

**FINAL EXAMINATION
Syllabus 2016**

Paper 13: CORPORATE LAWS & COMPLIANCE (CLC)

Time Allowed: 3 Hours

Full Marks: 100

**There are Sections A, B, C and D to be answered subject to instructions given against each.
(Time allotted for Sections A and B shall be limited to a maximum of 50 minutes)**

Section A					1 × 20 = 20 Marks
You are required to answer all the questions. Each question carries 1 mark. Instructions: Each question is followed by 4 Answer choices and only one is correct. You are required to select the choice which according to you represents the correct answer					
1.	a.	A company formed as under one person company may be either			
		(i)	A company limited by shares		
		(ii)	Company limited by guarantee		
		(iii)	An unlimited company		
		(iv)	All of the above	A	
	b.	Every company shall hold the first meeting of the Board of Directors within how many days of the date of its incorporation?			
		(i)	30 days	A	
		(ii)	60 days		
		(iii)	90 days		
		(iv)	15 days		
	c.	Approving financial statements and the Board’s Report comes under the :			
		(i)	Specific Items		
		(ii)	Corporate Actions		
		(iii)	General Business Items	A	
		(iv)	Additional list of items in case of listed companies		
	d.	FIPB stands for :			
		(i)	Foreign Investment Promotion Board	A	
		(ii)	Foreign Institutional Promotion Board		
		(iii)	Foreign Institutional Portfolio Board		
		(iv)	Foreign Investment portfolio Board		
	e.	SEBI was first established in the year_____ as non-statutory body			
		(i)	1992		
		(ii)	1988	A	
		(iii)	1990		
		(iv)	1985		
	f.	_____ option means an option of allotting equity shares in excess of the equity shares offered in the public issue as a post-listing price stabilizing mechanism;			
		(i)	Green shoe	A	
		(ii)	Listed issuer		

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	(iii)	Net offer to public		
	(iv)	Offer document		
g.	According to the Companies Act, 2013 foreign Company is mentioned in section _____.			
	(i)	2 (40)		
	(ii)	2 (42)	A	
	(iii)	2 (44)		
	(iv)	None of the above		
h.	Derivatives are covered under which Act:			
	(i)	Securities Contracts (Regulation) Act, 1956	A	
	(ii)	Depositories Act, 1996		
	(iii)	Reserve Bank of India Act, 1934		
	(iv)	The Competition Act, 2002		
i.	_____ means a prospectus which does not include complete particulars of the quantum or price of the securities included therein			
	(i)	Deemed Prospectus		
	(ii)	Shelf Prospectus		
	(iii)	Red herring prospectus	A	
	(iv)	None of the above		
j.	No insurer carrying on the business of life insurance and general insurance, shall be registered unless he has minimum paid up capital of			
	(i)	Rs.50 crore		
	(ii)	Rs. 200 crore		
	(iii)	Rs.150 crore		
	(iv)	Rs. 100 Crore	A	
k.	Every Producer Company shall have at least _____ Directors.			
	(i)	10		
	(ii)	5	A	
	(iii)	3		
	(iv)	2		
l.	The ordinary business activities like declaration of dividends, appointment of directors, acceptance of the financial statements and appointment of auditors requires the consent of _____ of the shareholders.			
	(i)	90%		
	(ii)	75%		
	(iii)	51%	A	
	(iv)	No need of acceptance of shareholders for ordinary activity		
m.	The Directorate of Enforcement was established in the year _____ with its Headquarters at New Delhi			
	(i)	1949		
	(ii)	1956	A	
	(iii)	1967		
	(iv)	1985		

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	n.	The period of one hundred and eighty days beginning from the insolvency commencement date and ending on one hundred and eightieth day is known as _____ as per Section 5(14)	
	(i)	Initiation date period	
	(ii)	Insolvency commencement date period	
	(iii)	Insolvency process period resolution	A
	(iv)	All of the above	
	o.	The Company Liquidator may, with the sanction of the Tribunal, appoint one or more _____ to assist him in the performance of his duties and functions under this Act.	
	(i)	Chartered Accountants	
	(ii)	Company Secretaries	
	(iii)	Cost Accountants	
	(iv)	All of the above	A
	p.	No Nidhi shall appoint or re-appoint an audit firm as auditor for more than two terms of _____ Consecutive year	
	(i)	Three	
	(ii)	Four	
	(iii)	Five	A
	(iv)	Six	
	q.	The first meeting of the committee of creditors shall be held within _____ of the constitution of the committee of creditors - Section 22(1) of Insolvency and Bankruptcy Code, 2016.	
	(i)	Six days	
	(ii)	Seven days	A
	(iii)	Eight Days	
	(iv)	Twelve days	
	r.	Listed companies must have audit committees of the board with a minimum of three directors, _____ of whom must be independent.	
	(i)	One-third	
	(ii)	Half	
	(iii)	Two-thirds	A
	(iv)	Two-fifth	
	s.	Every special resolution is required to be filed in form No. as per Section 117(3)(a)].	
	(i)	MGT-11	
	(ii)	MGT-12	
	(iii)	MGT-13	
	(iv)	MGT-14	A
	t.	In case of an initial public offer, the minimum contribution should not be less than _____ of the post issue capital.	
	(i)	5%	
	(ii)	10%	
	(iii)	15%	
	(iv)	20%	A

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Section B			10 × 2 = 20 Marks
You are required to answer all the questions. Each question carries 2 mark.			
Instructions: Each question is followed by a space where you are required to type your answer.			
2.	a.	When and by whom shall the first auditor of a company, other than a Government Company, shall be appointed?	
		Type your answer here The first auditor of a company, other than a Government Company, shall be appointed by the Board of directors within 30 days of the date of registration of the company.	
	b.	State the punishment if an auditor of a company contravenes any of the provisions of Section 139, Section 143, Section 144 or Section 145?	
		Type your answer here If an auditor of a company contravenes any of the provisions of Section 139, Section 143, Section 144 or Section 145, the auditor shall be punishable with fine which shall not be less than Rs. 25,000 but which may extend to Rs. 5 lacs	
	c.	How many independent directors shall every listed public company have?	
		Type your answer here Every listed public company shall have at least one-third of the total number of directors as independent directors [Section 149(4)].	
	d.	Who is an Interested Director?	
		Type your answer here A director who is in any way, whether by himself or through any of his relatives or firm, body corporate or other association of individuals in which he or any of his relatives is a partner, director or a member, interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into by or on behalf of a company known as Interested director according to Section 2 (49) of the Companies Act, 2013	
	e.	What are the three functions rolled into SEBI?	
		Type your answer here SEBI has three functions rolled into one body: quasi-legislative, quasi-judicial and quasi-executive.	
	f.	What do you mean by securitization?	
		Type your answer here Securitization means acquisition of financial assets by any asset reconstruction company from any originator, whether by raising of funds by such asset reconstruction company from qualified buyers by issue of security receipts representing undivided interest in such financial assets or otherwise.	
	g.	What is a pre requisite for initiating investigation into the offence of money laundering?	
		Type your answer here The Scheduled Offence is also called Predicate Offence and the occurrence of the same is a pre requisite for initiating investigation into the offence of money laundering	
	h.	What is an Option?	
		Type your answer here An Option contract conveys the right to buy or sell a specific security of commodity at specified price within a specified period of time.	
	i.	What is considered as the Insolvency commencement date ?	

		Type your answer here “Insolvency commencement date” means the date of admission of an application for initiating corporate insolvency resolution process by the Adjudicating Authority under Sections 7, 9 or Section 10 of Insolvency and Bankruptcy Code, 2016, as the case may be - Section 5(12) of Insolvency and Bankruptcy Code, 2016.	
	j.	State the requirement of woman director/s on Board.	
		Type your answer here Every listed company shall appoint at least one woman director on Board.	
<p align="center">Section C</p> <p align="center">You are required to answer any 4 out of 6 questions in this section</p> <p align="center">Instructions: Each question is followed by a space where you are required to type your answer.</p>			<p align="center">12 × 4 = 48 Marks</p>
3.	a.	Explain the conditions of Removal of Directors (Section 169)	6
		<p>Type your answer here Section 169 of the Companies Act, 2013 came into force partially 4 from 1st April, 2014 which provides the provisions for removal of directors. According to this section:</p> <p>(a) A company may, by ordinary resolution, remove a director other than a director appointed by the Tribunal under section 242 of the Act, before the expiry of the period of his office after giving him a reasonable opportunity of being heard. [Section 169(1)]. Independent director appointed for the second term can be removed by the special resolution.</p> <p>(b) It is further provided that the directors appointed on the principle of proportional representation under section 163 cannot be removed by an ordinary resolution as aforesaid. {Proviso to section 169(1)}.</p> <p>(c) A special notice shall be required of any resolution, to remove a director under section 169 or to appoint somebody in place of a director so removed, at the meeting at which he is removed. [Section 169 (2)].</p> <p>(d) On receipt of the notice of a resolution to remove a director under section 169, the company shall forthwith send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting. [Section 169(3)].</p> <p>(e) The vacancy resulting from the aforesaid removal if he had been appointed by the company in general meeting or by the Board, may be filled in by the appointment of another director at the same meeting at which the director is removed, provided special notice of the proposed appointment has been given under section 169(2). [Section 169(5)].</p> <p>(f) A director so appointed shall hold office for the remaining period for which the director who has been removed would have held office if he had not been removed. [Section 169(6)].</p> <p>(g) If the vacancy is not filled in the same meeting as above, then it may be filled as a casual vacancy in accordance with the provisions of this Act provided that the director who was so removed from office shall not be reappointed as a director. [Section 169(7)].</p> <p>(h) Nothing in this section shall be taken to deprive a person removed under this section of his rights to compensation or damages payable to him in respect of the premature termination of the directorship, or terms of his appointment as director or of any appointment terminating with that as a director. The Companies Act, 2013 [Section 169(8)(a)].</p> <p>(i) Nothing in this section shall be derogating from any power to remove a director under any other provisions of this Act. [Section 169(8)(b)]</p>	

	b.	What is the Jurisdiction of Tribunal? (Section 280)	6
		<p>Type your answer here As per Section 280, The Tribunal shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of :</p> <p>(a) any suit or proceeding by or against the company.</p> <p>(b) any claim made by or against the company, including claims by or against any of its branches in India.</p> <p>(c) any application made under Section 233.</p> <p>(d) any scheme submitted under Section 262.</p> <p>(e) any question of priorities or any other question whatsoever, whether of law or facts, including those relating to assets, business, actions, rights, entitlements, privileges, benefits, duties, responsibilities, obligations or in any matter arising out of, or in relation to winding up of the company, whether such suit or proceeding has been instituted, or is instituted, or such claim or question has arisen or arises or such application has been made or is made or such scheme has been submitted, or is submitted, before or after the order for the winding up of the company is made.</p>	
4.	a.	What is ED (Enforcement Directorate) under the Foreign Exchange Regulation Act, 1973? Also explain its functions.	6
		<p>Type your answer here The Directorate of Enforcement was established in the year 1956 with its Headquarters at New Delhi. It is responsible for enforcement of the Foreign Exchange Management Act, 1999 (FEMA) and certain provisions under the Prevention of Money Laundering Act. Work relating to investigation and prosecution of cases under the PMLA has been entrusted to Enforcement Directorate. The Directorate is under the administrative control of Department of Revenue for operational purposes the policy aspects of the FEMA, its legislation and its amendments are within the purview of the Department of Economic Affairs.</p> <p>Functions:</p> <p>a) To collect, develop and disseminate intelligence relating to violations of FEMA, 1999, the intelligence inputs are received from various sources such as Central and State Intelligence agencies, complaints etc.</p> <p>b) To investigate suspected violations of the provisions of the FEMA, 1999 relating to activities such as "hawala" foreign exchange racketeering, non-realization of export proceeds, non-repatriation of foreign exchange and other forms of violations under FEMA, 1999.</p> <p>c) To adjudicate cases of violations of the erstwhile FERA, 1973 and FEMA, 1999.</p> <p>d) To realize penalties imposed on conclusion of adjudication proceedings.</p> <p>e) To handle appeals and prosecution cases under the erstwhile FERA, 1973.</p> <p>f) To process and recommend cases for preventive detention under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA).</p> <p>g) To undertake survey, search, seizure, arrest, prosecution action etc. against offender of PMLA offence.</p> <p>h) To provide and seek mutual legal assistance to/from contracting states in respect of attachment/ confiscation of proceeds of crime as well as in respect of transfer of accused persons under PMLA</p>	

	b.	What are the different models of E-Governance ?	6
		<p>Type your answer here The different modes of e governance are:</p> <p>Government to Citizen (G2C)</p> <p>The goal of government to customer/citizen (G2C) e-governance is to offer a variety of ICT services to citizens in an efficient and economical manner and to strengthen the relationship between government and citizens using technology. There are several methods of government-to-customer e-governance. Two-way communication allows citizens to instant message directly with public administrators and cast remote electronic votes (electronic voting) and instant opinion poll. Transactions such as payment of services, such as city utilities, can be completed online or over the phone.</p> <p>Government to Employees (G2E)</p> <p>E-Governance to Employee partnership (G2E) is one of four main primary interactions in the delivery model of E-Governance. It is the relationship between online tools, sources, and articles that help employees maintain communication with the government and their own companies. E-Governance relationship with Employees allows new learning technology in one simple place as the computer. Documents can now be stored and shared with other colleagues online.</p> <p>Government to Government (G2G)</p> <p>(G2G) It is an electronic sharing of data and/or information system between government agencies, departments or organizations. The goal of G2G is to support e-government initiatives by improving communication, data access and data sharing.</p> <p>Government to Business(G2B)</p> <p>It is an online non-commercial interaction between local and central government and the commercial business sector with the purpose of providing businesses information and advice on e-business 'best practices'. G2B is also refers to the conduction through the Internet between government agencies and trading companies. Public issue and share transfer records is mandatory to be kept in electronic form.</p>	
5	a.	What is Listing of Securities ?Explain the Legal Provisions regarding listing.	8
		<p>Type your answer here As per Section 40 of the Companies Act, 2013, every company intending to offer shares or debentures to the public for subscription by the issue of a prospectus is required to make an application to one or more recognized stock exchanges before such issue for permission for the securities intending to be so offered to be dealt with in the stock exchange(s).</p> <p>As per Section 40 of the Companies Act, 2013, prospectus should state the names of the stock exchanges where application for listing has been made and any allotment of securities made on the basis of such prospectus should be void if permission of listing is not granted by the stock exchange(s) before the expiry of 10 weeks from the closure of the issue.</p> <p>As per Section 4 of the Securities Contracts (Regulation) Act, 1956, every recognized stock exchange has the powers to make bye-laws for the listing of securities on the stock exchange, inclusion of any security for the purpose of dealings and suspension or withdrawal of securities and the prohibition of trading in any specified security, subject to SEBI approval.</p>	

		<p>Every company while submitting its application for listing with the stock exchange(s) should produce a number of documents as enclosures to satisfy the requirements of the concerned stock exchange. It should also give a number of under takings as a condition precedent before listing as a sought by the concerned stock exchange. Finally, when the stock exchange(s) agree(s) to list the securities, the company shall execute a listing agreement with the stock exchange(s). The listing agreements of different stock exchanges have clauses ranging from 50 to 60.</p> <p>When a company signs a listing agreement with a stock exchange, it means it has entered a legally binding contract with that exchange and it has to ensure compliance of each and every term and condition in the listing agreement. For failure to ensure such compliance the stock exchange can take an action against the company after giving an opportunity of being heard.</p> <p>Listing of securities on Indian Stock Exchanges, thus, is essentially governed by the provisions in the Companies Act, 2013, the Securities Contracts (Regulation) Act, 1956, the Securities Contracts (Regulations) Rules, 1957, Rules, Bye-laws, regulations of concerned stock exchange, the listing agreement entered into by the issuer and stock exchange and circulars / guidelines issued by the Central Government and SEBI.</p>	
	b.	Explain the Duties of interim resolution professional under Section 18(1) of Insolvency and Bankruptcy Code, 2016.	4
		<p>Type your answer here The interim resolution professional shall perform the following duties - Section 18(1) of Insolvency and Bankruptcy Code, 2016.</p> <p>(a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to—</p> <ul style="list-style-type: none"> (i) business operations for the previous two years (ii) financial and operational payments for the previous two years (iii) list of assets and liabilities as on the initiation date; and (iv) such other matters as may be specified <p>(b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under Sections 13 and 15.</p> <p>(c) constitute a committee of creditors.</p> <p>(d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors.</p> <p>(e) file information collected with the information utility, if necessary; and</p> <p>(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets.</p> <p>(g) perform such other duties as may be specified by the Board.</p>	
6	a.	What are the required qualifications of the President, judicial member and technical Member of Tribunal (Section 409) under Companies Act, 2013 ?	6

		<p>Type your answer here Section 409 of the Act contains the provisions as to Qualification of President and Members of Tribunal. According to this Section the qualifications of the President and members of Tribunal are as follows:</p> <p>A:- Qualification for the President: He shall be a person who is or has been a Judge of a High Court for five years.</p> <p>B:- Qualification for the Judicial member: A person shall not be qualified for appointment as a Judicial Member unless he is or has been:</p> <ol style="list-style-type: none"> (1) a judge of a High Court, or (2) a District Judge for at least five years, or (3) an advocate of a court for at least ten years. <p>C:- Qualification for Technical member: A person shall not be qualified for appointment as a Technical Member unless he:</p> <ol style="list-style-type: none"> 1) has, for at least fifteen years been a member of the Indian Corporate Law Service or Indian Legal Service and has been holding the rank of Secretary and Additional Secretary to the Government of India, or 2) is, or has been, in practice as a Chartered Accountant for at least fifteen years, or 3) is, or has been, in practice as a Cost Accountant for at least fifteen years, or 4) is, or has been, in practice as a Company Secretary for at least fifteen years, or 5) is a person of proven ability, integrity and standing having special knowledge and experience, of not less than fifteen years, in, industrial finance, industrial management, industrial reconstruction, investment & accountancy, or 6) is, or has been, for at least five years, a presiding officer of a Labour Court, Tribunal or National Tribunal constituted under the Industrial Disputes Act, 1947. 	
	b.	Explain the two routes an Indian company may adopt to receive Foreign Direct Investment (FDI).	3
		<p>Type your answer here</p> <p>a) Automatic Route: - FDI is allowed under the automatic route without prior approval either of the Government or the Reserve Bank of India in all activities / sectors as specified in the consolidated FDI Policy, issued by the Government of India from time to time.</p> <p>b) Government Route: - FDI in activities not covered under the automatic route requires prior approval of the Government which is considered by the Ministry of Finance, and is to be routed through relevant administrative ministry. The Indian company having received FDI either under the Automatic route or the Government route is required to comply with provisions of the FDI policy including reporting the FDI to the Reserve Bank of India</p>	
	c.	Conditions for further public offer (Regulation 103)	3
		<p>Type your answer here</p> <p>(a) An issuer may make a further public offer (an offer of equity shares and convertible securities) if it satisfies the following conditions:</p> <ol style="list-style-type: none"> (1) if it has changed its name within the last one year, at least 50% of the revenue for the preceding one full year has been earned by it from the activity indicated by the new name. <p>(b) If the issuer does not satisfy the above conditions, it may make a further public offer if it satisfies the following conditions:</p> <ol style="list-style-type: none"> a) the issue is made through the book building process and the issuer undertakes to allot at least 75% of the net offer to public to qualified institutional buyers and to refund full subscription monies if it fails to make allotment to the qualified institutional buyers. 	

7.	a.	XYZ Ltd. has received loan in advanced contravention of the provisions of section 185, what will be Penalty for contravention?	6
		<p>Type your answer here</p> <p>If any loan is advanced or a guarantee is given or provided in contravention of the provisions of section 185, the following penalties shall be leviable:</p> <p>(a) On Company: Minimum- Rs 5 lakhs and maximum- Rs 25 lakhs.</p> <p>(b) On defaulting director and 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: Imprisonment Maximum 6 months, or, Fine- Minimum- 5 lakhs and maximum- 25 lakhs, or, Both imprisonment and fine. Thus, penalty is leviable only on the company or director or person to whom the loan is given or guarantee or security is provided. However, all other persons who are knowingly a party to default has been kept outside the ambit of penalty clause of section 185. The Companies (Meetings of Board and its Powers) Rules, 2014 has exempted the following from the ambit of section 185 provided the loans are to utilize by the subsidiary company for its principal business activities.</p> <p>(1) Any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company is exempted from the requirements under this section, and</p> <p>(2) Any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company is exempted from the requirements under this section. Vide Notification G.S.R 464(E), dated 5th June 2015, section 185 shall not apply to a private company:</p> <p>a) In whose share capital no other body corporate has invested any money.</p> <p>b) If the borrowings of such a company from banks or financial institutions or anybody corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower, and</p> <p>c) Such company has no default in repayment of such borrowings subsisting at the time of making transactions under this section.</p>	
	b.	What are the Conditions for issue of IDRs ?	6
		<p>Type your answer here</p> <p>An issue of IDR is subject to the following conditions:</p> <p>a) Issue size should not be less than Rs 50 crore.</p> <p>b) Procedure to be followed by each class of applicant for applying should be mentioned in the prospectus.</p> <p>c) Minimum application amount should be Rs 20,000.</p> <p>d) At least 50% of the IDR issued should be allotted to qualified institutional buyers on proportionate basis.</p> <p>e) The balance 50% may be allocated among the categories of non-institutional investors and retail individual investors including employees at the discretion of the issuer and the manner of allocation has to be disclosed in the prospectus. Allotment to investors within a category will be on proportionate basis. Further, at least 30% of the IDRs issued will be allocated to retail individual investors and in case of under-subscription in retail individual investor category, spill over to other categories to the extent of under-subscription may be permitted.</p> <p>f) At any given time, there will be only one denomination of IDR of the issuing company .</p>	
8.		Write Short Notes on any 4 out of 5 of the following :	4 × 3 = 12 Marks
	a.	Exceptions to Doctrine of Indoor Management	

		<p>Type your answer here</p> <p>The rule of Indoor Management is important to persons dealing with a company through its directors or other persons. They are entitled to assume that the acts of the directors or other officers of the company are validly performed, if they are within the scope of their apparent authority. So long as an act is valid under the articles, if done in a particular manner, an outsider dealing with the company is entitled to assume that it has been done in the manner required. The above mentioned doctrine of Indoor Management has limitations of its own. That is to say, it is inapplicable to the following cases, namely:</p> <ol style="list-style-type: none"> The rule does not protect any person when the person dealing with the company has notice, whether actual or constructive, of the irregularity [Moris vs. Kenssen (1946) A.C. 459. Devi Ditta Mal vs. The Standard Bank of India (1972) I.C. 568]. Thus director of a company cannot normally claim the benefit of the rule in the Turquand Case where he is also acting for the company in the transaction. The doctrine in no way, rewards those who behave negligently. Where the person dealing with the company is put upon an inquiry. When an instrument purporting to be executed on behalf of the company is a forgery. The doctrine of indoor management applies only to irregularities which might otherwise affect a transaction but it cannot apply to forgery which must be regarded as nullity and void ab initio [Ruben vs. Great Fingal Consolidated (1966) A.C. 439: Official Liquidator vs. Commr. of Police (1969) I Comp. L.J. (Mad.)] 	
	b.	Cognizable offence and Non-Cognizable Offence	
		<p>Type your answer here</p> <p>‘Cognizable offence’ is an offence and ‘Cognizable case’ is a case for which a police officer may arrest without warrant, while ‘Non-cognizable offence’ is an offence and ‘Non-cognizable case’ is a case for which a police officer has no authority to arrest without warrant.</p> <p>Schedule I specifies which offences are cognizable and which are non-cognizable under the Indian Penal Code and under other statutes. Non-cognizable cases are considered less grave than cognizable cases. Likewise, non-cognizable offences are considered less serious than cognizable offences.</p> <p>A police officer can investigate a cognizable case without an order of a magistrate, but he cannot investigate without such order if the case is non-cognizable one. If a case involves one or more cognizable offence it would be a cognizable case even if other offence or offences may be non-cognizable</p>	
	c.	Circumstances for seizure [Section 209 (1)]	
		<p>Type your answer here</p> <p>Where, upon information in his possession or otherwise, the Registrar or inspector has reasonable ground to believe that the books and papers of a company, or relating to:</p> <ol style="list-style-type: none"> 1) The key managerial personnel or 2) Any director or 3) Auditor or 4) Company secretary in practice <p>If the company has not appointed a company secretary, are likely to be destroyed, mutilated, altered, falsified or secreted, he may, after obtaining an order from the Special Court for the seizure of such books and papers: a) enter, with such assistance as may be required, and search, the place or places where such books or papers are kept, and b) seize such books and papers as he considers necessary after allowing the company to take copies of, or extracts from, such books or papers at its cost..</p>	

	d.	Small Company [Section 2 (85)]	
		<p>Type your answer here</p> <p>According to Section 2 (85) of Companies Act, 2013 a “small company” means a company, other than a public company:</p> <ol style="list-style-type: none"> 1) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees. Or, 2) turnover of which as per its profit and loss account for the immediately preceding financial year. does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees: <p>Provided that nothing in this clause shall apply to:</p> <ol style="list-style-type: none"> a) A holding company or a subsidiary company. b) A company registered under Section 8, or c) A company or body corporate governed by any special Act. <p>Some of the advantages enjoyed by the small companies are:</p> <ol style="list-style-type: none"> a) Holding of two board meetings instead of four – one each in the first and second half years and the gap between the two meeting should not be more than 90 days. [section 173(5)] b) Not required to give cash flow statements with the financial statements [section 2(40)] 	
	e.	Winding up of Banking Companies [Section 38 to 44]	
		<p>Type your answer here</p> <p>Sections 38 to 44 of the Act lay down the provisions for winding up of a banking company. The RBI may apply for the winding up of a banking company if.</p> <ol style="list-style-type: none"> a) It fails to comply with the requirements as to minimum Paid-up capital and reserves as laid down in Section 11, or b) Is disentitled to carry on the banking business for want of license under Section 22, or c) It has been prohibited from receiving fresh deposits by the Central Government or the Reserve Bank, or d) It has failed to comply with any requirement of the Act, and continues to do so even after the Reserve Bank calls upon it to do so, or e) The Reserve Bank thinks that a compromise or arrangement sanctioned by the court cannot be worked satisfactorily, or f) The Reserve Bank thinks that according to the returns furnished by the company it is unable to pay its debts or its continuance is prejudicial to the interests of the depositors. The banking company cannot be voluntarily wound up unless the Reserve Bank certifies that it is able to pay its debts in full . 	
		<p style="text-align: center;">Section D</p> <p style="text-align: center;">You are required to answer all the questions in this section</p> <p style="text-align: center;">Instructions: Each question is followed by a space where you are required to type your answer</p>	<p style="text-align: center;">12 × 1</p> <p style="text-align: center;">= 12</p> <p style="text-align: center;">Marks</p>

9.		<p>ABD is a consultancy company established in 2007 in Delhi as a public company. The founder director of the company is Mr. A. He is a dynamic person with twenty years working experience in the business consultancy. After which he started his own firm in the name of ABD Ltd. As a corporate and commercial consultancy firm, ABD Ltd. have always strived to focus on the requirements of its customers and their stakeholder. ABD deals in various fields like providing Legal, financial, and marketing consultancy. Currently, ABD company is a reputed name in the market for fulfilling its commitments on time.</p> <p>ADB is a listed company with a wide range of consultancy areas. Thus, it has collaborated with many other service providers through joint ventures and partnerships. The price of the share of the company has also steadily grown in the stock market over the years. In 2020 covid came to India and created a problem for the economy. The consultancy industry also suffered a blow. It became impossible to do business in the normal manner. ADB also faced many hardships and problems which resulted in huge losses for the company.</p> <p>Then, Directors of the company invited an extraordinary meeting in which it was decided to invest in the booming health care industry. However, it was noticed that for this purpose MOA and AOA need changes. There was no provision in objective clause of MOA to start business in health care industry. Many other provisions were changed to manage losses in the current business as well. Directors, then, followed the due processes required to make changes and decided to merge with a health service provider. However, the minority shareholders and creditors were not happy with the current move of the company. After various failed requests of protecting their interests, minority shareholders and creditors filed the petition for the winding up of the company. Tribunal received the petition and on enquiry it is found that there is no internal audit committee in the company. On various occasions the directors are found to go beyond the scope of their authority. One such incident was that a director borrowed an amount of Rs. 50 lakhs from a bank. However, as per AOA no director was allowed to borrow beyond Rs.5 lakhs without the permission obtained in the board's meeting. Various other irregularities in operations were suspected by the minority shareholders and were detailed in their petition.</p> <p>Thus, based on the petition an INVESTIGATION INTO AFFAIRS OF COMPANY under SECTION 210 was conducted. The investigation found that all allegations to be true and then ordered the winding up of the company.</p>	
	a.	What are the various provisions of the Companies Act to make changes in the objective clause in the MOA?	3
		<p>Type your answer here</p> <p>Change in the object of the company: A company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution through postal ballot is passed by the company and:</p> <p>a) the details, in respect of such resolution shall also be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating therein the justification for such change.</p> <p>b) the dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the Securities and Exchange Board</p>	
	b.	Who are the entities who can make petition for winding up Under section (Section 272)?	3

		<p>Type your answer here</p> <p>An application for the winding up of a company has to be made by way of petition to the Court. A petition may be presented under Section 272 by any of the following persons:</p> <p>(a) the company, or</p> <p>(b) any creditor or creditors, including any contingent or prospective creditor or creditors.</p> <p>(c) any contributory or contributories.</p> <p>(d) all or any of the parties specified above in clauses (a), (b), (c) together</p> <p>(e) the Registrar.</p> <p>(f) any person authorized by the Central Government in that behalf.</p> <p>(g) by the Central Government or State Government in case falling under clause (c) of Section 271 (1) i.e., Company acting against the interest of the sovereignty and integrity of India.</p>	
	C.	Explain investigation into affairs of company.	3
		<p>Type your answer here</p> <p>Sections 210 to 229 of the Companies Act, 2013 contain provisions relating to investigation of the affairs of company. Investigation within the meaning of the relevant provisions of the Act is a form of probe; a deeper probe; into the affairs of a company. It is a fact finding exercise. The main object of investigation is to collect evidence and to see if any illegal acts or offences are disclosed and then decide the action to be taken. Section 210 of the Act provides:</p> <p>(a) Investigation in the opinion of Central Government [Section 210 (1)] Where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company:</p> <p>(1) On the receipt of a report of the Registrar or Inspector under section 208.</p> <p>(2) On intimation of a special resolution passed by a company that the affairs of the company ought to be investigated,</p> <p>(3) In public interest, it may order an investigation into the affairs of the company.</p> <p>(b) Investigation on the order by a court or the Tribunal [Section 210 (2)] Where an order is passed by a court or the Tribunal in any proceedings before it that the affairs of a company ought to be investigated, the Central Government shall order an investigation into the affairs of that company.</p> <p>(c) Appointment of Inspectors [Section 210 (3)] For the purposes of this section, the Central Government may appoint one or more persons as Inspectors to investigate into the affairs of the company and to report thereon in such manner as the Central Government may direct.</p>	
	d.	Explain the class of companies which are required to appoint an internal auditor.	3
		<p>Type your answer here</p> <p>There was no provision under the Companies Act, 1956 for Internal Audit. Section 138 of the Companies Act, 2013 came into force from 1st April, 2014 which provides for it. According to Section 138 of the Companies Act, 2013 and the Companies (Accounts) Rules, 2014: (a) Companies required to appoint Internal Auditor</p> <p>(1) The following class of companies shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate [As amended vide notification no. G.S.R. 742(E) dated 27th July, 2016], namely:</p>	

		<p>a) every listed company.</p> <p>b) every unlisted public company having:</p> <ol style="list-style-type: none">1) paid up share capital of Rs 50 crore or more during the preceding financial year, or2) turnover of Rs 200 crore or more during the preceding financial year, or3) outstanding loans or borrowings from banks or public financial institutions exceeding Rs 100 crores or more at any point of time during the preceding financial year, or4) outstanding deposits of Rs 25 crore or more at any point of time during the preceding financial year, and <p>c) every private company having:</p> <ol style="list-style-type: none">1) turnover of Rs 200 crore or more during the preceding financial year, or2) outstanding loans or borrowings from banks or public financial institutions exceeding `100 crore or more at any point of time during the preceding financial year. <p>(2) The Audit Committee of the company or the Board shall, in consultation with the Internal Auditor, formulate the scope, functioning, periodicity and methodology for conducting the internal audit.</p>	

END