Final

Group III

Paper 13: CORPORATE LAWS & COMPLIANCE

(SYLLABUS – 2016)

SECTION - A

Question 1:

Choose the correct answer from the given alternatives:

1. The general principle of company law is that ____________________ with other members of the company in the same class.
   (a) **every member holds equal rights**
   (b) members may have differential rights
   (c) members may or may not have differential rights
   (d) None of the above

2. According to Sec 2(6) of Companies Act, 2013 an associate company, in relation to another company, means a company in which that other company has a significant influence. Here significant influence means _____________________
   (a) Control of at least twenty per cent. of total voting power
   (b) **Control of at least twenty per cent. of total voting power, or control of or participation in business decisions under an agreement**
   (c) Control of at least twenty - five per cent. of total voting power
   (d) Control of at least twenty - five per cent. of total voting power, or control of or participation in business decisions under an agreement

3. A copy of the Inspectors report under section 223 of Companies Act, 2013 may be obtained by ____________
   (a) **By members, creditors or any other person whose interest is likely to be affected by making an application in this regard to the Central Government**
   (b) by making an application in this regard to the Central Government
   (c) Option (a) or (b)
   (d) None of the above

4. Which of the following would not constitute to be the 'Key managerial personnel' as per section 2(51) of Companies Act, 2013.
   (a) the Chief Executive Officer or the managing director or the manager

(b) the company secretary
(c) such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board
(d) **the Chief Financial Officer**

5. 'Small Company' means a company, other than a public company, with a paid-up share capital of which does not exceed _______________ rupees or such higher amount as may be prescribed which shall not be more than ______________ rupees.
(a) five lakh; one crore
(b) fifty lakh; five crore
(c) **fifty lakh; ten crore**
(d) None of the above

6. A company registered under ______________ shall amalgamate only with another company registered under this Section and having similar objects
(a) Sec 7 of Companies Act, 2013
(b) **Sec 8 of Companies Act, 2013**
(c) Sec 9 of Companies Act, 2013
(d) Sec 10 of Companies Act, 2013

7. ______________ means any director whose presence cannot count for the purpose of forming a quorum at a meeting of the Board, at the time of the discussion or vote on any matter.
(a) **Interested Director**
(b) Related party
(c) Nominee Director
(d) None of the above

8. The ___________________ shall satisfy itself on the need for omnibus approval for transactions of repetitive nature and that such approval is in the interest of the company.
(a) Board of Directors
(b) **Audit Committee**
(c) Management Committee
(d) Any of the above

9. A company may make payment to a managing or whole-time director or manager, but not to _______________, by way of compensation for loss of office, or as consideration for retirement from office or in connection with such loss or retirement.
(a) **Any other Director**
(b) Independent Director
(c) Interested Director
(d) Employees

10. The provisions of Insolvency and Bankruptcy Code, 2016 applies, in relation to ____________.
    (a) **Insolvency, liquidation, voluntary liquidation or bankruptcy**
    (b) Insolvency, liquidation or bankruptcy
    (c) Insolvency or bankruptcy
    (d) None of the above

11. If any of the provisions of Sections 139 to 146 (both inclusive) is contravened, the company shall be punishable with fine which shall not be less ______________ than but which may extend to ________________
    (a) ₹ 1,00,000; ₹ 5,00,000
    (b) ₹ 25,000; ₹ 1,00,000
    (c) **₹ 25,000; ₹ 5,00,000**
    (d) ₹ 125,000; ₹ 5,00,000

12. Moratorium shall not apply to such transactions as may be notified by the Central Government in consultation with
    (a) any financial sector regulator
    (b) Operational Debtor
    (c) Operational Creditor
    (d) Board of Directors

13. The listing regulations have been sub-divided into ________________.
    (a) Two parts; substantive provisions incorporated in the main body of Regulations and procedural requirements in the form of Schedules to the Regulations
    (b) Two parts; substantive provisions incorporated in the main body of Regulations and juridical requirements in the form of Schedules to the Regulations
    (c) Three parts; substantive provisions incorporated in the main body of Regulations, procedural requirements in the form of Schedules to the Regulations and Listing for Merger and amalgamation
    (d) Three parts; substantive provisions incorporated in the main body of Regulations, juridical requirements in the form of Schedules to the Regulations and Listing for Merger and amalgamation

14. Unfair competition means adoption of practices such as ________________.
    (a) collusive price fixing
    (b) creation of barriers to entry
    (c) tie-in sales
    (d) all of the above

15. Foreign Currency Convertible Bond (FCCB) means _________________
    (a) A bond convertible from Indian Currency to Foreign Currency

(b) A bond convertible from Foreign Currency to Indian Currency
(c) A bond issued by an Indian company expressed in foreign currency, the principal and interest of which is payable in foreign currency
(d) A bond issued by a foreign company expressed in Indian currency, the principal and interest of which is payable in Indian currency

16. Remittance and Repatriation includes
(a) Remittance of sale proceeds/Remittance on winding up/Liquidation of Companies
(b) Repatriation of Dividend
(c) Repatriation of Interest
(d) All of the above

17. Every ____________________ is a Predicate Offence
(a) Scheduled Offence
(b) Recorded Offence
(c) Sentenced Offence
(d) Any of the above

18. Functions of Insurance Regulatory and Development Authority does not include
(a) Nomination by Policyholders
(b) Practical training for Insurance agents and other intermediaries
(c) Promoting insurance business
(d) Surrender value of Policyholders

19. In India the Memorandum of Understanding is a negotiated document between the Government, acting as the owner of Public Sector Enterprise (PSE) and a specific PSE with the objectives of ______________
(a) Improve the performance of CPSEs though increased management autonomy
(b) Remove the haziness in goals and objectives
(c) either (a) or (b)
(d) Both (a) and (b)

20. Suspicious transaction means a transaction whether or not made in cash which, to a person acting in good faith and
(a) Gives rise to a reasonable ground of suspicion that it may involve the proceeds or crime
(b) Appears to be made in circumstances of unusual or unjustified complexity.
(c) Appears to have no economic rationale or bonafide purpose
(d) Any of the above

SECTION - B

Study Note 1 – Companies Act, 2013

Question 2:

(a) Super Cool Limited wants to advance a Loan to Shri Sidhartha. What are the provisions that are required to be followed in this regard?

Answer:

Section 185 of Companies Act, 2013 deals with the provisions regarding loans to directors. This said provisions are stated as under:

(1) No company shall, directly or indirectly, advance any loan, including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken by,—
   (a) any director of company, or of a company which is its holding company or any partner or relative of any such director; or
   (b) any firm in which any such director or relative is a partner.

(2) A company may advance any loan including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by any person in whom any of the director of the company is interested, subject to the condition that—

   (a) a special resolution is passed by the company in general meeting:
   Provided that the explanatory statement to the notice for the relevant general meeting shall disclose the full particulars of the loans given, or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security and any other relevant fact; and

   (b) the loans are utilised by the borrowing company for its principal business activities.

Explanation - For the purposes of this sub-section, the expression "any person in whom any of the directors of the company is interested" means—

(a) any private company of which any such director is a director or member;
(b) any body corporate at a general meeting of which not less than twenty-five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or
(c) any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.

(3) Nothing contained in sub-sections (1) and (2) shall apply to—

(a) the giving of any loan to a managing or whole-time director—
  (i) as a part of the conditions of service extended by the company to all its employees; or
  (ii) pursuant to any scheme approved by the members by a special resolution; or

(b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the rate of prevailing yield of one year, three years, five years or ten years Government security closest to the tenor of the loan; or

(c) any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or

(d) any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company:

Provided that the loans made under clauses (c) and (d) are utilised by the subsidiary company for its principal business activities.

(4) If any loan is advanced or a guarantee or security is given or provided or utilised in contravention of the provisions of this section,—

(i) the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees;
(iii) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees; and
(iv) the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.

(b) The Board of Directors of Shree Durga Art Academy (a not-for-profit company) desires to prepare the books of accounts on cash basis. Can it be done without the approval of members or the Central Government?

Answer:

The present problem relates to section 128 of the Companies Act, 2013. As per the section, the books of accounts shall be prepared on accrual basis.

Section 128 does not provide any exemption permitting a company to p[reaper the books of accounts on any basis other than accrual basis. Further, the requirement to prepare the books of accounts on accrual basis is applicable on all companies, whether public or private, whether having share capital or not, whether a company is a government company or non-profit company.

Further, section 128 does not empower the members or the Central Government to permit a company to prepare the books of accounts on any basis other than accrual basis.

Thus the books of Accounts of Shree Durga Art Academy cannot be prepared on cash basis. If the books are prepared on cash basis, it would amount to contravention of Section 128.

Question 3:

(a) 'Rubber and Plastics' Ltd redeemed its preference shares 5 years ago. Some of the shares are still unpaid. It credited the unpaid amount into its 'Investor Education Protection Fund'. Was it a contravention of the provisions of Companies Act, 2013?

Answer:

The credits that may be made into the 'Investor Education Protection Fund' as per provisions of Section 125 of Companies Act, 2013 are as under:

(i) Amount in the Investor Education and Protection Fund under section 205C of the Companies Act, 1956.

(ii) Amount in the Unpaid Dividend Account of the companies transferred to the Fund under section 124, and interest accrued thereon

(iii) Application money received by the companies for allotment of any securities and due for refund and remaining unpaid for a period of 7 years, and interest accrued thereon

(iv) Matured deposits remaining unpaid for a period of 7 years, and interest accrued thereon

(v) Matured debentures remaining unpaid for a period of 7 years, and interest accrued thereon

(vi) Redemption amount of preference shares remaining unpaid for a period of 7 years

(vii) Grants by the Central Government after due appropriation made by the Parliament

(viii) Donations given to the Fund by the Central Government, any State Government, companies or any other institution

(ix) Interest or other income received out of the investments made from the Fund

(x) Sale proceeds of fractional shares arising out of issuance of bonus shares, merger and amalgamation and remaining unpaid for a period of 7 years.

(xi) Amount in the General Revenue Account of the Central Government which had been transferred to that account under section 205A(5) of the Companies Act, 1956, as it stood immediately before the commencement of the Companies (Amendment) Act, 1999

(xii) Amount received under section 38(4)

(xiii) Such other amount as may be prescribed.

Since, only 5 years has passed and not 7 years, hence it is a contravention of the provisions.

(b) Rustomjee Limited is a widely held, listed company having two executive directors who are technocrats. The company has suffered losses in the last four years. The company wants to enhance the remuneration of the executive directors to ₹ 6 lakhs per month from existing remuneration of ₹ 4 lakh. The audited balance sheet as on 31st March, 2016 reveals that the paid up capital of the company is ₹ 15 crores, accumulated losses ₹ 11 crores and secured long term borrowing ₹ 5 crores. Besides, the company has long term investments of ₹ 11 crores. The company's remuneration committee has recommended the proposal and the company is regular in repayment of its debts. Analyse the proposition with reference to the provisions of the Companies Act, 2013.

Answer:

As per section 197, where the proposed increase in remuneration is within the limits laid down in Part II of Schedule V, the company is competent to increase the remuneration of the managerial person without the approval of the Central Government.

As per Section II of Part II of Schedule V, the 'effective capital" shall be computed as follows:

Items to be added:
- paid-up share capital (excluding share application money or advances against shares)
- Securities premium account
- Reserves and surplus (excluding revaluation reserve)
- Long-term loans
- Deposits repayable after 1 year (excluding working capital loans, overdrafts, interest due on loans unless funded, bank guarantee, etc., and other short-term arrangements)

Items to be deducted:

- Investments (except in the case of an investment company)
- Accumulated losses
- Preliminary expenses not written off

The effective capital shall be calculated as on the last day of the financial year preceding the financial year in which the appointment of the managerial person is made.

Thus, the effective capital of Rustomjee Limited shall be calculated as on 31.03.2016.
Accordingly, the effective capital of Venus Limited is
₹ 15 crore + ₹ 5 crore - ₹ 11 crore - ₹ 11 crore = ₹ 2 crore (negative).

As per Section II of (Part II of Schedule V, in the absence or inadequacy of profits, a company having negative effective capital or effective capital of less than ₹ 5 crore may pay a maximum of ₹ 60 lakh per financial year as the managerial remuneration to each managerial person. However, the aforesaid limit of ₹ 60 lakh shall be doubled, if the resolution passed 6y the shareholders is a special resolution.

Rustomjee Limited proposes to increase the remuneration of its two executive directors from ₹ 4 lakh per month to ₹ 6 lakh per month. At the rate of ₹ 6 lakh per month, the managerial remuneration shall amount to ₹ 72 lakh per financial year for each managerial person. This payment of ₹ 72 lakh per financial year for each managerial person is possible only if the following conditions are satisfied:

(a) Repayment of remuneration is approved by a resolution passed by the (Board and, in the case of a company covered under sub-section (1) of section 178 also by the Nomination and Remuneration Committee.
This condition has been satisfied as the given problem states that company's remuneration committee has recommended the proposal to increase the remuneration.

(b) The company has not made any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of 30 days in the preceding financial year before the date of appointment of such managerial person. However, in case the company has made such a default, this condition shall be deemed to be complied with if the company obtains prior approval from the secured creditors for the proposed remuneration and the fact that such prior approval has been obtained, is mentioned in the explanatory statement annexed to the notice convening the general meeting.
This condition has been satisfied as the given problem states that the company is regular in repayment of its debts.

(c) A special resolution has been passed at the general meeting of the company authorising the payment of remuneration. Such special resolution shall remain valid for a period not exceeding 3 years.

(d) A statement shall be given to the shareholders along with the notice calling the general meeting. The statement shall contain the following information:
  (i) General Information
  (ii) Information about the appointee
  (iii) Other information
  (iv) Disclosures.

Question 4:

What are the steps that may be taken by the Tribunal to prevent oppression and mismanagement? What the powers that the Tribunal has in this regard.

Answer:

As per section 241, requisite number of members (as specified under section 244) may apply to the Tribunal for claiming relief from oppression or mismanagement. After due inquiry, the Tribunal may make such orders as are necessary to bring an end to the matters complained of. The Tribunal has been vested with the powers of wide amplitude to grant relief from oppression and mismanagement. These powers, and conditions to be fulfilled subject to which the Tribunal shall exercise such powers, are explained as follows:

1. Conditions to be fulfilled for exercise of powers by the Tribunal

Upon receiving an application under section 241, the Tribunal may exercise the powers vested in it, if it is of the opinion -

(a) that the company's affairs have been or are being conducted in a manner –
  (i) prejudicial to public interest; or
  (ii) prejudicial or oppressive to any member or members; or
  (iii) prejudicial to the interests of the company; and

(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up.

2. Powers of the Tribunal (Nature of orders of Tribunal)

The Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit, including the following orders:

(a) The regulation of conduct of affairs of the company in future.
(b) The purchase of shares of any member of the company by any other member or by the company.
(c) In the case of a purchase of its shares by the company, the consequent reduction of its share capital.
For effecting the reduction of capital, compliance with the provisions of section 66 of Companies Act, 2013 or sections 100 to 104 of the Companies Act, 1956 is not required.
(d) Restrictions on the transfer or allotment of shares of the company.
(e) The termination, setting aside or modification, of any agreement between the company and the managing director, any other director or manager, upon such terms and conditions as the Tribunal may deem fit.
(f) The termination, setting aside or modification, of any agreement between the company and any other person.
No such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned. A person whose agreement is terminated, set aside or modified shall not be entitled to claim any damages or compensation.
(g) The setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within 3 months before the date of the application made to the Tribunal, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference.
(h) Removal of the managing director, manager or any of the directors of the company.
(i) Recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery, including transfer to Investor Education and Protection Fund or repayment to identifiable victims.
(j) The manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company.
(k) Appointment of such number of persons as directors, who may be required to report to the Tribunal on such matters as the Tribunal may direct.
(l) Imposition of costs as may be deemed fit by the Tribunal.
(m) Any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made, i.e. in addition to the above powers, the Tribunal may make such orders as it may think fit for giving relief in respect of the matters complained of.

Consequences of termination of certain agreements

Where any such agreement is terminated, set aside or is modified, the following consequences shall follow:

(I) Vacation of office: Such managing director or director or manager shall vacate his office as from the date of the order of the Tribunal. The Tribunal is not bound to follow the procedure prescribed under section 169 for making such an order. As such, the Tribunal has unlimited powers to remove the existing directors and manager.

(II) No compensation for loss of office: A director or manager whose agreement is terminated, set aside or modified shall not be entitled to claim any damages or compensation for loss of office.

(III) No similar appointment for 5 years in the company: No director or manager whose agreement is so terminated or set aside, shall act as the director or manager of such company for a period of 5 years except with the permission of the Tribunal. The Tribunal may grant such permission only after giving an opportunity of being heard to the Central Government.

(IV) Punishment for contravention. Any person who knowingly acts as a director or manager of a company in contravention of the provisions of this section, and every other director of the company who is knowingly a party to such contravention, shall be punishable with imprisonment for a term which may extend to 6 months or with fine which may extend to ₹ 5 lakh, or with both.

Powers of the Tribunal are illustrative only

It can be seen that powers enumerated under section 242 are illustrative only. The Tribunal may make any other order to end the oppression or mismanagement. Thus, wide and ample powers have been conferred on the Tribunal for regulating the conduct of the company's affairs and to provide for any other matter which the Tribunal thinks just and equitable to provide for.

3. Filing of copy of order of the Tribunal

The company shall, within 30 days, file a certified copy of order of the Tribunal with the Registrar.

4. Power of the Tribunal to make an interim order

Pending the final order, the Tribunal may make an interim order for regulating the company's affairs. The Tribunal may make the interim order only if an application is made to the Tribunal by any party to the proceedings. The interim order may stipulate such terms and conditions as may appear to the Tribunal to be just and equitable.

5. Power of the Tribunal to alter the memorandum or articles

(a) Alteration by the Tribunal to be effective: The Tribunal is empowered to make any alteration in the memorandum or articles of a company, and such alteration shall have the same effect as if such alteration were duly made by a resolution passed by the company.

Where a particular regulation in the articles of the company was capable of being misused to prevent the members from exercising their ordinary right to demand a poll, the Tribunal ordered the amendment of such article

The Tribunal is empowered to reframe or insert a new article, which may be against the company's memorandum or other articles and even against the Companies Act, 2013 provided that such an order is necessary to put an end to the matters complained of

(b) Further alterations to require permission of the Tribunal: Any further alteration by the company would have to be consistent with the alterations made by the Tribunal and can be effective only if the permission of the Tribunal is obtained. Thus, once the Tribunal has altered an article contained in the articles of the company, the company cannot make an alteration which is calculated to reduce the effect of the alteration made by the Tribunal.

(c) Filing of copy of order of the Tribunal: The company shall file with the registrar a certified copy of every order of the Tribunal, which has the effect of altering the company's memorandum or articles, or which grants permission to the company to alter its memorandum or articles in future. The certified copy shall be filed with the registrar within 30 days of order of the Tribunal.

6. Punishment for contravention

If a company, without obtaining the permission of the Tribunal, makes any alteration in the memorandum or articles which is inconsistent with the alterations made by the Tribunal, the punishment shall be as follows:

(a) The company shall be punishable with fine which shall not be less than ₹ 1 lakh but which may extend to ₹ 25 lakh.
(b) Every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to 6 months or with fine which shall not be less than ₹ 25,000 but which may extend to ₹ 1 lakh, or with both.

Question 5:

(a) The Balance Sheet of Fast Track Ltd. As at 31-03-2014 discloses the following position:

	₹ (in crores)
Share Capital	**100**
Reserves & Surplus	**300**
Secured Loans	**150**
Unsecured Loans	**100**

Current Liabilities	**70**

Mr. Fast, the Managing Director of the company approaches the Best Bank for a secured loan of ₹ 600 crores to finance the new projects to be taken up shortly. The Bank seeks your advice whether it can grant the loan of ₹ 600 crores on the application of Mr. Fast. Advise the Royal Bank having regard to the provisions of the Companies Act, 2013.

Answer:

The given problem relates to section 179 and 180 of the Companies Act, 2013.

As per section 179(3)(d) of the Companies Act, 2013, the powers relating to borrowing of money shall be exercised by the (Board at a (Board meeting. However, as per First Proviso to Section 179(3), such power may be delegated by the (Board, subject to the following 3 conditions:

(a) The powers may be delegated to a committee of directors, managing director, manager, a principal officer of the company or a principal officer of the branch office.
(b) The delegation of power is made by passing a resolution at a Board meeting only.
(c) The Board may delegate such powers subject to such conditions as it may deem fit.

As per section 180(l)(c) of the Companies Act, 2013, consent of the company by way of a special resolution shall be required for borrowing of money if moneys already borrowed, together with moneys to be borrowed will exceed the aggregate of paid up capital, free reserves and securities premium of the company. However, temporary loans obtained from the company's bankers in the ordinary course of business shall not be considered as borrowings.

In the given case, the aggregate of paid up capital and free reserves comes to ₹ 400 crores (₹ 100 crores + ₹ 300 crores). The company has already borrowed ₹ 250 crores (₹ 150 crores + ₹ 100 crores). It has been assumed that secured loans of ₹ 150 crores and unsecured loans of ₹ 100 crores are not temporary loans. Current liabilities shall not be included in the amount already borrowed.

The amount already borrowed (₹ 250 crores) and amount proposed to be borrowed (₹ 600 crores) would exceed the aggregate of paid up capital and free reserves (₹ 400 crores). Therefore, the (Board is entitled to borrow ₹ 600 crores only after obtaining the consent of the company by way of a special resolution.

Accordingly, our advice to the Royal Bank is as follows:

(a) The Bank should make sure that the (Board has obtained the consent of the company by way of a special resolution. The special resolution must specify the maximum amount upto

which moneys may be borrowed by the (Board, and the amount so specified must be ₹ 850 crores or more [Section 180(1)(c) of the Companies Act, 2013].

(b) The (Bank should make sure that the power to borrow money has been delegated to the Managing (Director by passing such resolution in (Board meeting only [First proviso to Section 179(3) of the Companies Act, 2013].

(b) State the powers of Tribunal to enforce compromise or arrangement under Section 231 of Companies Act, 2013.

Answer:

(1) Power to give directions

Where the Tribunal makes an order under section 230 sanctioning a compromise or an arrangement in respect of a company, it –

(a) shall have the power to supervise the implementation of the compromise or arrangement; and

(b) may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper implementation of the compromise or arrangement.

(2) Power to order winding up

If the Tribunal is satisfied that the compromise or arrangement sanctioned under section 230 cannot be implemented satisfactorily with or without modifications, and the company is unable to pay its debts as per the scheme, it may make an order for winding up the company and such an order shall be deemed to be an order made under section 273.

(3) Applicability of section 231 to companies for which compromise or arrangement was sanctioned before the commencement of the Companies Act, 2013

The provisions of this section shall, so far as may be, also apply to a company in respect of which an order has been made before the commencement of this Act sanctioning a compromise or an arrangement.

Jurisdiction in case of Government Companies

In case of Government companies, while applying the provisions of section 230, for the word 'Tribunal', wherever it occurs, the words 'Central Government' shall be substituted [Notification No. G.S.R. 463(E) dated 5th June, 2015 as amended by Notification No. G.S.R. 582(E) dated 13th June, 2017].

Question 6:

(a) Aanchal Sarees Ltd acquired Bangalore Silks limited who in turn has Chennai Cotton limited as his subsidiary and again Delhi Stitches limited and Benarasi Zardosi limited are subsidiaries of Chennai Cotton ltd. Can Aanchal Sarees limited acquire Bangalore Silks limited and all its subsidiaries? Would it have been possible if the companies have been Banking Companies? Comment.

Answer:

Provisions contained in the **Companies (Restriction on number of layers) Rules, 2017** are as under:

Restriction on number of layers for certain classes of holding companies:

a) On and from the date of commencement of these rules, no company shall have more than 2 layers of subsidiaries.

b) However, this restriction shall not affect a company from acquiring a company incorporated outside India with subsidiaries beyond 2 layers as per the laws of such country.

c) For the purpose of computing the number of layers, one layer which consists of one or more wholly owned subsidiary or subsidiaries shall not taken into account.

Rules vis-a-vis Sec. 186 (1) - The provisions of this rule shall not be in derogation of the proviso to sub-section (1) of section 186 of the Act.

Provisions for existing companies

Every company existing on the commencement of these rules, which has number of layers of subsidiaries in excess of the layers specified in sub-rule (1) -

a) shall file, with the Registrar a return in Form CRL-1 disclosing the details specified therein, within a period of 150 days from the date of publication of these rules in the Official Gazette (viz. 20th September, 2017);

b) shall not, after the date of commencement of these rules, have any additional layer of subsidiaries over and above the layers existing on such date; and

c) shall not, in case one or more layers are reduced by it subsequent to the commencement of these rules, have the numbers of layers beyond the number of layers it has after such reduction or maximum layers allowed under these Rules, whichever is more.

Punishment for contravention

If any company contravenes any provision of these rules the company and every officer of the company who is in default shall be punishable with fine which may extend to ₹ 10,000 and where the contravention is a continuing one, with a further fine which may extend to ₹ 1,000 for every day after the first during which such contravention continues.

Non-applicability of the Rules

Nothing contained in these Rules shall apply to the following classes of companies:

a) A banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949.

b) A non-banking financial company as defined in clause (f) of Section 45-1 of the Reserve Bank of India Act, 1934 which is registered with the Reserve Bank of India and considered as systematically important non-banking financial company by the Reserve Bank of India.

c) An insurance company being a company which carries on the business of insurance in accordance with provisions of the Insurance Act, 1938 and the Insurance Regulatory Development Authority Act, 1999.

d) A government company referred to in clause (45) of section 2 of the Act.

(b) Move Ahead Company Ltd. has the requirement of maintaining register of loans, guarantees, securities and investments. Guide them, as to how to go about the same.

Answer:

The various provisions and legal requirements that has to be abided by in this regard are as follows:

(A) The provisions contained in Sec 186 of The Companies Act, 2013

(i) Every company which makes a loan, investment, guarantee and security, shall maintain a register.

(ii) The register shall contain such particulars as may be prescribed.

(iii) The register shall be maintained in such manner as may be prescribed.

(iv) The register shall be kept at the registered office of the company.

(v) The register shall be open to inspection at the registered office of the company.

(vi) The copies of the register may be obtained by any member on payment of the prescribed fees.

(vii) Extracts may be taken from the register by any member on payment of the prescribed fees.

(B) Provisions contained in Rule 12 of the Companies (Meetings of Board and its Powers) Rules, 2014

(i) The register shall be maintained in Form MBP-2.

(ii) The company shall enter in the register separately, the particulars of loans and guarantees given, securities provided and acquisitions made.

(iii) The register shall be maintained with effect from the date of its incorporation.

(iv) The entries in the register shall be made chronologically in respect of each such transaction within 7 days of making such loan or giving guarantee or providing security or making acquisition.

(v) The register shall be kept at the registered office of the company.

(vi) The register shall be preserved permanently.

(vii) The register shall be kept in the custody of the company secretary of the company or any other person authorised by the Board for this purpose.

(viii) The register may be maintained either manually or in electronic mode.

(ix) The entries in the register shall be authenticated by the company secretary of the company or by any other person authorised by the Board for the purpose.

(x) The extracts from the register may be furnished to any member of the company on payment of such fee as may be prescribed in the Articles of the company which shall not exceed ₹ 10 per page.

Question 7:

(a) Calcutta Sweets Ltd. has passed a resolution in its general meeting regarding accepting deposits from its members. Can this company accept deposits from its members under the Companies Act, 2013? If yes, state the conditions to be fulfilled regarding this.

Answer:

(A) Provisions contained in the Companies Act:

(i) Conditions for acceptance of deposits from members [Sec 73(2)]

A company may accept deposits from its members -

- on such terms and conditions as may be agreed between the company and the members;

- subject to the fulfillment of the following conditions:

1. **Resolution -** A resolution is passed in GM

2. **Rules -** The Company shall comply with such Rules, as may be prescribed by CG.

3. **Issue of circular to the members -** The Company shall issue a circular to the members inviting deposits from them. The circular shall include a Statement containing -
   (a) financial position of the company;
   (b) credit rating obtained by the company;
   (c) total number of depositors and amount due towards deposits in respect of any previous deposits accepted by the company;
   (d) such other particulars, in such form and manner, as may be prescribed.

4. **Filing of circular -** The circular, along with the Statement, shall be filed by the company with the Registrar, at least 30 days prior to the issue of the circular to the members.

5. **'Deposit repayment reserve account'**

   a) The company shall deposit in a Scheduled bank in a separate bank account a sum equal to 15% of the amount of deposits maturing during the financial year and next financial year.

   b) Such account shall be called as the 'deposit repayment reserve account'.

   c) The 'deposit repayment reserve account' shall not be utilised for any purpose, except for the repayment of deposits.

6. **Insurance -** The Company shall obtain deposit insurance in such manner and upto such extent as may be prescribed.

   The companies may accept the deposits without deposit insurance contract till the 31st March, 2017 or till the availability of a deposit insurance product, whichever is earlier.

7. **Certification of 'no default** - The company shall certify that it has not defaulted in repayment of any deposit or interest thereon

8. **Security w.r.t. deposits**
   a) The company may provide security for the due repayment of deposits and interest payable thereon, and create a charge on its assets for this purpose.

b) If the company does not secure the deposits or secures them partially, then, such deposits shall be termed as 'unsecured deposits' in every circular, form, advertisement or document through which the deposits are invited or accepted.

(ii) Repayment of deposits [Sec 73(3)] - The Company shall repay the deposits accepted by it, and interest thereon, in accordance with the terms and conditions of such deposits.

(iii) Failure to repay deposits or interest [Sec 73(4)] –

1. **Application to the Tribunal -** If a company fails to repay any deposit or interest thereon in accordance with the terms and conditions of such deposit, the depositor concerned may make an application to the Tribunal.

2. **Orders of the Tribunal**
   (a) The Tribunal may also order the company to pay to the depositor –
      (i) any sum due to him; and
      (ii) any loss or damage incurred by him.
   (b) The Tribunal may make such other orders as it may deem fit.

(B) Provisions contained in Rule 3 of the Companies (Acceptance of Deposits) Rules, 2014.

(i) Maximum amount of deposits and tenure of deposits:

a) The amount of deposits outstanding together with the amount of deposits proposed to be accepted shall not exceed 35% of the aggregate of the paid-up share capital, free reserves and securities premium account of the company. However, a private company may accept from its members monies not exceeding 100% of aggregate of the paid up share capital, free reserves and securities premium account, and such company shall file the details of monies so accepted to the Ri in such manner as may be specified.

b) No company shall accept or renew any deposit which is repayable on demand or upon receiving notice or which is repayable within a period of less than 6 months or more than 36 months from the date of acceptance of such deposit.

c) However, a company may, for the purpose of meeting any of its short-term requirement of funds, accept such short term deposits which are repayable earlier than 6 months from the date of acceptance of such deposit subject to the condition that -
   (i) such deposits shall not exceed 10% of the aggregate of the paid-up share capital, reserves and securities premium account; and

(ii) such deposits are repayable not earlier than 3 months from the date of acceptance of deposits.

(ii) No right of company to alter the terms:
The company shall not reserve to itself a right to alter, to the prejudice or disadvantage of the depositor any of the terms and conditions of the deposit, deposit trust deed and deposit insurance contract after circular is issued and deposits are accepted.

(C) Exemption to private companies [Notification No. GS.R. 464(E) dated 5th June, 2015]

Following conditions for acceptance of deposits from members shall not apply to a private company which accepts from its members monies not exceeding the aggregate of the paid up share capital and free reserves, provided such company shall file the details of monies so accepted to the Registrar in such manner as may be specified:

(a) Issue of circular along with a Statement to the members inviting deposits from them.
(b) Filing of the circular along with the Statement, with the Registrar.
(c) Depositing money in 'deposit repayment reserve account'.
(d) Obtaining deposit insurance.
(e) Certifying that the company has not defaulted in repayment of any depositor interest thereon.

(b) Mr. Mehul recently acquired 76% of the equity shares of M/s International Designers Company Ltd in the hope of earning good dividend income. Unfortunately the existing Board of Directors have been avoiding declaration o0f dividend due to alleged inadequacy of profits. Unconvinced, Mr. Mehul seeks permission of the company to examine the Books of Accounts, which is summarily rejected by the company. Examine and advise the provisions relating to inspection of Books of Accounts and remedy available.

Answer:

The present problem relates to section 128, 206 and 212 of the Companies Act, 2013 read with Regulation 89 of Table F contained in Schedule I.

(i) As per section 128 read with Rule 4, a director of the company is entitled to inspect the books of account of the company. However, section 128 does not empower any member (irrespective of the percentage of share capital held by him) to make inspection of the books of account.
(ii) As per section 206, following persons are empowered to inspect the books of account:
    (a) Registrar of Companies
    (b) Such officer of the government as may be authorised by the Central Government in this behalf.

(iii) As per section 212, the books of account of a company shall be open to inspection of the officers of Serious Fraud Investigation Office (SFIO).

(iv) Regulation 89 of Table F reads as under:

 (i) The Board shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations, the accounts and books of the company, or any of them, shall be open to the inspection of members not being directors.

 (ii) No member (not being a director) shad have any right of inspecting any account or book or document of the company except as conferred by law or authorised by the Board or by the company in general meeting.

In the given case, Mr. Mehul has not been authorised to inspect the books of account by the Board or by the members in the general meeting, Thus, Mr. Mehul shall not have any right to inspect the books of account even if he holds 76% of the equity shares of the company.

However, Mr. Mehul may, by using the majority voting power held by him and complying with the provisions of the Companies Act, 2013, get himself appointed as a director of M/s International Designers Company Ltd., and then, he shall be entitled (in the capacity of director) to make the inspection of books of account.

Question 8:

(a) What are the provisions that are required by a company to abide by in respect of the Unpaid Dividend Account?

Answer:

The provisions of the Companies Act, 2013 relating to the Unpaid Dividend Account, that a company needs to abide by, are contained in section 124, as explained below:

1. Treatment of dividend declared but remaining unpaid

(a) Transfer to Unpaid Dividend Account - Where a dividend is declared by a company, but it remains unpaid or unclaimed for 30 days from the date of its declaration, such dividend shall be transferred by the company, within next 7 days, to a special account in any scheduled bank. Such account shall be called as 'Unpaid Dividend Account'.

(b) Placing of a statement containing particulars of unpaid dividend on the website - The company shall prepare a statement containing the names, the last known addresses and the amount of unpaid dividend to be paid to each person. The company shall place such statement on the website of the company, if any, and also on any other website approved by the Central Government for this purpose. The statement shall be

prepared in such form and manner, and shall contain such other particulars as may be prescribed. The statement shall be prepared and placed on the website(s) within 90 days of transfer of unpaid dividend to the Unpaid Dividend Account.

(c) **Interest for delayed transfer -** If the company fails to transfer the unpaid or unclaimed dividend to the Unpaid Dividend Account, the company shall be liable to pay interest @ 12% per annum.
The interest so paid by the company shall enure to the benefit of the members of the company, in proportion to the amount remaining unpaid to them.

2. Application to the company for payment of dividend

Any person who claims to be entitled to any money transferred to the Unpaid Dividend Account, may apply to the company for the payment of such money.

3. Treatment of dividend remaining unpaid in the Unpaid Dividend Account

(a) **Transfer to 'Investor Education and Protection Fund' -** Any money transferred to the Unpaid Dividend Account which remains unpaid for 7 years from the date of such transfer shall be transferred by the company, along with interest accrued, if any, to the 'Investor Education and Protection Fund'.

(b) **Statement to be sent by the company to the Authority -** The company shall send a statement containing the details of such transfer to the Authority which administers the said Fund. The statement shall be in the prescribed form.
The statement containing the details of amount transferred to the Fund shall be in Form DIV. 5 (Rule 4 of the Companies (Declaration and Payment of Dividend) Rules, 2014).

(c) **Issue of receipt by the Authority -** The Authority shall issue a receipt to the company acknowledging the transfer of money in the Fund. The receipt shall be an evidence of such transfer.

4. Transfer of shares in the name of the Fund

All such shares in respect of which dividend has not been paid or claimed for 7 consecutive years shall be transferred by the company in the name of Investor Education and Protection Fund. At the time of such transfer of shares, the company shall also file a statement containing such details as may be prescribed.

Shares not to be transferred - In case any dividend is paid or claimed for any year during the said period of 7 years, the shares shall not be transferred to the Fund.

5. Right to claim the transferred shares

Any person who claims such shares as have been transferred to the Fund, shall be entitled to claim the transfer of shares fro the Fund. For this purpose, he shall be required to submit such documents as may be prescribed. The procedure to claim shares shall be such as may be prescribed.

6. Punishment for contravention

If a company fails to comply with any of the requirements of this section, then -
(a) the company shall be punishable with fine which shall not be less than ₹ 5 lakh but which may extend to ₹ 25 lakh; and
(b) every officer of the company who is in default shall be punishable with fine which shall not be less than ₹ 1 lakh but which may extend to ₹ 5 lakh.

(b) What are the functions you need to undertake as a Company Secretary?

Answer:

The functions of a company secretary are contained in section 205 of the Companies Act, 2013, as explained below:

Functions and duties of Company Secretary

The functions of the company secretary shall include the following:
(a) To report to the Board about compliance with the provisions of this Act, the rules made there under and other laws applicable to the company.

(b) To ensure that the company complies with the applicable secretarial standards.

(c) To discharge such other duties as may be prescribed.

As per Rule 10 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, the Company Secretary shall also discharge the following duties:

(1) To provide to the directors of the company, collectively and individually, such guidance as they may require, with regard to their duties, responsibilities and powers.
(2) To facilitate the convening of meetings and attend Board, committee and general meetings and maintain the minutes of these meetings.
(3) To obtain approvals from the Board, general meeting, the government and such other authorities as required under the provisions of the Act.

(4) To represent before various regulators and other authorities under the Act in connection with discharge of various duties under the Act.
(5) To assist the Board in the conduct of the affairs of the company.
(6) To assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices.
(7) To discharge such other duties as have been specified under the Act or rules.
(8) To discharge such other duties as may be assigned by the Board from time to time.

Definition of 'secretarial standards'

For the purpose of section 205, the expression 'secretarial standards' means secretarial standards issued by the Institute of Company Secretaries of India (constituted under section 3 of the Company Secretaries Act, 1980) and approved by the Central Government,

Question 9:

(a) The Board of directors of M/S. Lion Consultants Limited, registered in Nagpur, proposes to hold the next Board meeting in the month of December, 2014. They seek your advise in respect of the following matters:
- **(i) Can the Board meeting be held in Chennai, when all the directors of the company reside at Nagpur?**
- **(ii) Whether the Board meeting can be called on a national holiday and that too after business hours as the majority of the directors of the company have gone to Chennai on vacation.**
- **(iii) It is necessary that the notice of the Board meeting should specify the nature of business to be transacted?**

Advise with reference to the relevant provisions of the Companies Act, 2013.

Answer:

There is no provision in the Companies Act, 2013 which requires that a (Board meeting shall be held-
(a) only on a day that is not a national holiday;
(b) only at the registered office of the company or at any other place within the city, town or village in which the registered office of the company is situated;
(c) only during business hours

The answer to the given problem is as under:

(i) Section 96 requires that an annual general meeting shall be held only at the registered office of the company or at any other place within the city, town or village in which the

registered office of the company is situated. However, there is no similar provision in respect of holding of a Board meeting. As such, a Board meeting can be held anywhere in India or even outside India.

(ii) As per section 174, if a Board meeting could not Be held for want of quorum, then, unless the articles otherwise provide, the meeting shall automatically stand adjourned to the same day, time and place in the next week or if that day is a national holiday, then to next succeeding day, which is not a national holiday. It means that a Board meeting adjourned for-want of quorum can be held only on a day which is not a national holiday. 'However, there is nothing in the Act which prohibits the holding of an original Board meeting on a national holiday. Similarly, the Act does not require that a Board meeting shall be held only during Business hours.

In the instant case, the directors intend to hold a Board meeting on a national holiday and after Business hours, which is permissible.

(iii) No form or contents of notice has Seen specified By the Act. Agenda of a Board meeting is not required to Se sent along with the notice of a Board meeting unless there is some express provision of the Act which requires a specific notice to move a resolution at a Board meeting.

Therefore, the notice of Board meeting need not specify the nature of Business to be transacted.

(b) The annual general meeting of a company for the financial year 2014-2015 was held on 30th September, 2015. Till 30th September, 2016, the company does not hold any annual general meeting for the financial year 2015-2016. Rintu, Mintu and Ghontu are the directors liable to retire at the annual general meeting. Can they continue in office?

Answer:

At every annual general meeting, 1/3rd (or nearest to 1/3rd) of rotational directors shall retire from office [Section 152(6)]. As a general rule, the directors who are liable to retire at an annual general meeting cannot continue in office after the last day on which the annual general meeting should have Seen held. This is because the calling of annual general meeting is a duty and responsibility of the directors. They cannot, by omitting to call the annual general meeting, take advantage of their own default and by that means extend their tenure of office [B.K. Kundra v Motion Pictures Association (1976) 46 Comp Cas 339]. Also, the rule of automatic reappointment does not apply to a case where annual general meeting is not held.

The annual general meeting of a company must be held -

(a) within 6 months of close of the financial year; and
(b) not later than 15 months from the date of its previous annual general meeting.

The registrar has the power to grant extension of time for holding the annual general meeting by a period not exceeding 3 months.

The answer to the given problem is as under:

(a) For the financial year 2015-2016, the annual general meeting must be held on or before 30th September, 2016. If it is not so held, the directors, Rintu, Mintu and Ghontu shall cease to hold their offices on 30th September, 2016. Their continuance beyond this date shall be invalid.

(b) However, if the registrar grants extension of time for holding the annual general meeting, the annual general meeting may be held upto 31.12.2016, and so the directors can continue in office till that date. However, if the annual general meeting is not held upto 31.12.2016 (where extension is granted), the directors, Rintu, Mintu and Ghontu shall cease to hold their offices on 31.12.2016.

Question 10:

(a) In a winding up certain debts shall be paid in priority to all other debts. Comment

Answer:

Section 327 as amended by section 255 read with Schedule XI of the Insolvency and Bankruptcy Code, 2016 deals with preferential payments

(1) Certain debts termed 'preferential payments'

In a winding up, following debts shall be paid in priority to all other debts:

(a) All revenues, taxes, cesses and rates due, within 12 months immediately before the relevant date, to –
    (i) the Central Government; or
    (ii) any State Government; or
    (iii) to a local authority.

(b) All wages or salaries or commissions due to any employee for a period not exceeding 4 months within 12 months immediately before the relevant date.
    Such amount payable to any employee shall not exceed the amount as may be notified.

(c) All accrued holiday remuneration becoming payable to any employee, or in the case of his death, to any other person claiming under him.

(d) All amounts due in respect of contributions payable under the Employees' State Insurance Act, 1948 or any other law for the time being in force during the period of 12 months immediately before the relevant date.

(e) All amounts due in respect of any compensation or liability for compensation under the Workmen's Compensation Act, 1923 in respect of the death or disablement of any employee of the company.

(f) All sums due to any employee from the provident fund, the pension fund, the gratuity fund or any other fund for the welfare of the employees, maintained by the company.

(g) The expenses of any investigation held in pursuance of sections 213 and 216, in so far as they are payable by the company.

(2) Situation where assets are insufficient

The debts payable under this section shall rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.

(3) Priority over debentures secured by a floating charge

The debts payable under this section shall have priority over the claims of holders of debentures under any floating charge created by the company.

(4) Payments of debts forthwith

Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the debts under this section shall be discharged forthwith so far as the assets are sufficient to meet them.

(5) Meaning of 'employee'

For the purposes of this section, the expression 'employee' does not include a 'workman'.

(6) Meaning of 'relevant date'

In the case of a company being wound up by the Tribunal, relevant date means the date of appointment of a provisional liquidator or if no appointment of a provisional liquidator was made, the date of the winding up order, unless, in either case, the company had

commenced to be wound up voluntarily before that date under the Insolvency and Bankruptcy Code, 2016.

1. The provisions of section 327 shall apply subject to the provisions of section 326.
2. Section 327 shall not apply in the event of liquidation under the Insolvency and Bankruptcy Code, 2016.

(b) What are the effects of floating charge on an undertaking?

Answer:

Section 332 of Companies Act, 2013 states that, if a floating charge on the undertaking or property of the company was created within 12 months immediately preceding the commencement of the winding up, then such a floating charge shall be invalid, except for -

(a) the amount of any cash paid to the company at the time of, or subsequent to the creation of, and in consideration for, the charge; and

(b) interest on such amount at the rate of 5% per annum or such other rate as may be notified by the Central Government in this behalf.

However, if it is proved that the company, immediately after the creation of the charge was solvent, the floating charge shall not be invalid.

Question 11:

A transferee company may prepare a scheme or contract by which an offer is made to the shareholders of a transferor company to acquire their shares. In this regard state the powers it has to acquire shares of shareholders dissenting from the scheme or contract approved by majority.

Answer:

Section 235 of Companies Act, 2013 deals with such situations:

(1) The offer to acquire shares

A company (hereinafter referred to as 'the transferee company') may prepare a scheme or contract by which an offer is made to the shareholders of another company (hereinafter referred to as 'the transferor company') to acquire their shares.

Time limit during which the offer shall remain open

The offer shall remain open for a period of 4 months, i.e. any shareholder of the transferor company may agree to transfer his shares to the transferee company within a period of 4 months from the date of the offer.

(2) Approval of the offer, and notice to acquire the shares of dissenting shareholders

(a) If the offer made by the transferee company is approved by the shareholders holding not less than 9/10th in value of the shares, then, the transferee company may give notice to any dissenting shareholder that it desires to acquire his shares.

Time limit for giving notice

Notice to any dissenting shareholder may be given by the transferee company at anytime, but within 2 months of expiry of the period of 4 months during which the offer was open.

As per Rule 26, such notice shall be in Form No. CAA. 14 and shall be sent at the last intimated address of such shareholder.

(b) For this purpose, any shares already held by the transferee company or any of its nominees or subsidiaries shall be excluded.

(c) Dissenting shareholder means -
   (i) a shareholder who has not assented to the scheme or contract;
   (ii) a shareholder who has failed or refused to transfer his shares to the transferee company.

(3) Right of the dissenting shareholder(s) to make an application to the Tribunal

A dissenting shareholder to whom notice of acquisition is given by the transferee company, may make an application to the Tribunal praying that acquisition of his shares should not be permitted.

Time limit for making application

The application may be made to the Tribunal by any dissenting shareholder within 1 month of receipt of notice of acquisition of shares by him.

(4) Acquisition of shares by the transferee company

The transferee company shall be entitled as well as bound to acquire the shares of the dissenting shareholders on the same terms on which the shares of the approving shareholders were transferred to the transferee company, in the following two cases:

(a) Where no application is made by any dissenting shareholder to the Tribunal within 1 month of receipt of notice of acquisition of shares.
(b) Where an application is made by any dissenting shareholder, but such application is dismissed by the Tribunal.

The transferee company shall acquire the shares of the dissenting shareholder in the following manner:

(a) The transferee company shall send to the transferor company -
    (i) a copy of the notice of acquisition of shares earlier sent to the dissenting shareholders;
    (ii) an instrument of transfer of shares (viz. Transfer deed)

(b) The instrument of transfer shall be executed -
    (i) on behalf of the dissenting shareholder, by some person appointed by the transferor company; and
    (ii) on behalf of the transferee company, by a person authorised by the transferee company.

(c) The transferee company shall pay to the transferor company the consideration payable by it in respect of the shares of the dissenting shareholders acquired by it.

(d) The transferor company shall register the shares in the name of the transferee company.

(e) The transferor company shall, within 1 month of registration of shares in the name of the transferee company, inform the dissenting shareholder of the fact of -
    (i) registration of shares in the name of the transferee company; and
    (ii) receipt of consideration paid by the transferee company to which the dissenting shareholder is entitled to.

(f) The transferor company shall -
    (i) deposit into a separate bank account the consideration paid by the transferee company;
    (ii) hold such consideration as a trustee for the dissenting shareholders; and
    (iii) within 60 days, pay such consideration to the dissenting shareholders.

(5) No acquisition of shares by the transferee company

The transferee company shall not be entitled to acquire the shareholders of the dissenting shareholders if the Tribunal allows the application of dissenting shareholders, i.e. where the Tribunal makes an order that the transferee company shall not be allowed to acquire the shares of the dissenting shareholders.

Question 12:

(a) Justified Travelers Limited is an unlisted public company having a paid up capital of twenty crore rupees as on 31st March, 2015 and a turnover of one hundred fifty crore rupees during the year ended 31st March, 2015. The total number of directors is thirteen.
Referring to the provisions of the companies act, 2013 answer the following:
(i) State the minimum number of independent directors that the company should appoint.
(ii) How many independent directors are to be appointed in case Justified Travellers Limited is a listed company?

Answer:

The given problem relates to section 149(4) of the Companies Act, 2013 read with Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014.

(i) As per Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, the following class(es) of companies shall have at least 2 directors as independent directors:
(a) Public Companies having paid up share capital of ₹ 10 crore or more.
(b) Public Companies having turnover of ₹ 100 crore or more.
(c) Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding ₹ 50 crore.

However, the following classes of unlisted public companies shall not be required to have any independent director:
(a) A joint venture
(b) A wholly owned subsidiary
(c) A dormant company as defined under section 455 of the Act.

Relevant date: The paid up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, as existing on the last date of latest audited financial statements shall be taken into account.

In the given case, the paid up capital of Justified Travelers Limited is ₹ 20 crore, and turnover is ₹ 150 crore. Justified Travelers Limited fulfils two criteria out of the 3 criteria given under Rule 4. Accordingly, Justified Travelers Limited is required to appoint a minimum of 2 independent directors.

(ii) In case Justified Travelers Limited is a listed company, it is required to appoint at least 1/3rd of its total number of directors as independent directors.

Accordingly, out of 13 directors, at least 5 directors (1/3rd of 13 = 4.33; any fraction contained in such 1/3rd shall be rounded off as one) shall be independent directors.

(b) State the provisions for contravention of provisions for Acceptance of Deposits by companies.

Answer:

Section 76A of Companies Act, 2013 deals with the provisions of contraventions of acceptance of Deposits by companies:

Where a company accepts or invites or allows or causes any other person to accept or invite on its behalf any deposit in contravention of the manner or the conditions prescribed under section 73 or section 76 or rules made there under or if a company fails to repay the deposit or part thereof or any interest due thereon within the time specified under section 73 or section 76 or rules made there under or such further time as may be allowed by the Tribunal under section 73,—

(a) the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than one crore rupees or twice the amount of deposit accepted by the company, whichever is lower rupees but which may extend to ten crore rupees; and

(b) every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years and with fine which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees.

Provided that if it is proved that the officer of the company who is in default, has contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, he shall be liable for action under section 447.

Question 13:

A Board Meeting was held on 22.02.2018. at Chennai. After the meeting the Chairman asked Mr. Sanjay to record the minutes and get the necessary documentation done. Mr. Sanjay is completely unaware of the procedure. Help him with the provisions as, when are the minutes of the meetings of the Board of directors required to be recorded and signed?

Answer:

The statutory requirements relating to preparation of minutes, as contained in section 118 of Companies Act, 2013, are as follows:

(A) Provisions contained in the Act.

1. Scope of Section 118

Every company shall cause to be prepared, signed and kept minutes of-

(a) proceedings of every general meeting;
(b) proceedings of meeting of any class of shareholders;
(c) proceedings of meeting of any class of creditors;
(d) proceedings of meeting of board of directors;
(e) proceedings of meeting of any committee of the Board; and
(f) every resolution passed by postal ballot.

2. Manner of preparation and signing

(a) The minutes shall be prepared and signed in such manner as may be prescribed.
(b) All the appointments made at any meeting shall be included in the minutes.
(c) The minutes shall be maintained in the books kept for that purpose.
(d) The pages of the minutes book shall be consecutively numbered.

3. Time limits for preparation and signing

The minutes shall be prepared and signed within 30 days of-
(a) the conclusion of the meeting; or
(b) passing of the resolution by postal ballot.

4. Contents w.r.t. board meetings

In case of a board meeting or of committee meeting, the minutes shall also contain -
(a) the names of the directors present; and
(b) where any resolution is passed at the meeting, the names of the directors, dissenting from the resolution and the names of the directors not concurring with the resolution.

5. Discretion of Chairman

(a) No matter shall be included in the minutes, if the chairman is of the opinion that it is –
  (i) defamatory of any person; or
  (ii) irrelevant or immaterial; or
  (iii) detrimental to the interests of the company.

(b) The chairman shall exercise absolute discretion with regard to the inclusion or non-inclusion of any matter in the minutes on any of the grounds specified above.

6. Minutes to be correct and fair

Minutes shall contain a fair and correct summary of the proceedings of the meeting.

7. Evidential value

Minutes kept as per Sec. 118 shall be evidence of the proceedings recorded therein.

8. Presumptions drawn from minutes

Where minutes are kept as per Sec. 118, then, until contrary is proved, it shall be presumed that –

(a) the meeting was duly called and held;
(b) all the proceedings at the meeting were duly taken place;
(c) all the resolutions passed by postal ballot were duly passed; and
(d) in particular, all the appointments of directors, key managerial personnel, auditors or company secretary in practice were validly made.

9. Publication of reports of proceedings

No document purporting to be a report of the proceedings of any general meeting of a company shall be circulated or advertised at the expense of the company, unless it includes the matters required by this section (viz. Section 118) to be contained in the minutes of the proceedings of such meeting.

10. Compliance with Secretarial Standards

Every company shall observe secretarial standards with respect to general meetings and Board meetings-

(a) specified by the Institute of Company Secretaries of India; and
(b) approved as such by the Central Government.

11. Punishment for contravention

If any default is made in complying with the provisions of this section, then -
(a) the company shall be liable to a penalty of ₹ 25,000; and
(b) every officer in default shall be liable to a penalty of ₹ 5,000.

12. Punishment for tampering

Any person found guilty of tampering with the minutes shall be punishable with -
(a) imprisonment upto 2 years; and
(b) Fine: Minimum: ₹ 25,000; Maximum: ₹ 1 lakh.

(B) Provisions contained in the Rules:

1. Distinct minute book for each type of meeting

A distinct minute book shall be maintained for each type of meeting namely:

(i) General meeting of the members (including the resolutions passed by postal ballot since such resolutions are deemed to be passed in general meeting)

(ii) Meetings of the creditors
(iii) Meetings of the Board; and
(iv) Meetings of each of the committees of the Board.

2. Manner of maintenance of minutes

(i) The minutes of proceedings of each meeting shall be entered in the books maintained for that purpose along with the date of such entry.
(ii) Every resolution passed by postal ballot shall be entered in the minutes book of general meetings.
(iii) With respect to every resolution passed by postal ballot, the minutes shall contain -
 (a) a brief report on the postal ballot conducted;
 (b) the resolution proposed;
 (c) the result of voting;
 (d) summary of the scrutinizer's report
 (e) date of entry in the minutes book.

3. Manner of signing of minutes

Each page of every minute book shall be initialled or signed, and the last page shall be dated and signed, as follows:

Nature of minutes book	Signing Authority
Minutes of Board meetings and Committee meetings	■ The chairman of the same meeting or the chairman of the next meeting.
Minutes of General Meeting	■ The chairman of the same meeting within 30 days of conclusion of such meeting. ■ In the event of the death or inability of that chairman within that period, by a director duly authorised by the Board for this purpose.
Resolutions passed by postal ballot	■ The chairman of the Board ■ If there is no chairman of the Board or in the event of the death or inability of the chairman of the Board, by a director duly authorized by the Board for the purpose.

4. Preservation of minutes book

The minute books of general meetings, Board meetings and committee meetings shall be -

(i) kept at the registered office of the company, or at such other place as may be approved by the Board;
(ii) preserved permanently;
(iii) kept in the custody of the company secretary or any director duly authorised by the Board.

Study Note 2 – Insolvency & Bankruptcy Code, 2016

Question 14:

(a) Write a note on Insolvency and Bankruptcy Board of India and state its functions.

Answer:

An Insolvency and Bankruptcy Board of India (IABBI) will be established by Central Government under Section 188(1) of Insolvency and Bankruptcy Code, 2016.

"Board" means the Insolvency and Bankruptcy Board of India established under sub-Section (1) of Section 188 - Section 3(1) of Insolvency and Bankruptcy Code, 2016.

The Board will have powers of civil court in respect of issuing summons, discovery and production of books, inspection of books/ registers and issue of commissions for examination of witnesses - Section 196(2) of Insolvency and Bankruptcy Code, 2016.

Constitution of Board has been specified in Section 189 of Insolvency and Bankruptcy Code, 2016. The Board will be headed by Chairperson. It will consist of ten members out of which at least three will be whole-time members.

Function of the Board is to exercise regulatory oversight over insolvency professionals, insolvency professional agencies and information utilities. Some of the main functions of the Board are enumerated as follows:

(a) register insolvency professional agencies, insolvency professionals and information utilities and renew, withdraw, suspend or cancel such registrations;
(b) specify the minimum eligibility requirements for registration of insolvency professional agencies, insolvency professionals and information utilities;
(c) levy fee or other charges for the registration of insolvency professional agencies, insolvency professionals and information utilities;
(d) specify by regulations standards for the functioning of insolvency professional agencies, insolvency professionals and information utilities;
(e) lay down by regulations the minimum curriculum for the examination of the insolvency professionals for their enrolment as members of the insolvency professional agencies;
(f) carry out inspections and investigations on insolvency professional agencies, insolvency professionals and information utilities and pass such orders as may be required for compliance of the provisions of this Code and the regulations issued hereunder;
(g) monitor the performance of insolvency professional agencies, insolvency professionals and information utilities and pass any directions as may be required for compliance of the provisions of this Code and the regulations issued hereunder;

(h) call for any information and records from the insolvency professional agencies, insolvency professionals and information utilities;
(i) publish such information, data, research studies and other information as may be specified by regulations;
(j) specify by regulations the manner of collecting and storing data by the information utilities and for providing access to such data;
(k) collect and maintain records relating to insolvency and bankruptcy cases and disseminate information relating to such cases;
(l) constitute such committees as may be required including in particular the committees laid down in Section 197;
(m) promote transparency and best practices in its governance;
(n) maintain websites and such other universally accessible repositories of electronic information as may be necessary;
(o) enter into memorandum of understanding with any other statutory authorities;
(p) issue necessary guidelines to the insolvency professional agencies, insolvency professionals and information utilities;
(q) specify mechanism for redressal of grievances against insolvency professionals, insolvency professional agencies and information utilities and pass orders relating to complaints filed against the aforesaid for compliance of the provisions of this Code and the regulations issued hereunder;
(r) conduct periodic study, research and audit the functioning and performance of to the insolvency professional agencies, insolvency professionals and information utilities at such intervals as may be specified by the Board;
(s) specify mechanisms for issuing regulations, including the conduct of public consultation processes before notification of any regulations;
(t) make regulations and guidelines on matters relating to insolvency and bankruptcy as may be required under this Code, including mechanism for time bound disposal of the assets of the corporate debtor or debtor; and
(u) perform such other functions as may be prescribed

(b) Heritage India Limited filed a petition under Insolvency and Bankruptcy Code, 2016 with National Company Law Tribunal (NCLT) against Tulip Limited and the petition was admitted. After that, nature India Limited wanted to withdraw the petition based on a settlement arrived between the parties. Whether it is permissible to withdraw the petition after it has been admitted? Decide.

Also explain the rules relating to the admission and rejection of application by an adjudicating authority under the Insolvency and Bankruptcy Code, 2016.

Answer:

The given problem relates to section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 44(2) of the National Company Law Tribunal Rules, 2016.

As per section 9, an application for initiation of corporate insolvency resolution process may be made by an operational creditor against the corporate debtor. Such application is made to the Adjudicating Authority, viz. the Tribunal (NCLT).

As per section 13, where an application made under section 9 is admitted, the Adjudicating Authority shall make an order with respect to the following:

(c) Appoint an interim resolution professional in the manner as laid down in section 16.
(d) Cause a public announcement of the initiation of corporate insolvency resolution process and call for the submission of claims.
(e) Declare a moratorium for the purposes referred to in section 14.

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

As per Rule 44(2), where at any stage prior to the hearing of the petition or application, the applicant desires to withdraw his application, he shall make an application to that effect to the Tribunal, and the Tribunal on hearing the applicant and if necessary, the other party in the application, may permit such withdrawal upon imposing such costs as it may deem fit and proper.

In Parker Hannifin India Private Limited v Powers International Private Limited, an application made under section 9 was admitted By the Adjudicating Authority. As a consequence of admission of application, public announcement was made inviting claims from the creditors and moratorium was declared. Thereafter, operational creditor and corporate debtor thereafter duly agreed for amicable settlement.

Thereafter, a settlement was arrived at between the parties, viz. (Parker 'Hannifin India (private Limited and Prowess International Private Limited. Then, an application was made to the Adjudicating Authority for withdrawal of application admitted earlier.

The Adjudicating Authority held that after the admission of the application under section 9, the application acquires the character of a representative suit. By reason of public announcement, other creditors become entitled to file their claims and participate in the corporate insolvency resolution process. Therefore, the application cannot be dismissed on the Basis of a compromise or settlement arrived at between the operational creditor and corporate debtor. Thus,

operational creditor and corporate debtor alone shall have no right to decide the withdrawal of the application.

In the given case, Heritage India Limited's application against Tulip Limited has been admitted By the Adjudicating Authority (viz. NCLT) under section 9. Afterwards, Heritage India Limited and Tulip Limited entered into a settlement and wanted to withdraw the application. These facts are similar to the facts in the case of Parker Hannifin India Private Limited v Prowess International Private Limited. Accordingly, the application admitted under section 9 cannot be withdrawn.

Question 15:

(a) Discuss about the Powers and duties of Liquidator under Section 35 of Insolvency and Bankruptcy Code, 2016.

Answer:

(1) Powers and duties of the liquidator - The liquidator shall have the following powers and duties

(a) To verify claims of all the creditors

(b) To take into his custody or control all the assets, property, effects and actionable claims of the corporate debtor

(c) To evaluate the assets and property of the corporate debtor in the manner as may be specified by the Board and prepare a report

(d) To take such measures to protect and preserve the assets and properties of the corporate debtor as he considers necessary

(e) To carry on the business of the corporate debtor for its beneficial liquidation as he considers necessary

(f) To sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified

(g) To draw, accept, make and endorse any negotiable instruments including bill of exchange, hundi or promissory note in the name and on behalf of the corporate debtor, with the same effect with respect to the liability as if such instruments were drawn, accepted, made or endorsed by or on behalf of the corporate debtor in the ordinary course of its business

(h) To take out, in his official name, letter of administration to any deceased contributory and to do in his official name any other act necessary for obtaining payment of any money due and payable from a contributory or his estate which cannot be ordinarily done in the name of the corporate debtor, and in all such cases, the money due and payable shall, for the purpose of enabling the liquidator to take out the letter of administration or recover the money, be deemed to be due to the liquidator himself

(i) To obtain any professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities

(j) To invite and settle claims of creditors and claimants and distribute proceeds in accordance with the provisions of this Code

(k) To institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of on behalf of the corporate debtor

(l) To investigate the financial affairs of the corporate debtor to determine undervalued or preferential transactions

(m) To take all such actions, steps, or to sign, execute and verify any paper, deed, receipt document, application, petition, affidavit, bond or instrument and for such purpose to use the common seal, if any, as may be necessary for liquidation, distribution of assets and in discharge of his duties and obligations and functions as liquidator

(n) To apply to the Adjudicating Authority for such orders or directions as may be necessary for the liquidation of the corporate debtor and to report the progress of the liquidation process in a manner as may be specified by the Board

(o) To perform such other functions as may be specified by the Board.

The liquidator may exercise the above powers subject to the directions of the Adjudicating Authority.

(2) Power of the liquidator to consult the stakeholders

The liquidator shall have the power to consult any of the stakeholders entitled to a distribution of proceeds under section 53. However, any such consultation shall not be binding on the liquidator. The records of any such consultation shall be made available to all other stakeholders not so consulted, in the manner specified by the Board.

(b) Can anybody be a resolution professional?

Answer:

Regulation 3 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 deals with the provisions relating to eligibility for resolution professionals, as explained below:

(1) Eligibility for appointment as resolution professional

An insolvency professional shall be eligible to be appointed as a resolution professional for a corporate insolvency resolution process of a corporate debtor if he, and all partners and directors of the insolvency professional entity of which he is a partner or director, are independent of the corporate debtor.

A person shall be considered independent of the corporate debtor, if he:

(a) is eligible to be appointed as an independent director on the Board of the corporate debtor under section 149 of the Companies Act, 2013, where the corporate debtor is a company;
(b) is not a related party of the corporate debtor; or
(c) is not an employee or proprietor or a partner -
  (i) of a firm of auditors or company secretaries in practice or cost auditors of the corporate debtor in the last 3 financial years; or
  (ii) of a legal or a consulting firm, that has or had any transaction with the corporate debtor amounting to ten per cent or more of the gross turnover of such firm in the last 3 financial years.

(2) Disclosure by the resolution professional

A resolution professional shall make disclosures at the time of his appointment and thereafter in accordance with the Code of Conduct.

Study Note 3 – SEBI Laws and Regulations

Question 16:

(a) Bright Ltd., an unlisted public company, eligible to make a public issue, desires to get its securities listed on Mumbai Stock exchange, pursuant to a public issue to be made shortly. The company seeks your advice in respect of the following:
(i) Whether the company can freely price its equity shares, and
(ii) Whether it can issue equity shares to those applicants in the firm allotment category at a price different from the price at which equity shares are offered to the public.
Advise, keeping in view the SEBI Guidelines in this regard.

Answer:

Pricing by companies issuing securities are contained in Regulations 28 to 31 consisting of Part II of Chapter III of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009. The relevant part of these Regulations is explained below:

Pricing

(1) An issuer may determine the price of specified securities in consultation with the lead merchant banker or through the book building process.
(2) An issuer may determine the coupon rate and conversion price of convertible debt instruments in consultation with the lead merchant banker or through the book building process.
(3) The issuer shall undertake the book building process in a manner specified in Schedule XI.

Differential pricing

An issuer may offer specified securities at different prices, subject to the following:

(a) retail individual investors or retail individual shareholders or employees entitled for reservation made under regulation 42 making an application for specified securities of value not more than ₹ 2 lakhs, may be offered specified securities at a price lower than the price at which net offer is made to other categories of applicants:
Provided that such difference shall not be more than 10% of the price at which specified securities are offered to other categories of applicants;

(b) in case of a book built issue, the price of the specified securities offered to an anchor investor shall not be lower than the price offered to other applicants;

(c) in case of a composite issue, the price of the specified securities offered in the public issue may be different from the price offered in rights issue and justification for such price difference shall be given in the offer document.

(d) In case the issuer opts for the alternate method of book building in terms of Part D of Schedule XI, the issuer may offer specified securities to its employees at a price lower than the floor price:
Provided that the difference between the floor price and the price at which specified securities are offered to employees shall not be more than 10% of the floor price.

Price and price band

(1) The issuer may mention a price or price band in the draft prospectus (in case of a fixed price issue) and floor price or price band in the red herring prospectus (in case of a book built issue) and determine the price at a later date before registering the prospectus with the Registrar of Companies:

Provided that the prospectus registered with the Registrar of Companies shall contain only one price or the specific coupon rate, as the case may be.

(2) The issuer shall announce the floor price or price band at least 5 working days before the opening of the bid (in case of an initial public offer) and at least 1 working day before the opening of the bid (in case of a further public offer), in all the newspapers in which the pre issue advertisement was released.

(3) The announcement referred to in sub-regulation (2) shall contain relevant financial ratios computed for both upper and lower end of the price band and also a statement drawing attention of the investors to the section titled "basis of issue price" in the prospectus.

(3A) The announcement referred to in sub-regulation (2) and the relevant financial ratios referred to in sub-regulation (3) shall be disclosed on the websites of those stock exchanges where the securities are proposed to be listed and shall also be pre-filled in the application forms available on the websites of the stock exchanges.

(4) The cap on the price band shall be less than or equal to 120% of the floor price.

(5) The floor price or the final price shall not be less than the face value of the specified securities.
Explanation: For the purposes of sub-regulation (4), the 'cap on the price band' includes cap on the coupon rate in case of convertible debt instruments. 31. Face value of equity shares.

Face Value of Equity Shares

(1) Subject to the provisions of the Companies Act, 1956, the Act and these regulations, an issuer making an initial public offer may determine the face value of the equity shares in the following manner:
   (a) if the issue price per equity share is ₹ 500 or more, the issuer shall have the option to determine the face value at less than ₹ 10 per equity share:

   Provided that the face value shall not be less than Re. 1 per equity share;

   (b) if the issue price per equity share is less than ₹ 500, the face value of the equity shares shall be ₹ 10 per equity share:

Provided that nothing contained in this sub-regulation shall apply to initial public offer made by any government company, statutory authority or corporation or any special purpose vehicle set up by any of them, which is engaged in infrastructure sector.

(2) The disclosure about the face value of equity shares (including the statement about the issue price being "X" times of the face value) shall be made in the advertisements, offer documents and application forms in identical font size as that of issue price or price band.

Explanation: For the purposes of this regulation, the term "infrastructure sector" includes the facilities or services as specified in Schedule X.

(b) A company "issuer" was in the process of making an offer to right issue of the specified securities. All the process was completed and the arrangement was complete. Mr. Ritwik, a director of the company was categorized as a 'willful Defaulter' by a Bank in accordance with the guidelines issued by the RBI. Advise the "Issuer" whether it can proceed to offer the securities through the right issue. Will your answer differ, had it been a public issue?

Answer:

As per Regulation 4 of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, no issuer shall make, -

(a) a public issue of equity securities, if the issuer or any of its promoters or directors is a wilful defaulter; or

(b) a public issue of convertible debt instruments if,
   - (i) the issuer or any of its promoters or directors is a wilful defaulter; or
   - (ii) it is in default of payment of interest or repayment of principal amount in respect of debt instruments issued by it to the public, if any, for a period of more than 6 months.

However, an issuer may make a rights issue of specified securities, even if the issuer or any of its promoters or directors is a wilful defaulter provided the issuer shall make disclosures as specified in (Part G of Schedule VIII, in the offer document and abridged letter of offer. (But, in such right issue, the promoters or promoter group of the issuer shall not renounce their rights except to the extent of renunciation within the promoter group.

In the given case, a director of the issuer, Mr. Ritwik, is a wilful defaulter. (Therefore, the issuer may proceed to offer the securities by way of a right issue provided the issuer shall make disclosures as specified in Part G of Schedule VIII, in the offer document and abridged letter of offer. However, the issuer cannot make a public offer of securities.

Question 17:

(a) Complaints of unethical practices have been received against members of the governing body of a recognized stock exchange. Examine whether the Government has any power to take action against the governing body of the said exchange.

Answer:

On receipt of a complaint of unethical practices against the members of the governing body of a recognised stocky exchange, the Central government is empowered to take the following actions as per Securities Contracts (Regulations) Act, 1956.

1. **Withdrawal of recognition (Section 5)**
   As per section 5, the Central (government may withdraw the recognition granted to a stock exchange if considering the interest of the trade or the public interest, the Central (government is of the opinion that the recognition granted to a stock exchange should be withdrawn. The Central (government shall give an opportunity of being heard to the governing body. The withdrawal of recognition shall be published in the Official gazette.

2. **Supersession of the governing body (Section 11)**
   Section 11 empowers the Central (government to supersede the governing body of a recognized stock exchange. It may also appoint any person or persons to exercise all the powers and perform all the duties of the governing body. Where the Central (government appoints more than one person, it may appoint one of such persons to be the chairman and another to be the vice-chairman of the governing body. The Central (government shall have these powers notwithstanding anything contained in any other law for the time being in force. Jin order of supersession shall require the fulfilment of all the following conditions:
   (a) The Central government shall serve on the governing body a written notice that it is considering the supersession of the governing body.
   (b) The Central Government shall specify the reasons in the notice given to the governing Body.
   (c) The Central Government shall give an opportunity of being heard to the governing Body.
   (d) The Central Government must form an opinion that the governing Body of the stock exchange should be superseded.
   (e) The Central Government shaft issue a notification in the Official Gazette that the governing Body of the stock exchange has been superseded.

(b) The Securities and Exchange Board of India, for the purpose of corporatization and demutualization of a recognized stock exchange issued an order that at least fifty one percent of its equity share capital shall be held, within twelve months, by the public other than share holders having trading rights. Decide whether the said order of the Securities and exchange board of India is valid under the provisions of the Securities Contracts (Regulation) Act, 1956 including the time limit of twelve months as stated in the order.

Answer:

The procedure for corporatisation and demutualisation is contained under section 4B of the Act. This procedure is explained as under:

1. Requirement of Section 4B

Every recognised stock exchange shall submit a scheme for corporatisation and demutualisation to SEBI for its approval within such time as may be specified by SEBI. However, if a recognised stock exchange has already been corporatised and demutualised before the appointed date, it shall not be required to submit a scheme for corporatisation and demutualisation.

2. Approval of scheme by SEBI

(a) SEBI may approve the scheme of corporatisation and demutualisation. The approval may be given with or without modification.
(b) Before granting approval, SEBI may make such enquiry as may be necessary in this behalf. SEBI may obtain such further information from the recognised stock exchange as it may require.
(c) SEBI shall grant the approval only if it is satisfied that it is in the interest of the trade and also in the public interest to grant such approval.

3. Imposition of restrictions by SEBI

SEBI may, while approving the scheme, make an order restricting -

(a) the voting rights of the shareholders who are also the stock brokers;
(b) the right of shareholders or a stock broker of the recognised stock exchange to appoint the representatives on the governing board of the recognised stock exchange;
(c) the maximum number of representatives of the stock brokers of the recognised stock exchange to be appointed on the governing board of the recognised stock exchange, which shall not exceed l/4th of the total strength of the governing board.

The restrictions so imposed by SEBI shall have full effect, notwithstanding anything to the contrary contained in the Companies Act, 1956, or any other law for the time being in force.

4. Conditions of approval

(a) Every recognised stock exchange, in respect of which the scheme has been approved by SEBI, shall ensure that at least 51 % of its equity share capital is held by the public other than shareholders having trading rights.
(b) The recognised stock exchange shall comply with such provision within 12 months of the publication of order of SEBI. However, SEBI may extend such period by another 12 months.
(c) The recognised stock exchange may comply with such provision either by fresh issue of equity shares to the public or in any other manner as may be specified by the regulations made by SEBI.

5. Publication of scheme

The scheme is required to be published only when it has been approved by SEBI. The approved scheme shall be published by SEBI in the Official Gazette. The approved scheme shall be published by the recognised stock exchange in such 2 daily newspapers circulating in India, as may be specified by SEBI.

6. Effects of publication

(a) Upon publication of the scheme-
- the scheme shall become effective;
- the scheme shall be binding on all persons and authorities including all members, creditors, depositors and employees of the recognised stock exchange and on all persons having any contract, right, power, obligation or liability with, against, over, to, or in connection with, the recognised stock exchange or its members.

(b) This provision shall apply notwithstanding anything to the contrary contained in this Act or any other law for the time being in force or any agreement, award, judgment, decree or other instrument for the time being in force.

7. Rejection of the scheme

(a) SEBI may reject the scheme submitted by the recognised stock exchange if it is satisfied that it would not be in the interest of the trade and also in the public interest to approve the scheme.
(b) The order of rejection shall be published in the Official Gazette.
(c) Before rejecting the scheme, SEBI shall give a reasonable opportunity of being heard to all the persons concerned and the recognised stock exchange concerned.

Study Note 4 – Competition Act, 2002

Question 18:

(a) National Toys Limited and Local Toys Limited marketing their products in India proposes to be amalgamated. The enterprise created as a result of the said amalgamation will have assets of value of ₹ 300 crore and turnover of ₹ 1,000 crore. Examine whether the proposed amalgamation attracts the provisions of the Competition Act, 2002?

Answer:

The given problem relates to section 5 of the Competition Act, 2002.

As per section 5, an amalgamation shall be a combination if the enterprise created as a result of the amalgamation, shall have the assets of the value of more than ₹ 1,000 crores or turnover more than ₹ 3,000 crores. As per Notification No. S.O. 675(E) dated 4th March, 2016, the value of assets and turnover have been enhanced by 100%. Accordingly, as per section 5 read with 'Notification No. S.O. 675(E) dated 4th March, 2016, an amalgamation shall be a combination if the enterprise created as a result of the amalgamation, shall have the assets of the value of more than ₹ 2,000 crores or turnover more than ₹ 6,000 crores.

In the given case, the enterprise created as a result of the amalgamation wilt have assets of value of ₹ 300 crore (i.e. less than ₹ 2,000 crores) and turnover of ₹ 1,000 crore (i.e. less than ₹ 6,000 crores). Thus, as per the provisions of section S read with Notification No. S.O. 675(E) dated 4th March, 2016, the said amalgamation does not amount to 'combination', and so such amalgamation shall come into effect without obtaining any approval of the Competition Commission of India.

(b) What Factors are considered by the Commission in determining appreciable adverse effect on competition, whether an enterprise enjoys dominant position and whether any enterprise has abused its dominant position?

Answer:

The provisions relating to inquiry into anti-competitive agreements or abuse of dominant position are explained in the following paragraphs:

1. Nature of inquiry under section 19

The Commission may make an inquiry to determine as to whether the provisions of Section 3 or Section 4 have been contravened.

2. When can commission make an inquiry

The Commission may make an inquiry -

(a) on its own motion; or
(b) on receipt of any information, in such manner and accompanied by such fees as may be determined by Regulations, from any person, consumer or consumer association or trade association; or
(c) if a reference is made to the Commission by CG or SG or a statutory authority.

3. Determining 'appreciable adverse effect on competition'

The Commission shall, while determining whether an agreement has an appreciable adverse effect on competition under section 3, have due regard to all or any of the following factors:

(a) creation of barriers to new entrants in the market;
(b) driving existing competitors out of the market;
(c) foreclosure of competition by hindering entry into the market;
(d) accrual of benefits to consumers;
(e) improvements in production or distribution of goods or provision of services; or
(f) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

4. Determining whether an enterprise enjoys a dominant position or not

The Commission shall, while inquiring whether an enterprise enjoys a dominant position or not under section 4, have due regard to all or any of the following factors:

(a) market share of the enterprise;
(b) size and resources of the enterprise;
(c) size and importance of the competitors;
(d) economic power of the enterprise including commercial advantages over competitors;
(e) vertical integration of the enterprises or sale or service network of such enterprises;
(f) dependence of consumers on the enterprise;
(g) monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise;
(h) entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers;
(i) countervailing buying power;
(j) market structure and size of market;
(k) social obligations and social costs;
(l) relative advantage, by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have appreciable adverse effect on competition;
(m) any other factor which the Commission may consider relevant for the inquiry.

5. Determining 'relevant market'

For determining whether a market constitutes a 'relevant market' for the purposes of this Act, the Commission shall have due regard to the 'relevant geographic market' and 'relevant product market'.

6. Determining 'relevant geographic market'

The Commission shall, while determining the 'relevant geographic market', have due regard to all or any of the following factors:

(i) regulatory trade barriers;
(ii) local specification requirements;
(iii) national procurement policies;
(iv) adequate distribution facilities;
(v) transport costs;
(vi) language;
(vii) consumer preferences;
(viii) need for secure, regular supplies or rapid after-sales services.

7. Determining 'relevant product market'

The Commission shall, while determining the 'relevant product market', have due regard to all or any of the following factors:

(a) physical characteristics or end-use of goods;
(b) price of goods or service;
(c) consumer preferences;
(d) exclusion of in-house production;
(e) existence of specialised producers;
(f) classification of industrial products.

Study Note 5 – Foreign Exchange Management Act, 1999

Question 19:

(a) What are the penalties provided under FEMA for contravention of provisions of the Act?

Answer:

The penalties provided in the different provisions of the Act are summarised as under:

1. Penalty for contravention

(a) The penalty may be levied in the following cases:

- (i) Where any person contravenes any provisions of the Act, rule, regulation, notification, direction or order issued under the Act.
- (ii) Where any person contravenes any condition subject to which an authorisation is issued by the Reserve Bank.

(b) Amount of penalty.

(i) Where the amount involved in contravention is quantifiable, the penalty may be levied upto 3 times the sum involved in the contravention.
(ii) Where the amount involved in contravention is not quantifiable, penalty upto ₹ 2,00,000 may be levied.
(iii) Where any contravention is a continuing one, further penalty not exceeding ₹ 5,000 per day may be levied.

(c) Penalty payable upon adjudication. Penalty shall become payable only upon adjudication under section 14.

2. Other consequences of contravention [Section 13(2)]

In addition to the levy of penalty, the Adjudicating Authority may issue the following directions:

(a) Confiscation of currency etc.: While adjudicating any contravention, the Adjudicating Authority may, if he thinks fit, direct that any currency, security or any other money or property in respect of which the contravention has taken place shall be confiscated to the Central Government.

Extended meaning of 'property': For the purposes of section 13(2), 'property in respect of which contravention has taken place', shall include-
(i) deposits in a bank, where the said property is converted into such deposits;
(ii) Indian currency, where the said property is converted into that currency; *and*
(iii) any other property which has resulted out of the conversion of that property.

(b) Issue of directions relating to foreign exchange holdings: The Adjudicating Authority may further direct that the foreign exchange holdings of the person committing the contravention shall be brought back into India or shall be retained outside India in accordance with the directions made in this behalf.

3. Consequences of failure to pay penalty (Section 14)

Following points are worth noting in this regard:

(a) Imprisonment: If any person fails to make full payment of the penalty imposed on him within 90 days from the date of service of notice on him, he shall be liable to civil imprisonment.
(b) Term of imprisonment.
(i) Where the demand raised in the penalty order exceeds ₹ 1 crore, the imprisonment may extend upto 3 years.
(ii) In any other case, the imprisonment may extend upto 6 months.
(c) Release of defaulter on payment.: The defaulter shall be released, where the amount mentioned in the warrant has been paid to the officer in charge of the civil prison.

(1) Remedy consequent on order of Adjudicating Authority

Where penalty is imposed under section 13, the accused person may -

(a) seek compounding of the contravention; *or*

(b) prefer an appeal to -

(i) Special Director (Appeals), where the Adjudicating Authority passing the order is an Assistant Director of enforcement or a Deputy Director of enforcement; *or*

(ii) Appellate Tribunal, where the order is passed by any officer of the Adjudicating Authority other than Assistant Director of enforcement or Deputy Director of enforcement.

(i) **Liability of Legal representative or official assignee**

Where a person dies or becomes insolvent, following consequences shall follow:

(a) Any right, obligation, liability, proceeding or appeal to which he was a party, shall not abate by reason of his death or insolvency.

(b) Such rights and obligations shall devolve on the legal representative or the official receiver or official assignee of such person. However, the legal representative of the deceased shall be liable only to the extent of the inheritance or estate of the deceased.

(ii) **Penalty on an authorised person**

An authorised person is levied penalty under section 11 and not under section 13.

(b) Ms. Deepika daughter of Mr. Royal (an exporter), is residing in Australia since long. She wants to buy a flat in Australia. Since she is unmarried, she wants to make her father Mr. Royal a joint holder in that flat, for which entire proceeds are to be paid by her.

(i) What are the provisions of FEMA governing such type of transactions?

(ii) can Mr. Royal join her daughter in acquiring such a flat in Australia?

(iii) Mr. Royal, wants to receive advice payments against his exports from a buyer outside India.

What are the relevant provisions?

Answer:

(i) As per Regulation 5 of the Foreign 'Exchange Management (Acquisition and transfer of immovable property outside India) Regulations, 2015, a person resident in India may acquire immovable property outside India jointly with a relative who is a person resident outside India, provided there is no outflow of funds from India.

As per Regulation 15 of the Foreign 'Exchange Management (Export of Goods and Services) Regulations, 2015, where an exporter receives advance payment (with or without interest), from a buyer/third party named in the export declaration made by the exporter, outside India, the exporter shaft be under an obligation to ensure that -

(a) the shipment of goods is made within one year from the date of receipt of advance payment;

(b) the rate of interest, if any, payable on the advance payment does not exceed the rate of interest London Inter-Bank Offered Rate (LIBOR) + 100 basis points and

(c) the documents covering the shipment are routed through the authorised dealer through whom the advance payment is received;

Provided that in the event of the exporter's inability to make the shipment, partly or fully, within 1 year from the date of receipt of advance payment, no remittance towards refund of unutilized portion of advance payment or towards payment of interest, shad be made after the expiry of the period of 1 year, without the prior approval of the Reserve Bank.

(ii) Mr. Royal can join her daughter in acquiring the flat in Australia in accordance with the aforesaid Regulation 5 of the Foreign Exchange Management (Acquisition and transfer of immovable property outside India) Regulations, 2015.

(iii) Mr. Royal can receive advance payments against his exports from a buyer outside India in accordance with Regulation 15 of the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015.

Question 20:

(a) Mr. Aryan, an Indian National desires to obtain foreign exchange for the following purposes.

(i) Payment of US$ 10,000 as commission on exports under Rupee State Credit Route.

(ii) US$ 30,000 for a business trip to U.K.

(iii) Remittance of US$ 2,00,000 for payment as prize money to the winning team in a Kabaddi Tournament to be held in Australia.

Advise him, if he can get the Foreign Exchange and under what conditions.

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:

(i) Rule 3 read with Schedule I of Foreign (Exchange Management (Current Account Transactions) (Rules, 2000 prohibits payment of commission on exports under (Rupees State Credit Route (except commission upto 10% of invoice value of exports of tea and tobacco). Therefore, payment of US $ 10,000 as commission on exports under (Rupee State Credit Route is prohibited unless such commission is paid for export of tea and tobacco, and the commission does not exceed 10% of invoice value of exports.

(ii) As per Rule 5 read with Schedule III of (Foreign Exchange Management (Current Account Transactions) Rules, 2000, individuals can draw foreign exchange upto US Dollar 2,50,000 for travel for business (referred to as 'the Liberalised Remittance Scheme). (Drawal of foreign exchange in excess of US (Dollar 2,50,000 shall require prior approval of the Reserve (Bank of India. Therefore, Mr. E can obtain US Dollar 30,000 for Business tour to UK without any approval of the Reserve (Bank of India.

(iii) As per Rule 4 read with Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000, drawal of foreign exchange exceeding US$ 1,00,000 for the purpose of remittance of prize money/sponsorship of sports activity abroad By a person other than International/ National/ State level sports Bodies requires the prior approval of the Central government. In the given case, the drawal of US $ 2,00,000 for payment as prize money to the winning team in a Kabaddi Tournament to be held in Australia is organised By Mr. Aryan, who is an Indian National (i.e., not any International, National or State level Sports (Body) Therefore, Mr. Aryan can obtain US (Dollar 1,00,000 without any permission, But for drawal of additional US (Dollar 1,00,000, prior approval of the Central (government is required. However, prior approval of the Central government shall not Be required if drawal of additional US (Dollar 1,00,000 is made out of funds held in Resident Foreign Currency (RFC) Account.

(b) Mr. Sunny, an Indian National desires to obtain foreign exchange for the following purposes:

(i) Payment of commission on exports under Rupee State Credit Route.

(ii) Gift remittance exceeding US$ 10,000.

Advise him whether he can get foreign exchange and if so, under what condition?

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:

(i) (Rule 3 read with Schedule I of Foreign 'Exchange Management (Current Account Transactions) (Rules, 2000 prohibits payment of commission on exports under (Rupees State Credit (Route (except commission upto 10% of invoke value of exports of tea and tobacco). Therefore, payment of commission on exports under (Rupee State Credit (Route is

prohibited unless such commission is paid for export of tea and tobacco, and the commission does not exceed10% of invoice value of exports.

(ii) As per (Rule 5 read with Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000, individuals can draw foreign exchange upto US Dollar 2,50,000 for gift or donation referred to as 'the Liberalised (Remittance Scheme). Drawal of foreign exchange in excess of US Dollar 2,50,000 shall require prior approval of the Reserve Bank of India. Therefore, Mr. Sunny can obtain more than US Dollar 10,000 for gift without any approval of the Reserve Bank of India provided the total amount drawn by him during the entire financial year does not exceed US Dollar 2,50,000.

Study Note 6 – Laws relating to Banking Sector

Question 21:

(a) State the provisions relating to maintenance of Cash Reserve by a Banking Company.

Answer:

Section 18 contains the provisions regarding the Cash Reserve to be maintained by a Banking Company, as explained below:

1. **Time limit and amount of cash reserve [Section 18(1)]**
   Every banking company shall maintain on a daily basis by way of cash reserve or by way of balance in a current account with the Reserve Bank, a sum equivalent to such percent of the total of its demand and time liabilities as on the last Friday of the second preceding fortnight as the Reserve Bank may specify, by notification in the Official Gazette, from time to time, having regard to the needs of securing the monetary stability in the country, and shall submit to the Reserve Bank before the 20th day of every month a return showing the amount so held on alternate Fridays during a month with particulars of its demand and time liabilities on such Friday or if any such Friday is a public holiday under the Negotiable Instruments Act, 1881, at the close of business on the preceding working day.

2. **Penal interest payable for failure to maintain cash reserve [Section 18(1A) (IB) and (1C)]**
   (a) If the balance held by a banking company at the close of business on any day is below the minimum specified under section 18(1), such banking company shall, without prejudice to the provisions of any other law for the time being in force, be liable to pay to the Reserve Bank, in respect of that day, penal interest at a rate of 3% above the bank rate on the amount by which such balance falls short of the specified minimum, and if the shortfall continues further, the penal interest so charged shall be increased to a rate of 5% above the bank rate in respect of each subsequent day during which the default continues [Section 18(1A)].

(b) However, if the Reserve Bank is satisfied, on an application in writing by the defaulting banking company, that such defaulting banking company had sufficient cause for its failure to comply with the provisions of sub-section (1), it may not demand the payment of the penal interest [Section 18(1B)].

(c) The Reserve Bank may, for such period and subject to such conditions as may be specified, grant to any banking company such exemptions from the provisions of this section as it may think fit [Section 18(1C)].

3. Meaning of certain terms [Explanation to Section 18(1)

(a) 'Liabilities in India': Liabilities in India' shall not include –

(i) the paid-up capital or the reserves or any credit balance in the profit and loss account of the banking company;

(ii) any advance taken from the Reserve Bank or from the Exim Bank or from the Reconstruction Bank or from the National Housing Bank or from the National Bank or from the Small Industries Bank by the banking company.

(b) 'Fortnight': Fortnight means the period from Saturday to the second following Friday, both days inclusive.

(b) The Board of directors of Supra Limited, a banking company incorporated in India, for the accounting period ended 31.03.2013 transferred 15% of its net profit to its Reserve Fund. Certain shareholder of the company object to the above act of the board on the ground that it is violative of the provisions of the Banking Regulation Act, 1949. Decide whether the contention of the shareholders is tenable under the Banking Regulation Act, 1949.

Answer:

As per section 17, every banking company shaft transfer to the reserve fund a sum equivalent to not less than 20% of profit.

However, the Central Government may, on the recommendation of the Reserve Bank and having regard to the adequacy of the paid-up capital and reserves of a Banking company in relation to its deposit liabilities, declare by order in writing that the requirement of transfer of at least 20% of profits to reserve fund shall not apply to a Banking company for such period as may be specified in the order. But, no such order shall be made unless the amount in the reserve fund together with the amount in the share premium account is not less than the paid-up capital of the banking company.

The given problem is answered as under:

(i) The (Board of directors of the Banking company has transferred to reserves 15% of net profits. The shareholders have objected to it.

The objection made by the shareholders is valid since the minimum amount to be transferred to the reserve fund is 20% of profits.
However, the action of the Board shall be valid if the banking company has obtained in writing, an order of the Central government, waiving compliance with the requirements of transfer to the reserve fund.

(ii) In case the Board has transferred to the reserves 30% of net profits, such decision of the Board is valid since the requirement of 20% of profits to be transferred to reserves is the minimum requirement given under the Act. The Board is free to transfer to reserves anything over and above 20% of net profits. Thus, the contention of the shareholders is not tenable in the second case.

Question 22:

(a) Pest Control Limited defaulted in the repayment of term loan taken from a Bank against security created as a first charge on some of its assets. The bank issued notice pursuant to Section 13 of the SARFAESI Act, 2002 to the Company to discharge its liabilities within a period of 60 days from the date of the notice. The company failed to discharge its liabilities within the time limit specified. Explain the measures to be taken by the Bank to enforce its security interest under the said Act.

Answer:

The provisions relating to enforcement of security interest are as follows:

1. No intervention of court or tribunal in enforcement of security interest [Section 13(1)]

A secured creditor may enforce any security interest created in his favour, without the intervention of any Court or Tribunal.

2. Notice by secured creditor to borrower to discharge liabilities within 60 days [Section 13(2)]

(a) The secured creditor is empowered to issue a written notice to the borrower, if -
   (i) the borrower makes any default in repayment of secured debt or any installment thereof; and
   (ii) the account of such borrower is classified by the secured creditor as non-performing asset.

   The requirement of classification of secured debt as non-performing asset shall not apply to a borrower who has raised funds through issue of debt securities.

In case of default in repayment of debt securities, the debenture trustee shall be entitled to enforce security interest in the same manner as provided under this section with such modifications as may be necessary and in accordance with the terms and conditions of security documents executed in favour of the debenture trustee.

(b) The notice shall state -

(i) the details of the amount payable by the borrower;

(ii) that the borrower is required to pay in full his liabilities to the secured creditor within 60 days from the date of notice; and

(iii) that, in case of default by the borrower, the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4) of section 13;

(iv) the details of the secured assets intended to be enforced by the secured creditor in the event of non-payment of amount payable by the borrower.

After receipt of notice from the secured creditor, the borrower shall not transfer any of his secured assets referred to in the notice, without prior written consent of the secured creditor.

3. Secured creditor to consider the representation or objection of the borrower [Section 13(3A)]

(a) When a notice is served on the borrower by the secured creditor, the borrower is entitled to make a representation or raise his objection.
(b) The secured creditor shall consider such representation or objection.
(c) If the secured creditor comes to the conclusion that such representation or objection is not acceptable, he shall, within 15 days, communicate to the borrower the reasons for non-acceptance of the representation or objection.

The reasons so communicated or the likely action of the secured creditor shall not entitle the borrower to make an application to the Debts Recovery Tribunal.

4. Measures for secured creditor in case of default by the borrower [Section 13(4)]

In case the borrower fails to discharge his liability in full within 60 days from the date of notice, the secured creditor may take recourse to one or more of the following measures to recover his secured debt:

(a) Take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset.

(b) Take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset.

(c) Appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor.

(d) Require at any time by notice in writing, any person who has acquired any of the

secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

Any payment made by such person to the secured creditor shall give such person a valid discharge as if he has made payment to the borrower.

5. Right of secured creditor to bid [Section 13(5A)]

Where the sale of an immovable property, for which a reserve price has been specified, has been postponed for want of a bid of an amount not less than such reserve price, it shall be lawful for any officer of the secured creditors to bid for the immovable property on behalf of the secured creditor at any subsequent sale.

6. Purchase price to be adjusted towards claim of secured creditor [Section 13(5B)]

Where the secured creditor is declared to be the purchaser of the immovable property at any subsequent sale, the amount of the purchase price shall be adjusted towards the amount of the claim of secured creditor.

7. Applicability of Banking Regulation Act, 1949 [Section 13(5C)]

The provisions of section 9 of the Banking Regulation Act, 1949 shall, as far as may be, apply to such immovable property acquired by secured creditor.

8. Effects of transfer of secured asset by the secured creditor [Section 13(6)]

Any transfer of secured asset by the secured creditor shall vest in the transferee all the rights in the secured asset.

9. Recovery of costs by the secured creditor from the borrower [Section 13(7)]

(a) The secured creditor shall be entitled to determine the costs which have been properly incurred by him.

(b) Such costs shall be recoverable by the secured creditor from the borrower.

(c) Any money which is received by the secured creditor shall be applied, firstly, in payment of such costs and secondly, in discharge of the dues of the secured creditor, and if any amount remains after such payments, such amount shall be paid to the borrower.

10. No sale of secured asset if all dues paid to secured creditor before the date fixed for sale [Section 13(8)]

If the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets, -

(i) the secured assets shall not be transferred by way of lease, assignment or sale by the secured creditor; and

(ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this subsection, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets.

11. Right of action in case of joint financing of a financial asset [Section 13(9)]

In the case of financing of a financial asset by more than one secured creditors or joint financing of a financial asset by secured creditors, no secured creditor shall be entitled to exercise any right conferred on him under section 13(4), unless exercise of such right is agreed upon by the secured creditors representing not less than 60% in value of the amount outstanding, and such action shall be binding on all the secured creditors.

The provisions contained in section 13(9) are subject to the provisions contained in the Insolvency and Bankruptcy Code, 2016.

12. Distribution of amount realised in case of a company in liquidation [Proviso to Section 13(9)]

In the case of a company in liquidation, the amount realised from the sale of secured assets shall be distributed in accordance with the provisions of section 529A of the Companies Act, 1956.

13. Recovery of unsatisfied dues of secured creditor [Section 13(10)]

Where dues of the secured creditor are not fully satisfied with the sale proceeds of the secured assets, the secured creditor may file an application to the Debts Recovery Tribunal or a competent court, for recovery of the balance amount from the borrower.

14. Right of action against the guarantors or pledged assets [Section 13(11)]

The secured creditor shall be entitled to proceed against the guarantors or sell the pledged assets without first taking any of the measures specified in section 13(4).

15. Exercise of rights of secured creditor by authorized officers [Section 13(12)]

The rights of a secured creditor under this Act may be exercised by one or more of his officers authorised in this behalf.

(b) Under Section 31 of the Securitisation And Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002, certain situations have been specified in which the provisions of this Act are not applicable. You are required to mention such situations.

Answer:

The provisions of this Act shall not apply to -

(i) a lien on any goods, money or security given by or under the Indian Contract Act, 1872 or the Sale of Goods Act, 1930 or any other law for the time being in force;

(b) a pledge of movables within the meaning of section 172 of the Indian Contract Act, 1872;

(c) creation of any security in any aircraft as defined in clause (1) of section 2 of the Aircraft Act, 1934;

(d) creation of security interest in any vessel as defined in clause (55) of section 3 of the Merchant Shipping Act, 1958;

(e) any rights of unpaid seller under section 47 of the Sale of Goods Act, 1930;

(vi) any properties not liable to attachment (excluding the properties specifically charged with the debt recoverable under this Act) or sale under the first proviso to sub-section (1) of section 60 of the Code of Civil Procedure, 1908;

(vii) any security interest for securing repayment of any financial asset not exceeding ₹ 1 Lakh;

(viii) any security interest created in agricultural land;

(ix) any case in which the amount due is less than 20% of the principal amount and interest thereon.

Question 23:

(a) 'Pashu Kalyan', a charitable organization, opened a current account with M/s Advance Bank on 1st July, 2012. This account was closed on 30th June, 2016. Referring to the obligations of banking companies under the Prevention of Money Laundering act, 2002, specify the period upto which the said bank has to maintain records relating to the account of 'Pashu Kalyan'.

Answer:

The obligations of reporting entities with respect to maintenance of accounts are explained below:

1. Duties of reporting entities [Section 12(1)]

(a) Every reporting entity shall maintain a record of all transactions, including information relating to transactions covered under clause (b), in such manner as to enable it to reconstruct individual transactions.

These records shall be maintained for a period of 5 years from the date of transaction between a client and the reporting entity.

(b) Every reporting entity shall furnish to the Director within such time as may be prescribed, information relating to such transactions, whether attempted or executed, the nature and value of which may be prescribed.

(c) Every reporting entity shall verify the identity of its clients in such manner and subject to such conditions, as may be prescribed.
In practice, verification of identity of clients is termed as 'Know Your Customer' (KYC).

(d) Every reporting entity shall identify the beneficial owner, if any, of such of its clients, as may be prescribed.

(e) Every reporting entity shall maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients.

These records shall be maintained for a period of 5 years after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later.

2. Confidentiality of information [Section 12(2)]

Every information maintained, furnished or verified, save as otherwise provided under any law for the time being in force, shall be kept confidential.

3. Exemption [Section 12(5)]

The Central Government may, by notification, exempt any reporting entity or class of reporting entities from any obligation under this Chapter (*viz.* Chapter IV comprising of sections 12, 12A, 13, 14 and 15).

The Central Government may, in consultation with the Reserve Bank of India, prescribe the procedure and the manner of maintaining and furnishing information by a reporting entity under section 12 (Section 15)

(b) Explain the provisions contained in section 56 of Prevention of Money Laundering Act, 2002 with respect to power of the Central Government to enter into agreements with foreign countries.

Answer:

The provisions of section 56 are explained hereunder:

1. **Agreement with other countries [Section 56(1)]**
   (a) The Central Government may enter into an agreement with the Government of any country outside India for –
      (i) enforcing the provisions of this Act;
      (ii) exchange of information for the prevention of any offence under this Act or under the corresponding law in force in that country or investigation of cases relating to any offence under this Act.
   (b) The Central Government may, by notification in the Official Gazette, make such provisions as may be necessary for implementing such agreement.

2. **Modifications or exceptions in application of Chapter IX [Section 56(2)]**
   The Central Government may, by notification in the Official Gazette, direct that the application of this Chapter (*viz.* Chapter IX consisting of Sec. 55 to 61) in relation to a contracting State with which reciprocal arrangements have been made, shall be subject to such conditions, exceptions or qualifications as are specified in the said notification.

Study Note 7 – Laws relating to Insurance Sector

Question 24:

(a) The Insurance Regulatory and Development Authority has certain duties, powers and functions. Enumerate them.

Answer:

The duties, powers and functions of the Authority, as contained in section 14, are as follows:

1. **Duties of the Authority [Section 14(1)]**
   Subject to the provisions of this Act and any other law for the time being in force, the Authority shall have the duty to regulate, promote and ensure orderly growth of the insurance business and re-insurance business.

2. **Powers and functions of the Authority [Section 14(2)]**

Without prejudice to the generality of the provisions contained in sub-section (1), the powers and functions of the Authority shall include:

(a) issue to the applicant a certificate of registration, renew, modify, withdraw, suspend or cancel such registration;
(b) protection of the interests of the policy-holders in matters concerning assigning of policy, nomination by policy-holders, insurable interest, settlement of insurance claim, surrender value of policy and other terms and conditions of contracts of insurance;
(c) specifying requisite qualifications, code of conduct and practical training for intermediary or insurance intermediaries and agents;
(d) specifying the code of conduct for surveyors and loss assessors;
(e) promoting efficiency in the conduct of insurance business;
(f) promoting and regulating professional organisations connected with the insurance and re-insurance business;
(g) levying fees and other charges for carrying out the purposes of this Act;
(h) calling for information from, undertaking inspection of, conducting inquiries and investigations including audit of the insurers, intermediaries, insurance intermediaries and other organisations connected with the insurance business;
(i) control and regulation of the rates, advantages, terms and conditions that may be offered by insurers in respect of general insurance business not so controlled and regulated by the Tariff Advisory Committee under section 64U of the Insurance Act, 1938 (4 of 1938);
(j) specifying the form and manner in which books of account shall be maintained and statement of accounts shall be rendered by insurers and other insurance intermediaries;
(k) regulating investment of funds by insurance companies;
(l) regulating maintenance of margin of solvency;
(m) adjudication of disputes between insurers and intermediaries of insurance intermediaries;
(n) supervising the functioning of the Tariff Advisory Committee;
(o) specifying the percentage of premium income of the insurer to finance schemes for promoting and regulating professional organisations referred to in clause (/);
(p) specifying the percentage of life insurance business and general insurance business to be undertaken by the insurer in the rural or social sector; and
(q) exercising such other powers as may be prescribed.

(b) Is the Insurance Regulatory and Development Authority required to maintain the accounts in respect of transactions carried out by it? Is audit of accounts compulsory?

Answer:

The provisions of section 17 may be explained as follows:

1. Maintenance of Accounts [Section 17(1)]

The Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

2. **Audit of Accounts by CAG [Section 17(2)]**
The accounts of the Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority to the Comptroller and Auditor-General of India.

3. **Rights of CAG [Section 17(3)]**
The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Authority shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Authority.

4. **Laying down of audited accounts before Parliament [Section 17(4)]**
The accounts of the Authority as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

Question 25:

(a) State the manner of investment of assets by an insurer.

Answer:

(1) Investment of certain sum by an insurer carrying on life insurance business [Section 27(1)]

Every insurer shall invest and at all times keep invested assets equivalent to not less than the sum of -

(a) the amount of his liabilities to holders of life insurance policies in India on account of matured claims, and

(b) the amount required to meet the liability on policies of life insurance maturing for payment in India, less -

  (i) the amount of premiums which have fallen due to the insurer on such policies but have not been paid and the days of grace for payment of which have not expired, and

(ii) any amount due to the insurer for loans granted on and within the surrender values of policies of life insurance maturing for payment in India issued by him or by an insurer whose business he has acquired and in respect of which he has assumed liability in the following manner:
   (a) 25% of the said sum in Government securities, a further sum equal to not less than 25% of the said sum in Government securities or other approved securities; and
   (b) the balance in any of the approved investments, as may be specified by the regulations subject to the limitations, conditions and restrictions specified therein.

(2) Investment of certain sum by an insurer carrying on general insurance business [Section 27(2)]

In the case of an insurer carrying on general insurance business, 20% of the assets in Government Securities, a further sum equal to not less than 10% of the assets in Government Securities or other approved securities and the balance in any other investment in accordance with the regulations of the Authority and subject to such limitations, conditions and restrictions as may be specified by the Authority in this regard.

It is to be noted:

(1) As per Section 27A, no insurer carrying on life insurance business shall invest or keep invested any part of his controlled fund and no insurer carrying on general insurance business shall invest or keep invested any part of his assets otherwise than in any of the approved investments as may be specified by the regulations subject to such limitations, conditions and restrictions therein.

(2) As per Section 27B, all assets of an insurer carrying on general insurance business shall, subject to such conditions, if any, as may be prescribed, be deemed to be assets invested or kept invested in approved investments specified in section 27.

(3) As per Section 27C, an insurer may invest not more than 5% in aggregate of his controlled fund or assets as referred to in sub-section (2) of section 27 in the companies belonging to the promoters, subject to such conditions as may be specified by the regulations.

(b) State the prohibitions relating to prohibition on appointment of certain agents and multi level marketing.

Answer:

1. **Prohibition on appointment of certain agents [Section 42A(1)]**
   No insurer shall, on or after the commencement of the Insurance Laws (Amendment) Act, 2015, appoint any principal agent, chief agent, and special agent and transact any insurance business in India through them.

2. **Prohibition on multilevel marketing scheme [Section 42A(2)]**
   No person shall allow or offer to allow, either directly or indirectly, as an inducement to any person to take out or renew or continue an insurance policy through multilevel marketing scheme.

3. **Complaint to police authorities by Authority [Section 42A(3)]**
   The Authority may, through an officer authorised in this behalf, make a complaint to the appropriate police authorities against the entity or persons involved in the multilevel marketing scheme.

4. **Meaning of 'multilevel marketing scheme' [Explanation to Section 42A(3)]**
   For the purpose of this section 'multilevel marketing scheme' means any scheme or programme or arrangement or plan (by whatever name called) for the purpose of soliciting and procuring insurance business through persons not authorised for the said purpose with or without consideration of whole or part of commission or remuneration earned through such solicitation and procurement and includes enrolment of persons into a multilevel chain for the said purpose either directly or indirectly.

Study Note 8 – Corporate Governance

Question 26:

(a) Discuss about the 'Legal Framework of Corporate Governance'.

Answer:

The companies in India have to comply with the provisions of the Companies Act, 2013 the SEBI guidelines, the Kumara Mangalam Birla report on corporate governance, the Accounting Standards issued by the ICAI and the listing agreements with the stock exchanges in which they are listed. The Companies Act, 2013 is the relevant statute in India that governs the incorporation and, functioning of the companies. The ordinary business activities like declaration of dividends, appointment of directors, acceptance of the financial statements and appointment of auditors requires the consent of 51% of the shareholders, whereas all other business activities (other than routine business activities) requires the approval of 75% of the shareholders. If a company wants to start a new business it requires the approval of 75% shareholders, which means that the board

of a widely held company should be able to persuade the shareholders about their strategy to pass the special resolution. Whereas, the board of a closely held company will not find it difficult to pass such a resolution, because the shareholders are usually the managers in such cases.

However the Kumara Mangalam Birla report (KMB report) required that in case of appointment/ reappointment of directors, shareholders should be provided a resume, information regarding functional expertise and number of directorships held in other companies. KMB report mentioned that the board shall consist of at least 50% of non-executive directors. And if the chairman is an executive director then at least half of the board of directors shall be independent and in other case at least one-third of the total directors shall be independent. The KMB report has taken a more stringent view that the directors shall not be members of more than 10 committees or chairman of more than 5 committees across all companies.

The remuneration payable to managerial personnel under the Act, if there is only one such person, shall not exceed 5% of its net profit and in case of more than one managerial personnel it shall not exceed 10% of its net profit except with prior permission of the Central Government. In case of companies, which incurred a loss in the current financial year the limits on the salaries and perquisites to be paid to the Managing personnel.

The minority shareholders are protected under the Act and the members holding at least 10% of the share capital can make an application for relief to the concerned authorities in the cases of oppression and mismanagement. The minority shareholders have a provision to appoint representative director on the board. There is no special provision under the companies to protect the creditors. If the company makes default then the creditors have to move the civil court for realization of dues, which demands more time and money to be spent around the courts.

The Securitization and Reconstruction of Financial Assets and Enforcement of Securities Act, 2002 [SARFAESI Act] was enacted to regulate securitization and reconstruction of financial assets and enforcement of security interest and for matters connected therewith or incidental thereto. The Institute of Chartered Accountants of India is the concerned authority to issue Accounting Standards, which are mandatory in most of the cases. These Standards provide guidelines for disclosures of financial information to ensure uniformity between companies.

The Securities and Exchange Board of India is the regulatory authority, which issues regulations, rules and guidelines to companies to ensure protection of investors. The companies whose shares are listed on the stock exchanges should comply with additional requirements as mentioned in the listing agreement on a regular basis.

(b) Organization for Economic Cooperation and Development (OECD) developed a set of principles of Corporate Governance which are internationally recognized to serve as good benchmarks. Comment.

Answer:

The governance mechanism differs in each country and is shaped by its political, economic and social history as also by its legal framework. With keen interest shown by organizations like World Bank, Asian Development Bank etc.,

Organization for Economic Cooperation and Development (OECD) developed a set of principles of Corporate Governance which are internationally recognized to serve as good benchmarks.

They are discussed below:

(a) The Basis of an Effective Corporate Governance Framework

The corporate governance framework should promote transparent and efficient markets, be consistent with the rule of law, and clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities.

(b) Rights of Shareholders and Key Ownership Functions

The corporate governance framework should protect and facilitate the exercise of shareholders' rights. Seven core principles in this category spell out the various rights of shareholders and call for effective shareholder participation in key corporate governance decisions.

(c) Equitable Treatment of Shareholders

The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights.

(d) Role of Stakeholders in Corporate Governance

The corporate governance framework should recognize the rights of stakeholders established by law or through mutual agreements and should encourage active cooperation between corporations and stakeholders in creating wealth, jobs and sustainability of financially sound enterprises.

(e) Disclosure and Transparency

The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters with respect to the corporation, including the financial situation, performance, ownership, and governance of the company.

(f) Responsibilities of the Board

The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board and the board's accountability to the company and the shareholders. The advisory group on CG attempted to compare the status of corporate governance in India vis-a-vis the internationally recognized best standards and suggested to improve corporate governance standards in India.

Question 27:

(g) Can governance be extended to unlisted companies? Discuss.

Answer:

There is generally an incorrect perception that 'unlisted' or 'closely held' companies are small, mostly family run and relatively insignificant part of the corporate sector when it comes to policymaking and regulation relating to their governance. Undoubtedly, this group includes a vast proportion of such small and medium size entities but it is also home to several very substantial corporations which qualify as unlisted only by virtue of their ownership structures notwithstanding their revenues, profits, employee population, customer and vendor base, and sourcing of funds from banks and financial institutions. Illustratively, a Reserve Bank of India study of finances of select private limited companies (covering 6.8% of the paid up capital of all private limited companies at work) as of March 2012 indicated that the ratio of total borrowings (including both long and short term funds)to equity was 74.1 to 25.9; in other words, three fourths of the finances of these companies were borrowed from banks and financial institutions, and as such there was nothing strictly private about these companies except their ownership that was closely held. Many of these private limited companies would be joint ventures, wholly owned subsidiaries, venture-capital or other investor assisted units, and so on. Several companies in these groups may well be aspiring for listed status in the near future; ironically, the group would also include companies that preferred to delist from stock exchanges for whatever reason. A major thrust of the Act has been to extend several good governance practices to the unlisted segment of corporate business. As of December 2012, there were 852,957 companies at work comprising 806,666 private limited companies and 66,291 public limited companies; of these, about 6500 (10%) public companies were listed on the two major Indian stock exchanges. Given their predominant contribution to a nation's economy and employment potential, not to mention their extensive use of borrowed funds to sustain their operation, adoption of good corporate governance practices voluntarily or by legislation will likely help to improve their performance and reputational perceptions. Recognising these imperatives, guidelines have already been issued for such companies in Europe and the UK. Due allowance has also been made to minimise the costs of governance by segregating smaller from the relatively larger unlisted companies in these guidelines.

In India, while SEBI over the last decade and more has gradually strengthened regulatory requirements in respect of listed companies, the vast unlisted segment has received virtually no major policy interventions in this regard. The 2013 Act has taken the first steps to bridge this enormous vacuum by extending several good governance practices to the unlisted companies segment.

The Act and the rules framed there under reckon several criteria thresholds for extending application of such governance practices to unlisted companies. Primarily, these are based on paid-up capital and net worth, sales revenue, profits after tax, number of shareholders, deposit holders and debt security holders, and the extent of bank and other borrowings. Threshold levels of course will have to be such that they ensure additional costs of governance are commensurate with desired levels of benefits to the companies themselves and their stakeholders. There are daunting problems ahead: appropriate capacity building exercises have to be undertaken, both in getting these companies' buy-in to the new measures (based on their value-add to them rather than on threat of punishment for non-compliance) and in enlarging the pool of independent directors, and other key management personnel to take up the relevant responsibilities.

(h) Discuss about the advantages and disadvantages of the Family Businesses over Non-Family Businesses.

Answer:

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:

(a) 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.

(b) 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.

(c) 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.

(d) Mutual trust: Family businesses thrive on mutual trust and believe in maintaining long-term relationships by providing a conducive, supportive and trusting work environment.

Disadvantages of the Family Businesses over Non-Family Businesses are:

(a) Staff recruitment: External talent can be reluctant to join the family businesses as they would not enjoy the same freedom that the other businesses offer.

(b) Raising funds for growth: Access to capital is required to grow and evolve. However, it is difficult to raise the required funds for the family businesses than non-family businesses.

(c) Family conflicts: Conflict among the family members is the major setback for the family businesses.

(d) Ownership vs Management: Separating the ownership from the management and reaching a consensus on the roles of family members in the business are two important issues for the family businesses to address.

Study Note 9 – Social, Environmental and Economic Responsibilities of Business

Question 28:

(a) Discuss the National Voluntary Guidelines on "Businesses should provide goods and services that are safe and contribute to sustainability throughout their life cycle".

Answer:

The principle emphasizes that in order to function effectively and profitably, businesses should work to improve the quality of life of people.

The principle recognizes that all stages of the product life cycle, right from design to final disposal of the goods and services after use, have an impact on society and the environment. Responsible businesses, therefore, should engineer value in their goods and services by keeping in mind these impacts.

Core Elements

(a) Businesses should assure safety and optimal resource use over the life cycle of the product from design to disposal and ensure that everyone connected with itviz., designers, producers, value chain members, customers and recyclers are aware of their responsibilities.

(b) Businesses should raise the consumers' awareness of their rights through education, product labelling, appropriate and helpful marketing communication, full details of contents and composition and promotion of safe usage and disposal of their products and services.

(c) In designing the product, businesses should ensure that the manufacturing processes and technologies required to produce it are resource efficient and sustainable.

(d) Businesses should regularly review and improve upon the process of new technology development, deployment and commercialization, incorporating social, ethical and environmental considerations.

(e) Businesses should recognize and respect the rights of people who may be owners of traditional knowledge and other forms of intellectual property.

(f) Businesses should recognize that over consumption results in unsustainable exploitation of our planet's resources and should therefore promote sustainable consumption, including recycling of resources.

(b) CSR has a global perspective. Comment

Answer:

While there may be no single universally accepted definition of CSR, each definition that currently exists underpins the impact that businesses have on society at large and the societal expectations of them. Although the roots of CSR lie in philanthropic activities (such as donations, charity, relief work, etc.) of corporations, globally, the concept of CSR has evolved and now encompasses all related concepts such as triple bottom line [Triple bottom line (or otherwise noted as TBL or 3BL) is an accounting framework with three parts: social, environmental (or ecological) and financial.], corporate citizenship, philanthropy, strategic philanthropy, shared value, corporate sustainability and business responsibility. This is evident in some of the definitions presented below:

The European Commission (EC) defines CSR as "the responsibility of enterprises for their impacts on society". To completely meet their social responsibility, enterprises "should have in place a

process to integrate social, environmental, ethical human rights and consumer concerns into their business operations and core strategy in close collaboration with their stakeholders" The

World Business Council for Sustainable Development (WBCSD) defines CSR as "the continuing commitment by business to contribute to economic development while improving the quality of life of the workforce and their families as well as of the community and society at large."

According to the United Nations Industrial Development Organization (UNIDO), "Corporate social responsibility is a management concept whereby companies integrate social and environmental concerns in their business operations and interactions with their stakeholders. CSR is generally understood as being the way through which a company achieves a balance of economic, environmental and social imperatives (Triple Bottom Line Approach), while at the same time addressing the expectations of shareholders and stakeholders. In this sense it is important to draw a distinction between CSR, which can be a strategic business management concept and charity, sponsorships or philanthropy. Even though the latter can also make a valuable contribution to poverty reduction, will directly enhance the reputation of a company and strengthen its brand, the concept of CSR clearly goes beyond that."

From the above definitions, it is clear that:

(a) The CSR approach is holistic and integrated with the core business strategy for addressing social and environmental impacts of businesses.
(b) CSR needs to address the wellbeing of all stakeholders and not just the company's shareholders.
(c) Philanthropic activities are only a part of CSR, which otherwise constitutes a much larger set of activities entailing strategic business benefits.

Question 29:

(a) State the benefits of CSR programme.

Answer:

As the business environment gets increasingly complex and stakeholders become vocal about their expectations, good CSR practices can only bring in greater benefits, some of which are as follows:

(a) Communities provide the licence to operate: Apart from internal drivers such as values and ethos, some of the key stakeholders that influence corporate behaviour include governments (through laws and regulations), investors and customers. In India, a fourth and increasingly important stakeholder is the community and many companies have started

realising that the 'licence to operate' is no longer given by governments alone, but communities that are impacted by a company's business operations. Thus, a robust CSR programme that meets the aspirations of these communities not only provides them with the licence to operate, but also to maintain the licence, thereby precluding the 'trust deficit'.

(b) **Attracting and retaining employees:** Several human resource studies have linked a company's ability to attract, retain and motivate employees with their CSR commitments. Interventions that encourage and enable employees to participate are shown to increase employee morale and a sense of belonging to the company.

(c) **Communities as suppliers:** There are certain innovative CSR initiatives emerging, wherein companies have invested in enhancing community livelihood by incorporating them into their supply chain. This has benefitted communities and increased their income levels, while providing these companies with an additional and secure supply chain.

(d) **Enhancing corporate reputation:** The traditional benefit of generating goodwill, creating a positive image and branding benefits continue to exist for companies that operate effective CSR programmes. This allows companies to position themselves as responsible corporate citizens.

(b) What are the initiatives undertaken in India regarding E-governance?

Answer:

Recognising the increasing importance of electronics, the Government of India established the Department of Electronics in 1970. The subsequent establishment of the National Informatics Centre (NIC) in 1977 was the first major step towards e-Governance in India as it brought 'information' and its communication in focus. In the early 1980s, use of computers was confined to very few organizations. The advent of personal computers brought the storage, retrieval and processing capacities of computers to Government offices. By the late 1980s, a large number of government officers had computers but they were mostly used for 'word processing'. Gradually, with the introduction of better softwares, computers were put to other uses like managing databases and processing information. Advances in communications technology further improved the versatility and reach of computers and many Government departments started using ICT for a number of applications like tracking movement of papers and files, monitoring of development programmes, processing of employees' pay rolls, generation of reports etc.

However, the main thrust for e-Governance was provided by the launching of National Informatics Centre Network (NICNET) in 1987, the national satellite based computer network. This was followed by the launch of the District Information System of the National Informatics Centre

(DISNIC) programme to computerize all district offices in the country for which free hardware and software was offered to the State Governments. NICNET was extended via the State capitals to all district headquarters by 1990.

In the ensuing years, with ongoing computerization, teleconnectivity and internet connectivity, came a large number of e-Governance initiatives, both at the Union and State levels. A National Task Force on Information Technology and Software Development was constituted in May 1998. While recognising Information Technology as a frontier area of knowledge per se, it focused on utilizing it as an enabling tool for assimilating and processing all other spheres of knowledge. It recommended the launching of an 'Operation Knowledge' aimed at universalizing computer literacy and spreading the use of computers and IT in education. In 1999, the Union Ministry of Information Technology was created. By 2000, a 12-point minimum agenda for e-Governance was identified by Government of India for implementation in all the Union Government Ministries/Departments. The agenda undertaken which is adapted from Minimum Agenda for e-Governance in the Central Government has included the following action points:

(i) Each Ministry/Department must provide PCs with necessary software up to the Section Officer level. In addition, Local Area Network (LAN) must also be set up.

(ii) It should be ensured that all staff, who have access to and need to use computer for their office work are provided with adequate training. To facilitate this, inter alia, Ministries/Departments should set-up their own or share other's Learning Centres for decentralized training in computers as per the guidelines issued by the Ministry.

(iii) Each Ministry/Department should start using the Office Procedure Automation software developed by NIC with a view to keeping a record of receipt of dak, issue of letters, as well as movement of files in the department.

(iv) Pay roll accounting and other house-keeping software should be put to use in day-to-day operations.

(v) Notices for internal meetings should be sent by e-mail. Similarly, submission of applications for leave and for going on tour should also be done electronically. Ministries/Departments should also set up online notice board to display orders, circulars etc., as and when issued.

(vi) Ministries/Departments should use the web-enabled Grievance Redressal Software developed by the Department of Administrative Reforms and Public Grievances.

(vii) Each Ministry/Department should have its own website.

(viii) All Acts, Rules, Circulars must be converted into electronic form and along with other published material of interest or relevance to the public, should be made available on the internet and be accessible from the Information and Facilitation Counter.

(ix) The websites of Ministries/Departments/Organisations should specifically contain a section in which various forms to be used by citizens/customers are available. The forms should be available for being printed or for being completed on the computer itself and then printed out for submission. Attempts should also be made to enable completion and submission of forms online.

(x) The Hindi version of the content of the websites should as far as possible be developed simultaneously.

(xi) Each Ministry/Department would also make efforts to develop packages so as to begin electronic delivery of services to the public.

(xii) Each Ministry/Department should have an overall IT vision or strategy for a five year period, within which it could dovetail specific action plans and targets (including the minimum agenda) to be implemented within one year.

Short Notes

Question 30:

(a) Rectification of name of memorandum

Answer:

Central government to issue direction

According to Section 16 of the Companies Act, 2013, the Central Government is empowered to give direction to the company to rectify its name (Where the name is identical with or too nearly resembles the name by which a company in existence had been previously registered, or the name is identical with or too nearly resembling to a registered trade mark) within a period of 3 months or 6 months, as the case may be, from the issue of such direction by passing an ordinary resolution.

Notice of change to the registrar

Where a company changes its name or obtains a new name, it shall within a period of 15 days from the date of such change, give notice of the change to the Registrar along with the order

of the Central Government, who shall carry out necessary changes in the certificate of incorporation and the memorandum.

Default in compliance with the direction

If a company makes default in complying with any direction:

Liable person	Penalty/punishment
Company	Fine of 1,000 rupees for every day during which the default continues
Every Officer who is in default	Fine varying from 5,000 rupees to 1 lakh rupees.

(b) General restrictions or prohibitions for a Nidhi Company

Answer:

No Nidhi company shall:

(c) carry on the business of chit fund, hire purchase finance, leasing finance, insurance or acquisition of securities issued by any body corporate.

(d) issue preference shares, debentures or any other debt instrument by any name or in any form whatsoever.

(e) open any current account with its members.

(f) acquire another company by purchase of securities or control the composition of the Board of Directors of any other company in any manner whatsoever or enter into any arrangement for the change of its management, unless it has passed a special resolution in its general meeting and also obtained the previous approval of the Regional Director having jurisdiction over such Nidhi.

(g) carry on any business other than the business of borrowing or lending in its own name. Provided that Nidhis which have adhered to all the provisions of these rules may provide locker facilities on rent to its members subject to the rental income from such facilities not exceeding twenty per cent of the gross income of the Nidhi at any point of time during a financial year.

(h) accept deposits from or lend to any person, other than its members.

(i) pledge any of the assets lodged by its members as security.

(j) take deposits from or lend money to anybody corporate.

(k) enter into any partnership arrangement in its borrowing or lending activities.

(l) issue or cause to be issued any advertisement in any form for soliciting deposit.

(m) pay any brokerage or incentive for mobilising deposits from members or for deployment of funds or for granting loans.

(c) Punishment for failure to distribute dividends

Answer:

Section 127 of Companies Act, 2013 states that

(a) 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 thirty 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, be punishable with imprisonment which may extend to two years.

(b) He shall also be liable for a fine which shall not be less than ₹ 1,000 rupees for every day during which such default continues.

(c) 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.

(d) However, the following are the exceptions under which no offence shall be deemed to have been committed:

 (1) where the dividend could not be paid by reason of the operation of any law.

 (2) where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has been communicated to him.

 (3) where there is a dispute regarding the right to receive the dividend.

 (4) where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder, or

 (5) where, for any other reason, the failure to pay the dividend or to post the warrant within the period under this section was not due to any default on the part of the company.

This section shall apply to the Nidhis company, subject to that where the dividend payable to a member is one hundred rupees or less, it shall be sufficient compliance of the provisions of the section, if the declaration of the dividend is announced in the local language in one local newspaper of wide circulation and announcement of the said declaration is also displayed on the notice board of the Nidhis for at least three months [Vide Notification no. 465(E) dated 5th June 2015].

(d) Minutes of General Meeting or Board Meeting

Answer:

Section 118 of the Companies Act, 2013 imposes a statutory obligation on every company to cause minutes of all proceedings of general meetings, board meetings and other meeting and resolution passed by postal ballot.

However, vide Notification No.G.S.R.466(E) dated 05th June, 2015, this Section shall not apply as a whole to Section 8 companies except the minutes may be recorded within 30 days of the conclusion of every meeting in case of companies where the articles of association provide for confirmation of minutes by circulation.

According to the Section, every company shall cause minutes of the proceedings of every general meeting of any class of shareholders or creditors, and every resolution passed by postal ballot and every meeting of its Board of Directors or of every Committee of the Board, to be prepared and signed in such manner as may be prescribed and kept within thirty days of the conclusion of every such meeting concerned, or passing of resolution by postal ballot in books kept for that purpose with their pages consecutively numbered [Section 118(1)]

The minutes of each meeting shall contain a fair and correct summary of the proceedings there at. [Section 118(2)].

All appointments made at any of the meetings aforesaid shall be included in the minutes of the meeting [Section 118(3)].

The Chairman shall exercise absolute discretion in regard to the inclusion or non-inclusion of any matter in the minutes [Section 118(6)].

The minutes kept in accordance with the provisions of this Section shall be evidence of the proceedings recorded therein [Section 118(7)].

As per Section 118(10), every company shall observe Secretarial Standards with respect to general and board meetings specified by the Institute of Company Secretaries of India constituted under Section 3 of the Company Secretaries Act, 1980 and approved as such by the Central Government. Accordingly, upon receipt of approval of MCA, ICSI has notified two Secretarial Standards viz. SS-1: Meetings of the Board of Directors and SS-2: General Meetings vide Notification ICSI No.1(SS) of 2015 dated 23rd April, 2015.

(e) 'Information Utilities' under Insolvency and Bankruptcy Code, 2016

Answer:

The Insolvency and Bankruptcy professionals are expected to function on basis of financial information available electronically. Information Utility will collect, collate, authenticate and

disseminate financial information to be used in insolvency, liquidation and bankruptcy proceedings.

"Information utility" means a person who is registered with the 'Insolvency and Bankruptcy Board of India' (Board) as an information utility under Section 210 of Insolvency and Bankruptcy Code, 2016 - Section 3(21) of Insolvency and Bankruptcy Code, 2016. They will have to be registered with Board - Section 209 of Insolvency and Bankruptcy Code, 2016.

The information utility shall provide services as may be specified by Board. It will also provide core services to any person if such person complies with terms and conditions as may be specified in regulations - Section 213 of Insolvency and Bankruptcy Code, 2016.

"Core services" means services rendered by an information utility for –
(a) accepting electronic submission of financial information in such form and manner as may be specified
(b) safe and accurate recording of financial information
(c) authenticating and verifying the financial information submitted by a person; and
(d) providing access to information stored with the information utility to persons as may be specified - Section 3(9) of Insolvency and Bankruptcy Code, 2016.

(f) 'Related party' in relation to a Corporate Debtor

Answer:

According to Insolvency and Bankruptcy Code, 2016, **Related party**, in relation to a corporate debtor, means—
(a) a director or partner or a relative of a director or partner of the corporate debtor
(b) a key managerial personnel or a relative of a key managerial personnel of the corporate debtor;
(c) a limited liability partnership or a partnership firm in which a director, partner, or manager of the corporate debtor or his relative is a partner;
(d) a private company in which a director, partner or manager of the corporate debtor is a director and holds along with his relatives, more than two per cent, of its share capital;
(e) a public company in which a director, partner or manager of the corporate debtor is a director and holds along with relatives, more than two per cent, of its paid-up share capital;
(f) anybody corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;
(g) any limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;

(h) any person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act;
(i) a body corporate which is a holding, subsidiary or an associate company of the corporate debtor, or a subsidiary of a holding company to which the corporate debtor is a subsidiary;
(j) any person who controls more than twenty per cent, of voting rights in the corporate debtor on account of ownership or a voting agreement;
(k) any person in whom the corporate debtor controls more than twenty per cent, of voting rights on account of ownership or a voting agreement;
(l) any person who can control the composition of the board of directors or corresponding governing body of the corporate debtor;
(m) any person who is associated with the corporate debtor on account of—
   (i) participation in policy making processes of the corporate debtor; or
   (ii) having more than two directors in common between the corporate debtor and such person; or
   (iii) interchange of managerial personnel between the corporate debtor and such person; [Section 5(24)]

(g) Licensing of Banking Companies

Answer:

(a) According to Section 22 of Banking Regulation Act, 1949, no banking company can commence or carry on banking business in India unless it holds a licence granted to it by the Reserve Bank for the purpose. This section states the following requirements for granting licence:
   (1) Necessity of licensing and mode of applying for it.
   (2) Conditions for granting of licenses.
   (3) Cancellation of licenses and appeals from such orders.

(b) Before granting any license under this section, the Reserve Bank may require to be satisfied by an inspection of the books of the company that the following conditions are satisfied:
   (1) that the company is in a position to pay its present or future depositors in full as their claims accrue.
   (2) that the affairs of the company are not likely to be conducted in a manner detri-mental to the interests of its present or future depositors.
   (3) in the case of the carrying on of banking business by such company in India will be in the public interest and that the government or laws of the country in which it is incorporated does not discriminate in any way against banking companies registered in India and that the company complies with all the provisions of this Act, applicable to banking companies incorporated outside India. However, RRBs have been established

under a separate Act of Parliament, viz., RRBs Act 1976 and not under Banking Regulation Act.

(c) The Reserve Bank may cancel a license granted to a banking company under this section:
   (1) If the company ceases to carry on banking business in India, or
   (2) If the company at any time fails to comply with any of the conditions imposed upon it, or
   (3) Any banking company aggrieved by the decision of the Reserve Bank cancelling a licence under this section may, within thirty days from the date on which such decision is communicated to it, appeal to the Central Government. The decision of the Central Government shall be final.

Thus, every banking company which likes to start banking business in India must obtain licence from RBI. While on this section, it would be relevant to take note of the guidelines announced by the Reserve Bank of India during 2016 for licensing of new Banks. The salient features of the guidelines are provided at annexure I to this chapter. It is stated that the licences from Reserve Bank of India would now be available on tap, meaning that there is no specific period when the applications could be made. During the year 2015, two licences were issued by the Reserve Bank of India viz. for Bandhan Bank Limited and IDFC Bank Limited. It is expected that some of the prominent Non Banking Finance Companies may apply for conversion as banks under this provision. During the last year, the Reserve Bank also announced a few licences for payment banks which are yet to be implemented.

(h) Procedure for investigation of combination

Answer:

Section 29 of Competition Act, 2002 states that -

Meaning of Combination: It is the acquisition of one or more companies by one or more people or merger or amalgamation of enterprises shall be treated as 'Combination' of such enterprises and Persons in the following cases:
(a) acquisition by large enterprises;
(b) acquisition by group;
(c) acquisition of enterprise having similar goods/services;
(d) acquisition enterprise having similar goods/services by a group;
(e) merger of enterprises;
(f) merger in group company

Notice to parties: Where the Commission is of the prima-facie opinion that a combination is likely to cause, or has caused an appreciable adverse effect on competition within the relevant

market in India, it shall issue a notice to show cause to the parties to combination calling upon them to respond within thirty days of the receipt of the notice, as to why investigation in respect of such combination should not be conducted. After receipt of the response of the parties to the combination under sub- Section (1), the Commission may call for a report from the Director General and such report shall be submitted by the Director General within such time as the Commission may direct.

Directions to parties to publish details: The Commission, if it is prima facie of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall, within seven working days from the date of receipt of the response of the parties to the combination, or the receipt of the report from the Director General whichever is later direct the parties to the said combination to publish details of the combination within ten working days of such direction, in such manner, as it thinks appropriate, for bringing the combination to the knowledge or information of the public and persons affected or likely to be affected by such combination (Sub-Section 2).

Invitation to affected party: The Commission may invite any person or member of the public, affected or likely to be affected by the said combination, to file his written objections, if any, before the Commission within fifteen working days from the date on which the details of the combination were published.

Additional information: The Commission may, within fifteen working days from the expiry of the period specified before, call for such additional or other information as it may deem fit from the parties to the said combination. The additional or other information called for by the Commission shall be furnished by the parties to the combination within fifteen days from the expiry of the above specified period. After receipt of all information and within a period of forty-five working days from the expiry of the period for additional information, the Commission shall proceed to deal with the case of accordance within the provisions contained in Section 31.

(i) Procedure and Powers of the Securities Appellate Tribunal

Answer:

The powers and procedures of the Securities Appellate Tribunal have been given under Section 15U of SEBI Act, 1992. The Securities Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules. The Securities Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings. The Securities Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under

the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:

(a) summoning and enforcing the attendance of any person and examining him on oath.
(b) requiring the discovery and production of documents.
(c) receiving evidence on affidavits.
(d) issuing commissions for the examination of witnesses or documents.
(e) reviewing its decisions.
(f) dismissing an application for default or deciding it ex parte.
(g) setting aside any order of dismissal of any application for default or any order passed by it ex parte.
(h) any other matter which may be prescribed.

Every proceeding before the Securities Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for the purposes of Section 196 of the Indian Penal Code (45 of 1860) and the Securities Appellate Tribunal shall be deemed to be a civil court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

The appellant in the Securities Appellate Tribunal may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Securities Appellate Tribunal. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an adjudicating officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by an court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

(j) OECD Principles of Corporate Governance

Answer:

In response to a call by its council, the OECD issued the OECD Principles of Corporate Governance in 1999 after extensive consultations. These were later revised in 2004 following a comprehensive survey of corporate governance practices in and outside the OECD area. Since their launch, the principles have formed the basis for corporate governance initiatives in both OECD and non-OECD countries alike. They represent the minimum standard that countries with different traditions have agreed on, being applicable to countries with a civil and common law tradition without being unduly prescriptive.

The principles have been devised with four fundamental concepts in mind: responsibility, accountability, fairness and transparency and enabling diversity of rules and regulations. They outline the following:

(1) the basis for an effective corporate governance framework.
(2) the rights of shareholders.
(3) equitable treatment of shareholders.
(4) the role of stakeholders in corporate governance.
(5) disclosure and transparency, and
(6) the responsibilities of the board.

The **2004 revisions** covered four main areas:

(1) a new set of principles on the development of regulatory framework to underpin corporate governance mechanisms for implementation and enforcements.
(2) additional principles to strengthen the exercise of informed ownership by shareholders that call on institutional investors to disclose their corporate governance policies and to strengthen the rights of shareholders when choosing Board members.
(3) strengthened principles to reinforce Board oversight and enhance Board members' independent judgment, and
(4) new and strengthened principles to contain conflicts of interest through enhanced disclosure and transparency (for example, on related party transactions), thus making auditors more accountable to shareholders and promoting auditors' independence.