

FINAL EXAMINATION

December 2019

P-13(CLC)

Syllabus 2016

Corporate Laws & Compliance

Time Allowed: 3 Hours

Full Marks: 100

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

Answer Question No. 1 which is compulsory carrying 20 marks and answer any five questions from Question No. 2 to Question No. 8.

1. Answer all questions.

(a) Multiple Choice Questions:

2×10=20

(i) The company shall furnish to the Registrar verification of its registered office within a period of _____ from the date of its incorporation.

- (A) 30 days
- (B) 45 days
- (C) 60 days
- (D) 90 days

(ii) Out of following which item cannot be exercised by the Board of Directors of ABC Ltd.?

- (A) To diversify the business of the company
- (B) To take over a company
- (C) To approve amalgamation, merger or the reconstruction
- (D) To sell of the whole or substantially the whole of the undertaking of the company.

(iii) The board may fill any casual vacancy in the office of an auditor within 30 days but where such vacancy is caused by the resignation of an auditor, such appointment shall also be approved by the company at a general meeting concerned within _____ of the recommendation of the Board.

- (A) one month
- (B) two months
- (C) three months
- (D) six months

- (iv) In case the Comptroller and Auditor General of India does not appoint first auditor within the stipulated date who will appoint such auditor within next 30 days?
- (A) Shareholders
 - (B) Board of Directors
 - (C) Managing Directors
 - (D) Company Secretary
- (v) Under which principle of Corporate Governance, it implies the responsibility of the Chairman, the Board of Directors and the Chief Executive for the use of company's resources in the best interest of the company and its shareholders?
- (A) Independence
 - (B) Accountability
 - (C) Transparency
 - (D) Ethics
- (vi) Any person aggrieved by an order of NCLT may prefer an appeal to the Appellate Tribunal within a period of _____ from the date on which a copy of the order of the Tribunal is made available to the person aggrieved.
- (A) 120 days
 - (B) 60 days
 - (C) 45 days
 - (D) 30 days
- (vii) Which of the following is not the objective of The Prevention of Money Laundering Act, 2002?
- (A) To prevent and control money laundering
 - (B) To confiscate and seize the property obtained from the laundered money
 - (C) To generate profit for an individual or a group
 - (D) To deal with any other issue connected with money laundering in India
- (viii) A promise whereby the assured undertakes that some particular thing shall or shall not be done or that some conditions shall be fulfilled or affirms or negatives the existence of a particular state of facts. This principle of Insurance is known as
- (A) Warranty
 - (B) Good faith
 - (C) Conditions
 - (D) Indemnity

- (ix) Which of the following is not the benefits of CSR Programme?
- (A) Mutual trust
 - (B) Attracting and retaining employees
 - (C) Communities as suppliers
 - (D) Enhancing corporate reputation
- (x) An agreement or arrangement in writing for transfer of assets, or funds, goods or services, from or to the corporate debtor is known as
- (A) Transfer
 - (B) Transfer of property
 - (C) Transaction
 - (D) Transmission
2. (a) The Board of Directors of XYZ Company Limited at its meeting declared a dividend on its paid-up equity share capital which was later on approved by the company's Annual General Meeting. In the meantime, the directors at another meeting of the Board decided by passing a resolution to divert the total dividend to be paid to shareholders for purchase of investments for the company. As a result, dividend was paid to shareholders after 45 days. Examining the provisions of the Companies Act, 2013, state:
- (i) Whether the act of directors is in violation of the provisions of the Act and also the consequences that shall follow for the above act of directors?
 - (ii) What would be your answer in case the amount of dividend to a shareholder is adjusted by the company against certain dues to the company from the shareholder?
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- (b) (i) An understanding has been reached among the manufacturers of cement to control the price of cement, but the understanding is not in writing and it is also not intended to be enforced by legal proceedings.

Examine whether the above understanding can be considered as an 'Agreement' with the meaning of Section 2(b) of the Competition Act, 2002.

- (ii) Soma Nidhi Limited proposes to reappoint Mr X, a director who has completed a term of 10 consecutive years as a Director of the Nidhi.

State your views the validity of the above proposals with reference to Nidhi Rules, 2014 formulated under Companies Act, 2013.

3+3=6

(c) Answer the following in a few words:

1×4=4

- (i) Which type of Public Enterprise is established under a Special Act of the Parliament?
- (ii) How can a foreign company access Indian Securities market for raising funds?
- (iii) Which type of listing provides arbitrage opportunities to the investor?
- (iv) How many times extension of the period of Corporate Insolvency Resolution process can be granted?

3. (a) On the ground of conviction for an offence dealing with related party transaction. Mr. Bat was disqualified to hold the directorship in XYZ Limited. The Board filled up the vacancy by appointing Mr. Samarth as a director on 3rd April, 2018 which was subsequently approved by the members in the immediate next general meeting. Unfortunately, Mr. Samarth expired on 15th May, 2018 after working about 40 days as a director. The Board now wishes to fill up the said vacancy by appointing Mr. Ball in the forthcoming meeting of the Board. Advise the Board on the validity of the following appointments as per the provisions under the Companies Act, 2013:

- (i) Appointment of Mr. Samarth in place of Mr. Bat.
- (ii) Appointment of Mr. Ball in place of Mr. Samarth.

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(b) (i) Domes India Limited owes a sum of ₹ 2,80,000 to S, who assigns this debt to his two creditors, Mr. R—to the extent of ₹ 1,40,000 and Mr. M—to the extent of ₹ 1,40,000. Mr. M makes a demand for his money from the company by giving a legal notice. The company could not meet Mr. M's demand or otherwise satisfy him till the expiry of four weeks from the date of notice. Mr. M, therefore, moves to NCLT with an application for initiation of Insolvency and Bankruptcy Code, 2016, decide whether an application filed by Mr. M can be accepted by NCLT.

(ii) State the matters to be dealt with in the Management Discussion and Analysis Report as per SEBI guidelines on Corporate Governance.

3+3=6

(c) State whether the following statements are 'True' or 'False' and give reasons therefor:

1×4=4

- (i) 'Overseas Citizen of India (OCI)' means a person resident outside India who is a citizen of India.
- (ii) As per the SS-I (Secretarial standards on the meeting of Board), Quorum is not required to be present throughout the meeting.
- (iii) Locked-in securities of Promoter shall not be eligible for pledge with commercial banks, financial institutions as collateral security.
- (iv) 'Asset Reconstruction Company' means a company registered with Reserve Bank under section 3 for the purposes of carrying on the business of either asset reconstruction or securitisation.

4. (a) The Articles of Association of a listed company provides for fixed payment of sitting fee for each meeting of Directors subject to maximum of ₹30,000. In view of the increased responsibilities of Independent Directors of listed Companies, the Company proposes to increase the sitting fee to ₹45,000 per meeting. Advise the company about the requirement under the Companies Act, 2013 to give effect to the proposal. 4
- (b) XYZ Limited was incorporated by furnishing false informations. As per the Companies Act, 2013, state the power of the Tribunal in this regard. 4
- (c) Briefly state the compliance requirements under Companies Act, 2013 regarding risk management policy. 4
- (d) Fill in the Blanks: 1×4=4
- (i) Under IBC 2016, the resolution plan shall be approved by the Committee of Creditors by a vote of not less than _____ per cent of voting share of the financial creditors.
- (ii) Reserve Bank of India may check the condition that the asset reconstruction company has not incurred any loss in the _____ preceding financial years.
- (iii) Sec. 25 of the Banking Regulation Act, 1949, requires for the maintenance of assets equivalent to at least _____ % of its demand and time liabilities in India at the close of business of the last Friday of every quarter.
- (iv) According to section 14 of the Banking Regulation Act, 1949, no banking company shall create any charge upon its _____ capital, and any such charge, if created, shall be invalid.
5. (a) 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.
- Examining the 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.
- 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. 6

- (b) Runway Infrastructure Limited entered into a contract with Royal forgings (a partnership firm), in which wife of Mr. Patrick, a director of the Runway Infrastructure Limited is a partner. The contract is for supply of certain components by the firm for a period of three years with effect from 1st September, 2018 on credit basis. Explain the requirements under the Companies Act, 2013, which should have been complied with by Runway Infrastructure Limited before entering into contract with Royal forgings.

What would be your answer in case Royal forgings is a private limited company in which wife of Mr. Patrick is holding shares? 5

- (c) (i) Is it mandatory to obtain Regulatory approvals for scheme of compromise/arrangements as per section 230(5) of the Companies Act, 2013? Explain.

(ii) You, an individual shareholder found that the Directors representing the majority of shareholders perform an illegal or *ultra vires* act for the company. What is the action you may take to restrain such an act? 3+2

6. (a) Referring to the provisions of the Securities Contracts (Regulation) Act, 1956, state how a recognized stock exchange may delist the securities and how an appeal may be filed by an aggrieved investor against the decision of stock exchange for delisting of securities. 4

(b) What is the suggested framework for Business Responsibility Report? Explain. 4

- (c) The Management of Gangotri Ltd. was taken by LBV Bank Ltd. (secured creditor) complying the provisions of SARFAESI Act, 2002 who appointed two Directors. The Board of Directors of Gangotri Ltd., duly authorized by its Articles, appointed two Alternate Directors and the majority of the Directors made a declaration required for voluntary liquidation proceedings. A special resolution requiring the Company to be liquidated voluntarily by appointing an insolvency professional to act as the Liquidator was passed at the general meeting of the Company. The Board of Directors and the Shareholders passed the resolutions without the approval/consent of Directors appointed by LBV Bank Ltd. Discuss the validity of the above resolutions under SARFAESI Act, 2002. Does an unsecured Creditor have recourse to this Act? 4

- (d) During investigations conducted on the affairs of a company in the public interest, the inspector observed that the Directors of the company had been acting on the instructions of the holding company and he proceeded to investigate the holding company. Is Inspector permitted to do so under the provisions of the Companies Act, 2013? 4

7. (a) What is meant by Corporate Governance? State the major 'characteristics' of good corporate governance. 4

(b) Match the following items in Column 'A' with items shown in Column 'B': 1×4=4

Column 'A'

Column 'B'

- | | |
|----------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|
| (i) Penalty under Sec. 15 D of SEBI Act, 1992 for certain defaults in case of Mutual Funds. | (a) Not less than ₹1 lakh and may extend ₹1 crore. |
| (ii) Penalty under Sec. 15F of SEBI Act, 1992 for failure to issue contract notes. | (b) Not less than ₹5 lakh but which may extend to ₹25 crore or three times the amount of profits made out of insider trading, whichever is higher. |
| (iii) Penalty under Sec. 15HA of SEBI Act, 1992 for fraudulent and unfair trade practices. | (c) Not less than ₹1 lakh and may extend to ₹1 lakh per day for continuous failure subject to a maximum of ₹1 crore. |
| (iv) Penalty under Sec. 15 HB for contravention where no separate penalty has been provided. | (d) Not less than ₹1 lakh. |

(c) State some of the devices by which trade based money laundering is done. 4

(d) Mr. Daksh, an Indian National desires to obtain foreign exchange for the following purposes: 4

- (i) Payment to be made for securing health insurance from a company abroad.
- (ii) Payment of commission on exports under Rupee State Credit Route.

Advise whether he can get foreign exchange and if so, under what condition?

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

4×4=16

- (i) Functions of Winding up committee
- (ii) Duties of Interim resolution Professionals
- (iii) Sufficiency of assets with reference to Sec. 64V of the Insurance Act, 1938
- (iv) "Unpublished Price sensitive information" under Regulation (2n) of Part F of SEBI (Prohibition of Insider Trading) Regulation, 2015
- (v) The OECD Guidelines on corporate governance of state owned enterprises