

## **Paper 13 – Corporate Laws and Compliance**

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**Full Marks : 100**

**Time allowed: 3 hours**

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

**1. Answer any 4 from the below**

**[4x5=20]**

- (a) Mr. Singh is a director of Fulcrum Ltd. He has approached Housing Finance Co. Ltd. for the purpose of obtaining a loan of ₹ 50 lacs to be used for construction of building his residential house. The loan was sanctioned subject to the condition that Fulerton Ltd. should provide the guarantee for repayment of loan installments by Mr. Singh. Advise Mr. Singh.**
- (b) A Director claims that he may leave the company any time merely by submitting his resignation without waiting for its acceptance. Discuss whether it is acceptable and valid?**
- (c) DDJ Limited was incorporated on 5th May, 2014 under the Companies Act, 2013. Mr. Dutt was appointed as the first Resident Director of the Company in the Board Meeting held on 30th September, 2014. Examine the validity of the following appointment with reference to the provisions of the Companies Act, 2013.**
- (d) Viewtron Ltd. was incorporated on 1st January, 2012. On 1st July, 2014 a political party approaches the company for a contribution of ₹ 12 lakh for political purpose. Is the company legally authorised to give this political contribution under The Companies Act, 2013?**
- (e) Mr. Amrit is a director in State Bank of India. On the ground of his misconduct to the interest of the depositors, the Reserve Bank of India terminates his service. Decide whether the Reserve Bank of India can do so under the Banking Regulation Act, 1949.**

**Answer:**

- 1. (a) According to Section 185 of the Companies Act, 2013, no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person. Thus, Mr. Singh is not allowed for loan of ₹ 50 lacs against guarantee by the company Fulerton Ltd.
- (b) A resignation once communicated to the company need not be accepted by the Board of Directors. There is misconception that any resignation has to be accepted. The resignation is effective of the date if any date is specified in his letter of resignation. If no date is specified, it becomes effective only from the time when the letter of resignation is received by the company. But a whole-time director being an employee, resignation cannot be effective unless the resignation is accepted.
- (c) As per Section 149(3) of the Companies Act, 2013, every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty two days in the previous calendar year. The MCA vide General Circular No. 25/2014 dated 26th June, 2014 has given a clarification on applicability of requirement for resident director in the current calendar/financial year. Regarding newly incorporated companies, it is clarified that companies incorporated between

1st April, 2014 to 30th September, 2014 should have a resident director either at the incorporation stage itself or within six months of their incorporation. Since, DDJ Ltd. was incorporated on 5th May 2014, it should have a resident director either at the incorporation stage itself or within six months of their incorporation. Thus accordingly, the appointment of Mr. Dutt as a first Resident Director of the company in the Board Meeting held on 30th September 2014 is valid.

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

(e) Under section 36AA of the Banking Regulation Act, 1949, RBI can terminate any Chairman, Director, Chief Executive, other officials or any employee of the bank where it considers desirable to do so particularly when RBI is of the opinion that conduct of such persons is detrimental to the interest of the depositors or for securing proper management of the banking company. Before such termination concerned person should be given opportunity to be heard of. Such terminate officials can make appeal to the Central Govt. within 30 days from the date of communication of such termination order. The decision of the Central Govt. cannot be called into question. In case an order is issued pursuant to this section the concerned person shall cease to hold his office for a period of not exceeding 5 years as may be specified in the order. Contravention of the above provision shall be punishable with a fine, which may extend to ₹ 250 per day.

**2. (a) Sigma Company Ltd. in its Annual General Meeting appointed all its Directors by passing one single resolution. No objection was made to the resolution. Examine the validity of appointment of Directors explaining the relevant provisions of the Companies Act, 2013. Will it make any difference, if Sigma Company was a private company?** **6**

**(b) State what is meant by "Employees" Stock Option"?** **5**

**(c) Pursuant to the provisions of the Companies Act, 2013 which companies are required to constitute a "Nomination and Remuneration Committee"?** **5**

**Answer:**

2. (a) At a general meeting, two or more persons cannot be appointed as directors by a single resolution unless a resolution that appointment shall be so made has first been agreed to by the meeting without any vote being cast against it. A resolution moved in contravention of this provision shall be void, whether or not objection was raised at the time when such resolution was passed (Section 162).

In the present case, all the members passed a single resolution appointing all the directors. The resolution is void since before moving the resolution for appointment of all the directors by a single resolution, no resolution was passed to the effect that all the directors shall be appointed by a single resolution. It is immaterial that no member objected to the appointment of all the directors by a single resolution. Section 162 applies to all companies, whether public or private.

Therefore, the answer would remain same even if Sigma company in the present case is a private company.

- (b) An employee stock option (ESO) is a stock option granted to specified employees of a company. ESOs offer the options holder the right to buy a certain amount of company shares at a predetermined price for a specific period of time. An employee stock option is slightly different from an exchange-traded option, because it is not traded between investors on an exchange.
- (c) As per the provisions of Section 178 of the Companies Act, 2013 a Nomination and Remuneration Committee shall be constituted by the Board of Directors of:
- (a) Every listed company and
  - (b) Such other class or classes of companies as may be provided. The Companies (Meetings of Board and its powers) Rules, 2014 has prescribed the following classes of companies that shall constitute Nomination and Remuneration Committee of the Board:
    - (i) All public companies with a paid up capital of 10 crore rupees or more;
    - (ii) All public companies having a turnover of one hundred crore rupees or more;
    - (iii) All public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more.
- 3. (a) Mr. Samrat, a Cost Accountant and an Independent Director of Ludhiana Auto Ancillaries Ltd. will be abroad for three months from 10-11-2016. The Company wants to appoint Mr. Raghu as an alternate Director in place of Mr. Samrat. Draft a Board Resolution authorising the appointment. 6**
- (b) The promoters of Display Company incorporated on 8th June, 2015 have entered into a contract with on 10th May, 2015 for supply of goods. After incorporation, the company does not want to proceed with the contract. As a company advisor, advise the management of the company, referring to the provisions of the Companies Act, 2013. 5**
- (c) The Articles of Association of Disney Toys Private Limited provide that the maximum number of Directors in the company shall be 10. Presently, the company is having 8 directors. The Board of Directors of the said company desire to increase the number of directors to 16. Advise whether under the provisions of the Companies Act, 2013 the Board of Directors can do so. 5**

**Answer:**

3. (a)

LUDHIANA AUTO ANCILLARIES LTD  
Meeting of the Board of Directors

Resolution on Agenda Item 102.3

Date: 06.11.2016

RESOLVED THAT in pursuance of Sec.161 (2) of the Companies Act,2013 read with Article No..... of the Articles of Association of the Company, MR. Raghu who is not a Director/Alternate Director of the company, be and is hereby appointed as an Alternate Director of the Company in place of Mr. Samrat, an Independent Director for a period of, three months commencing from 10.11.2014 or such further period till the return of Mr. Samrat from abroad but not longer than that permissible to Mr. Samrat for his tenure as a Director in the company.

FURTHER RESOLVED THAT the Board endorses the recommendation of the Appointment and Remuneration Committee of the Board approving on verification the eligibility of Mr. Raghu to be appointed as an Independent Director and who is otherwise not disqualified for appointment.

RESOLVED FURTHER THAT the Company Secretary be and is hereby authorized to file returns and issue notice for appointment of Mr. Raghu in various committee of the Board.

- (b) It is not only the company which is allowed, under the Specific Relief Act, to adopt and enforce its pre-incorporation claims against third parties, Section 19 of the Specific Relief Act also allows, the other party to enforce the contract against the company if
- the company had adopted the same after incorporation, and
  - the contract is warranted by the terms of incorporation. Contracts like preparation and printing of the memorandum, and articles, remunerating the professionals, if any, for securing the registration of the company, renting premises, hiring secretarial staff are envisaged under the Act.

Pre-incorporation contracts in general are void ab-initio, and hence not binding on the company. However, under Section 19(e) of the Specific Relief Act, 1963, the party to the contract can enforce the contract against the company, if:

- The company had adopted the same after incorporation, and
- The contract is warranted by the terms of incorporation.

Thus, unless the company adopts the contract, the other Party cannot enforce the same against the Company. There shall be no personal liability for the Promoter, if the agreement provides that-

- His liability shall cease once the Company adopts the agreement, and
- Either party may rescind the agreement, if the Company does not adopt it within a specified time.

- (c) Under section 149(1) of the Companies Act, 2013 every company shall have a Board of Directors consisting of individuals as directors and shall have a minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company; and a maximum of fifteen directors. The proviso to section 149(1) states that a company may appoint more than fifteen directors after passing a special resolution.

From the, provisions of section 149 (1) as above, though the minimum number of directors may vary depending on whether the company is a public company, private or a one person company, the maximum number of directors is the same for all types at 15 directors. In the given case since the number of directors is proposed to be increased to 16, the company will be required to comply with the following provisions:

- Alter its Articles of Association under section 14 of the Act;
- Authorise the maximum number of directors to 16 by means of a special resolution.

**4. (a) A company wants to include the following clause in its Articles of Association:**

**'Each director shall be entitled to be paid out of the funds of the company for attending meetings of the Board or a Committee thereof including adjourned meeting such sum as sitting fees as shall be determined from time to time by the Directors but not exceeding a sum of ₹ 30,000 for each such meeting to be attended by the Director. You are required to advise the company as to the validity of such a clause and the correct legal position under the provisions of the Companies Act, 2013. 5**

- (b) Suzlon Ltd. declared and paid dividend in time to all its equity holders for the financial year 2014-15. Mrs. Raheza, holding 250 shares had mandated the company to directly deposit the dividend amount in her bank account. The company accordingly remitted the dividend but the bank returned the payment on the ground that there was difference in surname of the payee in the bank records. The company, however, did not inform Mrs. Raheza about this discrepancy. Discuss as per the respective provisions of the Company Law, 2013. 5

- (c) Audit Committee is to be formed by each and every company and the auditor has right to vote in the meeting of such Audit Committee, Comment. 6

**Answer:**

4. (a) The Companies Act, 2013 vide section 197 (5) provides that the sitting fee payable to directors for attending meetings of the Board or committees thereof will be decided by the Board subject to limits prescribed by the Central Government in rules framed in this behalf. The limit prescribed by the Central Government is ₹ 1 Lakh per meeting and may be different for independent and non independent directors. Hence the clause mentioned in articles, is well within the prescribed limits, and it is valid and effectual.
- (b) Section 127 of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time. One of such situations is 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 not been communicated to her. In the given situation, the company has failed to communicate to the shareholder Mrs. Raheza about non-compliance of her direction regarding payment of dividend. Hence, the penal provisions under section 127 will be applicable.
- (c) As per section 177 of the Companies Act, 2013 read with the Companies (Meeting of Board and its Powers) Rules, 2014, audit committee is to be formed by every listed company and following classes of companies:
- (i) All public companies with a paid up capital of ten crore rupees or more,
  - (ii) All public companies having turnover of one hundred crore rupees or more,
  - (iii) All public companies having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more. Further, the auditor shall have the right to be heard in the meetings of the Audit Committee when it considers the Auditor's Report but shall not have the right to vote.
5. (a) **What do you mean by "Spot Delivery Contract"?** **5**
- (b) **What do you mean by "Power System" according to The Indian Electricity Act, 1910?** **5**
- (c) **An arrangement has been made among the cotton producers that the cotton produced by them will not be sold to mills below a certain price. The arrangement is in writing but it is not intended to be enforced by legal proceeding. Examine whether the said arrangement can be considered as an agreement within the meaning of Section 2(b) of the Competition Act, 2002.** **6**

**Answer:**

5. (a) "Spot Delivery Contract" as per The Securities Contracts (Regulation) Act, means a contract which provides for:
- (i) actual delivery of securities and the payment of a price therefore either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefore through the post being excluded from the computation of the period aforesaid if the parties for the contract do not reside in the same town or locality;
  - (ii) Transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository.
- (b) "Power System" under The Indian Electricity Act, 1910 means all aspects of generation, transmission, distribution and supply of electricity and includes one or more of the following, namely:
- (i) generating stations
  - (ii) transmission or main transmission lines

- (iii) sub-stations
- (iv) load despatch activities
- (iv) electric supply lines
- (v) mains or distribution mains
- (vii) overhead lines
- (viii) service lines
- (ix) works.

(c) As per section 2(b) of the Competition Act, 2002, an agreement includes any arrangement or understanding or action in concert:

- (i) Whether or not, such arrangement, understanding or action is format or in writing; or
- (ii) Whether or not, such arrangement, or understanding or action is intended to be enforceable by legal proceedings. In the given case the understanding reached among the cotton producers not to sell below a certain price shall amount to an agreement as defined under section 2(b) notwithstanding the fact that through the arrangement is in writing but not intended to be enforced by legal proceeding.

**6. (a) What are Non performing Asset under the SARFAESI ACT , 2002? 5**

**(b) In what way does the Reserve Bank of India regulate the determination of the loans and advances which can be made by a banking company under the Banking Regulation Act, 1949? 6**

**(c) Mr. Hamid is an exporter of goods and services. Explain his duties under Foreign Exchange Management Act, 1999 regarding realization and repatriation of Foreign Exchange on such exports. 5**

**Answer:**

6. (a) Non performing asset means an asset or account of a borrower, which has been classified by a bank or financial institution, as sub-standard, doubtful or loss asset.

- In case such bank or financial institution is administered or regulated by any authority or body established, constituted or appointed by any law for the time being in force in accordance with the directions or guidelines relating to asset classification issued by such authority or body,
- In any other case, in accordance with the directions or guidelines relating to asset classification issued by RBI.

(b) Power of RBI to regulate determination of loans and advances by banking companies:

By virtue of provisions of Banking Regulations Act, 1949 as contained in Section 21 the RBI is empowered to issue directives to a banking company to determine the policy in relation to loans and advances. Such direction may relate to:

- (1) Purpose for which loan may or may not be made.
- (2) Margin stipulation.
- (3) Maximum amount of advances to any company, firm individual or association of persons (at present 15% for individual borrower without infrastructure project, if infrastructure project go by additional 10%, 40% for group borrower and for infrastructure project of group borrower it may be up to 50% of bank's capital and reserve (presently tier-I & tier-II capital from capital adequacy point of view.)
- (4) Maximum amount of guarantee liability on behalf of any individual firm/company.
- (5) The rate of interest and other terms and conditions on which such advances are made or guarantee given. It may further be mentioned that in accordance with

the provisions of Section 21A, rate of interest charged by banking company on the basis of loan contract between the bank and debtor is not to be subject to scrutiny by the court.

- (c) As per the provisions of FEMA Act, 1999, every exporter of goods shall;
- Furnish to the Reserve Bank or to such other authority a declaration in such form and in such manner as may be specified, containing true and correct material particulars, including the amount representing the full export value or, if the full export value of the goods is not ascertainable at the time of export, the value which the exporter, having regard to the prevailing market conditions, expects to receive on the sale of the goods in a market outside India;
  - Furnish to the Reserve Bank such other information as may be required by the Reserve Bank for the purpose of ensuring the realization of the export proceeds by such exporter.
- Every exporter of services shall furnish to the Reserve Bank or to such other authorities a declaration in such form and in such manner as may be specified, containing the true and correct material particulars in relation to payment for such services.

**7. (a) State the main features of the qualified and Independent Audit Committee set up under clause 49 of the listing agreement. 8**

**(b) Explain the power of Securities and Exchange Board to regulate, issue and transfer of securities under Companies Act, 2013. 8**

**Answer:**

7. (a) The main features of a qualified and independent audit committee to be set up under clause 49 of listing agreement are as follows:
1. The audit committee shall have minimum three directors as members. Two-thirds of the members of audit committee shall be independent directors;
  2. All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise;  
Explanation (i): The term "financially literate" means the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows.  
Explanation (ii): A member will be considered to have accounting or related financial management expertise if he or she possesses experience in finance or accounting, or requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.
  3. The Chairman of the Audit Committee shall be an independent director;
  4. The Chairman of the Audit Committee shall be present at Annual General Meeting to answer shareholder queries;
  5. The Audit Committee may invite such of the executives, as it considers appropriate (and particularly the head of the finance function) to be present at the meetings of the committee, but on occasions it may also meet without the presence of any executives of the company. The finance director, head of internal audit and a representative of the statutory auditor may be present as invitees for the meetings of the audit committee;
  6. The Company Secretary shall act as the secretary to the committee.
- (b) Section 24 of the Companies Act, 2013 seeks to provide that issue and transfer of securities etc of the listed companies/companies which intend to get their securities

listed shall be administered by SEBI and the Central Government, as required. The section says that –

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

(a) Where the provisions relate to

(i) issue and transfer of securities and

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

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

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

**8. (a) What are the advantages of a formal governance structure? 8**

**(b) Analyse "Corporate Social Responsibility" as a Corporate Brand. 8**

**Answer:**

8. (a) The advantages of a formal governance structure are several. First of all, there is defined structure with defined channels for decision making and clear lines of responsibility. Secondly, the board can tackle are as that may be sensitive from a family viewpoint but which nonetheless need to be dealt with succession planning is a case in point (deciding who would be best to fill key roles in the business should the existing incumbents move on, retire, or die). Succession planning is important too in the context of raising external equity because, once a family business starts to seek external equity investment, then shareholders will usually want to know that succession planning is in place. The third advantage of a formal governance structure is also one in which external shareholders would take a keen interest: the appointment of non executive directors. It may be that the family firm, depending on its size, appoints just one, or maybe two, non executive directors. The key point about the non executive director appointments is that the persons appointed should be independent; it is this trait that will make their contribution to the family firm a significant one. Of course, the independent non-executive directors should be appointed on the basis of the knowledge and experience that they can bring to the family firm.

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

Responsibility is the set of standards which is used by organizations to make a positive contribution to the society. In the recent decades managers are trying to find out the ways in which they can help the businesses to work for the development of the society and economy. Some stakeholder groups emphasis to set the policies in companies to take care of Corporate Social Responsibility activities. Stakeholders include not only the shareholders of organization but it also includes employees, customers, suppliers, producers, Government and Non-Governmental organizations.

Organizations have started to use CSR activities not for just to benefit the society but they also started to use it create good image in the eyes of customer and other stakeholders. Organizations can use Corporate Social Responsibility to create the competitive advantage for them. Organizations are well aware of fact that due to ecological and social changes the way they operate must also be change. Not only customers but employees also want to work for the organization which is indulged in Corporate Social Responsibility activities.

The image of the brand must be strong, unique and favourable in order to form informational nodes which are linked with brand nodes in associative network. In the last two decades many researches has been conducted to find out the effect of Corporate Social Responsibility activities on brand equity, performance of firm, consumer attitude, brand personality, and on many other factors".