

## FINAL EXAMINATION

### GROUP III

(SYLLABUS 2012)

## SUGGESTED ANSWERS TO QUESTIONS

JUNE 2015

### Paper-13 : CORPORATE LAWS & COMPLIANCE

Time Allowed : 3 Hours

Full Marks : 100

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

*Answer all the questions.*

*Students are requested to read the instructions against each individual question also.*

*All workings must form part of your answer.*

*Assumptions, if any, must be clearly indicated.*

#### SECTION A

1. Answer *all* questions: 20
- (a) Define the term 'Promoter' as contained in the Companies Act, 2013. 3
- (b) Mr. K is appointed as an Additional Director by the Board of Directors of PNR Company Limited at its meeting held on 1st October, 2014 for a period as permitted by Law.  
Draft a resolution and state the body which appoints K. 3
- (c) Mr. Balu was on the list of contributories as a member who had transferred his shares within a year before the winding up order. After a call had been made against him by the liquidator, he brought certain debts which were due from the company and claimed a reduction in his liabilities under the calls to the extent of those debts. Is this claim maintainable under Companies Act, 1956? 3
- (d) Dehradun Stock Exchange wants to get itself recognize. What information will have to be provided with the application for recognition under Securities Contracts (Regulation) Act, 1956? 3
- (e) Explain the power of Reserve Bank of India to appoint Additional Director as per Banking Regulation Act, 1949. 3
- (f) Write short note on Corporate Governance Committee. 3
- (g) Discuss briefly the Corporate Citizenship. 2

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**Answer:**

**1. (a)**

The Companies Act, 2013 has introduced a new definition of Promoter-in sec 2(69) of the Act which means a person—

- (a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or
- (b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
- (c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act.

Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity.

**1. (b)**

**Appointment of Additional Director: Resolution (Section 161 of the Companies Act, 2013)**

According to section 161(1) of the Companies Act, 2013, the articles of a company may confer on its Board of Directors the power to appoint any person as an additional director at any time.

**Board Resolution:**

“Resolved that pursuant to the Articles of Association of the company and section 161(1) of the Companies Act, 2013, Mr. K is appointed as an Additional Director of the PNR Company Limited with effect from 1st October, 2014 to hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier.

Resolved further that Mr. K will enjoy the same powers and rights as other directors.

Resolved further that Mr. \_\_\_\_\_ Secretary of PNR Company Limited be and is hereby authorised to electronically file necessary returns with the Registrar of Companies and to do all other necessary things required under the Act.”

**Assumption:** As the question is silent about the Articles of Association, it is assumed that Articles of Association has conferred the power to appoint the additional director on the Board of Directors of PNR Company Limited.

**1. (c)**

In this case, the claim of set off is not maintainable. As per section 469, a contributory in a limited company who is also a creditor of the company cannot, as a winding up, set off his debt against a call made on him by the liquidator. A contributory cannot set off his debts against his liabilities for calls even if there is an express agreement to do so. If set off were allowed the effect would be that a shareholder creditor would to paid his debt in full, while other creditors would get only a dividend on their debts.

**1. (d)**

Application for recognition must be accompanied by 4 copies of Articles/ Bye-Laws and Rules and Regulations which must contain specific details on:

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1. Constitution, powers of management and manner of transacting business by the Governing Body of the Stock Exchange.
2. Powers and duties of the office bearers of Stock Exchange.
3. Various classes of Members, qualification of membership and the exclusion, suspension, expulsion and re-admission of members.
4. The procedure for registration of Partnerships as members to stock exchange and rules of nomination of authorized representatives.

Membership provisions, composition of Board and Powers of Governing Board etc are defined in the Articles of the Exchange. Rules governing Listing, Trading and Settlement, Penalties and Prohibitions, Disciplinary provisions and Defaults are defined in Bye-Laws of the Exchange.

## 1. (e)

1. If the Reserve Bank is of opinion that in the interest of banking policy or in the public interest or in the interests of the banking company or its depositors it is necessary so to do, it may, from time to time by order in writing, appoint, with effect from such date as may be specified in the order, one or more persons to hold office as additional directors of the banking company. [Sec 36AB(1)]
2. Any person appointed as additional director in pursuance of this section-
  - (a) shall hold office during the pleasure of the Reserve Bank and subject thereto for a period not exceeding three years or such further periods not exceeding three years at a time as the Reserve Bank may specify;
  - (b) shall not incur any obligation or liability by reason only of his being a director or for anything done or omitted to be done in good faith in the execution of the duties of his office or in relation thereto; and
  - (c) shall not be required to hold qualification-shares in the banking company. [Sec 36AB(2)]
3. For the purpose of reckoning any proportion of the total number of directors of the banking company, any additional director appointed under this section shall not be taken into account. [Sec 36AB(3)]

## 1. (f)

**Corporate Governance Committee:** A company may constitute Corporate Governance Committee to develop and recommended the board a set of corporate governance guidelines applicable to the company, implement policies and processes relating to corporate governance principles to review periodically, the corporate governance guideline of the company. Many companies give the mandate of corporate governance to nomination committee and is given the nomenclature Nomination and Corporate Governance Committee.

## 1. (g)

Corporate citizenship means and requires that the corporate should act, behave and perform like a good citizen and contribute their best to their stakeholders. They should keep away from the profit maximisation theory and should understand that they can exist for a long lime only if they are committed to the nation, society and the public at large.

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## SECTION B

2. Answer any four questions:

15×4 = 60

- (a) (i) Mr. Birat is a Director of MEGLOW LTD. He intends to construct a residential building for his own use. The cost of construction is estimated at ₹ 1.00 Crore which Mr. Birat proposes to finance partly from his own sources to the tune of ₹ 50 Lakh and balance ₹50 Lakh from housing loan to be obtained from a Housing Finance Company. For the purpose of obtaining the loan, he has approached the housing finance company which has in principle agreed to grant loan, but has put a condition.

The condition put by the housing finance company is that MEGLOW LTD. of which Mr. Birat is a Director should provide the guarantee for repayment of the loan and interest as per terms of the proposed agreement for granting the loan to Mr. Birat.

You are required to advise Mr. Birat on the matter keeping in view the relevant provisions of the Companies Act, 2013. 4

- (ii) Mr. B has won a big lottery and wants to remit US Dollar 25,000 out of the winnings to his son who is in USA.

Advise whether such remittance is possible under the Foreign Exchange Management Act, 1999. 2

- (iii) UCO Bank, a Nationalized Bank, acquired on January 1, 2007 a building, fully occupied by various tenants, from Mr. Atanu, the owner of the building in discharging of a term loan advanced to Mr. Atanu who had mortgaged the said Building as security with the said bank and failed to repay the loan. The said bank wants to keep the building permanently with it and earn the rent from tenants.

You are required to state with reference to the provisions of the Banking Regulation Act, 1949, whether the said bank can do so? 4

- (iv) A company incorporated in Malaysia, has established its place of business at Mumbai, what documents are required to be furnished on such establishment of business in India under the Companies Act, 1956. 3

- (v) Mr. Johi held certain partly paid up shares of Ltd. company. The company asked him to pay the final call money on the shares. Due to some unavoidable circumstances he was unable to pay the amount of call money to the company. At a general meeting of the shareholders, the chairman disallowed him to cast his vote on the ground that the articles do not permit a shareholder to vote if he has not paid the calls on the shares held by him. Johi contested the decision of the Chairman.

Referring to the provisions of the Companies Act, 2013 decide whether the contention of Johi is valid. 2

Answer:

2. (a) (i)

### Loans to Directors [ Sec. 185 of Companies Act, 2013]

According to Sec. 185 (1), 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.

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## **Contravention :**

if any loan is advanced or a guarantee or security is given or provided in contravention of the provisions of sub-Sec. (1), the company shall be punishable with a fine which shall not be less than ₹ 5 lakhs but which may extend to ₹ 25 lakhs and the directors or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.

## **Present Case:**

In view of the provision of Sec. 185, MEGLOW Ltd shall not provide guarantee-for repayment of loan and interest thereon.

## **2. (a) (ii)**

Rule 3 read with Schedule I for rules on current account transactions under Foreign Exchange Management Act, 1999 provides that remittance but of income from:

Lottery winnings or

Racing/riding etc. or any other hobby are transactions for which drawal of foreign exchange is prohibited. Thus, Mr. B cannot remit US Dollar 25000 out of his winning, to his son in USA.

## **2. (a) (iii)**

As per section 9 of The Banking Regulation Act, 1949 no banking company shall hold any immovable property howsoever acquired, except such as is required for its own use for any period exceeding 7 years from the acquisition thereof 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.

As per Proviso to Section 9, the Reserve Bank may in any particular case extend the aforesaid period of 7 years by such period not exceeding 5 years where it is satisfied that such extension would be in the interests of the depositors of the banking company.

In the given case, UCO Bank proposes to keep the building for earning rent from tenants, and not for its own use. In view of the provisions of section 9, UCO Bank cannot keep the building permanently with it for the purpose of earning rent from tenants. It shall have to dispose of the Building within 7 years from the date of its acquisition, i.e. on or before 31st December, 2014.

However, if the approval of the Reserve Bank is obtained, it may continue to hold the Building till such extended period as is sanctioned by the Reserve Bank, The Reserve Bank shall not permit the UCO Bank to hold the property beyond 31st December, 2019.

## **2. (a) (iv)**

Foreign Companies shall, within 30 days of establishment of the place of business, deliver to the ROC for registration (Section 380 of the Companies Act 2013)-

(a) Certified Copy of - (i) Charter, (ii) Statutes, (Hi) Memorandum and Articles, or (iv) other instrument constituting or defining the constitution of the Company, and, a certified English Translation thereof, if the instrument is not in the English Language,

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- (b) Full Address of the Registered or Principal Office of the Company,
- (c) List of Directors and Secretary of the Company, containing prescribed particulars,
- (d) Name(s) and Address(es) of person(s) resident in India, authorised to accept on behalf of the Company service of process and any notices or other documents required to be served on the Company, and
- (e) Full Address of Office of the Company in India which is to be deemed its Principal Place of Business in India.
- (f) Particulars of Opening and Closing of a place of business in India on earlier occasion or occasions,
- (g) Declaration that none of the Directors or Authorized Representative in India has ever been convicted or debarred from formation of Companies and management in India or abroad, and
- (h) Form FC-1, along with - (i) attested copy of approval from RBI/Other Regulators under various law / Regulations, or (ii) a declaration from the Authorized Representative that no such approval is required.

**Note:** The question is based on Companies Act, 1956 whereas as corresponding provisions of Companies Act, 2013 is already applicable. Hence the answer is provided as per Companies Act, 2013.

## 2. (a) (v)

Section 106 (1) of the Companies Act, 2013 states that the articles of a company may provide that no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid, or in regard to which the company has exercised any right of lien.

In the present case the articles of the company do not permit a shareholder to vote if he has not paid the calls on the shares held by him. Therefore, the chairman at the meeting is well within its right to refuse him the right to vote at the meeting and Mr. Johi's contention is not valid.

- 2. (b) (i) **XYZ Private Limited is a company in which there are eight shareholders. Can a member holding less than one-tenth of the share capital of the company apply to the Company Law Board for relief against oppression and mismanagement under the Companies Act, 1956.** 3
- (ii) **M/s Variety Stores Limited is planning to buy-back of its shares during the current year, but the company has defaulted in the payment of term loan and interest thereon to its bankers. The company seeks your advice as to how and when the company can buy-back its shares under these circumstances as per the provisions of the Companies Act, 2013.** 2
- (iii) **State with reasons, whether the following statements are correct or incorrect under the Companies Act, 2013:**
  - (1) **Cost audit can be conducted also by Chartered Accountant if in the opinion of the Central Government sufficient numbers of Cost Accountants were not available.**

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- (2) The provisions for appointment of directors to be voted individually shall be applicable to only public company or a private company which is a subsidiary of a public company. 1+1=2
- (iv) Explain the provisions regarding directors' responsibility statement as covered under the Companies Act, 2013. 5
- (v) Q Limited has defaulted repayments of dues to a financial institution during the financial year 2013-14 and the same remained outstanding as at March 31, 2014. However, the company settled the total outstanding dues including interest in April, 2014 subsequent to the year end and before completion of the audit. Discuss how you would deal with this matter as per schedule III to the Companies Act, 2013. 3

**Answer:**

**2. (b) (i)**

Under sec 399(1)(a) of the Companies Act, 1956, in the case of a company having share capital, the following members have the right to apply to the Company Law Board under section 397 or 398.

- (i) Not less than 100 members of the company or not less than one-tenth of the total number of members, whichever is less; or
- (ii) any member or members holding not less than one-tenth of the issued share capital of the company provided the applicant(s) have paid all the calls and other sums due on the shares.

In the given case, since there are eight shareholders. As per (i) above, 10% of 8 i.e. 1 satisfies the condition. Therefore a single member can present a petition to the Company Law Board (CLB), regardless of the fact that he holds less than one-tenth of the company's share capital.

**2. (b) (ii)**

Under section 70 of the Companies Act 2013, now the company can buy-back even if it has defaulted in the repayment of deposit or interest thereon, redemption of debentures or preference shares or payment of dividend or repayment of any term loan or interest thereon to any financial institution or bank, provided the default has been remedied and period of three years has elapsed after such default ceased to subsist. Therefore M/S Variety Stores Ltd. needs to follow the procedure as highlighted above for buy-back of shares.

**2. (b) (iii)**

- (a) False-The cost Audit shall be conducted by a Cost Accountant in practice who shall be appointed by the board on such remuneration as may be determined by the members in such manner as may be prescribed. (Sec 148)
- (b) False- The appointment of Director to be voted individually shall be applicable to all the Companies including the Private Company. (Sec 162)

**2. (b) (iv)**

**Directors' Responsibility Statement [Section 134(5)]:**

- (a) The Directors' Responsibility Statement referred to in 134(3) (c) shall state that—

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- (1) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
- (2) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;
- (3) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;
- (4) the directors had prepared the annual accounts on a going concern basis; and
- (5) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively:

Here, the term "internal financial controls" means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information;

- (6) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

## 2. (b) (v)

**Reporting requirement as per Schedule III to the Companies Act, 2013:** As per the general instructions for preparation of Balance Sheet, provided under Schedule III to the Companies Act, 2013, terms of repayment of term loans and other loans is required to be disclosed in the notes to accounts. It also requires specifying the period and amount of continuing default as on the balance sheet date in repayment of loans and interest, separately in each case.

In the given case, Q Ltd. has defaulted in repayments of dues to a financial institution during the financial year 2013-14 which remain outstanding as at March 31, 2014. However, the company has settled the total outstanding dues including interest in April, 2014 but, the dues were outstanding as at March 31, 2014. Therefore, it needs to be reported in the notes to accounts.

2. (c) (i) **Explain the term 'Overriding Preferential Payments' under the provision of the Companies Act, 1956. ABC Limited is being wound-up by the Court. The official liquidator has realized ₹100 lakh by selling the land and buildings mortgaged by the company in favour of its bankers. The company owes ₹200 lakh to the bank. The bank has claimed that the amount realised by sale of land and buildings must be paid in full to it in preference to the workmen's dues to the extent of ₹50 lakh. Examine the bank's claim with reference to the provisions of the Companies Act, 1956.** 3+2=5
- (ii) **ABC Limited, an Indian insurance company carrying on general insurance business, is facing liquidity problems and, therefore, it has decided to maintain deposits under section 7 of the Insurance Act, 1938 at one per cent of total gross premium written in**

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- India. The company thinks that it is sufficient, as the company has a Paid-up Capital of ₹150 Crores. What would be your suggestion to the company for compliance of Insurance Act and rules and regulations made there under? 3
- (iii) PKR Ltd. is a securitization and reconstruction company under SRFAESI Act, 2002. The certificate of registration granted to it was cancelled. State the authority which can cancel the registration and the right of PKR Ltd. against such cancellation. 3
- (iv) Explain the provisions under the Companies Act, 1956 for amendment of articles of association of a producer company. 2
- (v) Explain in what way the term 'Illustration' is considered as 'Internal Aid' in the interpretation of statutes. 2

**Answer:**

**2. (c) (i)**

**Overriding preferential payment:** As per Section 529A of the Companies Act, 1956, notwithstanding anything contained in any other provisions of this Act or any other law for the time being in force in the winding-up of a company - (i) workmen's dues and (ii) debts due to secured creditors to the extent such debts rank, under clause (c) of the proviso to Sub-section (1) of Section 529, pari passu with such dues, shall be paid in priority to all other debts.

These debts payable under (i) and (ii) above shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.

As per the above provision, the dues of the workmen and debt due to the secured creditors are to be treated pari passu and have to be treated as prior to all other dues.

In view of the stated legal position in the problem, the contention of the Bank to pay the amount in full is not valid as the debts payable to the workmen and the secured creditors shall be paid in full, unless the realized assets are insufficient to meet the due debts, in which case they shall abate in equal proportions. Here, in the given problem, the realized assets of ABC Limited is ₹100 lakh and debts due to the secured creditor (Bank) is ₹200 lakh and the workmen's dues is ₹ 50 lacs.

In the light of the provisions of Section 529 and 529A, amount to be paid towards

$$\begin{aligned}\text{Workmen's dues} &= \frac{\text{Amt. realized} \times \text{Workmen's dues}}{\text{Workmen's dues} + \text{secured loan}} \\ &= ₹ 100 \text{ lacs} \times \frac{₹ 50 \text{ lacs}}{₹ 50 \text{ lacs} + ₹ 200 \text{ lacs}} \\ &= ₹ 100 \text{ lacs} \times \frac{₹ 50}{₹ 250} \\ &= ₹ 100 \text{ lacs} \times \frac{1}{5} = ₹ 20 \text{ lacs}\end{aligned}$$

In view of the provisions of Section 529 and 529A, the contention of the bank that whole of ₹100 lacs realized from the sale of land, etc, shall be paid to the bank towards repayment to loan is not tenable, only a sum of ₹ 80 lacs shall be paid.

Thus, Official Liquidator will have- to pay ₹ 20 Lacs to Workmen and ₹ 80 Lacs to the Bank.

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## 2. (c) (ii)

Section 7 of the Insurance Act, 1938 requires every insurer, carrying a general insurance business, to deposit and keep deposited with RBI in it's one of the Offices in India a sum equivalent to three percent of total gross premium written in India in any financial year. The maximum limit of deposit under this section is Rupees ten crores. The deposit is to be for and on behalf of the Government of India. The deposit can be made either by way of cash and/or investment in approved securities. If securities are deposited, their estimated market value on the date of deposit is to be seen. The amount of deposit required in the case of reinsurance business is rupees twenty crores.

In the given case, Since ABC Limited has decided to maintain deposits at one percent of the total gross premium written in India, is a violation of the Section 7 of the Insurance Act, 1938. The contention of the company that it has a paid up capital of ₹ 150 crores would not make any difference.

## 2. (c) (iii)

The Reserve Bank of India may cancel a certificate of Registration granted to a Securitization and Reconstruction Company for the reasons stated in Sec 4 of SARFAESI ACT, 2002.

PKR Ltd. can prefer an appeal to the Central Govt. (Secretary, Ministry Of Finance, Govt, of India) within a period of 30 days from the date on which order of cancellation was communicated to it. Central Govt, must also give such company a reasonable opportunity of being heard before rejecting the appeal. If PKR Ltd. is holding Investment of qualified Institutional buyers at the time of cancellation of certificate of registration, It shall be deemed to be a securitization and Reconstruction Company until it repays the entire Investment held by it, together with interest if any, within such period as may be specified by the Reserve Bank

## 2. (c) (iv)

Any amendment of the articles shall be proposed by not less than two-third of the elected Directors or by not less than one-third of the members of the producer Company and adapted by the members by a special resolution (Sec 581-I of the Companies Act 1956).

A copy of the amended articles together with the copy of the special resolution, both duly certified by the Two Directors should be filed with the Registrar within 30 days from the date of its adaption.

## 2. (c) (v)

Illustrations Form a part of the Statute and considered to be of reference and value in construing the text of the section. However illustration cannot have the effect of modifying the language of the section and can neither curtail nor expand the ambit of the section.

## (d) (i) Telco Ltd. had the following items under the head 'Reserves and Surplus' in the Balance Sheet as on 31st March, 2015.

	Amount ₹ in Lakhs
Capital Reserve	70
Security Premium Reserve	80

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General Reserve

70

- The company had an accumulated loss of ₹ 240 Lakhs on the same date, which it has disclosed under the head 'Statement of Profit and Loss' as an asset in its Balance Sheet. Comment on accuracy of this treatment in line with schedule III to the Companies Act, 2013. 4
- (ii) 'Money Laundering' does not mean just siphoning of fund. Comment. 2
- (iii) Under 'The Electricity Act, 2003, Licensee shall not do certain things.' Explain. 4
- (iv) Anu Ltd. and Kirti Ltd. dealing in petro-chemicals made an agreement to jointly produce, supply and distribution of their products. Competition Commission of India (CCI) has received a complaint that agreement is anti-competitive and against the interests of persons dealing in the trade. What factors CCI will take into account to determine whether this agreement has any appreciable adverse effect on competition in the market. Examine. 3
- (v) Explain the provisions of 'Compliance' with regard to clause 49 of Corporate Governance. 2

**Answer:**

**2. (d) (i)**

Debit balance of statement of profit & loss (after all allocations and appropriations) shall be shown as a negative figure under the head 'surplus'. Similarly, the balance of 'reserve & surplus', after adjusting balance of surplus, shall be shown under the head 'Reserve & Surplus' even if the resulting figure is in negative. [As per Note 6(B) part 1 of schedule III of the Companies Act, 2013.]

In this case, the debit balance of profit & loss i.e ₹240 lakhs exceeds the total of all reserve i.e ₹220 lakhs. Therefore, balance of 'Reserve & Surplus' after adjusting debit balance of profit & loss is negative by ₹ 20 lakhs, which should be disclosed on the face of the Balance Sheet as the sub heading 'Reserve & Surplus' under the heading 'Shareholders' fund'. Thus, treatment done by the company is incorrect.

**2. (d) (ii)**

Money laundering is a moving of illegally acquired cash through financial systems so that it appears to be legally acquired. Thus, money laundering is not just the siphoning but it is the conversion of money which is illegally obtained to a legal money.

Thus, Prevention of money laundering Act, 2002 has been enacted with aim, for combating & channelizing of money into illegal activities.

**2. (d) (iii)**

No licensee shall, without prior approval of the Appropriate Commission, –

(a) undertake any transaction to acquire by purchase or takeover or otherwise, the utility of any other licensee: or

(b) merge his utility with the utility of any other licensee:

Provided that nothing contained in this sub-section shall apply if the utility of the licensee is situated in a State other than the State in which the utility referred to in clause (a) or clause (b) in situate.

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- (2) Every licensee shall, before obtaining the approval under subsection (1), give not less than one month's notice to every other licensee who transmits or distributes, electricity in the area of such licensee who applies for such approval.
- (3) No licensee shall at any time assign his license or transfer his utility, or any part thereof, by sale, lease exchange or otherwise without the prior approval of the Appropriate Commission.
- (4) Any agreement relating to any transaction specified in sub-section(1) or sub-section (3), unless made with, the prior approval of the Appropriate Commission, shall be void.

## 2. (d) (iv)

### Factors determining appreciable adverse effect on competition:

The Competition Commission of India (CCI), while determining whether an agreement is anti-competitive under Section 19(3) of the Competition Act, 2002, will take into account the following factors.

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

## 2. (d) (v)

### Compliance:

The company shall obtain a certificate from either the auditors or practicing company secretaries regarding compliance of conditions of corporate governance as stipulated in this clause and annex the certificate with the directors' report, which is sent annually to all the shareholders of the company. The same certificate shall also be sent to the Stock Exchanges along with the annual report filed by the company.

- (e) (i) **The Board of Directors of Kanu Limited by passing a resolution decides to borrow from the company's bankers an additional sum of ₹ 200 Crores, as long term loan in order to finance the new projects to be taken up shortly.**

**The company gives you the following financial information:**

	₹
<b>Equity Share Capital</b>	<b>100 Crores</b>
<b>Preference Share Capital</b>	<b>50 Crores</b>
<b>General Reserve</b>	<b>25 Crores</b>
<b>Debentures Redemption Reserve</b>	<b>20 Crores</b>
<b>Provision for Taxation</b>	<b>10 Crores</b>

**Existing Long Term Loan is ₹ 25 Crores.**

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- Examining the provisions of the Companies Act, 2013, the company seeks your advice about the extent to which the company can borrow from its bankers and also state whether the board of directors' proposal to borrow ₹ 200 Crores is valid. 5
- (ii) There are 9 (nine) directors in a company and out of which 2 offices of the directors have fallen vacant. What will be the quorum for the board meeting under the provisions of the Companies Act, 2013? 2
- (iii) (a) Mumbai Stock Exchange wants to establish additional trading floor. Advise.  
(b) Complaints of unethical practices have been received against members of a recognized stock exchange by the Government. Examine whether the Government has any power to suspend the business of such a recognized stock exchange. 2+2
- (iv) What are the circumstances in which an inspector appointed under Sec. 210 of the Companies Act, 2013, can investigate into affairs of related companies? 4

**Answer:**

2. (e) (i) Section 180 of the Companies Act, 2013 provides that the Board of directors of a company can exercise certain powers only with the consent of the company accorded by a special resolution passed at the company's general meeting.

Board of directors of the company can borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed the aggregate of the company's paid-up share capital and free reserves, apart from temporary loans obtained from the company's bankers in the ordinary course of business, only with the consent of the company accorded by a special resolution passed at a general meeting. Every such special resolution shall specify the total amount up to which moneys may be borrowed by the Board of Directors.

In the given case, the aggregate of paid-up share capital + free reserves is ₹ 100 crores + ₹ 50 crores + ₹25 crores, i.e. ₹ 175 crores i.e. the maximum amount can be borrowed by the directors. As per resolution, the Board wants to borrow additional sum of ₹ 200 crores. Company has already borrowed ₹ 25 crores as existing long term loan. Since the amount of additional borrowing i.e. ₹ 200 crores is in excess of the above limit of ₹ 175 crores, the Board can borrow only by passing a special resolution passed in the general meeting of the company.

The Board of Directors of the company are, therefore, advised to get a special resolution passed in the company's general meeting and the resolution should also specify the amount that can be borrowed by the Board.

- (ii) According to section 174(1) of the Companies Act, 2013, the quorum for a meeting of the Board of Directors of a company shall be one third of the total strength of Board (any fraction contained in the said one third being rounded off as one) or two directors whichever is higher. The total strength is to be derived after deducting the number of directors whose offices are vacant. Therefore, where total number of directors is 9 and 2 offices of the directors have fallen vacant, we find:  $1/3$  of  $(9-2) = 1/3$  of  $7 = 2 \frac{1}{3}$  directors which will be rounded off as 3. Therefore, being higher than 2, 3 directors would constitute the quorum for the Board meetings.
- (iii) (a) According to Section 13A or Securities Contracts (Regulation) Act, 1956, a Stock Exchange may establish additional trading floor with the prior approval of the Securities Exchange Board of India with the terms and conditions stipulated by the said Board. 'Additional Trading Floor', means a trading facility offered by

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a recognized stock exchange outside its area of operation to enable the investors to buy and sell securities through such trading floor under the regulatory frame work of that Stock-Exchange.

- (b) Section 12 of the Securities Contracts (Regulation) Act, 1956 deals with the powers of the Central Government to suspend business of recognized Stock Exchange. Central Government, if it deems fit, is vested with power to suspend business for a period not exceeding 7 days by notification in Gazette. Central Government also have power to extend this period by a like notification. However, such power can be exercised by the Central Government, if it is of opinion that an emergency has arisen and it is expedient so to do.

(iv) **Investigation into affairs of related companies:** According to section 219 of the Companies Act, 2013, if an inspector appointed under section 210 or section 212 or section 213 to investigate into the affairs of a company considers it necessary for the purposes of the investigation, can also investigate the affairs of—

- (i) any other body corporate which is, or has at any relevant time been the company's subsidiary company or holding company, or a subsidiary company of its holding company;
- (ii) any other body corporate which is, or has at any relevant time been managed by any person as managing director or as manager, who is, or was, at the relevant time, the managing director or the manager of the company;
- (iii) any other body corporate whose Board of Directors comprises nominees of the company or is accustomed to act in accordance with the directions or instructions of the company or any of its directors; or
- (iv) director or manager or employee.

## SECTION C

3. Answer any two questions:

10×2 = 20

- (a) (i) **What are the CORE elements of the Corporate Social Responsibility (CSR) policy as per the CSR Voluntary Guidelines, 2009?** 5
- (ii) **According to Altered Images: The 2001 State of Corporate Responsibility in India Poll' a survey conducted by TATA Energy Research Institute (TERI), the evolution of CSR in India has followed a chronological evolution of 4 thinking approaches.—Explain the same.** 5
- (b) (i) **Risk assessment form a major element in whole life costing. Discuss.** 5
- (ii) **Discuss corporate brand as CSR initiative to enable corporate to build a stronger brand.** 5
- (c) (i) **Discuss the issue of subjectivity in Whole Life Cycle Costing (WLCC).** 5
- (ii) **What is the need for Corporate Governance in India?** 5

**Answer:**

**3. (a) (i)**

The Government of India released guidelines to assist companies in India to understand the new voluntary Corporate Social Responsibility Code. As per these guidelines, the core elements that one must consider while establishing such a CSR policy are as under:

1. Care for Stake Stakeholders - Respect the interests of all your stakeholders such as

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shareholders, customers, suppliers, society at large.

2. Ethical functioning - Ensure that your Company maintains the highest levels of standards in ethics, transparency and accountability.
3. Respect for Workers' Rights and Welfare - Ensure fair treatment of all employees by instituting policies covering key aspects such as safety, hygiene, training, healthcare, grievance redressal. anti-discrimination etc.
4. Respect for Human Rights - Ensure that there are no Human Rights violations in the operations - either with employees, customers, society, production, labour etc.
5. Respect for Environment - Ensure sustainability of key natural resources and optimal utilization of land, water, energy to minimize the impact on the environment.
6. Social and Inclusive Development - Respect the area what you work in and the people that work for you. Include the community through economic and social improvement activities.

### 3. (a) (ii)

According to "Altered Images: the 2001 State of Corporate Responsibility in India Poll", a survey conducted by Tata Energy Research Institute (TERI), the evolution of CSR in India has followed a chronological evolution of 4 thinking approaches:

**Ethical Model (1930-1950):** One significant aspect of this model is the promotion of "trusteeship" that was revived and reinterpreted by Gandhiji. Under this notion the businesses were motivated to manage their business entity as a trust held in the interest of the community. The idea prompted many family run businesses to contribute towards socio-economic development. The efforts of Tata group directed towards the well being of the society are also worth mentioning in this model.

**Statist Model (1950 -1970s):** Under the aegis of Jawahar Lal Nehru, this model came into being in the post independence era. The era was driven by a mixed and socialist kind of economy. The important feature of this model was that the state ownership and legal requirements decided the corporate responsibilities.

**Liberal Model (1970s -1990s):** The model was encapsulated by Milton Friedman. As per this model, corporate responsibility is confined to its economic bottom line. This implies that it is sufficient for business to obey the law and generate wealth, which through taxation and private charitable choices can be directed to social ends.

**Stakeholder Model (1990s - Present):** The model came into existence during 1990s as a consequence of realisation that with growing economic profits, businesses also have certain societal roles to fulfill. The model expects companies to perform according to "triple bottom line" approach. The businesses are also focusing on accountability and transparency through several mechanisms.

### 3. (b) (i)

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

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procurement of construction projects, generally involve multiple disciplines and 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 risks and decisions that are taken in the evaluation process. Nor do they allow for a systematic evaluation of all the parameters that are considered important in the examination of the WLCC aspects of a project. The existing methods also do not adequately quantify the true economic impacts of many quantitative and qualitative parameters.

### 3. (b) (ii)

In an economy where corporates strive for a unique selling proposition to differentiate themselves from their competitors, CSR initiatives enable corporates to build a stronger brand that resonates with key external stake-holders—customers, general public and the government.

Businesses are recognizing that adopting an effective approach to CSR can open up new opportunities, and increasingly contribute to the corporates' ability to attract passionate and committed workforces.

Corporates in India are also realizing that their reputation is intrinsically connected with how well they consider the effects of their activities on those with whom they interact. Wherever the corporates fail to involve parties, affected by their activities, it may put at risk their ability to create wealth for themselves and society. Therefore, in terms of business, CSR is essentially a strategic approach for firms to anticipate and address issues associated with their interactions with others and, through those interactions, to succeed in their business endeavors. The idea that CSR is important to profitability and can prevent the loss of customers, shareholder, and even employees is gaining increasing acceptance.

Further, CSR can help to boost the employee morale in the organization and create a positive brand-centric corporate culture in the organization. By developing and implementing CSR initiatives, corporates feel contented and proud, and this pride trickles down to their employees.

### 3. (c) (i)

The issue of subjectivity and vagueness is also a very important facet of WLCC. Subjectivity, vagueness and ambiguity are different from randomness. Randomness deals with uncertainty (in terms of probability) concerning the occurrence or non-occurrence of an event. Subjectivity, on the other hand, has to do with the imprecision and inexactness of events and judgments, including probability judgments. Many WLCC decision problems involve variables and relationships that are difficult, if not impossible, to measure precisely. For example, probability judgments about issues like inflation, operation costs, etc. are not always precise in WLCC and often cost analysts use subjective expressions to express their probability judgments. This applies to probability judgments as well as the costs and benefits in many WLCC decision problems. The requirement for high levels of precision may cause WLCC models to lose part of their relevance to the real world by ignoring some of the relevant decision attributes because these variables are incapable of precise measurement or because their inclusion may increase the complexity of the models. Hence, the key to successful WLCC and risk assessment is to build models that require little information - no more than the users can provide.

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## 3. (c) (ii)

### **Need for Corporate Governance:**

Corporate Governance is integral to the existence of the company. It is needed to create a corporate culture of transparency, accountability and disclosure.

**Corporate Performance:** Improved governance structures and processes help ensure quality decision-making, encourage effective succession planning for senior management and enhance the long-term prosperity of companies, independent of the type of company and its sources of finance.

**Enhanced Investor Trust:** Investors consider Corporate Governance as important as financial performance when evaluating companies for investment.

**Combating Corruption:** Companies that are transparent, and have sound system that provide full disclosure of accounting and auditing procedures, allow transparency in all business transactions, provide environment where corruption will certainly fade out.

**Better Access to Global Market:** Good Corporate Governance systems attracts investment from global investors, which subsequently leads to greater efficiencies in the financial sector.

**Enhancing Enterprise Valuation:** Improved management accountability and operational transparency fulfill investors' expectations and confidence on management and corporations, and return, increase the value of corporations.

**Accountability:** Investor relations' is essential part of good Corporate Governance, investors have directly/indirectly entrusted management of the company for creating enhanced value for their investment.

**Easy Finance from Institutions:** Evidence indicates that well-governed companies receive higher market valuations.

**Reduced Risk of Corporate Crisis and Scandals:** Effective Corporate Governance ensures efficient risk mitigation system in place.