



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) In case of “limited” companies, what is limited?
- a. Shares
 - b. Liability of members
 - c. Capital of the company
 - d. Powers of the shareholders
- (ii) Minutes are supposed to be kept at:
- a. Registered office
 - b. Head office
 - c. Any office
 - d. Any of the above
- (iii) Power of Board of directors may be restricted subject to
- a. Companies Act
 - b. Articles of Association
 - c. Resolution of general meeting
 - d. Any or all of the above
- (iv) The Insolvency and Bankruptcy Board has power of.....Court in respect of issue of summons, discovery and production of books, inspection of books/registers and issue of commissions for examination of witnesses:
- a. Session Court
 - b. High Court
 - c. Supreme Court
 - d. Civil Court
- (v) The items under Schedule VII of the Act, should be:.
- a. strictly interpreted
 - b. liberally interpreted
 - c. depends on the company
 - d. only a guideline
- (vi) The principle of _____ ensures that an insured does not profit by insuring with multiple insurers.
- a. Subrogation
 - b. Contribution
 - c. Co-insurance
 - d. Indemnity



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- (vii) Takeover means
- buying few shares
 - acquiring 10%
 - acquiring shares which will give control over the management.
 - none of the above
- (viii) Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than _____years but which may extend to _____years and shall also be liable to fine.
- 3/5
 - 5/7
 - 3/7
 - 3/5
- (ix) FDI is prohibited in the which of the following sectors:
- Lottery Business including Government/ private lottery, online lotteries.
 - Gambling and betting including casinos.
 - Chit funds
 - All of the above.
- (x) OSBI stands for
- Open source Business intelligence
 - Open source business Innovation
 - Operational source Business Intelligence
 - none
- (xi) Asset Reconstruction Companies are to be registered with:
- SEBI
 - RBI
 - MCA
 - None of the above
- (II) Mohan and Shyam along with other four friends decide to start a business of running an old age home with commercial objective. They have plans to raise fund, both equity and loan from known people. Shyam feels that since this is a charitable purpose, they may register as non-profit company (section 8) and claim tax benefit. The six friends will take profits from the company apart from taking monthly remuneration since they will be working full time for the business. Rajesh, another friend opines that since they want to gain out of the venture, partnership law will apply.
- Based on the above case study, you are required to answer the questions no. from (xii) to (xv).
- (xii) Whose opinion was that partnership law will apply is correct?
- Mohan,
 - Shyam,
 - Rajesh,
 - None



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- (xiii) If they form a private limited company, they can issue shares to how many _____ persons.
- 50
 - 100
 - 200
 - 500
- (xiv) Which of the following is correct in relation to the situation above?
- They will not get NPO licence because it is for gain.
 - They can form NPO (section 8) Company.
 - They can register an NGO.
 - In every case the company will get tax exemption.
- (xv) If they go for partnership, what is the maximum number of partners they may have.
- 10
 - 20
 - 30
 - 50

Answer:

i	ii	iii	iv	v	vi	vii	viii	ix	x
b	a	d	d	b	b	c	c	d	a
xi	xii	xiii	xiv	xv					
b	c	c	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 provision for Prohibition on Acceptance of Deposits from Public in Companies Act, 2013.
- (b) Explain how far the acts of the director will be invalid if his appointment is not valid.

[7+7 =14]

Answer:

- (a) **Prohibition on Acceptance of Deposits from Public [Section 73 of Companies Act 2013]**
- No company can invite, accept or renew deposits under this Act from the public except in a manner provided under Chapter V provided that nothing in this Sub section shall apply to a banking company and non-banking financial company and to such other companies as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf.
 - A company may, with the mandate of a resolution in general meeting and subject to such rules as may be prescribed accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with

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interest, as may be agreed upon between the company and its members, subject to the fulfilment of the following conditions, namely

- (a) Issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed.
- (b) filing a copy of the circular along with such statement with the Registrar within thirty days before the date of issue of the circular
- (c) depositing on or before 30th April each year such sum which shall not be less than twenty percent of the amount of its deposits maturing during the following financial year, and kept in a scheduled bank in a separate bank account to be called as deposit repayment reserve account
- (d) Certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits, and where the default has occurred, the company made good the default and five years have elapsed since then.
- (e) Providing security, if any, for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company. Provided that in case where a company does not secure the deposits or secures such deposits partially, then, the deposits shall be termed as 'unsecured deposits' and shall be so quoted in every circular, form, advertisement or in any document related to invitation or acceptance of deposits.

3. Every deposit accepted by a company under sub-section (2) shall be repaid with interest in accordance with the terms and conditions of the agreement referred to in that sub-section.
4. Where a company fails to repay the deposit or part thereof or any interest thereon under Sub- Section (3) the depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit.
5. The deposit repayment reserve account referred to in clause (c) of Sub-Section (2) shall not be used by the company for any purpose other than repayment of deposits.

- (b) The provisions relating to validity of acts of directors are contained in section 176.

The provisions of section 176 are discussed below in detail:

Section 176 seeks to give protection to the company and third parties where certain acts are done by a director in good faith and without notice that these are done wrongly or illegally. Thus, section 176 validates the bona fide acts of de facto directors. These provisions may be explained as follows:

1. Acts of a director – Validated

No act done by a person as a director shall be deemed to be invalid, notwithstanding that it was subsequently noticed that –

- (a) his appointment was invalid by reason of any defect or disqualification; or
- (b) his appointment was terminated by virtue of any provision contained in the Act or in the Articles of the company.

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Acts done by a director in his capacity as managing director are not validated under section 176. Accordingly, where a managing director ceased to hold his office, all his subsequent acts were held to be invalid. It was not an irregular exercise of power, but exercise of power by a person who had no authority at all [Varkey Souriarv Keraleeya Banking Co. Ltd. AIR 1957 Ker 97].

3. Acts of a director - Not validated

In the following cases, the acts of a director shall not be valid:

- (a) Where his appointment is illegal or there is no appointment at all;
- (b) If an appointment has been shown to the company as invalid or terminated, where such defect comes into the knowledge of the company, all subsequent acts done by such a director shall be invalid.
- (c) Where the acts of a director are ultra vires the Companies act 2013

3. (a) Describe the provision related to Minutes of the Meeting of the General Meeting/Board Meeting.**(b) Explain the powers of Central Government and Tribunal to prevent Oppression and Mismanagement? [7 + 7 =14]**

Answer:

(a) Minutes of the Meeting of the General Meeting/Board Meeting [Section 118]

The minute in a literal sense means a note to preserve the memory of anything. The minutes of a meeting are a written record of the business transacted; decisions and resolutions arrived at the meeting.

Section 118 of the Companies Act, 2013 imposes a statutory obligation on every company to cause minutes of all proceedings of general meetings, board meetings and other meeting and resolution passed by postal ballot.

Every company shall cause minutes of the proceedings of every general meeting of any class of shareholders or creditors, and every resolution passed by postal ballot and every meeting of its Board of Directors or of every Committee of the Board, to be prepared and signed in such manner as may be prescribed and kept within thirty days of the conclusion of every such meeting concerned, or passing of resolution by postal ballot in books kept for that purpose with their pages consecutively numbered [Section 118(1)]

The minutes of each meeting shall contain a fair and correct summary of the proceedings thereat [Section 118(2)].

All appointments made at any of the meetings aforesaid shall be included in the minutes of the meeting [Section 118(3)]. The names of the dissenting directors should be recorded.

The Chairman shall exercise absolute discretion in regard to the inclusion or non-inclusion of any matter in the minutes [Section 118(6)]. The minutes are to be signed by the chairman of the meeting or the net meeting.

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The minutes kept in accordance with the provisions of this Section shall be evidence of the proceedings recorded therein [Section 118(7)] and all recording shall be considered valid and authentic.

No document purporting to be proceeding of a general meeting shall be circulated at the expense of the company.

As per Section 118(10), every company shall observe Secretarial Standards with respect to general and board meetings specified by the Institute of Company Secretaries of India. Accordingly, two Secretarial Standards viz. SS-1: Meetings of the Board of Directors and SS-2: General Meetings have been notified.

(b) Central Govt.'s power

Companies Amendment Act, 2019 have inserted sub-section 3 to section 241, enabling Central Govt. to make a case of oppression and mismanagement, under following situations.

- a) Any person management guilty of fraud, itérance, persistent negligence or breach of duty and trust,
- b) Business not conducted with sound business principles or prudent commercial practices,
- c) Management conducted in many injuries to interest of the trade, industry to which the company pertains
- d) Business carried out with an intention to defraud its creditors, members or in fraudulent or unlawful purpose.

Powers of Tribunal (Section 242)

The Tribunal may appoint such number of persons as directors, who may be required to report to the Tribunal on such matters as the Tribunal may direct.

- (a) The Tribunal is of the opinion:
 - (1) that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company, and
 - (2) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up, the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.
- (b) an order under that Sub- Section may provide for:
 - (1) the regulation of conduct of affairs of the company in future.
 - (2) the purchase of shares or interests of any members of the company by other members thereof or by the company.
 - (3) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital.
 - (4) restrictions on the transfer or allotment of the shares of the company.
 - (5) the termination, setting aside or modification, of any agreement, howsoever arrived at, between the company and the managing director, any other director or manager or any other person, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case.

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- (6) the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (5):
Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned.
- (7) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this Section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference.
- (8) removal of the managing director, manager or any of the directors of the company.
- (9) Recovery of undue gains made by managerial persons
- (10) Appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct.
- (11) Imposition of costs as may be deemed fit by the Tribunal.
- (12) Any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made.
- (c) A certified copy of the order of the Tribunal shall be filed by the company with the Registrar within thirty days of the order of the Tribunal. [Sub-Section 3]
- (d) The Tribunal may, make any interim order also
- (e) Where an order of the Tribunal makes any alteration in the memorandum or articles of a company, the company shall not have power, to make any alteration inconsistent with the order.
4. (a) **Critically assess the situation and advise about the quorum of Company's Board Meeting in the following cases (explain as per the provisions of the Companies Act, 2013)?**
- (i) **A public company has 10 directors (including 4 non-executive directors). But 8 directors (including 4 non-executive directors) attended the BOD meeting.**
- (ii) **Startup Odisha Ltd. is a section 8 company which has 8 non-executive directors. 3 directors attended the meeting.**
- (iii) **BOD of X Ltd. consists of 9 executive directors and 3 non-executive directors. Total 6 executive directors and 3 non-executive directors attended the BOD meeting. A business was transacted in which one director was interested. Articles of the Association have fixed the quorum as 5.**
- (b) **X & Co. is a LLP firm wants to convert their firm into a corporate entity as per the provisions contained in Sec. 366 of the Companies Act ,2013 and the Companies (Authorized to registered) Rules, 2014. They have conducted a meeting for conversion of and to decide the name of the company summoned for the purpose of registering the LLP. In the meeting 1/4th partners want for the conversion into a Pvt. Ltd company, and 3/4th partners want for a new corporate entity with the word “Public Limited”. There are 6 partners in the firm. Recommend an appropriate decision and steps to be taken by the firm. [7+7=14]**



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Answer:**(a) Quorum of company's Board meetings**

- (i) According to Section 174 of the Companies Act, 2013 the quorum for a Board Meeting shall be one third of its total strength or two directors, whichever is higher. Here the strength is 10. $\frac{1}{3}$ rd of total strength is 3.33 or 4. So the quorum is 4 (any fraction rounded as one).
- (ii) The companies covered under section 8 of the Act shall constitute quorum for the Board meeting, either eight members or 25% of its total strength whichever is less. Provided that quorum shall not be less than two members. [Vide Notification G.S.R.466(E) dated 5th June 2015]. As Start-up Odisha Ltd. is a section 8 company, the quorum will be decided as per above provisions. Here $\frac{1}{4}$ th of total directors is 2. Hence the quorum is 2.
- (iii) Interested Director means any director whose presence cannot counted for the purpose of forming a quorum at a meeting of the Board, at the time of the discussion or vote on any matter. The Act prohibits an interested director from participating in the discussion of or voting on, any contract or arrangement entered into, or to be entered into, by or on behalf of the company in which his presence shall not be counted for the purpose of forming a quorum at the time of any such discussion or vote and if he does vote, his vote shall be void. There is requirement of $\frac{12}{3}$ i.e., 4 directors to be quorum,

However, now 8 directors are present (excluding the interested director); Hence quorum is available for a valid BOD meeting of X Ltd.

(b) An LLP can be converted into a Pvt. Ltd. Company as per the provisions contained in section 366 of the companies act 2013 and the companies (Authorised to Registered) Rules, 2014. This step can be initiated in 2 ways as enumerated below:

- (i) Incorporation of a new corporate entity.
- (ii) Conversion of existing entity (e.g. LLP/Partnership Firm) into a Company There are various requirements which need to be satisfied for converting an LLP into a private Ltd.
 - 1) An LLP must have at least 7 partners (however as per Companies Amendment Act, 2017 LLP with 2 partners can be converted into company).
 - 2) Approval from all partners is required.
 - 3) Advertisement in newspaper is to be done in a local and national newspaper.
 - 4) No objection certificate (NOC) is required from ROC where such LLP is registered

However, if an LLP crosses an annual turnover of Rs.40 lakhs or a capital contribution of more than Rs.25 lakhs, the compliance requirements for LLP and Private Limited Company become almost similar, making the private limited company a better choice. Further that a company with less than 7 members shall register as a private company, whether the majority is for a new corporate entity with the word "Public Limited".

The following steps to be taken by the firm:

1. Hold a meeting of the partners to decide the name of the company. To authorize partners to take all steps necessary and to execute all papers, deeds, documents etc. pursuant to register of the LLP as a Company. The major advantages are that the business can be run under the same name as that of the LLP except that in addition to the name of LLP the words Limited or private limited has to be added. The accepted name by the authority will be valid for 60 days.



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2. After obtaining name approval, apply for Digital Signature Certificate (DSC) and Director Identification Number (DIN) for the member of the LLP who will be the directors of the Private Limited Company after conversion. In case of non-applicability of DIN, the applicant needs to provide address proof, identity proof and photographs along with the application. Therefore, obtain DIN directly through filing incorporation form.
3. Further, Form URC-1 needs to be filed by the applicant; furnish the following list of documents along with the form URC-1.
 - Provide details such as name, address and shares held by the members along with the member's list.
 - Provide details such as Name, Address, DIN, passport number along with an expiry date of all the directors of the Private Limited Company.
 - An affidavit is required from the first directors of the Private Limited Company stating that they are not banned from being a director.
 - Also, file all mandatory documents with the Registrar of Companies for the registration of the company.
 - Note: The details provided by the company should be complete, correct and accurate to the best of their knowledge.
 - Copy of Limited Liability Partnership agreement with a list containing the name and address of the partners of LLP and a certified copy of registration which is duly verified by at least two designated partners of LPP is required.
 - The statement with the details of the nominal share capital of the firm and the number of shares separated the number of shares taken and the amount remitted for each share and the name of the firm with the word private limited to be provided.
 - The no-objection certificate from all the creditors has to be provided.
 - Duly certified accounts statement of the company by the auditor, which should not be less than six days from the date of application and the copy of the newspaper advertisement is required.
4. Draft the Memorandum of Association (MOA) and Articles of Association (AOA) and submit to the Registrar of Companies. After the approval of the company name, the Register of Companies sanctions the form URC-1.
5. (a) **Discuss the persons not entitled to initiate insolvency resolution process under the IBC, 2016?**
- (b) **Nature India Limited filed a petition under Insolvency and Bankruptcy Code, 2016 with National Company Law Tribunal (NCLT) against Tulip Limited and the petition was admitted. After that, Nature India Limited wanted to withdraw the petition based on a settlement arrived between the parties. Examine whether it is permissible to withdraw the petition after it has been admitted? and also infer the legal provision relating to the admission and rejection of application by an adjudicating authority under the Insolvency and Bankruptcy Code, 2016.** [7+7 =14]



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Answer:**(a) Persons who are not entitled to initiate insolvency resolution process.**

The Code states that a corporate debtor (which includes a corporate applicant in respect of such corporate debtor) shall not be entitled to make an application to initiate corporate insolvency resolution process [Section 11 of Insolvency and Bankruptcy Code, 2016] in the following cases:

- (a) when undergoing a corporate insolvency resolution process; or
- (b) having completed corporate insolvency resolution process twelve months preceding the date of making of the application; or
- (c) a corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under this Chapter; or
- (d) a corporate debtor in respect of him a liquidation order has been made.

(b) The given problem relates to section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 44(2) of the National Company Tribunal Rules, 2016. As per section 9, an application for initiation of corporate insolvency resolution process may be made by an operational creditor against the corporate debtor. Such application is made to the adjudicating Authority (NCLT).

As per section 13, where an application is made under section 9 is admitted, the adjudicating authority shall make an order with respect to following:

- (i) Appoint an interim resolution professional in the manner as laid down in sec 16.
- (ii) Cause a public announcement of the initiation of corporate insolvency resolution process and call for the submission of claims.
- (iii) Declare a moratorium for the purposes referred to in section 14.

However, section 9 does not address a situation wherein an application made to the Adjudicating Authority is admitted, but afterwards, the operational creditor wishes to withdraw its application. In other words, section 9 is silent as to whether an application, once admitted, can be withdrawn or not. But, this is dealt with Rule 44(2) of the National Company Law Tribunal Rules, 2016.

As per Rule 44(2), where at any stage prior to the hearing of the petition or application, the applicant desires to withdraw his application, he shall make an application to that effect to the Tribunal, and the Tribunal on hearing the applicant and if necessary, the other party in the application, may permit such withdrawal upon imposing such costs as it may deem fit and proper. In “Parker Hannifin India private Limited v Powers International Private Limited” an application made under section 9 was admitted by the Adjudicating Authority. As a consequence of admission of application, public announcement was made inviting claims from the creditors and moratorium was declared. Thereafter, operational creditor and corporate debtor duly agreed for amicable settlement and were arrived at between the parties. Then an application was made to the Adjudicating Authority for withdrawal of application admitted earlier.

The Authority held that after the admission of the application under section 9, the application acquires the character of a representative suit. By reason of public announcement, other creditors become entitled to file their claims and participate in the corporate insolvency resolution process.

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Therefore, the application cannot be dismissed on the basis of a compromise or settlement arrived at between the operational creditor and corporate debtor. Thus, operational creditor and corporate debtor alone shall have no right to decide the withdrawal of the application. In the given Nature India Limited's application against Tulip Limited has been admitted by the Adjudicating Authority under section 9. Afterwards, Nature India Limited and Tulip Limited entered into a settlement and wanted to withdraw the application. Accordingly, the application admitted under section 9 cannot be withdrawn.

6. (a) **Examine the sustainability report and its purpose of disclosure.**
- (b) **Classify the major categories of cyber-crimes and summarize them with examples. [7+7=14]**

Answer:

(a) **Sustainability Reporting:**

UNO supports principles of Responsible Investment (PRI). These principles have subscribed by 3500 signatories who are investors. They have committed to integrate ESG factors into investment decision making.

Most of the large companies in the world are already reporting their ESG profile in line with globally recognized parameters.

Studies have made by one rating agency on ESG ratings which shows variance in rating in different sectors. Though not mandatory ESG rating would give the message to the outsiders, stakeholders about the ESG approach of the entity. More and more companies are coming under ESG philosophy and practice.

In view of the above, it has become important to reporting of company's performance on sustainability related factors and its importance is as relevant operational performance.

SEBI had in November 2015, prescribed format in reporting ESG parameters listed entities. SEBI has raised the format in May, 2021 for reporting ESG parameters called Business Responsibility and Sustainability Report (BRSR). It seeks disclosure from listed entities on their performance against the principles of National Guidelines on Responsible Business Conduct (NGBRC). Each parameter is divided into leadership and essential indicators, whereas the former is voluntary and latter is mandatory.

Purpose of Disclosure

1. The disclosure, are in nature of quantity and standards so that it can be easily compared with other similar entities by third parties, particularly a prospective investor.
2. Engaging with stakeholders in most proper way beneficial to both.
3. The corporates need to look beyond financial figures for effective ecosystem between corporate, society and environment.

Application of mandatory reporting

With effect from financial year 2022-23, the filing shall be mandatory for top 1000 companies listed in any of the exchange, based on market capitalization.

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(b) Cyber-crimes can be basically divided into three major categories:

A. Cyber-crimes against persons are:

- Cyber-Stalking: It means to create physical threat that creates fear to use the computer technology such as internet, e-mail, phones, text messages, webcam, websites or videos.
- Defamation: It is an act of imputing any person to lower down the dignity of the person by hacking his mail account and sending some mails with using vulgar language to unknown persons.
- Hacking: unauthorized control/access over computer system and act of hacking completely destroys the whole data as well as computer programmes.
- Cracking: Cracking means that a stranger has broken into your computer systems without your knowledge and consent and has tampered with precious confidential data and information.
- Spoofing: A spoofed e-mail may be said to be one, which misrepresents its origin. It shows its origin to be different from which actually it originates. Spoofing is a blocking through spam which means the unwanted uninvited messages. Wrongdoer steals mobile phone number of any person and sending SMS via internet and receiver gets the SMS from the mobile phone number of the victim.
- Carding: It means false ATM cards i.e. Debit and Credit cards used by criminals for their monetary benefits through withdrawing money from the bank account mala fide.
- Fraud: It means the person who is doing the act of cyber-crime i.e. stealing password and data storage has done it with having guilty mind which leads to fraud and cheating.
- Threat: refers to threatening a person with fear for their lives or lives of their families through the use of a computer network i.e. E-mail, videos or phones.

B. Cyber-crimes against property

There are certain offences which affects person or properties which are as follows:

- Squatting: It means where two persons claim for the same Domain Name either by claiming that they had registered the name first on by right of using it before the other or using something similar to that previously.
- Vandalism: Vandalism means deliberately destroying or damaging property of another. Thus cyber vandalism means destroying or damaging the data when a network service is stopped or disrupted. It may include within its purview any kind of physical harm done to the computer of any person.
- Hacking: Hacktivism attacks those included Famous Twitter, blogging platform by unauthorized access/ control over the computer. Due to the hacking activity there will be loss of data as well as computer.
- Virus: Viruses are programs that attach themselves to a computer or a file and then circulate themselves to other files and to other computers on a network. They usually affect the data on a computer, either by altering or deleting it. Worm attacks plays major role in affecting the computerize system of the individuals.

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- Trespass: It means to access someone's computer without the right authorization of the owner and does not disturb, alter, misuse, or damage data or system by using wireless internet connection.

C. Cyber-crimes against Government

There are certain offences done by group of persons intending to threaten the international governments by using internet facilities. It includes:

- Terrorism: Cyber terrorism is a major burning issue in the domestic as well as global concern. The common form of these terrorist attacks on the Internet is by distributed denial of service attacks, hate websites and hate e-mails, attacks on sensitive computer networks etc. Cyber terrorism activities endanger the sovereignty and integrity of the nation.
- Warfare: It refers to politically motivated hacking to damage and spying. It is a form of information warfare sometimes seen as analogous to conventional warfare although this analogy is controversial for both its accuracy and its political motivation.
- Piracy: It means distributing pirated software from one computer to another intending to destroy the data and official records of the government.
- unauthorized Information: It is very easy to access any information by the terrorists with the aid of internet and to possess that information for political, religious, social, ideological objectives.
 - (i) Tampering with Computer source documents - Sec.65
 - (ii) Hacking with Computer systems, Data alteration - Sec.66
 - (iii) Publishing obscene information - Sec.67
 - (iv) Un-authorized access to protected system Sec.70
 - (v) Breach of Confidentiality and Privacy - Sec.72
 - (vi) Publishing false digital signature certificates - Sec.73

7. (a) Explain the various steps to be taken by a Listed Company in prevention of Insider trading.
- (b) Discuss the "Abuse of Dominant position" and "predatory pricing" under Competition Act, 2002. [7+7=14]

Answer:

- (a) The following steps need to be taken by the Management of a Listed Company to prevent insider trading which can also be referred as Institutional Mechanism to counter Insider trading:
- a) The Chief Executive Officer shall put in place adequate and effective system of internal control for compliance.
 - b) The Audit Committee shall review compliance with the provision of these regulations at least once in a financial year and shall verify that the systems for internal control are adequate and are operating effectively.
 - c) Every listed company shall formulate policies and procedures for inquiry in case of leak or suspected leak of unpublished price sensitive information which shall be approved by the Board of directors and accordingly initiate appropriate inquiries in time and inform the

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Board promptly of the status.

- d) The listed Company shall formulate whistle- blower policy and make employees aware of such policy to enable employees to report instances of leak of unpublished price sensitive information.
- e) If an inquiry has been initiated by a listed Company in case of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information, the relevant intermediaries and fiduciaries shall co-operate with the listed company in connection with such an inquiry.

(b) Abuse of Dominant Position

- a) When a party directly or indirectly, imposes unfair or discriminatory condition in purchase or sale of goods or service; or Price in purchase or sale (including predatory price) of goods or service; or
- b) Indulges in practice or practices resulting in denial of market access; or
- c) Uses its dominant position in one relevant market to enter into, or protect, other relevant market. “Dominant position” means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables into-
 - (i) Operate independently of competitive forces prevailing in the relevant market; or
 - (ii) Affect its competitors or consumers or the relevant market in its favour.

“**Predatory price**” means the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of the goods or provision of services. The basic motive behind such a move is to reduce competition or eliminate the competitors.

8. (a) **Examine the process of Money Laundering of the PMLA, 2002.**
- (b) **An asset reconstruction company may, for the purposes of asset reconstruction, provide for any one or more of the measures. Explain the measures to be taken for assets reconstruction.**
- [7+7=14]

Answer:

- (a) The process of Money Laundering generally involves the following three stages –
- 1) **Placement:** The Money Launderer, who is holding the money generated from criminal activities, introduces the illegal funds into the financial systems. This might be done by breaking up large amount of cash into less conspicuous smaller sums which are deposited directly into a Bank Account or by purchasing a series of instruments such as Cheques, Bank Drafts etc., which are then collected and deposited into one or more accounts at another location.
 - 2) **Layering:** The second stage of Money Laundering is layering. In this stage, the Money Launderer typically engages in a series of continuous conversions or movements of funds, within the financial or banking system by way of numerous accounts, so as to hide their true origin and to distance them from their criminal source. The Money Launderer may use various channels for movement of funds, like a series of Bank Accounts, sometimes spread

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across the globe, especially in those jurisdictions which do not co-operate in anti-Money Laundering investigations.

- 3) **Integration:** Having successfully processed his criminal profits through the first two stages of Money Laundering, the Launderer then moves to this third stage in which the funds reach the legitimate economy, after getting inseparably mixed with the legitimate money earned through legal sources of income. The Money Launderer might then choose to invest the funds into real estate, business ventures & luxury assets, etc. so that he can enjoy the laundered money, without any fear of law enforcement agencies.

The above three steps may not always follow each other. At times, illegal money may be mixed with legitimate money, even prior to placement in the financial system. In certain cash rich businesses, like Casinos (Gambling) and Real Estate, the proceeds of crime may be invested without entering the mainstream financial system at all.

(b) **Measures for assets reconstruction (Section 9 of SARFAESI Act, 2002)**

An asset reconstruction company may for the purposes of asset reconstruction, provide for any one or more of the following measures, namely

- a) The proper management of the business of the borrower, by change in or takeover of, the management of the business of the borrower,
- b) The sale or lease of a part or whole of the business of the borrower,
- c) Rescheduling of payment of debts payable by the borrower,
- d) Enforcement of security interest in accordance with the provisions of this Act.
- e) Settlement of dues payable by the borrower,
- f) Taking possession of secured assets in accordance with the provisions of this Act,
- g) Conversion of any portion of debt into shares of a borrower company Provided that conversion of any part of debt into shares of a borrower company shall be deemed always to have been valid, as if the provisions of this clause were in force at all material times.

The Reserve bank for this purpose shall determine the policy and issue necessary directions including the directions for regulation of management of the business of the borrower and fees to be charged. The asset reconstruction company shall take measures as per the directions of RBI.