

**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.**

Section A				20 X 1 = 20 Marks
<b>You are required to answer all the questions. Each question carries 1 mark.</b> <b>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.</b>				
<b>1.</b>				
	<b>a.</b>	A person who fails to get appointed as a director in a general meeting cannot be appointed as		
	(i)	Additional Director		
	(ii)	Alternate Director	A	
	(iii)	Independent Director		
	(iv)	Nominee Director		
	<b>b.</b>	The company shall furnish to the Registrar verification of its registered office within a period of _____ of its incorporation in such manner as may be prescribed.		
	(i)	40 days		
	(ii)	30 days	A	
	(iii)	15 days		
	(iv)	25 days		
	<b>c.</b>	All monies payable by any member to the company under the memorandum or articles shall be a debt due from him to _____		
	(i)	company	A	
	(ii)	member		
	(iii)	Both (i) and (ii)		
	(iv)	None of the above		
	<b>d.</b>	Under Insolvency & Bankruptcy Code, 2016 where extension of time is requested, the Corporate Resolution process shall be completed within a period of _____ from the date of admission of the application to initiate such process.		
	(i)	60 days		
	(ii)	90 days		
	(iii)	180 days	A	
	(iv)	240 days		
	<b>e.</b>	Who shall have the custody of records of the Appellate Tribunal?		
	(i)	The Chairperson of the NCLAT		
	(ii)	The Chairperson of IBBI		
	(iii)	The Registrar	A	
	(iv)	The Chief Justice of the Supreme Court		
	<b>f.</b>	To whom shall the liquidating company notify about the passing of resolution by the members		

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		for the liquidation?	
	(i)	Registrar of the Company and Regional Director	
	(ii)	Registrar of the Company and Insolvency and Bankruptcy Board of India (IBBI)	A
	(iii)	Registrar of the Company	
	(iv)	Insolvency and Bankruptcy Board of India (IBBI) and Regional Director	
	<b>g.</b>	The deposition of a witness shall be recorded in which Form under the Companies Act, 2013?	
	(i)	Form NCLAT-6	
	(ii)	Form NCLAT-8	
	(iii)	Form NCLAT-7	A
	(iv)	Form NCLAT-5	
	<b>h.</b>	The Securities and Exchange Board of India (SEBI) introduced the Institutional Trading Platform (ITP) in 2015 and renamed it as the _____ in December, 2019 for new-age technology companies and startups.	
	(i)	Start-up Trading Platform (STP)	
	(ii)	High-tech Innovation Platform (HIP)	
	(iii)	Innovators Growth Platform (IGP)	A
	(iv)	New Business Platform (NBP)	
	<b>i.</b>	Corporate Governance is a form of _____.	
	(i)	external regulation	
	(ii)	government control	
	(iii)	self-regulation	A
	(iv)	charitable action	
	<b>j.</b>	Which among the following is correct with respect to Interim Dividend?	
	(i)	It is declared during Annual General Meeting.	
	(ii)	It is recommended by the Directors and approved by the Share Holders.	
	(iii)	An interim dividend is typically one of two dividends given out by a company that is providing shareholders with income on a semi-annual basis	
	(iv)	Both (ii) and (iii)	A
	<b>k.</b>	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	
	<b>l.</b>	The Directorate of Enforcement was established in the year _____ with its Headquarters at New Delhi.	
	(i)	1949	
	(ii)	1956	A
	(iii)	1967	
	(iv)	1985	
	<b>m.</b>	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) of the	

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		Insolvency and Bankruptcy Code, 2016.	
	(i)	Initiation date period	
	(ii)	Insolvency commencement date period	
	(iii)	Insolvency process period resolution	A
	(iv)	All of the above	
	<b>n.</b>	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 the Companies Act, 2013.	
	(i)	Chartered Accountants	
	(ii)	Cost Accountants	
	(iii)	Company Secretaries	
	(iv)	All of the above	A
	<b>o.</b>	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
	<b>p.</b>	Derivatives are covered under which of the following Acts in India?	
	(i)	Securities Contracts (Regulation) Act, 1956	A
	(ii)	Depositories Act, 1996	
	(iii)	Reserve Bank of India Act, 1934	
	(iv)	The Competition Act, 2002	
	<b>q.</b>	When a company whose shares are listed on a stock exchange comes out with a public issue of securities, it has to list such issue with the stock exchange. Such listing is known as _____.	
	(i)	Listing for Public Issue	A
	(ii)	Initial Listing	
	(iii)	Multiple Listing	
	(iv)	Preferential Listing	
	<b>r.</b>	FIPB stands for _____.	
	(i)	Foreign Investment Promotion Board	A
	(ii)	Foreign Institutional Promotion Board	
	(iii)	Foreign Institutional Portfolio Board	
	(iv)	Foreign Investment portfolio Board	
	<b>s.</b>	_____ 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	
	<b>t.</b>	Which is considered as the first major step of the Government of India towards e-Governance?	
	(i)	Constitution of The Securities and Exchange Board of India in 1988	
	(ii)	Enactment of the Insolvency and Bankruptcy Code, 2016	

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		(iii)	Release of Corporate Governance - Voluntary Guidelines 2009		
		(iv)	Establishment of National Informatics Centre (NIC) in 1977	A	
<b>Section B</b>					<b>10 X 2 = 20 Marks</b>
<b>You are required to answer all the questions. Each question carries 2 marks.</b> <b>Instructions: Each question is followed by a space where you are required to type your answer.</b>					
<b>2.</b>					
	a.		What is issued to the directors or employees of the company for consideration other than cash?		
			<b>Type your answer here</b> Sweat Equity shares are issued to directors and employees.		
	b.		State the different modes of e-Governance.		
			<b>Type your answer here</b> Government to Citizen (G2C), Government to Employees (G2E), Government to Government (G2G) and G2B (Government to Business)		
	c.		State the composition of the National Company Law Appellate Tribunal.		
			<b>Type your answer here</b> The National Company Law Appellate Tribunal. consists of a Chairperson and such number of Judicial and Technical Members the total of which is eleven members.		
	d.		How much should be the spending on account of CSR in every financial year for those companies who qualify the conditions as laid down in section 135(1) of the Companies Act, 2013?		
			<b>Type your answer here</b> 2% of average Net Profit of the company made during the three immediately preceding financial years		
	e.		What is Operational Debt under the Insolvency and Bankruptcy Code, 2016?		
			<b>Type your answer here</b> Operational debt means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority.		
	f.		What does Section 8 of the Foreign Exchange Management Act, 1999 deals with?		
			<b>Type your answer here</b> Section 8 of the Foreign Exchange Management Act, 1999 deals with Realization and Repatriation of foreign exchange.		
	g.		What percentage of profits shall the Banking companies incorporated in India are obligated to transfer to the reserve fund ?		
			<b>Type your answer here</b> Under Section 17, Banking companies incorporated in India are obligated to transfer to the reserve fund a sum equivalent to not less than 20 percentage of the profit each year, unless the amount in such fund together with the amount in the share premium account is more than or equal to its paid-up capital.		
	h.		What do you mean by Securitization under The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002?		
			<b>Type your answer here</b> Securitization under Section 2(z) The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 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.		
	i.		What shall be done to the unclaimed money of the Companies Liquidation Account?		

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		<b>Type your answer here</b> After 15 years shall the unclaimed money of the Companies Liquidation Account be transferred to the general revenue account of the Central Government.	
	j.	State the maxim which expresses the doctrine proximate cause.	
		<b>Type your answer here</b> The doctrine of proximate cause is expressed in the maxim 'Causa Proxima non remota spectator', which means that the proximate and not the remote cause, shall be taken as the cause of loss.	
<b>Section C</b>			<b>4 X 12 = 48 Marks</b>
<b>You are required to answer any 4 out of 6 questions in this section</b>			
<b>Instructions: Each question is followed by a space where you are required to type your answer.</b>			
<b>3.</b>	<b>a.</b>	Write a note on: Conversion of Public Company into a Private Company or vice versa	<b>6</b>
		<p><b>Type your answer here</b></p> <p>(a) Conversion of public company into private company -A public company can be converted into a private company by passing a special resolution, after altering its articles so as to include therein the restrictions contained in Section 2(68) of the Act. A special resolution passed to convert a public company into a private company is binding on dissenting shareholders provided it is bona fide, is in the interest of the company as a whole, and is consistent 9 The Companies Act, 2013 with the objects in the Memorandum of Association [Bal Ramba vs. Master Silk Mills AIR 1955 N.U.R. Saurashtra 927]. Under Section 14 (1), any alteration made in the articles to convert a public company into a private company shall take effect only with the approval of the Tribunal which shall make such order as it may deems fit.</p> <p>(b) Conversion of private company into public company Similarly where a private company alters its articles by passing special resolution in such a manner that they no longer includes the restrictions and limitations which are required to be included in the articles of a private company, then such company shall cease to be a private company from the date of such alteration.</p>	
	<b>b.</b>	Discuss the classes of companies that are outside the purview of CARO Companies (Auditor's Report) Order, 2020	<b>6</b>
		<p><b>Type your answer here</b></p> <p>The following classes of companies are outside the purview of the CARO 2020.</p> <p>(a) Banking company as defined under Section 5 (c) of the Banking Regulation Act, 1949.</p> <p>(b) Insurance company as defined under the Insurance Act 1938.</p> <p>(c) Company licensed to operate under Section 8 of the Companies Act 2013 (companies registered with charitable object).</p> <p>(d) A one person company (OPC) as defined under clause (62) of Section 2 of Companies Act 2013 (OPC means a company which has only one person as a member).</p> <p>(e) A small company under Section 2 (85) of the Companies Act, 2013.</p> <p>(1) As per sec 2(85) of Companies Act 2013 small company means a company, other than a public company: a) Paid up share capital of which does not exceed Rs. 50 lacs or such higher amount as may be prescribed which shall not be more than Rs 10 crore, and b) Turnover of which as per its last profit and loss account does not exceed Rs 2 crore or such higher amount as may be prescribed which shall not be more than Rs 100 crore.</p> <p>(2) The following company shall not qualify as a small company: a) A holding company or a subsidiary company. b) A company registered under Section 8 of the Act. c) A company or body corporate governed by any special act.</p> <p>(f) The auditor of following type of Private Companies are not required to comment on the matter prescribed under CARO 2020:</p> <p>(1) A private company which is not holding or subsidiary company of a public company, and</p> <p>(2) A private company having a paid up capital and reserve and surplus not more than ` 1</p>	

		<p>crore as on the balance sheet date, and</p> <p>(3) A private company which does not have total borrowing exceeding Rs 1 crore from any bank and financial institution at any point of time during the financial year, and</p> <p>(4) A private company which does not have total revenue exceeding Rs 10 crore during the financial year</p>	
4.	a.	<p>One of the Objects Clauses of the Memorandum of Association of Info Company Limited conferred upon the company, power to sell its undertaking to another company with identical objects. Company's Articles also conferred upon the directors powers to sell or otherwise deal with the property of the company. At an Extraordinary General Meeting of the company, members passed an ordinary resolution for the sale of its assets on certain terms and authorized the directors to carry out the sale. Directors refused to comply with the wishes of the members where upon it was contended on behalf of the members that they were the principals and directors being their agents, were bound to give effect to their (members') decisions.</p> <p>After examining the relevant provisions of the Companies Act, 2013, answer the following: Whether the contention of members against the non-compliance of members' decision by the directors is tenable.</p> <p>Whether it is possible for the members to usurp the powers, which by the Articles are vested in the directors by passing a resolution in the general meeting.</p>	6
		<p><b>Type your answer here</b></p> <p>Powers of Board: In accordance with the provisions of the Companies Act, 2013, as contained under Section 179(1), the Board of Directors of a Company shall be entitled to exercise all such powers and to do all such acts and things, as the Company is authorized to exercise and do: Provided that in exercising such power of doing such act or thing, the Board shall be subject to the provisions contained in that behalf in this Act, or in the memorandum or articles, or in any regulations not inconsistent therewith and duly made there under including regulations made by the Company in general meeting.</p> <p>Provided further that the Board shall not exercise any power or do any act or thing which is directed or required, whether under this Act or by the members or articles of the Company or otherwise to be exercised or done by the Company in general meeting.</p> <p>Section 180 (1) of the Companies Act, 2013, provides that the powers of the Board of Directors of a Company which can be exercised only with the consent of the Company by a special resolution. Clause (a) of Section 180 (1) defines one such power as the power to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the Company owns more than one undertaking of the whole or substantially the whole or any of such undertakings.</p> <p>Therefore, the sale of the undertaking of a Company can be made by the Board of Directors only with the consent of members of the Company accorded vide a special resolution.</p> <p>Even if the power is given to the Board by the memorandum and articles of the Company, the sale of undertaking must be approved by the shareholders in general meeting by passing a special resolution.</p> <p>Therefore, the correct procedure to be followed is for the Board to approve the sale of the undertaking clearly specifying the terms of such sale and then convene a general meeting of members to have the proposal approved by a special resolution.</p> <p>In the given case, the procedure followed is completely incorrect and violative of the provisions of the Act. The shareholders cannot on their own make out a proposal of sale and pass an ordinary resolution to implement it through the directors.</p> <p>The contention of the shareholders is incorrect in the first place as it is not within their authority to approve a proposal independently of the Board of Directors. It is for the Board to approve a proposal of sale of the undertaking and then get the members to approve it by a special resolution. Accordingly, the contention of the members that they were, the principals and directors being their agents were bound to give effect to the decisions of the members is</p>	

		not correct. Further, in exercising their powers the directors do not act as agent for the majority of members or even all the members. The members therefore, cannot by/resolution passed by a majority or even unanimously supersede the powers of the directors or instruct them how they shall exercise their powers. The shareholders have, however, the power to alter the Articles of Association of the Company in the manner they like subject to the provisions of the Companies Act, 2013.	
	<b>b.</b>	The Promoters of M/s S Limited, a listed public company propose to have the strength of the Board of Directors as eleven. They also propose to make the Managing Director and Whole Time Directors as directors not liable to retire by rotation. Advise on the following matters as per the provisions of the Companies Act, 2013: (i) How many of the remaining directors will have to retire by rotation every year at the Annual General Meeting (AGM)? (ii) For the purpose of increasing the strength, certain nominations were received to nominate candidates for contesting elections. One of the nominations was rejected by the directors as it was received after sending the notice of AGM and that too after the working hours of the last day on which nomination should have been received	6
		<b>Type your answer here</b> (i) According to section 152(6)(c) of the Companies Act, 2013, 1/3rd of such of the Directors for the time being as are liable to retire by rotation, or their number is neither three nor a multiple of three, then, the number nearest to the 1/3rd shall retire from office. Therefore the Directors liable to retire by rotation are $11 \times \frac{2}{3}$ i.e. 7.3 or 8. (No. of directors to retire at AGM: $8 \times \frac{1}{3}$ i.e. 2.67. Hence nearest to 1/3rd is 3). (ii) According to section 160 of the Companies Act, 2013, a person who is not a retiring director in terms of section 152 shall, subject to the provisions of this Act, be eligible for appointment to the office of a director at any general meeting, if he has, not less than 14 days before the meeting, left at the registered office of the Company, a notice in writing under his hand signifying his candidature as a director. In the instant case, one nomination was rejected by the directors as it was received after sending the notice of AGM and that too after the working hours of the last day on which nomination should have been received i.e. 14th day. Hence, the contention of the directors are valid.	
	<b>5. a.</b>	“Book Building is a price discovery mechanism.” Comment.	9
		<b>Type your answer here</b> Book Building means a process undertaken to elicit demand and to assess the price for determination of the quantum or value of specified securities or Indian Depository Receipts, as the case may be in accordance with the SEBI (ICDR) Regulations 2018. (a) In an issue made through the book building process, the allocation in the net offer to public category is made as follows: (1) Not less than 35 % to retail individual investors. (2) Not less than 15 % to non-institutional investors i.e. investors other than retail individual investors and qualified institutional buyers. (3) Not more than 50% to Qualified Institutional Buyers; 5 % of which would be allocated to mutual funds. Provided that in addition to five per cent allocation available in terms of clause (3), mutual funds shall be eligible for allocation under the balance available for qualified institutional buyers. In an issue made through the book building process under sub-regulation (2) of regulation 6, the allocation in the net offer to public category shall be as follows: (1) not more than ten per cent to retail individual investors; (2) not more than fifteen per cent to non-institutional investors;	



		<p>(3) not less than seventy-five per cent to qualified institutional buyers, five per cent of which shall be allocated to mutual funds:          Provided further that in addition to five per cent allocation available in terms of clause (3), mutual funds shall be eligible for allocation under the balance available for qualified institutional buyers.</p> <p>In an issue made through the book building process, the issuer may allocate up to 60% of the portion available for allocation to qualified institutional buyers to an anchor investor in accordance with the conditions specified.</p> <p>(b) In an issue made other than through the book building process, allocation in the net offer to public category will be made as follows:          (1) minimum 30% to retail individual investors, and          (2) remaining to individual applicants other than retail individual investors and other investors including corporate bodies or institutions, irrespective of the number of equity shares and convertible securities applied for.          (3) the unsubscribed portion in either of the categories specified above (point 1 and 2) may be allocated to applicants in the other category. If the retail individual investor category is entitled to more than 50% on proportionate basis, the retail individual investors will be allocated that higher percentage.</p>	
	<b>b.</b>	Discuss the applicability of Insolvency and Bankruptcy Code, 2016.	<b>3</b>
		<p><b>Type your answer here</b></p> <p>The provisions of Insolvency and Bankruptcy Code, 2016 applies to the following, in relation to their insolvency, liquidation, voluntary liquidation or bankruptcy, as the case may be (Section 2 of Insolvency and Bankruptcy Code, 2016).</p> <p>(a) Companies incorporated under Companies Act          (b) Companies governed under special Act (so far as of Insolvency and Bankruptcy Code, 2016 is consistent with those special Acts i.e. provisions of Special Act will prevail over of Insolvency and Bankruptcy Code, 2016)          (c) Limited Liability Partnership (LLP)          (d) Other body corporates as may be notified by Central Government          (e) Partnership firms and individuals.          (f) Personal guarantors to corporate debtors:          (g) Partnership firms and proprietorship firms; and          (h) Individuals, other than persons referred to in clause (e).</p>	
<b>6.</b>	<b>a.</b>	What are the prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control under Section 12A of Securities and Exchange Board of India Act, 1992?	<b>6</b>
		<p><b>Type your answer here</b></p> <p>Securities and Exchange Board of India has prohibited insider trading, substantial acquisition of securities or control. Insider trading can be defined as securities trading by insiders based on material non-public information in violation of a fiduciary or similar duty of trust and confidence to the company issuing the security to the company's shareholders or to the source of information. The main benefit of the insider trading goes to the insider.</p> <p>Section 12A of the Act provides that: No person shall directly or indirectly:          (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognised stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made there under.          (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange.          (c) engage in any act, practice, course of business which operates or would operate as fraud or</p>	



		<p>deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made there under.</p> <p>(d) engage in insider trading.</p> <p>(e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made there under.</p> <p>(f) acquire control of any company or securities more than the percentage of equity share capital of a company whose securities are listed or proposed to be listed on a recognised stock exchange in contravention of the regulations made under this Act.</p>	
	<b>b.</b>	Define the terms - Acquisition, Agreement and Cartel under the Competition Act, 2002.	6
		<p><b>Type your answer here</b></p> <p>(1) Acquisition Under Section 2(a) of the Competition Act, 2002, the term acquisition has been specifically defined. It means directly or indirectly, acquiring or agreeing to acquire: a) shares, voting rights or assets of any enterprise. b) control over management or control over assets of any enterprise. The terms 'acquiring' or 'acquisition' are relevant for Regulation of Combinations.</p> <p>(2) Agreement Under Section 2(b) the Competition Act, 2002, the term 'agreement' includes arrangement or understanding or action in concert. a) whether or not, such arrangement, understanding or concert is in formal or in writing. or b) whether or not such arrangement, understanding or concert is intended to be enforceable by legal proceedings. It implies that an arrangement need not necessarily be in writing. The term is relevant in the context of Section 3, which envisages that anti-competitive agreements shall be void and thereby prohibited by the law.</p> <p>(3) Cartel According to Section 2(c) the Competition Act, 2002, Cartel includes an association of producers, sellers or distributors, traders or service providers who, by agreement amongst themselves, limit control or attempt to control the production, distribution, sale or price of or, trade in goods or provision of services. The nature of a cartel is to raise price above competitive levels, resulting in injury to consumers and to the economy. For the consumers, cartelisation results in higher prices, poor quality and less or no choice for goods or/and services. An international cartel is said to exist, when not all of the enterprises in a cartel are based in the same country or when the cartel affects markets of more than one country. An import cartel comprises enterprises (including an association of enterprises) that get together for the purpose of imports into the country.</p>	
<b>7</b>	<b>a.</b>	Explain the OECD principles of Corporate Governance.	6

	<p><b>Type your answer here</b></p> <p>An Indian company issuing shares / convertible debentures under FDI Scheme to a person resident outside India shall receive the amount of consideration required to be paid for such shares/ convertible debentures by:</p> <p>(a) inward remittance through normal banking channels by the Indian company against issue of Depository Receipt and FCCB.</p> <p>(b) debit to NRE / FCNR account of a person concerned maintained with an AD Category–I bank.</p> <p>(c) conversion of royalty/lump sum/technical know-how fee due for payment or conversion of ECB, shall be treated as consideration for issue of shares.</p> <p>(d) conversion of import payables / pre incorporation expenses / share swap can be treated as consideration for issue of shares with the approval of FIPB.</p> <p>(e) debit to non-interest bearing Escrow account in Indian Rupees in India which is opened with the approval from AD Category–I bank and is maintained with the AD Category–I bank on behalf of residents and non-residents towards payment of share purchase consideration.</p> <p>If the shares or convertible debentures are not issued within 180 days from the date of receipt of the inward remittance or date of debit to NRE / FCNR (B)/Escrow account, the amount shall be refunded. Further, Reserve Bank may on an application made to it and for sufficient reasons permit an Indian Company to refund / allot shares for the amount of consideration received towards issue of security if such amount is outstanding beyond the period of 180 days from the date of receipt.</p>	
	<b>b.</b>	6
	<p><b>Explain the concept of Corporate Social Responsibility and its meaning to different people.</b></p> <p><b>Type your answer here</b></p> <p>Corporate Social Responsibility (CSR): It is a concept that organizations, have an obligation to consider the interests of customers, employees, shareholders, communities, and ecological considerations in all aspects of their operations. This obligation is seen to extend beyond their statutory obligation to comply with legislation. CSR is closely linked with the principles of Sustainable Development, which argues that enterprises should make decisions based not only on financial factors such as profits or dividends, but also based on the immediate and long term social and environmental consequences of their activities, especially taking into consideration the needs of future generations. It is an integrated combination of policies, programs, education, and practices which extend throughout a corporation's operations and into the communities in which they operate, about how companies voluntarily manage the business processes to produce an overall positive impact on society. CSR can mean different things to different people:</p> <ol style="list-style-type: none"> <li>1. for an employee it can mean fair wages, no discrimination, acceptable working conditions etc.</li> <li>2. for a shareholder it can mean making responsible and transparent decisions regarding the use of capital.</li> <li>3. for suppliers it can mean receiving payment on time.</li> <li>4. for customers it can mean delivery on time, etc.</li> <li>5. for local communities and authorities it can mean taking measures to protect the environment from pollution.</li> </ol> <p>for non-governmental organizations and pressure groups it can mean disclosing business practices and performance on issues ranging from energy conservation and global warming to human rights and animal rights, from protection of the rainforests and endangered species to child and forced labour, etc. For a company, however, it can simply be seen as responding to the needs and concerns of people who can influence the success of the company and/or whom the company can Impact through its business activities, processes and products.</p>	
<b>8.</b>	<b>You are required write Short Notes on any 4 out of 5 questions.</b>	<b>4 X 3 = 12 Marks</b>

	<b>a.</b>	Enforcement Directorate (ED)	3
		<p><b>Type your answer here</b></p> <p>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 PML has been entrusted to the Enforcement Directorate.</p> <p>The Directorate is under the administrative control of the 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. Policy issues pertaining to the PML Act, however, are the responsibility of the Department of Revenue. Before FEMA became effective (1 June, 2000), the Directorate enforced regulations under the Foreign Exchange Regulation Act, 1973.</p>	
	<b>b.</b>	Indian Depository Receipts	3
		<p><b>Type your answer here</b></p> <p>A foreign company can access Indian securities market for raising funds through issue of Indian Depository Receipts (IDRs).</p> <p>An IDR is an instrument denominated in Indian Rupees in the form of a depository receipt created by a Domestic Depository (custodian of securities registered with the Securities and Exchange Board of India) against the underlying equity of issuing company to enable foreign companies to raise funds from the Indian securities markets. An issuing company making an issue of IDR is required to satisfy the following:</p> <ul style="list-style-type: none"> <li>(a) it should be listed in its home country.</li> <li>(b) it should not be prohibited to issue securities by any regulatory body.</li> <li>(c) it should have a track record of compliance with securities market regulations in its home country.</li> </ul>	
	<b>c.</b>	Serious Fraud Investigation Office (SFIO)	3
		<p><b>Type your answer here</b></p> <p>Section 211 of the Act provides for the establishment of Serious Fraud Investigation Office as under:</p> <p>(a) Setting up of Serious Fraud Investigation Office (SFIO) [Section 211 (1)] The Central Government shall, by notification, establish an office to be called the Serious Fraud Investigation Office (SFIO) to investigate frauds relating to a company. Earlier, the Serious Fraud Investigation Office was set-up by the Central Government in 2003.</p> <p>(b) Composition of SFIO [Section 211 (2)] The SFIO shall be:</p> <ul style="list-style-type: none"> <li>(1) Headed by a Director, and</li> <li>(2) Consist of such number of experts from the following fields to be appointed by the Central Government from amongst persons of ability, integrity and experience in: <ul style="list-style-type: none"> <li>a) banking;</li> <li>b) corporate affairs;</li> <li>c) taxation;</li> <li>d) forensic audit;</li> <li>e) capital market;</li> <li>f) information technology;</li> <li>g) law; or</li> <li>h) such other fields as may be prescribed.</li> </ul> </li> </ul>	
	<b>d.</b>	Insolvency Resolution Process Costs	3
		<p><b>Type your answer here</b></p> <p>Insolvency resolution process costs means –</p>	

		(a) the amount of any interim finance and the costs incurred in raising such finance (b) the fees payable to any person acting as a resolution professional (c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern (d) any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and (e) any other costs as may be specified by the Board - Section 5(13) of Insolvency and Bankruptcy Code, 2016. Interim finance means any financial debt raised by the resolution professional during the insolvency resolution process period - Section 5(15) of Insolvency and Bankruptcy Code, 2016.	
	<b>e.</b>	Guidance on Implementation of Principles and Core Elements	3
		<b>Type your answer here</b> Successful implementation of the Principles and Core elements require that all of them need to be integrated and embedded in the core business processes of an enterprise. This requires, specifically that the following actions are taken: (a) Leadership: The Chairman/CEO/Owner/Manager should play a proactive role in convincing the board/Top Management and staff within the business that adopting these principles is crucial for success. The board and senior management need to ensure that the principles are fully understood across the organization and comprehensively executed. (b) Integration: These principles and core elements must be embedded in the Business policies and strategies emanating from the core business purpose of the organization. For this to happen, these must align with each business's internal values and/or must provide clear business benefits. (c) Engagement: Building strong relationships and engaging with stakeholders on a consistent, continuous basis is crucial. (d) Reporting: Implementation process includes disclosure by companies of their impact on society an environment to their stakeholders.	
<b>Section D</b> <b>You are required to answer all the questions in this section</b> <b>Instructions: Each question is followed by a space where you are required to type your answer.</b>			<b>1 X 12 = 12 Marks</b>
9.		Mr. M is an Indian having several business units all over the world. He and three partners X, Y & Z registered a company under the Companies Act, 2013 in the name of B Private Ltd. The company was incorporated in 2020-21. B Private Ltd. started a manufacturing unit in Bengaluru. The B Ltd. was registered with an equity of Rs. 100 crores and its Net Worth at the end of the year 2020-21 was Rs. 125 Crores and 2021-22 was Rs. 150 Crores. B Ltd. recorded Net Profits of Rs.4.5 Crores in 2020-21 and Rs.5.5 in 2021-22 which was the net result of its turnover for 2020-21 of Rs. 190 Crores and 2021-22 of Rs. 250 Crores. The owners of the B Private Ltd. consider that B Private Ltd. being a private limited company and that also very newly registered do not require to undertake any Corporate Social Responsibility (CSR) activity. During a Board Meeting, there was a discussion on the need for any CSR activity, whether B Private Ltd. is required to undertake any such activity under Companies Act, 2013, further, what amount should be set aside for funding the CSR activities, whether investment in CSR activities result in building of the goodwill which eventually may help the company to have a good run of trade. The Board members were wanting to make a mark in the international arena. They make to a consensus that CSR activities performed by the company would surely help to enhance the market image of company.	
	<b>a.</b>	Which companies qualify for CSR under the Companies Act, 2013?	3
		<b>Type your answer here</b>	

		<p>As per Section 135(1) of The Companies Act, 2013, the CSR provision is applicable to companies which fulfills any of the following criteria during the immediately preceding financial year</p> <ul style="list-style-type: none"> <li>Companies having net worth of Rs. 500 crore or more;</li> <li>Companies having turnover of Rs. 1000 crore or more;</li> <li>Companies having a net profit of Rs. 5 crores or more;</li> </ul> <p>As per explanation to Section 135, the Net Profit for the purposes of this section is calculated as per the provisions of Section 198 of the Companies Act, 2013.</p>	
	<b>b.</b>	Do you think that B Private Ltd. fulfils any or all the criteria for the applicability of the provisions under section 135(1) of the Companies Act, 2013?	3
		<p><b>Type your answer here</b></p> <p>The current financial year being 2022-23, during the immediately preceding financial year, i.e. 2021-22, B Private Ltd. recorded a Net Profit of Rs. 5 crores or more. It does not have Net Worth of Rs. 500 crore or more nor its turnover of Rs. 1000 crore or more.</p> <p>Thus, it qualifies one of the three criteria and hence, it is required to comply with the provisions of Section 135(1) of the Companies Act, 2013.</p>	
	<b>c.</b>	B Private Limited is a newly registered company and the Board members are of the opinion that the company is not even seven years old and is like a start-up company and the relevant provisions under the Companies Act, 2013 are not applicable to it. What is your opinion in this regard?	3
		<p><b>Type your answer here</b></p> <p>As per Section 198 of the Companies Act, 2013 read with CSR Rules, B Private Ltd. should spend at least 2% of the average net profits made by the company during the preceding three financial years for CSR activities.</p> <p>Even though B Private Ltd. has not completed three financial years since its incorporation, but it satisfies any of the criteria mentioned in section 135(1), the CSR provisions including spending of at least two per cent of the average net profits made during immediately preceding financial year(s) are applicable.</p>	
	<b>d.</b>	In your opinion how much is required to be spent on CSR activities as per Companies Act, 2013 by B Private Ltd.?	3
		<p><b>Type your answer here</b></p> <p>The average net profit for the purpose of determining the spending on CSR activities is to be computed in accordance with the provisions of section 198 of the Act and will also be exclusive of the items given under rule 2(1)(h) of the Companies (CSR Policy) Rules, 2014. Section 198 of the Act specifies certain additions/deletions (adjustments) to be made while calculating the net profit of a company (mainly it excludes capital payments/receipts, income tax, set-off of past losses). Profit Before Tax (PBT) is used for computation of net profit under section 135 of the Act.</p> <p>In this case, the amount of CSR spending should be at least 2% of average net profits of two preceeding financial years, viz. <math>2\% \text{ of Rs. } (4.5 + 5.5) \text{ Crores} / 2 = 2\% \text{ of Rs. } 5 \text{ Crores} = \text{Rs. } 10 \text{ Lakhs.}</math></p>	

END