Paper-13: CORPORATE LAWS AND COMPLIANCE

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Full Marks: 100 **Time Allowed: 3 Hours**

Sec – A:

Answer Question No. 1 which is compulsory carries 20 marks and answer any 5 Question from Q. No 2 to Q. No. 8

Question 1: Answer any 4 from the below **[4×5=20]**

(a) Section 174(4) of the Companies Act, 2013 provides that, if a Board meeting could not be held for want of quorum, then, unless the articles otherwise provide, the meeting shall automatically stand adjourned to the same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a national holiday, at the same time and place.

It may be noted that on adjournment of a meeting, the meeting having started and not ended will not constitute a contravention of section 173(1) under which a company is required to hold four board meetings in a year and not more than 120 days shall elapse between two board meetings. In case of adjournment of the meeting, it shall be deemed to have been held on the date on which it was started and not on the date when the adjourned meeting was held.

(b) Section 140 of the Companies Act, 2013 prescribes certain procedure for removal of auditors. Under section 140 (1) the auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner. Form this sub section it is clear that the approval of the Central Government shall be taken first and thereafter the special resolution of the company should be passed.

Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.

Therefore, in terms of Section 140(1) of the Companies Act, 2013 read with rule 7 of the Companies (Audit & Auditors) Rules, 2014 the following steps should be taken for the removal of an auditor before the completion of his term:

(i) The application to the Central Government for removal of auditor shall made in Form ADT-2 and shall be accompanied with fees as provided for this purpose under the Companies (Registration Offices and Fees) Rules, 2014.
(ii) The application shall be made to the Central Government within thirty days of resolution passed by the Board.
(iii) The company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution.

(c) The following are the few factors and influences which have led to increasing attention being devoted to Corporate Social Responsibility (CSR) by the Corporate:

(i) Globalization – coupled with focus on cross-border trade, multinational enterprises and global supply chains – is increasingly raising CSR concerns related to human resources management practices, environmental protection, and health and safety, among other things.
(ii) Governments and intergovernmental bodies, such as the United Nations, The OECD (Organisation for Economic Cooperation and Development) and the ILO

(International Labour Organisation) have developed compacts, declarations, guidelines, principles and other instruments that outline social norms for acceptable conduct.

(iii) Advances in communications technology, such as the Internet, Cellular phones and personal digital assistants, are making it easier to track corporate activities and disseminate information about them. Non-governmental organizations now regularly draw attention through their websites to business practices they view as problematic.

(iv) Consumers and investors are showing increasing interest in supporting responsible business practices and a demanding more information on how companies are addressing risks and opportunities related to social and environmental issues.

(v) Numerous serious and high-profile breaches of corporate ethics have contributed to elevated public mistrust of corporations and highlighted the need for improved corporate governance, transparency, accountability, and ethical standards.

(vi) Citizens in many countries are making it clear that corporations should meet standards of social and environmental care, no matter where they operate.

(vii) There is increasing awareness of the limits of government legislative and regulatory initiatives to effectively capture all the issues that CSR addresses.

Businesses are recognizing that adopting an effective approach to CSR can reduce risk of business disruptions, open up new opportunities, and enhance brand and company reputation.

(d) Preference Shareholders: The term 'member' includes preference shareholders also. Further, preference shareholders are a class of members and their rights may be affected differently in the proposed scheme of arrangement. Hence their approval is also required.

If the Court directs separate meeting of preference shareholders and equity shareholders, then the scheme should be approved by requisite majority in both such meetings held as per directions of the Court.

(e) Abuse of Dominant position: The Competition commission while inquiring whether the enterprise ABC company enjoys a dominant position or not under sub-section (4) of section 19 of the Competition Act, 2002 will take the following factors into account:

(1) Market share of the enterprise

(2) Size and resources of the enterprise.

(3) Size and importance of the competitors.

(4) Economic power of the enterprise including commercial advantages over competitors.

(5) Vertical integration of the enterprises or sale or service net work of such enterprises.

(6) Dependence of consumers on the enterprise.

(7) Monopoly or dominant position whether acquired as result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise.

(8) Entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or services for consumers.

(9) Countervailing buying power.

(10) Market structure and size of market.

(11) Social obligations and social cost.

(12) Relative advantage, by way of contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition.

(13) Any other factor which the commission may consider relevant for the inquiry.

<u>Question 2:</u> **[6+5+5 = 16]**

(a) False. Section 129(2) of the Companies Act, 2013 provides that at every annual general meeting of a company, the Board of Directors of the company shall lay before such meeting financial statements for the financial year. Further section 134(7) provides that signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy each of:
(1) Any notes annexed to or forming part of such financial statement;
(2) The auditor's report; and
(3) The Board's report.

It, therefore, follows that unaudited accounts cannot be sent to members or unaudited accounted cannot be filed with the Registrar of Companies.

(b) According to section 128(1) of the Companies Act, 2013, every company is required to prepare and keep at its registered office, the books of accounts and other relevant books and prepares and financial statement for every financial year which gives true and fair view of the state of the affairs of the company, including that of its branch office or offices, if any, and explain the transactions effected both at the registered office and its branches and such books shall be kept on accrual basis and according to the double entry system of accounting.

The proviso to section 128(1) further provides that all or any of the books of account aforesaid and other relevant papers may be kept at such other place in India as the Board of Directors may decide and where such a decision is taken, the company shall, within seven days thereof, file with the Registrar a notice in writing giving the full address of that other place. Further company may keep such books of accounts or other relevant papers in electronic mode as per the Rule 3 of the Companies (Accounts) Rules, 2014.

Therefore, the company is empowered to keep its Books of Accounts at a place other than the registered office by following the above procedure.

(c) As per Regulation 80 contained in Table F of Schedule I to the Companies Act, 2013, a company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the Board. Following conclusions are worth noting:
(i) The power to declare dividend vests in the members, but the members can exercise such power only if the dividend is proposed/recommended by the Board.
(ii) The rate of dividend proposed/recommended by the Board may be reduced by the members.
(iii) The rate of dividend proposed/recommended by the Board cannot be increased by the members.
(iv) Any provision in the articles, which authorises the members to declare dividend higher than the rate recommended by the Board, is void.

Therefore, in the given case, the resolution passed at the Annual General Meeting declaring dividend at a rate higher than that recommended by the Board of directors is not valid.

<u>Question 3:</u> **[6+5+5=16]**

(a) Under Section 163 of the Companies Act, 2013, the articles of a company may provide for the appointment of not less than two-thirds of the total number of the directors of a company in accordance with the principle of proportional representation, whether by single transferable vote or by a system of cumulative voting or otherwise and such appointments may be made once in every 3 years and casual vacancies of such directors shall be filled as provided in sub-section (4) of section 161 i.e. by the board of directors at a duly convened board meeting.

Section 169(1) of the Companies Act, 2013 provides for the removal of a director by ordinary resolution of members (expect a director appointed by the Tribunal) before the expiry of his term of office. However, according to the proviso to section 169(1) this is not applicable where the company has availed itself of the option given to it under section 163 to appoint not less than two thirds of the total number of directors according to the principle of proportional representation.

Hence, according to proviso to section 169(1), the directors elected by the principle of proportional representation under section 163 of the Companies Act, 2013 cannot be removed by the shareholders in general meeting.

(b) A company can pay compensation to its directors for loss of office as provided in sections 202 of the Companies Act, 2013. Under section 202, such compensation can be paid only to managing director, director holding the office of the manager and to a whole time director but not to others. The compensation payable shall be on the basis of average remuneration actually earned by such director for three years, or such shorter period as the case may be, immediately preceding the ceasing of holding of such office and shall be for the unexpired portion of his term or for three years whichever is shorter. No such payment can be made, if winding up of the company is commenced before or commences within 12 months after he ceases to hold office if the assets of the company on the winding up, after deducting expenses thereof, are not sufficient to repay to the shareholders the share capital (including the premium, if any) contributed by them. However, no payment of compensation can be made in the following cases:

(1) where a director resigns on the ground of amalgamation or reconstruction and is appointed the office of managing director or manager or other officer of such reconstructed or amalgamated company.
(2) where the director resigns his office otherwise than on the reconstruction of the company or its amalgamation as aforesaid,
(3) where the director vacates office under section 167 of the Companies Act, 2013,
(4) where the winding up of the Company is due to the negligence of the director concerned,
(5) where the director has been guilty of any fraud or breach of trust,
(6) where the director has instigated or has taken part directly or indirectly in bringing about, the termination of his office.

(c) Notice of Board meeting

Section 173(3) of the Companies Act, 2013 makes it mandatory for every director to be given proper notice of every board meeting. It is immaterial whether a director is interested or not.

(i) An Interested Director: Notice must be given to a director even though he is precluded from voting at the meeting on the business to be transacted.
(ii) A Director who has expressed his inability to attend a particular Board Meeting: In terms of Section 173(3) even if a director states that he will not be able to attend the next Board Meeting; notices must be given to that director.

<u>Question 4:</u> **[6+5+5 = 16]**

(a) Procedure in case of Compulsory Winding-Up: Mr. X has to take the following steps to put the company into compulsory winding up:

1. A petitions for winding up of the company is to be filed in the high court, where the registered office of the company is located under section 439(l)(b) read with section 433(e) and (f) of the Companies Act, 1956. A copy of the petition should be served on the company.

2. The petition should be filed along with an affidavit showing sufficient ground for the appointment of a provisional liquidator till an order is passed by the High Court appointing an official liquidator.
3. After obtaining the winding up order from the high court the same should be advertised within 14 days in a newspaper in English language and in the regional language of the state where the company is registered.
4. A certified copy of the winding up order passed by the court should be filed with the concerned Registrar of Companies along with the prescribed fees within 30 days from the date of the winding up to order (Section 445 (i)).
5. The winding up proceedings will be carried out by the official liquidator till dissolution of the company.

(b) As per section 581F of the Companies Act, 1956, the Memorandum of Association of a Producer Company has to state the following:
1. The name of the company with "Producer Company Limited" as the last words of the name of the Company;
2. The State in which the registered office of the Producer Company is to situate;
3. The main objects of the Producer Company confirming to the objects specified in section 581B of the Companies Act, 1956;
4. The names and addresses of the persons who have subscribed to the Memorandum of Association;
5. The amount of share capital with which the Producer Company is to be registered and division thereof into shares of a fixed amount;
6. The names, addresses and occupations of the subscribers being producers, who shall act as the first directors in accordance with section 581J(2) of the Companies Act, 1956;
7. That the liability of its members is limited;
8. Opposite to the subscriber's name the number of shares each subscriber takes (Each subscriber must take at least one share);
9. In case the objects of the Producer Company are not confined to one State, the States to whose territories the objects extend.

(c) In terms of the definition of a foreign company under section 2 (42) of the Companies Act, 2013 a "foreign company" means any company or body corporate incorporated outside India which:
1. Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
2. Conducts any business activity in India in any other manner.

Further, Section 379 states that where not less than 50% of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company is held by one or more citizens of India or by one or more companies or bodies corporate incorporated in India, or by one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with the provisions of this Chapter and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India.

In the case given in the question, the following facts are given:
1. Joel Ltd. was incorporated in London and has a place of business (share transfer office), hence, it is a foreign company.
2. Its shareholding companies of 25% held by Y who is a citizen of India and 30% by X Ltd. which is a company registered in India. Together the two Indian shareholders hold 55% of the share capital of Joel Ltd.

Therefore, although Joel Ltd. is a foreign company, due to the holding of more than 50% of its share capital by two Indian entities, it will be covered under section 379 and will be treated as a company incorporated in India or as an Indian Company.

However, it may be noted that under section 379, the application of Companies Act, 2013 on Joel Ltd. will be only in respect of business carried by it in India and not in relation to its business anywhere outside India.

The Companies Act, 2013 under Chapter XXII does not require a foreign company to file documents in relation to its global business.

Under Section 380 of the Act, a foreign company is required to file for registration within 30 days of the establishment of a place of business in India the following documents with the Registrar:

1. A certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company. If the instrument is not in the English language, a certified translation thereof in the English language;
2. The full address of the registered or principal office of the company;
3. A list of the directors and secretary of the company containing such particulars as may be prescribed;

In relation to the nature of particulars to be provided as above, the Companies (Registration of Foreign Companies) Rules, 2014, provide that the list of directors and secretary or equivalent (by whatever name called) of the foreign company shall contain the following particulars, for each of the persons included in such list, namely;

1. Personal name and surname in full;
2. Any former name or names and surname or surnames in full;
3. Father's name or mother's name and spouse's name;
4. Date of birth;
5. Residential address;
6. Nationality;
7. If the present nationality in not the nationality of origin, his nationality of origin;
8. Passport Number, date of issue and country of issue: (if a person holds more than one passport then details of all passports to be given)
9. Income-tax permanent account number (PAN), if applicable;
10. Occupation, if any;
11. Whether directorship in any other Indian company, (Director Identification Number (DIN), Name and Corporate Identity Number (CIN) of the company in case of holding directorship);
12. Other directorship or directorships held by him;
13. Membership Number (for Secretary only);
14. E-mail ID.

(a) The name and address or the names and addresses of one or more persons resident in India to accept on behalf of the company service of process and any notices or other documents required to be served on the company.
(b) The full address of the office of the company in India which is deemed to be its principal place of business in India;
(c) Particulars of opening and closing of place of business in Indian on earlier occasion or occasions;
(d) Declaration that none of the directors of the company or the authorized representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and
(e) Any other information as may be prescribed.

Question 5: **[6+5+5=16]**

(a) Offences to be non-cognizable: A new section 439 of the Companies Act, 2013 came into force on 12th September, 2013 which provides for offences to be non-cognizable. According to this section:

(i) Notwithstanding anything in the Code of Criminal Procedure, 1973, every offence under this Act except the offences referred to in sub-section (6) of section 212 shall be deemed to be non-cognizable within the meaning of the said Code.

(ii) No court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder of the company, or of a person authorized by Central Government in that behalf.

(iii) The Court may take cognizance of offences relating to issue and transfer of securities and non-payment of dividend, on a complaint in writing, by a person authorized by the Securities and Exchange Board of India.

(iv) Nothing in this sub-section shall apply to a prosecution by a company of any of its officers.

(v) Where the complainant is the Registrar or a person authorized by the Central Government, the presence of such officer before the Court trying the offences shall not be necessary unless the court requires his personal attendance at the trial.

(vi) The above provisions shall not apply to any action taken by the liquidator of a company in respect of any offence alleged to have been committed in respect of any of the matters in Chapter XX or in any other provision of this Act relating to winding up of companies.

(vii) The liquidator of a company shall not be deemed to be an officer of the company.

(b) (i) Section 397 of the Companies Act, 1956 deals with the remedy in a situation when the affairs of the company are being conducted in a manner oppressive to a shareholder or shareholders. This means that some of the shareholders must be in such a position that they can be oppressed by other shareholders or the management.

In the present case as given in the question, both the Indian Group and the French Group of Indo-French Ltd. are equally strong and none is able to oppress the other. The situation stated in the question is a deadlock but it cannot be termed as oppression. Since it is not a case of winding up of the company, the relief under the said section 397 is not available to the Indian Group. [Gnanasambandam vs. Tamilnad Transporters (Coimbators) Pvt. Ltd]. In view of the position discussed, the contention of the Indian Group is not tenable.

(ii) The powers of the CLB under the provisions of section 397 of the Companies Act, 1956 are discretionary in character. Apart from the general powers envisaged therein, the CLB under section 402 (b) of the said Act, may order the purchase of the shares of one group by the other group. In the case of Yashovardhan Saboo Vs. Groz Beckert Saboo Ltd., the presiding officer ordered he foreign group to buy out the shares of the minority group at the fair price with deadlock and the matters are not sorted out by any other means, an order for winding up of the company may also be made under the jest and equitable clause, [Kishan Lal Ahuja Vs. Suresh Kumar Ahuja]. Thus, if the Indian Group or the French Group fails to buy out the shares of the other group, an order for winding up of the company may be made under the just and equitable clause, by the Company Law Board.

(c) Price manipulation in the shares of ABC Ltd. can be considered as fraudulent and unfair trade practices relating to securities market. In this case SEBI may exercise the following powers under section 11(4) of securities and Exchange Board of India Act, 1992

(i) Suspend the trading of any security (in this case the securities of ABC Ltd.) in a recognized stock exchange.
(ii) Restrain persons (in this case ABC Ltd.) from accessing the securities market. It can also prohibit any person associated with securities market (i.e. brokers who have indulged in price manipulation) to buy, sell or deal in securities market.

SEBI may issue the above orders for reasons to be recorded in writing. SEBI shall, either before or after passing such orders give an opportunity of hearing to company and brokers concerned (proviso 2 to Section 11(4)) SEBI may also appoint an adjudicating officer who may levy penalty under section 15HFA after holding an enquiry in the prescribed manner. According to section 15HA if any person indulges in fraudulent and unfair trade practices relating to securities, he shall be leviable to a penalty of ` 25 crores or 3 times the amount of profits made out of such practices, whichever is higher.

Prohibition on manipulation and deceptive practices: Further according to Section 12A, no person shall directly or indirectly indulge in following (i.e.) (a) using in manipulative or deceptive device in connection with purchase, sale or securities listed (b) Employ any scheme or device to defraud in connection with dealing in securities which are listed (c) engage in an act which would operate as fraud or deceit upon any person in connection with dealing in securities which are listed. SEBI may impose penalty up to ` 1 crore on any person who fails to comply with any provisions of SEBI Act (Section 15HB).

Question 6: **[6+5+5=16]**

(a) The term "current account transaction" is defined in section 2(j) of Foreign Exchange Management Act, 1999. It means a transaction other than a capital account transaction and includes:
(i) Payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business
(ii) Payments due as interest on loans and as net income from investments.
(iii) Remittances for living expenses of parents, spouse and children residing abroad and
(iv) Expenses in connection with foreign travel education and medical care of parents, spouse and children.

According to Section 5 of FEMA, 1999 any person may sell or draw foreign exchange to or from an authorized person if such sale or drawal is a current account transaction. Provided that the Central Government may in public interest and in consultation with the Reserve Bank, impose such reasonable restrictions for current account transactions as may be prescribed.

Further, any person may sell or draw foreign exchange to or from an authorized person for a capital account transaction subject to the provisions of section 6(2).

(b) Requirement of Paid Up equity capital for insurance business: No insurer carrying on the business of life insurance, general insurance or re-insurance in India on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall be registered unless he has, -
(i) a paid-up equity capital of rupees one hundred crores, in case of a person carrying on the business of life insurance or general insurance; or
(ii) a paid-up equity capital of rupees two hundred crores, in case of a person carrying on exclusively the business as a re-insurer :

Provided that in determining the paid-up equity capital specified under clause (I) or clause (ii), the deposit to be made under section 7 and any preliminary expenses incurred in the formation and registration of the company shall be excluded :

Provided further that an insurer carrying on business of life insurance, general insurance or re-insurance in India before the commencement of the Insurance Regulatory and Development Authority of India Act, 1999 and who is required to be registered under this Act, shall have a paid-up equity capital in accordance with clause (I) and clause (ii), as the case may be, within six months of the commencement of that Act.

(c) Section 12 provides for the obligations of Banking Companies, Financial Institutions and Intermediaries or a person carrying on a designated business or profession. According to sub-section (1), every banking company, financial institution and intermediary or a person carrying on a designated business or profession shall –

1. Maintain a record of all transactions, including information relating to transactions covered under clause (b), in such manner as to enable it to reconstruct individual transactions;
2. Furnish to the Director within such time as may be prescribed, information relating to such transactions, whether attempted or executed, the nature and value of which may be prescribed;
3. Verify the identity of its clients in such manner and subject to such conditions, as may be prescribed;
4. Identify the beneficial owner, if any, of such of its clients, as may be prescribed;
5. Maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients.

Every information maintained, furnished or verified, save as otherwise provided under any law for the time being in force shall be kept confidential.

The records referred to in clause (a) of sub-section (I) shall be maintained for a period of five years from the date of transaction between a client and the reporting entity.

The records referred to in clause (e) of sub-section (I) shall be maintained for a period of five years after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later.

The Central Government may, by notification, exempt any reporting entity or class of reporting entities from any obligation under this chapter.

Question 7: Answer any two questions from the below **[2×8= 16]**

(a) According to OECD, a major challenge is to find a balance between the state's responsibility for actively exercising its ownership functions, such as, the nomination and election of the board, while at the same time refraining from imposing undue political interference in the management of the company. Another important challenge is to ensure that there is a level playing field in markets where private sector companies can compete with the state-owned enterprises, and that governments do not distort competition in the way they use their regulatory or supervisory powers.

According to OECD, the guidelines suggest that the state should exercise its ownership functions through a centralized ownership entity, or effectively co-ordinate entities, which should act independently and in accordance with a publicly disclosed ownership policy. The guidelines also suggest the strict separation of the state's ownership and regulatory functions. The major recommendations in OECD guidelines are as discussed below:

Ensuring an effective legal and regulatory framework for state-owned enterprises

- There should be a clear separation between the state's ownership function and other state functions that may influence the conditions for state-owned enterprises, particularly with regard to market regulation.

- SOEs should not be exempt from the application of general laws and regulations. Stakeholders including competitors, should have access to efficient redress.
- SOEs should face competitive conditions regarding access to finance. Their relations with state-owned banks, state-owned financial institutions, and other state-owned companies, should be based on purely commercial grounds.

State acting as an owner

The state should act as an informed and active owner, and establish a clear and consistent ownership policy, ensuring that governance of state-owned enterprises is carried out in a transparent and accountable manner with the necessary degree of professionalism and effectiveness.

- The government should develop and issue an ownership policy that defines the overall objectives of state ownership, the state's role in corporate governance of SOEs, and how it will implement its ownership policy.
- The government should not be involved in the day-to-day management of SOEs and allow them full operational autonomy to achieve their defined objectives.
- The state should let SOE boards exercise their responsibilities and respect their independence.
- The state should exercise its ownership rights according to the legal structure of each company. Keeping this in mind, it should ensure that remuneration schemes for SOE board members foster the long-term interest of the company, and can attract and motivate qualified professionals.

Equitable treatment of shareholders

The SOEs should recognize the rights of all shareholders and in accordance with the OECD principles of corporate governance, ensure their equitable treatment and equal access to corporate information.

- SOEs should observe a high degree of transparency towards all shareholders.
- The co-ordinating or ownership entity and SOEs should ensure that all shareholders are treated equally.
- The participation of minority shareholders in shareholder meetings should be facilitated in order to allow them to take part in fundamental corporate decisions, such as board election.

Relations with stakeholders

The state ownership policy should fully recognize the state-owned enterprises' responsibilities towards stakeholders and report their relations with them.

- Listed on large SOEs, as well as SOEs pursuing important public policy objectives, should report on stakeholder relations.

Transparency and disclosure

State-owned enterprises should observe high standards of transparency in accordance with the OECD Principles of Corporate Governance.

- SOEs should develop efficient internal audit procedures and establish an internal audit function that is monitored by and reports directly to the board and to the audit committee or the equivalent company organ.
- SOEs, especially large ones, should be subject to an annual independent external audit based on international standards. The existence of specific state control procedures dots not substitute for an independent external audit.

Responsibilities of the boards of state-owned enterprises

The boards of state-owned enterprises should have the necessary authority, competencies, and objectivity to carry out their function of strategic guidance and monitoring of management. They should act with integrity and be held accountable for their actions.

- ➢ The boards of SOEs should be assigned a clear mandate and ultimate responsibility for the company's performance. The board should be fully accountable to the owners, act in the best interest of the company, and treat all shareholders equally.
- ➢ SOE boards should carry out their functions of monitoring of management and strategic guidance, subject to the objectives set by the government and the ownership entity. They should have the power to appoint and remove the CEO.
- ➢ The boards of SOEs should be so composed that they can exercise objective and independent judgment. Good practice calls for the chair to be separate from the CEO.
- ➢ SOE boards should carry out an annual evaluation to appraise their performance.

(b) Whole life-cycle costing (WLCC) is rapidly becoming the standard method for the long-term cost appraisal of buildings and civil infrastructure projects. With clients now demanding buildings that demonstrate value for money over the long term, WLCC has become an essential tool for those involved in the design, construction, operation and risk analysis of construction projects.

WLCC risk management is one of the important issues facing building assets executives today. As spending on building assets rises, asset owners become increasingly worried about WLCC optimisation throughout the life span of facilities; consequently, they become highly vulnerable to the risk of operational costs. Usually, when decision makers are faced with an investment choice under uncertain conditions, their main concern is to avoid projects whose actual economic outcome might be less favourable than what is acceptable, resulting in the risk of missing out on potential investment opportunities.

Thus, the objective of WLCC risk management should be to assist decision makers in evaluating whole life alternatives so that investment success is maximised. Usually traditional methods are used to optimise this process. However, traditional approaches to risk management have failed miserably because of their demand for mysterious statistical data that the end user does not have (Koller 1999). The key to successful WLCC risk-process and risk modeling is to build a WLCC framework that requires from the user nothing more than they presently can provide. This can be a challenge that can be addressed through the use of a variety of techniques. That is why it is important to use a combination of risk management techniques (depending on the stage of assessment) for risk assessment in WLCC, ranging from simple deterministic approaches to uncertainty assessment (e.g. sensitivity and break even analysis methods which are easy to use and understand and require no additional methods of computation beyond the ones used in LCC analysis), to very sophisticated methods based on probabilities, artificial intelligence (AI) and a hybrid of both techniques.

The reasons why it fails to embrace WLCC are:

- The lack of universal methods and standard formats for calculating whole life costs.
- The difficulty in integration of operating and maintenance strategies at the design phase.
- The scale of the data collection exercise, data inconsistency.
- The requirement for an independently maintained database on performance and cost of building components.

(c) Need for Corporate Governance: Corporate Governance is integral to the existence of the company. It is needed to create a corporate culture of transparency, accountability and disclosure.

(i) Corporate Performance: Improved governance structures and processes help ensure quality decision-making, encourage effective succession planning for senior management and enhance the long-term prosperity of companies, independent of the type of company and its sources of finance.

(ii) Enhanced Investor Trust: Investors consider Corporate Governance as important as financial performance when evaluating companies for investment.

(iii) Combating Corruption: Companies that are transparent, and have sound system that provide full disclosure of accounting and auditing procedures, allow transparency in all business transactions, provide environment where corruption will certainly fade out.

(iv) Better Access to Global Market: A Good Corporate Governance system attracts investment from global investors, which subsequently leads to greater efficiencies in the financial sector.

(v) Enhancing Enterprise Valuation: Improved management accountability and operational transparency fulfill investors 'expectations and confidence on management and corporations, and return, increase the value of corporations.

(vi) Accountability: An Investor relation 'is essential part of good Corporate Governance. Investors have directly/indirectly entrusted management of the company for creating enhanced value for their investment.

(vii) Easy Finance from Institutions: Evidence indicates that well-governed companies receive higher market valuations.

(viii) Reduced Risk of Corporate Crisis and Scandals: Effective Corporate Governance ensures efficient risk mitigation system in place.