

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

## Answer to MTP\_Final\_Syllabus 2012\_Dec2015\_Set 2

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	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) Profit Ltd. was incorporated on 1st January, 2013. On 1st November, 2015 a political party approaches the company for a contribution of ₹ twelve lakhs for political purpose. Can the company be penalized for defiance of provisions in this regard? **3**
- (b) Mr. Rahul resided in India during the financial year 2010-2011 for less than 183 days. He came to India on 1st April, 2011 for employment. What would be his residential status during the financial year 2011-2012 under FEMA, 1999? **3**
- (c) Would the proceedings of the Insurance Regulatory and Development Authority become invalid due to any vacancy in, or any defect in its constitution, as per IRDA Act, 1999? **3**
- (d) Mr. Vikas, who could not be appointed as director in the general meeting, was appointed as Additional Director of Nanda Garments Limited, by its Board of Directors authorized by its articles. Comment. **3**
- (e) A producer company was incorporated on 1<sup>st</sup> September, 2014. At present the paid-up share capital of the company is ₹ 10 lakhs consisting of 1,00,000 equity shares of ₹ 10 each fully paid-up held by 200 individuals and 20 producers institutions. What is the Quorum for the Annual General Meeting as per the provisions of the Companies Act, 1956 **3**
- (f) What are the reasons of corporate mis-governance? **2**
- (g) State the four main issues that were dealt by the Greenbury Committee on Corporate Governance. **3**

**Answer:**

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- (a)** Under section 182 (4) of the Companies Act, 2013 if a company makes any contribution in contravention of the provisions of section 182, the company shall be punishable with fine which may extend to five times the amount so contributed and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months and with fine which may extend to five times the amount so contributed.
- (b)** 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. Rahul resided in India for less than 183 days in the financial year 2010-11. Therefore, for the financial year 2011-12 he is a 'Person resident outside India'.
- (c)** As per section 11 of IRDA Act, 1999, no act or proceeding of the Authority shall be invalid merely by reason of—
- (a) any vacancy in, or any defect in the constitution of, the authority; or
  - (b) any defect in the appointment of a person acting as a member of the Authority; or
  - (c) any irregularity in the procedure of the Authority not affecting the merits of the case.
- (d)** According to Section 161(1) of the Companies Act, 2013, the article of a company may confer on its Board of Directors the power to appoint any person as an additional director at any time. Such person shall not be appointed as an additional director who fails to get appointed as a director in a general meeting. In the instant case, Mr. Vikas failed to get appointed as director in the general meeting. So his appointment as additional director is not valid.
- (e)** Quorum Unless the articles of association of the producer company provide for a larger number, 1/4<sup>th</sup> of the total number of members of the producer company shall be the quorum for its annual general meeting. In this case the company has got 220 members [200 individuals and 20 producer institutions]. Hence the quorum is 55. [Section 581ZA (9) of Companies Act, 1956].
- (f)** Corporate mis-governance refers to the poor implementation of corporate governance practices in an organisation. It leads to various unethical and unscrupulous practices in the organisation. In India, both the public and private sectors are in the grip of corruption and red-tapism. There are various reasons of corporate mis-governance which are enumerated below;
- limited access to international market,
  - lack of competitiveness,
  - corruption,
  - inefficient regulations, and
  - difficulty in the implementation of legal rules.

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**(g)** The four main issues that were dealt by the Greenbury Committee are reproduced below;

- Defining the role of a remuneration committee in setting the remuneration packages for the Chief Executive officer and other directors,
- Making all materials disclosures regarding the details of director's remuneration mandatory for shareholders,
- Establishing service contracts and provisions that binds the organisation to pay compensation to the directors, particularly in the event of dismissal for unsatisfactory performances,
- Framing specific guidelines for determining a remuneration policy for directors.

**Question 2: Answer any four questions**

**[60 Marks]**

**Question 2(a)**

**(i) Examine whether the following branches can be considered as a 'person resident in India' under the Foreign Exchange Management Act:**

**(a) Arvind Power Mills Limited, a company incorporated in India established a branch at London on 1st January, 2013.**

**(b) M/s German Power, a foreign company, established a branch at New Delhi on 1st January, 2013. The branch at New Delhi controls a branch at Colombo.**

**(ii) Can a non-profit organization be registered as a company under the Companies Act, 2013? If so, what procedure does it have to adopt?**

**(iii) Golden Rule Ltd. has the proposal of appointment of a Managing Director who is more than 70 years of age, under the consideration of its Board of directors. Comment.**

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

**Answer:**

**(i)** 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.

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- (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) Arvind Power Mills Limited as well as the London branch of Arvind Power Mills Limited is a 'person'. Therefore, residential status under FEMA shall be determined for each of them separately.
- Arvind Power Mills Limited is incorporated in India. Therefore, it is a 'person resident in India'.
  - Arvind Power Mills Limited (a 'person resident in India') has established a branch outside India. Therefore, the London branch of Arvind Power Mills Limited falls under the clause 'an office, branch or agency outside India owned or controlled by a person resident in India' and so the London branch is a 'person resident in India'.
- (b) M/s German Power, New Delhi branch as well as Colombo branch of M/s German Power is a 'person'. Therefore, residential status under FEMA shall be determined for each of them separately.
- M/s German Power (a foreign company) does not fall under any of the clauses of the definition of a 'person resident in India'. Therefore, M/s German Power is a person resident outside India.
  - The New Delhi branch of M/s German Power 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'.
  - The Colombo branch of M/s German Power, though not owned, is controlled by the New Delhi branch. The Colombo branch is a 'person resident in India' since it falls under the clause 'an office, branch or agency outside India owned or controlled by a person resident in India'.
- (ii) According to section 8(1) of the Companies Act 2013, the Central Government may allow person or an association of persons to be registered as a Company under the Companies Act if it has been set up for promoting commerce, arts, science, sports, education, research, social welfare religion, charity protection of environment or any such other useful object and intends to apply its profits or other income in promotion of its objects. However, such company has to prohibit payment of any dividend to its members.

Procedure of Registration of a non-profit organization as a company:

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- (a) Permission from Central Government-An association of persons intending to carry any or all or some of the activities as mentioned above, has to apply to the Central Government seeking its permission for being set up as a company under the Act.
- (b) Issue of licence- The Central Government if satisfied on the above may by the issue of a licence in such manner as may be prescribed and on such conditions as it may deem fit, allow such association to be registered as a limited company under section 8(1) without the addition of word "Limited" or words "Private Limited" as the case may be, to its name.
- (c) Application filed with registrar after issue of licence- After the issue of the licence by the Central Government, an application must be made to the Registrar in the prescribe form after which the Registrar will register the association of persons as a company under section 8(1).
- (d) Privileges and obligations of a limited company- Under section 8(2) a company registered under section 8(1) as above, shall enjoy all the privileges and be subject to all the obligations of a limited company.
- (e) Revocation of licence- This licence issued by the Central Government is revocable, and on revocation the Registrar shall put the words 'Limited' or 'Private Limited' against the company's name in the Register. But before such revocation, the Central Government must give the company a written notice of its intention to revoke the licence and provide an opportunity to it to be represented and heard in the matter.
- (iii) Under the proviso to section 196 (3) (a) of the Companies Act, 2013, a person who has attained the age of seventy years may be employed as managing director, whole-time director or manager by the approval of the members by a special resolution passed by the company in the general meeting and the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person.

### Question 2(b)

- (i) **Difficult Ltd wants to make payment of remuneration of ₹ 40,000 per month to its whole time director. The company is running in loss and is having an effective capital of ₹ 95.00 lacs. Comment.**
- (ii) **Examine with reference to the relevant provisions of the Competition Act, 2002 whether a person purchasing goods not for personal use, but for resale can be considered as a 'consumer'.**

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- (iii) The Board of directors of Sunrise Ltd. filled up a casual vacancy caused by the death of Mr. Andrew by appointing Mr. Enrique as a director on 3rd April, 2014. Unfortunately Mr. Enrique expired on 15th May, 2014 after working about 40 days as a director. The Board now wishes to fill up the casual vacancy by appointing Mrs. Enrique in the forthcoming meeting of the Board. Advise the Board in this regard as per the provisions under the Companies Act, 2013.**

**[4+5+6 = 15]**

**Answer:**

- (i)** If, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including managing or whole time director or manager, any remuneration exclusive of any fees payable to directors except in accordance with the provisions of Schedule V. Section II of Part II of schedule V provides that where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it may, without Central Government approval, pay remuneration to the managerial person not exceeding ₹ 30 Lakhs for the year if the effective capital of the company is negative or upto ₹ 5 Crores. In the present case the proposed remuneration can be paid without the approval of Central Government.

- (ii)** The given problem relates to section 2(f) of the Competition Act, 2002.

As per section 2(f), 'consumer' means any person who -

(a) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, whether such purchase of goods is for resale or for any commercial purpose or for personal use;

(b) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first-mentioned person whether such hiring or availing of services is for any commercial purpose or for personal use.

Thus, a person who purchases goods for resale or for any commercial purpose (and not for personal use) is also a 'consumer'.

- (iii)** Any Section 161(4) of the Companies Act, 2013 provides that in the case of a public



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company, if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board.

Provided that any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.

In view of the above provisions, in the given case, the appointment of Mr. Enrique in place of the deceased director Mr. Andrew was in order. In normal course, Mr. Enrique could have held his office as director up to the date to which Mr. Andrew would have held the same.

However, Mr. Enrique expired on 15<sup>th</sup> May, 2014 and again a vacancy has arisen in the office of director owing to death of Mr. Enrique who was appointed by the board to fill up the casual vacancy resulting from Mr. Andrew's demise. Vacancy arising on the Board due to vacation of office by the director appointed to fill a casual vacancy in the first place, does not create another casual vacancy as section 161 (4) clearly mentions that such vacancy is created by the vacation of office by any director appointed by the company in general meeting. Hence, the Board cannot fill in the vacancy arising from the death of Mr. Enrique.

The Board may however appoint Mrs. Enrique as an additional director under section 161 (1) of the Companies Act, 2013 provided the articles of association authorises the board to do so, in which case Mrs. Enrique will hold the office until the conclusion of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier.

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

- (i) The Article of Association of a listed company has fixed payment of sitting fee for each Meeting of Directors subject to maximum of ₹ 25,000. In view of increased responsibilities of independent directors of listed companies, the company proposes to increase the sitting fee to ₹ 55,000 per meeting. Advise the company about the requirement under Companies Act, 2013 to give effect to the proposal.**
  
- (ii) Explain the powers and duties of the Administrator, as per Section 52B of Insurance Act, 1938.**
  
- (iii) There are 9 directors in a company and out of which 2 offices of the directors have fallen vacant. What will be the quorum for the Board Meeting?**

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

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### **Answer:**

- (i) Section 197(5) of the Companies Act, 2013 provides that a director may receive remuneration by way of fee for attending the Board/Committee meetings or for any other purpose as may be decided by the Board, provided that the amount of such fees shall not exceed the amount as may be prescribed. The Central Government through rules prescribed that the amount of sitting fees payable to a director for attending meetings of the Board or committees thereof may be such as may be decided by the Board of directors or the Remuneration Committee thereof which shall not exceed the sum of ₹ 1 lakh per meeting of the Board or committee thereof. Further, the Board may decide different sitting fee payable to independent and non-independent directors other than whole-time directors.

From the above, it is clear that fee to independent directors can be increased from ₹ 25,000 to ₹ 55,000 per meeting by passing a Board Resolution.

- (ii) The powers and duties of the Administrator are contained in section 52B of the Insurance Act, 1938 as explained below:

1. Conduct of business of the insurer [Section 52B(1)]

The Administrator shall conduct the management of the business of the insurer with the greatest economy compatible with efficiency and shall, as soon as may be possible, file with the Authority a report stating which of the following courses is in the circumstances most advantageous to the general interests of the holders of life insurance policies, namely:

- (a) the transfer of the business of the insurer to some other insurer;
- (b) the carrying on of its business by the insurer;
- (c) the winding up of the insurer; and
- (d) such other course as he deems advisable.

2. Action by the Authority on receipt of report from the Administrator [Section 52B(2)]

On the filing of the report with the Authority, the Authority may take such action as he thinks fit for promoting the interests of the holders of life insurance policies in general.

3. Binding effect of orders of the Authority [Section 52B(3)]

Any order passed by the Authority under sub-section (2) shall be binding on all persons concerned, and shall have effect notwithstanding anything in the memorandum or articles of association of the insurer, of a company.

- (iii) According to section 174(1) of the Companies Act, 2013, the quorum for a meeting of the Board of Directors of a company shall be one third of the total strength of Board (any fraction contained in the said one third being rounded off as one) or two directors

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whichever is higher. The total strength is to be derived after deducting the number of directors whose offices are vacant. Therefore, where total number of directors is 9 and 2 offices of the directors have fallen vacant, we find:  $\frac{1}{3}$  of  $(9-2) = \frac{1}{3}$  of  $7 = 2\frac{1}{3}$  directors which will be rounded off as 3. Therefore, being higher than 2, 3 directors would constitute the quorum for the Board meetings.

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

- (i) Explain the provisions contained in section 56 with respect to power of the Central Government to enter into agreements with foreign countries, with reference to Prevention of Money Laundering Act, 2002.
- (ii) Mr. Varun, A Chartered Accountant, holding certificate of practice from the Institute of Chartered Accountants of India has been appointed as auditor of Indian Plastics Limited, which is a public limited company. Mr. Siddharth, a relative of Mr. Varun, hold security in the company, the face value of which is ₹ 5,000. Explaining the provisions of the Companies Act, 2013 answer the following:
- (a) Examine the validity of Mr. Varun's appointment as auditor in the above company.
- (b) What would be your answer in case Mr. Varun is already the auditor of 10 companies?
- (c) What shall be your answer in case Mr. Varun has some business relationship with a subsidiary company of Indian Plastics Limited and is rendering consulting services to the subsidiary company?
- (iii) Mr. Influential is already a director of 19 companies out of which 10 are public limited companies and 9 are private companies. He is being appointed as a director of another company named Rural Artifacts Ltd. Advise Mr. Influential on what are the companies to be excluded for the purpose of calculating the ceiling on the appointment of directors in a public company? [4+(3 × 3)+2 = 15]

### **Answer:**

- (i) The provisions of section 56 are explained hereunder:

1. Agreement with other countries [Section 56(1)]

The Central Government may enter into an agreement with the Government of any country outside India for-

- (a) enforcing the provisions of this Act;
- (b) exchange of information for the prevention of any offence under this Act or under the corresponding law in force in that country or investigation of cases relating to any offence under this Act, and may, by notification in the Official Gazette, make

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such provisions as may be necessary for implementing the agreement.

### 2. Terms of agreement [Section 56(2)]

The Central Government may, by notification in the Official Gazette, direct that the application of this Chapter in relation to a contracting state with which reciprocal arrangements have been made, shall be subject to such conditions, exceptions or qualifications as are specified in the said notification.

- (ii) (a) In accordance with the provisions of Companies Act, 2013 as contained in Section 141(3)(d), a person who, or his relative or partner, is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company cannot be appointed as an auditor of the company. However, if that relative is holding the security or interest in the company of face value not exceeding ₹ 1,00,000 as prescribed under the Companies (Audit and Auditors) Rules, 2014, a person can be appointed as an auditor of the company even though he is related to the person holding security or interest.

Therefore, the appointment of Mr. Varunas an auditor is valid, since Mr. Siddharth, a relative of Mr. Varun holds securities of the value not more than ₹ 1,00,000 (₹ 5,000 in the given case).

- (b) In the second case, Mr. Varun is already the auditor of 10 companies. As per Section 141(3)(g) of the Companies Act, 2013, a person shall not be eligible for appointment as an auditor of a company if a person is in full time employment elsewhere or a person or partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than 20 companies. In this case since Mr. Varun is auditor in only 10 companies, he can accept the appointment as an auditor in 10 more companies.

- (c) In the third case, in accordance with the provisions of the Act as contained in Section 141(3)(e), a person or a firm who, whether directly or indirectly has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed under the Companies (Audit and Auditors) Rules, 2014, shall be disqualified from being appointed as an auditor of a company. Therefore, Mr. Varun cannot be appointed as an auditor of the company in the given case, since he is having some business relationship with a subsidiary of Indian Plastics Limited.

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- (iii) For calculating the limit of 10 public companies, a private company which is neither a subsidiary nor a holding company of a public company will be excluded in terms of the explanation to section 165 (1) of the Companies Act, 2013.

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

- (i) **The Articles of a Public Company clearly stated that Mr. Ayush will be the solicitor of the company. The company in its general meeting of the shareholders resolved unanimously to appoint Babloo in place of Ayush as the solicitor of the company by altering the articles of association. Examine, whether the company can do so? State the reasons clearly.**
- (ii) **The Board of Directors of Ashoka Herbals Limited recommended dividend on 20th February, 2014 and the same was approved and declared by the company in its Annual General Meeting held on 31st May, 2014 and was paid to the shareholders on 15th June, 2014. But dividend was not paid to Mr. Anand, a shareholder. The company adjusted the amount of dividend against a sum due to it from Mr. Anand. Decide, under the provisions of the Companies Act, 2013 the liability of the company in this regard?**
- (iii) **What are the circumstances in which an inspector appointed under section 210 of the Companies Act, 2013, can investigate into affairs of related companies?**

**[5+6+4 = 15]**

### **Answer:**

- (i) 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.

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.

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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 Babloo will stand and Ayush will be terminated.

- (ii) Payment of dividend (Section 127 of the Companies Act, 2013):** Section 127 of the Companies Act, 2013 lays down that dividend has to be paid within 30 days from the date of its declaration. Failure to pay or post dividend warrant within 30 days constitutes an offence under the Act and renders every director of the company, if he is knowingly a party to the default, punishable with simple imprisonment for a term which may extend to two years and also to a fine of one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent per annum during the period for which such default continues.

The Section further provided that no offence shall be deemed to have been committed in the case where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder.

In the instant case, dividend was declared on 31st May, 2014 and was paid on 15th June, 2014 i.e. within 15 days. The time limit prescribed by section 127 of the said Act is 30 days so no offence is committed.

Further, no dividend was paid to Mr. Anand as the company adjusted the amount of dividend against a sum due to it from Mr. Anand. Section 127 expressly authorizes the company to lawfully adjust the amount of dividend against any sum due to it from the shareholder.

So, in the instant case, the adjustment of amount of dividend is also not violative of the Companies Act, 2013.

- (iii) Investigation into affairs of related companies:** According to section 219 of the Companies Act, 2013, if an inspector appointed under section 210 or section 212 or section 213 to investigate into the affairs of a company considers it necessary for the purposes of the investigation, can also investigate the affairs of—
- (a) any other body corporate which is, or has at any relevant time been the company's subsidiary company or holding company, or a subsidiary company of its holding company;
  - (b) any other body corporate which is, or has at any relevant time been managed by any person as managing director or as manager, who is, or was, at the relevant time, the managing director or the manager of the company;

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- (c) any other body corporate whose Board of Directors comprises nominees of the company or is accustomed to act in accordance with the directions or instructions of the company or any of its directors; or
- (d) director or manager or employee.

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

**[20 Marks]**

#### **Question 3(a)**

- (i) **What are the do's and don'ts of good corporate governance practices in banking Industry?**
- (ii) **Describe the historical perspective of Corporate Governance.**
- (iii) **State any four reports on Governance by Corporate Governance Committees.**

**[5+3+2=10]**

#### **Answer:**

- (i) Each member of the Board of Directors and Core Management of the Bank should adhere to the following so as to ensure compliance with good Corporate Governance practices. Certain do's and don'ts of good corporate governance are reproduced below;

##### **Dos**

- Attend Board meetings regularly and participate in the deliberation and discussion effectively,
- Study the Board papers thoroughly and enquire about follow-up reports on definite time schedule,
- Involve actively in the matter of formulation of general policies,
- Be familiar with the broad objectives of the Bank and the policies laid down by the Government and the various Laws and Legislations,
- Ensure confidentiality of the Bank's agenda papers, notes and minutes.

##### **Don'ts**

- Do not interfere in the day to day functioning of the bank,
- Do not reveal any information relating to any constituent of the Bank to anyone,
- Do not display the logo / distinctive design of the Bank on their personal visiting cards / Letter heads,

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- Do not sponsor any proposal relating to loans, investments, buildings or sites for Bank's premises, enlistment or empanelment of contractors, architects, auditors, doctors, lawyers, and other professionals,
- Do not do anything, which will interfere with and / or be subversive of maintenance of discipline, good conduct and integrity of the staff,
- Any waiver of any provision of this Code of Conduct for a member of the Bank's Board of Directors or members of the Core Management must be approved in writing by the Board of Directors of the Bank.

(ii) Corporate Governance is not a new concept as it originates in the 19<sup>th</sup> century. However, it was implemented in organisations in a narrow sense. The narrow perspective or the traditional approach of corporate governance has primarily paid much attention to the segregation of ownership and control. However, after sometime with the increase in competition, the need was felt to broaden the perspective of corporate governance. Therefore, the broader perspective of corporate governance includes a huge spectrum of issues, such as business ethics, corporate social responsibility, life cycle development, corporate strategy, and sustainable economic development. These issues necessitate the implementation of proper practices of corporate governance to be in place. Quality rich corporate governance strategies ensure that the customers, investors and other stakeholder's interests are taken care of.

The Broader perspective brought about radical change in the way organisations perceived corporate governance. Now, the organisations not only focus on its stakeholder's interest but also take care of overall welfare of the society. Thus, corporate governance has evolved as an all encompassing system of desirable corporate behaviour that facilitates the sustainable development of an organisation and its surroundings.

(iii) Corporate Governance Committees have been formed with the objective of establishing and maintaining the standards of corporate governance practices. These committees normally introduce a legal and corporate structure for the proper governance of business environment. Timely reforms and recommendations have been formulated under the functioning of various corporate governance committees. The various reports on governance by corporate governance committee are reproduced below;

- Cadbury Report- 1992
- Greenbury Report- 1995
- Hampel Report- 1998
- Combined Code- 1998



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### Question 3(b)

(i) Discuss the report of Narayan Murthy Committee, 2003 on Corporate Governance.

(ii) Describe the core elements to be covered under CSR Policy.

[4+6=10]

### Answer:

(i) Narayan Murthy Committee was established in February 2003, with the objective of promoting corporate governance and evaluating the adequacy of existing practices in Indian organisations. The committee focuses on the following tasks:

- Evaluating the performance of corporate governance,
- Defining independent directors,
- Assessing the role of organisations in reacting to rumours and other price-sensitive matters,
- Increasing the level of transparency and integrity.

The committee has given some mandatory and non mandatory recommendations. The recommendations that are mandatory for the auditor are given as follows:

- Disclosing the financial statements and audit reports on time,
- Holding management discussion and discussing financial matters,
- Preparing reports related to risk management,
- Drafting reports on concerned party's transactions.

The non mandatory recommendations of Narayan Murthy Committee are as follows:

- Managing the performance of the board of directors,
- Training the board members on their role.

(ii) The following are the 7 core subjects that socially responsible organizations should address in their policies:

1. **Organizational governance** – Practicing Organization accountability and transparency at all levels; leadership promotes responsibility.
2. **Human rights** – Treating all individuals with respect; making special efforts to help members of vulnerable groups.
3. **Labour practices** – Providing just, safe and healthy conditions for workers; engaging in two-way discussions to address workers' concerns.

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4. **Environment** – Identifying and improving environmental impacts of your operations, including resource use and waste disposal.
5. **Fair operating practices** – Respecting the law; practicing accountability and treating all partners fairly, including suppliers.
6. **Consumer issues** – Providing healthy and safe products, giving accurate information, and promoting sustainable consumption.
7. Community involvement and development being involved as a good neighbor for the betterment of local community.

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

- (i) **How does the role of directors influence corporate governance practice of an organization? Discuss.**
- (ii) **State the powers of Audit Committee as per Clause 49 of the Listing Agreement in India.**

**[8+2=10]**

### **Answer:**

(i) The stability of an organization depends on the manner in which it discloses its activities to its shareholders maintain transparency. These actions are taken by the directors of the board with the help of various regulators' frameworks, such as stock exchanges and other regulatory bodies that take care of various aspects of corporate governance. The following aspects should be considered by the board to ensure effective corporate governance practices in an organization:

1. **Commitment of Directors:** Indicates the efficiency and commitment of the board to protect the interest of stakeholders. The directors must attend and actively participate in the board's meetings.
2. **Planning Properly:** Refers to the need of setting priorities and planning actions by the directors of board. The directors must ensure that all the issues are being considered and addressed.
3. **Maintaining a Clear Stand on Various Issues:** Implies that the directors must have clarity of thoughts about their assent or dissent regarding any particular issue. A responsible director is expected to his/her voice whenever or wherever he/she disagrees with any decision or issue.

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- 4. Ensuring the Appointment of Efficient CEOs:** States that the directors play a substantial role appointing or dismissing a CEO in an organization. The board should recruit an efficient candidate for post of CEO based on his/her competency and experience in strategic planning.
- 5. Handling Challenges Caused by Acquisitions:** Refers to a challenge in front of the board to decisions on an acquisition. It is challenging because the attention of the board turns towards the acquisitions after it starts. In such a situation, opposing the acquisition becomes unrealistic and difficult.
- 6. Anticipating Business Events:** Suggests that the directors should be alert for any upcoming event of organization as there can be a possibility of a potential disaster or success. The directors should be prepared to take required action to avoid any disastrous events.
- 7. Financial Disclosures to Shareholders:** Indicate that the directors must ensure the maintenance transparency while interacting with the shareholders of the organization.
- 8. Taking care of employees:** Indicates that the directors should consider the employees as an asset of organization and seek their job satisfaction for their growth.
- 9. Taking care of other shareholders:** Emphasizes that the directors should maintain fairness while dealing with the stakeholders of the organization.

(ii) The Audit Committee shall have powers, which should include the following;

- To investigate any activity within its terms of reference,
- To seek information from any employee,
- To obtain outside legal or other professional advice,
- To secure attendance of outsiders with relevant expertise, if it considers necessary.