

## CSR & Social Governance

### (Chapter 15)

(Total= 20 marks)

Time - 1 Hr

Answer the following question.

#### Case Study 1

Philosophically, foreign contribution (donation) is akin to gratifying intoxicant replete with medicinal properties and may work like a nectar. However, it serves as a medicine so long as it is consumed (utilised) moderately and discreetly, for serving the larger cause of humanity. Otherwise, this artifice has the capability of inflicting pain, suffering and turmoil as being caused by the toxic substance (potent tool) - across the nation. In that, free and uncontrolled flow of foreign contribution has the potentials of impacting the sovereignty and integrity of the nation, its public order and also working against the interests of the general public. It is open to a sovereign democratic nation to completely prohibit acceptance of foreign donation on the ground that it undermines the constitutional morality of the nation, as it is indicative of the nation being incapable of looking after its own affairs and needs of its citizens. The third world countries may welcome foreign donation, but it is open to a nation, which is committed and enduring to be self-reliant and variously capable of shouldering its own needs, to opt for a policy of complete prohibition of inflow/acceptance of foreign contribution (donation) from foreign source (Noel Harper & Ors vs. Union of India & Anr judgement dated April 08, 2022, the Hon'ble Supreme Court of India)

#### Questions:

(5 marks each)

1. What is meant by "Prior Permission" under regulatory frameworks like the Foreign Contribution Regulation Act (FCRA)? Discuss the eligibility criteria an organization must meet to obtain prior permission for receiving foreign contributions.

#### Answer

An organization in formative stage is not eligible for certificate of registration. Such organization may apply for grant of prior permission under FCRA, 2010. Prior permission is granted for receipt of a specific amount from specific donor/donors for carrying out specific activities/projects. For this purpose, the association should meet following criteria:

(i) be registered under an existing statute like the Societies Registration Act, 1860 or the Indian Trusts Act, 1882 or section 25 of the Companies Act, 1956 etc;

(ii) submit a specific commitment letter from the donor indicating the amount of foreign contribution and the purpose for which it is proposed to be given; and

(iii) For Indian recipient organizations and foreign donor organizations having common members, **FCRA Prior Permission shall be granted to the Indian recipient organizations subject to its satisfying the following:**

(i) The Chief Functionary of the recipient Indian organization should not be a part of the donor organization.

(ii) At least 75% of the office-bearers/ members of the Governing body of the Indian recipient organization should not be members/employees of the foreign donor organization.

(iii) In case of foreign donor organization being a single person/individual that person should not be the Chief Functionary or office bearer of the recipient Indian organization.

(iv) In case of a single foreign donor, at least 75% office bearers/members of the governing body of the recipient organization should not be the family members and close relatives of the donor.

2. Who is prohibited from receiving foreign contributions under the Foreign Contribution Regulation Act (FCRA), 2010? List the categories of individuals and organizations restricted from accepting such funds.

## **Answer**

As per Section 3(1) of FCRA, 2010, the following are prohibited to receive foreign contribution:

- (a) candidate for election;
- (b) Correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper;
- (c) Public Servant, Judge, Government servant or employee of any corporation or any other body controlled or owned by the Government;
- (d) Member of any legislature;
- (e) Political party or office bearer thereof;
- (f) organization of a political nature as may be specified under sub-section (1) of Section 5 by the Central Government;
- (g) association or company engaged in the production or broadcast of audio news or audio-visual news or current affairs programmes through any electronic mode, or any other electronic form as defined in clause (r) of sub-section (1) of Section 2 of the Information Technology Act, 2000 or any other mode of mass communication;
- (h) Correspondent or columnist, cartoonist, editor, owner of the association or company referred to in point (g);
- (i) Individuals or associations who have been prohibited from receiving foreign contribution.

## **Case Study 2**

Foreign Contribution (Regulation) Act, 2010(FCRA) is the law that governs foreign funding in India. FCRA has the primary objective of regulating the acceptance and utilisation of foreign contribution or foreign hospitality by certain persons or associations, with a view to ensuring that Parliamentary and political associations, academic and other institutions as well as individuals working in important areas of national life may function in a manner consistent with the values of a sovereign democratic republic. The Act prohibits acceptance of foreign contribution by election candidates, journalists, public servants, members of the legislature, and political parties or their office bearers and allows Associations having definite cultural, economic, educational religious or social programme to accept such contributions after complying with certain requirements.

### **Questions:**

**(3 marks each)**

1. As per Section 16 of the FCRA, 2010, what is the timeline and procedure for renewing an FCRA registration certificate? Mention with the above documents.

### **Answer**

As per Section 16 of FCRA, 2010 every person who has been granted a certificate of registration under Section 12 thereof shall have such certificate renewed within six months before the expiry of the period of the certificate.

Associations which desire to renew their registration certificate shall apply online only in Form FC-3C within 6 months before the expiry of their existing registration certificate. After successful payment of fees only, the application is deemed to have been completed.

Documents required for renewal of registration:

- (a) Darpan id of Section 8 Company/Trust/Society
- (b) Verification of aadhaar number of each member
- (c) Details of FCRA account of SBI, Main Branch New Delhi
- (d) Signature of Chief Functionary
- (e) Seal of the association
- (f) Registration certificate of the association, Memorandum of Association/ Trust Deed
- (g) FCRA Registration Certificate of association issued by MHA and affidavit in prescribed proforma AA to be executed by each member individually on Non- Judicial Stamp Paper of Rs. 10 attested by Notary Public or 1st Class Magistrate are to be uploaded for renewal of registration.

2. The acceptance of foreign contribution by the association/ person is not likely to affect prejudicially, explain the conditions to be met for the grant of registration and prior permission.

### **Answer**

- i. the sovereignty and integrity of india;
- ii. the security, strategic, scientific or economic interest of the State;
- iii. the public interest;
- iv. freedom or fairness of election to any Legislature;
- v. friendly relation with any foreign State;
- vi. harmony between religious, racial, social, linguistic, regional groups, castes or communities.

Q3. **(4 marks)**

What are the key FATF (Financial Action Task Force) requirements applicable to Non-Profit Organisations (NPOs)? Discuss the importance of good practice guidelines issued to NPOs to prevent misuse for money laundering or terrorist financing.

**Answer**

1. Wherever necessary, NPO shall inform the Ministry of Home Affairs (FCRA Wing) about the suspicious activities of the customer, without waiting for annual returns.
2. The Board of Directors / Chief Functionary of NPO shall issue directions regarding duties of official who shall be required to enforce these guidelines and other rules of FCRA, 2010 read with FCRR, 2011 as amended from time to time.
3. The NPO shall put its goals, objectives and activities on its website.
4. The NPO shall upload the details of key persons associated with NPOs activities on its website.
5. The NPO shall take due diligence of its employees at the time of recruitment.
6. The NPO shall maintain the information of beneficiaries of funds and upload on its website and monitor the activities of the beneficiaries. Wherever a beneficiary is a legal person, the details of beneficial owner shall also be uploaded.
7. The NPO shall ensure that the financial transactions involving more than Rs.20,000/- to be routed through Banking channels only.
8. The Board of Directors/Trustees of NPO's must ensure utilization of funds consistent with objectives as approved by MHA.
9. The Board of Directors/Trustee of NPO's shall conduct meeting once at least in six months to review the working of these instructions and shall record the minutes of these meetings.
10. The NPO shall train its staff on the FCRA and about the application of these guidelines.
11. When any transaction is under investigation by any authority, the MHA shall be informed by such NPO.

**BEST OF LUCK**