

**Corporate Laws & Compliance**

**Full Marks: 100**

**Time Allowed: 3 hours**

This paper contains 3 questions. All questions are compulsory, subject to instruction provided against each question. All workings must form part of your answer. Assumptions, if any, must be clearly indicated.

**(1) Answer all questions: [20 marks]**

**(a) Mr. Rahim resided in India during the financial year 2006-2007 for less than 183 days. He came to India on 1st April, 2007 for employment. What would be his residential status during the financial year 2007-2008 under FEMA, 1999? (3 Marks)**

**Answer:**

The residential status of an individual for a particular financial year is determined with reference to his residence in India in the immediately preceding financial year. In the problem given, Mr. Rahim resided in India for less than 183 days in the financial year 2006-07. Therefore, for the financial year 2007- 08 he is a 'Person resident outside India.

**(b) State the forms of business organisation which are prohibited from carrying on Insurance Business. (3 Marks)**

**Answer:**

As per section 2C, Save as hereinafter provided, no person shall begin to carry on any class of insurance business in India unless he is -

- (a) a public company, or
- (b) a society registered under the Co-operative Societies Act, 1912, or under any other law for the time being in force in any State relating to cooperative societies, or
- (c) a body corporate incorporated under the law of any country outside India not being of the nature of a private company.

**(c) Whether the Act shall apply to an Insurer after it has discontinued its business? (3 Marks)**

**Answer:**

As per section 2D, every insurer shall be subject to all the provisions of this Act in relation to any class of insurance business so long as his liabilities in India in respect of business of that class remain unsatisfied or not otherwise provided for.

**(d) During the year 2013, Akash Ltd. held four meetings of the Board on 2nd January 2013, 10th May 2013, 16th October 2013 and 31st December 2013. Examine whether this was in accordance with the provisions of the Companies Act, 1956? (3 Marks)**

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**Answer:**

As per section 285, at least four Board meetings shall be held in each calendar year and at least one Board meeting shall be held in each quarter.

In the present case no meeting was held during the quarter July-September, 2013. Hence, section 285 has been violated.

**(e) Pritam Ltd. had been incorporated in May, 1950 and its articles of association at that time fixed the maximum number of directors as 16. It has now 10 directors, but wants to appoint 6 new directors. Will the approval of the Central Government be required? (3 Marks)**

**Answer:**

No approval of the Central Government shall be necessary, in the case of a company which was in existence on 21.7.1951, if the number of directors as increased do not exceed the maximum number of directors specified in the articles as on 21.7.1951.

In the given case, the maximum number of directors specified in the articles as on 21.7.1951 are 16. Thus, it can anytime increase the number of directors to 16 by passing an ordinary resolution, without taking the approval of the Central Government.

**(f) State the nature of Corporate Governance.**

**(2<sup>1</sup>/<sub>2</sub> Marks)**

**Answer: (answer any five points)**

1. A good system of corporate governance should clearly spell out the responsibilities and duties cast on each director.
2. It is concerned with formalizing, clarifying and making consistent the decision-making process within the organization.
3. It is aimed to achieve a responsible, value-oriented management and control over an organization.
4. It is primarily concerned with the board of directors, its structure, style and processes, their relationships and roles, the linkages and activities, as well as the roles of company's members, auditors and others.
5. It is only a part of the larger economic context in which firms operate. It depends upon legal, regulatory and institutional environment.

**(g) What are the reasons for Corporate Governance failure?**

**(2<sup>1</sup>/<sub>2</sub> Marks)**

**Answer:**

There are innumerable reasons for corporate governance failure. Some of the reasons are as follows:

1. Fraudulent accounting practices;
2. Weak internal controls;
3. Non-adherence of corporate governance norms;
4. Mismanagement of funds;
5. Unqualified and inexperienced members of the Board;

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6. Questionable ethics;
7. Non-disclosure of mandatory items;
8. Nepotism, favouritism;
9. Poor management.

### **(2) Answer any four questions: [4 × 15 = 60 marks]**

**(a)(i) Piyush Private Limited is a company in which there are eight shareholders. Can a member holding less than one-tenth of the share capital of the company apply to the Company Law Board for the relief against oppression and mismanagement? It is alleged by the said member that the directors of the company have misused their position in making certain inter- corporate deposits which are against the interests of the company. Will the Company Law Board entertain application containing such allegation in the case of Private Company? (5 Marks)**

**Answer:**

As per section 399, in the case of a company having a share capital, members eligible to apply for oppression and mismanagement shall be lowest of the following:

- (a) 100 members; or
- (b) 1/10th of the total number of members; or
- (c) Members holding not less than 1/10th of the issued share capital of the company.

In the given case, there are eight shareholders. Thus, 1/10th of 8 comes to 1 member. Therefore a single member can present a petition to the Company Law Board, regardless of the fact that he holds less than 1/10th of the share capital of the company, provided he must have paid all the calls and other sums due on his shares.

As regards the propriety rights in inter-corporate loans by a private limited company, they are not closely regulated by the Company Law Board as in the case of public companies. Although the Board of directors is the best to judge and to take a commercial decision in this regard yet the matter should be looked into if the Board has acted mala fide. Therefore, the Company Law Board may look into the allegation lodged by the member.

**(a)(ii) The executive committee of a recognized stock exchange desires to transfer certain duties and functions of a clearing house to a recently set up clearing corporation, incorporated as a company under the companies Act, 1956.**

**Examining the provisions of the Securities Contracts (Regulation) Act, 1956:**

**(A) State the purposes for which such transfer of duties and functions can be made to clearing corporation.**

**(B) What is the procedure to be adopted for such transfer of duties and functions? (5 Marks)**

**Answer:**

Section 8A has made provisions for formation of a clearing corporation. These provisions are explained as follows:

(i) Purpose of clearing corporation

Clearing corporation means a company incorporated under the Companies Act, 1956, for the purpose of -

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- (a) the periodical settlement of contracts and differences thereunder;
- (b) the delivery of, and payment for, securities;
- (c) any other matter incidental to, or connected with, such transfer.

(ii) Procedure for transfer of duties and functions to clearing corporation

A recognised stock exchange may transfer the duties and functions of a clearing house to a clearing corporation. The procedure for such transfer is as follows:

- (a) The stock exchange shall obtain the prior approval of SEBI.
- (b) Every clearing corporation shall make bye-laws and submit the same to SEBI for its approval.
- (c) SEBI may grant approval to the bye-laws submitted to it by the clearing corporation.
- (d) SEBI shall not grant such approval, unless it is satisfied that such approval is in the interest of the trade and also in the public interest.

The provisions of Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 shall, as far as may be, apply to a clearing corporation as they apply in relation to a recognised stock exchange.

**(a)(iii) Mr. C was a member of the Competition Commission of India. He ceased to be such member on 31st March, 2008. Thereafter, he was offered the post of Executive Director with appropriate remuneration and perquisites in the following organisations to join his duties on and from 1st July, 2008:**

**(A) HL Ltd., a private sector public limited company, whose case was disposed off by the Competition Commission under the provisions of the Competition Act, 2002 in the month of February, 2008.**

**(B) Life Insurance Corporation of India.**

**You are required to state with relevant provisions of the Competition Act, 2002 the option available to Mr. C in respect of accepting the above offers. (5 Marks)**

**Answer:**

As per section 12, the Chairperson and other Members shall not, for a period of two years, accept any employment connected with the management or administration of any enterprise which has been a party to any proceeding before the Commission under this Act. However, the said restriction shall not apply where the Chairperson or any Member is offered an employment in a corporation established by or under any Central, State or Provincial Act.

In the present case, HL Ltd. is an enterprise which has been a party to any proceeding before the Commission. Therefore, Mr. C cannot join HL Ltd. upto 31st March, 2010 (i.e., upto 2 years of cessation of his office of member). However, LIC is a corporation established by a Central Act, and so the restriction on employment of Chairman or a Member shall not apply where appointment is made in LIC. Therefore, Mr. C can join LIC.

**(b)(i) A majority of the Board of Directors of M/s SAV Drugs Ltd. have reasons to believe that some of the business activities Carried on in the name of the company are prima facie against the interests of the company and its members.**

**They want the matter to be referred to Central Government in the form of an application for appointment of an Inspector to reach to the bottom of the matter and unveil the truth. In this connection you are required to –**

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**State the steps required to be taken with reference to the provisions of the Companies Act, 1956.**

**(5 Marks)**

**Answer:**

The provisions relating to investigation of the affairs of a company are contained in sections 235 and 237. In the present case, following options are open to M/s SAV Drugs Ltd.:

- 1. Passing a special resolution:** The Company may pass a special resolution declaring that the affairs of the company ought to be investigated. Then, the Central Government shall order an investigation of the affairs of the company [Section 237(a)].
- 2. Petition to the Court:** The directors may make a petition to the Court in this regard. The Central Government shall order investigation of the affairs of the company if the Court, by order, declares that the affairs of the company ought to be investigated [Section 237(a)].
- 3. Application to the Central Government:** The requisite number of members of the company may make an application to the Central Government. If the Central Government declares that the affairs of the company ought to be investigated, it shall order an investigation of the affairs of the company. Requisite number of members' means-
  - (a) in the case of a company having a share capital, not less than 200 members, or members holding not less than 1/10th of the total voting power.
  - (b) in the case of a company having no share capital, not less than 1/5th of the total number of members [Section 235(2)].

**(b)(ii) Examine with reference to the provisions of the Companies Act, 1956 the validity of the following:**

**(A) A scheme provides for amalgamation of a 'foreign company' with a company registered under the Companies Act, 1956.**

**(B) The statement forwarded with the notice convening a meeting of its members pursuant to Court's direction under Section 391 contains only 'exchange ratio' without details of its calculation.**

**(5 Marks)**

**Answer:**

- (i) For effecting amalgamation of two or more companies, an application shall be made to the Court under section 391 (Section 394). The benefit of section 394 is available only if the transferee company (i.e., new company) is a company within the meaning of Companies Act, 1956. However, the transferor company may be anybody corporate, whether a company within the meaning of the Companies Act, 1956 or not. As such, a foreign company can be a 'transferor company' but not a 'transferee company'. Therefore, a scheme of amalgamation may provide for transfer of foreign companies to Indian companies.
- (ii) For effecting amalgamation of two or more companies, an application shall be made to the Court under section 391 (Section 394). On receipt of such an application, the Court may order that a meeting of the creditors or members or any class of them be called, held and conducted in the manner directed by the Court. Where a meeting of creditors or members is called, the notice given to them must contain -
  - the terms of the compromise or arrangement;
  - an explanatory statement explaining the effect of the compromise or arrangement;
  - a statement explaining any material interests of the directors, managing director, or manager of the company. The effect of those interests on the scheme should be

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explained stating if and now their interests are different from the like interests of other persons; and

- if the debentureholders are also affected by the scheme, the interest of the trustees should also be similarly disclosed.

In the present case, the notice convening a meeting of members contains only 'exchange ratio' without details of its calculation. As is evident, the terms of the compromise or arrangement have not been disclosed. Therefore, the notice given to members is not valid.

**(b)(iii) Mr. Samrat, an Indian National desires to obtain foreign exchange for the following purposes:**

- (A) Remittance of US Dollar 50,000 out of winnings on a lottery ticket.**
- (B) US Dollar 1,00,000 for sending a cultural troupe on a tour of U.S.A.**
- (C) US Dollar 50,000 for meeting the expenses of his business tour to Europe.**

**Advise him whether he can get foreign exchange and if so, under what conditions? (5 Marks)**

**Answer:**

Any person may sell or draw foreign exchange to or from an authorised person if such sale or drawal is a current account transaction. However, the Central Government may in public interest and in consultation with the RBI, impose such reasonable restrictions for current account transactions as may be prescribed (Section 5). The Central Government has framed Foreign Exchange Management (Current Account Transactions) Rules, 2000. The rules stipulate some restrictions on drawal of foreign exchange for certain purposes. In the light of provisions of these rules, the answer to the given problem is as follows:

- (A) Rule 3 read with Schedule I of Foreign Exchange Management (Current Account Transactions) Rules, 2000 prohibits remittances out of lottery winnings. Therefore, Mr. Samrat cannot obtain foreign exchange of US Dollar 50,000 out of winnings of a lottery ticket.
- (B) Drawal of foreign exchange for cultural tours requires the prior approval of the Central Government. Therefore, Mr. Samrat can obtain US Dollar 1,00,000 for sending a cultural troupe on a tour of U.S.A. with the prior approval of Central Government. However, no approval of the Central Government is required if the payment is made out of the funds held in Resident Foreign Currency Account.
- (C) Drawal of foreign exchange exceeding US\$ 25,000 for business travel, or attending a conference or specialised training requires the prior approval of Reserve Bank of India. Therefore, Mr. Samrat can obtain US Dollar 50,000 for business tour to Europe with the prior approval of Reserve Bank of India. However, prior approval of the Reserve Bank of India shall not be required if drawal of additional US Dollar 25,000 is made out of funds held in Resident Foreign Currency (RFC) Account.

**(c)(i) A meeting of the Board of directors of a company was convened to be held on 30th December, 2012, but the meeting could not be held for want of quorum. The last meeting of the Board of directors was held on 14th August, 2012. Advise. (5 Marks)**

**Answer:**

As per section 285, at least four Board meetings shall be held in each calendar year and at least one Board meeting shall be held in each quarter.

As per section 288, where a Board meeting cannot be held for want of quorum, then unless the articles provide otherwise, it shall automatically stand adjourned to the same day, time and place in the next week, or if that day is a public holiday, then to next succeeding day, which is

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not a public holiday. Section 285 shall not be deemed to be contravened, if a Board meeting could not be held for want of quorum.

In the instant case, unless the articles otherwise provide, the Board meeting convened for 30th December, 2012 shall stand adjourned to the same day, time and place in the next week, or if that day is a public holiday, then to next succeeding day, which is not a public holiday. The last meeting held on 14th August satisfies the requirement of holding the meeting in the quarter July to September. As respects the quarter October to December, although no meeting has been held, yet the provisions of section 285 shall not be deemed to be contravened because the meeting was validly called but could not be held only because of absence of quorum.

**(c)(ii) State the provisions relating to issue of security by a securitisation or reconstruction company. (5 Marks)**

**Answer:**

The provisions relating to issue of security by a securitisation or reconstruction company are explained below:

**1. Offer of security receipts by securitisation or reconstruction company [Section 7(1)]**

Without prejudice to the provisions contained in the Companies Act, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992, any securitisation company or reconstruction company, may, after acquisition of any financial asset under sub-section (1) of section 5, offer security receipts to qualified institutional buyers (other than by offer to public) for subscription in accordance with the provisions of those Acts.

**2. Raising of funds by securitisation or reconstruction company by formulating schemes [Section 7(2)]**

A securitisation company or reconstruction company may raise funds from the qualified institutional buyers by formulating schemes for acquiring financial assets and shall keep and maintain separate and distinct accounts in respect of each such scheme for every financial asset acquired out of investments made by a qualified institutional buyer and ensure that realisations of such financial asset is held and applied towards redemption of investments and payment of returns assured on such investments under the relevant scheme.

**3. Scheme to be in the nature of a trust [Section 7(2A)]**

The scheme for the purpose of offering security receipts under sub-section (1) or raising funds under sub-section (2), may be in the nature of a trust to be managed by the securitisation company or reconstruction company, and the securitisation company or reconstruction company shall hold the assets so acquired or the funds so raised for acquiring the assets, in trust for the benefit of the qualified institutional buyers holding the security receipts or from whom the funds are raised.

The provisions of the Indian Trusts Act, 1882 shall, except in so far as they are inconsistent with the provisions of this Act, apply with respect to the trust.

**4. Consequences in case of non-realisation of financial asset [Section 7(3)]**

In the event of non-realisation under sub-section (2) of financial assets, the qualified institutional buyers of a securitisation company or reconstruction company, holding security receipts of not less than 75% of the total value of the security receipts issued under a scheme by such company, shall be entitled to call a meeting of all the qualified institutional buyers and every resolution passed in such meeting shall be binding on the company.

**5. Procedure to be followed in the meeting by Qualified Institutional Buyers [Section 7(4)]**

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The qualified institutional buyers shall, at a meeting called under sub-section (3), follow the same procedure, as nearly as possible as is followed at meetings of the board of directors of the securitization company or reconstruction company, as the case may be.

**(c)(iii) What are requirements as to capital for carrying on insurance business? (5 Marks)**

**Answer:**

As per section 6, no insurer carrying on the business of life insurance, general insurance, or re-insurance in India, shall be registered unless he has, -

- (i) a paid-up equity capital of ₹100 Crore, in case of a person carrying on the business of life insurance or general insurance; or
- (ii) a paid-up equity capital of ₹200 Crore, in case of a person carrying on the business as a reinsurer.

**(d)(i) Can a Banking Company hold any immovable property? (5 Marks)**

**Answer:**

Section 9 contains the provisions regarding holding of immovable property by a Banking Company, as explained below:

### **1. Mandatory disposal of property within 7 years (Section 9)**

Notwithstanding anything contained in section 6, no banking company shall hold any immovable property howsoever acquired, except such as is required for its own use, for any period exceeding 7 years from the acquisition thereof or any extension of such period as in this section provided, and such property shall be disposed of within such period or extended period, as the case may be.

### **2. Extension of period by RBI (Proviso to Section 9)**

However, the Reserve Bank may in any particular case extend the aforesaid period of 7 years by such period not exceeding 5 years where it is satisfied that such extension would be in the interests of the depositors of the banking company.

**(d)(ii) Directors of XYZ Limited are not holding any shares in D Company Limited. Similarly directors of D company Limited are not holding any shares in XYZ Limited. But, wife of director 'X' of XYZ Limited holds 40% of the paid up share capital of D Company Limited. Board of directors of XYZ Limited entered into a contract with D Company Limited for purchase of goods and director 'X' did not disclose his indirect interest in D Company Limited. Examine whether 'X' has violated any of the provisions of the Companies Act and also the validity of the contract.**

**(5 Marks)**

**Answer:**

Section 297 does not apply to a contract between two public companies and therefore the present case is outside the purview of section 297. However, as per section 299, every director who is anyway, directly or indirectly, interested in a contract or arrangement shall disclose the nature of his interest. Following must be noted in this regard:

- Relationship of husband and wife, or father and son is capable of influencing the judgment of a person so that it is prima facie a matter of interest which must be disclosed. The interest need not be direct.



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- If to the knowledge of a director, his relative is concerned or interested in a contract or arrangement, the director must disclose the same to the Board.

Therefore, in view of the above judicial rulings, 'X' should disclose his interest since he is indirectly interested in the contract, as his wife is holding 40% of the paid up share capital of D Company Limited. Failure to disclose the interest by 'X' amounts to non-compliance of section 299 and the following consequences shall follow:

- 'X' shall vacate the office of director held by him (Section 283).
- He shall be punishable with fine which may extend to ₹ 50,000 (Section 299).
- If 'X' acts as a director when he knows that the office of director held by him has become vacant on account of non-disclosure of interest, he shall be punishable with fine which may extend to ₹ 5,000 for each day on which he acts as a director (Section 283).
- The contract is not illegal, void or unenforceable. However, the company has an option to avoid the contract.

**(d)(iii) What shall be the term of office of the Chairperson and Members of the Insurance Regulatory and Development Authority? (5 Marks)**

**Answer:**

The provisions relating to term of office of Chairperson and Members of the Authority are explained as follows:

**1. Term of office of Chairperson and whole time members [Section 5(1)]**

The Chairperson and every other whole-time member shall hold office for a term of 5 years from the date on which he enters upon his office and shall be eligible for reappointment.

**Maximum age of Chairperson to be 65 years/First Proviso to Section 5(1)].**

No person shall hold office as such Chairperson after he has attained the age of 65 years.

**Maximum age of whole time members to be 62 years [Second Proviso to Section 5(1)].**

No person shall hold office as such whole-time member after he has attained the age of 62 years.

**2. Term of office of part time members [Section 5(2)]**

A part-time member shall hold office for a term not exceeding 5 years from the date on which he enters upon his office.

**3. Removal and resignation [Section 5(3)]**

Notwithstanding anything contained in sub-section (1) or sub-section (2), a member may -

- (a) relinquish his office by giving in writing to the Central Government notice of not less than 3 months; or
- (b) be removed from his office in accordance with the provisions of section 6.

**(e)(i) Examine, with reference to the provisions of the Foreign Exchange Management Act, 1999, the residential status of the branches mentioned below:**

**(A) M Limited, an Indian company having its Registered Office at Delhi, India established a branch at New York U.S.A. on 1st April, 2004.**

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**(B) WIP Ltd., a company incorporated and registered in London established a branch at Mumbai in India on 1<sup>st</sup> April, 2004. (5 Marks)**

**Answer:**

Section 2(u) defines a 'person'. As per this definition, the following shall be covered in the definition of a 'person':

- (a) A company
- (b) Any agency, office or branch owned by a 'person'.

Section 2(v) defines a 'person resident in India'. As per this definition, the following shall be covered in the definition of a 'person resident in India':

- (a) Any person or body corporate registered or incorporated in India.
- (b) An office, branch or agency in India owned or controlled by a person resident outside India.
- (c) An office, branch or agency outside India owned or controlled by a person resident in India.

The answer to the given problem is as under:

(A) M Limited as well as the New York branch of M Limited is a 'person'. Therefore, residential status under FEMA shall be determined for each of them separately.

- M Limited is incorporated in India. Therefore, it is a 'person resident in India'.
- M Limited (a 'person resident in India') has established a branch outside India. Therefore, the New York branch of M Limited falls under the clause 'an office, branch or agency outside India owned or controlled by a person resident in India' and so the New York branch is a 'person resident in India'.

(B) WIP Ltd. as well as Mumbai branch of WIP Ltd. is a 'person'. Therefore, residential status under FEMA shall be determined for each of them separately.

- WIP Ltd. (a foreign company) does not fall under any of the clauses of the definition of a 'person resident in India'. Therefore, WIP Ltd. is a person resident outside India.
- The Mumbai branch of WIP Ltd. is a 'person resident in India' since it falls under the clause 'an office, branch or agency in India owned or controlled by a person resident outside India'.

**(e)(ii) Can the Central Government grant immunity to a person who has violated the provisions of the SEBI Act? (5 Marks)**

**Answer:**

Section 24B empowers the Central Government to grant immunity to any person who has committed a contravention of any provision of the SEBI Act. These provisions are explained as follows:

### **1. Conditions for granting immunity**

- (a) SEBI has made a recommendation to the Central Government that a person alleged to have violated any of the provisions of the SEBI Act should be granted immunity from prosecution or imposition of penalty under the Act.
- (b) The Central Government is satisfied that such person has made a full and true disclosure in respect of the alleged violation.
- (c) The proceedings for the prosecution for any such offence have not been instituted

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before the date of receipt of application for grant of such immunity.

(d) The Central Government may grant the immunity subject to such conditions as it may think fit to impose.

### 2. Withdrawal of immunity

An immunity granted to a person may, at any time, be withdrawn by the Central Government, if it is satisfied that such person had, in the course of the proceedings, not complied with the condition on which the immunity was granted or had given false evidence.

**(e)(iii) Mr. Ram is a Director of Fraudulent Ltd., Honest Ltd. and Regular Ltd. For the financial year ended on 31st March, 2010 two irregularities were discovered against Fraudulent Ltd. Fraudulent Ltd. did not file its annual accounts for the year ended 31.3.2010 and failed to pay interest on loans taken from a financial institution for the last three years.**

**On 1st June, 2011 Mr. Ram is proposed to be appointed as additional director of Goodwill Ltd., which company has sought a declaration from Mr. Ram and he also submitted the declaration stating that the disqualification specified in Section 274 of the Companies Act, 1956 is not attracted in his case. Decide under the provisions of the Companies Act:**

**(A) Whether the declaration submitted by Mr. Ram to Goodwill Ltd. is in order?**

**(B) Whether Mr. Ram can continue as a Director in Honest Ltd. and Regular Ltd.? (5 Marks)**

**Answer:**

Section 274 disqualifies a director of a public company from being appointed as a director in any other public company, if the public company of which he is already a director -

- (a) does not file the annual accounts and annual returns for any continuous 3 Financial years commencing on and after 1.4.1999, or
- (b) fails to repay its deposit or interest thereon on due date or redeem its debentures on due date or pay dividend and such failure continues for 1 year or more.

Such disqualification shall remain in force for a period of 5 years [Section 274(1)(g)].

In the present case, Fraudulent Limited has committed the following defaults:

- (a) Failure to file annual accounts for the year ended 31st March, 2010.

As per section 274(1)(g), disqualification specified under section 274(1)(g) applies only if the default is in filing of annual accounts as well as annual returns for 3 continuous financial years commencing on and after 1.4.1999.

However, in the present case, Fraudulent Ltd. has not defaulted in filing of annual returns. Also, the failure to file the annual accounts has not been for 3 consecutive financial years as contemplated by section 274(1)(g). Therefore, in the given case, failure to file the annual accounts does not result in disqualification under section 274(1)(g).

- (b) Failure to pay interest on loans taken from a financial institution for last three years However, such failure does not result in disqualification under section 274(1)(g), since the disqualification is incurred only if the default relates to payment of 'public deposits' or interest on deposits, and not for non-payment of 'loans' obtained from any financial institution.

Accordingly, -

- (i) the declaration submitted by Mr. Ram to Goodwill Ltd. is in order and valid.

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- (ii) Mr. Ram can continue as a Director in all the companies in which he is a director including Fraudulent Ltd., Honest Ltd. and Regular Ltd.

### (3) Answer any two questions: [2 × 10 = 20 marks]

**(a)(i) State the recommendation of Cadbury Committee relating to the Non-executive Directors under Corporate Governance. (5 Marks)**

**Answer:**

1. They should bring an independent judgment to bear on issues of strategy, performance, resources, key appointments, and standards of conduct.
2. The majority should be independent of the management and any business or other relationship which could materially interfere with the exercise of their independent judgment, apart from their fees and shareholding. Their fees should reflect the time which they commit to the company.
3. They should be appointed for specified terms, and reappointment should not be automatic. They should be selected through a formal process and their appointment should be a matter for the Board as a whole.

**(a)(ii) What are the roles of members of the Board of a Listed Company? (5 Marks)**

**Answer:**

1. **Performance role:** The directors are expected to provide their expertise and competencies for the growth and development of the company. They have to represent not only the top management but also the shareholders.
2. **Conformation role:** The Board of Directors have to ensure that the company conforms to plans, policies, and procedures laid down by the management.
3. **The watchdog role:** The Board of Directors are expected to act as protectors of interests of owners and the specific interest groups. Representatives and nominee directors are in this position as they protect interests of minority shareholders, consumers, employees, etc.
4. **The role of confidante:** The directors are trustees of companies and hence they have the responsibility to take all the steps to safeguard the physical and intellectual properties of companies. Further, they shall act as trusted and reliable counselors in times of uncertainty.

**(b) State the dimensions of Social Responsibility of a Company. (10 Marks)**

**Answer:**

1. **Economic responsibilities:** Business has an economic obligation to society. It has a responsibility to produce goods and services that society wants and to sell them at a profit. Unless business is economically viable, its other responsibilities become susceptible. To achieve its economic responsibilities, business must be effective, efficient and make wise strategic decisions, actions and practices.
2. **Legal responsibilities:** Social responsibility of business is legal in nature. Business is expected to be economically viable, while obeying the laws of the land—federal, state and local. Just as society has developed the economic system by permitting business to assume a productive

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role of producing goods and services at a profit, it has also laid the ground rules—the laws and regulations—within which business is expected to operate. These laws are formed from 'codified ethics' in the sense that they formalise certain expectations of business decisions, actions and practices.

3. **Ethical responsibilities:** Social responsibility of business also is ethical in nature. Though there are ethical dimensions to business's economic and legal responsibilities, the ethical dimension goes beyond these and implies an obligation to embrace those activities and practices that are expected or prohibited by social members even though they may not be codified into law. The norms, standards, or an expectation about business activity is ethical responsibility. Therefore, it is what major stakeholders such as customers, employees, shareholders, the management, the community and others regard as fair and just. The ethical responsibility of business includes the dictum "do not harm" by such activities as polluting the environment, discriminating against workers, producing dangerous products, and misleading advertisements. Of course, some of the practices are governed by legal responsibilities while some others are not. Ethical responsibility embraces a response to the spirit of the law and helps guide business actions in these decision areas in which regulations are ill defined or non-existent. Some view the laws as the ethical minimum or floor on business behaviour, whereas the firm which conforms to ethics is often expected to operate above the minimum requirements of law. Ethical leadership would be a manifestation of this kind of business obligation.
4. **Voluntary or discriminatory responsibilities:** Business responsibility is discriminatory in nature. Perhaps, it is a misnomer to call this category a responsibility. However, it is clear from history and through the practice of business over decades that society expects businessmen to be good citizens by contributing to the well-being of the community, through business giving or philanthropy. This discretionary category might well be named the philanthropic category because the best examples of business fulfilling this expectation are typically considered philanthropic—giving money or other resources to a charitable cause, initiating "adopt a school" programme, starting an executive loan programme in the community, conducting an in-house programme for drug abuse, sponsoring civic events, and so on. The distinction between ethical responsibility and discretionary responsibility is that the latter is typically 'derived' by society and not expected in a normal or ethical sense.

In summary, this forms part of the perspective on social responsibility. Business should simultaneously fulfill its economic, legal, ethical and discretionary or philanthropic responsibilities to society or business stakeholders. Stated in a more pragmatic and managerial term, the socially responsible firm should thrive to make profit, obey the law, and be an ethical, good citizen. The social responsibility concept is normative. It is also descriptive of what socially responsible organisations are doing today.

**(c) What are the assumptions of Social Responsibility of a Company?**

**(10 Marks)**

**Answer:**

**Assumption of Social Responsibility**

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It is a fallacy that business can prosper or, indeed even exist without regard to broader social concerns.

"Business is a citizen, too, and in that sense it has proportionate responsibilities to go well beyond the letter of law." According to Walter P. Carten

The aim of social responsibility is to:

- Ensure viability of business
- Fulfill long-term self interest
- Establish better public image
- Avoid government regulation or control
- Stop misuse of national and economic resources, avoid class conflicts
- Convert resistances into resources.

### **Constraints in assuming social responsibilities**

- Prevalence of the ideology of profit maximisation
- Dilution of business's primary purpose
- Cost of social involvement
- Lack of social skills
- Absence of accountability
- Excessive concentration of power
- Weakened international balance of payments.

### **Criteria for determining social responsibility**

- Nature of the business
- Size of the business
- Availability of surplus funds
- Societal commitment and degree of social involvement by the organisation
- Applicability and enforcement of laws governing the industry
- Attitudes and perception of top-level executives
- Levels and directions of public expectations vis-a-vis corporate policy.