

Paper 13- Corporate Laws and Compliance

Paper-13: Corporate Laws and Compliance

Full Marks: 100

Time allowed:3 hours

Section - A

1. Answer all questions mentioned below. Mark the correct answer (only indicate A or B or C or D) and give justification. [2 × 10 = 20]

Multiple choice question:

- (i) A memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulation in this behalf is known as
- (A) Red Herring Prospectus
 - (B) Abridged Prospectus
 - (C) Shelf Prospectus
 - (D) Deemed Prospectus
- (ii) Strategy to tackle black money under The Prevention of Money Laundering Act, 2002:
- (A) Preventing generation of black money
 - (B) Effective detection, investigation & adjudication of black money
 - (C) Both the above
 - (D) None of the above
- (iii) Any allotment of securities made on the basis of Prospectus should be void if permission of listing is not granted by the Stock Exchange before expiry of
- (A) 12 weeks from the closure of the issue
 - (B) 10 weeks from the closure of the issue
 - (C) 8 weeks from the closure of the issue
 - (D) 30 days from the closure of the issue
- (iv) Which of the following is not the correct manner in the event of any change in his particulars as stated in Form DIR-3, an applicant intimate such change to the Central Government within a period of 30 days of such change in Form DIR-3?
- (A) The applicant shall download Form DIR-6 from the portal
 - (B) The form shall be digitally signed by CA or CS or CMA
 - (C) The applicant shall submit the fees
 - (D) The applicant shall submit the form DIR-6
- (v) The Apples producers of Shimla have formed an association to control the production of apples. This association is called as
- (A) Pool
 - (B) Cartel
 - (C) Merger
 - (D) Combination

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- (vi) Payment of Commission on exports made towards equity investment in wholly owned subsidiary abroad of an Indian Company is
- (A) Permissible
 - (B) Prohibited
 - (C) Forwarded
 - (D) Restricted
- (vii) Which of the following listing provides arbitrage opportunities to the investors, whereby they can make profit based on the difference in the prices prevailing in the said exchanges?
- (A) Multiple listing
 - (B) Initial listing
 - (C) Listing for right issue
 - (D) Listing for public issue
- (viii) Corporate Governance is a blend of the Internal and External Corporate Governance
- (A) Techniques
 - (B) Mechanisms
 - (C) Systems
 - (D) Methods
- (ix) No banking company shall create any charge upon its
- (A) Paid up Capital
 - (B) Unpaid Capital
 - (C) Paid up and unpaid capital
 - (D) None of these
- (x) Which of the following is not the condition for issue of IDR?
- (A) Issue size should not be more than ₹ 50 crores
 - (B) Minimum application amount should be ₹ 20,000
 - (C) At least 50% of the IDR issued should be allotted to qualified institutional buyers on proportionate basis
 - (D) There will be only denomination of IDR of the issuing company

Answer:

1.

(i)	B	Abridged Prospectus - Abridged Prospectus is a shorter version of the prospectus that includes all the most key elements of the typical prospectus.
(ii)	C	Both the above - The Prevention of Money Laundering Act, 2002, has identified all of the strategies mentioned here, are to be applied for tackling back money.

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(iii)	B	10 weeks from the closure of the issue Under - Sec. 40 of The Companies Act, 2013 any allotment of securities made on the basis of Prospectus should be void if permission of listing is not granted by the Stock Exchange before the expiry of 10 weeks from the closure of the issue.
(iv)	C	The applicant shall submit the fees - While submitting form DIR-6, the applicant does not require to submit fees.
(v)	B	Cartel - The term "cartel" has an inclusive meaning. Thus an association formed to control the production of apples is within the aforesaid definition of a cartel. Hence the association of apple producers of Shimla will be considered as a cartel under the provisions of the Act.
(vi)	B	Prohibited - According to the rules, drawal of foreign exchange for certain transactions are prohibited. In respect of certain transactions drawal of foreign exchange is permissible with the prior approval of Central Government. Payment of Commission on exports made towards equity investment in wholly owned subsidiary abroad of an Indian Company is prohibited.
(vii)	A	Multiple listing - Multiple listing provides arbitrage opportunities to the investors, whereby they can make profit based on the difference in the prices prevailing in the said exchanges.
(viii)	B	Mechanisms - Corporate Governance is a blend of the internal and external corporate governance mechanisms. The external mechanisms include the managerial labour market, the capital market, takeover and legal systems. The internal governance mechanisms include the board of directors and most important is ownership.
(ix)	B	Unpaid Capital - According to Section 14 of The Banking Regulation Act, 1949, no banking company shall create any charge upon its unpaid capital, and any such charge if created, shall be invalid.
(x)	C	At least 50% of the IDR issued should be allotted to qualified institutional buyers on proportionate basis - Issue size should not be more than ₹ 50 crores. Issue size should not be less than ₹ 50 crores.

Section - B

Answer any Five Question:

[16 X 5 =80]

2. (a) The Board of Directors of XYZ Company Limited at its meeting declared a dividend on its paid-up equity share capital which was later on approved by the company's Annual General Meeting. In the meantime, the directors at another meeting of the Board decided by passing a resolution to divert the total dividend to be paid to shareholders for purchase of investments for the company. As a result, dividend was paid to shareholders after 45 days. Examining the provisions of the Companies Act, 2013, state:
- (i) Whether the act of directors is in violation of the provisions of the Act and also the consequences that shall follow for the above act of directors?
 - (ii) What would be your answer in case the amount of dividend to a shareholder is adjusted by the company against certain dues to the company from the shareholder?

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- (b) Universal, a foreign company, incorporated in Australia was carrying on its business in Delhi related to manufacturing of automobile parts. Due to failure of its compliance with the respective law of the country under which it was incorporated, it was ceased to exist. Decide in the light of the Companies Act, 2013 the status of the company and the effect on the Conduct of Business in India. 3
- (c) What are the duties of Directors under the provisions of Companies Act, 2013? 7

Answer:

2. (a) According to section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the Unpaid Dividend Account. Further, according to section 127 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30 days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default is liable for the punishment under the said section. In the present case, the Board of Directors of XYZ Company Limited at its meeting declared a dividend on its paid-up equity share capital which was later on approved by the company's Annual General Meeting. In the meantime, the directors at another meeting of the Board decided by passing a resolution to divert the total dividend to be paid to shareholders for purchase of investment for the company. As a result, dividend was paid to shareholders after 45 days.
- (i) 1. Since, declared dividend has not been paid or claimed within 30 days from the date of the declaration to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the Unpaid Dividend Account.
2. The Board of Directors of XYZ Company Limited is in violation of section 127 of the Companies Act 2013 as it failed to pay dividend to shareholders within 30 days due to their decision to divert the total dividend to be paid to shareholders for purchase of investment for the company.
- Consequences: The following are the consequences for the violation of above provisions:
- (A) Every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and shall also be liable for a fine which shall not be less than one thousand rupees for every day during which such default continues.
- (B) The company shall also be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.

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(ii) If the amount of dividend to a shareholder is adjusted by the company against certain dues to the company from the shareholder, then failure to pay dividend within 30 days shall not be deemed to be an offence under Proviso to section 127 of the Companies Act 2013.

(b) Section 376 of the Companies Act, 2013 provides the law related to the power of winding up Foreign Companies, although dissolved. Provision states that where a body corporate incorporated outside India which has been carrying on business in India, ceases to carry on business in India, it may be wound up as an unregistered company under this Part (i.e., Part I of the Chapter 21 which deals with the companies authorized to register under this Act), notwithstanding that the body corporate has been dissolved or otherwise ceased to exist as such under or by virtue of the laws of the country under which it was incorporated.

As per the facts given in the question, Universal, a foreign company, incorporated in Australia ceased to exist as per the law of the country, also ceased to carry on business in Delhi. Accordingly, Universal Company may be wound up as an unregistered company although it ceased to exist in Australia.

(c) Duties of directors has been defined in the company Law for the first time under section 166 of the Companies Act, 2013. The following duties have been prescribed for a director under the said section:

- (i) He shall act in accordance with the articles of the company, subject to the provisions of this Act.
- (ii) He shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.
- (iii) He shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
- (iv) He shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.
- (v) He shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.
- (vi) He shall not assign his office and if any assignment so made, it shall be void.
- (vii) If a director of the company contravenes the provisions of this section, such director shall be punishable with fine which shall not be less than ₹ 1,00,000 but which may extend to ₹ 5,00,000.

3. (a) **Person who are not entitled to initiate insolvency resolution process-Discuss.** 7
- (b) **Comment with reference to the provisions of the Companies Act, 2013 in respect of the following:**
- (i) **Mr. P who is not qualified to be appointed as an independent director is appointed by the Board of Directors of XYZ Company Limited, for an independent director, as an alternate director.**

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- (ii) On the request of bank providing financial assistance, the Board of Directors of PQR Limited decides to appoint on its Board Mr. Peter, as nominee director. Articles of Association of the Company do not confer upon the Board of Director any such power. Further, there is no agreement between the company and the bank for any such nomination. 2+3=5
- (c) State whether the following statements are 'True' or 'False' and give reasons therefor:
- (i) 'Overseas Citizen of India (OCI)' means a person resident outside India who is a citizen of India.
- (ii) As per the SS-I (Secretarial standards on the meeting of Board), Quorum is not required to be present throughout the meeting.
- (iii) Locked-in securities of Promoter shall not be eligible for pledge with commercial banks, financial institutions as collateral security.
- (iv) 'Asset Reconstruction Company' means a company registered with Reserve Bank under section 3 for the purposes of carrying on the business of either asset reconstruction or securitisation. 1x4=4

Answer:

3. (a) The Code states that a corporate debtor (which includes a corporate applicant in respect of such corporate debtor) shall not be entitled to make an application to initiate corporate insolvency resolution process [Section 11 of Insolvency and Bankruptcy Code, 2016] in the following cases:
- (a) when undergoing a corporate insolvency resolution process; or
- (b) having completed corporate insolvency resolution process twelve months preceding the date of making of the application; or
- (c) or a financial creditor who has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under this Chapter; or
- (d) in respect of him a liquidation order has been made.

Thus, application to initiate insolvency resolution process cannot be filed within 12 months or if there were violation of conditions or where order of liquidation has been made.

New Section 29A has been inserted in November, 2017 amended.

Persons not eligible to resolution applicant:

A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person –

- (a) is an undercharged insolvent;
- (b) is a willful defaulter of the time of submission of resolution plan,
- (c) At the time of submission of plan, has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset.
- (d) has been convicted for any offence punishable with imprisonment for two years for offences under 12th Schedule of the Code or 7 years under any law.

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- (e) is disqualified to act as a director under the Companies Act, 2013;
- (f) is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;
- (g) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code;
- (h) has executed a guarantee in favour of a creditor in respect of a corporate debtor;
- (i) has been subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or
- (j) has a connected person not eligible under clauses (a) to (i).
- (b) (i) According to first proviso to section 161(2) of the Companies Act, 2013, no person shall be appointed as an alternate director for an independent director unless he is qualified to be appointed as an independent director under the provisions of this Act. In the present case, Mr. P who is not qualified to be appointed as an independent director is appointed by the Board of Directors of XYZ Company Limited; for an independent director, as an alternate director. Thus, the said appointment is not valid.
- (ii) According to section 161(3) of the Companies Act, 2013, the Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its shareholding in a Government company, subject to the articles of a company.

In the present case, on the request of bank providing financial assistance the Board of Directors of PQR Limited decides to appoint on its Board Mr. Peter, as nominee director. Articles of Association of the company do not confer upon the Board of Directors any such power and further there is no agreement between the company and the bank. Thus, the appointment of Mr. Peter as nominee director is not valid as Articles do not confer upon the Board of Directors any such power.

(c)

Sl. No.	Answer	Justification
(i)	False	'Overseas Citizen of India (OCI)' Means a person resident outside India who is registered as an Overseas Citizen of India Card holder under Section 7(A) of the citizenship Act, 1955. (Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018.
(ii)	False	As per SS-I (Secretarial Standards on the meeting of the Board) Quorum shall be present throughout the meeting.
(iii)	False	Locked in Securities of Promoter shall be eligible for pledge with Commercial Banks, financial institutions as Collateral Security [SEBI (ICDR) Regulations 2018]
(iv)	False	"Asset reconstruction Company" means a Company registered with Reserve Bank under Section 3 for the purposes of Carrying on the business of asset reconstruction or Securitization, or both [Section 2 (ba)]

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4. (a) (i) Is it mandatory to obtain Regulatory approvals for scheme of compromise/arrangements as per section 230(5) of the Companies Act, 2013? Explain.
- (ii) You, an individual shareholder found that the Directors representing the majority of shareholders perform an illegal or ultra vires act for the company. What is the action you may take to restrain such an act? [3+2=5]
- (b) Winding up proceedings has been commenced by the Tribunal against Paramount Limited, a government company (Central Government is a member). Even after completion of one year from the date of commencement of winding up proceedings, it has not possible to conclude the same. The liquidator is of the opinion that the statement shall be filed with tribunal and registrar only.
- (i) Decide validity to the opinion made by the liquidator and penalty that can be imposed on the liquidator for contravention of the provision as per the Companies Act, 2013.
- (ii) Discuss, if the Paramount Limited is a non-government company. 7
- (c) PBX Pvt. Ltd. is a company in which there are 6 shareholders. Mr. Bala, who is a director and also the legal representative of a deceased shareholder holding less than one tenth of the share capital of the company made a petition to the tribunal for relief against oppression and mismanagement. Examine under the provisions of the Companies Act, 2013 whether the petition made by Mr. Bala is valid and maintainable. 4

Answer:

4. (a) (i) Notice to be sent to the regulators seeking their representations Section 230(5) states that a notice under Sub-Section (3) along with all the documents in such form as may be prescribed shall also be sent to the Central Government, the income-tax authorities, the Reserve Bank of India, the Securities and Exchange Board, the Registrar, the respective stock exchanges, the Official Liquidator, the Competition Commission of India established under Sub-Section (1) of Section 7 of the Competition Act, 2002, if necessary, and such other sectoral regulators or authorities which are likely to be affected by the compromise or arrangement and shall require that representations, if any, to be made by them shall be made within a period of thirty days from the date of receipt of such notice, failing which, it shall be presumed that they have no representations to make on the proposals.
- (ii) The majority of shareholders have no right to confirm an illegal or ultravires transactions of the company. In such case an individual shareholder has right to restrain the company by an order or injunction of the court from carrying out an ultravires acts.
- (b) Section 348 of the Companies Act, 2013 states that, if the winding up of a company is not concluded within one year after its commencement then the Company Liquidator shall file a statement in such form containing such particulars as may be prescribed. Such statement shall be filled within two months of the expiry of such year and it shall be filled continuously thereafter until the winding up is concluded, at intervals of not more than one year or at such shorter intervals as may be prescribed. The statement shall be duly audited, by a person qualified to act as auditor of the company and position of with respect to the proceedings in the liquidation.

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The statement shall be filled with the tribunal in the case of a winding up by the Tribunal. A copy shall simultaneously be filed with the Registrar and shall be kept by him along with the other records of the company.

Where a statement relates to a Government company in liquidation, the Company Liquidator shall forward a copy thereof,

- to the Central Government, if that Government is a member of the Government company;
- to any State Government, if that Government is a member of the Government company; or
- to the Central Government and any State Government, if both the Governments are members of the Government company.

(i) If Paramount Limited is a Government Company

In the current scenario, we can understand that the Paramount Limited is a government company in which Central Government is a member and hence statement is also required to file to the Central Government along with the Tribunal and Registrar. So, the opinion by the Company Liquidator is not tenable in the eyes of the law and he is liable for penal action under the Act.

The company liquidator shall be punishable with fine which may extend to five thousand rupees for every day during which the failure continues.

(ii) If Paramount Limited is a Non-Government Company

In the current scenario, the Paramount Limited is a non-government company hence statement is only required to file with the Tribunal and Registrar only. So, the opinion by the Company Liquidator is tenable in the eyes of the law and he is not liable for any penal action under the Act.

- (c) According to section 244 of the Companies Act, 2013, in the case of a Company having share capital, the following member(s) have the right to apply to the Tribunal under section 241:
- (a) Not less than 100 members of the Company or not less than one-tenth of the total number of members, whichever is less; or
 - (b) 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.

Legal heir of the deceased shareholder with minority status is entitled to file the petition.

In the given case, there are six shareholders. As per the condition (a) above, 10% of 6 i.e. 1 (round off 0.6) satisfies the condition. Therefore, in the light of the provisions of the Act, a single member (even the legal representative of a deceased shareholder) can present a petition to the Tribunal, regardless of the fact that he holds less than one-tenth of the Company's share capital.

Thus, the petition made by Mr. Bala is valid and maintainable.

5. (a) (i) **List out the main features of a qualified and independent audit committee to be set up under SEBI (listing obligations and disclosure Requirements) Regulations, 2015. [5]**
- (ii) **State the matters to be dealt with in the Management Discussion and Analysis Report as per SEBI guidelines on Corporate Governance. [3]**

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- (b) (i) Upon an enquiry made by the Competition Commission of India it was found that Huge Limited is enjoying dominant position in the market and there is every possibility that the company may abuse its dominant position. In order to overcome such a possible situation, the Competition Commission of India wants to order for division of Huge Limited. Referring to the provisions of the Competition Act, 2002, describe the matters which may be provided in the said order. [5]
- (ii) Explain the provision as to Division of enterprise enjoying dominant position under the competition Act 2002?

Answer:

5. (a) (i) The main features of a qualified and independent audit committee to be set up under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 are as follows:
1. The audit committee shall have minimum three directors as members. Two-thirds of the members of audit committee shall be independent directors;
 2. All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise;
Explanation (i): The term "financially literate" means the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows.
Explanation (ii): A member will be considered to have accounting or related financial management expertise if he or she possesses experience in finance or accounting, or requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.
 3. The Chairperson of the Audit Committee shall be an independent director;
 4. The Chairperson of the Audit Committee shall be present at Annual General Meeting to answer shareholder queries;
 5. The Audit Committee at its discretion shall invite the finance director or the head of the finance function, head of internal audit and a representative of the statutory auditor and any other such executives to be present at the meetings of the committee; provided that occasionally, the Audit Committee may meet without the presence of any executives of the listed entity.;
 6. The Company Secretary shall act as the secretary to the committee.
- (ii) Management A Management Discussion and Analysis Report should form part of the annual report to the shareholders; containing discussion on the following matters.
1. Opportunities and threats.
 2. Segment-wise or product-wise performance.
 3. Risks and concerns.
 4. Discussion on financial performance with respect to operational performance.
 5. Material development in human resource / industrial relations front.
- (b) (i) According to section 28 of the Competition Act, 2002, the Commission, may, notwithstanding anything contained in any other law for the time being in force, by order

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in writing, direct division of an enterprise enjoying dominant position to ensure that such enterprise does not abuse its dominant position. The order may provide for all or any of the following matters, namely:

- (1) the transfer or vesting of property, rights, liabilities or obligations;
- (2) the adjustment of contracts either by discharge or reduction of any liability or obligation or otherwise;
- (3) the creation, allotment, surrender or cancellation of any shares, stocks or securities;
- (4) the formation or winding up of an enterprise or the amendment of the memorandum of association or articles of association or any other instruments regulating the business of any enterprise;
- (5) the extent to which, and the circumstances in which, provisions of the order affecting an enterprise may be altered by the enterprise and the registration thereof;
- (6) any other matter which may be necessary to give effect to the division of the enterprise.
- (7) The payment of compensation to any person who suffered any loss due to dominant position of such enterprise.

(ii) The Commission, may, notwithstanding anything contained in any other law for the time being in force, by order in writing, direct division of an enterprise enjoying dominant position to ensure that such enterprise does not abuse its dominant position. The order may provide for all or any of the following matters, namely:

- (1) the transfer or vesting of property, rights, liabilities or obligations.
- (2) the adjustment of contracts either by discharge or reduction of any liability or obligation or otherwise.
- (3) the creation, allotment, surrender or cancellation of any shares, stocks or securities.
- (4) Omitted.
- (5) the formation or winding up of an enterprise or the amendment of the memorandum of association or articles of association or any other instruments regulating the business of any enterprise.
- (6) the extent to which, and the circumstances in which, provisions of the order affecting an enterprise may be altered by the enterprise and the registration thereof.
- (7) any other matter which may be necessary to give effect to the division of the enterprise. Notwithstanding anything contained in any other law for the time being in force or in any contract or in any memorandum or articles of association, an officer of a company who ceases to hold office as such in consequence of the division of an enterprise shall not be entitled to claim any compensation for such cesser.

6. (a) (i) **Power of Reserve Bank to inspect authorized person under Foreign Exchange Management Act,1999** [4]
- (ii) **what are the procedure for receiving Foreign Direct Investment (FDI) in an Indian company.** [4]
- (b) **Explain the powers and functions of IRDA.** [8]

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Answer:

6. (a) (i) Power of Reserve Bank to inspect authorized person under Foreign Exchange Management Act, 1999
- (A) The Reserve Bank may, at any time, cause an inspection to be made by any officer of the Reserve Bank specially authorised in writing by the Reserve Bank in this behalf, of the business of any authorised person as may appear to it to be necessary or expedient for the purpose of:
- (1) verifying the correctness of any statement, information or particulars furnished to the Reserve Bank.
 - (2) obtaining any information or particulars which such authorised person has failed to furnish on being called upon to do so.
 - (3) securing compliance with the provisions of this Act or of any rules, regulations, directions or orders made thereunder.
- (B) It shall be the duty of every authorised person, and where such person is a company or a firm, every director, partner or other officer of such company or firm, as the case may be, to produce to any officer making an inspection under sub-section (1), such books, accounts and other documents in his custody or power and to furnish any statement or information relating to the affairs of such person, company or firm as the said officer may require within such time and in such manner as the said officer may direct.
- (ii) An Indian company may receive Foreign Direct Investment (FDI) under the two routes as given under:
- (A) Automatic Route FDI is allowed under the automatic route without prior approval either of the Government or the Reserve Bank of India in all activities / sectors as specified in the consolidated FDI Policy, issued by the Government of India from time to time.
- (B) Government Route FDI in activities not covered under the automatic route requires prior approval of the Government which is considered by the Ministry of Finance, and is to be routed through relevant administrative ministry. The Indian company having received FDI either under the Automatic route or the Government route is required to comply with provisions of the FDI policy including reporting the FDI to the Reserve Bank of India.
- (b) The Authority shall have the duty to regulate, control, promote and ensure healthy development of insurance and re-insurance business. The powers and functions of the Authority includes inter-alia:
- (1) Issue, modify, cancel, etc., of Registration certificate to the applicant.
 - (2) Safeguarding the interests of the policyholders like insurable interests, settlement of claim, surrender value of the policy, etc.
 - (3) Specifying code of conduct of the Surveyors.
 - (4) Determining qualifications and training aspect of agents and intermediary.
 - (5) Levying fees and charges for their work.

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- (6) Conducting investigations and enquiries relating to issues concerning insurance business.
 - (7) Regulating and controlling business not controlled by Tariff Advisory committee under section 64 of Insurance Act 1938.
 - (8) Regulatory investment funds by the Insurance Companies.
 - (9) Regulating maintenance of margin of solvency.
 - (10) Adjudicating and settling disputes between intermediaries and insurers.
 - (11) Supervising the functioning of Tariff Advisory Committee.
7. (a) (i) **Explain how the provisions of the Companies Act, 2013 relating to Audit Committee will help in achieving some of the objectives of Corporate Governance.** [5]
- (ii) **Explain the advantages of the family Businesses over Non –family Businesses?** [4]
- (b) **Explain the status of implementation of XBRL in India.** [7]

Answer:

7. (a) (i) Companies, particularly public listed companies raise huge amounts of monies from the members of the public and public financial institutions. They owe it to all the vast number of persons and institutions who have reposed their faith in them and have invested in them, that their faith is rewarded both in terms of annual return and in terms of wealth appreciation in real terms. In order to achieve this, it is vital to have the highest quality of corporate governance in the conduct of affairs of such companies. Thus, the role of audit committees have been enhanced, their responsibilities made more objective and the accountability, has increased substantially.

In this context the provisions of the Companies Act, 2013 have been framed to improve corporate governance standards and protect the interests of the public and the financial institutions who have invested in companies. These provisions may be highlighted as under:

1. The constitution of Audit Committees under section 177(2) requires the majority representation from independent directors. In other words, persons from within the management cannot form a majority in the Committee, thereby making the functioning of these committees more transparent;
2. The proviso to section 177(2) further requires the majority of members and the chairperson of the Audit Committees to be persons who can understand financial statements. This enables a meaningful exercise of the committee's functions by knowledgeable persons thereby increasing the effectiveness of such committees.
3. Now the terms of reference or the minimum, scope of work of an Audit Committee has been laid down in the act itself under section 177(4). By doing this the vagueness and doubt in the role and functions of such committees has been removed.
4. The Audit Committee shall have authority to investigate, into any matter in relation to the areas of its scope of functioning or referred to it by the Board and for this shall have power to obtain professional advice from external sources and have full, access to information contained in the records of the company. This provides

the Audit Committee to function with a high degree of effectiveness by accessing external professional advice and the records of the company.

5. The recommendations of the Audit Committee are binding' on the Board to take appropriate corrective actions. In case the Board of Director refuses to accept the recommendations of the Audit Committee, it bound to disclose the same with the reasons for non-acceptance, in Its report to the members of the company under section. 134 (3) which relates to the Directors Report on Financial Statements to the members of the company.

It will be seen from the above provisions of the Companies Act, 2013 that efforts have been made to make such committees more impartial, effective and accountable which will enable the company to improve the quality of its corporate governance thereby improving accountability and avoiding financial impropriety

- (ii) Family businesses identify a number of positive differences over non-family businesses. These include commitment and passion towards the success of the business, being able to make quick market focused decisions, having a deep industry knowledge, etc. Some of the advantages that family businesses share over non-family enterprises include the following:

- (1) Commitment, Passion and Dedication: It is believed that owners tend to take better care of their businesses as they have greater personal stakes involved. Family businesses are more appreciative of their talent.
- (2) Agile decision-making abilities: Not having responsibilities towards any shareholders gives the Indian family businesses greater flexibility in terms of making decisions faster, improving the speed with which they launch new initiatives, change operations, evaluate new business opportunities, etc.
- (3) Deep industry insight: Family businesses gain significant experience and expertise as they typically work in one industry for longer durations. This gives them the added advantage of understanding and appreciating the challenges faced in that industry much better than any non-family businesses.
- (4) Mutual trust: Family businesses thrive on mutual trust and believe in maintaining long-term relationships by providing a conducive, supportive and trusting work environment.

- (b) (i) India is now an established jurisdiction of XBRL International. A separate company, under Section 25 has been created, to manage the operations of XBRL India. The main objectives of XBRL in India are:

- (1) To create awareness about XBRL in India.
- (2) To develop and maintain Indian Taxonomies.
- (3) To help companies, adopt and implement XBRL

- (ii) The mandate applies to the following companies:

- (1) All public listed companies in India and their Indian Subsidiaries.
- (2) All companies having a paid up capital of INR 5 crores and above.
- (3) All companies having a turnover of INR 100 crores and above.

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- (iii) All the companies that fall under the mandate are required to file with MCA following information in XBRL:
- (1) Balance Sheet.
 - (2) Profit and Loss Account.
 - (3) Cash Flow Statement.
 - (4) Schedules related to Balance Sheet and Profit and Loss Statement.
 - (5) Notes to Accounts.
 - (6) Statement relating to subsidiary companies.
 - (7) Auditors Report.
 - (8) Directors Report.
 - (9) Cost Audit Report.
- (iv) In view of the advantages of XBRL reporting, now the Companies need to quickly gear-up to this new reporting challenge and also to gain benefits from the broader business uses of XBRL. Some of the key challenges that companies might encounter as they adopt XBRL reporting are:
- (1) Requirement of training staff to understand XBRL and how it needs to be implemented including matters like timely tagging and validation processes.
 - (2) The software tool to be used for the purpose of tagging.
 - (3) The first-time efforts involved in tagging and resolving errors identified by validation checks.
 - (4) Smooth and timely closure of reporting within the prescribed timelines.

8. Write short notes any four of the following:

4X4=16

- (a) Persons who are not entitled to initiate insolvency resolution process**
- (b) Guidance on implementation of principles and Core Elements. (National Voluntary Guidelines 2011)**
- (c) Foreign Currency Convertible Bond under FEMA, 1999**
- (d) CSR can mean different things to different people. Explain**
- (e) Responsibilities of the Board of State Owned enterprises**

Answer:

8. (a) Persons who are not entitled to initiate Insolvency resolution process
- The Code states that a corporate debtor (which includes a corporate applicant in respect of such corporate debtor) shall not be entitled to make an application to initiate corporate insolvency resolution process [Section 11 of Insolvency and Bankruptcy Code, 2016] in the following cases:
- (i) when undergoing a corporate insolvency resolution process; or
 - (ii) having completed corporate insolvency resolution process twelve months preceding the date of making of the application; or
 - (iii) or a financial creditor who has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under this Chapter; or (iv) in respect of him a liquidation order has been made. Thus, application to initiate insolvency resolution process cannot be filed within 12 months or if there were violation of conditions or where order of liquidation has been made.

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- (b) Guidance on Implementation of Principles and Core Elements
- Successful implementation of the Principles and Core elements require that all of them need to be integrated and embedded in the core business processes of an enterprise. This requires, specifically that the following actions are taken:
- (i) Leadership: The Chairman/CEO/Owner/Manager should play a proactive role in convincing the board/Top Management and staff within the business that adopting these principles is crucial-for success. The board and senior management need to ensure that the principles are fully understood across the organization and comprehensively executed.
 - (ii) Integration: These principles and core elements must be embedded in the Business policies and strategies emanating from the core business purpose of. the organization. For this to happen, these must align with each businesses internal values and/or must provide clear business benefits.
 - (iii) Engagement: Building strong relationships and engaging with stakeholders on a consistent, continuous basis is crucial.
 - (iv) Reporting: Implementation process includes disclosure by companies of their impact on society an environment to their stakeholders.
- (c) Foreign Currency Convertible Bond (FCCB) under FEMA,1999 “Foreign Currency Convertible Bond” (FCCB) under Foreign Exchange Management Act, 1999 means a bond issued by an Indian company expressed in foreign currency, the principal and interest of which is payable in foreign currency. FCCBs are issued in accordance with the Foreign Currency Convertible Bonds and ordinary shares (through depository receipt mechanism) Scheme, 1993 and subscribed by a non-resident entity in foreign currency and convertible into ordinary shares of the issuing company in any manner, either in whole, or in part.
- (d) Corporate Social Responsibilities (CSR) is an integrated combination of policies programs, education, and practices which extend throughout a corporation operations and into the communities in which they operate, about how companies voluntarily manage the business processes to produce an overall, positive impact on society CSR can mean different things to different people:
- For an employee it can mean fair wages, no discrimination, acceptable working conditions etc.
 - For a shareholder it can mean making responsible and transparent decisions regarding the use of capital.
 - For suppliers it can mean receiving payment on time.
 - For customers it can mean delivery on time etc.
 - For local communities and authorities it can mean taking measures to protect the environment from pollution.
 - For non- governmental organization and pressure groups it can mean disclosing business practices and performance on issues ranging from energy conservation and global warming to human rights and animal rights, from protection of the rainforests and endangered species to child and forced labour etc.

- For a company, however, it can simply be seen as responding to the needs and concerns of people who can influence the success of the company and/or whom the company can impact through its business activities, processes and products.

(e) **Responsibilities of The Boards of State- Owned Enterprises**

The boards of the state owned enterprises should have the necessary authority, competencies, and objectivity to carry out their function of strategic guidance and monitoring of management. They should act with integrity and be held accountable for their actions the boards of SOEs should be assigned a clear mandate and ultimate responsibility for the company's performance.

- The board should be fully accountable to the owners, act in the best interest of the company, and treat all shareholders equally.
- SOE boards should carry out their functions of monitoring of management and strategic guidance, subject to the objectives set by the government and the ownership entity. They should have the power to appoint and remove the CEO.
- The boards of SOEs should be so composed that they can exercise objective and independent judgment. Good practice calls for the chair to be separate from the CEO.
- SOE boards should carry out an annual evaluation to appraise their performance.