

Answer to PTP_Final_Syllabus 2012_Dec2014_Set 3

Roll No.....

No. of Printed Pages...

Corporate Laws & Compliance

Full Marks: 100

Time Allowed: 3 hours

This paper contains 3 questions. All questions are compulsory, subject to instruction provided against each question. All workings must form part of your answer. Assumptions, if any, must be clearly indicated.

(1) Answer all questions: [20 marks]

(a) Explain the term 'executive directors' and non-executive directors.

(3 Marks)

Answer:

The expressions 'executive director' and 'non-executive director' have not been used in the Companies Act, 1956 or the Companies Act, 2013. Generally, these terms are used as follows:

1. Executive directors

The directors who are in the employment of the company are called as executive directors or inside directors. A whole time director and managing director are covered in this category of directors. The inside directors possess in-depth knowledge about the affairs of the company. They are generally connected with the policy formulation of the company and take active interest in the day-to-day affairs of the company. They have personal involvement with the company since their remuneration depends on the successful operations of the company.

2. Non-executive directors

Directors who are not in the employment of the company are called as non-executive directors or part time directors or outside directors. This category includes professional directors and nominee directors. These directors have generally diverse experience and backgrounds. They provide independent thinking, wider knowledge and perspective to the company. They are appointed not to work full time under a contract of service. They are not intimately connected with the company except through attending the Board meetings. They have an unbiased attitude towards the working of the company.

(b) At an annual general meeting of your company, one of the directors being badly heckled by irate shareholders had tendered his resignation orally which was accepted by the majority of members present at the meeting. Can the director continue in his office after the annual general meeting?

(3 Marks)

Answer:

The Company Act has not made any provision regarding resignation of a director. Thus, resignation by a director is controlled by the rules made by the articles, if any. Where the articles of a company are silent, it has been held that a resignation shall be effective if it is addressed to the company and acceptance of resignation is not necessary.

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Where a director tendered his resignation orally at a general meeting and it was accepted at the general meeting, it was held that the resignation was effective even if it was not in writing. As such, the director who had tendered his resignation could not withdraw it except with the consent of the general meeting [Latchford Premier Cinema Ltd. v Ennion (1931) 2 Ch 409].

Thus, in the given case the director who had orally tendered the resignation at an annual general meeting cannot continue in office.

(c) Mr. Bipin goes abroad for four months from 4.4.1999 and an alternate director has been appointed in his place. Advice as to sending of notice as required under section 286. (3 Marks)

Answer:

Notice of every Board meeting shall be given in writing to every director for the time being in India and to every other director at his usual address in India (Section 286). As can be seen, section 286 does not specifically state that notice to an alternate director shall be served. However, an alternate director is a director in his own right. He is not a proxy or representative of the original director. The grounds of vacation of office also apply to him as these apply to the original director, e.g., an alternate director shall vacate office if he does not attend the Board meetings as contemplated by section 283(1)(g). As such, it is implied that notice to an alternate director is to be given. Thus, notice should be served to both, the alternate director as well as the original director. Notice to Mr. Bipin Ram, who is outside of India, shall be served at his usual address in India.

(d) What are the provisions regarding preservation of accounts and records of a company which has been amalgamated with any other company? (3 Marks)

Answer:

The object of section 396A is to prevent the practice of destroying incriminating accounts and records of the company which has been amalgamated with another company.

The books and papers of a company which has been amalgamated with, or whose shares have been acquired by, another company shall not be disposed of without the prior permission of the Central Government. Before granting such permission, the Central Government may appoint a person to examine the books and papers for the purpose of ascertaining whether they contain any evidence of the commission of an offence in connection with the promotion, formation or management of the affairs of the company or its amalgamation or the acquisition of its shares?

(e) What provision has been made under section 15A of the SEBI act, 1992 in connection with penalty for failure to furnish information or returns? (3 Marks)

Answer:

A person shall be liable to a fine of ₹ 1,00,000 per day or ₹ 1 crore, whichever is less, if he fails to-

(a) furnish any document, return or report to the SEBI, as required under the Act, rules or regulations made thereunder; or

(b) file any return or furnish any information, books or other documents within the time

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specified under the Act, rules or regulations made thereunder; or

- (c) maintain the books of account or records as required under the Act, rules or regulations made thereunder.

(f) Explain the need for Social Responsibility.

(2¹/₂ Marks)

Answer:

Need for Social Responsibility

Today, businessmen are aware that society is the biggest force which controls the entire business operations, right from acquisition of land to final produce. They now feel that they cannot operate in societal isolation. Profit still being the major determinant for business houses, it is extremely difficult to strike a balance between the conflicting needs of business this earning profit and society's need to take care of its many constituents. The success of a business depends on the growth of the society because the goods and services of business are ultimately consumed by the society. So, an organisation must initiate steps which will ultimately lead to economic upliftment of the people. Although at the initial stage of investment for such welfare measures it may appear to be a losing proposition, in the long run, it will have a twin positive effect—the image of the organisation will be enhanced and there will be an economic resurgence of the people through adoption of such welfare measures which will create a new set of consumers for their products.

Another contribution which society expects from the business community is qualitative improvement of the product. This necessitates huge investment in research and development, which government alone cannot afford. Accordingly, business organisations should come out with liberal contribution for setting up research laboratories for product quality improvement. In addition, business houses should shun unethical practices such as price rigging of the product through hoarding and creating scarcity, quality deterioration due to adulteration, and resorting to advertisements which lead to formation of biased attitude. As business is now considered to be a part of social order, it itself will determine its ethical standards through cross-current interactions.

(g) What are the requirements to strengthen Corporate Governance?

(2¹/₂ Marks)

Answer:

Requirements to strengthen corporate governance

The following are some of the requirements meant for strengthening corporate governance:

1. Enforcement of rights by minority shareholders: Shareholders activism have to be encouraged so as to enhance the shareholders' value in the long run.
2. Quality of audit: There is an imperative need on the part of the Government to strengthen the quality of audit so as to make the Auditor accountable for the disclosure of information in the annual reports and to monitor the working of Audit Firms.
3. Ensuring the independence of directors: An appropriate and acceptable system has to be designed to ensure the independence of directors to discharge their duties as per the requirements of the law.

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4. Awareness for adoption of corporate governance practices: Efforts have to be made for propagation of corporate governance norms amongst entrepreneurs for better compliance.
5. Amendment to bankruptcy laws: There is a need to amend bankruptcy laws for prompt implementation of provisions.
6. Accountability of the board to stakeholders: The Board of Directors as well as the CEOs and CFOs are made accountable for the discharge of their duties with the proper use of their rights within the powers.
7. Upgrading the efficacy of systems: Adequate care has to be exercised to ensure the quality and effectiveness of the legal, administrative and regulatory framework.
8. Report on corporate governance: To make a statutory compliance for the listed companies to compulsorily obtain a report on Corporate Governance Rating (CGR) from a Credit Rating Agency in India.

(2) Answer any four questions: [4 x 15 = 60 marks]

(a)(i) Your company has been approached by its foreign collaborators who have three U.S. based directors on your Board with the idea that they would appoint a single individual based in India to act as an alternate for all the three U.S. based director. Advice by indicating the feasibility of the idea, the voting rights to be enjoyed by the proposed alternate director, and the sitting fees payable to him. (5 Marks)

Answer:

An alternate director can be appointed only if any of the directors of the company is absent for not less than 3 months from the State in which Board meeting are ordinarily held (Section 313). But, section 313 does not contain any specific provision either prohibiting or authorising an individual to be appointed as an alternate director for more than one director.

The appointment of one person as an alternate director for three U. K. based directors would not be in the interest of good corporate governance. Also, it would adversely affect the interests of company, since this would limit the deliberations in the Board meeting. Moreover, only one person would exercise three votes and this would probably result in giving of all the three votes either in favour of the resolution or against the resolution.

In the given case if one individual is appointed as an alternate director for the three foreign directors, he will have three votes. However, he shall be entitled to receive the sitting fees in respect of one director only.

(ii) State the kind of approval required for the following transactions under the Foreign Exchange Management Act, 1999:

(A) T wants to draw US \$20,000 to make donation to a charitable trust situated in South Korea.

(B) Q requires US \$ 5,000 to make payment related to 'call back services' of telephone.

(5 Marks)

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Answer:

Any person may sell or draw foreign exchange to or from an authorised person if such sale or drawal is a current account transaction. However, the Central Government may in public interest and in consultation with the RBI, impose such reasonable restrictions for current account transactions as may be prescribed (Section 5). The Central Government has framed Foreign Exchange Management (Current Account Transactions) Rules, 2000. The Rules stipulate some prohibitions and restrictions on drawal of foreign exchange for certain purposes. In the light of provisions of these rules, the answer to the given problem is as follows:

(A) As per Rule 5 read with Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000, prior approval of Reserve Bank of India is required for drawal of foreign exchange, exceeding US\$ 5,000 per financial year for donations.

Therefore, Mr. T can obtain \$ 20,000 for making donation to a charitable trust situated in South Korea with the permission of Reserve Bank of India. However, prior approval of the Reserve Bank of India shall not be required if drawal of additional US Dollar 15,000 is made out of funds held in Resident Foreign Currency (RFC) Account.

(B) Rule 3 read with Schedule I of Foreign Exchange Management (Current Account Transactions) Rules, 2000 prohibits drawal of foreign exchange for payments related to call back services of telephones. Therefore, payment of US \$ 5,000 for 'call back services' of telephone is prohibited.

(iii) Whether appointment of Controller of Insurance is compulsory? Explain. (5 Marks)

Answer:

The provisions relating to appointment of Controller of Insurance is explained as below:

1. Appointment on supersession of IRDA [Section 2B(1)]

If at any time, the Authority is superseded under sub-section (1) of section 19 of the Insurance Regulatory and Development Authority Act, 1999, the Central Government may, by notification in the Official Gazette, appoint a person to be the Controller of Insurance till such time the Authority is reconstituted under section 19(3) of the said Act.

2. Factors to be considered at the time of appointment of Controller of Insurance [Section 2B(2)]

In making any appointment of Controller of Insurance, the Central Government shall have due regard to the following considerations, namely, whether the person, to be appointed has had experience in industrial, commercial or insurance matters and whether such person has actuarial qualification.

(b)(i) In case of appointment of directors of a company, all the directors were not voted on individually, but were appointed by one resolution and no shareholder objected to it. Discuss the position under the provision of the Companies Act. (5 Marks)

Answer:

At a general meeting, two or more persons cannot be appointed as directors by a single resolution unless a resolution that appointment shall be so made has first been agreed to by the meeting

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without any vote being cast against it. A resolution moved in contravention of this provision shall be void, whether or not objection was raised at the time when such resolution was passed (Section 162 of the Companies Act, 2013). In the present case, all the members passed a single resolution appointing all the directors. The resolution is void since before moving the resolution for appointment of all the directors by a single resolution, no resolution was passed to the effect that all the directors shall be appointed by a single resolution. It is immaterial that no member objected to the appointment of all the directors by a single resolution. As per section 176 of the Companies Act, 2013, the acts of these directors shall not be invalid till the defect in their appointment is noticed by the company.

Section 162 of the Companies Act, 2013 applies to all companies, whether public or private. Therefore, the answer would remain same even if the company in the present case is a private company.

(ii) What shall be the composition of the Insurance Regulatory and Development authority?

(5 Marks)

Answer:

The composition of the Authority may be explained as follows:

1. Chairperson and Members [Section 4(1)]

The Authority shall consist of the following members, namely:

- (a) a Chairperson;
- (b) not more than 5 whole time members;
- (c) not more than 4 part-time members,

to be appointed by the Central Government from amongst persons of ability, integrity and standing who have knowledge or experience in life insurance, general insurance, actuarial science, finance, economics, law, accountancy, administration or any other discipline which would, in the opinion of the Central Government, be useful to the Authority.

2. Requirement as to specialised areas [Section 4(2)]

The Central Government shall, while appointing the Chairperson and the whole-time members, ensure that at least one person each is a person having knowledge or experience in life insurance, general insurance or actuarial science, respectively.

(iii) Examine the validity of the resolution passed at the Annual General Meeting of a public company for payment of dividend at a rate higher than recommended by the board of directors.

(5 Marks)

Answer:

As per Regulation 85 contained in Table A of Schedule I to the Companies Act, 1956, the company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the Board. Following conclusions are worth noting:

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- (a) The power to declare dividend rests with the members, but the members can exercise such power only if the dividend is proposed by the Board.
- (b) The rate of dividend proposed by the Board may be reduced by the members.
- (c) The rate of dividend proposed by the Board cannot be increased by the members.
- (d) Any provision in the articles, which authorises the members to declare dividend higher than the rate recommended by the Board, is void.

Therefore, in the given case, the resolution passed at the Annual General Meeting declaring dividend at a rate higher than that recommended by the Board of directors is not valid.

(c)(i) Examine whether the following companies can be considered as 'Foreign Companies' under the Companies Act, 1956:

(A) A company which is incorporated outside India employs agents in India but has no place of Business in India.

(B) A company incorporated outside Indian having shareholders who are all Indian citizens.

(C) A company incorporated in India but all the shares are held by foreigners. (5 Marks)

Answer:

As per section 591(1), a company shall be a foreign company if -

- (a) it is incorporated outside India; and
- (b) it has established a place of business in India.

The answer to the given problem is as follows:

- (i) Employing agents in India does not amount to establishment of a place of business in India. Thus, the company is not a foreign company since it has not established any place of business in India.
- (ii) A company incorporated outside India does not become a foreign company by the mere fact that all its shareholders are Indian citizens. Assuming that the company has not established any place of business in India, the company is not a foreign company.
- (iii) A company incorporated in India is a 'company' within the meaning of section 2(20) of the Companies Act, 2013. It cannot become a foreign company by the mere fact that all the shares of the company are held by foreigners.

(ii) State whether a banking company is required to file with the registrar its accounts and balance sheet. (5 Marks)

Answer:

As per section 32, where a banking company in any year furnishes its accounts and balance-sheet in accordance with the provisions of section 31, it shall at the same time send to the registrar 3 copies of such accounts and balance-sheet and of the auditor's report, and where such copies are so sent, it shall not be necessary to file with the registrar, in the case of a public company, copies

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of the accounts and balance-sheet and of the auditor's report, and, in the case of a private company, copies of the balance-sheet and of the auditor's report as required by sub-section (1) of section 220 of the Companies Act, 1956; and the copies so sent shall be chargeable with the same fee and shall be dealt with in all respects as if they were filed in accordance with that section.

(iii) Mr. Sandip is an Indian Citizen. He has been residing in India since his birth. He left India on 25th February, 2011 for pursuing business management in America for 2 years. He comes back on 24th February, 2013. What is his residential status for the financial years 2010-11, 2011-12, 2012-13 and 2013-14? (5 Marks)

Answer:

The given problem can be answered as follows:

- (a) Financial year 2000-01. Mr. Sandip resided in India for the whole year in the preceding financial year, i.e., 1999-2000. His leaving India for pursuing business management for 2 years would not exclude him from the definition of 'Person resident in India' because he is not going outside India for any of the following purposes:
- (i) for or on taking up employment outside India, or
 - (ii) for carrying on outside India a business or vocation outside India, or
 - (iii) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period. Therefore, Mr. Sandip is a person resident in India for the financial year 2000-01.
- (b) Financial year 2001-02. He resided in India for more than 182 days in the preceding financial year, i.e., 2000-01. Therefore, he is a 'Person resident in India' for the financial year 2001-02. It is immaterial that he is outside India for the whole financial year 2001-02.
- (c) Financial year 2002-03. Mr. Sandip did not reside in India at all in the preceding financial year, i.e., 2001-02. Therefore, he shall be a 'Person resident outside India' for the financial year 2002-03.
- (d) Financial year 2003-04. Mr. Sandip resided for less than 183 days in the preceding financial year, i.e., 2002-03. Therefore, he shall be a 'Person resident outside India' for the financial year 2003-04.

(d)(i) M/s. Sahara Fertilizers Ltd. proposes to acquire equity shares of XYZ Ltd. worth ₹19 lakhs. On the basis of the following information advise Sahara Fertilizers Ltd. about the requirements to be complied with under Companies Act, 1956 for the proposed investment in XYZ Ltd.:

Authorised Share Capital	₹50,00,000	
Issued, subscribed and paid-up capital	₹25,00,000	
Free Reserves	₹5,00,000.	(5 Marks)

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Answer:

Inter-corporate loans and investments are governed by the provisions of section 372A. First determine whether a special resolution is required for making fresh investments. This can be determined as follows:

Particulars	₹
Paid up capital of the company (A)	25,00,000
Free reserves (B)	5,00,000
Aggregate of paid up capital and free reserves (C)	30,00,000
60% of aggregate of paid up capital and free reserves (D)	18,00,000
Higher of (B) or (D), i.e. the ceiling limit for inter-corporate loans, investments etc. without requiring a special resolution	18,00,000
Proposed investment in equity shares of XYZ Limited	19,00,000

Since the proposed investment exceeds the ceiling limit, a special resolution is required. The company shall adopt the following procedure for making investments in XYZ Ltd.:

- (a) Unanimous approval of the Board shall be obtained by passing a resolution at a Board meeting.
- (b) A special resolution shall be passed in the general meeting.
 - The notice of special resolution shall state the specific limits, particulars of the company to which loan is proposed to be given, specific source of funding and other relevant details.
 - The company shall file a copy of special resolution with the registrar within 30 days of passing the special resolution.
- (c) The company shall obtain the prior approval of the Public Financial Institution, if any, from whom it has taken a term loan.
- (d) The company can make such investments only if no default in respect of Public deposits is subsisting.
- (e) The prescribed particulars shall be entered in the register maintained under section 372A(5).

(ii) Is a stock exchange compulsorily required to be corporatized and demutualised? (5 Marks)

Answer:

The provisions relating to section 4A are explained hereunder:

1. Requirement of Section 4A

Every recognised stock exchange shall be corporatised and demutualised before the appointed date.

2. Consequences of non-compliance of Section 4A

(a) Applicability of Section 4B. Every recognised stock exchange shall be corporatised and demutualised as per section 4B.

(b) Relaxation by SEBI. SEBI may specify another appointed date in respect of a recognised stock exchange if it is satisfied that such recognised stock exchange was prevented by

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sufficient cause from being corporatised and demutualised.

3. Meaning of 'appointed date'

- (a) 'Appointed date' means the date appointed by SEBI by notification in the Official Gazette.
- (b) Different 'appointed dates' may be appointed for different recognised stock exchanges.

(iii) What shall be the composition of Competition Commission of India?

(5 Marks)

Answer:

The composition of Competition Commission of India may be explained as follows:

1. Chairperson and Members

The Commission shall consist of a Chairperson and not less than two and not more than 6 other Members to be appointed by the Central Government:

2. Qualifications and experience of the Chairperson and Members

The Chairperson and every other Member shall be a person of ability, integrity and standing and who has special knowledge of, and such professional experience of not less than 15 years in, international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs or competition matters, including competition law and policy, which in the opinion of the Central Government, may be useful to the Commission.

3. Terms of employment

The Chairperson and other Members shall be whole-time Members.

(e)(i) State, with reason, whether the following are debts for the purpose of section 433(e) of the Companies act, 1956:

(A) Contingent or conditional liability.

(B) Non-payment of dividend declared.

(C) Non-payment of salary to an employee.

(D) Non-payment to a creditor of a disputed liability.

(5 Marks)

Answer:

The Court may order the winding up of a company under any of the circumstances mentioned under section 433(a) to (f). Section 433(e) provides that a company may be wound up by the Court if it is unable to pay its debts. Section 434 specifies the circumstances in which the company shall be deemed to be unable to pay its debts.

(i) Contingent or conditional liability

A debt must be a definite sum of money payable immediately or at a future date. A contingent or conditional liability is not a debt, unless the contingency or condition has already happened [Registrar of Companies v Kavita Benefit Private Limited(1978) 48 Comp Cas 231].

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(ii) Non-payment of dividend declared

On declaration, the dividend becomes a debt payable by the company. Non-payment of dividend entitles the shareholder to apply for winding up of the company [Hariprasad (C) v Amalgamated Commercial Traders (Private) Ltd. (1964) 34 Comp Cas 209]. Therefore, non-payment of dividend declared would amount to a debt for the purpose of winding up petition.

(iii) Non-payment of salary to an employee

Non-payment of salary to an employee of the company is not a debt for the purpose of section 433(e) [Pawan Kumar Khullar v Kaushal Leather Board Ltd. AIR 1966 MP 85]. However, a contrary decision has been given by the A.P. High Court in which the Court construed the word 'debt as a sum which is to be recovered from a person who is obliged to make the payment and accordingly the Court held that unpaid salary is a debt [B.5. Damagry v VIF Airways Ltd.]. It seems that A.P. High Court judgment is realistic and reflects the intention of the legislature.

(iv) Non-payment to a creditor of a disputed liability

Where a debt is bona fide disputed by the company and the Court is satisfied with the company's defence, a winding up order will not be made [Piara Singh (S) v S.H.R. Properties Pvt. Ltd. (1993) 10 CLA 83]. If a debt is bona fide disputed there cannot be a neglect to pay. The Court shall consider the following principles'.

- (a) Whether the defence of the company is in good faith and is of some substance.
- (b) Whether the defence is likely to succeed in point of law.
- (c) Whether the company has produced prima facie proof of the facts on which the defence depends [Kirpal Singh v Sutlej Land Finance Pvt. Ltd. (1989) 66 Comp Cos 841].

(ii) What are the powers of the High Court to enforce its orders relating to compromise and arrangement? (5 Marks)

Answer:

Section 392 has conferred wide powers on the Court to remove the obstacles and difficulties for the proper working of the scheme. These powers are discussed as follows:

1. Power to give directions to the company

Where a compromise or arrangement is proposed, the Court may order that a meeting of creditors or members or any class of them be called, held and conducted in the manner directed by the Court (Section 391). If the Court gives such directions, then the provisions of the Companies Act will not apply to that extent. However, Court has no power to dispense with the holding of the meeting even though the shareholders unanimously approve the scheme [Re, Southern Automotive Corporation Pvt. Ltd. (1960) 30 Comp Cas 119].

2. Power to stay any suit or proceedings

The Court may stay the commencement or continuation of any suit or proceedings against the company until the application is finally disposed of (Section 391).

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3. Power to order winding up

If, after sanctioning the scheme, the Court is satisfied that the sanctioned scheme has become unworkable even after an honest effort, the Court may wind up the company. The power can be exercised suo motu or on the application of the company or its creditors or any person interested in the affairs of the company (Section 392).

4. Power to supervise and modify the scheme

After sanctioning a scheme of compromise or arrangement, the Court may exercise the following powers:

- (a) To supervise the carrying out of the scheme.
- (b) To modify or vary the sanctioned scheme so that it becomes workable.
- (c) To ask for a report on the working of the scheme. On consideration of such report, the Court may give such directions as it thinks fit (Section 392).

(iii) What measures can a securitization or reconstruction company adopt for the purpose of asset reconstruction? (5 Marks)

Answer:

The measures for asset reconstruction, as contained in Section 9 of the Act, are explained below: Without prejudice to the provisions contained in any other law for the time being in force, a securitisation company or reconstruction company may, for the purposes of asset reconstruction, having regard to the guidelines framed by the Reserve Bank in this behalf, provide for any one or more of the following measures, namely:

- (a) the proper management of the business of the borrower, by change in, or takeover of, the management of the business of the borrower;
- (b) the sale or lease of a part or whole of the business of the borrower;
- (c) rescheduling of payment of debts payable by the borrower;
- (d) enforcement of security interest in accordance with the provisions of this Act;
- (e) settlement of dues payable by the borrower;
- (f) taking possession of secured assets in accordance with the provisions of this Act.

(3) Answer any two questions: [2 × 10 = 20 marks]

(a) Evaluate the concept of Social Responsibility of Business.

(10 Marks)

Answer:

Evolution of the Concept of Social Responsibility of Business

The evolution of the concept of social responsibility of business is the result of different stages of struggle. Business began merely as an institution for the purpose of making money. Man was considered successful so long as he made money and kept himself out of jail. He felt no particular obligation and acknowledged no responsibility to the public. As an owner of his business, he thought that he had a perfect right to do what he pleased with the money he earned. Social norms and attitudes had very little influence on the practice of management. Even in USA, business ventures like those of John D. Rockefeller, G.F. Swift, J.P. Morgan are noted for their flagrant disregard of society, the individual worker, and competitive business firms.

But by 1920s, the position changed and the word 'service' became the slogan of innumerable business clubs and associations. At the same time, business leaders as a whole were becoming increasingly conscious of the fact that the public was an integral part of the general business scheme. The sense of service, thus, qualified and modified the greed for profit. Economic orders came to recognise social order as their very foundation. It is now increasingly recognised that what is not for the public good is not for the good of business.

The second element that helped the evolution process was the purchasing power of the public. The demand of the public meant nothing unless backed by purchasing power. Industry had come to understand that one of its proper functions was to manufacture and distribute purchasing power, besides manufacturing and distributing merchandise. The most important effect of this change in the attitude was a new business policy which demanded a persistent tendency towards higher wages and lower prices. Thus, the new social responsibilities of business came to be recognised.

Yet, one more element in this evolution process has been the rise of new relationship between the public and business. The era of purely private business for private profits has gone. Business has a duty to report to the public whose money it is constantly seeking, in order to conduct the business itself. According to Nicholas N. Eberstadt (1973):

Today's corporate social responsibility movement is a historical swing to re-create social contract of power with responsibility, and as such...the most important reform of our time.

To Keith Davis (1973), "Social responsibility has become the hallmark of mature, global civilization.

(b) What are the important legislations that govern corporate governance in India? (10 Marks)

Answer:

The following are some of the important legislations that govern corporate governance:

The Companies Act, 1956

The Companies Act, 1956 is the principal legislation that governs the companies. Its objectives are:

- Standard of business integrity

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- Conduct in the promotion and management of companies
- Disclosure of all reasonable information relating to the affairs of the company
- Effective participation
- Shareholders and their protection of interest
- Performance and management
- Governance

The Competition Act, 2002

The objectives of the Competition Act, 2002 include:

- Prohibition of anti-competitive agreements
- Prohibition of abuse of dominant position
- Regulation of combination.

The Securities and Exchange Board of India (SEBI) Act, 1992

SEBI has been instituted by the Securities and Exchange Board of India Act, 1992 with the following objectives:

- Protect the interests of investors or securities
- Promote the development of the securities market
- Regulate the securities market
- Investors' education
- Regulation of intermediaries
- Protect investors against unfair and fraudulent trade practices
- Provide a grievance redressal mechanism

The Foreign Exchange Management Act (FEMA), 1999

The Foreign Exchange Management Act, 1999 came into effect on June 1, 2000 and it replaced the Foreign Exchange Regulation Act (FERA), 1973. While the objective of FERA was to conserve the foreign exchange resources, FEMA facilitated external trade and payments and promoted orderly maintenance of the foreign exchange market in India. The highlights of the new Act are given below:

1. FEMA is more transparent in its application. It has laid down the areas where specific permission of the Reserve Bank/Government of India is required. A person can, thus, remit funds, acquire assets, and incur liability in accordance with the specific provisions laid down in the Act or the notifications issued by the Reserve Bank/Government of India under the Act without seeking approval of Reserve Bank/ Government of India.
2. Application of FEMA may be seen broadly from two angles: (i) capital account transactions and (ii) current account transactions, capital account transactions will be regulated by the Reserve Bank and they relate to movement of capital, e.g. transactions in property and investments, and lending and borrowing money. Current account transactions are those which do not fall in the

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capital account category. They which are permitted freely subject to a few restrictions as given below:

- (a) RBI permission would be required when they exceed a certain ceiling.
- (b) Need permission of Government of India appropriate authority irrespective of the amount.
- (c) There are seven types of current account transactions which are prohibited and no transaction can, therefore, be undertaken relating to them. These include transactions relating to lotteries, football pools, and banned magazines.

Significant features: The Foreign Exchange Management Act and Rules give full freedom to a person resident in India who was earlier resident outside India to hold or own or transfer any foreign security, shares or immovable property situated outside India and acquired when he/she was resident there. Similar freedom is also given to a resident who inherits such security or immovable property from a person resident outside India. The exchange drawn can also be used for purposes other than for which it is drawn provided drawal of exchange is otherwise permitted for such purpose. Certain prescribed limits have been substantially enhanced. For instance, residents now going abroad for business purposes or for participating in conferences/seminars will not need Reserve Bank's permission to avail foreign exchange up to US\$ 25,000 per trip irrespective of the period of stay; basic travel quota has been increased from the existing US\$ 3000 to US\$ 5000 per calendar year.

The Foreign Contribution (Regulation) Act, 1976

The foreign contribution (Regulation) Act, 1976 has been brought in to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain persons or associations. The purpose of the regulation is to ensure that parliamentary institutions, political associations, academic and other voluntary organisations as well as individuals working in the important areas of national life function in a manner consistent with the values of the Sovereign Democratic Republic. The Act extends to the whole of India, in addition to the:

- (a) citizens outside India, and
- (b) associates, branches or subsidiaries outside India, of companies or bodies corporate, registered or incorporated in India.

The Consumer Protection Act, 1986

Consumer is a stakeholder of a company who deals with the company's product or services. It is the responsibility of the government to protect their interest and rights. The basic objectives of the consumer protection Act, 1986 are:

- The right to be protected against marketing of goods and services which are hazardous to life and property
- The right to be informed about the quality, quantity, purity, standard, and price of goods or services
- Protect the consumer against unfair trade practices
- Consumer education
- Consumer redressal

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The Environment (Protection) Act, 1986

Environmental degradation has become a very serious issue in recent years. The need for covering all aspects of the environment resulted in the enactment of the Environment (Protection) Act, 1986. This need has been internationally recognised and a decision to protect and improve environment was taken at the United Nations Conference on Human Environment at Stockholm in June 1972. The mankind has been exploiting, using and abusing earth for centuries. Rapid industrialisation and population explosion are the key factors for environmental degradation. If the environmental pollution is not checked or controlled, the quality of life will deteriorate and earth would become uninhabitable. Environmental legislation intends to control the environmental degradation to improve quality of life and health of the inhabitants.

(c)(i) List out the key features of the Kumar Mangalam Birla Committee's Report on Corporate Governance. (5 Marks)

Answer:

The Kumar Mangalam Birla Committee Report

- Strengthening of disclosure norms for initial public offer
- Providing information in Director's report for utilisation of funds
- Declaration of quarterly results
- Mandatory appointment of Compliance Officer
- Disclosure of material and price-sensitive information
- Disclosure of material events
- Copy of abridged balance sheet to all shareholders
- Guidelines for preferential allotment
- Regulation for fair and transparent framework for takeovers and substantial acquisition
- Audit committee
- Frequency of meetings and quorum
- Independent, and Nominee Directors in the Board

(ii) State the composition of board as per Clause 49 of Listing Agreement. (5 Marks)

Answer:

Composition of Board

In the present competitive environment, corporates have to be extraordinary careful in choosing the balanced composition of the board, particularly, age of the members of the board, professional competencies of the members and experience as members of the board. To make the board truly effective, it must be balanced in several aspects. A good board always works as an interdisciplinary, jointly working consulting group where everybody has been given an opportunity to exhibit his expertise and professional competence. The test of a balanced group depends on whether the

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requisite technical, legal, financial, and managerial skills are represented on the board. Representation of different age groups on the board will definitely strengthen the board as a whole. For the board, the better age range shall be from 40 to 75 years. Every board is expected to have:

- Experienced members
- Combination of young and senior members
- Men of integrity and sincerity
- People of proven performance capacity
- Willingness to work
- Well versed in duties and responsibilities pertaining to both statutory and non-statutory compliances