

**Paper-13: CORPORATE LAWS AND COMPLIANCE**

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Full Marks: 100

Time Allowed: 3 Hours

Answer Question No. 1 which is compulsory carries 20 marks and answer any 5 Question from Q. No 2 to Q. No. 8

(1) Answer any 4 from the below

4x5=20

**(a) Megatron Ltd. was incorporated on 1st January, 2012. On 1st July, 2014 a political party approaches the company for a contribution of ₹12 lakh for political purpose. Is the company legally authorised to give this political contribution under The Companies Act, 2013?**

**Answer:**

Under section 182 (4) of the Companies Act, 2013 if a company makes any contribution in contravention of the provisions of section 182, the company shall be punishable with fine which may extend to five times the amount so contributed and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months and with fine which may extend to five times the amount so contributed.

**(b) TTK Limited was incorporated on 5<sup>th</sup> May, 2014 under the Companies Act, 2013. Mr. Rajan was appointed as the first Resident Director of the Company in the Board Meeting held on 30<sup>th</sup> September, 2014. Examine the validity of the following appointment with reference to the provisions of the Companies Act, 2013.**

**Answer:**

As per Section 149(3) of the Companies Act, 2013, every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty two days in the previous calendar year. The MCA vide General Circular No. 25/2014 dated 26th June, 2014 has given a clarification on applicability of requirement for resident director in the current calendar/financial year. Regarding newly incorporated companies, it is clarified that companies incorporated between 1st April, 2014 to 30th September, 2014 should have a resident director either at the incorporation stage itself or within six months of their incorporation. Since, TTK Ltd. was incorporated on 5th May 2014, it should have a resident director either at the incorporation stage itself or within six months of their incorporation. Thus accordingly, the appointment of Mr. Rajan as a first Resident Director of the company in the Board Meeting held on 30th September 2014 is valid.

**(c) Analyse 'Corporate Social Responsibility' as a Corporate Brand.**

**Answer:**

In an economy where corporate strive for a unique selling proposition to differentiate themselves from their competitors, CSR initiatives enable corporate so build a stronger brand that resonates with key external stakeholders – customers, general public and the government. Business are recognising that adopting an effective approach to CSR can open up new opportunities, and increasingly contribute to the corporate ability to attract passionate and committed workforces. Corporate in India are also realising that their reputation is intrinsically connected with how well they consider the effects of their activities on those with whom they interact. Wherever the corporate

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fail to involve parties, affected by their activities it may put at risk their ability to create wealth for themselves and society. Therefore, in terms of business, CSR is essentially a strategic approach for firms to anticipate and address issues associated with their interactions with others and through those interactions, to succeed in their business endeavours. The idea that CSR is important to profitability and can prevent the loss of customers, shareholders and even employees is gaining increasing acceptance. Further, CSR can help to boost the employee morale in the organisation and create a positive brand centric corporate culture in the organisation. By developing and implementing CSR initiatives, corporate feel contented and proud, and this pride trickles down to their employees. The sense of fulfilling the social responsibility leaves them with a feeling of elation. Moreover it serves as a soothing diversion from the mundane workplace routine and gives one a feeling of satisfaction and a meaning to their lives.

**(d) The Board of Directors of a newly incorporated Banking Company is required to file the accounts and balance sheet. Advise the Board of Directors about the law relating to preparation, signing and filing of accounts and balance sheet under the provisions of the Banking Regulation Act, 1949.**

**Answer:**

Law related to preparation, signing and filing of Accounts and Balance Sheet:

According to section 29 of the Banking Regulation Act 1949, every Banking Company incorporated In India, In respect of all business transacted by it and through its branches in India, shall prepare a balance sheet and profit & loss account as on the last working day of the Accounting year (which is April to March i.e. 31st March) in the Form "A" and "B" given in the third schedule of the Act. Signing of Accounts and Balance Sheet:

The amalgamated Balance Sheet and Profit and Loss Account should be signed by the manager or the principal officer of the company and at least three Directors where there are more than three directors or where there are not more than three directors, by all the directors. In case of banking companies incorporated outside India by the manager or agent of the principal officer of the company in India.

Sections 31 and 32 of the Banking Regulation Act, 1949 lay down the procedure for the filing of the accounts and balance sheet. The accounts and balance sheet along with auditor's report shall be published in prescribed manner and three copies thereof shall be furnished as returns to Reserve Bank of India (RBI) within three months from the end of the period to which they refer. The RBI may extend the period by a further period of not exceeding three months. These three copies of accounts and balance sheet along with auditor's report shall be sent by the banking company to the Registrar of Companies, at the same time while sending the same.

**(e) Xenta Limited, a foreign company failed to deliver some desired documents to the Registrar of Companies as required under Section 380 of the Companies Act, 2013. State the provisions of penalty prescribed under the said Act, which can be levied on Xenta Limited for its failure.**

**Answer:**

If a foreign company fails to deliver documents to the Registrar of Companies as required under Section 380 of the Companies Act, 2013 the foreign company shall be punishable with a fine which shall be not less than ₹ 1,00,000 but which may extend to ₹ 3,00,000 and in the case of a continuing offence, with an additional fine which may

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extend to ₹ 50,000 for every day after the first during which the contravention continues. Also, every officer of the foreign company who is in default shall be punishable with an imprisonment for a term which may extend to six months or with a fine which shall not be less than ₹25,000 but which may extend to ₹5,00,000 or with both. The penalty is provided in Section 392 and thus Xenta Ltd. is liable for the contravention of Section 380 of the Act.

- (2) (a) Explain the concept of Key Managerial Personnel as introduced by the Companies Act, 2013. Explain the classes of companies which are required to appoint whole time Key Managerial Person under the provisions of the said Act. 8
- (b) What are the scanned documents required to be attached with e form DIR-3? 4
- (c) State what is meant by "Employees' Stock Option". 4

**Answer:**

(2) (a) As per the provisions of Section 203(1) of the Companies Act, 2013, every company belonging to such class or classes of companies as may be prescribed, shall have the following whole time Key Managerial Personnel.

- (i) Managing Director or Chief Executive Officer or Manager and in their absence, a Whole Time Director;
- (ii) Company Secretary; and
- (iii) Chief Financial Officer.

According to Rule 8 of the Companies (appointment and Remuneration of Managerial Personnel) Rules, 2014, every listed company and every other public company having a paid up share capital of ₹ 10 crore or more shall have a whole time Key Managerial Personnel. Further, as per the Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2014, a company other than a company covered under Rule 8 above, which has a paid up share capital of ₹ 5 crore or more than shall have a whole time Company Secretary. With the insertion of Rule 8A to the above rules, it is now mandatory for every other company to have a whole time company secretary, if its paid up share capital is ₹ 5 Crore or more.

- (b) (i) High resolution photograph of the applicant.
- (ii) PAN is mandatory now. So copy of pan is mandatory for identity, name, father's name and date of birth. Proof of father's name is not required in the case of foreign nationals.
- (iii) Copy of passport is mandatory as an id proof in the case of foreign nationals.
- (iv) Present Address proof which should not be older than 2 months.
- (v) Verification as perform DIR -4 as per the format given on the website.

(c) An employee stock option (ESO) is a stock option granted to specified employees of a company. ESOs offer the options holder the right to buy a certain amount of company shares at a predetermined price for a specific period of time. An employee stock option is slightly different from an exchange-traded option, because it is not traded between investors on an exchange.

(3) (a) Delta Private Limited is a company in which there are eight shareholders. Can a member holding less than one-tenth of the share capital of the company apply to the Company Law Board for relief against oppression and mismanagement? Give your answer according to the provisions of the Companies Act, 1956. 5

(b) The Board of Directors of Maxwell Limited decides to pass a resolution by circulation for allotment of 1,000 equity shares to Mr. Rao. Draft a specimen Board Resolution to be passed by circulation for this purpose. 5

(c) Pursuant to the provisions of the Companies Act, 2013 which companies are required to constitute a 'Nomination and Remuneration Committee'? 6

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## Answer:

**(3) (a)** Under Section 399(1)(a) of the Companies Act, 1956, in the case of a company having share capital, the following member(s) have the right to apply to the Company Law Board under Section 397 or 398.

- (i) Not less than 100 members of the company or not less than one -tenth of the total number of members, whichever is less; or
- (ii) Any member or members holding not less than one-tenth of the issued share capital of the company provided the applicant(s) have paid all the calls and other sums due on the shares.

In the given case, since there are eight shareholders. As per the condition (a) above, 10% of 8 i.e., 1 satisfies the condition. Therefore a single member can present a petition to the Company Law Board (CLB), regardless of the fact that he holds less than one-tenth of the company's share capital.

## **(b)**

To  
Mr. Rao (Director)  
(Address in India only)

Dear Sir,

The following resolution which is intended to be passed as a resolution by circulation as provided in Section 175 of the Companies Act, 2013 is circulated herewith as per the provisions of the said section. If only you are not interested in the resolution, you may please indicate by appending your signature in the space provided beneath the resolution appearing herein below as a separate perforated slip, if you are in favour or against the said resolution. The perforated slip may please be returned if and when signed within seven days of this letter.

However, it need not be returned if you are interested in the resolution.

Yours faithfully,

(Secretary)  
Maxwell Limited

## RESOLUTION:

Resolution by circulation passed by directors as per circulation effected ..... 20  
.....Resolved that 1,000 equity shares in the company be and hereby allotted to Mr. Rao, 202, M.G. Road, Patliputra, Bihar from whom full amount has been received. It is further resolved that necessary return of allotment be filed in the office of the ROC under the signature of Mr. Nair, a Director.

For/Against

Signature

**(c)** As per the provisions of Section 178 of the Companies Act, 2013 a Nomination and Remuneration Committee shall be constituted by the Board of Directors of:

- (a) Every listed company and
- (b) Such other class or classes of companies as may be provided. The Companies (Meetings of Board and its powers) Rules, 2014 has prescribed the following

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classes of companies that shall constitute Nomination and Remuneration Committee of the Board:

- (i) All public companies with a paid up capital of 10 crore rupees or more;
- (ii) All public companies having a turnover of one hundred crore rupees or more;
- (iii) All public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more.

- (4) (a) Explain the power of Securities and Exchange Board to regulate, issue and transfer of securities under Companies Act, 2013. 8**
- (b) What do you mean by 'Sweat Equity Share'? 4**
- (c) Audit Committee is to be formed by each and every company and the auditor has right to vote in the meeting of such Audit Committee, Comment. 4**

**Answer:**

**(4) (a)** Section 24 of the Companies Act, 2013 seeks to provide that issue and transfer of securities etc of the listed companies/companies which intend to get their securities listed shall be administered by SEBI and the Central Government, as required. The section says that –

(1) The provisions contained in this chapter III (Prospectus and allotment,) Chapter IV (share capital and debenture) and in section 127 (Punishment for failure to distribute dividends) shall-

(a) Where the provisions relate to

- (i) issue and transfer of securities and
- (ii) non-payment of dividend, by listed companies or those companies which intend to get their securities listed on any recognized stock exchange in India, except as provided under this Act be administered by the Securities and Exchange Board by making regulations in this behalf

(b) In any other case, be administered by the Central Government. The sections further explains that all powers relating to all other matters with respect to prospectus, return of allotment, redemption of preference shares and any other matters specifically provided in this Act, shall be exercised by the Central Government, the Tribunal or the Registrar, as the case may be.

(2) The Securities and Exchange Board shall, in respect of matters specified above and the matters delegated to it under provision of section 458(1) [provisions relating to the forward dealing and the insider trading], exercise the powers conferred upon it by the Securities and Exchange Board of India Act, 1992.

**(b)** "Sweat Equity Shares" means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

**(c)** As per section 177 of the Companies Act, 2013 read with the Companies (Meeting of Board and its Powers) Rules, 2014, audit committee is to be formed by every listed company and following classes of companies:

- (i) All public companies with a paid up capital of ten crore rupees or more,
- (ii) all public companies having turnover of one hundred crore rupees or more,
- (iii) all public companies having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more. Further, the auditor shall have the right to be heard in the meetings of the Audit Committee when it considers the Auditor's Report but shall not have the right to vote.

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- (5) (a) Enumerate the obligations of banking companies under the Prevention of Money Laundering Act, 2002. 8
- (b) Mr. Lal has won a big lottery and wants to remit US Dollar 20,000 out of his winnings to his daughter who is in USA. Advise whether such remittance is possible under the Foreign Exchange Management Act, 1999. 8

**Answer:**

- (5) (a) Section 12 provides for the obligation of Banking Companies, Financial Institutions and Intermediaries or a person carrying on a designated business or profession. According to Sub-section (1), every banking company, financial institution and intermediary or a person carrying on a designated business or profession shall-
- (a) maintain a record of all transactions, including information relating to transactions covered under clause (b), in such manner as to enable it to reconstruct individual transactions;
  - (b) furnish to the Director within such time as may be prescribed, information relating to such transactions, whether attempted or executed, the nature and value of which may be prescribed;
  - (c) verify the identity of its clients in such manner and subject to such conditions, as may be prescribed;
  - (d) identify the beneficial owner, if any, of such of its clients, as may be prescribed;
  - (e) maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients.
- (b) Remittance of Foreign Exchange (Section 5 of the Foreign Exchange Management Act, 1999): According to Section 5 of the FEMA, 1999 any person may sell or draw foreign exchange to or from an authorized person if such a sale or drawal is a current account transaction. Provided that Central Government may, in public interest and in consultation with the Reserve Bank, impose such reasonable restrictions for current account transactions as may be prescribed. As per the rules, drawal of foreign exchange for current account transactions are categorized under three headings:
- a. Transactions for which drawal of foreign exchange is prohibited.
  - b. Transactions which need prior approval of appropriate government of India for withdrawal of foreign exchange, and
  - c. Transactions which require RBI's prior approval for drawal of foreign exchange.

Mr. Lal wanted to remit US Dollar 20,000 out of his lottery winnings to his son residing in USA. Such remittance is prohibited and the same is included in the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, Mr. Lal cannot withdraw foreign exchange for this purpose.

- (6) (a) Explain the provisions under the Companies Act, 1956 for amendment of Articles of Association of a producer company. 4
- (b) Define the expression 'Accounting Standards' within the meaning of Companies Act, 2013. 4
- (c) Board of Directors of PBX Limited held a board meeting on 2nd May, 2014 at its registered office. You are required to state the salient points to be taken into account while drafting the minutes of the said board meeting. 8

**Answer:**

- (6) (a) Under section 581X of the companies Act, 1956 every producer company having an average turnover exceeding ₹ 5 Crores in each of three consecutive financial years shall have a whole time secretary who is a member of ICSI.

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(b) As per subsection (2) of Section 2 of the Companies Act, 2013, the expression "accounting standards" means the standards of accounting or any addendum thereto for companies or class of companies referred to in section 133. As per Section 133, the standards of accounting recommended by the Institute of Chartered Accounts of India constituted under the Chartered Accountants Act, 1949 as may be prescribed by the Central Government in consultation with and after examination of the recommendations made by the National Financial Reporting Authority established under section 132 of the said Act. Rule 7 of the Companies (Accounts) Rules, 2014, further states that the standards of accounting specified under the Companies Act, 1956. Shall be deemed to be the accounting standards until the according standards are prescribed by the Central Government under section 133.

(c) While drafting the minutes of a board meeting following salient points should be kept in mind:

- the minutes may be drafted in a tabular form or they may be drafted in the form of a series of paragraphs, numbered consecutively and with relevant headings.
- the place, date and time of the meeting should be stated.
- the Chairman of the meeting must be mentioned. The general phrase used in the Minutes is "Mr. \_\_\_\_\_, chairman of the meeting took the chair and called the meeting to order".
- the minutes should clearly mention the attendance and the constitution of the meeting, i.e., persons present and the capacity in which present, e.g. name of the person chairing the meeting, names of the directors and secretary, identifying them as director or secretary, names of persons in attendance like auditor, internal auditor etc. The minutes should also contain the subject of leave of absence granted, if any, to any of the board members.
- contents of the meeting giving serial number of the minutes, brief subject heading, full terms of the resolution adopted including the statistical details, if any.
- the adoption of the Minutes of the previous Board Meeting must be the first item on the Agenda by the directors giving their approval and the Chairman signing the Minutes as proof of approval of the Minutes.
- conduct of the business at the meeting should be recorded in the chronological sequence as per the Agenda.  
In respect of each item of business the names of the directors dissenting or not concurring with any resolution passed at the board meeting should be mentioned.
- Reference about interested directors abstaining from voting is also required to be stated in the minutes.
- Chairman's signature and date of verification of minutes as correct

**(7) (a) Explain the powers of Reserve Bank of India to control advances by Banking Company under the Banking Regulation Act, 1949. 8**

**(b) How a trial under the prevention of Money Laundering Act, 2002 is conducted in Special Courts? 8**

**Answer:**

- (7) (a)** (i) Where the Reserve Bank is satisfied that it is necessary or expedient in the public interest or in the interests of depositors or banking policy so to do, it may determine the policy in relation to advances to be followed by banking companies generally or by any banking company in particular, and when the policy has been so determined, all banking companies or the banking company concerned, as the case may be, shall be bound to follow the policy as so determined. ii.
- (ii) Without prejudice to the generality of the power vested in the Reserve Bank under sub-section (1) the Reserve Bank may give directions to banking



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companies, either generally or to any banking company or group of banking companies in particular, as to

- (a) the purposes for which advances may or may not be made,
  - (b) the margins to be maintained in respect of secured advances,
  - (c) the maximum amount of advances or other financial accommodation which, having regard to the paid-up capital, reserves and deposits of a banking company and other relevant considerations, may be made by that banking company to any one company, firm, association of persons or individual,
  - (d) the maximum amount up to which, having regard to the considerations referred to in clause (c), guarantees may be given by a banking company on behalf of any one company, firm, association of persons or individual, and
  - (e) the rate of interest and other terms and conditions on which advances or other financial accommodation may be made or guarantees may be given.
- (iii) Every banking company shall be bound to comply with any directions given to it under this section.

**(b)** As per Sec. 43 of the Prevention of Money Laundering Act, 2002, the Central Government, in consultation with the Chief Justice of the High Court, shall for trial of offence punishable under Sec.4 by notification designate one or more courts of session as special Court or courts for such area or areas or for such class or case or group of cases as may be specified in the notification. Here, "High Court" means the High Court of the State in which a Session Court designated as Special Court was functioning immediately before such designation. While trying an offence under this Act, a special Court shall also try an offence, other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

**(8) (a) "Corporate Governance is about promoting fairness". Is it truly beneficial? – Discuss. 8**

**(b) The Financial Reporting Council (FRC) is responsible for high standards of Corporate Governance. Explain this statement along with the aims of FRC. 8**

**Answer:**

**(8) (a)** Corporate Governance deals with promoting corporate fairness, transparency and accountability. It is concerned with structures and processes for decision making, accountability, control and behaviour at the top level of the organizations. It influences how the objectives of an organization are set and achieved, how risk is monitored and assessed and how performance is optimized. It is truly beneficial and it has the following benefits.

**1. Improve Financial Performance:**

Socially responsible business practices are linked to positive financial performance.

**2. Operating Cost Reduction:**

CSR initiative can help to reduce operating costs.

**3. Brand Image and Reputation:**

CSR helps a company to increase its brand image and reputation among the public, which in turn increase its ability to attract investors and trading partners. Proactive CSR Practices would lead to a favourable public image resulting in various positive outcomes like consumer and retailer loyalty, easier acceptance of new products and services, market access and preferential allocation of investment funds.

**4. Increased sales and customer loyalty:**

Business must first satisfy customer's key buying criteria i.e. price, quality, safety and convenience.

**5. Productivity and Quality:**

Improved working conditions, reduced environmental impacts or increased employee involvement in decision making, leads to

- (a) increased productivity and
- (b) reduced errors.

6. **Ability to attract and retain employees:**

Companies perceived to have strong CSR commitments find it easier to recruit and retain employees, resulting in reduction in turnover and associated recruitment and training costs.

**(b)** The Financial Reporting Council (FRC) has six operating bodies: the Accounting Standards Board (ASB), the Auditing Practices Board (APB) the Board for Actuarial Standards (BAS), the Professional oversight Board, the Financial Reporting Review Panel (FRRP) and the Accountancy and Actuarial Discipline Board (AADB). The importance placed on corporate governance is evidenced by the fact that, in March 2004, the FRC set up a new committee to lead its work on corporate governance.

Overall, the FRC is responsible for promoting high standards of corporate governance. It aims to do so by:

- maintaining an effective Combined Code on Corporate Governance and promoting its widespread application;
- ensuring that related guidance, such as that an internal control, is current and relevant;
- influencing EU and Global Corporate Governance Developments;
- helping to promote boardroom professionalism and diversity;
- encouraging constructive interaction between company boards and institutional shareholders.

The FRC has carried out several consultative reviews of the Combined Code which led to the amended Combined Code in 2006, and subsequently in 2008. The latest review took place in 2008. The frequency of the reviews are both an indicator of the FRC's responsibility for corporate governance of UK companies which involves leading public debate in the areas and its response to the global financial crisis which has, in turn, affected confidence in aspects of corporate governance.

The FRC website mentions the independent review of the governance of banks and other financial institutions carried out by Sir David Walker. The Walker Review published its draft recommendations in July 2009, some of the recommendations could be taken forward through amendments to the Combined Code. The FRC is considering the extent to which the Walker Review recommendations may be applicable for some or all listed companies in other sectors.