

**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:****[15x2=30]**

XYZ Pvt. Ltd., a private limited company registered under the Companies Act, 2013, currently has five directors on its board. As per its Articles of Association, the maximum permissible number of directors is seven. At the forthcoming Annual General Meeting (AGM), two directors—Mr. A and Ms. B—are due to retire by rotation. The board intends to reappoint Mr. A and induct Ms. C as a new director, despite her not being a shareholder of the company.

In addition, the board plans to appoint Mr. D as an Additional Director to oversee a specific project, with the intention of formalizing his appointment at the subsequent AGM. Meanwhile, a group of shareholders holding 15% of the voting rights has proposed Mr. E's nomination as a director to represent minority shareholders.

Answer the question from (i) to (iv) based on the above case study.

- (i) Under which section of the Companies Act, 2013 does the Board have the authority to appoint an Additional Director?
- a) Section 161.
 - b) Section 145.
 - c) Section 182.
 - d) Section 98.
- (ii) Can Ms. C be appointed as a director in XYZ Pvt. Ltd.
- a) No, only shareholders can be appointed as directors
 - b) Yes, if permitted by its Articles
 - c) Yes, under the provision of Companies Act, 2013
 - d) Only with approval of ROC
- (iii) What is the minimum notice period required for recommending the name of a Mr. E for directorship under Section 160 of the Companies Act, 2013?
- a) 7 days before the AGM
 - b) 14 days before the AGM
 - c) 28 days before the AGM
 - d) 30 days before the AGM
- (iv) What is the requirement under the Companies Act, 2013 for a director to be reappointed (like Mr. A) after retirement by rotation?
- a) Special resolution



CORPORATE AND ECONOMIC LAWS

- b) Board resolution only
 - c) Ordinary resolution at AGM
 - d) No resolution needed
- (v) Shifting of registered office of a company from one state to another requires
- a) Alteration of MOA only
 - b) Alteration of MOA and Central Govt.(CG) approval
 - c) only CG approval
 - d) only Board approval
- (vi) For Board meeting, quorum as per the Companies Act, 2013 is:
- a) Two third of the total no. of directors
 - b) One third of the total no. of directors
 - c) Half of the total no. of directors
 - d) None of the above.
- (vii) Insolvency and Bankruptcy code 2016 is not applicable on:
- a) Partnership Firms and Individuals
 - b) Limited Liability Partnership (LLP)
 - c) Companies Incorporated under Companies Act
 - d) Financial Service Providers
- (viii) Corporate governance is close to:
- a) ethical conduct of business
 - b) managerial conduct of business
 - c) target oriented business
 - d) none of the above
- (ix) The regulatory authority for the Insolvency and Bankruptcy Code (IBC) in India is
- a) Debt Recovery Tribunal (DRT)
 - b) National Company Law Tribunal (NCLT)
 - c) Supreme Court of India
 - d) Insolvency and Bankruptcy Board of India (IBBI)
- (x) The cases under PMLA can be tried in:
- a) Common courts
 - b) High courts only
 - c) Special designated courts
 - d) none of the above.

**CORPORATE AND ECONOMIC LAWS**

- (xi) Which of the following is not the objective of Competition Act, 2002?
- a) To prevent practices having adverse effect on competition.
 - b) To prevent competition in market
 - c) To protect the interest of the consumers
 - d) To ensure freedom of trade carried on by the other participant in marketing India and for matter connected there with or incidental thereto.
- (xii) The purpose of the SEBI Act is to provide for the establishment of a Board called Securities and Exchange Board of India (SEBI). The Preamble to the Act provides for the establishment of a Board to:
- a) Protect the interests of investors in securities
 - b) Promote the development of the securities market
 - c) To regulate the securities market
 - d) All of the above
- (xiii) Credit facilities in the ordinary course of business is an example of
- a) Capital account transaction
 - b) Current account transaction
 - c) Either (a) or (b)
 - d) None of the above
- (xiv) Insurance business is regulated by:
- a) SEBI
 - b) RBI
 - c) MCA
 - d) none of the above
- (xv) Which among the following is a Cybercrime under the IT Act?
- a) Tampering with Computer source documents.
 - b) Hacking with Computer systems, Data alteration.
 - c) Publishing obscene information.
 - d) All of the above

Answer:

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



SECTION – B

Answer any 5 questions out of 7 questions given. Each question carries 14 marks. [5 x 14 = 70]

- 2) (a) Discuss the legal provisions related to the prohibition on acceptance of deposits from the public by companies under section 73 of the Indian Companies Act, 2013. [7]
- (b) Describe how a managing director, whole time director or manager is appointed by a company. [7]

Answer:

- (a) Prohibition on acceptance of deposits from the public by companies under section 73 of the Indian Companies Act, 2013 are:

- No company can invite, accept or renew deposits under this Act from the public except in a manner provided under this Chapter.

Provided that nothing in this Sub-Section shall apply to a banking company and non-banking financial company and to such other company 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 interest, as may be agreed upon between the company and its members, subject to the fulfilment of the following conditions, namely:
 - (1) 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.
 - (2) filing a copy of the circular along with such statement with the Registrar within thirty days before the date of issue of the circular.
 - (3) depositing on or before 30th April each year such sum which shall not be less than twenty per cent of the amount of its deposits maturing during a financial year, and kept in a scheduled bank in a separate bank account to be called as deposit repayment reserve account.
 - (4) 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.
 - (5) 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.

**CORPORATE AND ECONOMIC LAWS**

- Every deposit accepted by a company shall be repaid with interest in accordance with the terms and conditions.
 - 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.
 - 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. The detailed procedure is mentioned under Companies (Acceptance of Deposits) Rules, 2014. Some of the Rules are summarised and placed below for understanding.
- (b) Section 196 of the Companies Act, 2013 contain the provisions for appointment of Managing Director, Whole Time Director or Manager. According to this section:
- (1) No company shall appoint or employ a managing director and a manager at the same time.
 - (2) No company shall appoint or re-appoint any person as its managing director, whole time director or manager for a term exceeding five years at a time, provided that no re-appointment shall be made earlier than one year before the expiry of his term.
 - (3) No company shall appoint or continue the employment of any person as managing director, whole-time director or manager who:
 - is below the age of 21 years or has attained the age of 70 years. Person who has attained the age of seventy years may be appointed by the passing of a special resolution.
 - is an undischarged insolvent or has at any time been adjudged as an insolvent, or
 - has at any time suspended payment to his creditors or makes, or has at any time made, a composition with them, or
 - has at any time been convicted by a court of an offence and sentenced for a period of more than six months.
 - (4) Schedule V to the Companies Act, 2013, prescribes additional conditions for managing or whole-time director or a manager to be eligible for appointment. The schedule stipulates that:
 - he had not been sentenced to imprisonment for any period, or to a fine exceeding one thousand rupees, for the conviction of an offence under 16 Acts as specified under Schedule V.
 - he had not been detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974:
 - where he is a managerial person in more than one company, he draws remuneration from one or more companies subject to the ceiling provided in section V of Part II.
 - he is resident of India.
- In this context, 'resident in India' includes a person who has been staying in India for a continuous period of not less than twelve months immediately preceding the date of his appointment as a managerial person and who has come to stay in India,
- a. for taking up employment in India; or

**CORPORATE AND ECONOMIC LAWS**

- b. for carrying on a business or vacation in India.
- Where an appointment not approved by AGM, any Act done by him deemed to be invalid.

- 3) (a) Discuss the duties and liabilities of directors under the provisions of the Companies Act, 2013. [7]
(b) Discuss the provisions related to investigation by Serious Fraud Investigation Office (SFIO). [7]

Answer:

(a) Duties of Directors

Duties of directors has been defined in the company Law under section 166 of the Companies Act, 2013.

The following duties have been prescribed for a director under the said section:

- He shall act in accordance with the articles of the company, subject to the provisions of this Act.
- He shall act in good faith in order to promote the objects of the company and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.
- He shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
- He shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or, with the interest of the company.
- He shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates.
- He shall not assign his office.

The duties of directors are also mentioned in other provisions of the Act rules. The code of conduct which is now introduced also specifies few duties.

Liabilities of Directors

The liabilities of the directors may be grouped under certain heads for convenience of consideration and discussion. They are:

- **Liability to outsiders**

Directors of a company may personally become liable to outside parties in the following cases:

- (a) When they enter into contracts on behalf of the company:
 - (1) if the contracts are ultra vires the company;
 - (2) if they act outside the scope of their own authority;
 - (3) if they act in their own name and not for and on behalf of the company;
- (b) When they issue a prospectus; in violation of the provisions of the Companies Act, 2013 and the SEBI (ICDR) Regulations which contains mis-statements(s).
- (c) When they are found guilty of fraud.
- (d) When they allot shares in an irregular manner.
- (e) When the Court orders that the directors are personally liable for all or any of the debts or liabilities of the company for fraudulent trading on the part of the company.

**CORPORATE AND ECONOMIC LAWS**

- **Liability to the Company**

The directors are liable to the company in the following cases:

- (a) When they are negligent in the performance of their duty as directors and the company suffers loss, etc.
- (b) When they commit an act which is ultra vires their powers or ultra vires the company.
- (c) When any illegal act or breach of trust is committed by them.

- **Liability to the shareholders**

The position of the directors in respect of the company's properties and the rights conferred upon them to be exercised as directors is that of a trustee. If they commit any breach of trust or indulge in wrongful uses of their rights and the company suffers loss, they have to make good the loss. Similarly, if shareholders suffer loss due to the negligence of the directors they are personally liable for the loss.

- **Liability for statutory defaults and violations.**

Under the Companies Act, 2013 the directors are required to ensure compliance with the several provisions of the Act and penalties have been prescribed for defaults and/or non-compliance. The directors are liable for consequences.

- (b) The Central Government have established an office called the Serious Fraud Investigation Office (SFIO) to investigate frauds relating to a company.

Section 212 of the Act provides for Investigation into affairs of Company by the Serious Fraud Investigation Office (SFIO). According to this section:

- where the Central Government:
 - (1) on receipt of a report of the Registrar or Inspector under section 208;
 - (2) on intimation of a special resolution passed by a company that its affairs are required to be investigated.
 - (3) in the public interest, or
 - (4) on request from any Department of the Central Government or a State Government, is of the opinion that it is necessary to investigate into the affairs of a company by the Serious Fraud Investigation Office (SFIO), the Central Government may, by order, assign the investigation into the affairs of the said company to the SFIO.
- No other investigating agency of Central Government or any State Government shall proceed with investigation in such case in respect of any offence under this Act. In case any such investigation has already been initiated, the concerned agency shall transfer the relevant documents and records in respect of such offences under this Act to facilitate SFIO to investigate.
- The Director, Serious Fraud Investigation Office shall cause the affairs of the company to be investigated by an Investigating Officer who shall have the power of the inspector under section 217.
- The company and its officers and employees, who are or have been in employment of the company shall be responsible to provide all information, explanation, documents and assistance

**CORPORATE AND ECONOMIC LAWS**

to the Investigating Officer as he may require for conduct of the investigation.

- The SFIO shall submit an interim report and on completion, final report to the Central Government.
- Any person concerned by making an application in this regard to the court may get a copy of the report.
- The Central Government may, after examination of the report, direct the SFIO to initiate prosecution against the company and its officers or employees, who are or have been in employment of the company or any other person directly or indirectly connected with the affairs of the company.

- 4) (a) **RR Ltd. is a public limited company, having its registered office in Bengaluru, and has been in existence since March, 2010. The following is the summarised position of its financial results for the past four years (in crores)**

Particulars	2019-20	2020-21	2021-22	2022-23
Net worth	303	319	368	503
Turnover	500	490	680	890
Net profit	6.1	6.9	7.9	8.9

In the light of above facts, examine the following issues:

(i) Does the company come within the purview of CSR Regulations?

(ii) Is CSR Committee required to be formed?

(iii) What will be the minimum budget for CSR compliance, for the year 2023-24

(iv) What are the other CSR obligations under the provisions of the Companies Act, 2013

[7]

- (b) Gautam of Uttar Pradesh incorporated a One Person Company (OPC). In compliance to law, he appointed his brother Rohit as nominee. Both are resident Indian citizens. On 12/02/2024, Rohit left India permanently to settle in Dubai and he has withdrawn his nomination. You are required to examine the following issues in the light of the provisions of the Companies Act, 2013:**

(i) What action shall be taken by Gautam when he gets notice of withdrawal of nomination and within what time limit?

(ii) Gautam wants to appoint his minor son (Abhijit). Can Gautam appoint his minor son (Abhijit) as nominee in OPC? Examine, with relevance, the correctness of the same.

[7]

Answer:

- (a) Whether RR Ltd comes within the purview of CSR Regulations**

(i) As per section 135(1) of the Companies Act, 2013, the CSR regulations will apply where any of the following conditions are fulfilled:

- Net worth of ₹500 crores or more, or
- Turnover of ₹1000 or more, or
- Net profit of ₹5 crores

Since RR Ltd. fulfils the net profit criteria, CSR Regulations will apply.

**CORPORATE AND ECONOMIC LAWS**

- (ii) Formation of CSR Committee Yes, where a company comes under the purview of section 135 of the Act, CSR Committee is required to be formed.
- (iii) Minimum budget for CSR for 2023-24 Average profits for the last 3 years = $6.9+7.9+8.9=23.7/3 = 7.9$ crores Minimum budget for CSR for 2023-24 = 2% of $7.9 = ₹15.8$ lakhs
- (iv) Other CSR obligations
- The amount has to be spent before the end of the financial year.
 - The details of the CSR spending have to be furnished in the Report of the Board of Directors.
 - Form CSR 1 has to be filed.

(b) Action to be taken by Gautam when he gets notice of withdrawal of nomination

- (i) In case of OPC, the Shareholder shall nominate another person who shall become the shareholders in case of death/incapacity of the original shareholder. Such nominee shall give his/her consent and such consent for being appointed as the Nominee for the sole Shareholder. The company shall within thirty days of receipt of the notice of withdrawal of consent, file with the Registrar,
- notice of such withdrawal of consent,
 - the intimation of the name of another person nominated by him in Form No INC.4, and
 - the written consent of such another person so nominated in Form No.INC.3.
- along with fee as provided in the Companies (Registration offices and fees) Rules, 2014
- (ii) Correctness of nomination of minor son in the OPC
- As per the Companies (Incorporation) Rules, 2014, a minor cannot become member or nominee of the OPC nor can hold share with beneficial interest.
- In view of this, Gautam's minor son Abhijit Cannot be appointed as nominee.

5. (a) Analyse the provisions related to internal audit under section 138 of the Companies Act, 2013. [7]
- (b) A Ltd. intends to initiate voluntary liquidation proceedings. In this regard, a declaration by way of affidavit has been submitted by some of the directors of the company, stating that a full inquiry into the affairs of the company has been conducted and that the company will be able to repay its debts in full from the proceeds of asset sales during the liquidation process.
- Based on this scenario, analyze whether A Ltd. is in compliance with the conditions for initiating voluntary liquidation under the provisions of the Insolvency and Bankruptcy Code, 2016. Also, specify the documents that must accompany such a declaration. [7]

Answer:

- (a) Section 138 of the Companies Act, 2013 came into force from 1st April, 2014 which provides first time new provision for internal audit. According to Section 138 of the Companies Act, 2013 and the Companies (Accounts) Rules, 2014:
- Companies required to appoint Internal Auditor
- (1) The following class of companies shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate, namely:
- a. every listed company
 - b. every unlisted public company having:

**CORPORATE AND ECONOMIC LAWS**

- i) paid up share capital of ₹50 crores or more during the preceding financial year, or
- ii) turnover of ₹200 crores or more during the preceding financial year, or
- iii) outstanding loans or borrowings from banks or public financial institutions exceeding ₹100 crores or more at any point of time during the preceding financial year, or
- iv) outstanding deposits of ₹25 crores or more at any point of time during the preceding financial year, and
- c. every private company having:
 - i) turnover of ₹200 crores or more during the preceding financial year, or
 - ii) outstanding loans or borrowings from banks or public financial institutions exceeding ₹100 crores or more at any point of time during the preceding financial year.
- (2) The Audit Committee of the company or the Board shall, in consultation with the Internal Auditor, formulate the scope, functioning, periodicity and methodology for conducting the internal audit.
- Transitional period
An existing company covered under any of the above criteria shall comply with the requirements of Section 138 and this rule within 6 months of commencement of such Section.
- Who is Internal Auditor
 - (a) Internal Auditor shall either be a chartered accountant or a cost accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company. Here, the term “Chartered Accountant” or “Cost Accountant” shall mean a “Chartered Accountant” or a “Cost Accountant”, as the case may be, whether engaged in practice or not.
 - (b) The internal auditor may or may not be an employee of the company.

(b) Legal Provisions under Section 59 – Voluntary Liquidation

Voluntary liquidation proceedings of a corporate person registered as a company shall meet the following conditions, namely: -

- (a) a declaration from majority of the directors of the company verified by an affidavit stating that -
 - (i) they have made a full inquiry into the affairs of the company and they have formed an opinion that either the company has no debt or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and
 - (ii) the company is not being liquidated to defraud any person;
- (b) the declaration under sub-clause (a) shall be accompanied with the following documents, namely: -
 - (i) audited financial statements and record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later;
 - (ii) a report of the valuation of the assets of the company, if any prepared by a registered valuer;

Analysis of the Given Situation

In the present case:

- X Ltd. intends to initiate voluntary liquidation.
- A declaration by affidavit has been made by some of the directors of the company.
- The declaration includes a statement that a full inquiry has been conducted and that the company will be able to pay its debts in full from the proceeds of asset sales.

**CORPORATE AND ECONOMIC LAWS**

However, as per Section 59(3)(a) of the Code, the declaration must be made by the majority of the directors of the company. Since only some of the directors have provided the affidavit, the requirement is not satisfied. Furthermore, another mandatory element of the declaration that the company is not being liquidated to defraud any person is not mentioned in the given scenario. This omission makes the declaration non-compliant with the IBC.

Therefore, based on the analysis, X Ltd. cannot initiate voluntary liquidation in its current state of compliance.

6. (a) Discuss the objectives and benefits of corporate governance. [7]
(b) Analyse the data protection law in India. [7]

Answer :

(a) Following can be taken as objectives of corporate governance.

1. Company to justifiably satisfy the stakeholders by balancing conflict of interest amongst the stakeholders;
2. Company adopts transparent, logical and justifiable policies affecting the stakeholders in all areas of management;
3. Ideal composition of the board of directors: to justify independence of decision making; this is now regulated under LODR.
4. Optimum use of resources of the company the resources belong to shareholders and thereafter the employees, Customers, financiers are also affected if the resources available is not properly used.
5. To reduce risks by following risk management through due diligence process.
6. Establishing strong relationship of trust between the company and the stakeholders which enhances the value of the company.

Benefits of Corporate Governance

1. Better governed company is essential for growth and stabilization
2. Reputation of the company will enhance one people know that you are a honest or good governed company.
3. Better use of funds of the company, which may be fines collected from public of the company by the managers.
4. Better management of resources which are available to the company.
5. Better governed ensures long term and steady growth.
6. Establishing stakeholders' confidence
7. Leverage of competitive advantages
8. Alliances with other companies are easy as others are interested to be associated with your company.

- (b) India currently is not having a separate data protection law and when the Information Technology Act, 2000 (hereinafter referred to as the "IT Act") first came into force on October 17, 2000 it lacked provisions for protection and the procedure to be followed to ensure the safety and security of sensitive personal information of an individual. This was taken care of in Information Technology (Amendment) Act, 2008 whose provisions came into force on October 27, 2009. Section 43A was inserted in the IT Act and the Central Government, notified the Information Technology (Reasonable security practices and procedures

**CORPORATE AND ECONOMIC LAWS**

and sensitive personal data or information) Rules, 2011. The right to privacy in India was declared a fundamental right by the Hon'ble Supreme Court of India on August 24, 2017,

Important Provisions of IT Act related to Data Protection

- **Section 43A** of the IT Act explicitly provides that whenever a corporate body possesses or deals with any sensitive personal data or information, and is negligent in maintaining a reasonable security to protect such data or information, which thereby causes wrongful loss or wrongful gain to any person, then such body corporate shall be liable to pay damages to the person(s) so affected.
- Further, **Section 72A** provides for the punishment for disclosure of information in breach of lawful contract and any person may be punished with imprisonment for a term not exceeding three years, or with a fine not exceeding up to five lakh rupees, or with both in case disclosure of information is made in breach of lawful contract.

7. (a) Discuss the obligations of the acquirer and the target company under takeover Regulations. [7]
(b) Analyse the powers of the Competition Commission of India to pass orders after finding contravention of Section 3 of the Competition Act, 2002 or abuse of dominant position by an enterprise. [7]

Answers:

(a) Obligations of the acquirer

- (a) To ensure that firm financial arrangements have been made for fulfilling the payment obligations under the open offer.
- (b) to ensure able to implement the open offer, subject to any statutory approvals for the open offer that may be necessary.
- (c) acquirer shall not alienate any material assets of the target company or of any of its subsidiaries, whether by way of sale, lease, encumbrance or otherwise outside the ordinary course of business, unless the acquirer the acquirer has not declared an intention in the detailed public statement and the letter of offer. If such intention wasn't declared, then for alienation - special resolution via postal ballot is required and notice must mention the reasons for such alienation.
- (d) the acquirer and persons acting in concert with him shall not sell shares of the target company held by them, during the offer period.
- (e) the acquirer and persons acting in concert with him shall be jointly and severally responsible for fulfillment of applicable obligations under takeover code.

Obligations of the target company

- (i) the board of directors of such target company shall ensure that during the offer period, the business of the target company is conducted in the ordinary course consistent with past practice.
- (ii) the target company shall be prohibited from fixing any record date for a corporate action on or after the third working day prior to the commencement of the tendering period and until the expiry of the tendering period.
- (iii) furnish to the acquirer within two working days from the identified date, a list of shareholders as per the register of members of the target company containing names, addresses, shareholding and folio number, in electronic form, wherever available, and a list of persons whose applications, if any for registration of transfer of shares are pending with the target company

**CORPORATE AND ECONOMIC LAWS**

(iv) during the offer period:

- (a) unless the approval of shareholders of the target company by way of a special resolution by postal ballot is obtained, the board of directors of either the target company or any of its subsidiaries shall not —
- (b) alienate any material assets whether by way of sale, lease, encumbrance or otherwise or enter into any agreement therefor outside the ordinary course of business.

(b) Where after inquiry the Commission finds that any agreement referred to in section 3 or action of an enterprise in a dominant position, it may pass all or any of the following orders, namely:

- (a) direct any enterprise or association of enterprises involved in such agreement, or abuse of dominant position, to discontinue and not to re-enter such agreement or discontinue;
- (b) impose such penalty, as it may deem fit: However, in case any agreement referred to in section 3 has been entered into by a cartel, the Commission may impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or ten percent. of its turnover for each year of the continuance of such agreement, whichever is higher.

Provided that in case any agreement referred to in section 3 has been entered into by a cartel, the Commission may impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or ten per cent. of its turnover for each year of the continuance of such agreement, whichever is higher

- (c) direct that the agreements shall stand modified to the extent and in the manner as may be specified in the order by the Commission;
- (d) direct the enterprises concerned to abide by such other orders as the Commission may pass and comply with the directions, including payment of costs, if any;
- (e) pass such other order or issue such directions as it may deem fit

While passing orders under this section, if the Commission comes to a finding, that an enterprise in contravention to section 3 or section 4 of the Act is a member of a group other members of such a group are also responsible for, or have contributed to, such a contravention, then it may pass orders, under this section, against such members of the group.

8. (a) **Discuss the procedure of investigation under the Prevention of Money Laundering Act, 2002.** [7]
(b) **Analyse the role of the Reserve Bank of India in formulation of monetary, banking and financial policies.** [7]

Answer:

- (a) PMLA empowers certain officers of the Directorate of Enforcement to carry out investigations in cases involving offence of money laundering and also to attach the property involved in money laundering. PMLA envisages setting up of an Adjudicating Authority to exercise jurisdiction, power and authority conferred by it essentially to confirm attachment or order confiscation of attached properties. It also envisages setting up of an Appellate Tribunal to hear appeals against the order of the Adjudicating Authority and the authorities like Director FIU-IND.

PMLA envisages designation of one or more courts of sessions as Special Court or Special Courts to try the

**CORPORATE AND ECONOMIC LAWS**

offences punishable under PMLA and offences with which the accused may, under the Code of Criminal Procedure 1973, be charged at the same trial.

The Act provides for reciprocal arrangements for processes/assistance with regard to accused persons. In order to enlarge the scope of this Act. The Act provides for bilateral agreements between countries to cooperate with each other and curb the menace of money laundering. These agreements shall be for the purpose of either enforcing the provisions of this Act or for the exchange of information which shall help in the prevention in the commission of an offence under this Act or the corresponding laws in that foreign State. Special Courts have been set-up in a number of States / UTs by the Central Government to conduct the trial of the offences of money laundering. The authorities under the Act like the Director, Adjudicating Authority and the Appellate Tribunal have been constituted to carry out the proceedings related to attachment and confiscation of any property derived from money laundering.

The Government has constituted the Financial Intelligence Unit, India, in November, 2004, headed by Director in the rank of a Joint Secretary to the Government of India. The organization has become functional and has started receiving Cash Transaction Reports and Suspicious Transactions Reports from the banking companies etc. in terms of Section 12 of the PMLA.

Powers of investigation and prosecution for offences under the Act have been conferred on the Director, Enforcement Directorate.

In addition, the Adjudicating Authority in terms of section 6 of the Act and the Appellate Tribunal under section 25 of the Act have also been constituted and have become functional.

- (b) Since its inception Reserve Bank has been playing key role in the formulation of monetary, banking and financial policies. To facilitate the transition process and in order to effectively perform its varying roles in the changing banking scenario, from ‘regulator’ to ‘facilitator’ over the period, Department has undergone various organizational changes and so also in its activities, approach and functioning.

(i) **Inspection of banks**

Reserve Bank of India has been empowered under Banking Regulation Act, 1949 to conduct the inspection of banks and regulate them in the interest of banking system, banking policy and depositors/public.

(ii) **Regulatory role of commercial banks**

Department of Banking Operations and Development exercises regulatory powers in respect of commercial banks and Local Area Banks (LABs). The Department of Banking Operations and Development is entrusted with the responsibility of regulation of commercial banks and LABs under the regulatory provisions contained in the Banking Regulation Act, 1949 and the Reserve Bank of India Act, 1934 and other related statutes besides enunciation of banking policies. Its functions broadly relate to prescription of regulations for compliance with various provisions of Banking Regulation Act on establishment of banks such as licensing and branch expansion, maintenance of statutory liquidity reserves, management and operations, amalgamation, reconstruction and liquidation of banking companies.

**CORPORATE AND ECONOMIC LAWS****(iii) Anti - money laundering under PMLA**

RBI has a role in PMLA by creating an anti money laundering Cell (AML Cell) for combating Financing of Terrorism (CFT) and tracking domestic and global developments in AML and CFT.

(iv) Approval/ monitoring of Board level appointments of commercial banks.

The key activity of the section, appropriately named as Appointments Section, relate

- Approval of proposals from the domestic private sector banks for appointment/ removal of part-time Chairman/Managing Director/ whole-time Chairman and Chief Executive Officers. Ensuring compliance with the provisions of the Banking Regulation Act, 1949 with regard to the composition of the Board of Directors of commercial banks in the private sector.
- Making recommendations to Government regarding appointment of Executive Directors/Chairmen & Managing Directors of public sector banks, fixation of their salaries, payment of superannuation benefits and other allied matters.
- Making recommendations to Government regarding appointment of non-official directors, non-workmen directors and RBI Nominee Directors on the Boards of Nationalised banks.

(v) licensing of branches

- (a) issue of authorisations to Indian commercial banks including Local Area Banks for opening of branches in pursuance to regulatory powers vested with Reserve Bank under the provisions of Banking Regulation Act, 1949.
- (b) To consider representations/complaints from institutions/VIPs and members of public for opening /shifting/ closure of bank offices.
- (c) Review of branch licensing policy periodically
- (d) Maintenance and updation of database on opening/substitution/closure/shifting of branches, Extension Counters, ATMs, etc.

(vi) Banking policy

It undertakes various new policy initiatives and reviews existing guidelines for progressive upgradation of prudential norms to move towards best practices. The major activities of the Section are as follows:

- Formulation of policy and issue of prudential guidelines pertaining to Capital adequacy; Income recognition; asset classification and provisioning pertaining to advances portfolio; Classification, valuation and operation of investment portfolio; and Credit exposure limits
- Formulation of policy and issues regarding capital structure of public sector banks, including raising of fresh equity, return of capital, recapitalisation.
- Formulation of policy and issuance of regulatory guidelines for implementation of the Basel II framework.
- Policy guidelines / clarifications on integrated risk management systems including Asset Liability Management and issue of guidance notes on various aspects.
- Policy issues/ guidelines pertaining to compromise settlement of NPAs of banks.
- Matters regarding Foreign Contributions Regulations Act – donations received by organizations from abroad.

**CORPORATE AND ECONOMIC LAWS****(vii) Issue of directives to banks**

Various directions are issued by RBI from time to time, on payment of Interest rates on various types of deposit accounts (including NRI deposit), maintenance of deposit accounts, prohibitions in respect of S.B. Accounts, matters relating to payment of additional interest and brokerage on deposits, appointment of agents for soliciting deposits, giving gifts/incentives to depositors/staff members, freezing of accounts, Resurgent India Bonds, Development Bonds, etc. RBI may also direct Capital Market Exposure of banks.

(viii) Collection and dissemination of information

Collection and dissemination of information from/to banks and notified All-India financial institutions (FIs) regarding defaulting borrowers with outstanding aggregating `1 crore and above, which have been classified by them as 'doubtful' or 'loss' (non-suit filed accounts) on half-yearly basis viz., as on March 31 and September 30.

(ix) Overseeing/ monitoring Indian banks operations abroad

- Policy formulation and issue of guidelines regarding overseas operations of Indian banks, examination of proposals and grant of approvals for opening their Joint Ventures / Representative Offices / branches and review of their overseas operations including closure of branches / joint ventures / representative offices.
- Approval of Indian banks' proposals for entering into Management Agreements and correspondent banking arrangements with foreign entities.
- Preparation of proposals for submission before IDC of GOI regarding opening of branches / representatives offices of Indian banks abroad.

(x) Authorisation for dealing in precious metals

Policy matters relating to Gold Deposit and Gold Import Schemes and dealing with references received from banks in this regard, issue and renewal of authorization for banks for import of gold / silver / platinum and acceptance of gold under Gold Deposit Scheme and collection of data relating to import of gold and Gold Deposit Scheme and collection of data relating to import of gold and gold deposits by banks in India.