. An alternative reading may be based on Sec. 2(3) of Companies Act, 1956, though omitted w.e.f. 13-Dec-2000.

kb, 140x60 pixels)

5. Scanned seal impression of the organization (jpg, up to 100 kb, 140x60 pixels)

You can reduce the PDF file size at smallpdf.com. If you receive an error message repeatedly, try using Internet Explorer instead of Chrome or Firefox etc.

Final Submission

After uploading the documents, preview the form using 'Final Submit' tab. If all the details show up correctly, click on 'Final Submit' button. You cannot change the form after this.

Payment of Fee

Fee (Rs. 500) is paid online, after the form has been submitted online. If your NGO doesn't have net banking, you can use your personal credit card, debit card or net banking to pay this.

If the fee is not paid, your application will be treated as invalid.

PROBLEMS AND PRECAUTIONS

Normally, the process of renewal is automatic and assured once the application is made in time. The Government can refuse renewal only where an NPO has violated any provision of FCRA law or rules. This might be something common, such as non-filing of returns, or it might be more serious, such as shadow-lending. Let us

discuss some of the common questions.

Changes in Board

FCRA had placed a restriction on excessive changes in Board in Dec'96. This restriction has been lifted now. You no longer need FCRA permission to change Board members.

However, you should file the new form FC-6 online to update details, if there are any changes in your board. It is better to file this form before applying for renewal.

Foreign Connection

There is no direct prohibition under FCRA law or rules on having foreigners as members of your governing body or general body. However, FCRA Department has taken an administrative decision to regulate such applications.⁶

Accordingly, if you have any foreigners on your governing body, it may be a good idea for them to get off before you apply for renewal. Alternatively, you should apply for government permission for them to be on your board.

Having a foreigner as the Chief Functionary is even more sinful.⁷ They should be requested to resign, and allow an Indian national to take their place.⁸

Receiving & Using Funds

You can continue receiving foreign contribution till date of expiry, even if you don't apply for renewal. Any funds received before expiry in normal course can be used after expiry as well.

⁶ Q.8 Whether foreigners can be appointed as Executive Committee members of an association seeking registration or prior-permission?

Ans. Organizations having foreign nationals, other than of Indian origin, as members of their executive committees or governing bodies are generally NOT permitted to receive foreign contribution. However, foreigners may be allowed to be associated with such associations in an ex-officio capacity, representing multilateral bodies, foreign contribution from whom is exempted from the purview of the Foreign Contribution (Regulation) Act, 2010, or in a purely honorary capacity depending upon the person's stature in his/her field of activity.

Subject to relaxation given on a case to case basis, foreign nationals fulfilling the following conditions may be appointed as Executive Committee members, after obtaining prior approval of the Central Government:

- i. the foreigner is married to an Indian citizen;
- ii. the foreigner has been living and working in India for at least five years;
- iii. the foreigner has made available his/her specialized knowledge, especially in the medical and health related fields on a voluntary basis in India, in the past;
- iv. the foreigner is part of the Board of Trustees/Executive Committee in terms of the provisions in an inter-governmental agreement;
- v. the foreigner is part of the Board of Trustees/Executive Committee, in an ex-officio capacity representing a multilateral body which is exempted from the definition of foreign source.

The need for such an appointment should, however, be adequately justified.

Source: *Frequently Asked Questions (FAQs) on FCRA*; <https://fcraonline.nic.in/home/index.aspx#>; Last accessed 29-Feb-16

⁷ This position, mentioned in all the FCRA forms, is not defined anywhere. In practice, anyone who is authorized to sign documents on behalf of the Board, and is involved in day to day functioning can sign these. It is advisable to get this recorded in the Board minutes through a resolution. Usually, the Chairperson, President, or Secretary is treated as Chief Functionary.

In some cases, a Chief Executive Officer, appointed by the Board as an employee, could also sign these documents, as Chief Functionary. This should preferably be supported by a resolution. If the CEO is a foreigner, then it is better for them not to sign documents or project themselves as the Chief Functionary.

⁸ A non-resident Indian (NRI) is equal in status to a resident Indian. NRIs who become foreign citizens are known as PIOs. They are mostly on par with foreign nationals.

Delays in Processing

The Department is expected to renew the certificate within ninety days of filing the application. However, if there is a delay, the Government is to write to the NPO, giving reasons for delay.

Suppose you applied well in time, but the processing was delayed at FCRA Department. Will your FCRA registration lapse? No. In such a case, your FCRA registration will still remain valid for the time being.⁹

However, make sure that your application has been filed online properly. Also make sure that your application has not been rejected. For example, the rejection letter may not have reached you, though sent by the Department.

In practice, most donor agencies will insist on a proper renewal letter or proof of filing form FC-3 before disbursing funds.

Delayed Application

What happens if you forget to apply in time? Your application can be accepted up to four months after expiry:

However, you will have to give reasons as to why you did not file the application in time. The Government also has the option of rejecting your reasons, if these do not seem to be good enough.

Does this mean that the FCRA registration will remain valid even after scheduled expiry? No, the registration will lapse. The NPO cannot accept any fresh foreign contribution after its FCRA registration

Initial Registration	Scheduled Expiry	File FC-3 before	Delayed Filing up to
1-May-2005	30-Apr-2016	30-Jun-2016	31-Aug-2016
1-Feb-2012	31-Jan-2017	31-Jul-2016	31-May-2017

has expired.¹⁰

The NPO can still apply for renewal till date of delayed filing. After this grace period of four months is over, the NPO will have to make a fresh application for registration using FC-3.

THAT FEELING OF REJECTION...

What happens if your FCRA registration is not renewed? Or if the registration lapses? This would mean that you cannot receive fresh foreign contribution. It does not mean that the FC funds already received will be automatically confiscated.

You can still continue using these as before. Remember, however, that the funds and assets are still foreign contribution. You must, therefore, follow all the FCRA rules as earlier.

You also have a second chance. You can apply for fresh FCRA registration again. However, if your renewal application was rejected, it would be better to wait for at least six months before applying again.

⁹ Rule 12(5) of FCRR 2011

¹⁰ Foreign contribution received before this date can be used in the normal course.

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