

**Paper-13: CORPORATE LAWS AND COMPLIANCE**

## Answer to MTP\_Final\_Syllabus 2012\_Dec2015\_Set 1

	Learning objectives	Verbs used	Definition
<b>LEVEL C</b>	KNOWLEDGE  What you are expected to know	List	Make a list of
		State	Express, fully or clearly, the details/facts
		Define	Give the exact meaning of
	COMPREHENSION  What you are expected to understand	Describe	Communicate the key features of
		Distinguish	Highlight the differences between
		Explain	Make clear or intelligible/ state the meaning or purpose of
		Identify	Recognize, establish or select after consideration
		Illustrate	Use an example to describe or explain something
	APPLICATION  How you are expected to apply your knowledge	Apply	Put to practical use
		Calculate	Ascertain or reckon mathematically
		Demonstrate	Prove with certainty or exhibit by practical means
		Prepare	Make or get ready for use
		Reconcile	Make or prove consistent/ compatible
		Solve	Find an answer to
		Tabulate	Arrange in a table
	ANALYSIS  How you are expected to analyse the detail of what you have learned	Analyse	Examine in detail the structure of
		Categorise	Place into a defined class or division
		Compare and contrast	Show the similarities and/or differences between
		Construct	Build up or compile
		Prioritise	Place in order of priority or sequence for action
		Produce	Create or bring into existence
	SYNTHESIS  How you are expected to utilize the information gathered to reach an optimum conclusion by a process of reasoning	Discuss	Examine in detail by argument
		Interpret	Translate into intelligible or familiar terms
Decide		To solve or conclude	
EVALUATION  How you are expected to use your learning to evaluate, make decisions or recommendations	Advise	Counsel, inform or notify	
	Evaluate	Appraise or assess the value of	
	Recommend	Propose a course of action	

**Paper-13: CORPORATE LAWS AND COMPLIANCE**

Full Marks: 100

Time Allowed: 3 Hours

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

**Question 1: Answer all questions**

**[20 Marks]**

- (a) Mr. Ramdhan the secretary of Strong Limited issues a Share certificate in favour of Mr. Rudra purporting to be signed by the directors and the secretary and the seal of the company affixed to it. In fact the secretary forged the signature of the directors and has affixed the seal without authority. Can Mr. Rudra hold the company liable for the shares covered by the Share certificate?
- (b) What are the conditions that need to be satisfied to be a small company, as per Companies Act, 2013?
- (c) Atul, one of the shareholder of a company, filed a civil suit in a Court for removal of directors Dinesh, Suresh and Radha. Is the suit maintainable? Advice in the light of Companies Act, 2013.
- (d) With a view to issue shares to the general public a prospectus containing some false information was issued by Dhisoom company. Mr. Khanna received a copy of the prospectus from the company, but did not apply for allotment of any shares. The allotment of shares to the general public was completed by the company within the stipulated period. A few months later, Mr. Khanna bought 2000 shares through the stock exchange at a higher price which later on fell sharply. Khanna sold these shares at a heavy loss. Mr. Khanna claims damages from the company for the loss suffered on the ground that the prospectus issued by the company contained a false statement. Referring to the provisions of the Companies Act, 2013 examine whether Khanna's claim for damages is justified.
- (e) Mr. Ashutosh, a former bank executive, was convicted by a court eight years ago for embezzlement of funds and was sentenced to imprisonment for one year. Can Mr. Ashutosh become the director of Rashmi Jewelers Ltd., a public company?
- (f) What do you understand by the term 'Normative Ethics'?
- (g) "Businessman should have Social responsibility". Comment.

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### **Answer:**

**(a)** Mr. Rudra is not entitled to shares and he cannot hold the company liable for any loss

Since in case of forgery, there is not a defect in consent, but absence of consent and therefore the share certificate issued by way of forgery is invalid. [Rubben v Great Fingall Consolidated Company]

**(b)** As per Sec 2(85) of Companies Act, 2013 a company shall be a small company only if it satisfies any one or both of the following conditions:

1. Its paid up share capital does not exceed –
  - ₹ 50 lakhs; or
  - Such higher amount as may be prescribed (not being more than ₹ 5 crores)
2. Its turnover (as per the last profit and loss account) does not exceed –
  - ₹ 2 crores; or
  - Such higher amount as may be prescribed (not being more than ₹ 20 crores)

A company shall not be a small company, if, it is a –

1. Public company; or
2. Holding Company of any company; or
3. Subsidiary company of any company; or
4. Company registered u/s 8 (viz. a non-profit company); or
5. Company or a body corporate governed by any special act.

**(c)** A Civil Court has no jurisdiction to entertain a suit for removal of a director since the matter relates to the internal management of the company which is governed by the Companies Act, 2013 [Khetan Industries Pvt. Ltd. v Manju Ravindra Prasad Khetan (1995) 16 CLA 169 (Bom)]. Section 169 has given to the shareholders necessary powers (subject to adequate safeguards) to remove a director and thus a Civil Court has no jurisdiction to entertain a suit for removal of a director.

**(d)** Mr. Khanna is not an original allottee of shares [Sec 35 of Companies Act, 2013]

→ Since he purchased the shares from the market, and not from the company.

Mr. Khanna cannot claim damages from the company

→ Since Mr. Khanna is not an original allottee of shares;

→ Since Mr. Khanna did not subscribe for shares on the faith of a misleading prospectus [Peek v Gurney]

**(e)** A person is disqualified if he is convicted by a Court of any offence (whether involving moral turpitude or otherwise) and sentenced to imprisonment for 6 months or more. However, such disqualification shall remain in force for a period of 5 years only. [Section 164(1)(d) of Companies Act, 2013]

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In the present case Mr. Ashutosh was convicted 8 years ago. Since the requirement of 164(1)(d) of Companies Act, 2013 are not satisfied, he is, at present, eligible to become a director of Rashmi Jewelers Ltd.

- (f) Normative ethics was the prevalent form of ethics in philosophy till the end of the 19<sup>th</sup> century. To decide what things are good or bad and what kind of actions or behavior are right or wrong involves how people ought to act on the principles, how they make moral choices, and how rules apply to individual lives. It includes a consideration of the importance of human freedom, and a discussion of the limits of a human's responsibility for moral decisions and for the consequence of his actions. The role of conscience in moral decision making is also a part of normative ethics. This may come from an established group of culture, such as Christian tradition, or it may be based on some other way of thinking. This is the traditional way of viewing office.
- (g) The businessman of today is not only a 'economic man' but also a 'social man'. The business organization is not only an economic system but a social system as well. In a broader sense, the goods and services of business are social than economic. When business is accepted as a social system, it is imperative that the social environment in which it operates be the economic output. The two-fold basic concept that the businessman and his business should bear in mind is that business produces two products, namely, the economic goods and services and the social effect on all those involved or engaged in the production. The ultimate beneficiary is the society or community.

### **Question 2: Answer any four questions**

**[60 Marks]**

#### **Question 2(a)**

- (i) Prachi Limited is an unlisted Public company having paid up share capital of ₹ 80 crores during the preceding financial year 2014-15. The turnover of the company was ₹ 110 crores for the same period. Referring to the provisions of the Companies Act, 2013, answer the following:
1. Is it mandatory for the above company to appoint an internal auditor for the financial year 2015-16?
  2. What are the qualifications of the Internal Auditor?
- (ii) Under Section 387 of the Companies Act, 2013, what are the particulars required to be contained in a prospectus to be issued by an existing foreign company?
- (iii) Are the provisions of the Information Technology Act, 2000 applicable to electronic records kept under The Companies Act, 2013?

**[6+6+3 =15]**

#### **Answer:**

(i)

1. Section 138 of the companies Act, 2013 and the companies (Accounts) Rules, 2014 prescribes the class of companies required to appoint Internal Auditor. According to it, following class of companies shall be required to appoint an internal auditor or a firm of internal auditors.

**(a) Every listed company;**

**(b) Every unlisted public company having -**

- Paid up share capital of ₹ 50 crore or more during the preceding financial year; or
- Turnover of ₹ 200 crore or more during the preceding financial year; or
- Outstanding loans or borrowings from banks or public financial institutions exceeding ₹ 100 crore or more at any point of time during the preceding financial year; or
- Outstanding deposits of ₹ 25 crores or more at any point of time during the preceding financial year; and

**(c) Every private company having -**

- Turnover of ₹ 200 crore or more during the preceding financial year; or
- Outstanding loans or borrowings from banks or public financial institutions exceeding ₹ 100 crore or more at any point of time during the preceding financial year.

As per the facts given in the question, Prachi Limited is an unlisted public company with the paid up share capital of ₹ 80 cores during the preceding financial year with the turnover of ₹ 110 crores. Since Prachi Limited fulfills one of the criteria with paid up share capital of more than ₹ 50 crore during the preceding financial year, it is mandatory for the Prachi Limited to appoint an internal auditor for the financial year 2015-16.

### 2. Qualifications of 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.

(b) The internal auditor may or may not be an employee of the company.

(ii) Under Section 387 of the Companies Act, 2013, no person shall issue, circulate or distribute in India any prospectus offering to subscribe for securities of a company incorporated or to be incorporated outside India, unless the prospectus is dated and signed, and contains particulars with respect to the following matters namely:

1. the instrument constituting or defining the constitution of the company;

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2. the enactments or provisions by or under which the incorporation of the company was effected;
3. the address in India where the said instrument, enactments or provisions, or copies thereof can be inspected. If the same are not in the English language, a certified translation thereof in the English language should be available for inspection;
4. the date on which and the country in which the company would be or was incorporated; and
5. whether the company has established a place of business in India and, if so, the address of its principal office in India; and
6. the matters specified under section 26 (so far as they are applicable) which lays down the matters to be included in a prospectus issued by an Indian Company.

In terms of the proviso to section 387 (1) the above referred points (i), (ii) and (iii), shall not be applicable if the prospectus is issued more than 2 years after the date at which the company is entitled to commence business.

- (iii)** As per section 402, all the provisions of the Information Technology Act, 2000 relating to the electronic records, including the manner and format in which the electronic records shall be filed, in so far as they are not inconsistent with this Act, shall apply in relation to the records in electronic form specified under section 398

### **Question 2(b)**

- (i) Tanishq Company Limited served a notice of general meeting upon its shareholders. The notice stated that the issue of sweat equity shares would be considered at such meeting. Mr. Abhinav, a shareholder of the Tanishq Company Limited complains that the issue of sweat equity shares was not specified fully in the notice. Is the notice issued by Tanishq Company Limited regarding issue of sweat equity shares valid according to the provisions of the Companies Act, 2013? Explain in detail.**

- (ii) An enterprise is not satisfied with the decision of the Competition Commission, Advise whether any remedy is available to the aggrieved party against the decision of the Competition Commission under the Competition Act, 2002?**

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

- (a) Payment to be made for securing insurance for health from a company abroad.**
- (b) Payment of commission on exports under Rupee State Credit Route.**
- (c) Gift remittance exceeding US Dollars 10,000.**

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

**[3+6+6 = 15]**

### **Answer:**

- (i)** Under section 102 (2) (b) in the case of any meeting other than an AGM, all business

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transacted thereat shall be deemed to be special business.

Further under section 102 (1) a statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting:

- (a) the nature of concern or interest, financial or otherwise, if any, in respect of each items, of every director and the manager, if any or every other key managerial personnel and relatives of such persons; and
- (b) any other information and facts that may enable members to understand the meaning, scope and implications of the item of business and to take decision thereon.

Thus, the objection of the member is valid since the complete details about the issue of sweat equity should be sent with the notice. The notice is, therefore, not a valid notice under Section 102 of the Companies Act 2013.

- (ii)** Remedy against the decision of competition commission (sections 53B and 53T of the Competition Act, 2002)

Appeal to Appellate Tribunal

1. According to section 53B of the Competition Act, 2002, the Central Government or the State Government or a local authority or enterprise or any person, aggrieved by any direction, decision or order referred to in section 53A may prefer an appeal to the Appellate Tribunal.
2. Every such appeal shall be filed within a period of sixty days from the date on which a copy of the direction or decision or order made by the Commission is received by the Central Government or the State Government or a local authority or enterprise or any person referred to in that sub-section and it shall be in such form and be accompanied by such fee as may be prescribed.
3. The Appellate Tribunal may entertain an appeal after the expiry of the said period of sixty days if it is satisfied that there was sufficient cause for not filing it within that period.
4. On receipt of an appeal, the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the direction, decision or order appealed against.
5. The Appellate Tribunal shall send a copy of every order made by it to the Commission and the parties to the appeal.

The appeal filed before the Appellate Tribunal shall be dealt with by it as expeditiously as possible and Endeavour shall be made by it to dispose of the appeal within six months from the date of receipt of the appeal.

- (iii)** 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



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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 prohibitions and 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) Drawal of foreign exchange for securing insurance for health from a company abroad does not fall under any of the Schedules I, II or III. Therefore, such a transaction is permitted without any restriction or condition.
  
- (b) Rule 3 read with Schedule I of Foreign Exchange Management (Current Account Transactions) Rules, 2000 prohibits payment of commission on exports under Rupees State Credit Route (except commission upto 10% of invoice value of exports of tea and tobacco). Therefore, payment of commission on exports under Rupee State Credit Route is prohibited unless such commission is paid for export of tea and tobacco, and the commission does not exceed 10% of invoice value of exports.
  
- (c) Drawal of foreign exchange exceeding US \$ 5,000 per donor per financial year for the purpose of making gifts requires the prior approval of the RBI. Accordingly, approval of the Reserve Bank of India is required for gift remittance in the given case. However, prior approval of the Reserve Bank of India shall not be required if drawal in excess of additional US Dollar 5,000 is made out of funds held in Resident Foreign Currency (RFC) Account.

### **Question 2(c)**

- (i) **“RBI has power to control advances by banking companies”. Comment.**
  
- (ii) **Mr. Narayan held certain partly paid up shares of Ltd. Company. The company asked him to pay the final call money on the shares. Due to some unavoidable circumstances he was unable to pay the amount of call money to the company. At a general meeting of the shareholders, the chairman disallowed him to cast his vote on the ground that the articles do not permit a shareholder to vote if he has not paid the calls on the shares held by him. Narayan contested the decision of the Chairman. Referring to the provisions of the Companies Act, 2013 decide whether the contention of Narayan is valid.**
  
- (iii) **The Balance Sheet of Royal Ltd. as at 31-03-2015 disclosed the following details:**

<b>1. Authorized share capital</b>	<b>₹400 crores</b>
<b>2. Paid up share capital</b>	<b>₹150 crores</b>
<b>3. Reserves and surplus</b>	<b>₹750 crores</b>

**The company has issued in the year 2010, Fully Convertible Debentures of ₹100 crores which are due for conversion in the year 2015. The company proposes, after the conversion of Debentures to issue Bonus shares in the ratio of 1: 1. Explain briefly the requirements of the Securities and Exchange Board of India (SEBI) Regulations to be**

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followed by the company in this regard.

[6+3+6 = 15]

**Answer:**

(i) Section 21 of Banking Regulation Act, 1949 empowers the Reserve Bank to control advances by a Banking Company, as explained below:

**1. Formulation of policy by Reserve Bank in relation to advances [Section 21(1)]**

Where the Reserve Bank is satisfied that it is necessary or expedient in the public interest or in the interests of depositors or banking policy so to do, it may determine the policy in relation to advances to be followed by banking companies generally or by any banking company in particular, and when the policy has been so determined, all banking companies or the banking company concerned, as the case may be, shall be bound to follow the policy as so determined.

**2. Directions by the Reserve Bank to banking companies [Section 21(2)]**

Without prejudice to the generality of the power vested in the Reserve Bank under sub-section (1), the Reserve Bank may give directions to banking companies, either generally or to any banking company or group of banking companies in particulars, as to-

- (a) the purposes for which advances may or may not be made;
- (b) the margins to be maintained in respect of secured advances;
- (c) the maximum amount of advances or other financial accommodation which, having regard to the paid-up capital, reserves and deposits of a banking company and other relevant considerations, may be made by that banking company to any one company, firm, association of persons or individual;
- (d) the maximum amount up to which, having regard to the considerations referred to in clause (c), guarantees may be given by a banking company on behalf of any one company, firm, association of persons or individual; and
- (e) the rate of interest and other terms and conditions on which advances or other financial accommodation may be made or guarantees may be given.

**3. Binding effect of directions of the Reserve Bank [Section 21(3)]**

Every banking company shall be bound to comply with any directions given to it under this section.

(ii) Section 106 (1) of the Companies Act, 2013 states that the articles of a company may provide that no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid, or in regard to which the company has exercised any right of lien.

In the present case the articles of the company do not permit a shareholder to vote if he

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has not paid the calls on the shares held by him. Therefore, the chairman at the meeting is well within its right to refuse him the right to vote at the meeting and Mr. Narayan's contention is not valid.

**(iii) Bonus Issue (Chapter IX of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009)**

Chapter IX of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 contains the regulations (Regulations 92 to 95) for issue of bonus shares. Royal Ltd. can issue bonus shares in the ratio of 1:1 as follows:

1. The Articles of Royal Ltd. must authorize it to issue the bonus shares and capitalization of reserve. If there is no provision in the Articles authorizing the company, firstly, the Articles shall be amended by passing a special resolution.
2. Steps for determining whether any increase in authorised share capital is required:
  - (a) Paid up share capital as on 31st March, 2015: ₹150 crores.
  - (b) Paid up capital (after conversion of ₹100 crores fully convertible debentures, assuming that these debentures shall be converted into share capital of ₹100 crores) ₹250 crores (150 +100).
  - (c) Proposed bonus issue -1 share for every 1 share held.
  - (d) Post bonus issue capital: ₹500 crores (250+250).

Since the Authorised share capital of the company is only ₹400 crores, it has to take steps to increase the amount to ₹500 crores or beyond by complying with the provisions laid down in the Companies Act.

3. Sources of bonus shares: Reserves and surplus (free reserves built out of the genuine profits can be used for issue of bonus issue): ₹750 Crores

### **Question 2(d)**

**(i) The Board of Directors of Disha Limited appointed Ms. Piyali as a Women Director in the Board Meeting held on 10<sup>th</sup> September, 2015. The said appointment was made to fill the vacancy of the Woman Director, which had occurred as a result of resignation of Ms. Divya on 30<sup>th</sup> June, 2015.**

**Will your answer differ if the Board Meeting of the company was held on 8<sup>th</sup> November, 2015?**

**(ii) Chanchal Limited was incorporated on 5<sup>th</sup> May, 2015 under the Companies Act, 2013. Mr. Rinku was appointed as the first Resident Director of the company in the Board Meeting held on 30<sup>th</sup> September, 2015.**

**(iii) The Articles of a Public Company clearly stated that Mr. Bibhu will be the solicitor of the company. The company in its general meeting of the shareholders resolved unanimously to appoint Sona in place of Bibhu as the solicitor of the company by altering the articles of**

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**association. Examine, whether the company can do so? State the reasons clearly.**

**[5+5+5 = 15]**

**Answer:**

- (i)** At least one woman director shall be on the Board of such class or classes of companies as may be prescribed (second proviso to section 149(1) of the Companies Act, 2013). Further, any intermittent vacancy of a woman director shall be filled up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy, whichever is later.

As per the above provisions, the appointment of Ms. Piyali is valid. The vacancy of a woman director of Disha Limited which arose on 30th June 2015, due to the resignation of Ms. Divya, should be filled up latest by 29th September 2015 or the day of the next Board Meeting, whichever is later. Since Ms. Piyali was appointed in the next Board Meeting after the vacancy arose, i.e. on 10th September 2015, her appointment is valid.

The answer will remain the same, even if Disha Ltd. appoints Ms. Piyali in the Board Meeting held on 8th November 2015, provided the said meeting is the first meeting of the Board after 30th June 2015 i.e. after the resignation of Ms. Divya.

- (ii)** As per section 149(3) of the Companies Act, 2013, every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty two days in the previous calendar year.

The MCA vide General Circular No. 25/2014 dated 26<sup>th</sup> June, 2014 has given a clarification on applicability of requirement for resident director in the current calendar /financial year. Regarding newly incorporated companies, it is clarified that companies incorporated between 1st April, 2015 to 30th September, 2015 should have a resident director either at the incorporation stage itself or within six months of their incorporation.

Since, Chanchal Ltd., was incorporated on 5th May 2015, it should have a resident director either at the incorporation stage itself or within six months of their incorporation. Thus accordingly, the appointment of Mr. Rinku as a first Resident Director of the company in the Board Meeting held on 30<sup>th</sup> September, 2015 is valid.

- (iii)** According to Section 10(1) of the Companies Act, 2013, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member and contained covenants on its and his part to observe all the provisions of the memorandum and articles.

Further, under Section 14 (1) subject to the provisions of this Act and to the conditions contained in the Memorandum, a company may, by a special resolution, alter its Articles.

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Moreover, under section 14(2) the company will be required to file within fifteen days the altered Articles with the Registrar along with necessary documents, such as the copy of the special resolution etc, and in such manner as may be prescribed. On receipt of all documents the Registrar shall register the same.

Section 14 (3) further provides that any alterations in the Articles on registered will be valid as if they were in the original Articles.

In the present case, the company has altered the Articles by a unanimous resolution of the members passed at a general meeting. Hence, the alteration is valid and after registration of the altered Articles, the appointment of Sonu will stand and Bibhu will be terminated.

### **Question 2(e)**

- (i) Explain the provisions of SEBI (Issue of Capital and Disclosure Requirements) /Regulations, 2009 on the conditions for issue of 'Indian Depository Receipts'.**
- (ii) A company passed a special resolution for the winding up of the company by the Court and made the necessary petition to the Court. In spite of the opposition of the workers, the company was ordered to be wound up. The workers filed an appeal against the winding up order. It is contended by the company that the workers have no right to appeal as they have neither any right to present a petition for the winding up, nor to be heard in winding up proceedings. Is the contention of the company correct? Cite case law.**
- (iii) Which of the provisions of the Companies Act, 2013 shall apply to a foreign company in which 50% of the paid up share capital is held by Indian citizens?**

**[6+6+3 = 15]**

### **Answer:**

- (i)** As per the Regulation 98 of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, an issue of Indian Depository Receipts (IDR) shall be subject to the following conditions:
- (a) Issue size shall not be less than fifty crore rupees;
  - (b) Procedure to be followed by each class of applicant for applying shall be mentioned in the prospectus;
  - (c) Minimum application amount shall be twenty thousand rupees;
  - (d) At least fifty percent of the IDR issued shall be allotted to qualified institutional buyers on proportionate basis.
  - (e) The balance fifty percent may be allocated among the categories of non-institutional investors and retail individual investors including employees at the discretion of the issuer and the manner of allocation shall be disclosed in the prospectus. Allotment to investors within a category shall be on proportionate basis.

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Provided that at least thirty percent of the IDRs being offered in the public issue shall be available for allocation to retail individual investors and in case of under subscription in retail individual investor category, spill over to other categories to the extent of under subscription may be permitted.

At any given time, there shall be only one denomination of IDR of the issuing company.

### **(ii) Petition by the workers is not maintainable**

The right to file a petition for winding up of the company is given by section 439. Section 439 does not authorise the workers to make a winding up petition. Accordingly, the workers cannot make a winding up petition (National Textile Workers' Union v P.R. Ramakrishnan (1983) 53 Comp Cas 184).

### **Appeal by the workers against winding up order is maintainable**

There is nothing in the Companies Act expressly prohibiting workers from being heard in a winding up petition. Accordingly, the workers would be entitled to be heard though as interveners and not as parties. Also, after the winding up order is made, the workers may appeal against it. But, once the order becomes final, the workers shall not participate in any further proceedings [National Textile Workers' Union v P.R. Ramakrishnan (1983) 53 Comp Cas 184], The Court shall take into account not only the interests of the shareholders and creditors but also public interest and the interest of workers and employees.

### **Right of any other person to be heard**

Every person whose interests are likely to be affected adversely or favourably is entitled to oppose or support a petition for winding up of the company. The Court has the discretion to hear any person other than the parties to the petition on the ground of public interest or otherwise [Keerat Kaur v Patiala Exhibition (P.) Ltd. (1991) 70 Comp Cas 728].

Therefore, the contention of the company that the workers have no right to appeal against the winding up order is not correct

### **(iii) As per section 379 of the Companies Act, 2013, if 50% or more of the paid-up share capital (whether equity or preference or partly equity and partly preference) of a foreign company is held (whether singly or in the aggregate) by –**

(a) one or more Indian citizens; or

(b) one or more companies or bodies corporate incorporated in India; or

(c) one or more Indian citizens and one or more bodies corporate incorporated in India, then, such a foreign company shall, in respect of its Indian business, comply with Chapter XXII of the Companies Act, 2013 (viz. Companies Incorporated Outside India) and such other provisions of the Act as may be prescribed by the Central Government, as if it were a company incorporated in India.

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### **Question 3: Answer any two questions**

**[20 Marks]**

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### Question 3(a)

(i) What are the accepted instruments for promoting socially responsible practices in business?

(ii) State a few arguments against the implementation of social responsibility for business.

[8+2 = 10]

### Answer:

(i) The following are the accepted instruments for promoting socially responsible practices in business:

1. **Accountability:** It is focused on improving the quality of social and ethical accounting, auditing, and reporting. Accountability specifies the processes an organisation should follow to account for its performance. It does not include the levels of performance the organisation should achieve such as social, environmental and economic indicators. It explains or justifies the acts and omissions to which one is responsible with a legitimate interest. It includes transparency with stakeholders of the organisation, responsiveness (responsibility for the organisation's acts and omissions and developing the processes and goals to continually improve performance), and compliance (adhere to legal requirements regarding the organisation's policy and reporting).
2. **Codes of conduct:** A code of conduct is intended to be a central guide and reference for day-to-day decision making. It is meant to clarify an organisation's mission, values and principles, and to link them with standards of professional conduct. Codes of conduct typically set guidelines on issues including child labour, forced labour, wages, benefits, working hours, disciplinary practices, freedom of association, and health and safety.
3. **Fair trade:** It is a growing international movement which seeks to ensure that producers get fair treatment within trade relations. Fair Trade seeks to challenge conventional wisdom about trading relations by establishing a partnership between the producer and the buyer based on long-term commitment, stable prices and greater producer involvement in marketing.
4. **Social accountability:** The Council on Economic Priority Accreditation Agency (CEPAA) has initiated an international standard for soda' accountability by in order to ensure the standards. It is a voluntary standard and can be applied to any organisation or a business in any industry. In addition to performance standards, an organisation must introduce a Social Management System (SMS) to assure compliance and continuous improvement in social performance in the set practices. The SMS include various aspects such as social policy, a planning process, and a

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designated senior manager to assure SA 8000 standards.

5. **Socially responsible investing (SRI):** It is a broad term and refers to many investment practices that consider not only the financial aspects of an investment but also social and environmental issues. SRI helps investing to be used as a tool for improving business practice and community development. It can be an effective means of promoting CSR when there is money to invest, a methodological approach, and an understanding of traditional investment practice.
  
6. **Global reporting (GR):** It is a multi-stakeholder, international initiative established to develop and provided globally applicable sustainability reporting guidelines. GR seeks to elevate the quality of reporting and achieve greater comparability, consistency, and usefulness of the reports. The GR consists of 54 core indicators and are organised into environmental financial and social dimensions. A business must report on all core indicators or provide a reason for why they did not do so. The indicators are extensive and cover such issues as economic impact, natural resource consumption, impact on bio-diversity and wetland, training and education, and child labour.

(ii) Arguments against social responsibility of business include:

1. Business sidetracks from the primary objective of earning profits. Every rupee spent to social causes or on society's problems is a rupee less for the owners and investors.
2. Participation in social programmes gives business greater power, perhaps at the expense of particular segments of society.
3. Some people also question whether business has the expertise needed to assess and make decisions about social problems.
4. Many people believe that social problems are the responsibility of the government agencies and officials.)

### Question 3(b)

(i) 'Need for Corporate Governance versus Corporate Governance Needs'. Comment.

(ii) Can there be compliance to corporate governance beyond the regulations?

[7+3 = 10]

Answer:

(i)

Need for Corporate Governance	Corporate Governance Needs
Impact of globalization	To prevent expropriation.
Economic changes.	Improving the quality of information provided
Change in the structure of shareholding.	Enhancing minority shareholder's



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	participation in decision making.
Financial reporting and transparency.	Making the board more effective and independent.
Shareholders/stakeholders net worth/wealth	Reducing the related party transaction.
Failure of corporate directors in carrying out their fiduciary duties.	Enhanced responsibility on the role of internal auditors.
Concentration of securities in fewer hands brought about disastrous results.	Threshold ownership: minimum shareholdings for exercising the rights.
Transparency in information is encouraged particularly in grey areas as secrecy of information reduces the image and reputation of the organizations.	Disclosure of information of related matters affecting the rights of minority shareholders and prevent dominant shareholders from undue advantages.
Family directorships have not yielded expected performance and outcome.	Enhancing the effectiveness of the Board.
Enforceability of legal provisions is very much lacking.	Regulatory measures to build up the image.
The law breakers escape easily due to various loopholes in law.	Suggesting imposition of penalties and fines for failure in the performance.

- (ii) The determination towards the achievement of excellence in governance should come in letter and spirit and the same cannot be enforced upon any corporate by regulators by prescribing certain rules and regulations. Corporates who march forward towards achieving excellence would continue to do many things voluntarily by going beyond the regulations. Some of the companies do disclose various policies in their annual reports such as Social Corporate Responsible Policy, Code of Conduct and Ethics, Whistle Blower policy, Insider Trading Code, Quality Policy, Safety, Health and Environmental Policy, Strategic Risk Management Policy

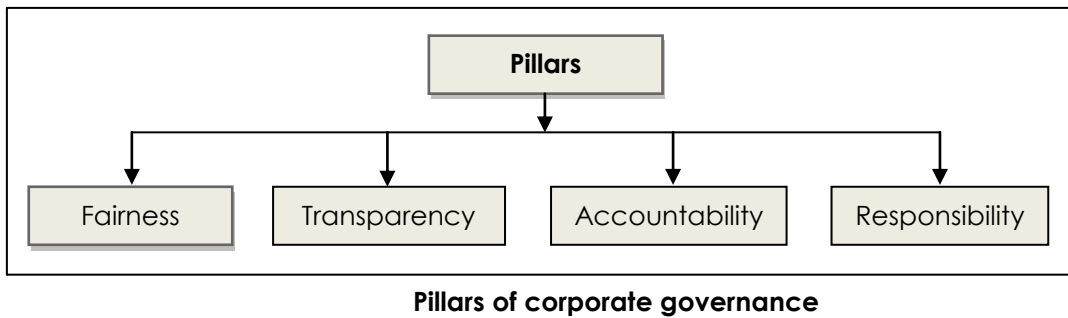
### **Question 3(c)**

- (i) **State the pillars or Corporate Governance.**
- (ii) **What are the dimensions of Corporate Governance?**

**[5+5 = 10]**

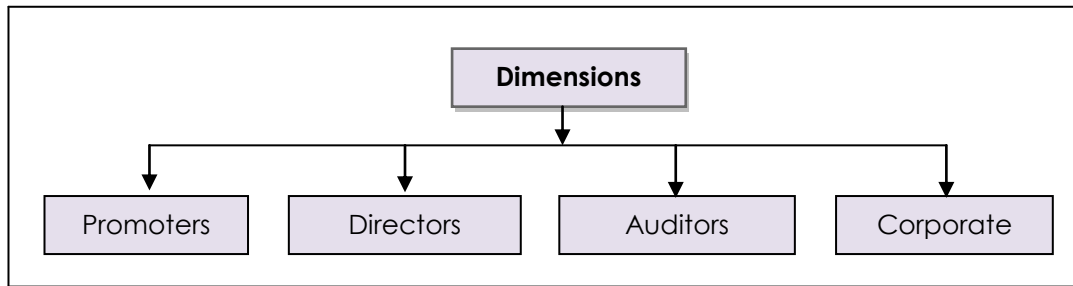
### **Answer:**

- (i) The principle of corporate governance is built on the following four pillars:



1. **Fairness:** It refers to the manner in which the business is conducted without any detriment to the interest of the stakeholders, shareholders, employees and the public as a whole. Business ethics plays a vital role in this context, hence they have to be on par with the ethical code of the society in which a business operates.
2. **Transparency:** It is disclosure, which is a tool of corporate governance. Corporate governance ensures timely and accurate disclosure on all material matters. Disclosure regarding the corporate performance, ownership and governance should be of high quality in accordance with the financial, accounting and auditing standards. Transparency is access to information by users/stakeholders/shareholders/public, which by way of disclosure should include the following:
  - Financial and operating results of the company
  - Company's objectives
  - Members of the Board
  - Material foreseeable risk factors
  - Information regarding employees and stakeholders
3. **Accountability:** It is monitoring managerial performance and achieving adequate return for the shareholders by true and fair means by the managerial body (Board of Directors). It is also a responsibility to implement system designed to ensure that the corporation obeys laws. It is acting in good faith, with due diligence and care, and in the best interest of the company and its constituents.
4. **Responsibility:** Responsibility and accountability go hand in hand. Corporate is expected to be a responsible citizen and serve not only the interest of the stakeholders but also in the best interest of the society. Corporate governance reflects the larger ethics prevailing in society. Companies are required to take more active roles in changing the practices and values that are believed to be harmful to groups outside the company.

(ii) The dimensions of Corporate Governance may be stated as follows:



### Dimensions of Corporate governance

- 1. Promoters:** They form companies. They are both financiers and managers. Earlier, mostly, the family members of promoters managed companies. Since many of them did not have managerial competence, most of the companies failed. It was because the promoters were neither answer able nor accountable to anyone. The concept was more or less the one-man company principle. Over the years, their involvement started declining. The promoters felt the need for a professional management to manage the affairs of the company so as to maximise their returns. Good corporate governance is intended to enhance the quality of functioning of the Board.
- 2. Directors:** They are the persons appointed by the promoters to manage the affairs of corporate. They are collectively known as Board of Directors. In a corporate, it was considered prestigious to hold the office of the Director. Their duties and responsibilities are multifarious. The Board is the governing organisation of a corporate. It is invested with a high degree of accountability and responsibility. It forms and frames rules and regulations for the efficient functioning of the firm. It acts as Trustee of the investors' funds. It is in a fiduciary position both towards the company and general body of shareholders. Corporate governance enhances the value of the company by making the Board accountable and responsible. The Stanford Director's Conference has listed the following as the important tasks of the Board:
  - Monitor and evaluate a long-term strategy
  - Evaluate management performance
  - And monitor current corporate performance
  - Maintain legal and ethical practice

In addition, there should be the following different committees of the Board to ensure the above:

- Management committee
- Share and securities transfer committee
- Audit committee
- Corporate planning committee
- Appropriation committee (for approving capital expenditure/projects)
- Executive committee

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- 3. Auditors:** An auditor has the crucial responsibility of certifying the truth and fairness of the financial statements of a company under the Companies Act. They should act independently and express their opinion. Formation of an Audit committee as a sub-committee of the Board of Directors would improve the quality of reporting.
- 4. Company:** Being considered as a corporate citizen a company encompasses the relationship with various constituents in day-to-day business and it has the responsibility of being accountable, transparent and fair in all its dealings. Corporate governance is the system by which companies are directed and controlled.