



FINAL EXAMINATION

SET - 1

MODEL ANSWERS

TERM – DECEMBER 2024

PAPER – 13

SYLLABUS 2022

CORPORATE AND ECONOMIC LAWS

Time Allowed: 3 Hours

Full Marks: 100

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

SECTION – A (Compulsory)

1. Choose the correct option:

[15 x 2 = 30]

(I) (i) Minutes of the Board meeting are to be signed by -

- a. Chairman of the company
- b. Chairman of the present meeting or next meeting
- c. Chairman of the company, whether he was present in the meeting or not
- d. None of the above

(ii) SFIO stands for:

- a. Serious Fraud Institution Office
- b. Serious Fraud Investigating Organization
- c. Serious Fraud Investigating Office
- d. None of the above

(iii) If a company wants to punish an employee or officer of a company, it has to take permission of:

- a. ROC
- b. CG
- c. NCLT
- d. High Court

(iv) Powers of the tribunal is listed in section:

- a. 242
- b. 240
- c. 243
- d. 241

(v) Companies shall not make investment through more than _____ layer of investment companies.

- a. 1
- b. 2
- c. 3
- d. 4

(vi) The Commission also has the power to impose a fine which may extend up to of the total turnover or the assets of the combination, whichever is higher, for failure to give notice to the Commission of the combination

- a. 2%
- b. 1%
- c. 0.5%
- d. 3%



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- (vii) Total maximum remittance during a financial year under LRS scheme is:
- US \$ 1,00,000
 - US \$ 1,25,000
 - US \$ 1,50,000
 - US \$ 2,50,000
- (viii) The judicial authority under SARFAESI is _____.
- SEBI
 - RBI
 - DRT
 - MCA
- (ix) The Chairman of the Insurance Regulatory and Development Authority shall hold office for a term of _____, from the date on which he enters upon his office and should be eligible for reappointment.
- 3 Years
 - 4 Years
 - 5 Years
 - 6 Years
- (x) IRDA shall, within _____ after the close of each financial year, submit to the Central Government a report giving a true and full account of its activities including the activities for promotion and development of the insurance business during the previous financial year.
- nine months
 - three months
 - one month
 - six months
- (xi) If payment to any MSME unit is delayed by _____ days, the buyer has to pay interest.
- 50
 - 45
 - 60
 - 90
- (II) Shri Ramesh is MD of Sunshine Co. Ltd. The audit is going on and there are many issues which the auditor is pointed out which are being clarified but Auditor is not satisfied with the answer. MD wants to know how the auditor can be removed. Auditor also is not comfortable and has threatened to resign. In such situation, MD wants clarification on legal provisions of various situations.
- Based on the above case study, you are required to answer the questions no. from (xii) to (xv).
- (xii) The auditor appointed may be removed from his office before the expiry of his term only by a special resolution of the company and after obtaining the previous approval of the Central Government by making an application in:
- ADT-2
 - ADT-4



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- c. ADT-6
d. ADT-1

- (xiii) The application shall be made to the Central Government within ____ days of the resolution passed by the Board.
- a. 90
b. 60
c. 45
d. 30
- (xiv) The Sunshine Co. Ltd shall hold the general meeting within _____ days of receipt of approval of the Central Government for passing the special resolution.
- a. 60
b. 30
c. 45
d. 90
- (xv) If the Auditor has resigned from the Sunshine Co. Ltd, he shall file within a period of ____ days from the date of resignation, a statement in the form ____ with the company and the Registrar.
- a. 45, ADT-4
b. 60, ADT-3
c. 90, ADT-4
d. 30, ADT-3

Answer:

| | | | | | | | | | | | | | | |
|-----|------|-------|------|-----|------|-------|--------|------|-----|------|-------|--------|-------|------|
| (i) | (ii) | (iii) | (iv) | (v) | (vi) | (vii) | (viii) | (ix) | (x) | (xi) | (xii) | (xiii) | (xiv) | (xv) |
| b | c | c | a | b | b | d | c | c | a. | b | a | d | a | d |

SECTION – B

(Answer any five questions out of seven questions given. Each question carries 14 Marks)

[5 x 14 = 70]

2. (a) Describe the procedure which has to be followed by the company while transferring unpaid or unclaimed dividend from unpaid dividend account to IEPF.
- (b) Explain how the directors are elected by small shareholders appointed under Section 151? [7 + 7 = 14]

Answer:

- (a) It has been observed that in many cases, few shareholders are not traceable. The documents sent to them are returned to the company. Before IEPF, the unpaid dividend used to be with



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the company for three years and thereafter was transferred to Central Govt. wherefrom shareholders can claim. This rule has been modified with establishment of IEPF.

The following procedure should be followed by the company while transferring unpaid or unclaimed dividend from unpaid dividend account to IEPF:

- i. Section 124(5) of the Act, provides that any money transferred to the unpaid dividend account of a company which remains unpaid or unclaimed for a period of seven years from the date of such transfer is required to be transferred by the company along with interest accrued, if any, thereon to the Investor Education and Protection Fund (IEPF) established under Section 125.
 - ii. The amount shall be remitted into the specified branches of State Bank of India or any other nationalized bank along with challan (in triplicate) within a period of 90 days of such amount becoming due to be credited to the IEPF. The Bank will return two copies duly stamped to the Company as token of having received the amount and the company shall file one such copy of challan to the authority.
 - iii. The company shall send a statement of amount credited to Investor Education and Protection Fund in Form DIV 5 to the authority which administer the fund and the authority shall issue a receipt to the company as evidence of such transfer.
 - iv. On receipt of this statement, the authority shall enter the details of such receipts in a register maintained by it in respect of each company every year and reconcile the amount.
 - v. The company shall keep a record consisting of names, last known addresses of the persons entitled to receive the same, the amount to which each person is entitled, folio number/ client ID, certificate number, beneficiary details etc. of the persons in respect of whom amount has been remain unpaid or unclaimed for 7 years and transferred to IEPF. Such record shall be maintained for a period of 8 years from the date of such transfer to IEPF and authority shall have the powers to inspect such records (shareholder or his legal representative).
- (b) There was persistent demand from the small shareholders to have a director nominated by them to look after the interest of small shareholder This has been considered in the new Act.

“Small Shareholders” means a shareholder holding shares of nominal value of not more than ₹20,000 or such other sum as may be prescribed.

The Companies (Appointment and Qualification of Directors) Rules, 2014 provides for the procedure for appointment of small shareholders’ director according to which:

- (a) A listed company, may upon notice of not less than
- one thousand small shareholders, or
 - one tenth of the total number of such shareholders, whichever is lower, have a small shareholders’ director elected by the small shareholder.

However, a listed company may opt to have a director representing small shareholders’ suo-moto and in such a case the provisions of sub-rule (2), given below, shall not apply for appointment of such director.

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- (b) The small shareholders intending to propose a person as a candidate for the post of small shareholders' director shall leave a notice of their intention with the company at least fourteen days before the meeting under their signatures specifying the name, address, shares held and folio number of the person whose name is being proposed for the post of director and of the small shareholders who are proposing such person for the office of director.
- (c) The notice shall be accompanied by a statement signed by the person whose name is being proposed for the post of small shareholders' director stating:
- his Director Identification Number;
 - that he is not disqualified to become a director under the Act; and
 - his consent to act as a director of the company.
- (d) Such director shall be considered as an independent director subject to, his being eligible under sub-section (6) of section 149 and his giving a declaration of his independence in accordance with sub-section (7) of section 149 of the Act.
- (e) The appointment of small shareholders' director shall be subject to the provisions of section 152 except that:
- such director shall not be liable to retire by rotation;
 - Such director's tenure as small shareholders' director shall not exceed a period of three consecutive years; and
 - On the expiry of the tenure, such director shall not be eligible for re-appointment.
- (f) A person shall not be appointed as small shareholders' director of a company, if he is not eligible for appointment in terms of section 164 which specifies the disqualifications for appointment of a director.
- (g) A person appointed as small shareholders' director shall vacate the office if:
- the director incurs any of the disqualifications specified in section 164;
 - the office of the director becomes vacant in pursuance of section 167;
 - the director ceases to meet the criteria of independence as provided in sub-section (6) of section 149.
- (h) No person shall hold the position of small shareholders' director in more than two companies at the same time.
However, the second company in which he has been so appointed shall not be in a business which is competing or is in conflict with the business of the first company.
- (i) A small shareholders' director shall not, for a period of three years from the date on which he ceases to hold office as a small shareholders' director in a company, be appointed in or be associated with such company in any other capacity, either directly or indirectly.
3. (a) Describe the Powers of the Board to be exercised by the Board by means of the resolution passed at a duly convened Board meeting.



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- (b) ABC Ltd. is a public limited unlisted company with ₹50 crore equity capital of ₹10 each. It has taken over 70% equity of a company called BCG Ltd. which is a listed company with equity capital of ₹20 crores divided into share of ₹10 each. ABC Ltd. and BCG Ltd. have decided to merge.

Advise the CEO of BCG Ltd. regarding the following queries:

- (i) Is the decision to merge in order?
- (ii) Is the merger to be approved by shareholders of each of the companies?
- (iii) What happens if few shareholders do not consent?
- (iv) Does require order of NCLT?

[7 + 7 =14]

Answer:

- (a) Board of Directors 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. The Board shall be subject to the provisions of this Act, or the Memorandum or Articles, or any Regulations not inconsistent therewith and duly made thereunder, including regulations made by the company in general meeting.

The Board shall not exercise any power or do any act or thing to be exercised or done by the company in general meeting. However, no regulation made by the company in general meeting shall invalidate any prior act of the Board which would have been valid if that regulation had not been made.

No Regulation made by the company in general meeting shall invalidate any prior Act of the Board which would have been valid if that Regulation had not been made.

Powers of the Board to be exercised by the Board by means of the resolution passed at a duly convened Board meeting [Section 179 (3)]:

- (1) to make calls on shareholders in respect of money unpaid on their shares;
- (2) to authorise buy back of securities under section 68;
- (3) to issue securities, including debentures, whether in or outside India;
- (4) to borrow monies;
- (5) to invest the funds of the company;
- (6) to grant loans or give guarantee or provide security in respect of loans;
- (7) to approve financial statement and the Board's report;
- (8) to diversify the business of the company;
- (9) to approve amalgamation, merger or reconstruction;
- (10) to take over a company or acquire a controlling or substantial stake in another company;
- (11) any other matter which may be prescribed

Further, Rule 8 of the Companies (Meetings of Board and its Powers) Rules, 2014 has prescribed certain more powers that shall also be exercised by the Board of Directors only by means of resolutions passed at meetings of the Board:

- (1) to make political contributions
- (2) to appoint or remove KMP; and
- (3) to appoint internal auditors and secretarial auditor.

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The Board may, by a resolution passed at a meeting, delegate the powers specified in points (4) to (6) above, on such conditions as it may specify to:

- (1) any committee of directors,
- (2) the managing director,
- (3) the manager or any other principal officer of the company, or
- (4) the principal officer of the branch office (in the case of a branch office of the company).

Note: Matters referred to in clauses (4), (5) and (6) of sub-section (3) of section 179 may be decided by the board by circulation instead of at a meeting in respect to the companies covered under section 8 of the Companies Act, 2013.

- (b) (i) Yes, The decision to merge is in order. Companies are free to merge with consent of shareholders and by following the procedures prescribed under law. However, it will not fall under special category mergers under section 233 of the Act.
- (ii) Yes, a scheme is necessary.
- (iii) Yes, the scheme has to be approved by 3/4th majority of shareholders in value.
- (iv) The dissenting shareholders have to accept the decision of the majority.
- (v) Yes. It requires approval of NCLT. Since the transferee company is listed, SEBI regulations have to be complied with, wherever applicable

4. (a) **The Board of Directors of Best Consultants Limited, registered in Kolkata, proposes to hold the next board meeting in the month of May, 2024. They seek your advice in respect of the following matters:**

- (i) **Can the board meeting be held in Chennai, when all the Directors of the Company reside in Kolkata?**
- (ii) **Is it necessary that the notice of the board meeting should specify the nature of business to be transacted?**

Advise with reference to the relevant provisions of the Companies Act, 2013.

(b) **United Social Services Ltd is a company formed by 10 professionals with ₹1 lakh paid up capital by each promoter. The company intends to give various services to NGOs and social sector organisations with marginal profit. Though the registered office is in Delhi, the company wants to work on pan India basis.**

Critically assess the following perception of the company and advise the management of the company, in line with the provisions of law.

- (i) **The company claims that it is a non-profit company.**
- (ii) **If not, can it be converted as NPO?**
- (iii) **What is to be done for conversation?**
- (iv) **Once converted, would the promoters get dividend out of profit? [7+7=14]**



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Answer:

(a) (i) There is no provision in the Companies Act, 2013 under which the board meetings must be held at any particular place. The Companies Act lays down the provisions for holding meetings by video conferencing, sending notices, procedures at the meeting etc. Therefore, there is no difficulty in holding the board meeting at Chennai even if all the directors of the company reside at Kolkata and the registered office is situated at Kolkata provided that the requirements regarding the holding of a valid board meeting and the other provisions relating to the signing of register of contracts, taking roll calls, etc. are complied with.

(ii) Section 173(3) of the Companies act, 2013 provides for the giving of notice of every board meeting of not less than seven days to every director of the company. There is no provision in the Act laying down the contents of the notice. Hence, it may be construed that notice may be interpreted as intimation of the meeting and does not necessarily include the sending of the Agenda of the meeting. However, considering the importance of Board Meetings and the responsibilities placed on the Directors for decisions taken at the meetings, it is inevitable for them to be properly prepared and informed about the items to be discussed at the Board Meetings. As a matter of good secretarial practice, the notice should include full details and particulars of the business to be transacted at the Board Meetings.

The articles of association of the company may make it mandatory to do so in almost all cases.

(b) (i) The perception of the management of United social service is being classified as follows - the company is not a non-profit company as it is for gain that is marginal cost to gain, to qualify as NPO the company needs to be registered under section 8 and obtain separate license from MCA.

(ii) Yes, it can be converted into NPO.

(iii) In order to convert itself into NPO, it has to take following steps for conversion:

1. Alter the memorandum by incorporating objects for promotion of art, science, education etc. or any charitable purpose;
2. Application to MCA GOI has to be made in the form Inc. 12 along with memorandum of articles and association financial statement of last 2 years;
3. Statement of asset and liabilities which are estimated income plans by practicing advocate of the resolution of board meeting;
4. Make a public notice of such proposed consortium with also need to be filled with ROC.
5. Registrar may require for the information like minutes of the meeting, consider objection of others and after being satisfied, shall issue license to operate as sec 8 company.

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(iv) Once the company is converted into a non-profit organization (Section 8 company), the promoters or any members cannot receive dividends from profits. Section 8 mandates that the profits are used solely for promoting the company's objects and cannot be distributed to members.

5. (a) A Jyoti industry is a public limited company. Due to some Insolvency Resolution Problem, the factory and office were closed. Two accounts officers dealing with finalization of accounts left the company in quick succession and accounts could not be prepared. It is likely that the financial statements will not be placed within the last date of AGM, i.e. 30th September. Analyse the legal provision after discussing with the MD of the company about the consequences in following situations:

- (i) Accounts are not ready and cannot be placed in AGM.
- (ii) AGM to be deferred after 30th September.
- (iii) Accounts are ready but AGM could not be held.
- (iv) AGM held, accounts placed but not approved.

(b) Mr. Ajay, an advocate, is in the business of providing professional services like filing of petitions before Tribunals and Courts. Mrs. Sonali, wife of Mr. Ajay, is a registered Insolvency Professional (IP) with the Insolvency Bankruptcy Board of India. Mr. Ajay, in his capacity of an advocate, filed many applications relating to admission of corporate debtors before National Company Law Tribunal (NCLT) and his wife Mrs. Sonali being insolvency professional in her own professional capacity acts as Insolvency Professional in all the cases her husband takes up. Mrs. Sonali within 6 months of becoming Insolvency Professional accepted 15 such assignments. She does not have any prior experience as an Insolvency Professional. While considering one such application for initiation of Corporate Insolvency Resolution Professional (CIRP), NCLT observed that the fees charged by Mrs. Sonali for acting as insolvency resolution professional is exorbitant. Mrs. Sonali contracted with the applicant to not only act as Interim Resolution Professional but also as Resolution Professional in all the 15 assignments that she accepted.

With reference to the above-mentioned facts, Analyse the situation and Discuss the answers with reasons of the following questions:

- i) Is Mrs. Sonali right in accepting the assignments when it was her husband who proposed her name?
- ii) IBBI has issued a show cause notice to Mrs. Sonali based on the adverse remarks made by NCLT. Is IBBI is empowered by the Code to issue a show cause notice even without a complaint made against?
- iii) Assume that out of the 15 assignments Mrs. Sonali accepted, 2 are listed companies, 3 are unlisted public companies and 10 are private companies. Is there any limit in number of assignments that an IP can accept? [7+7 =14]



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Answer:

- (a) (i) Company has to adjourn the meeting to a date where the accounts shall be ready but such meeting also shall be within 30th September.
- (ii) AGM cannot be deferred by the Company. Approval of extension is given by Registrar of Companies. However, the approval for extension shall have to be taken within 30th September.
- (iii) If AGMs could not be held, it would amount to violation of law and extension to be sought.
- (iv) If the AGM is held but the accounts are not adopted, the unadopted accounts shall be filed with the Registrar. Where the financial statements are not adopted at annual general meeting or adjourned annual general meeting, such unadopted financial statements along with the required documents shall be filed with the Registrar within 30 days of the date of annual general meeting.
- (b) (i) The Code of Conduct requires the IP to maintain complete independence in professional relationships. It is not correct on the part of Mrs. Sonali to accept assignments which will affect her independence.
- (ii) IBBI is empowered by the Code to issue a show cause notice even without a complaint made against IP if it has reasonable grounds to believe IP has contravened any provisions.
- (iii) There is no cap or limit on the numbers of assignments that an IP can accept. However, IP must refrain from accepting too many assignments if he is unable to devote enough time

6. (a) Analyse the features of Corporate Governance.

- (b) Explain the types of business intelligence tools and applications and benefits of business intelligence.**

[7+7=14]**Answer:**

- (a) **Features of corporate governance are:**
- **A proper tool for transparency:** disclosing the status of the affairs company at every step to every stakeholder i.e. required to maintain transparency. The concept goes against the theory of suppression of material facts by the company to its stakeholders, may be or may not be, for the benefit of the shareholders only.
 - **Prudent and participative management:** the management should use its full intelligence and knowledge for the benefit of the stakeholders. Hence, it may be taken that management is prudent and wise in its decision making.
 - **Enhancing value of the enterprise:** Any company should grow from year to year, if it wants to satisfy its stakeholders. Value may be monetary or reputation, image, goodwill etc. Better governing companies will have better reputation, trust of the stakeholders



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and there will be enhancement of business, leading to more profit and better enterprise valuation.

- **Accountability:** Success and accountability has to go together. Successful companies will make themselves accountable to the stakeholders. There are many combination of relationships, i.e. with the customer, creditors, shareholders, employees. etc. The company cannot say it is accountable to one stakeholder only. It has to be accountable to all stakeholders.
- **Innovation:** Doing something new or doing the same thing in a novel manner is the essence of growth and sustainability of an enterprise. The governance structure should encourage new things in the company for enhancing value of the company.
- **Professionalism and specialization:** The basics of professionalism is that the job shall not be compromised at any level and there should not be conflict of interest of the directors and senior managers between his duty and personal gain. It also takes into account the competence of the person doing job having obviously adequate domain knowledge either by academic qualification or track record of experience
- **Stakeholder recognition:** All the stake holders should be recognized and respected. The Company should believe that all these stakeholders have contribution in making the company work and grow

(b) The list of BI technologies that are available to organizations includes the following:

Ad hoc analysis: It's the process of writing and running queries to analyze specific business issues on casual or temporary basis.

Online analytical processing (OLAP): OLAP tools enable users to analyze data along multiple dimensions, which is particularly suited to complex queries and calculations bases.

Mobile BI: Here, BI applications and dashboards available on smartphones and tablets. This may only display two or three data visualizations and KPIs so they can easily be viewed on a device's screen.

Real-time BI: In real-time BI applications, data is analyzed as it's created, collected and processed to give users an up-to-date view of business operations, customer behaviour, financial markets and other areas of interest. The real-time analytics process often involves streaming data and supports decision analytics uses, such as credit scoring, stock trading and targeted promotional offers.

Operational intelligence (OI): Also called operational BI, this is a form of real-time analytics that delivers information to managers and frontline workers in business operations.

Open source BI (OSBI): Business intelligence software that is open source typically includes two versions: a community edition that can be used free of charge and a subscription-based commercial release with technical support by the vendor.

Embedded BI: Embedded business intelligence tools put BI and data visualization functionality directly into business applications. That enables business users to analyze

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data within the applications they use to do their job. Embedded analytics features are most commonly incorporated by application software vendors, but corporate software developers can also include them in home grown applications.

Collaborative BI: This is more of a process than a specific technology. It involves the combination of BI applications and collaboration tools to enable different users to work together on data analysis and share information with one another. For example, users can annotate BI data and analytics results with comments, questions and highlighting via the use of online chat and discussion tools.

Location intelligence (LI): This is a specialized form of BI that enables users to analyze location and geospatial data, with map-based data visualization functionality incorporated. Location intelligence offers insights on geographic elements in business data and operations. Potential uses include site selection for retail stores and corporate facilities, location-based marketing and logistics management.

Overall, the key benefits that businesses can get from BI applications include the ability to:

- (i) Speed up and improve decision-making;
- (ii) Optimize internal business processes;
- (iii) Increase operational efficiency and productivity;
- (iv) Spot business problems that need to be addressed;
- (v) Identify emerging business and market trends;
- (vi) Develop stronger business strategies;
- (vii) Drive higher sales and new revenues; and
- (viii) Gain a competitive edge over rival companies.

BI initiatives also provide narrower business benefits -- among them, making it easier for project managers to track the status of business projects and for organizations to gather competitive intelligence on their rivals. In addition, BI, data management and IT teams themselves benefit from business intelligence, using it to analyze various aspect of technology and analytics operations.

7. (a) Explain the term “connected person” in context of insider trading.
(b) Discuss, what is “combination” under Competition Act and how is it regulated?
[7+7=14]

Answer:

- (a) The insider trading is being regulated by SEBI through Securities and Exchange Board of India (prohibition of insider trading) Regulations, 2015
- “Connected person” means,
- (i) any person who is or has during the 6 months prior to the concerned act been associated with a company, directly or indirectly, in any capacity including by reason of frequent communication with its officers or by being in any contractual, fiduciary or employment relationship or by being a director, officer or an employee of the company or



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holds any position including a professional or business relationship between himself and the company whether temporary or permanent, that allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access. The following persons shall be considered to be connected persons unless the contrary is established, -

- (a) an immediate relative of connected persons specified in clause (i); or
- (b) a holding company or associate company or subsidiary company; or
- (c) an intermediary as specified in section 12 of the Act or an employee or director thereof; or
- (d) an investment company, trustee company, asset management company or an employee or director thereof; or
- (e) an official of a stock exchange or of clearing house or corporation; or
- (f) a member of board of trustees of a mutual fund or a member of the board of directors of the asset management company of a mutual fund or is an employee thereof; or
- (g) a member of the board of directors or an employee, of a public financial institution or
- (h) an official or an employee of a self-regulatory organization recognised or authorized by the Board; or
- (i) a banker of the company

Note: “immediate relative” means a spouse of a person, and includes parent, sibling, and child of such person or of the spouse, any of whom is either dependent financially on such person or consults such person in taking decisions relating to trading in securities.

- (b) The acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises shall be a combination of such enterprises and persons or enterprises, if acquisition of control by a person over an enterprise where such person has direct or indirect control over another enterprise engaged in competing businesses, and mergers and amalgamations between or amongst enterprises when the combining parties exceed the thresholds set in the Act. Combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India is prohibited and such combination shall be void. The thresholds are as follows.

Individual: Either the combined assets of the enterprises would value more than ₹2,000 crores in India or the combined turnover of the enterprise is more than ₹6,000 crores in India. In case either or both of the enterprises have assets/turnover outside India also, then the combined assets of the enterprises value more than US\$ 1 billion, including at least ₹1,000 crores in India, or turnover is more than US\$ 3 billion, including at least ₹3,000 crores in India.

Group: The group to which the enterprise whose control, shares, assets or voting rights are being acquired would belong after the acquisition or the group to which the enterprise remaining the merger or amalgamation would belong has either assets of value of more than ₹8,000 crores in India or turnover more than ₹24,000 crores in India. Where the group has presence in India as well as outside India then the group has assets more than US\$ 4 billion including at least ₹1,000 crores in India or turnover more than US\$ 12 billion including at least ₹3,000 crores in India.

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No person or enterprise shall enter into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and such a combination shall be void. Any person or enterprise, who or which proposes to enter into a combination, shall give notice to the Commission, in the form as may be specified, and the fee which may be determined, by regulations, disclosing the details of the proposed combination, within 30 days:

(a) Approval of the proposal relating to merger or amalgamation, by the board of directors of the enterprises concerned with such merger or amalgamation, as the case may be;

(b) Execution of any agreement or other document for acquisition

(c) No combination shall come into effect until two hundred and ten days have passed from the day on which the notice has been given to the Commission under sub-section (2) or the Commission has passed orders, whichever is earlier.

The provisions of this section shall not apply to share subscription or financing facility or any acquisition, by a public financial institution, foreign institutional investor, bank or venture capital fund, pursuant to any covenant of a loan agreement or investment agreement. They shall, within seven days from the date of the acquisition, file, with the Commission the details of the acquisition including the details of such acquisition and control.

8. (a) Analyse the aspects, which remittances are prohibited under Liberalized Remittance Scheme (LRS)? Discuss what facilities are available to entities other than individuals?
(b) Discuss the procedure for registration of an Asset Reconstruction Company.

[7+7=14]

Answer:

- (a) Prohibited items under the Liberalized Remittance Scheme (LRS):
- i. Remittance for any purpose specifically prohibited under Schedule-I (like purchase of lottery tickets/sweep stakes, proscribed magazines, etc.) or any item restricted under Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000.
 - ii. Remittance from India for margins or margin calls to overseas exchanges / overseas counterparty.
 - iii. Remittances for purchase of FCCBs issued by Indian companies in the overseas secondary market.
 - iv. Remittance for trading in foreign exchange abroad.
 - v. Capital account remittances, directly or indirectly, to countries identified by the Financial Action Task Force (FATF) as “non- cooperative countries and territories”, from time to time.
 - vi. Remittances directly or indirectly to those individuals and entities identified as posing significant risk of committing acts of terrorism as advised separately by the Reserve Bank to the banks.



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The following facilities are available to persons other than individuals:

- Donations up-to one per cent of their foreign exchange earnings during the previous three financial years or USD 5,000,000, whichever is less, for- (a) creation of Chairs in reputed educational institutes, (b) contribution to funds (not being an investment fund) promoted by educational institutes; and (c) contribution to a technical institution or body or association in the field of activity of the donor Company.
- Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India up to USD 25,000 or five percent of the inward remittance whichever is less.
- Remittances up to USD 10,000,000 per project for any consultancy services in respect of infrastructure project and USD 1,000,000 per project, for other consultancy services procured from outside India.
- Remittances up to five per cent of investment brought into India or USD 100,000 whichever is less, by an entity in India by way of reimbursement of pre-incorporation expenses.
- Remittances up to USD 250,000 per financial year for purposes stipulated under Para 1 of Schedule III to FEM (CAT) Amendment Rules, 2015. However, all residual current account transactions undertaken by such entities are otherwise permissible without any specified limit and are to be disposed of at the level of AD, as hitherto. It is for the AD to satisfy them about the genuineness of the transaction.

Anything in excess of above limits requires prior approval of the Reserve Bank of India.

- (b) A company can commence or carry on the business of securitisation or asset reconstruction only after obtaining a certificate of registration and having the owned fund of not less than two crore rupees or such other higher amount as the Reserve Bank, may be notification specify. The Reserve Bank may, by notification, specify different amounts of owned fund for different class or classes of asset reconstruction companies.

(i) The requirement for registration of AMC is as under-

- (1) that the asset reconstruction company has not incurred losses in any of the three preceding financial years.
- (2) that such asset reconstruction company has made adequate arrangements for realisation of the financial assets acquired for the purpose of securitisation or asset reconstruction and shall be able to pay periodical returns and redeem on respective due dates on the investments made in the company by the qualified institutional buyers or other persons.
- (3) that the directors of asset reconstruction company have adequate professional experience in matters related to finance, securitisation and reconstruction.
- (4) that any of its directors has not been convicted of any offence involving moral turpitude.



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- (5) that a sponsor of an asset reconstruction company is a fit and proper person in accordance with the criteria as may be specified in the guidelines issued by the Reserve Bank for such person.
 - (6) that the asset reconstruction company has complied with or is in a position to comply with prudential norms specified by the Reserve Bank.
 - (7) that the asset reconstruction company has complied with one or more conditions specified in the guidelines issued by the Reserve Bank for the said purpose.
- (ii) RBI may impose restrictions/conditions as deemed fit. Reserve Bank approval is further required for-
- (1) any substantial change in its management including appointment of any direction on the Board of Directors of the asset reconstruction company or managing director or Chief Executive Officer thereof.
 - (2) change of location of its registered office.
 - (3) change in its name.

The decision of the Reserve Bank, whether the change in management of an asset reconstruction company is a substantial change in its management or not, shall be final and binding. The expression “substantial change in management” means the change in the management by way of transfer of shares or change affecting the sponsorship in the company by way of transfer of shares or amalgamation or transfer of the business of the company.