



Paper 13- Corporate Laws And Compliance

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Full Marks: 100

Time allowed:3 hours

Section A

1. Answer all questions mentioned below. Mark the correct answer (only indicate A or B or C or D) and give justification. [2 × 10 = 20]

Multiple choice question

- (i) A company shall have its Registered Office from the date _____ of its incorporation.
- (A) 7th day
 - (B) 15th day
 - (C) 30th day
 - (D) one month
- (ii) Power to recognize Stock Exchange vests with
- (A) Central Government
 - (B) State Government
 - (C) SEBI
 - (D) Supreme Court
- (iii) A company has 9 Directors, on 01-01-2016. The office of 2 Directors have fallen vacant on 02-01-2016. The quorum required for conducting a board meeting is
- (A) 4
 - (B) 3
 - (C) 2
 - (D) 5
- (iv) A memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulation in this behalf is known as
- (A) Red Herring Prospectus
 - (B) Abridged Prospectus
 - (C) Shelf Prospectus
 - (D) Deemed Prospectus
- (v) Sec Must have a minimum of One Director.- The Sole Shareholder can himself be the Sole Director. - The Company may have a maximum number of 15 directors. These features belong to - (a) Private company (b) Small company (c) Public company (d) OPC
- (A) Private company
 - (B) Small company
 - (C) Public company
 - (D) OPC
- (vi) Significant accounting transaction' means any transaction other than:
- (A) payment of fees by a company to the Registrar

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- (B) payments made by it to fulfill the requirements of this Act or any other law
- (C) allotment of shares to fulfill the requirements of this Act
- (D) All of the above

(vii) The Chairman of the Insurance Regulatory and Development Authority shall hold office for a term of _____ from the date on which he enters upon his office and should be eligible for reappointment.

- (A) 3 Years
- (B) 4 Years
- (C) 5 Years
- (D) 6 Years

(viii) Every Company shall hold the first Board meeting within,

- (A) 3 months of its incorporation
- (B) 30 days of its incorporation,
- (C) 15 days of its incorporation
- (D) 4 months of its incorporation

(ix) Dormant company is formed and registered under this Act:

- (A) for a future project
- (B) To hold an asset
- (C) Intellectual property and has no significant accounting transaction
- (D) All of the above

(x) Which of the following is not the objective of Competition Act, 2002?

- (A) To prevent practices having adverse effect on competition
- (B) To prevent competition in market
- (C) To protect the interest of the consumers
- (D) To ensure freedom of trade carried on by the other participant in marketing India and for matter connected there with or incidental thereto

Answer:1

(i)	B	Sec.12- A Company shall on and from the fifteenth day of its incorporation have a Regd. Office to receive & acknowledge of communication & notice addressed to it.
(ii)	C	Power to recognize Stock Exchange vests with Central Government. However, Central Government has delegate the power to SEBI vide its notification No. F.No.1/57/SE/93 dated 13.9.94 (
(iii)	B	The total strength shall be 9-2=7 directors. Quorum shall be higher of 2 or 1/3rd of 7. 1/3rd of 7 comes to 2.33. As per Clause (i) of Explanation to section 174(4), any fraction of a number shall be rounded off as 1. Accordingly, the quorum shall be 3 directors (being higher of 2 or 3).
(iv)	B	Abridged Prospectus is a shorter version of the prospectus that includes all the most key elements of the typical prospectus.
(v)	D	These all are the features of One Person Company. The concept of One Person Company has now been introduced in India, through Section 2 (62) of Companies Act, 2013
(vi)	D	This is as per provision related with the meaning and definition of significant accounting transaction as per Companies Act, 2013.
(vii)	C	The Chairman of the Insurance Regulatory and Development Authority shall hold office for a term of five years from the date on which he enters

		upon his office and should be eligible for reappointment. Maximum age of Chairman to be 65 year: [First Proviso to section 5(1)]. No person shall hold office as such Chairman after he has attained the age of 65 years
(viii)	B	As per Sec . 173(1) the 1stBoardMeeting shall be held within 30 days of the date of its incorporation
(ix)	D	As per Companies Act, 2013, where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.
(x)	B	Keeping in view the economic development of the country, the Competition Act, 2002 was laid down to provide for an establishment of a commission not to seek the objective of preventing competition in market.

Section B

Answer any Five Question [16 X 5 =80]

2. (a) Mentioned the classes of companies are outside the purview of the CARO 2016. 10
(b) What are the duties of the inspector as enumerated in Sec 223 of the Companies Act,2013 in relation to his report. (pg 165) 6

Answer:2(a)

The following classes of companies are outside the purview of the CARO 2016.

- (a) Banking company as defined under Section 5 (c) of the Banking Regulation Act, 1949.
(b) Insurance company as defined under the Insurance Act 1938.
(c) Company licensed to operate under Section 8 of the Companies Act 2013 (companies registered with charitable object).
(d) A one person company (OPC) as defined under clause (62) of Section 2 of Companies Act 2013 (OPC means a company which has only one person as a member).
(e) A small company under Section 2 (85) of the Companies Act, 2013.
(1) As per sec 2(85) of Companies Act 2013 small company means a company, other than a public company:
a) Paid up share capital of which does not exceed ₹ 50 lacs or such higher amount as may be prescribed which shall not be more than ₹ 5 crore, and
b) Turnover of which as per its last profit and loss account does not exceed ₹ 2 crore or such higher amount as may be prescribed which shall not be more than ₹ 20 crore.
(2) The following company shall not qualify as a small company:
a) A holding company or a subsidiary company.
b) A company registered under Section 8 of the Act.
c) A company or body corporate governed by any special act.
(f) The auditor of following type of Private Companies are not required to comment on the matter prescribed under CARO 2016:
(1) A private company which is not holding or subsidiary company of a public company, and
(2) A private company having a paid up capital and reserve and surplus not more than

₹ 1 crore as on the balance sheet date, and

- (3) A private company which does not have total borrowing exceeding ₹ 1 crore from any bank and financial institution at any point of time during the financial year, and
- (4) A private company which does not have total revenue exceeding ₹ 10 crore during the financial year.

Note: Such revenue means revenue as disclosed in scheduled III to the Companies Act, 2013 and includes revenue from discontinuing operation

(b) Section 223 of the Act lays down the following provisions in respect of the Inspector's report on investigation conducted under the Chapter XIV:

(i) Submission of interim report and final report [Sub section (1)]: An Inspector appointed under the Chapter (Chapter XIV- Inspection, Inquiry and Investigation) may, and if so directed by the Central Government shall, submit interim reports to that Government, and on the conclusion of the investigation, shall submit a final report to the Central Government.

(ii) Report to be in writing or printed [Sub section (2)]: Every report made under sub section (1) above, shall be in writing or printed as the Central Government may direct.

(iii) Obtaining copy of report [Sub section (3)]: A copy of the above report may be obtained by making an application in this regard to the Central Government.

(iv) Authentication of report [Sub section (4)]: The report of any Inspector appointed under this Chapter shall be authenticated either:

(1) by the seal, if any, of the company whose affairs have been investigated; or

(2) by a certificate of a public officer having the custody of the report, as provided under section 76 of the Indian Evidence Act, 1872, and such report shall be admissible in any legal proceeding as evidence in relation to any matter contained in the report.

(v) Exceptions [Sub section (5)]: Nothing in this section shall apply to the report referred to in section 212 of the Companies Act, 2013.

3(a) Person who are not entitled to initiate insolvency resolution process-Discuss 9
(b) what are the duties of Directors under the provisions of Companies Act,2013 7

Answer: 3(a)

The Code states that a corporate debtor (which includes a corporate applicant in respect of such corporate debtor) shall not be entitled to make an application to initiate corporate insolvency resolution process [Section 11 of Insolvency and Bankruptcy Code, 2016] in the following cases:

(a) when undergoing a corporate insolvency resolution process; or

(b) having completed corporate insolvency resolution process twelve months preceding the date of making of the application; or

(c) or a financial creditor who has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under this Chapter; or

(d) in respect of him a liquidation order has been made.

Thus, application to initiate insolvency resolution process cannot be filed within 12 months or if there were violation of conditions or where order of liquidation has been made .

New Section 29A has been inserted in November, 2017 amended .

Persons not eligible to resolution applicant:

A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person –

(a) is an undercharged insolvent;

(b) is a willful defaulter of the time of submission of resolution plan,

(c) At the time of submission of plan, has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset.

(d) has been convicted for any offence punishable with imprisonment for two years for offences under 12th Schedule of the Code or 7 years under any law.

(e) is disqualified to act as a director under the Companies Act, 2013;

(f) is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;

(g) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code;

(h) has executed a guarantee in favour of a creditor in respect of a corporate debtor;

(i) has been subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or

(j) has a connected person not eligible under clauses (a) to (i).

3(b) Duties of directors (section 166) Duties of directors has been defined in the company Law for the first time under section 166 of the Companies Act, 2013. The following duties have been prescribed for a director under the said section:

(a) He shall act in accordance with the articles of the company, subject to the provisions of this Act.

(b) He shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.

(c) He shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.

(d) He shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.

(e) He shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.

(f) He shall not assign his office and if any assignment so made, it shall be void.

(g) If a director of the company contravenes the provisions of this section, such director shall be punishable with fine which shall not be less than ₹ 1,00,000 but which may extend to ₹ 5,00,000

4(a) What is subsidiary company? [pg 177]

[9]

(b) Removable of members under Section 417 of Companies Act, 2013

[7]

4(a) Subsidiary Company

As per 2 (87) 'subsidiary company' or 'subsidiary', in relation to any other company (that is to say the holding company), means a company in which the holding company:

(a) controls the composition of the Board of Directors, or

(b) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation: For the purposes of this clause:

(1) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause:

a) or sub-clause

b) is of another subsidiary company of the holding company.

(2) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors.

(3) the expression 'company' includes anybody corporate.

(4) 'layer' in relation to a holding company means its subsidiary or subsidiaries.

Removable of members under Section 417 of Companies Act, 2013

Section 417 of the Act contains the provisions as to Removal of Members. According to this Section:

The Central Government may, after consultation with the Chief Justice of India, remove from office the President, Chairperson or any Member, who:

(a) has been adjudged an insolvent, or

(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude, or

(c) has become physically or mentally incapable of acting as such President, the Chairperson, or Member, or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President, the Chairperson or Member, or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest. Provided that the President, the Chairperson or the Member shall not be removed on any of the grounds specified in clauses (b) to (e) without giving him a reasonable opportunity of being heard.

5(a) Conditions for Initial Public Offer. [9]

(b) Power of Commission to regulate its own procedure as per The Competition Act, 2002 [7]

Answer: 5.(a) Conditions for Initial Public Offer.

(a) An issuer may make an initial public offer (an offer of equity shares and convertible debentures by an unlisted issuer to the public for subscription and includes an offer for sale of specified securities to the public by an existing holder of such securities in an unlisted issuer) if:

- (1) The issuer has net tangible assets of at least ` 3 crores in each of the preceding 3 years (of 12 months each) of which not more than 50% are held in monetary assets. If more than 50% of the net tangible assets are held in monetary assets, then the issuer has to make firm commitment to utilize such excess monetary assets in its business or project.
- (2) It has a minimum average pre-tax operating profit of rupees fifteen crore, calculated on a restated and consolidated basis, during the three most profitable years out of the immediately preceding five years.
- (3) The issuer company has a net worth of at least ` 1 crores in each of the preceding 3 full years (of 12 months each).
- (4) The aggregate of the proposed issue and all previous issues made in the same financial year in terms of issue size does not exceed 5 times its pre-issue net worth as per the audited balance sheet of the preceding financial year.
- (5) In case of change of name by the issuer company within last one year, at least 50% of the revenue for the preceding one year should have been earned by the company from the activity indicated by the new name.

(b) Any issuer not satisfying any of the conditions stipulated above may make an initial public offer if:

- (1) The issue is made through the book building process and the issuer undertakes to allot at least 75% of the net offer to public to qualified institutional buyers and to refund full subscription monies if it fails to make allotment to the qualified institutional buyers.

(c) An issuer may make an initial public offer of convertible debt instruments without making a prior public issue of its equity shares and listing.

(d) An issuer cannot make an allotment pursuant to a public issue if the number of prospective allottees is less than one thousand.

(e) No issuer can make an initial public offer if there are any outstanding convertible securities or any other right which would entitle any person any option to receive equity shares after the initial public offer.

5(b) Power of Commission to regulate its own procedure

(a) In the discharge of its functions, the Commission shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government, the Commission shall have the powers to regulate its own procedure.

The Commission shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:

- (1) summoning and enforcing the attendance of any person and examining him on oath.
- (2) requiring the discovery and production of documents.
- (3) receiving evidence on affidavit.
- (4) issuing commissions for the examination of witnesses or documents.
- (5) requisitioning, subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), any public record or document or copy of such of record or document from any office.

(b) The Commission may call upon such experts, from the field of economics, commerce, accountancy, international trade or from any other discipline as it deems necessary to assist the Commission in the conduct of any inquiry by it. The Commission may direct any person:

(1) to produce before the Director General or the Secretary or an officer authorized by it, such books, or other documents in the custody or under the control of such person so directed as may be specified or described in the direction, being documents relating to any trade, the examination of which may be required for the purposes of this Act.

(2) to furnish to the Director General or the Secretary or any other officer authorized by it, as respects the trade or such other information as may be in his possession in relation to the trade carried on by such person, as may be required for the purposes of this Act.

6(a) Power of Reserve Bank to inspect authorized person under Foreign Exchange Management Act, 1999

[8]

(b) How does Money Laundering actually take place?

[8]

Answer: 6(a)

Power of Reserve Bank to inspect authorized person under Foreign Exchange Management Act, 1999

(a) The Reserve Bank may, at any time, cause an inspection to be made by any officer of the Reserve Bank specially authorised in writing by the Reserve Bank in this behalf, of the business of any authorised person as may appear to it to be necessary or expedient for the purpose of:

- (1) verifying the correctness of any statement, information or particulars furnished to the Reserve Bank.
 - (2) obtaining any information or particulars which such authorised person has failed to furnish on being called upon to do so.
 - (3) securing compliance with the provisions of this Act or of any rules, regulations, directions or orders made thereunder.
- (b) It shall be the duty of every authorised person, and where such person is a company or a firm, every director, partner or other officer of such company or firm, as the case may be, to produce to any officer making an inspection under sub-section (1), such books, accounts and other documents in his custody or power and to furnish any statement or information relating to the affairs of such person, company or firm as the said officer may require within such time and in such manner as the said officer may direct.

6(b) The process of Money Laundering generally involves the following three stages:

(a) Placement: The Money Launderer, who is holding the money generated from criminal activities, introduces the illegal funds into the financial systems. This might be done by breaking up large amount of cash into less conspicuous smaller sums which are deposited directly into a Bank Account or by purchasing a series of instruments such as Cheques, Bank Drafts etc., which are then collected and deposited into one or more accounts at another location.

(b) Layering: The second stage of Money Laundering is layering. In this stage, the Money Launderer typically engages in a series of continuous conversions or movements of funds, within the financial or banking system by way of numerous accounts, so as to hide their true origin and to distance them from their criminal source. The Money Launderer may use various channels for movement of funds, like a series of Bank Accounts, sometimes spread across the globe, especially in those jurisdictions which do not co-operate in anti Money Laundering investigations.

(c) Integration: Having successfully processed his criminal profits through the first two stages of Money Laundering, the Launderer then moves to this third stage in which the funds reach the legitimate economy, after getting inseparably mixed with the legitimate money earned through legal sources of income. The Money Launderer might then choose to invest the funds into real estate, business ventures & luxury assets, etc. so that he can enjoy the laundered money, without any fear of law enforcement agencies. The above three steps may not always follow each other. At times, illegal money may be mixed with legitimate money, even prior to placement in the financial system. In certain cash rich businesses, like Casinos (Gambling) and Real Estate, the proceeds of crime may be invested without entering the mainstream financial system at all.

7(a) Explain the OECD principles of Corporate Governance.

[8]

(b) Benefits of CSR programme

[8]

Answer:

7(a) OECD Principles of Corporate Governance

(a) In response to a call by its council, the OECD issued the OECD Principles of Corporate Governance in 1999 after extensive consultations. These were later revised in 2004 following a comprehensive survey of corporate governance practices in and outside the OECD area. Since their launch, the principles have formed the basis for corporate governance initiatives in both OECD and non-OECD countries alike. They represent the minimum standard that

countries with different traditions have agreed on, being applicable to countries with a civil and common law tradition without being unduly prescriptive.

The principles have been devised with four fundamental concepts in mind: responsibility, accountability, fairness and transparency and enabling diversity of rules and regulations. They outline the following:

- (1) the basis for an effective corporate governance framework.
- (2) the rights of shareholders.
- (3) equitable treatment of shareholders.
- (4) the role of stakeholders in corporate governance.
- (5) disclosure and transparency, and
- (6) the responsibilities of the board.

(b) The 2004 revisions covered four main areas:

- (1) a new set of principles on the development of regulatory framework to underpin corporate governance mechanisms for implementation and enforcements.
- (2) additional principles to strengthen the exercise of informed ownership by shareholders that call on institutional investors to disclose their corporate governance policies and to strengthen the rights of shareholders when choosing Board members.
- (3) strengthened principles to reinforce Board oversight and enhance Board members' independent judgment, and
- (4) new and strengthened principles to contain conflicts of interest through enhanced disclosure and transparency (for example, on related party transactions), thus making auditors more accountable to shareholders and promoting auditors' independence

(b) Benefits of CSR programme

As the business environment gets increasingly complex and stakeholders become vocal about their expectations, good CSR practices can only bring in greater benefits, some of which are as follows:

(i) Communities provide the licence to operate: Apart from internal drivers such as values and ethos, some of the key stakeholders that influence corporate behaviour include governments (through laws and regulations), investors and customers. In India, a fourth and increasingly important stakeholder is the community and many companies have started realising that the 'licence to operate' is no longer given by governments alone, but communities that are impacted by a company's business operations. Thus, a robust CSR programme that meets the aspirations of these communities not only provides them with the licence to operate, but also to maintain the licence, thereby precluding the 'trust deficit'.

(ii) Attracting and retaining employees: Several human resource studies have linked a company's ability to attract, retain and motivate employees with their CSR commitments. Interventions that encourage and enable employees to participate are shown to increase employee morale and a sense of belonging to the company.

(iii) Communities as suppliers: There are certain innovative CSR initiatives emerging, wherein companies have invested in enhancing community livelihood by incorporating them into their supply chain. This has benefitted communities and increased their income levels, while providing these companies with an additional and secure supply chain.

(iv) Enhancing corporate reputation: The traditional benefit of generating goodwill, creating a positive image and branding benefits continue to exist for companies that operate effective CSR programmes. This allows companies to position themselves as responsible corporate citizens.

8. Write short notes any four of the following :

4X4=16

- (a)** Persons who are not entitled to initiate insolvency resolution process
- (b)** Guidance on implementation of principles and Core Elements. (National Voluntary Guidelines 2011)
- (c)** Disadvantages of the family Businesses over non-family Businesses
- (d)** CSR can mean different things to different people. Explain
- (e)** Strategy to tackle black money

Answer:

8(a) Persons who are not entitled to initiate Insolvency resolution process

The Code states that a corporate debtor (which includes a corporate applicant in respect of such corporate debtor) shall not be entitled to make an application to initiate corporate insolvency resolution process [Section 11 of Insolvency and Bankruptcy Code, 2016] in the following cases :

- (a) when undergoing a corporate insolvency resolution process ; or
- (b) having completed corporate insolvency resolution process twelve months preceding the date of making of the application ; or
- (c) or a financial creditor who has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under this Chapter ; or
- (d) in respect of him a liquidation order has been made. Thus, application to initiate insolvency resolution process cannot be filed within 12 months or if there were violation of conditions or where order of liquidation has been made.

(b) Guidance on Implementation of Principles and Core Elements

Successful implementation of the Principles and Core elements require that all of them need to be integrated and embedded in the core business processes of an enterprise. This requires, specifically that the following actions are taken:

- (a) **Leadership:** The Chairman/CEO/Owner/Manager should play a proactive role in convincing the board/Top Management and staff within the business that adopting these principles is crucial-for success. The board and senior management need to ensure that the principles are fully understood across the organization and comprehensively executed.
- (b) **Integration:** These principles and core elements must be embedded in the Business policies and strategies emanating from the core business purpose of the organization. For this to happen, these must align with each businesses internal values and/or must provide clear business benefits.
- (c) **Engagement:** Building strong relationships and engaging with stakeholders on a consistent, continuous basis is crucial.
- (d) **Reporting:** Implementation process includes disclosure by companies of their impact on society an environment to their stakeholders.

(c) Disadvantages of the Family Businesses over Non-Family Businesses

(a) Staff recruitment: External talent can be reluctant to join the family businesses as they would not enjoy the same freedom that the other businesses offer. (b) Raising funds for growth: Access to capital is required to grow and evolve. However, it is difficult to raise the required funds for the family businesses than non-family businesses. (c) Family conflicts: Conflict among the family members is the major setback for the family businesses. (d) Ownership vs. Management: Separating the ownership from the management and reaching a consensus on the roles of family members in the business are two important issues for the family businesses to address.

(d) Corporate Social Responsibilities (CSR) is an integrated combination of policies, programs, education, and practices which extend throughout a corporation's operations and into the communities in which they operate, about how companies voluntarily manage the business processes to produce an overall positive impact on society. CSR can mean different things to different people:

- For an employee it can mean fair wages, no discrimination, acceptable working conditions etc.
- For a shareholder it can mean making responsible and transparent decisions regarding the use of capital.
- For suppliers it can mean receiving payment on time.
- For customers it can mean delivery on time etc.
- For local communities and authorities it can mean taking measures to protect the environment from pollution.
- For non-governmental organizations and pressure groups it can mean disclosing business practices and performance on issues ranging from energy conservation and global warming to human rights and animal rights, from protection of the rainforests and endangered species to child and forced labour, etc.
- For a company, however, it can simply be seen as responding to the needs and concerns of people who can influence the success of the company and/or whom the company can impact through its business activities, processes and products.

(e) Strategy to tackle black money:

The committee has identified the following strategy to tackle black money:

- (a) Preventing generation of black money.
- (b) Discouraging use of black money.
- (c) Effective detection of black money.
- (d) Effective investigation and adjudication.
- (e) Other steps.