



FINAL EXAMINATION

SET 1

MODEL ANSWERS TERM – DECEMBER 2023

PAPER – 13

SYLLABUS 2022

CORPORATE AND ECONOMIC LAWS

Time Allowed: 3 Hours

Full Marks: 100

The figures in the margin on the right side indicate full marks.
Where considered necessary, suitable assumptions may be made and
clearly indicated in the answer.

SECTION – A

1. Multiple Choice Question:

[2 × 15 = 30]

- (I) (i) ABC Ltd. has 35% shares in XYZ Ltd. The majority of directors of XYZ Ltd. are appointed and removed by ABC Ltd. XYZ Ltd. is:
- Subsidiary of ABC Ltd.
 - Not a subsidiary of ABC Ltd.
 - Depends on Board of ABC Ltd.
 - Depends on Board of XYZ Ltd.
- (ii) Once declared in AGM, dividend-
- May be revoked
 - Cannot be revoked
 - May be reduced
 - Payment can be delayed
- (iii) Under Insolvency Bankruptcy code 2016 where extension of time is requested, the Corporate Resolution process shall be completed within a period of from the date of admission of the application to initiate such process.
- 60 days
 - 90 days
 - 180 days
 - 240 days
- (iv) Corporate Governance practices are almost.....by companies in India.
- formalized
 - regulated
 - accepted
 - rejected
- (v) The recommendation of the Audit Committee:
- may not be accepted by Board of Directors
 - has to be accepted by Board
 - In case not accepted, Board has to records the reasons
 - Recommendation need not go to Board meeting.



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- (vi) At the time of IPO, the issuer has to have a:
- CFO
 - MD
 - Designated Compliance Officer
 - At least one independent director.
- (vii) SEBI has three functions rolled into one body. Which of the following is not the function of SEBI?
- Quasi-legislative
 - Quasi –judicial
 - Quasi – executive
 - Quasi- official
- (viii) The Competition Act has replaced-
- Companies Act, 1956
 - Consumer Protection Act
 - MRTP Act, 1969
 - None
- (ix) Zenith Ltd is accompany registered in UK, issues share to citizen of UK. Under the Indian law, the shares are;
- foreign security
 - Indian security
 - any of the above
 - none of the above
- (x) According to Banking Regulation Act 1949, no Banking Company shall pay dividend on its shares until all its –
- Depreciation is fully written off.
 - “Capitalized expenses” have been completely written off
 - Bad debts are provided in full.
 - Contingent liability is settled.
- (xi) a unit has investment in plant and equipment of ₹55 crore and turnover of ₹300 crores. It will be classified as:
- micro
 - small
 - medium
 - none of the above



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(II) ABC limited is a company with paid up capital of ₹ 50 cr. and turnover of ₹310 cr. Mr. Rajesh Kumar, who is promoter and MD of the company wants to run the company complying with all laws and regulations. The chairman is non-executive and is an eminent academician. There are two more directors, one is Director (Finance), Mr Joshi and Director (commercial) Mr. Nirmal Kumar, who is related to the promoter. Company is in the process of taking substantial loan for capital investment from SBI, where SBI will nominate a director in the Board.

Based on the above case study, you are required to answer the questions no. from (xii) to (xv).

- (xii) Is the present Board properly constituted? - Which statement is correct.
 - a. Company is an unlisted company with four directors, the present Board is properly constituted.
 - b. Company is an unlisted company with four directors, which is properly constituted, but since the turnover is more than ₹300 cr., a woman director is required.
 - c. Company is an unlisted company with four directors, which is properly constituted, but need of one resident director who has stayed in India for a total period of not less than 182 days in the financial year.
 - d. Company is an unlisted company, which is properly constituted with a MD.
- (xiii) Can Mr. Nirmal Kumar be considered as independent director?
 - a. Yes, since he is related to the promoter.
 - b. No, since he is related to the promoter.
 - c. Yes, since he is commercial Director.
 - d. Yes, since he is a whole time /functional Director.
- (xiv) Is there any need of women director?
 - a. Yes, since the turnover is more than ₹300 cr.
 - b. No, since the paid up capital is not more than ₹100 cr.
 - c. No, SBI will nominate a director in the Board.
 - d. None of the above.
- (xv) What will be the status of the director nominated by SBI, if she is a woman?
 - a. She will be classified as Nominee Director.
 - b. She will be classified as Interested Director.
 - c. SBI has no right to nominate any women director in the Board.
 - d. None of the above.

Answer:

(I)

(i)	(ii)	(iii)	(iv)	(v)	(vi)	(vii)	(viii)	(ix)	(x)	(xi)
a	b	c	b	c	c	d	c	d	b	d

(II)

(xii)	(xiii)	(xiv)	(xv)
b	b	a	a



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SECTION – B

(Answer any five questions out of seven questions given. Each question carries 14 marks.)

2. (a) Describe the classes of companies which are outside the purview of the Company Auditor Report Order (CARO) under the Companies Act 2013.
- (b) Summarize the disqualifications of a director under section 164 of the Companies Act 2013. [7 + 7 = 14]

Answer:

- (a) MCA has notified now Companies (Auditor's Report) Order, 2020 on 25th February, 2020 which replaced CARO, 2016. It is a new format of reporting of statutory audit having additional reporting requirements decided in consultation with National Financial Reporting Authority (NFRA) CARO, 2020 is applicable for all statutory audits commencing on or after 1.4.2020 corresponding of Financial Year 2019-20.

The following classes of companies are outside the purview of the CARO 2020:

- (a) Banking company as defined under Section 5 (c) of the Banking Regulation Act, 1949.
- (b) Insurance company as defined under the Insurance Act 1938.
- (c) Company licensed to operate under Section 8 of the Companies Act 2013 (companies registered with charitable object).
- (d) A one-person company (OPC) as defined under clause (62) of Section 2 of Companies Act 2013 (OPC means a company which has only one person as a member).
- (e) A small company under Section 2 (85) of the Companies Act, 2013.
- (1) As per sec 2(85) of Companies Act 2013 small company means a company, other than a public company:
- Paid up share capital of which does not exceed ₹50 lakhs or such higher amount as may be prescribed which shall not be more than ₹10 crores, and
 - Turnover of which as per its last profit and loss account does not exceed ₹2 crores or such higher amount as may be prescribed which shall not be more than ₹100 crores.
- (2) The following company shall not qualify as a small company:
- A holding company or a subsidiary company.
 - A company registered under Section 8 of the Act.
 - A company or body corporate governed by any special act.
- (f) The auditor of following type of Private Companies are not required to comment on the matter prescribed under CARO 2020:
- (1) A private company which is not holding or subsidiary company of a public company, and
- (2) A private company having a paid up capital and reserve and surplus not more than ₹1 crore as on the balance sheet date, and
- (3) A private company which does not have total borrowing exceeding ₹1 crore from any bank and financial institution at any point of time during the financial year, and



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- (4) A private company which does not have total revenue exceeding ₹10 crores during the financial year.

Note: Such revenue means revenue as disclosed in scheduled III to the Companies Act, 2013 and includes revenue from discontinuing operation.

(b) According to Section 164 Disqualifications for appointment of Director are –

- (1) A person cannot be appointed as director of a company in any of the following cases:
- he is of unsound mind and stands so declared by a competent court.
 - he is an undischarged insolvent.
 - he has applied to be adjudicated as an insolvent and his application is pending.
 - he has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than 6 months and a period of 5 years has not elapsed from the date of expiry of the sentence etc.
 - he has been convicted of the offence of dealing with related party transactions under section 188 at any time during the last preceding 5 years, or
 - he has not complied with sub-section (3) of section 152 which requires a director to have a Director Identification Number under section 154.
 - he has not complied with the provisions of 165(1) relating to holding of maximum number of directorship. In such case the penalty of ₹5,000 for each day of continuing failure. It may be noted that no person can hold office of director including alternate director is more than 20 including maximum 10 in public company.
- (2) No person who is or has been a director of a company which:
- has not filed financial statements or annual returns for any continuous period of 3 financial years, or
 - has failed to repay the deposits or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared on preference shares and such failure to pay or redeem continues for 1 year or more, however, such director shall not incur the disqualification for a period of 6 months from the date of appointment.
- (3) Section 164 is not applicable to Government Company.
- (4) A private company may by its articles provide for any disqualifications for appointment as a director in addition to those specified in sub-sections (1) and (2) of section 164 as stated above [i.e., point (1) and (2) above].
- (5) However, the disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) [given in point (1) above] shall not take effect:
- for 30 days from the date of conviction or order of disqualification.
 - where an appeal or petition is preferred within 30 days as aforesaid against the conviction resulting in sentence or order, until expiry of 7 days from the date on which such appeal or petition is disposed off, or
 - where any further appeal or petition is preferred against order or sentence within 7 days, until such further appeal or petition is disposed of.



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3. (a) “A casual meeting of the directors, even at the office of the company, cannot be treated as a board meeting” – analyse the legal provisions relating to board meeting under the Companies Act 2013?
- (b) Explain who shall bear the cost of investigation under section 225. under the Companies Act 2013? [7 + 7 = 14]

Answer:

- (a) Under Chapter XII, Section 173 to Section 195 of the Act deals with the Meeting of Board and its power, from Section 173 of the Act deals with the meeting of the board of directors. The Section states the number of meetings, how a meeting can be called and what the penalty is for non-compliance of the same. After the incorporation, every company shall hold a meeting of the Board of Directors within 30 days and later on in a year, a minimum of 4 meetings are held.

Number of meetings to be held [Section 173(1)]: According to Section 173(1) of the Act, as stated earlier, after the incorporation of a company, the first meeting of the Board of Directors shall take place within 30 days. After the first meeting, a minimum of 4 meetings of the Board of Directors need to be held in a year. The Section further states that the meeting is to be held in such a manner that there should not be a gap of more than 120 days between the two consecutive meetings of the Board.

However, by a notification from the Central Government, the government can direct that the provisions of this Section shall or shall not apply to a specific class or description of companies.

Mode of the meeting [Section 173(2)]: Sub-section 2 of Section 173 of the Act states the mode of meeting. According to this Section, whichever method is prescribed, the directors can participate in the meeting either in person; or through video conferencing; or by any other audio-visual means. These methods must be capable of recording and recognising the directors participating and they should also be able to record and store the meeting along with the date and time of the meeting.

Notice for meeting [Section 173(3)]

Section 173(3) of the Act states that a meeting shall be called by a notice to every director in writing and the notice shall give a minimum of 7 days to the directors at their registered addresses as provided by them to the company. The Section further states that such notice shall be seen either by the following ways:

by hand delivery; or

by post; or

by electronic means.

The exception to Section 173 of the Act states that if there is an urgent business matter, at least one independent director must be present in the meeting, subject to the conditions. However, if there is an independent director and that director is absent from the board meeting, then the decision shall be circulated among all the directors and the decision shall be final once that independent director ratifies or gives consent to the same.

Failure to comply with the provision and penalty [Section 173(4)]: Section 173 (4) of the Act provides the penalty provision. The Section states that in case an officer of the company, i.e. the Company Secretary, who is responsible to give the notice fails to do so, then a penalty of ₹. 25,000 shall be imposed on him.

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In cases of a One Person Company (“OPC”), a small company and a dormant company, then every half of the calendar year, at least one board meeting must be conducted and there should be a gap of a minimum of 90 days between two meetings. However, in OPC, if there is only one director on the board then the provisions of this sub-section and Section 174 of the Act shall not be applicable.

Section 174(1) of the Act states that for a quorum for a meeting of a board of directors of a company hall, there shall be either one-third participation of directors or two, whichever is higher. In case of participation of directors via video conferencing or other audio-visual means, shall also be counted.

Section 174(2) of the Act states that in case there is a reduction in the number of directors fixed for the quorum of board meetings then the continuing directors may fill in the vacancy.

Section 174 (4) of the Act states that in case a meeting could not be held for want of quorum then such meeting shall be adjourned to the same day, place and time for the next week or in case of a national holiday, the day succeeding it.

A resolution may be passed by circulation in accordance with the provisions of section 175, unless the act requires that such a resolution shall be passed at a Board meeting only.

(b) Section 225 of the Act lays down the following provisions in respect of expenses of investigation:

(a) the expenses of investigation shall be defrayed in the first instance by the Central Government, but shall be reimbursed by the following persons to the extent mentioned below, namely:

(1) any person who is convicted on a prosecution instituted, or who is ordered to pay damages or restore any property in proceedings brought, under section 224, to the extent that he may in the same proceedings be ordered to pay the said expenses as may be specified by the court convicting such person, or ordering him to pay such damages or restore such property, as the case may be.

(2) any company or body corporate in whose name proceedings are brought as aforesaid, to the extent of the amount or value of any sums or property recovered by it as a result of such proceedings.

(3) unless, as a result of the investigation, a prosecution is instituted under section 224:

a) any company, body corporate, managing director or manager dealt with by the report of the Inspector, and

b) the applicants for the investigation, where the Inspector was appointed under section 213, to such extent as the Central Government may direct.

(b) As per sub-section (2), any amount for which a company or body corporate is liable under clause (2) above shall be a first charge on the sums or property mentioned in that clause.

4. (a) **Three Board meeting of A Ltd. were held on 01.01.2022, 01.04.2022, 01.07.2022. In the fourth Board meeting scheduled for 27.10.2022, no matter could be discussed since the required quorum was not present, and so it was adjourned till 03.11.2022. In the adjourned Board meeting held on 03.11.2022, 5 matters were discussed and voted upon. Assess the situation, Has the company contravened any of the provisions of the Companies Act, 2013?**



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- (b) X & Co. is a LLP firm wants to convert their firm into a corporate entity as per the provisions contained in Sec. 366 of the Companies Act ,2013 and the Companies (Authorized to registered) Rules, 2014. They have conducted a meeting for conversion of and to decide the name of the company summoned for the purpose of registering the LLP. In the meeting 1/4th partners want for the conversion into a Pvt. Ltd company, and 3/4th partners want for a new corporate entity with the word “Public Limited”. There are 6 partners in the firm. Recommend an appropriate decision and steps to be taken by the firm. [7+7=14]

Answer:

- (a) As per section 173 (1), at least four Board meetings shall be held in each calendar year and not more than 120 days shall intervene between two consecutive meetings of the Board. In the present case, the Board meeting held on 27.10.22 was adjourned, and the adjourned Board meeting was held on 03.11.22. The Board meeting held on 27.11.22 and adjourned Board meeting held on 03.11.22 shall not be deemed to be separate Board meetings, since an adjourned meeting is a mere continuation of the original meeting. Accordingly, the Board meeting held on 27.10.22 and the adjourned Board meeting held on 03.11.22 shall be counted as one Board meeting only. Thus, the company has held 4 Board meetings during the calendar year 2022. The gap between first and second Board meeting was not more than 120 days. Similarly, the gap between the 2nd and third Board meeting was not more than 120 days. Regarding the gap between the third and fourth Board meeting, the date of third board meeting and forth original board meeting should be considered. This is so because the Board meeting only, it shall be deemed that only one Board meeting was held on 27.10. 2022.As is evident, the gap between the third Board meeting 1.07.22 and fourth Board meeting is not more than 120 days. Since A ltd has held four Board meetings during the calendar year 2022, and the gap between no two consecutive Board meetings is more than 120 days, A Ltd has complied with section 173.
- (b) An LLP can be converted into a Pvt. Ltd. Company as per the provisions contained in section 366 of the companies act 2013 and the companies (Authorised to Registered) Rules, 2014.

This steps can be initiated in 2 ways as enumerated below:

- (i) Incorporation of a new corporate entity.
- (ii) Conversion of existing entity (e.g. LLP/Partnership Firm) into a Company There are various requirements which need to be satisfied for converting an LLP into a private Ltd.
 1. An LLP must have at least 7 partners (however as per Companies Amendment Act ,2017 LLP with 2 partners can be converted into company).
 2. Approval from all partners is required.
 3. Advertisement in newspaper is to be done in a local and national newspaper.
 4. No objection certificate (NOC) is required from ROC where such LLP is registered

However, if an LLP crosses an annual turnover of Rs.40 lakhs or a capital contribution of more than Rs.25 lakhs, the compliance requirements for LLP and Private Limited Company become almost similar, making the private limited company a better choice. Further that a company with less than 7 members shall register as a private company, whether the majority is for a new corporate entity with the word “Public Limited “.



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The following steps to be taken by the firm:

1. Hold a meeting of the partners to decide the name of the company. To authorize partners to take all steps necessary and to execute all papers, deeds, documents etc. pursuant to register of the LLP as a Company. The major advantages are that the business can be run under the same name as that of the LLP except that in addition to the name of LLP the words Limited or private limited has to be added. The accepted name by the authority will be valid for 60 days.
2. After obtaining name approval, apply for Digital Signature Certificate (DSC) and Director Identification Number (DIN) for the member of the LLP who will be the directors of the Private Limited Company after conversion. In case of non-applicability of DIN, the applicant needs to provide address proof, identity proof and photographs along with the application. Therefore, obtain DIN directly through filing incorporation form.
3. Further, Form URC-1 needs to be filed by the applicant; furnish the following list of documents along with the form URC-1.
 - Provide details such as name, address and shares held by the members along with the member's list.
 - Provide details such as Name, Address, DIN, passport number along with an expiry date of all the directors of the Private Limited Company.
 - An affidavit is required from the first directors of the Private Limited Company stating that they are not banned from being a director.
 - Also, file all mandatory documents with the Registrar of Companies for the registration of the company.
 - Note: The details provided by the company should be complete, correct and accurate to the best of their knowledge.
 - Copy of Limited Liability Partnership agreement with a list containing the name and address of the partners of LLP and a certified copy of registration which is duly verified by at least two designated partners of LPP is required.
 - The statement with the details of the nominal share capital of the firm and the number of shares separated, the number of shares taken and the amount remitted for each share and the name of the firm with the word private limited to be provided.
 - The no-objection certificate from all the creditors has to be provided.
 - Duly certified accounts statement of the company by the auditor, which should not be less than six days from the date of application and the copy of the newspaper advertisement is required.
4. Draft the Memorandum of Association (MOA) and Articles of Association (AOA) and submit to the Registrar of Companies. After the approval of the company name, the Register of Companies sanctions the form URC-1.
5.
 - (a) **Illustrate the process of appointment of first auditors in the case of Government Company under section 139(7) of "The Companies Act, 2013".**
 - (b) **Nature India Limited filed a petition under Insolvency and Bankruptcy Code, 2016 with National Company Law Tribunal (NCLT) against Tulip Limited and the petition was admitted. After that, Nature India Limited wanted to withdraw the petition based on a**

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settlement arrived between the parties. Examine whether it is permissible to withdraw the petition after it has been admitted? and also infer the legal provision relating to the admission and rejection of application by an adjudicating authority under the Insolvency and Bankruptcy Code, 2016. [7+7=14]

Answer:

- (a) As per section 139(7), in case of a Government company, the manner of appointment of first auditor shall be as follows:
- i. In the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments, the first auditor shall be appointed by the CAG within 60 days of registration of the company.
 - ii. In case, CAG does not appoint the first auditor within the said period of 60 days, the Board shall appoint the first auditor within next 30 days.
 - iii. Further, in the case of failure of the Board to appoint such auditor within the next 30 days, it shall inform the members of the company who shall appoint such auditor within the 60 days at an extraordinary general meeting, who shall hold office till the conclusion of the first annual general meeting.
- (b) The given problem relates to section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 44(2) of the National Company Tribunal Rules, 2016.
- As per section 9, an application for initiation of corporate insolvency resolution process may be made by an operational creditor against the corporate debtor. Such application is made to the adjudicating Authority (NCLT)
- As per section 13, where an application is made under section 9 is admitted, the adjudicating authority shall make an order with respect to following:
- (i) Appoint an interim resolution professional in the manner as laid down in sec 16.
 - (ii) Cause a public announcement of the initiation of corporate insolvency resolution process and call for the submission of claims.
 - (iii) Declare a moratorium for the purposes referred to in section 14.

However, section 9 does not address a situation wherein an application made to the Adjudicating Authority is admitted, but afterwards, the operational creditor wishes to withdraw its application. In other words, section 9 is silent as to whether an application, once admitted, can be withdrawn or not. But, this is dealt with Rule 44(2) of the National Company Law Tribunal Rules, 2016.

As per Rule 44(2), where at any stage prior to the hearing of the petition or application, the applicant desires to withdraw his application, he shall make an application to that effect to the Tribunal, and the Tribunal on hearing the applicant and if necessary, the other party in the application, may permit such withdrawal upon imposing such costs as it may deem fit and proper. In “Parker Hannifin India private Limited v Powers International Private Limited” an application made under section 9 was admitted by the Adjudicating Authority. As a consequence of admission of application, public announcement was made inviting claims from the creditors and moratorium was declared. Thereafter, operational creditor and corporate debtor duly agreed for amicable settlement and was arrived at between the parties. Then an application was made to the Adjudicating Authority for withdrawal of application admitted earlier.



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The Authority held that after the admission of the application under section 9, the application acquires the character of a representative suit. By reason of public announcement, other creditors become entitled to file their claims and participate in the corporate insolvency resolution process. Therefore, the application cannot be dismissed on the basis of a compromise or settlement arrived at between the operational creditor and corporate debtor. Thus, operational creditor and corporate debtor alone shall have no right to decide the withdrawal of the application. In the given Nature India Limited's application against Tulip Limited has been admitted by the Adjudicating Authority under section 9. Afterwards, Nature India Limited and Tulip Limited entered into a settlement and wanted to withdraw the application. Accordingly, the application admitted under section 9 cannot be withdrawn.

6. (a) Discuss the benefits of Sustainable report.
- (b) Classify the major categories of cyber-crimes and summarize them with examples. [7+7=14]

Answer:

- (a) **Benefits of sustainability reporting:** Sustainability reporting refers to the disclosure, whether voluntary, solicited, or required, of non-financial performance information to outsiders of the organization. Generally speaking, sustainability reporting deals with information concerning environmental, social, economic and governance issues in the broadest sense. These are the criteria gathered under the acronym ESG (Environmental, social and corporate governance).

The introduction of these non-financial information in published reports is seen as a step forward in corporate communication and considered as an effective way to increase corporate engagement and transparency.

Sustainability reports help companies build consumer confidence and improve corporate reputations through social responsibility programs and transparent risk management. This communication aims at giving stakeholders broader access to relevant information outside the financial sphere that also influences the company's performance.

In the EU, the mandatory practice of sustainability reporting for certain companies is regulated by the Non-Financial Reporting Directive (NFRD) recently revised and renamed Corporate Sustainability Reporting Directive (CSRD). An increasing number of organizations are providing frameworks for sustainability reporting and are issuing standards or similar initiatives to guide companies in this exercise.

There is a wide range of terminology used to qualify this same concept of sustainability reporting: non-financial reporting, extra-financial reporting, social reporting, CSR reporting or even socio-environmental reporting.

UNO supports principles of Responsible Investment (PRI). These principles have subscribed by 3500 signatories who are investors. They have committed to integrate ESG factors into investment decision making.

Most of the large companies in the world are already reporting their ESG profile in line with globally recognized parameters.

Studies have made by one rating agency on ESG ratings which shows variance in rating in different sectors. Though not mandatory ESG rating would give the message to the outsiders, stakeholders



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about the ESG approach of the entity. More and more companies are coming under ESG philosophy and practice.

In view of the above, it has become important to reporting of company's performance on sustainability related factors and its importance is as relevant operational performance.

SEBI had in November 2015, prescribed format in reporting ESG parameters listed entities. SEBI has raised the format in May, 2021 for reporting ESG parameters called Business Responsibility and Sustainability Report (BRSR). It seeks disclosure from listed entities on their performance against the principles of National Guidelines on Responsible Business Conduct (NGBRC). Each parameter is divided into leadership and essential indicators, whereas the former is voluntary and latter is mandatory. The corporates need to look beyond financial figures for effective ecosystem between corporate, society and environment.

With effect from financial year 2022-23, the filing shall be mandatory for top 1000 companies listed in any of the exchange, based on market capitalization.

Sustainable management takes the concepts from sustainability and synthesizes them with the concepts of management. Sustainability has three branches: the environment, the needs of present and future generations, and the economy. Sustainable management is needed because it is an important part of the ability to successfully maintain the quality of life on our planet.

(b) Cyber-crimes can be basically divided into three major categories:

A. Cyber-crimes against persons are:

- *Cyber-Stalking*: It means to create physical threat that creates fear to use the computer technology such as internet, e-mail, phones, text messages, webcam, websites or videos.
- *Defamation*: It is an act of imputing any person to lower down the dignity of the person by hacking his mail account and sending some mails with using vulgar language to unknown persons.
- *Hacking*: unauthorized control/access over computer system and act of hacking completely destroys the whole data as well as computer programmes.
- *Cracking*: Cracking means that a stranger has broken into your computer systems without your knowledge and consent and has tampered with precious confidential data and information.
- *Spoofing*: A spoofed e-mail may be said to be one, which misrepresents its origin. It shows its origin to be different from which actually it originates. Spoofing is a blocking through spam which means the unwanted uninvited messages. Wrongdoer steals mobile phone number of any person and sending SMS via internet and receiver gets the SMS from the mobile phone number of the victim.
- *Carding*: It means false ATM cards i.e. Debit and Credit cards used by criminals for their monetary benefits through withdrawing money from the bank account mala fide.
- *Fraud*: It means the person who is doing the act of cyber-crime i.e. stealing password and data storage has done it with having guilty mind which leads to fraud and cheating.
- *Threat*: refers to threatening a person with fear for their lives or lives of their families through the use of a computer network i.e. E-mail, videos or phones.



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B. Cyber-crimes against property

There are certain offences which affects person or properties which are as follows:

- *Squatting*: It means where two persons claim for the same Domain Name either by claiming that they had registered the name first on by right of using it before the other or using something similar to that previously.
- *Vandalism*: Vandalism means deliberately destroying or damaging property of another. Thus cyber vandalism means destroying or damaging the data when a network service is stopped or disrupted. It may include within its purview any kind of physical harm done to the computer of any person.
- *Hacking*: Hactivism attacks those included Famous Twitter, blogging platform by unauthorized access/ control over the computer. Due to the hacking activity there will be loss of data as well as computer.
- *Virus*: Viruses are programs that attach themselves to a computer or a file and then circulate themselves to other files and to other computers on a network. They usually affect the data on a computer, either by altering or deleting it. Worm attacks plays major role in affecting the computerize system of the individuals.
- *Trespass*: It means to access someone's computer without the right authorization of the owner and does not disturb, alter, misuse, or damage data or system by using wireless internet connection.

C. Cyber-crimes against Government

There are certain offences done by group of persons intending to threaten the international governments by using internet facilities. It includes:

- **Terrorism**: Cyber terrorism is a major burning issue in the domestic as well as global concern. The common form of these terrorist attacks on the Internet is by distributed denial of service attacks, hate websites and hate e-mails, attacks on sensitive computer networks etc. Cyber terrorism activities endanger the sovereignty and integrity of the nation.
- **Warfare**: It refers to politically motivated hacking to damage and spying. It is a form of information warfare sometimes seen as analogous to conventional warfare although this analogy is controversial for both its accuracy and its political motivation.
- **Piracy**: It means distributing pirated software from one computer to another intending to destroy the data and official records of the government.
- **unauthorized Information**: It is very easy to access any information by the terrorists with the aid of internet and to possess that information for political, religious, social, ideological objectives.
 - (i) Tampering with Computer source documents - Sec.65
 - (ii) Hacking with Computer systems, Data alteration - Sec.66
 - (iii) Publishing obscene information - Sec.67
 - (iv) Un-authorized access to protected system Sec.70
 - (v) Breach of Confidentiality and Privacy - Sec.72
 - (vi) Publishing false digital signature certificates - Sec.73



FINAL EXAMINATION **SET 1**
MODEL ANSWERS **TERM – DECEMBER 2023**
PAPER – 13 **SYLLABUS 2022**
CORPORATE AND ECONOMIC LAWS

7. (a) Discuss “connected person” in context of insider trading.
- (b) Analyse the duties and power of the director general of Competition Commission of India? [7+7=14]

Answer:

- (a) According to Regulation 2 (1) (d) of SEBI (Prohibition of Insider Trading) Regulations, 2015, “connected person” means-
- any person who is or has during the 6 months prior to the concerned act been associated with a company, directly or indirectly, in any capacity including by reason of frequent communication with its officers or by being in any contractual, fiduciary or employment relationship or by being a director, officer or an employee of the company or holds any position including a professional or business relationship between himself and the company whether temporary or permanent, that allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access. The following persons shall be considered to be connected persons unless the contrary is established, -
- (a) an immediate relative of connected persons specified in clause (i); or
 - (b) a holding company or associate company or subsidiary company; or
 - (c) an intermediary as specified in section 12 of the Act or an employee or director thereof; or
 - (d) an investment company, trustee company, asset management company or an employee or director thereof; or
 - (e) an official of a stock exchange or of clearing house or corporation; or
 - (f) a member of board of trustees of a mutual fund or a member of the board of directors of the asset management company of a mutual fund or is an employee thereof; or
 - (g) a member of the board of directors or an employee, of a public financial institution; or
 - (h) an official or an employee of a self-regulatory organization recognised or authorized by the Board; or
 - (i) A concern, firm, Hindu undivided family, company, or an association of persons wherein a director of the company or his immediate relative or banker of the company, has more than ten percent of the holding of interest.
7. (b) The competition bill, 2001 was introduced in Lok Sabha on 6 august 2001 and passes on December 2002 to replace the MRTP act, 1969. The act is also acknowledged as competition act 2002 or antitrust law. This act extends to whole of India except the state of Jammu and Kashmir. The objective of the act to prohibits anti-competitive agreements, abuse of the dominant position by enterprises and regulates the combinations which causes or likely to cause adverse effect on competition with in India.
- The Central Government appoints a Director General for the purposes of assisting the Commission in conducting inquiry into contravention of any of the provisions of this Act and for performing such other functions.
- The Director General is responsible for performing a number of important duties, which are outlined below:
- Conducting Investigations:* The primary duty of the DG is to investigate cases where there is a suspicion of anti-competitive behaviour by businesses or individuals. The DG may conduct



CORPORATE AND ECONOMIC LAWS

investigations on its own initiative, or on the basis of a complaint filed by a party. In conducting investigations, the DG has the power to summon witnesses, call for the production of documents, and conduct search and seizure operations.

Gathering Evidence: In the course of investigations, the DG is responsible for gathering evidence in order to establish whether there has been a contravention of the Competition Act. This may involve interviewing witnesses, examining documents and records, and analysing economic data.

Preparing Reports: Once an investigation is complete, the DG is required to prepare a report outlining its findings. The report must contain details of the alleged anti-competitive conduct, the evidence gathered during the investigation, and the DG's conclusions as to whether there has been a contravention of the Competition Act.

Providing Expert Opinions: The DG is often called upon to provide expert opinions and advice to the Competition Commission of India (CCI) on matters related to competition law and policy. This may include providing advice on proposed mergers and acquisitions, conducting market studies, and assessing the impact of government policies on the competition.

Assisting the CCI: The DG is required to assist the CCI in the discharge of its functions under the Competition Act. This may include providing technical and administrative support, assisting in the preparation of cases, and presenting evidence before the CCI.

Prosecuting Offences: In cases where the DG concludes that there has been a contravention of the Competition Act, it is responsible for initiating prosecution proceedings before the Competition Commission of India.

Conducting Advocacy: The DG also plays an important role in promoting competition advocacy, which involves raising awareness about the benefits of competition and advocating for policies and practices that promote competition in the marketplace.

The Director General shall in the entire matters under his charge, have powers assigned to him all the way through the Governing Body. He shall exercise these powers under the direction, superintendence and control of the Society, President and Vice President and subject to these rules and bye-laws.

Section 33: - power to issue interim orders

The commission may by order, temporarily restrain any party from carrying on such act until the conclusion of any such inquiry or until further orders, without giving notice to such party where it deems necessary. Section 33 empowers to issue in term orders in case of anticompetitive agreements.

Section 34: - the power to award competition

In the section 34 of this act, the anti-competitive agreements are agreements in the midst of competitors in the direction of prevent, restrict or distort competition. Section 34 under this Act disallow agreements, decisions and practices that are anti-competitive.

Section 35: -

Person or an enterprise or the Director General may either appear in person or authorize one or more chartered accountants or company secretaries or cost accountants or legal practitioners or else any of his or its officers to there his or its case sooner than the Commission etc.



CORPORATE AND ECONOMIC LAWS

8. (a) “Money Laundering is the process of conversion of such proceeds of crime, the ‘dirty money’, to make it appear as ‘legitimate’ money”- examine the validity of statement by the rules and regulations of the act “The Prevention of Money Laundering Act, 2002”
- (b) Describe the role of Reserve Bank of India in management of foreign exchange. [7+7=14]

Answer:

- (a) The goal of a large number of criminal activities is to generate profit for an individual or a group. Money laundering is the processing of these criminal proceeds to disguise their illegal origin. The money so generated is tainted and is in the nature of ‘dirty money’. Money Laundering is the process of conversion of such proceeds of crime, the ‘dirty money’, to make it appear as ‘legitimate’ money.

The Prevention of Money Laundering Act, 2002 consists of ten chapters containing 75 sections and one Schedule divided into five parts.

The objects sought to be achieved under the Act are:

- (a) To prevent and control money laundering.
- (b) To confiscate and seize the property obtained from the laundered money. And
- (c) To deal with any other issue connected with money laundering in India.

The Directorate of Enforcement in the Department of Revenue, Ministry of Finance is responsible for investigating the cases of offence of money laundering under Prevention of Money Laundering Act, 2002. Financial Intelligence Unit - India (FIU-IND) under the Department of Revenue, Ministry of Finance is the central national agency responsible for receiving, processing, analysing and disseminating information relating to suspect financial transactions to enforcement agencies and foreign FIUs. Central Govt.(CG) shall appoint adjudicating authority to exercise jurisdiction and powers conferred under the Act.

The process of Money Laundering:

- (a) *Placement*: The Money Launderer introduces the illegal funds into the financial systems. This might be done by breaking up large amount of cash into less conspicuous smaller sums which are deposited directly into a Bank Account or by purchasing a series of instruments such as Cheques, Bank Drafts etc., which are then collected and deposited into one or more accounts at another location.
- (b) *Layering*: In this stage, the Money Launderer typically engages in a series of continuous conversions or movements of funds, within the financial or banking system by way of numerous accounts, so as to hide their true origin and to distance them from their criminal source. The Money Launderer may use various channels for movement of funds, like a series of Bank Accounts, sometimes spread across the globe, especially in those jurisdictions which do not co-operate in anti-Money Laundering investigations.
- (c) *Integration*: The Launderer moves to this third stage in which the funds reach the legitimate economy, after getting inseparably mixed with the legitimate money earned through legal sources of income. The Money Launderer may invest the funds into real estate, business ventures & luxury assets, etc. so that he can enjoy the laundered money, without any fear of law enforcement agencies.

**CORPORATE AND ECONOMIC LAWS**

The offences listed in the Schedule the Act, are scheduled offences and are divided into three parts - Part A, B and C.

In Part A, offences to the Schedule have been listed in 28 paragraphs.

Part 'B' of the Schedule are offences with total value involved is ₹1 crore or more.

Part 'C' deals with trans-border crimes, and is a vital step in tackling Money Laundering across International boundaries. Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine. But where the proceeds of crime involved in money-laundering relate to any offence specified under paragraph 2 of Part A of the Schedule, the maximum punishment may extend to ten years instead of seven years. Property made out of proceeds of crime, directly or indirectly attached and/or confiscated by the authority.

(b) **Since** its inception Reserve Bank has been playing key role in the formulation of monetary, banking and financial policies.

(i) **Inspection of banks**

Reserve Bank of India has been empowered under Banking Regulation Act, 1949 to conduct the inspection of banks and regulate them in the interest of banking system, banking policy and depositors/public.

(ii) **Regulatory role of commercial banks**

Department of Banking Operations and Development exercises regulatory powers in respect of commercial banks and Local Area Banks (LABs).

(iii) **Anti - money laundering under PMLA**

RBI has a role in PMLA by creating an anti-money laundering Cell (AML Cell) for combating Financing of Terrorism (CFT) and tracking domestic and global developments in AML and CFT.

(iv) **Approval/ monitoring of Board level appointments of commercial banks.**

The key activity of the section, appropriately named as Appointments Section, relate

- Approval of proposals from the domestic private sector banks for appointment/ removal of part-time Chairman/Managing Director/ whole-time Chairman and Chief Executive Officers.
- Making recommendations to Government regarding appointment of Executive Directors/Chairmen & Managing Directors of public sector banks, fixation of their salaries, payment of superannuation benefits and other allied matters.
- Making recommendations to Government regarding appointment of non-official directors, non-workmen directors and RBI Nominee Directors on the Boards of Nationalised banks.

(v) **licensing of branches**

- issue of authorisations to Indian commercial banks including Local Area Banks for opening of branches in pursuance to regulatory powers vested with Reserve Bank under the provisions of Banking Regulation Act, 1949.
- To consider representations/complaints from institutions/VIPs and members of public for opening /shifting/closure of bank offices.
- Review of branch licensing policy periodically
- Maintenance and updating of database on opening/substitution/closure/shifting of branches, Extension Counters, ATMs, etc.

**CORPORATE AND ECONOMIC LAWS****(vi) Banking policy**

It undertakes various new policy initiatives and reviews existing guidelines for progressive upgradation of prudential norms to move towards best practices. The major activities of the Section are as follows:

- Formulation of policy and issue of prudential guidelines pertaining to Capital adequacy; Income recognition; asset classification and provisioning pertaining to advances portfolio; Classification, valuation and operation of investment portfolio; and Credit exposure limits.
- Formulation of policy and issues regarding capital structure of public sector banks, including raising of fresh equity, return of capital, recapitalisation.
- Formulation of policy and issuance of regulatory guidelines for implementation of the Basel II framework.
- Policy guidelines / clarifications on integrated risk management systems including Asset Liability Management and issue of guidance notes on various aspects.
- Policy issues/ guidelines pertaining to compromise settlement of NPAs of banks.
- Matters regarding Foreign Contributions Regulations Act – donations received by organizations from abroad.

(vii) Issue of directives to banks

Various directions are issued by RBI from time to time, on payment of Interest rates on various types of deposit accounts (including NRI deposit), maintenance of deposit accounts, prohibitions in respect of S.B. Accounts, matters relating to payment of additional interest and brokerage on deposits, appointment of agents for soliciting deposits, giving gifts/incentives to depositor's/staff members, freezing of accounts, Resurgent India Bonds, Development Bonds, etc. RBI may also direct Capital Market Exposure of banks.

(viii) Collection and dissemination of information

Collection and dissemination of information from/to banks and notified All-India financial institutions (FIs) regarding defaulting borrowers with outstanding aggregating ₹1 crore and above, which have been classified by them as 'doubtful' or 'loss' (non-suit filed accounts) on half-yearly basis viz., as on March 31 and September 30.

(ix) Overseeing/ monitoring Indian banks operations abroad

- Policy formulation and issue of guidelines regarding overseas operations of Indian banks, examination of proposals and grant of approvals for opening their Joint Ventures / Representative Offices / branches and review of their overseas operations including closure of branches / joint ventures / representative offices.
- Approval of Indian banks' proposals for entering into Management Agreements and correspondent banking arrangements with foreign entities.
- Preparation of proposals for submission before IDC of GOI regarding opening of branches / representatives offices of Indian banks abroad.

(x) Authorisation for dealing in precious metals

Policy matters relating to Gold Deposit and Gold Import Schemes and dealing with references received from banks in this regard, issue and renewal of authorization for banks for import of gold / silver / platinum and acceptance of gold under Gold Deposit Scheme and collection of data relating to import of gold and Gold Deposit Scheme and collection of data relating to import of gold and gold deposits by banks in India.

**CORPORATE AND ECONOMIC LAWS**

- (xi) **Overseeing and monitoring offshore banking units**
- Approvals for setting up of Offshore Banking Units (OBUs) and issue of policy guidelines for the operation of OBUs in Special Economic Zones (SEZs).
 - Correspondence with Government and other agencies relating to setting up of Special Economic Zones, International Financial Services Centres.
- (xii) **Monitoring and policy making industrial and export credit**
The industrial credit segment has been considerably liberalized / deregulated over the period. At present, various items of work currently undertaken by IECS are distributed amongst three desks viz. (i) Policy Desk (ii) Export Credit Desk and (iii) Industrial Rehabilitation Desk.
- (xiii) **Interpretation of regulations**
- (xiv) **Granting exemptions**
- (xv) Role in management of foreign exchange.:
- a) Controlling dealings in foreign exchange by giving general or special permission for dealing in foreign exchange, excluding those cases where specific provisions have been made in Act, Rules or Regulations.
 - b) RBI cannot impose any restrictions on current account transactions. These can be imposed only by Central Government in consultation with RB. In certain cases, prior approval of RBI is required for current account transactions as provided in Foreign Exchange Management (Current Account Transactions) Rules, 2000.
 - c) Specifying conditions for payment in respect of capital account transaction – Section 6(2).
 - d) Regulate/prohibit/restrict the following, by issuing Regulations:
 - Transfer or issue of foreign security to resident and Indian security to non-resident;
 - Borrowing and lending in foreign exchange or to a foreign person;
 - Export/import of currency or currency notes;
 - Transfer of immovable property outside India;
 - Giving guarantee or surety where foreign exchange transaction is involved – Section 6(3)
 - e) Specify (by regulation) period and manner in which foreign exchange due from export of goods and services should be received – Section 8.
 - f) To grant exemption from realisation and repatriation in cases specified under Section 9.
 - g) Granting authorisation to ‘Authorised Person’ to deal in foreign exchange, to give directions to them and to inspect the authorised person – Sections 10, 11 & 12. This post was last modified on June 25, 2021 12:38 pm
- (xvi) **Bankers bank:**
It extends loans and advances to commercial banks.
- (xvii) **Bankers to Central Govt./State Govt.**
RBI is the banker to Central/ State Govt. where it also extends loan and keeps account. It also issues bonds on behalf of the Govt.
- (xviii) **Oversee payment and settlement system**
RBI oversees payment and settlement system of commercial banks.