Paper-11 Capital Market Analysis & Corporate Laws

Time Allowed: 3 hours **Full Marks: 100**

Working notes should form part of the answers.

Wherever necessary, suitable assumptions should be made and indicated in answer by the candidates.

Section I

(Capital Market Analysis)

Answer **Question No.1** (carrying 20 marks) which is compulsory and answer **any two** (carrying 20 marks each) from the rest in this section

Question 1.

(a) In each of the cases given below, one out of four is correct. Indicate the correct answer (= 1 mark) and give workings/ reasons briefly in support of your answer (=1 mark) [7 × 2]

(i) Aritra Ltd. has both European call and put options traded on NSE. Both options have an expiration date 6 months and exercise price of ₹ 30. The call and put are currently selling for ₹ 10 and ₹ 4 respectively. If the risk free rate of interest is 6% p.a., what would be the stock price of Aritra Ltd.? [Given PVIF $_{(6\%, 0.5 \text{ years})}$ = 0.9709]

(A) ₹ 40.87;
(B) ₹ 35.13;
(C) ₹ 45.50;
(D) ₹ 38.67.

(ii) Priya is willing to purchase a 5 years ₹ 1,000 par value PSU bond having a coupon rate of 9%. Her required rate of return is 10%. How much Priya should pay to purchase the bond if it matures at par? [Given PVIFA $_{(10\%, 5 \text{ years})}$ = 3.791 and PVIF $_{(10\%, 5 \text{ years})}$ = 0.621]

(A) ₹ 962.19;
(B) ₹ 850.30;
(C) ₹ 805.47;
(D) ₹ 965.49.

(iii) The spot value of Nifty is 4430. An investor bought an one month Nifty for 4410 call option for a premium of ₹ 12. The option is:

(A) At the money;
(B) Out of the money;
(C) In the money;
(D) Insufficient data.

(iv) Mr. A purchased 200 units of Printel mutual Fund at ₹ 40 per unit on 31.03.2013. In 2013-14, he received ₹ 1 as dividend per unit and a capital gains distribution of ₹ 2 per unit. If the NAV as on 31.03.2014 is ₹ 48 per unit, then the return of one year period will be:

(A) 27.5%;

(B) 13.3%;
(C) 10.0%;
(D) 13.62%.

(v) Expected returns on two stocks for particular market returns are given in the following table:

Market Return	Aggressive	Defensive
7%	4%	9%
25%	40%	18%

The Betas of the two stocks will be:
(A) 1.50, 2;
(B) 2, 1.50;
(C) 0.75, 0.50;
(D) 2, 0.50.

(vi) A stock is currently selling at ₹ 270. The call option to buy the stock at ₹ 266 costs ₹ 12. The time value of the option will be —
(A) ₹ 13;
(B) ₹ 17;
(C) ₹ 5;
(D) ₹ 8.

(vii)The probabilities and associated returns of BML Ltd., are given below:

Return%	12	15	18	20	24	28	30
Probability	0.05	0.10	0.24	0.26	0.18	0.12	0.05

The expected return will be:
(A) 20.56%;
(B) 20.36%;
(C) 20.80%;
(D) 4.31%.

(b) Choose the most appropriate alternative from the stated options and write it down: [6 × 1]

(i) The market which deals with the multicurrency requirements and those requirements are met by the exchange of currencies is called:
A. Money market;
B. Capital market;
C. Forex market;
D. Credit market.

(ii) Which of the following is not a Money Market Instrument:
A. Treasury Bill;
B. Certificate of Deposit;
C. Equity Shares;
D. Commercial Paper.

(iii) If conclusions and opinions of equity analysts and other experts based on publicly available information are reflected in stock prices, then stock market exhibits:
A. Weak form of efficiency;

B. Semi- strong form of efficiency;
C. Strong form of efficiency;
D. None of the above.

(iv) Which among the following increases the NAV of a Mutual Fund Scheme?
A. Value of investments;
B. Receivables;
C. Accrued Income;
D. All of the above.

(v) A process of investment by a Sponsor or a Syndicate of Investors/Sponsors directly in a Company is referred as:
A. Bought out deal;
B. Buy back of shares;
C. Irredeemable preference shares;
D. Deferred shares.

(vi) An investor owing a stock wants to retain the upside potential of the stock. At the same time he wants to limit his loss if the stock price falls. What should he do?
A. Buy a put option;
B. Buy a call option;
C. Buy a call option and buy a put option;
D. Sell a call option and buy a put option.

Answer to Question 1(a):

(i) (B) ₹ 35.13

According to Call-put Parity

$C_0 = P_0 + S_0 – PV(E)$

$10 = 4 + S_0 – 30 \times 0.9709$ [Here $C_0 = 10$, $P_0 = 4$, PV(E) = Present value of 30, S_0 = stock price]

$S_0 = 10 – 4 + 29.127 = 35.127$ i.e. ₹ 35.13

(ii) (A) ₹ 962.19

Maturity of the bond at par = ₹ 1,000

Interest p.a. = ₹ 90 (₹ 1,000 × 9%), K_d = 10%

The purchase price of the bond = (₹ 90 × 3.791) + (₹ 1,000 × 0.621) = ₹ 962.19

(iii) (C) In the money

In case of call option, if spot value > exercise price = In the money

Here, 4430 > 4410

(iv) (A) 27.5%

$$\text{Return} = \frac{(₹\,48 - ₹\,40) + ₹\,1 + ₹\,2}{₹\,40} = 27.5\%$$

(v) (D) 2, 0.50

The Betas of two stocks:
Aggressive stock — (40% - 4%)/(25% - 7%) = 2
Defensive stock — (18% - 9%/25% - 7%) = 0.50

(vi) **(D) ₹ 8**
Time value of option = ₹ (266 + 12) – 270 = ₹ 8.

(vii) **(C) 20.80%**
Expected Return = (12 × 0.05) + (15 × 0.10) + (18 × 0.24) + (20 × 0.26) + (24 × 0.18) + (28 × 0.12) + (30 × 0.05)
= 0.60 + 1.5 + 4.32 + 5.20 + 4.32 + 3.36 + 1.5
= 20.80%

Answer to Question 1(b):

(i) C. Forex market
(ii) C. Equity Shares
(iii) B. Semi- strong form of efficiency
(iv) D. All of the above
(v) A. Bought out deal
(vi) A. Buy a put option

Question 2.

(a) Calculation the value of option from the following information:
Current Asset Price (S) = ₹ 30
Exercise price (X) = ₹ 30
Time to expiry in decimals of a year (T-t) = 3 months or 0.25 years
Risk-free rate of interest in decimals (r) = 12% = 0.12
Annualised standard deviation of the natural log of the asset price relative to decimals(σ)=0.40
Given N (0.25) = 0.5987, N(0.05) = 0.5199 and $e^{-0.03}$ = 0.9704.

(b) "Preference share is a hybrid security because it has features of both ordinary shares and bonds." — Write about the general forms of preference shares.

(c) Your client is holding the following securities:

Particulars of Securities	Cost (₹)	Dividends (₹)	Market Price (₹)	Beta
Shares in A Co.	8,000	800	8,200	0.8
Shares in B Co.	10,000	800	10,500	0.7
Shares in C Co.	16,000	800	22,000	0.5
PSU Bonds	34,000	3,400	32,300	1.0

Assuming a risk free rate of 14%, calculate:

(i) Expected rate of return in each, using the Capital Asset Pricing Model (CAPM).
(ii) Average return of the portfolio.

[6+6+(6+2)]

Answer:

(a) Since d_1 and d_2 are required inputs for Black – scholes option Pricing Model.
We know that —

$$d_1 = \frac{\ln(S/X) + (r + \sigma^2/2)(T - t)}{\sigma\sqrt{T - t}}$$

$$d_1 = \frac{\ln(30/30) + [0.12 + (0.16/2)](0.25)}{0.40\,(0.50)} = \frac{0 + 0.05}{0.20} = 0.25$$

Again, $d_2 = d_1 - \sigma\sqrt{T - t}$

$d_2 = d_1 - 0.20 = 0.05$

$N(d_1) = N\ (0.25)$

$N\ (d_2) = N\ (0.05)$

There above two represent area under a standard normal distribution function.

From given data, we see that value of N(0.25) = 0.5987 and N(0.05)= 0.5199. We can use those values to solve the equation in Black- scholes option Pricing Model. The value of option (C) will be:

$$C = SN(d_1) - Xe^{-r(T-t)}N(d_2)$$

C = ₹ 20 [N (d_1)] - ₹ 20 e $^{(-0.12)(0.25)}$[N(d_2)]
= ₹ 20 [N (0.25)] – ₹ 20(0.9704)[N(0.05)]
= ₹ 20 (0.5987) – ₹ 19.41 (0.5199)
= ₹ 11.97 – ₹ 10.09
= ₹ 1.88

(b) Preference shareholders have preferential rights in respect of assets and dividends. In the event of winding up the preference shareholders have a claim on available assets before the ordinary shareholders.

The general forms of preference shares are as follows:

- Cumulative and Non-cumulative Preference Shares: The cumulative preference share gives a right to demand the unpaid dividend of any year, during the subsequent years when the profits are ample.

- Cumulative Convertible Preference Shares: The cumulative convertible preference (CCP) share is an instrument that embraces features of both equity shares and preference shares, but which essentially is a preference share. The CCPs are convertible into equity shares at a future specified date at a predetermined conversion rate once it is converted into equity shares, it passes all the characteristics of an equity share.

- Participating and Non-participating Preference Shares: Participating preference shares are those shares which are entitled to a fixed preferential dividend and, in addition, carry a right to participate in the surplus profits along with equity shareholders after dividend at a certain rate has been paid to equity shareholders.

- Redeemable and Irredeemable Preference Shares: Subject to an authority in the articles of association, a public limited company may issue redeemable preference shares to be redeemed either at a fixed date or after a certain period of time during the life time of the company. The Companies Act, 1956 prohibits the issue of any preference share which is irredeemable or is redeemable after the expiry of a period of twenty years from the date of issue.

(c)

(i) Calculation of expected Return on Market Portfolio (ER_m)

Investment	Cost (₹)	Dividends (₹)	Capital Gains (₹)
Shares in A Co.	8,000	800	200
Shares in B Co.	10,000	800	500
Shares in C Co.	16,000	800	6,000
PSU Bonds	34,000	3,400	-1,700
	68,000	5,800	5,000

$$ER_m = \frac{5,800 + 5,000}{68,000} \times 100 = 15.88\%$$

Calculation of Expected Rate of Return on Individual Security:

Shares in A Co.	14% + 0.8(15.88% - 14.00%)	= 15.50%
Shares in B Co.	14% + 0.7(15.88% - 14.00%)	= 15.32%
Shares in C Co.	14% + 0.5(15.88% - 14.00%)	= 14.94%
PSU Bonds	14% + 1.0(15.88% - 14.00%)	= 15.88%

(ii) Calculation of the Average Return of the Portfolio:

$$= \frac{15.50\% + 15.32\% + 14.94\% + 15.88\%}{4}$$

$$= 15.41\%$$

Question 3.

(a) Determine the intrinsic value for the buyer of an option contract, in the following situations:

(i) A put Option, when the current value of the underlying asset is ₹ 1,400 and the strike price is ₹ 1,480.

(ii) A Call Option when the strike price is ₹ 1,700 and the current value of underlying asset is ₹ 1,650.

(iii) A Call Option when the current value of the underlying asset is ₹ 950 and the strike price is ₹ 950.

(iv) A Put Option when the current value of the underlying asset is ₹ 950 and the strike price is ₹ 950.

(v) A Put Option when the exercise price is ₹ 1,090 and the current value of the underlying asset is 1,000.

(vi) A Call Option when the current value of asset is ₹ 120 and the strike price is ₹ 98.

(vii) A Call Option when the exercise price is ₹ 80 and the market price is ₹ 84.

(viii) A Put Option when the exercise price is ₹ 87 and the market price is ₹ 82.

(b) "Underwriting is a guarantee for the marketability of shares." — State the advantages of underwriting agreement.

(c) What is Venture Capital? Describe some of its characteristics in relation to the financing.

[8+5+(2+5)]

Answer:

(a) Calculation of Intrinsic value for the buyer of an option contract:

Nature of Option	Exercise Price (₹)	Current Market Price (₹)	Cash Flows (₹)	Intrinsic Value (₹)
Put	1,480	1,400	In-the-money	80
Call	1,700	1,650	Out-of-the-money	0
Call	950	950	At-the-money	0
Put	950	950	At-the-money	0
Put	1,090	1,000	In-the-money	90
Call	98	120	In-the-money	22
Call	80	84	In-the-money	4
Put	87	82	In-the-money	5

(b) Advantages of underwriting:

Underwriting assumes great significance as it offers the following advantages to the issuing company:

1. The issuing company is relieved from the risk of finding buyers for the issue offered to the public. The company is assured of raising adequate capital.
2. The company is assured of getting minimum subscription within the stipulated time, a statutory obligation to be fulfilled by the issuing company.
3. Underwriters undertake the burden of highly specialized function of distributing securities.
4. Provide expert advice with regard to timing of security issue, the pricing of issue, the size and type of securities to be issued etc.
5. Public confidence on the issue enhances when underwritten by reputed underwriters.

(c) Venture capital is long term risk capital to finance high technology project which involves risk but at the same time has strong potential for growth. Venture capital refers to the commitment of capital as shareholding, for the formulation and setting up of small firms specializing in new ideas or new technologies. It is not merely an injection of funds into a new firm; it is a simultaneous input of skill needed to set up the firm, design its marketing strategy and organize and manage it.

Characteristics of venture capital:

1. Venture capital is usually in the form of an equity participation. It may also take the form of convertible debt or long term loan.
2. Investment is made only in high risk but high growth potential projects.
3. Venture capital is available only for commercialization of new ideas or new technologies and not for enterprises which are engaged in trading, booking, financial services, agency, liaison work or research and development.
4. Venture capitalist joins the entrepreneurs as a co-promoter in project and shares the risks and rewards of the enterprise.
5. Investment is usually made in small and medium scale enterprises.
6. Once the venture has reached the full potential the venture capitalist disinvests his holdings either to the promoters or in the market. The basic objective of investment is not profit but capital appreciation at the time of disinvestment.

Question 4.

(a) What is Arbitrage Pricing Model? List the macro-economic factors which are associated with this model.

(b) Mr. A has invested in three Mutual Fund Schemes as per detailed below:

Particulars	MF X	MF Y	MF Z
Date of investment	01-12-2013	01-01-2014	10-03-2014
Amount of investment	₹ 50,000	₹ 1,00,000	₹ 50,000
Net Asset Value (NAV) at entry date	₹ 10.50	₹ 10.00	₹ 10.00
Dividend received upto 31-03-2014	₹ 950	₹ 1,700	Nil
NAV as at 31-03-2010	₹ 10.40	₹ 10.10	₹ 9.80

Required: What is the effective yield on per annum basis in respect of each of the three schemes to Mr. A upto 31-03-2014?

(c) Write down the procedures for trading mechanism in Stock Exchanges.

[(2+4)+9+5]

Answer:

(a) The Arbitrage Pricing Model (APM) looks very similar to the Capital Asset Pricing Model (CAPM). The APM is a multi-factor model. The APM was developed by Ross in 1976. Arbitrage Pricing Theory, out of which the APM arises, states that the expected return on an investment is dependent upon how that investment reacts to a set of individual macro-economic factors (the degree of reaction being measured by the betas) and the risk premium associated with each of those macro-economic factors.

The macro-economic factors which are associated with APM:
Several factors appear to have been identified as being important. In particular, researchers have identified:

- Changes in the level of industrial production in the economy
- Changes in the shape of the yield curve
- Changes in the default risk premium (L e., changes in the return required on bonds \ different perceived risks of default)
- Changes in the inflation rate
- Changes in the real interest rate
- Level of personal consumption
- Level of money supply in the economy.

Some of the aforesaid factors, such as inflation, money supply, industrial production and personal consumption, do have aspects of being inter-related.

(b) Calculation of Effective Yield on per annum basis in respect of three Mutual Fund Schemes to Mr. A upto 31-03-2014 —

Particulars	MF X	MF Y	MF Z
(a) Investment	(₹) 50,000	(₹) 1,00,000	(₹) 50,000
(b) No. of units	4,761.905	10,000	5,000
(c) Unit NAV on 31-03-2014	(₹) 10.40	(₹) 10.10	(₹) 9.80
(d) Total NAV on 31-03-2014 (b) x (c)	(₹) 49,523.81	(₹) 1,01,000	(₹) 49,000
(e) Increase / (Decrease of NAV (a) – (d)	(₹) (476.19)	(₹) 1,000	(₹) (1,000)
(f) Dividend received	(₹) 950	(₹) 1,700	Nil
(g) Total yield (e) + (f)	(₹) 473.81	(₹) 2,700	(₹) (1,000)
(h) Number of days	122	91	31
(i) Effective yield p.a. $\frac{(g)}{(a)} \times \frac{365}{(h)} \times 100$	(%) 2.835%	10.830%	(-) 23.548%

(c) The by-laws of the stock exchanges do not permit an outsider, who is not a member to transact business directly. Buying and selling of securities could be engaged only through a broker, who is a member of a stock exchange.

The trading mechanism of stock exchanges follows the following procedure:

(i) Choosing a broker - selecting a broker can be based on either a known member or proximity / popularity.

(ii) Engaging the broker – Complying with the legal terms and signing an agreement with the broker of your choice.

(iii) Opening an account with broker – A DP (Depository Participant) account to be opened becomes necessary for opening an account with the broker.

(iv) Placing the order – An order is placed with the broker for buying or selling a specific number of securities.

(v) Exercising of the choice of orders – The orders placed are executed for which a certain percentage of brokerage charges are levied.

(vi) Giving Margin money to broker – A margin money is deposited with the broker to take exposure on any loss incurred on transacting a contract

(vii) Preparing Contract Note - After execution of the contract a contract note is issued to the client.

(viii) Settlement of the contract – The payment of funds by the buyer is made for the shares bought and the delivery of securities sold is done by the seller thus settling the contract entered with the broker.

Section II

(Corporate Laws)

Answer **Question 5** (carrying 10 marks) which is compulsory and answer **any two** (carrying 15 marks each) from the rest in this section.

Question 5.

(a) Choose the most appropriate alternative from the stated options and write it down: [6 × 1]

(i) An ordinary resolution is one which is passed in a general meeting by:

A. A simple majority of votes including the casting vote of the chairman;

B. 3/4th majority of votes;

C. 2/3rd majority of votes;

D. None of the above.

(ii) Under the Companies Act, 1956, the first directors shall hold the office upto:

A. The end of the statutory meeting;

B. The end of the period as prescribed by the Articles of the company;

C. The end of three years from the date of appointment;

D. Till the first Annual General Meeting.

(iii) Which of the following items requires special resolutions in a general meeting under the Companies Act, 1956?

A. Issue of shares at discount;
B. Reduction of Share Capital;
C. Adoption of Statutory Report;
D. Appointment of Managing / whole-time Director.

(iv) Which one of the following is not a mode of winding-up of a comapny?

A. Winding up by the Tribunal;
B. Members' Voluntary Winding Up;
C. Debtors' Voluntary Winding Up;
D. Creditors' Voluntary Winding Up.

(v) The Government has allowed foreign institutional investors such as pension funds, mutual funds investment trust etc. to invest in the Indian Capital Market provided they are registered with:

A. Reserve Bank of India (RBI);
B. Securities and Exchange Board of India (SEBI);
C. Central Government;
D. Registrar of the companies.

(vi) The nationality of a company is decided by:

A. Place of residence of the directors in charge of management of the company;
B. Place of registered office of the company;
C. Place where the books of accounts of the company are kept;
D. None of the above.

(b) Fill in the blanks in the following sentences by using appropriate word(s)/phrase(s)/ number(s): **[4 × 1]**

(i) Alteration of share capital requires the passing of _______________ resolution.

(ii) The Competition Commission of India shall consist of a Chairperson and not less than ______ and not more than _________ other Members to be appointed by the Central Government.

(iii) The importance of the certificate of ________________ is that it is a conclusive evidence about the birth of the company.

Answer to Question 5(a):

(i) A. A simple majority of votes including the casting vote of the chairman.
(ii) D. Till the first Annual General Meeting.
(iii) B. Reduction of Share Capital.
(iv) C. Debtors' Voluntary Winding Up.
(v) B. Securities and Exchange Board of India (SEBI).
(vi) B. Place of registered office of the company.

Answer to Question 5(b):

(i) ordinary.
(ii) two, ten.

(iii) Incorporation.

Question 6.

(a) Mr. Roy was appointed as Managing Director for life by the Articles of Association of a private company incorporated on 1st June, 1990. The articles also empowered Mr. Roy to appoint a successor. Mr. Roy appointed, by will, Mr. Sen to succeed him after his death. Can Mr. Sen succeed Mr. Roy as Managing Director after the death of Mr. Roy?

(b) State about the Authorised Share Capital and Reserve Capital.

(c) What is Statutory Report in the context of Shareholders' Meetings? Describe the particulars which must be contained in the Statutory Report.

[4+(2+2)+(2+5)]

Answer:

(a) No director shall assign his office to any other person. If he does, the assignment shall be void (Section 312 of the Companies Act, 1956).

The Articles of a company empowered its Managing Director to appoint a successor. The Managing Director appointed, by his will, Mr. Sen to succeed him as a managing director after his death. The Court observed that a director is prohibited from assigning his office. The word 'his' used in section 312 indicates that the prohibition applies only when an office held by a director is assigned to any other person. Where a director dies, the office held by him becomes vacant and therefore such office cannot be assigned to any other person. Therefore, appointment of a new person in such office does not amount to an assignment within the meaning of section 312. [Oriental Metal Pressing Pvt. Ltd. v B.K. Thakoor (1961) 31 Comp Cas 143].

The facts of the given case are identical to the facts discussed in the above case. Accordingly, it can be said that appointment of Mr. Sen is valid and it does not amount to an assignment of office by Mr. Roy.

(b) Authorised Share Capital: This is the maximum amount of share capital that a company can raise during its life time unless it is subsequently increased. This amount is mentioned in the Memorandum of Association of the company. The amount of authorized capital is divided into different types of shares and can be increased in future in case there is a need.

Reserve Capital: This is an uncalled capital (which is not called up) but this amount can be called up only in the event of winding up of the company. A company may pass a special resolution decide to call a certain portion of its uncalled capital only in the event of the winding up of the company. Therefore this amount cannot be called during the lifetime of the company. Such capital is called as 'Reserve Capital' and it cannot be turned into uncalled capital without the sanction of the Court. The company is prohibited from charge reserve capital and similarly it cannot cancel such capital.

(c) Statutory Report is a report drafted by director and certified as correct by at least two of them [including Managing Director where there is one]. A copy of the report must be sent to every member at least 21 days before the date of the meeting. A copy is also to be sent to the Registrar for registration.

Section 165 [3] of the Companies Act, 1956 provides that the statutory report must contain the following particulars:

I. The total number of shares fully paid up and partly paid up allotted.
II. The total amount of cash received by the company in respect of the shares.
III. An abstract of the receipts, classifying them according to source and mentioning the expenses incurred for commission, brokerage etc.
IV. The names, address and occupations of directors, auditors, manager and secretary and changes of the names, addresses etc.
V. Particulars of contracts, which are to be submitted to the meeting for approval with proposed modifications if any.
VI. Details of underwriting contracts if any.
VII. Calls in arrears from directors and others.
VIII. Particulars of commission and brokerages paid to directors and managers.

Question 7.

(a) Describe Project Control System. Also state the benefits of Project governance.

(b) State the objectives of the Right to Information Act, 2004.

(c) Write a short note on Defunct Company.

[(3+4)+3+5]

Answer:

(a) Project Control System: Project control is that element of a project that keeps it on-track, on-time, and within budget. Project control begins early in the project with planning and ends late in the project with post implementation review, having a thorough involvement of each step in the process. Each project should be assessed for the appropriate level of control needed: too much control is too time consuming, too little control is very risky. If project control is not implemented correctly, the cost to the business should be clarified in terms of errors, fixes, and additional audit fees.

Control systems are needed for cost, risk, quality, communication, time, change, procurement, and human resources. In addition, auditors should consider how important the projects are to the financial statements, how reliant the stakeholders are on controls, and how many controls exist. Auditors should review the development process and procedures for how they are implemented. The process of development and the quality of the final product may also be assessed if needed or requested. A business may want the auditing firm to be involved throughout the process to catch problems earlier on so that they can be fixed more easily. An auditor can serve as a controls consultant as part of the development team or as an independent auditor as part of an audit.

Benefits of Project governance: Project governance will:

1) Outline the relationships between all internal and external groups involved in the project.
2) Describe the proper flow of information regarding the project to all stakeholders.
3) Ensure the appropriate review of issues encountered within each project.

4) Ensure that required approvals and direction for the project is obtained at each appropriate stage of the project.

(b) The objectives of the Right to Information Act are to —

(i) give effect to the Fundamental Right to Information, which will contribute to strengthening democracy, improving governance, increasing public participation, promoting transparency and accountability and reducing corruption

(ii) establish voluntary and mandatory mechanisms or procedures to give effect to right to information in a manner which enables persons to obtain access to records of public authorities in a swift, effective, inexpensive and reasonable manner.

(iii) promote transparency, accountability and effective governance of all public authorities by, including but not limited to, empowering and educating all persons to:
- understand their rights in terms of this Act in order to exercise their rights in relation to public authorities;
- understand the functions and operation of public authorities; and effectively participating in decision making by public authorities that affects their rights.

(c) Defunct Company: A company is said to be 'defunct' when it is not carrying on business or when it is not in operation. If the company has ceased to carry on business, the Registrar may strike off the Register as a defunct company in accordance with the provisions of the Company Law.

A company shall be declared to a 'defunct' company after following a proper procedure. If the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, he shall send to the company by post a notice inquiring whether the company is carrying on the business or not. If the Registrar do not receive an answer within one month of the sending this letter, he shall within 14 days after the expiry of the month, send to the company by registered post, a letter referring to the first letter and stating that no answer has been received. He shall further mention in the letter that if no reply is received to the second letter within one month, a notice will be published in the Official Gazette with a view to striking the name of the company off the Register.

If the Registrar receives an answer that the company is not carrying on any business or if no answer is received within one month of the sending of the second letter, he may publish in the Official Gazette and send to the company by a registered post, a notice that at the expiration of 3 months from the date of the notice, the name of the company shall be struck off the Registrar and the company may be dissolved. The company may, however, within three months show cause why it should not be dissolved.

The same procedure is also followed when the company is being wound up and the Registrar has reasons to believe that either no liquidator is acting or the affairs of the company has been wound up completely and no return has been submitted by the liquidator for a period of 6 consecutive months.

At the expiry of 3 months, the Registrar may strike the name of the company of the Register, unless cause to the contrary is previously shown by the company. He shall then publish notice of this fact in the Official Gazette. It is on the publication in the Official Gazette of this notice that the company shall stand dissolve.

Name of the defunct company can be restored by the Tribunal and this power lasts for 20 years. Restoration can be made on the application of any member or creditor who feels aggrieved by the name of the company having been struck off the Register. He may apply to the Tribunal within a period of 20 years from the date of publication in the Official Gazette. The Tribunal may order restoring the name if it is satisfied that at the time of striking off the name, the company was in fact in operation and was carrying on the business and it is just that the name of the company be restored in the Register.

Question 8.

(a) The Board of directors of XYZ Ltd. met thrice in the year 2013 and the 4th meeting, though called could not be held for want of quorum. Examine with reference to the relevant provisions of the Companies Act, 1956, the following:

(i) Whether any provisions of the Companies Act, 1956 have been contravened?

(ii) Is a director bound to attend the Board meetings and when his frequent absence from the Board meetings may be excused?

(b) List out some cases where special resolution is required to be obtained.

(c) Describe the procedure to be adopted for the alteration of object clause in the Memorandum of Association.

[6+3+6]

Answer:

(a) The present problem relates to sections 285 and 288 of the Companies Act, 1956.

1. As per section 285, at least four Board meetings shall be held in each calendar year and at least one Board meeting shall be held in each quarter.
2. As per section 288, section 285 shall not be deemed to be contravened, if a Board meeting could not be held for want of quorum.
3. The issues raised in the given problem are answered as under:

(i) In the instant case, three Board meetings were held in the calendar year 2013, but the fourth Board meeting could not be held for want of quorum.

Assuming that one Board meeting each was held in the first three quarters of the calendar year 2013 (viz., January to March, 2013, April to June, 2013, and July to September, 2013), non-holding of Board meeting in the quarter October to December, 2013 shall not be deemed to be a contravention of section 285, because the fourth Board meeting was validly called but it could not be held only because of absence of quorum.

Conclusion: The Company has not violated the provisions of section 285.

(ii) A director should endeavour to attend the maximum number of Board meetings. But he is not duty bound to attend all the Board meetings.

However, if loss is caused to the Company because of continuous absence of a director from the meetings of the Board, it would amount to negligence and breach of duty. Moreover, a director shall vacate his office if he absents himself, without obtaining leave of absence from the Board, from 3 consecutive Board meetings or from all the Board meetings for a continuous period of 3 months, whichever is longer.

The frequent absence of a director from the Board meetings may be excused where the director did not attend the Board meetings because of the reason that he was out of the State in which the Board meetings were held, especially when he was outside the State in connection with the work of the Company, and he was granted leave of absence by the Board.

(b) Some of the cases where special resolution is required —

- Alteration of memorandum for changing the place of registered office from one State to other with the permission of the Tribunal.
- Change of name of the company
- Alteration of the articles of association
- Payment of interest out of capital
- Applying to the Court to wind up of a company.

(c) The procedure to be adopted for the alteration of object clause in the Memorandum of Association are described below:

1. A special resolution must be passed.
2. A petition should be filed with the National Company Law Tribunal for confirmation of the change.
3. The consent of the creditors of the company should be obtained or their claims paid off or secured.
4. Notice should be given to the Registrar of companies so that he can appear before the Tribunal and state his objections and suggestions if any.
5. After the Tribunal has confirmed the alteration, a certified copy of the Tribunal's order together with a printed copy of the Memorandum as altered shall be filed with the Registrar within 3 months of the date of the order.
6. The certificate of the Registrar of Companies is conclusive evidence of the alteration and its validity. The alteration takes effect after it is registered. If no registration is made within 3 months, the alteration and the entire proceedings connected herewith become void.