

# Suggested Answer\_Syl12\_Dec13\_Paper 13

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## FINAL EXAMINATION GROUP III (SYLLABUS 2012)

### SUGGESTED ANSWERS TO QUESTIONS DECEMBER 2013

#### Paper-13 : CORPORATE LAWS & COMPLIANCE

Time Allowed : 3 Hours

Full Marks : 100

*The figures in the margin on the right side indicate full marks.*

*Please answer all parts of a question at one place. Wherever necessary, the students can make suitable assumption and state them clearly in the answer.*

#### SECTION A

*Answer Question No. 1 which is compulsory and any four from rest in this section.*

1. (a) A group of promoters approach you for advice regarding the formation of a guarantee company. Advise them briefly about the types of organizations for which it is suitable to form a guarantee company and the advantages that can be derived by registering a guarantee company. 4
- (b) The capital of Sigma Ltd. is ₹ 80 Lakhs, consisting of equity share capital of ₹ 50 Lakhs and redeemable preference share capital of ₹ 30 Lakhs. The preference share capital is to be redeemed before 31st March 2013. The company is running in losses and its total accumulated losses amount to ₹ 20 Lakhs. The company wants to borrow ₹ 30 Lakhs from financial institution to improve its working and also to redeem the preference share capital. Advise. 3
- (c) Sec. 253 of The Companies Act, 1956 provides that no body Corporate, Association or Firm can be appointed Director of a company. Only an individual can be appointed as director. Explain briefly the reasons as to why it is necessary that only an individual should be a Director of a company. 3
- (d) Draft a Directors responsibility statement to be attached in Director's report under The Companies Act, 1956. 5

#### Answer

1. (a) A guarantee company is like any other limited company with separate legal entity. Further the liability of the members is limited. In the case of a company having share capital, it is limited by the nominal amount of shares held by each member and in the case of a company not having share capital, by amounts of guarantee undertaken by

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the members i.e., the amounts they shall contribute in the event of the company being wound up for repayment's of its debts.

Formation of Guarantee Company is a convenient for association such as clubs, chamber of commerce, trade associations, societies setup for carrying on charitable work etc.

The advantages of a guarantee company are:

It has a separate legal entity and can own property, enter into contracts, sue or be sued in regard to its contracts and transactions.

(ii) In respect of the transaction of the company, no personal liability is incurred by the members or director and if at all their liability arises only on winding up.

**(b)** According to sec 80, redemption of preference share capital is permitted only out of (I) Profits of a company or (II) Out of fresh issue of shares made for the purposes of redemption.

Thus borrowing from financial institution for redemption of preference shares shall not be permissible.

The amount, may however be raised for improving its working.

The limit to deposits do not apply to borrowing from financial institutions since the same is excluded from the expression deposit as per rule 2(b)(II) of the companies acceptance of deposit rules 1975.

**(c)** In oriental metal pressing works (P) LTD v B.KTHAKOOR, the Supreme Court pointed out the reasons as to why it is necessary that only an individual should be director of a company.

It was held that the office of the director being to some extent an office of trust, There should be somebody readily available who can be held responsible for the failure to carry out the trust, And it might be difficult to fix that responsibility if the director was a corporation or an association of person.

**(d)** DIRECTOR'S RESPONSIBILITY STATEMENT

Your Directors wish to inform that the Audited Accounts containing Financial Statements for the financial year ended 31<sup>st</sup> March 2013 are in full conformity with requirements of the Act, 1956. Your Directors believe that the Financial Statements reflect fairly the form and substance of transactions carried out during the year and reasonably present the Company's financial condition and result of operations.

As stipulated in Section -217 (2AA) of the Companies Act, 1956, your Directors subscribe to the Director's Responsibility statement and confirm that:

- (i) in the presentation of the Annual Accounts, applicable accounting standards have been followed;
- (ii) the accounting policies have been consistently applied and reasonable, prudent judgment and estimates are made so as to give a true and fair view of the state

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of your Company as at 31<sup>st</sup> March 2013 and of the profit for the financial year ended 31<sup>st</sup> March 2013;

- (iii) proper and sufficient care has been taken for the maintenance of adequate accounting records in accordance with the provision of the Companies Act, 1956 for safeguarding the assets of your Company and for preventing and detecting frauds and other irregularities ;
- (iv) the annual accounts of your Company have been prepared on a going concern basis ;
- (v) The Company's Internal Auditors had conducted periodic audits to provide reasonable assurance that the Company's established policies and procedures have been followed.

2. (a) **Mr. Ajit was a member of The Competition Commission of India. He retired on 31st March 2012. He was offered the post of Chairperson in Supriya Ltd. with appropriate remuneration and perquisites. Discuss whether he can accept the job. What will be the position if Mr. Ajit joins Gail Ltd., a Government company with effect from 1st April 2013?** 4
- (b) **Explain with reference to the provisions of The Companies Act, 1956, whether the following companies are covered under the definition of "foreign companies".**
- (i) **Indian citizens incorporated a company in Dubai for the purpose of carrying on business there.**
  - (ii) **A company incorporated in New York, U.S.A., which has a share transfer office at Chennai?** 4
- (c) **State the rules for disposal of non-banking assets under The Banking Regulation Act, 1949.** 4
- (d) **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?** 3

### Answer

2. (a) As per section 12 of the Competition Act 2002, a member of competition commission of India shall not, for a period of two years from the date on which he ceased to hold office, accept any employment in any enterprise. However these provisions will not apply to be any employment in government company or government or local authority or any corporation established under any central or state act. Accordingly MR. AJIT cannot join SUPRIYA LTD. However, there is no restriction for him to join GAIL on 1<sup>st</sup> April 2013 as it is a government company.
- (b) As per section 591 of the companies Act 1956, foreign company means a company incorporated outside India but having a place of business in India. Accordingly, to qualify as foreign company. A company must have both the Following features:
- (i) It should be a company incorporated outside India and
  - (ii) It should have a place of business in India:

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As to what amount to having a place of business in India. Section 602(e) provides that the expression place of business includes a share transfer or share registration office.

The company incorporated in Dubai for the purpose of carrying on business there is not a foreign company. Its incorporation by Indian citizen is immaterial. In order to be a foreign company it has to have a place of business in India.

A company incorporated in Newyork which has a share transfer officer at Chennai is a foreign company.

### **(c) Disposal of non-banking assets [Section 9]**

Notwithstanding anything contained in section 6, no banking company shall hold any immovable property howsoever acquired, except such as is required for its own use, for any period exceeding seven years from the acquisition thereof or from the commencement of the Banking Regulation Act, whichever is later or any extension of such period as in this section provided, and such property shall be disposed of within such period or extended period, as the case may be.

#### **Exceptions are:**

- (i) The banking company may, within the period of seven years as aforesaid deal or trade in any such property for the purpose of facilitating the disposal thereof.
- (ii) The Reserve Bank may in any particular case extend the aforesaid period of seven years by such period not exceeding five years where it is satisfied that such extension would be in the interests of the depositors of the banking company.

**(d)** 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.

**3. (a) Explain with reference to decided cases, what constitute and what do not constitute oppression of members. 5**

**(b) A company declared dividend at an Annual General Meeting for the financial year ended 31st March 2013 without providing for depreciation on certain immovable properties on the ground that these assets were acquired as investment for the purpose of the earning supplementary income, though shown in the balance sheet under the head "Fixed Assets", and not for the purpose of any business carried on by the company. If the company had provided depreciation on the said immovable properties, the company would have suffered loss for the financial year ended 31st March 2013.**

**Answer the following in the context of the above and with reference of The Companies Act, 1956: 6**

- (i) Is it in order for the company to declare dividend for the financial year ended 31st March 2013 without providing for depreciation on certain immovable properties?**

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- (ii) Is it possible for the Board of Directors of the company to revoke the dividend which has been declared at the Annual General Meeting?
- (iii) Is it possible for the company to claim that depreciation has not been provided in the accounts as the company is not entitled to any depreciation under The Income Tax Act.
- (c) Distinguish between member's voluntary winding up and creditors' voluntary winding up. 4

### Answer

3. (a) In Shanti Prasad Jain V. Kalinga Tubes Ltd. The Supreme Court defined "oppression" as conduct which is burdensome, harsh and wrongful, it involves an element of lack of probity or fair dealing with regard to a member with respect to his proprietary rights as a member.

Illustrations of "oppression":

- (a) not holding AGMs.
- (b) deliberately not giving notices of general body meetings to some members.
- (c) not giving balance sheets and profit and loss accounts to members.
- (d) Carrying on the company's business after substratum of the company has disappeared.
- (e) Usurping powers which one does not possess and using them against members who have beneficial interests.
- (f) not paying declared dividends.
- (g) Refusing illegally, transfer or transmission of shares.
- (h) directors taking more than permissible remuneration.

Illustrations of "no oppression":

- (a) change of management is not necessarily oppression - Shanti prasad Jain's case.
- (b) trying to get majority or trying to retain majority provided unfair means are not used
- (c) not allowing members to inspect books of account.
- (d) all directors being members of the same family.
- (e) not declaring dividends according to profits.
- (f) oppression as a director and not as a member (in Five Minutes Car wash service Ltd.)
- (g) explanatory statement not annexed to notice calling meetings.

- (b) According to section 205 of the companies Act, a company cannot declare or pay dividend for any financial year except out of profits of the company for that year arrived at after providing for depreciation in accordance with Section 205(2) or out of the profits of the company for any previous financial year or years arrived at after

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providing depreciation. It is immaterial whether the assets are used for the purpose of business of the company or as investment for earning supplementary income so long as these assets are not intended for resale i.e. stock-in-trade. As the provisions of section 205 (1) and (2) are mandatory in nature, it is not in order for the company to declare dividend for the financial year ended 31st March 2013 without providing for depreciation on certain immovable properties. Further the balance sheet and profit and loss account for the financial year ended 31st March 2013 cannot be said to show a true and fair view of the State of affairs or if its profit and loss as contemplated in section 211(1) and (2).

- (ii) ordinarily a dividend once declared cannot be revoked except with the consent of the shareholders, for the declaration of dividend creates a debt a debt to the shareholders in whose favour it is declared. But where a dividend has been declared illegally as in this case, the Board of directors will be justified in revoking the declaration of dividend.
- (iii) For the purpose of determining the amount of depreciation to be provided under section 205 read with section 350 it is immaterial whether depreciation in respect of any assets is actually admissible under the income Tax Act and the rules made thereunder. Further, section 205 was amended in 1988 requiring a company to provide for depreciation at the rates specified in schedule XIV and thus delinking the depreciation under the companies Act from that under the income Tax Act. Hence the company's contention is not correct.

**(c)** Difference between Members' winding up and Creditors' winding up:

Member's Winding up	Creditors' Winding up
1. Directors have to file Declaration of solvency To prove that the comp -any is able to pay its Liabilities in full.	1. No declaration of solvency by Directors, company is unable to pay its liabilities in full.
2. Proceedings controlled by members Liquidator appointed by members.	2. Proceedings are controlled by creditors. Creditors' nominee to be the liquidator.
3. It requires the calling of a meeting of members only.	3. It requires the calling of separate meetings of members and creditors.
4. No committee of Inspection.	4. There is an option to appoint a committee of Inspection.

- 4. (a) Write a brief note on Conglomerate merger. 5**
- (b) In a limited liability partnership (LLP), what are the requirements relating to minimum and maximum number of partners, designated partners and identification numbers for the designated partners? 4**
- (c) State the minimum limits for annuities and other benefits secured by policies of life insurance under The Insurance Act, 1938. 4**
- (d) Is it legally necessary for the every producer company to appoint a whole-time secretary under the provision of The Companies Act, 1956. 2**

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## Answer

### 4. (a) Conglomerate merger

A conglomerate merger is a merger where two or more companies carrying different businesses are acquired and merged to diversify the products marketed. The companies may not be related to each other horizontally. In a "pure conglomerate" there are no important common factors between the companies in production, marketing, research and development or technology.

Conglomerate merger is quite often the result of desire

- (i) to obtain greater stability of earnings through spreading activities in different industries with different business cycles or to diversify out of static or dying industry;
- (ii) to employ spare resources, whether of capital or management;
- (iii) where there are some common factors, to obtain benefit of economies of scale, particularly to "staff functions (such as personnel, advertising, accounting and financial);
- (iv) defensive diversifications, designed to make the company too large to be likely, to be the object of a take-over, or perhaps to make it a less attractive object;
- (v) to provide an outlet for the ambitions of management, where anti-monopoly laws make further acquisitions (or perhaps even growth) in the company's own field impracticable.

### (b) Partners and designated partners in LLP

In the case of a LLP there must be a minimum of two partners.

There is no maximum number prescribed.

Every limited liability partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India. The term 'resident' means a person who has stayed in India for a period of not less than one hundred and eighty two days during the immediately preceding one year.

However, in case of a limited liability partnership in which all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such limited liability partnership or nominees of such bodies corporate shall act as designated partners.

There is also the requirement that each designated partner must have a Designated Partner Identification Number ("DPIN"). This would mean before making the application for registration the person proposing to act as a designated partner must have obtained the DPIN, In this regard, the provisions of the CA 1956 relating to Director Identification Number ("DIN") would apply.

### (c) Minimum limits for annuities and other benefits secured by policies of life Insurance [Section 4]

- (1) No insurer, not being a Co-operative Life Insurance Society to which Part IV of this Act applies, shall pay or undertake to pay on any policy of life insurance issued after the commencement of the Insurance (Amendment) Act, 1946 (6 of 1946), an annuity of less than one hundred rupees or a gross sum of less than one

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thousand rupees, exclusive of any profit or bonus provided that this shall not prevent an insurer from converting any policy into a paid-up policy of any value or payment of surrender value of any amount.

(2) Nothing contained in this section shall apply to any policy of the description known as a group policy, where the number of persons covered by the policy is not less than fifty or such smaller number as may be approved by the Authority and a standard form of the policy has been certified in writing by the Authority to be a policy of such description or to any policy undertaking to pay a gross sum of more than five hundred rupees or an annuity of more than fifty rupee, issued-

(a) by an insurer to any person in his permanent employed respect of the life of that person, or

(b) under any scheme, approved by the Authority and complying with such conditions, if any, as he may think fit to impose, whereby premiums due from persons employed under any employer are collected by or under the supervision of the employer, or to any policy issued by a Mutual insurance Company to which Part IV applies and which the Authority may by order in writing exempt from the provisions of this section, for so long as the company complies with such conditions, if any, as may be prescribed.

(d) Under Section 581X of the Companies Act 1956, every producer company having an average turnover exceeding ₹5 crores in each of the three consecutive financial years shall have a whole time secretary who is a member of ICST.

5. (a) Mrs. Kavita, an Indian National desires to obtain foreign exchange for the following purpose:

(i) Remittance of US Dollar 30000 for payment for goods purchased from a party situated in Japan.

(ii) Remittance of US Dollar 50000 out of winnings on a lottery ticket.

(iii) Payment to be made for securing insurance for health from a company abroad. Advise her if she can get the foreign exchange and under what condition? 6

(b) Explain briefly what type of defaults by the stock brokers come within the purview of Section 15F of SEBI Act, 1992. 3

(c) State the functions of the regional load dispatch center as per SEC 28 of The Electricity Act, 2003. 4

(d) Decide under the provision of The Companies Act, 1956, whether notice of a board meeting is required to be sent to an interested director. 2

### Answer

5. (a) As per section 5 of the Foreign Exchange Management Act 1999, certain rules have been made for drawal Of foreign exchange for current account transactions. As per these rules, drawal of foreign exchange for some of the current account transactions is prohibited. As regards some other current account transactions, foreign exchange can be drawn with prior permission of the central government, while in case of some current account transactions prior permission of R.B.I, is required.

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- (i) Remittance to JAPAN, such remittance is prohibited and the same is included in first schedule to the Foreign Exchange Management rules 2000. Hence MRS KAVITA cannot withdraw Foreign Exchange for this purpose.
- (ii) Remittance out of lottery winnings, such remittance is prohibited and the same is included in first schedule to the foreign exchange management rules 2000. MRS KAVITA cannot withdraw the foreign exchange for this purpose.
- (iii) The payment required to be made for securing insurance for health from a company abroad as referred in item 1 can be made after obtaining permission from central government of India, as prescribed in second schedule to Foreign Exchange Management rules 2000. Hence MRS KAVITA cannot draw foreign exchange after obtaining such permission.

**(b)** The following defaults by stock brokers come within the purview of SEBI Act:

- (a) Any failure on the part of the stock broker to issue contract notes in the form and in the manner specified by the Stock Exchange.
- (b) Any failure on the part of the broker to deliver any security or to make payment of the amount due to the investor in the manner or within the period specified in the regulations.
- (c) Any collection of charges by way of brokerage in excess of the brokerage as specified in the regulations. (Section 15 F, SEBI Act, 1992)

**(c) Functions of Regional Load Despatch Centre [Section 28]**

- (1) The Regional Load Despatch Centre shall be the apex body to ensure integrated operation of the power system in the concerned region.
- (2) The Regional Load Despatch Centre shall comply with such principles, guidelines and methodologies in respect of the wheeling and optimum scheduling and despatch of electricity as the Central Commission may specify in the Grid Code.
- (3) The Regional Load Despatch Centre shall -
  - (a) be responsible for optimum scheduling and despatch of electricity within the region, in accordance with the contracts entered into with the licensees or the generating companies operating in the region;
  - (b) monitor grid operations;
  - (c) keep accounts of the quantity of electricity transmitted through the regional grid;
  - (d) exercise supervision and control over the inter-State transmission system; and
  - (e) be responsible for carrying out real time operations for grid control and despatch of electricity within the region through secure and economic operation of the regional grid in accordance with the Grid Standards and the Grid Code.
- (4) The Regional Load Despatch Centre may levy and collect such fee and charges from the generating companies or licensees engaged in inter-State transmission of electricity as may be specified by the Central Commission.

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(d) Section 286 requires that notice must be given to every director.

Therefore, notice must be given to a director even if he is precluded from voting on a proposed business. [John Shaw & Sons (Salford) Ltd v. Peter Shaw & John Shaw]

6. (a) (i) What are the disclosure requirements under The Companies Act, 1956 for making political contribution?
- (ii) A mere distributor of company's product cannot become a Sole Selling Agent.— Justify.
- (b) Examine whether the following transactions can be considered as a loan to a director requiring approval of the Central Government under SEC 295 of The Companies Act.
- (i) A public company secures residential accommodation for the use of its managing director by entering into an arrangement under which the company has to deposit a certain amount with the landlord to secure compliance with the terms of the agreement.
- (ii) A public company purchases a flat which is subsequently sold to a director at the prevailing market price out of which the director pays 50% immediately and contracts to pay the balance in 10 equal annual instalments.
- (c) A was appointed director of the company in its annual general meeting. He took over the office and started acting on behalf of the company as its director. Subsequently it was found that the appointment of the director was not valid because in the meeting where he was appointed certain members who had voted were not qualified to vote and certain members had voted twice by mistake. There were also certain mistakes in the counting of the votes. As such, the appointment of the director was held to be invalid. Would the acts of A, done by him as director be valid and binding upon the company?
- (d) The liability of audit fees has been outstanding since last two years. This year after completion of audit, the auditor informs to the secretary of the company over phone to bring the cheque of all the three years and take delivery of the audit report. Discuss briefly the above statement in the context of the right of the auditor to receive remuneration.

### Answer

6. (a) (I) As per sec 293 A of the companies Act, 1956, the company shall disclose the following particulars in its profit & loss Account
- (a) Total Amount of political contribution, and
- (b) Name of the political party or person(s) to whom such amount has been contributed.
- Contravention of sec 293 A shall give rise to the following:
- (a) The company shall be punishable with a fine upto 300% of the amount contributed.
- (b) Every officer in default is punishable with imprisonment upto 3 years and shall also be liable to fine.
- (II) A mere distributor of company's product cannot become a SSA unless such distributor is given exclusive rights to sell the company's product.

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(b) (I) The deposit of the cost of purchase of the property cannot be regarded as a loan or advance to the M.D. or book debt attracting the provisions of section 295 or section 296 of the Companies Act. It is no concern of the M.D. on what terms the company secures premises for residential accommodation for him.

(II) In a petition in *Dr. Freddie Ardeshir Mehta v. Union of India* seeking quashing of a prosecution launched under Section 295, the Bombay High Court came to the conclusion that a company selling one of its flat to one of its directors on receiving half price in cash and agreeing to accept the balance in installments does not give a loan to the director. It is a credit sale. It cannot continued be described even as an indirect loan. In view of this decision, the transaction in question does not amount to a loan to a director requiring approval of the Central Government.

(c) **Yes.** According to Sec. 290, all the acts of a director are valid notwithstanding the fact that his appointment is afterward discovered to be invalid, by reason of any defect in his appointment. This is to protect outsiders as well as member dealing with the company. In this case the defects in the appointment of the director were found out subsequent to his appointment.

The director had no knowledge of the defects until he had started acting as a director. He validity of the acts of the director cannot be questioned just on the basis of irregularities subsequently discovered in the appointment of the director.

(d) Section 224 (8) of the Companies Act, 1956 deals with fixation of remuneration of an auditor. However, the Act is silent on the mode of recovery of remuneration by an auditor. Normally speaking, an auditor has right to receive his remuneration after completing his work, that is, submission of the audit report.

As per Research Committee of the Institute, the auditor may also recover his fees on progressive basis] In the instant case, perhaps, the auditor has linked the delivery of audit report only on audit fees being received since the payment has been outstanding for last two years. But as a matter of professional ethics, it would not be proper on the part of the auditor and moreover he would not be performing his duties under the companies Act, 1956 if he links delivery of the audit report conditional upon receipt of audit fees.

As such, it would be better on the part of the auditor to enforce his right to receive remuneration through Court of Law only after submitting his audit report.

## SECTION B

*Answer any five questions from Q. No. 7(a) to 7(f).*

5×5=25

7. (a) **What is meant by the corporate governance as per renowned exponents in this field? How far do you agree with their views (agree/strongly agree/disagree etc.)?**
- (b) **As per the revised corporate governance code published in Japan in 2001, discuss the mission and role of (i) Board of Directors and (ii) Committees established within the board.**
- (c) **What are the possible stages in family firm's governance?**

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- (d) What are the core elements of the CSR policy as per the CSR voluntary guide lines 2009?
- (e) What do you mean by 'whole life cycle costing'? Explain the role of risk assessment in whole life costing.
- (f) Write short note on:
- (i) Corporate citizenship.
  - (ii) Role of independent directors in corporate governance.

## Answer

### 7. (a) Corporate governance

Corporate governance is...

- The process of supervision and control intended to ensure that the company's management acts in accordance with the interests of shareholders (Parkinson, 1994). -Strongly agree
- The governance role is not concerned with the running of the business of the company per se, but with giving overall direction to the enterprise, with overseeing and controlling the executive actions of management and with satisfying legitimate expectations of accountability and regulation by interests beyond the corporate boundaries (Tricker, 1984).-Agree
- The governance of an enterprise is the sum of those activities that make up the internal regulation of the business in compliance with the obligations placed on the firm by legislation, ownership trusteeship of assets, their management and their deployment (cannon, 1994). – Agree
- The relationship between shareholders and their companies and the way in which shareholders act to encourage best practice (e.g., by voting at AMs and by regular meetings with companies' senior management). Increasingly, this includes shareholder 'activism' which involves a campaign by a shareholder or a group of shareholders to achieve change in companies (the Corporate Governance Handbook, 1996). -Some agreement
- The structures, process, cultures and systems that engender the successful operation of the Organization (Keasey and Wright, 1993). -Some agreement
- The system by which companies are directed and controlled (The Cadbury Report, 1992) - slight agreement.

### (b) Mission and role of the board of directors

This first chapter contained five principles relating to: the position and purpose of the board of directors; the function and powers of the board of directors; the organization of the board of directors; outside directors and their independence; the role of the leader of the board of directors.

The board should be comprised of outside directors (someone who has never been a full-time director, executive, or employee of the company)- preferably a majority- and inside directors (executives or employees of the company). Independent directors are outside directors who can make their decisions independently. The

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board of directors' role is seen as one of management supervision including approving important strategic decisions, nominating candidates for director positions, appointment and removal of the CEO, and general oversight of accounting and auditing, the board of directors may also be required to approve certain decisions made by the CEO.

## **Mission and role of the committees established within the board of directors**

The board is recommended to establish various committees including an audit committee, compensation committee, and nominating committee. Each committee established should comprise at least three directors, and an outside director appointed as chair of each committee. The majority of directors on the audit committee should be independent directors, whilst the majority of directors on the other two committees should be outside directors, of whom at least one should be an independent director.

The roles of the various committees are broadly defined and cover the usual areas that one would expect for each of these committees.

## **(c) Possible stages in a family firm's governance**

or a particular knowledge or functional specialism of relevance to the firm, which will enable them to 'add value' and contribute to the strategic development of the family firm.

Cadbury (2000) sums up the three requisites for family firms to manage successfully the impacts of growth: They need to be able to recruit and retain the very best people for the business, they need to be able to develop a culture of trust and transparency, and they need to define logical and efficient organisational structures'. A good governance system will help family firms to achieve these requisites.

Bammens and Voordeckers (2009), in a study of family firms in Belgium, find that 'contrary to traditional agency wisdom, family firm boards devote substantial attention to controlling the management team... those family firms that employ trust and control in a complementary manner will be most effective'.

In the context of succession planning, Bennedsen et al (2006), in a study of family firms in Denmark, report that their empirical results demonstrate that professional, non-family CEOs provide extremely valuable services to the organizations they head. On the other hand, they report that family CEO underperformance is particularly large in fast-growing industries, industries with a highly skilled labor force and relatively large firms.

[Study Note 8.30]

## **(d) CSR Policy covers following core elements**

### 1. Care for all stakeholders

The company shall a) respect the interest of and be responsive towards all stakeholders including shareholders, employees, customers, suppliers project affected people, society at large & others (b) create value for all of them. They should develop mechanism to actively engage with all stock holders, inform them of inherent risk and mitigate them where they occur.

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## 2. Ethical functioning

Their government should be under pinned by Ethics, Transparency and Accountability. They should not engage in business practice that are abusive, unfair, corrupt or anti competitive.

## 3. Respect for workers' right and welfare.

Company should provide (a) work place environment that is safe, hygienic and humane and which upholds the dignity of employees (b) provide all employees with access to training and development of skills for career advancement on an equal and non-discrimatory basis (c) should uphold the freedom of association and the effective recognition of the right to collective bargaining have an effective grience redressed systems should not employ child or forced labour. Provide and maintain equality of opportunities without any discrimination on any grounds in recruitment and during employment.

## 4. Respect for human rights

## 5. Respect for environment

## 6. Activities for social and economic development should take social & economic development of communities and geographical area - these could include education, skill building, health, cultural & social welfare.

**(e) Whole Life Cycle** - In practice, we refer to WLC as the total operating costs of the building, including energy/utilities costs and facilities management elements that relate to the building, such as maintenance and cleaning. LCC refers to replacement building components within the building such as windows fan coil units etc. Over and above these are facilities management costs, such as security and catering.

### **Role of whole life cycle costing**

Combined with WLCC, risk assessment should form a major element in the strategic decision making process during project procurement and also in value analysis, especially in today's highly uncertain business environment. WLCC decisions are complex (the complexity level is usually determined by the scale, funding and financial environment surrounding the scheme amongst other factors), and usually comprise an array of significant factors affecting the ultimate cost decisions. WLCC decisions generally have multiple objectives and alternatives, long term impacts, multiple constituencies in the procurement of construction project, generally involve multiple disciplines and a numerous decision makers, and always involve various degrees of risk and uncertainty. Project cost, design and operational decision parameters are often established very early in the life of a given building project often these parameters are chosen based on owner's and project team's personal experiences or on an adhoc static economic analysis of the anticipated project costs. While these approaches are common they do not provide a robust framework for dealing with the risk and decision that are taken in the evaluation process. Nor do they allow for they for a systematic evaluation of all the parameters impact of many quantitative and qualitative parameters.

Capital costs and future costs must be quantified analysed and present as part of the strategic decision making process in today's business environment cost analysis and

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value analysis techniques are used to quantify and assess the economic implications of investment in building facilities in general. These techniques have typically concentrated on utilizing life cycle and comparative cost procedures to determine either the lowest initial cost alternative or the highest investment return alternative while these techniques do provide a basis for making project cost decision, they most often do not account for many of the parameters which may affect the actual project value of cost. The existing methods also do not use formal decision making processes and risk assessment methods in performing cost benefit analysis.

## **(f) (i) Corporate Citizenship**

A new terminology that has been gaining grounds in the business community today is corporate citizenship. So what is corporate citizenship and is this fundamentally different from corporate social responsibility? Corporate citizenship is defined by the Boston college centre for corporate citizenship, as the business strategy that shapes the value underpinning a company's defined mission and the choices made each day by its executives managers and employees as they engage with society. According to the definitions the four key principles that define the essence of corporate citizenship are (i) minimize harm (ii) maximize benefit (iii) Be accountable and responsive to key stakeholders (iv) support strong financial result.

Thus corporate citizenship's similar to its CSR concept's is focusing on the membership of the corporation in the political social and cultural community with a focus on enhancing social capital. Notwithstanding the different terminologies and nomenclature used, the focus for companies to day should be to focus on delivering to the basic essence and promise of the message that embodies these key concepts CSR and corporate citizenship.

## **(ii) Independent directors and corporate governance**

The independent directors also have an important role to play in CG all the committees and the listing agreement have emphasized the position of independent directors. The name independent director itself suggests that these are the directors not attached or related to the promoter group of the company. These directors may be considered as true representatives of the shareholders and other stakeholders. These directors are capable of exercising independent judgement and opinions. The independent directors are instruments of ensuring that BoD takes decisions keeping in view the interest of the relevant stakeholders and without prejudice to any particular group.

Independent directors create a trust confidence the BoD and the stakeholders. They help steward the company towards maximization of stakeholders value and in formulation of strategic policies of the company. However in order to take a pure independent view, these directors should be professionally qualified and having sufficient background of company management competence and integrity, both are required on the part of independent directors. Independent directors have to operate within the code of conduct as applicable to other members of the BoD.