

**Paper 13- Corporate Laws and Compliance**



## Paper-13: Corporate Laws and Compliance

Full Marks: 100

Time allowed:3 hours

### Section A

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

#### Multiple choice question

- (i) A company shall have its Registered Office from the date \_\_\_\_\_ of its incorporation
- (A) 7<sup>th</sup> day
  - (B) 15<sup>th</sup> day
  - (C) 30<sup>th</sup> day
  - (D) One Month
- (ii) Board of every Company shall ensure that the company spends in every financial year on account of CSR Policy at least
- (A) 5 % of average Net Profit
  - (B) 3 % of average Net Profit
  - (C) 2.5% of average Net Profit
  - (D) 2 % of average Net Profit
- (iii) The Chairman of the Insurance Regulatory and Development Authority shall hold office for a term of \_\_\_\_\_ from the date on which he enters upon his office and should be eligible for reappointment.
- (A) 3 Years
  - (B) 4 Years
  - (C) 5 Years
  - (D) 6 Years
- (iv) Corporate Governance is a blend of the Internal and external Corporate Governance
- (A) Techniques
  - (B) Mechanisms
  - (C) Systems
  - (D) Methods
- (v) Any person aggrieved by any order of Appellate Tribunal, may file an appeal to the Hon'ble Supreme Court within days, from the date of receipt of the order of Appellate Tribunal.
- (A) 30 days
  - (B) 60 days
  - (C) 90 days
  - (D) 120 days
- (vi) Unfair competition under the Competition Act, 2002 means adoption of practices viz.

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- (A) collusive price fixing
- (B) allocation of markets
- (C) discriminatory pricing etc
- (D) All of the above.

(vii) 'Small Company' means a Company of which

- (A) Paid-up- Share capital is Rs 50 Lakhs to Rs 5 Crores
- (B) Turnover is Rs 2 Crores to Rs 20 Crores
- (C) Both the above
- (D) None of the above

(viii) Every Nidhi shall maintain Net Owned Funds(excluding the proceeds of any preference share capital of not less than

- (A) Rs 10,00,000
- (B) Rs.15,00,000
- (C) Rs. 20,00,000
- (D) Rs 25,00,000

(ix) Export under Foreign Exchange Management Act,1999 means :

- (A) the taking out of India to a place outside India any goods.
- (B) provision of services from India to any person outside India
- (C) both the above
- (D) none of the above

(x) The Director prepares the annual accounts in Director Responsibility Statement on a/an

- (A) Money measurement basis
- (B) Going concern basis
- (C) Accrual Basis
- (D) Business Entity basis

**Answer:1**

(i)	B	Sec. 12 - A company shall on and from the fifteenth day of its incorporation have a Regd. Office to receive & acknowledge of communication & notices addressed to it.
(ii)	D	Towards CSR expense(Sec.135)
(iii)	C	The Chairman of the Insurance Regulatory and Development Authority shall hold office for a term of five years from the date on which he enters upon his office and should be eligible for reappointment. Maximum age of Chairman to be 65 year: [First Proviso to section 5(1)]. No person shall hold office as such Chairman after he has attained the age of 65 years.
(iv)	B	Corporate Governance is a blend of the internal and external corporate governance mechanisms. The external mechanisms include the managerial labour market, the capital market, takeover and legal systems. The internal governance mechanisms include the board of directors and most important is ownership
(v)	B	60 Days (Ref. Sec. 423. However Supreme Court if it is satisfied then SC may allow. Further time not more than 60 days.
(vi)	D	All the above (SEC.40 collusive price fixing: creation of barriers to entry: allocation of market: tie in scales: predatory price; discriminating price etc

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(vii)	C	As per Section 2(85) of the companies Act, 2013, 'small company' means a company, other than a public company where both the mentioned conditions apply.
(viii)	A	Every Nidhi shall maintain Net Owned Funds (excluding the proceeds of any preference share capital) of not less than ten lakh rupees or as specified by the Central Government, from time to time.
(ix)	C	Under Section 2(i) FEMA, 1999 'export' with its grammatical variations and cognate expressions, means both (i) the taking out of India to a place outside India any goods. (ii) provision of services from India to any person outside India.
(x)	A	The director prepared the annual accounts in Director Responsibility Statement on a going concern basis.

### Section B

Answer any Five Question [16 X 5 =80]

**2(a) Minu Limited was incorporated by furnishing false informations. As per the Companies Act, 2013, state the power of the Tribunal in this regard. [8]**

**(b) A producer company was incorporated on 1st September, 2009. At present the paid-up Share Capital of the company is Rs 10 lakhs consisting of 1,00,000 Equity Shares of Rs10 each fully paid -up held by 200 individuals and 20 producers institutions. You are required to answer the following with reference to the provisions of the Companies Act, 1956:**

**(i) What is the time limit for holding the First Annual General Meeting and the subsequent Annual General Meetings?**

**(ii) What is the Quorum for the Annual General Meeting?**

**(iii) State the manner in which the voting rights of the members are determined.**

**(iv) Is it possible to remove a member? [8]**

**Answer:**

**2. (a)** According to section 7(7) of the Companies Act, 2013:

Incorporation by furnishing of incorrect information: Without prejudice to the provisions of sub-section (6), where a company has got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants,—

(a) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or

(b) direct that liability of the members shall be unlimited; or

(c) direct removal of the name of the company from the register of companies; or

(d) pass an order for the winding up of the company; or

(e) pass such other orders as it may deem fit:

Provided that before making any order under this sub-section.—

(i) the company shall be given a reasonable opportunity of being heard in the matter; and

(ii) the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

(b)(i) Annual General Meeting - The first annual general meeting of a producer company shall be held within 90 days of incorporation i.e. on or before 29<sup>th</sup> November, 2009 in this case [Sec. 581 ZA(2)]. In the case of subsequent AGMs gap between two AGMs must not be more than 15 months. Registrar of Companies may extend the time for holding any AGM other than the first AGM by a period not exceeding 3 months for any special reason [581 ZA(i)]

(ii) Quorum Unless the articles of association of the producer company provide for a larger number, 1/4<sup>th</sup> of the total number of members of the producer company shall be the quorum for its annual general meeting. In this case the company has got 220 members. Hence the quorum is 55 [Sec. 581ZA(8)].

(iii) Voting rights of members: It depends on the type of membership. Where the membership consists of individuals and producer institutions, (as in this case) voting rights should be computed on the basis of a single vote for every member [Section 581 D(c)]

(iv) Removal of member: No person, who has any business interest which is in conflict with business of the producer company, shall become a member of that company (Section 581 D(4)). A person who has become a member of the producer company acquires any business interest which is on conflict with the business of the producer company, shall cease to be a member of that company and be removed as a member in accordance with the articles [Sec. 581 D(5)].

**3(a) Mention the list of assets which will not form part of liquidation assets as per Insolvency and bankruptcy Code, 2016** [8]

**(b) Can a Company pay compensation to its Directors for loss of office? Explain briefly the relevant provisions of the Companies Act, 2013 in this regard.** [8]

**Answer:**

**3(a)** Assets which will not form part of liquidation assets - As per Section 36(4) of Insolvency and Bankruptcy Code, 2016, the following shall not be included in the liquidation estate assets. These shall not be used for recovery in the liquidation.

(a) assets owned by a third party which are in possession of the corporate debtor, including -  
(i) assets held in trust for any third party (ii) bailment contracts (iii) all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund (iv) other contractual arrangements which do not stipulate transfer of title but only use of the assets and (v) such other assets as may be notified by the Central Government in consultation with any financial sector regulator.

(b) assets in security collateral held by financial services providers and are subject to netting and set-off in multi-lateral trading or clearing transactions.

(c) personal assets of any shareholder or partner of a corporate debtor as the case may be provided such assets are not held on account of avoidance transactions that may be avoided under this Chapter.

(d) assets of any Indian or foreign subsidiary of the corporate debtor, or

(e) any other assets as may be specified by the Board, including assets which could be subject to set-off on account of mutual dealings between the corporate debtor and any creditor.

**3(b)** A company can pay compensation to its directors for loss of office as provided in sections 202 of the Companies Act, 2013. Under section 202, such compensation can be paid only to

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managing director, director holding the office of the manager and to a whole time director but not to others. The compensation payable shall be on the basis of average remuneration actually-earned by such director for three years, or such shorter period as the case may be, immediately preceding the ceasing of holding of such office and shall be for the unexpired portion of his term or for three years whichever is shorter. No such payment can be made, if winding up of the company is commenced before or commences within 12 months after he ceases to hold office if the assets of the company on the winding up, after deducting expenses thereof, are not sufficient to repay to the shareholders the share capital (including the premium, if any) contributed by them, However, no payment of compensation can be made in the following cases:

- (a) where a director resigns on the ground of amalgamation or reconstruction and is appointed the office of managing director or manager or other officer of such reconstructed or amalgamated company,
- (b) where the director resigns his office otherwise than on the reconstruction of the company or its amalgamation as aforesaid,
- (c) where the director vacates office under section 167 of the Companies Act, 2013,
- (d) where the winding up of the company is due to the negligence of the director concerned,
- (e) where the director has been guilty of any fraud or breach of trust,
- (f) where the director has instigated or has taken part directly or indirectly in bringing about, the termination of his office.

**4(a)Registration of offer of scheme involving transfer of shares as per section 238 [9]**  
**(b) Removable of Members under Section 417 of Companies Act,2013 [7]**

**Answer:**

**4(a)**Section 238 (1) states that in relation to every offer of a scheme or contract involving the transfer of shares or any

class of shares in the transferor company to the transferee company under Section 235:

(a)every circular containing such offer and recommendation to the members of the transferor company by its directors to accept such offer shall be accompanied by such information and in such manner as may be prescribed.

(b)every such offer shall contain a statement by or on behalf of the transferee company, disclosing the steps it has taken to ensure that necessary cash will be available, and

(c)every such circular shall be presented to the Registrar for registration and no such circular shall be issued until it is so registered: Provided that the Registrar may refuse, for reasons to be recorded in writing, to register any such circular which does not contain the information required to be given under clause (a) or which sets out such information in a manner likely to give a false impression, and communicate such refusal to the parties within thirty days of the application.

Section 238 (2) states that an appeal shall lie to the Tribunal against an order of the Registrar refusing to register any circular under Sub-Section (1).

Section 238 (3) states that the director who issues a circular which has not been presented for registration and registered under clause (c) of Sub-Section (1), shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.



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**4(b)** Section 417 of the Act contains the provisions as to Removal of Members. According to this Section:

The Central Government may, after consultation with the Chief Justice of India, remove from office the President, Chairperson or any Member, who:

- (i) has been adjudged an insolvent, or
- (ii) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude, or
- (iii) has become physically or mentally incapable of acting as such President, the Chairperson, or Member, or
- (iv) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President, the Chairperson or Member, or
- (v) has so abused his position as to render his continuance in office prejudicial to the public interest. Provided that the President, the Chairperson or the Member shall not be removed on any of the grounds specified in clauses (b) to (e) without giving him a reasonable opportunity of being heard.

**5(a) What are the penalties envisaged under SEBI Act, 1992** **[10]**

**(b) Discuss the Acts which was taking place outside India but having an effect on competition in India** **[5]**

**Answer:**

**5(a)** SEBI is empowered to impose penalties under Chapter VIA of SEBI Act, 1992 [Section 15A to 15HB] for various violations such as penalty for failure to furnish information/return, penalty for default in case of stock brokers, penalty for insider trading, penalty for non-disclosure of acquisition of shares and takeovers and penalty for fraudulent and unfair trade practices etc.. In terms of Section 15J, the Adjudicating Officers while imposing penalty 'shall have due regard to' certain factors such as repetitive nature of default, the amount of disproportionate gain or unfair advantage, the amount of loss caused to an investor or group of investors. The details of the penalties are furnished below:

Sl. No	Section	Nature of Violation	Penalty
1	15A	Failure to: (a) furnish information etc. (b) file return etc. (c) maintain books of accounts etc.	Not less than Rs 1 lakh and may extend to Rs 1 lakh per day for continuous failure subject to a maximum of Rs 1 crore.
2	15B	Penalty for failure by any person to enter into agreement with clients	Not less than Rs 1 lakh and may extend to Rs 1 lakh per day for continuous failure subject to a maximum of Rs 1 crore
3	15C	Penalty for failure to redress investors' grievances	Not less than Rs 1 lakh and may extend to Rs 1 lakh per day for continuous failure subject to a maximum of Rs 1 crore.
4	15D	Penalty for certain defaults in case of mutual funds	Not less than Rs 1 lakh and may extend to Rs 1 lakh per day for continuous failure subject to a maximum of Rs 1 crore.
5	15E	Penalty for certain defaults in case of mutual funds	Not less than Rs 1 lakh and may extend to Rs 1 lakh per day for continuous failure subject to a maximum of RS 1 crore.

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Sl. No	Section	Nature of Voilation	Penalty
6	15F	Fails to issue contract notes  Fails to deliver any security or fails to make payment  Charges in excess of the brokerage specified	Not less than Rs1 lakh  Not less than Rs1 lakh and may extend to Rs1 lakh per day for continuous failure subject to a maximum of Rs1 crore.  Not less than Rs1 lakh and may extend five times of the brokerage
7	15G	Penalty for insider trading	Not less than Rs10 lakh but which may extend to Rs 25 crore or three times the amount of profits made out of insider trading, whichever is higher.
8	15H	Penalty for non-disclosure of acquisition of shares and takeovers	Not less than Rs10 lakh but which may extend to Rs 25 crore or three times the amount of profits made out of insider trading, whichever is higher
9	15HA	Penalty for fraudulent and unfair trade practices	Not less than Rs 5 lakh but which may extend to Rs 25 crore or three times the amount of profits made out of insider trading, whichever is higher.
10	15HB	Penalty for contravention where no separate penalty has been provided	Not less than Rs1 lakh and may extend Rs 1 crore.

**5(b)** Acts taking place outside India but having an effect on competition in India (Section 32)

The Commission shall, notwithstanding that:

- (a) an agreement referred to in Section 3 has been entered into outside India. or
- (b) any party to such agreement is outside India. or
- (c) any enterprise abusing the dominant position is outside India. or
- (d) a combination has taken place outside India. or
- (e) any party to combination is outside India. or
- (f) any other matter or practice or action arising out of such agreement or dominant position or combination is outside India.

have power to inquire in accordance with the provisions contained in Sections 19, 20, 26, 29 and 30 of the Act into such agreement or abuse of dominant position or combination if such agreement or dominant position or combination has, or is likely to have, an appreciable adverse effect on competition in the relevant market in India and pass such orders as it may deem fit in accordance with the provisions of this Act.



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

- (I) L, a famous playback singer of India wants to perform a musical night in Paris for Indians residing there. Foreign exchange to the extent of USD 20,000 is required for this purpose.  
(II) M requires USD 5,000 to make payment related to 'call back services' of telephone. [5+3]

**(b) State the "Insurable Interest" -based on Insurance Act, 1938**

**[8]**

**Answer:**

**6(a)(i) Contributory:** According to Section 428 of the Companies Act, 1956 in a winding up, the term "contributory" means a past or present member liable to contribute to the assets of the company in the event of its being wound up and includes holders of shares which are fully paid up. If a member is once placed in the list of contributories, he is liable to the extent of original shares that remain unpaid, unless he proves that he should not have been placed in the list.

When a company goes into liquidation, every member, whether past or present, has to contribute to the assets of the company. However, a past member will not be required to contribute in the following circumstances:

- (a) if he had ceased to be a member for a period of one year or upwards before the commencement of winding up.  
(b) if the debt or liability of the company was contracted or incurred after he ceased to be a member.  
(c) if the present members are able to satisfy the contributions required to be made by them under the Act.

**(ii) (i)** Foreign exchange drawals for cultural tours require prior permission/approval of the Government of India irrespective of amount of foreign exchange required, Therefore, in the given case L, the singer is required to seek permission of the Government of India.

**(ii)** Drawal of foreign exchange for payment related to 'call back services' of telephones is prohibited. Therefore 'M' cannot draw foreign exchange.

**(b) Insurable Interest**

To constitute insurable interest, it must be an interest such "that the risk would by its proximate effect cause damage to the assured, that is to say, cause him to lose a benefit or incur a liability. The validity of an insurance contract in India is dependent on the existence of an insurable interest in the subject matter. The

person seeking an insurance policy must establish some kind of interest in the life or property to be insured, in the absence of which, the insurance policy would amount to a wager and consequently void in nature.

The test for determining if there is an insurable interest is whether the insured will in case of damage to the life or property being insured, suffer pecuniary loss [New India Insurance Company Ltd. v. G.N. Sainani (1997) 6 SCC 383]. A person having a limited interest can also insure such interest Insurable interest varies depending on the nature of the insurance. The controversy as to the existence of an insurable interest between spouses was settled by the court, which held that such an interest could exist as neither was

likely to indulge in any mischievous game'. The same analogy may be extended to parents and children. Further, the courts have also held that such an insurable interest would exist for a creditor (in a debtor) and for an employee (in an employer) to the extent of the debt incurred and the remuneration due, respectively.

The existence of insurable interest at the time of happening of the event is another important consideration. In case, of life and personal accident insurance it is sufficient if the insurable interest is present at the time of taking the policy. However, in the case of fire and motor accident insurance the insurable interest has to be present both at the time of taking the policy and at the time of the accident. The case is completely different with marine insurance wherein there need not be any insurable interest at the time of taking the policy

**7(a) Explain the OECD principles of Corporate Governance. [8]**

**(b) (i) Whether XBRL is mandatory in all the Companies. If not, state the Companies where XBRL is mandatory.**

**(ii) What are the advantages of XBRL? [2+6]**

**7(a)** 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.

(b) 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.

**(b) (i) XBRL applies to the following companies:**

- 1) All Public listed companies in India and their Indian subsidiaries.
- 2) All companies having a paid up Capital of Rs 5 Crores and above.
- 3) All companies having Turnover of Rs 100 Crores and above.

**(ii) Advantages of XBRL**

XBRL offers major benefits at all stages of business reporting and analysis. The benefits are seen in automation, cost saving, faster, more reliable and more accurate handling of data, improved analysis and in better quality of information and decision making. XBRL enables producers end-consumers of financial data to switch resources away from costly manual

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processes; typically involving time consuming comparison, assembly and re-entry of data. They are able to concentrate effort on analysis aided by software which can validate" and 'process XBRL information. XBRL is a flexible language, which is intended to support, all current aspects of reporting in different countries and industries. Its extensible nature means that it can be adjusted to meet particular business requirements, even 'at the individual organization level.

All types of organizations can use XBRL to save costs and improve efficiency in handling business and financial information. Because XBRL is extensible and flexible, it can be adopted to a wide variety of different requirements. All participants in the financial information supply chain can benefit, whether they are preparers, transmitters or users of business data.

XBRL is set to become the standard way of recording, storing and transmitting business financial information. It is capable of use throughout the world, whatever the language of the country concerned, for a wide variety of business purposes. It will deliver major cost savings and gains in efficiency, improving' processes in companies; governments and other organizations.

**8. Write short notes any four of the following :**

**4X4=16**

**(a) Difference between Mediation and Conciliation**

**(b) Life Insurance Business**

**(c) Strategy to tackle black money**

**(d) Activities not to be considered as CSR Activities**

**(e) Disadvantages of the family Businesses over non-family Businesses**

**Answer:**

**8(a) Difference between Mediation and Conciliation**

The meaning of these words as understood in India appears to be similar. 'Mediation' is a way of settling disputes by a third party who helps both sides to come to an agreement, which each considers acceptable. Mediation can be 'evaluative' or 'facilitative'. 'Conciliation', is a procedure like mediation but the third party, the conciliator, takes a more interventionist role in bringing the two parties together and in suggesting possible solutions to help achieve a settlement. The difference lies in the fact that the 'conciliator' can make proposals for settlement, 'formulate' or 'reformulate' the terms of a possible settlement while a 'mediator' would not do so but would merely facilitate a settlement between the parties. From the very wording it appears that the 'Mediation and Conciliation Panel' as contemplated under Section 442 (as the name suggests) will adopt dual approach of 'Mediation' as well as 'Conciliation' in settling the disputes.

**(b) Life Insurance Business:**

Section 2(11): "life insurance business" means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include:

- i) the granting of disability and double or triple indemnity accident benefits, if so provided in the contract of insurance.
- ii) the granting of annuities upon human life, and

iii) the granting of superannuation allowances and benefits payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependents of such persons.

Explanation: For the removal of doubts, it is hereby declared that "life insurance business" shall include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a component of investment and a component of insurance issued by an insurer referred to in clause (9) of this section.

### **(c) Strategy to tackle black money:**

The committee has identified following strategy to tackle black money:

- (i) Preventing generation of black money.
- (ii) Discouraging use to black money.
- (iii) Effective detection of black money.
- (iv) Effective investigation and adjudication.
- (v) Other steps.

### **(d) Activities not to be considered as CSR Activities: The Companies (CSR Policy) Rules, 2014 provides for some activities which are not considered as CSR activities:**

- (1) The CSR projects or programs or activities undertaken outside India.
- (2) the CSR projects or programs or activities that benefit only the employees of the company and their families.
- (3) Contribution of any amount directly or indirectly to any political party under section 182 of the Act.
- (4) Expenses incurred by companies for the fulfillment of any Act/Statute of regulations (such as Labour Laws, Land Acquisition Act etc.) would not count as CSR expenditure under the Companies Act.

### **(e) Disadvantages of the Family Businesses over Non-Family Businesses**

- (i) 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.
- (ii) 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.
- (iii) Family conflicts: Conflict among the family members is the major setback for the family businesses.
- (iv) 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.