

Paper13- Corporate Laws and Compliance

Paper-13: Corporate Laws and Compliance

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 person who fails to get appointed as a director in a general meeting cannot be appointed as
- (A) Additional director
 - (B) Alternate director
 - (C) Independent director
 - (D) Nominee director.
- (ii) A Nidhi shall not accept deposit exceeding times of its net owned funds
- (A) Ten times
 - (B) Fifteen times
 - (C) Twenty times
 - (D) Twenty-five times
- (iii) Which of the following Committee was formed by SEBI for improving standards of Corporate Governance of Listed Companies in India?
- (A) Naresh Chandra Committee
 - (B) N.R. Narayan Murthy Committee
 - (C) Kotak Committee
 - (D) Kumar Mangalam Birla Committee
- (iv) During any financial year Corporate Social Responsibility Committees of the Board shall be constituted by every Company having
- (A) Turnover of Rs 5,000 crores or more.
 - (B) A Net Profit of Rs 2 crores or more.
 - (C) Net Worth of Rs 5 crores or more.
 - (D) Authorized capital of Rs 500 crores or more.
- (v) A minor can be nominated as a nominee in Life Insurance Policy by its
- (A) Drawer
 - (B) Agent
 - (C) Holder
 - (D) Corporation
- (vi) According to Banking Regulation Act 1949, no Banking Company shall pay dividend on its shares until all its

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- (A) Depreciation is fully written off.
- (B) "Capitalized expenses" have been completely written off
- (C) Bad debts are provided in full.
- (D) Contingent liability is settled

(vii) Unless the Articles require a larger number of members, Quorum of a General Meeting of a Producer Company shall be

- (A) 5 members
- (B) one-third of total membership
- (C) one-fourth of total membership
- (D) half of total membership

(viii) Any person aggrieved by any order of Appellate Tribunal, may file an appeal to the Hon'ble Supreme Court within days, from the date of receipt of the order of Appellate Tribunal.

- (A) 30 days
- (B) 60 days
- (C) 90 days
- (D) 120 days

(ix) Unfair competition under the Competition Act, 2002 means adoption of practices viz.

- (A) collusive price fixing.
- (B) allocation of markets.
- (C) discriminatory pricing etc.
- (D) All of the above

(x) Corporate Governance is a blend of the Internal and External Corporate Governance

- (A) Techniques
- (B) Mechanisms
- (C) Systems
- (D) Methods

Answer:

i	A	A person who fails to get appointed as a director in a general meeting cannot be appointed as Additional director.
ii	C	A Nidhi shall not accept deposit exceeding Twenty times of its Net owned funds as per its last audited financial statements.
iii	C	SEBI had formed a committee for improving standards of Corporate Governance of listed Companies in India under the chairmanship of Uday Kotak.
iv	A	According to Section 135(1) of the Companies Act 2013, every Company having net worth of rupees five hundred crores or more, or turnover of ` One thousand crores or more or a net profit of rupees five crores or more during any financial year shall constitute a corporate social Responsibility Committee of the Board. In view of the above, Option (A) Turnover of ` 5000 crores or more which is more than of rupees one thousand crores or more as per required provision stated above should be considered.
v	C	A minor can be nominated as a nominee in life insurance policy by its holder

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vi	B	Sec. 15 prohibits every Banking Co. from paying any dividend on its share until all its capitalized expense completely written off.
vii	C	1/4th membership. (SEC 581 Y)
viii	B	60 Days (Ref. Sec. 423. However Supreme Court if it is satisfied then SC may allow. Further time not more than 60 days)
ix	D	All the above (SEC.40 collusive price fixing; creation of barriers to entry; allocation of market; tie in scales; predatory price; discriminating price etc.
x	B	Corporate Governance is a blend of the internal and external corporate governance mechanisms. The external mechanisms include the managerial labour market, the capital market, takeover and legal systems. The internal governance mechanisms include the board of directors and most important is ownership

Section B

Answer any Five Question [16 X 5 =80]

2. (a) Discuss-Conversion of companies already registered [8]
(b) What are the Prohibitions and restrictions regarding political contribution under Section 182 of the Companies Act, 2013 [8]

Answer:

2(a) According to Section 18 of the Companies Act, 2013, a company may convert itself in some other class of company by altering its memorandum and articles of association. Following is the law with respect to the conversion of the companies already registered.

- (a) By alteration of memorandum and articles: A company of any class registered under this Act may convert itself as a company of other class under this Act by alteration of memorandum and articles of the company in accordance with the provisions of this Chapter.
- (b) File an application to the Registrar: Wherever such conversion of companies is required to be done, the company shall file an application to the Registrar, who shall after satisfying himself that the provisions applicable for registration of companies have been complied with, close the former registration of the company.
- (c) Issue a certificate of incorporation: After registering the required documents, issue a certificate of incorporation in the same manner as its first registration.
- (d) No effect on the debts, liabilities etc. incurred before conversion: The registration of a company under this Section shall not affect any debts, liabilities, obligations or contracts incurred or entered into, by or on behalf of the company before conversion and such debts, liabilities, obligations and contracts may be enforced in the manner as if such registration had not been done.

2(b) Prohibitions and restrictions regarding political contribution under Section 182 of the Companies Act, 2013

- (a) Notwithstanding anything contained in any other provision of this Act, a company may contribute any amount directly or indirectly to any political party. Here, political party means a political party registered under section 29A of the Representation of the People Act, 1951.

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- (b) The following companies are not allowed to contribute to any political party:
- (1) a Government company; and
 - (2) a company which has been in existence for less than three financial years.
- (c) The aggregate of the amount which may be so contributed by the company in any financial year shall not exceed seven and a half per cent of its average net profits during the three immediately preceding financial years.
- (d) No such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors and such resolution shall be deemed to be justification in law for the making and the acceptance of the contribution authorised by it.
- (e) Without prejudice to the generality of the provisions of sub-section (1),
- (1) a donation or subscription or payment caused to be given by a company on its behalf or on its account to a person who, to its knowledge, is carrying on any activity which, at the time at which such donation or subscription or payment was given or made, can reasonably be regarded as likely to affect public support for a political party shall also be deemed to be contribution of the amount of such donation, subscription or payment to such person for a political purpose.
 - (2) the amount of expenditure incurred, directly or indirectly, by a company on an advertisement in any publication, being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like, shall also be deemed:
 - a) where such publication is by or on behalf of a political party, to be a contribution of such amount to such political party, and
 - b) where such publication is not by or on behalf of, but for the advantage of a political party, to be a contribution for a political purpose.
- (f) Every company shall disclose in its profit and loss account any amount or amounts contributed by it to any political party during the financial year to which that account relates. [Section 182(3)].
- (g) If a company makes any contribution in contravention of the provisions of this section, 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. [Section 182(4)].

- 3(a) (i) Discuss the applicability of Insolvency and Bankruptcy Code, 2016 [5]**
(ii) Draw the structure of Regulatory Mechanism and Regulatory Bodies as per Insolvency and Bankruptcy Code, 2016 [3]

(b) A meeting of members of Joka Agricultural Equipment's Limited was convened under the orders of the Court for the purpose of considering a scheme of compromise and arrangement. The meeting was attended by 200 members holding 500000 shares. 70 members holding 400000 shares in the aggregate voted for the scheme. 120 members holding 90000 shares in aggregate voted against the scheme. 10 members holding 10000 shares abstained from voting. Examine with reference to the relevant provisions of the Companies Act, 1956 whether the scheme was approved by the requisite majority? [8]

Answer:

3(a)(i) Applicability of Insolvency and Bankruptcy Code, 2016

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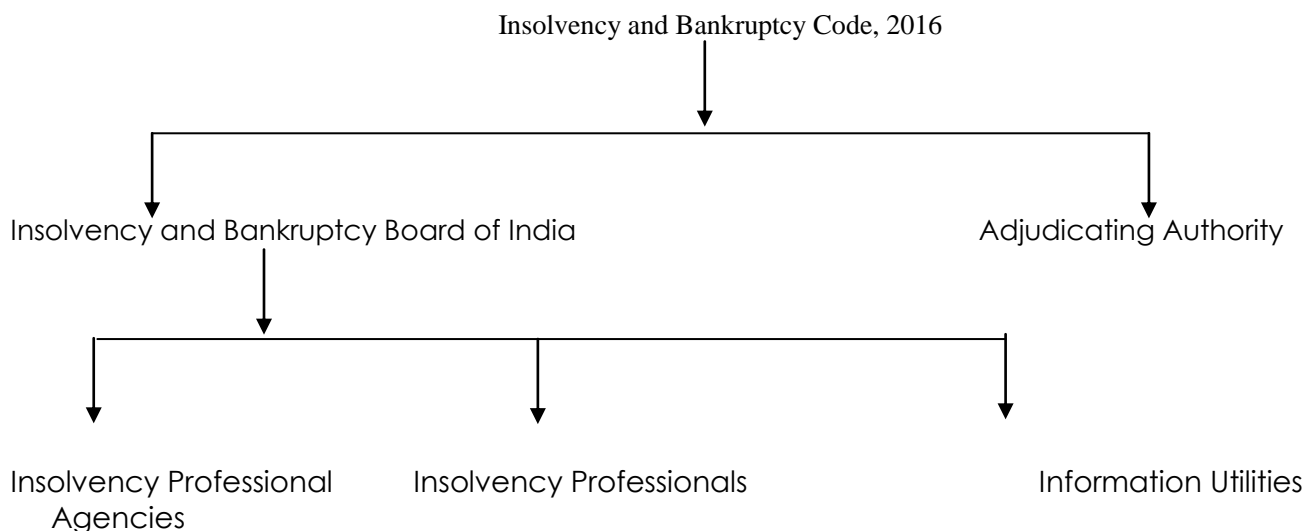
The provisions of Insolvency and Bankruptcy Code, 2016 applies to the following, in relation to their insolvency, liquidation, voluntary liquidation or bankruptcy, as the case may be (Section 2 of Insolvency and Bankruptcy Code, 2016).

- (a) Companies incorporated under Companies Act
- (b) Companies governed under special Act (so far as of Insolvency and Bankruptcy Code, 2016 is consistent with those special Acts i.e. provisions of Special Act will prevail over of Insolvency and Bankruptcy Code, 2016)
- (c) Limited Liability Partnership (LLP)
- (d) Other body corporates as may be notified by Central Government
- (e) Partnership firms and individuals.
- (f) Personal guarantors to corporate debtors:
- (g) Partnership firms and proprietorship firms; and
- (h) Individuals, other than persons referred to in clause (e).

Code not applicable to financial service providers - The Insolvency and Bankruptcy Code is not applicable to corporates in finance sector. Section 3(7) of Insolvency and Bankruptcy Code, 2016 states that "Corporate person" shall not include any financial service provider. Thus, the Code does not cover Bank, Financial Institutions, Insurance Company, Asset Reconstruction Company, Mutual Funds, Collective Investment Schemes or Pension Funds.

3(a)(ii) The regulatory mechanism as per The Insolvency and Bankruptcy Code, 2016 would be based on the following five pillars:

- Insolvency and Bankruptcy Board of India
- Adjudicating Authority
- Insolvency Professional Agencies
- Insolvency Professionals
- Information Utilities



3(b) Compromise or Arrangement: According to sub-section (2) of the section 391 of the Companies Act, 1956, the scheme of compromise and arrangement must be approved by a resolution passed with a majority in number representing three-fourths in value of the creditors, or members, or class of members, as the case may be, present and voting either in person or, by proxy.

The majority is dual, in number and in value. A simple majority of those voting is sufficient. Whereas the 'three-fourths' requirement relates to value. The three-fourths value is to be computed with reference to paid-up capital held by members present and voting at the

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meeting.

In this case 200 members attended the meeting, but only 190 members voted at the meeting. As 70 members voted in favour of the scheme the requirement relating to majority in number (i.e. 95) is not satisfied.

190 members who participated in the meeting held 4,90,000 shares, three-fourth of which works out to 3,67,500 while 70 members who voted for the scheme held 4,00,000 shares. The majority representing three-fourths in value is satisfied.

Thus, in the instant case, the scheme of compromise and arrangement of Joka Agricultural Equipments Limited is not approved as though the value of shares voting in favour is significantly more, the number of members voting in favour do not exceed the number of members voting against.

4(a)(i) ABC Private Limited is a company in which there are eight shareholders. Can a member holding less than one-tenth of the share capital of the company apply to the Tribunal for relief against oppression and mismanagement? Give your answer according to the provisions of the Companies Act, 2013.

(ii) Does the scheme of compromise or arrangement require approval preference shareholder?

[4+3]

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

[9]

Answer:

4(a)(i) Under section 244 of the Companies Act, 2013, in the case of a company having share capital, the following member(s) have the right to apply to the Tribunal under section 241:

- (a) Not less than 100 members of the company or not less than one-tenth of the total number of members, whichever is less; or
- (b) Any member or members holding not less than one-tenth of the issued share capital or the company provided the applicant(s) have paid all the calls and other sums due on the shares.

In the given case, since there are eight shareholders. As per the condition (a) above, 10% of 8 i.e. 1 satisfies the condition. Therefore, a single member can present a petition to the Tribunal, regardless of the fact that he holds less than one-tenth of the company's share capital.

4(a) (ii) 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/Tribunal 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/Tribunal.

4(b) 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

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(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)(i) Define Indian Depository Receipts.

(ii) What conditions to be followed for issue of Indian Depository Receipts

[3+6]

(b) What Constitutes Competition Law and Policy? Objectives of the Competition Act, 2002 [7]

Answer:

5(a)(i) A foreign company can access Indian securities market for raising funds through issue of Indian Depository Receipts (IDRs).

An IDR is an instrument denominated in Indian Rupees in the form of a depository receipt created by a Domestic Depository (custodian of securities registered with the Securities and Exchange Board of India) against the underlying equity of issuing company to enable foreign companies to raise funds from the Indian securities markets.

An issuing company making an issue of IDR is required to satisfy the following:

- (a) it should be listed in its home country.
- (b) it should not be prohibited to issue securities by any regulatory body.
- (c) it should have a track record of compliance with securities market regulations in its home country

5(a)(ii) Conditions for issue of IDR.

An issue of IDR is subject to the following conditions:

- (a) issue size should not be less than Rs 50 crore.
- (b) procedure to be followed by each class of applicant for applying should be mentioned in the prospectus.
- (c) minimum application amount should be Rs 20,000.
- (d) at least 50% of the IDR issued should be allotted to qualified institutional buyers on proportionate basis.
- (e) the balance 50% may be allocated among the categories of non-institutional investors and retail individual investors including employees at the discretion of the issuer and the manner of allocation has to be disclosed in the prospectus. Allotment to investors within a category will be on proportionate basis. Further, at least 30% of the IDRs issued will be allocated to retail individual investors and in case of under-subscription in retail individual investor category, spill over to other categories to the extent of under-subscription may be permitted.
- (f) At any given time, there will be only one denomination of IDR of the issuing company.

5(b) Competition law and policy is defined as those Government measures that affect the behaviour of enterprises and structure of the industry with a view to promote efficiency and maximize welfare.

The two elements of such Government measures are:

Competition Policy: Set of policies, such as liberalized trade policy, relaxed FDI policy, de-regulation, etc., that enhances competition in the markets.

Competition Law: To prevent anti-competitive practices with minimal intervention.

Objectives of the Competition Act, 2002

Keeping in view of the economic development of the country, the Competition Act, 2002 was laid down to provide for an establishment of a Commission seeks to achieve the following objectives:

- (a) to prevent practices having adverse effect on competition.

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- (b) to promote and sustain competition in markets.
- (c) to protect the interests of consumers.
- (d) to ensure freedom of trade carried on by other participants in markets in India and for matters connected therewith or incidental thereto.

The objectives of the Act are sought to be achieved through the instrumentality of the Competition Commission of India (CCI) which has been established by the Central Government with effect from 14th October, 2003.

- 6(a) What is external commercial borrowings? Discuss the purpose for which it is taken [8]**
(b) What is the meaning of security interest as per SARFAESI Act? Can SARFAESI proceedings be initiated against the guarantor to the credit facility? Can proceedings against the guarantor be initiated first and then against the borrower? [8]

Answer:

6(a) External Commercial Borrowings (ECB): ECBs are commercial loans raised by eligible resident entities from recognised non-resident entities and should conform to parameters such as minimum maturity, permitted and non-permitted end-uses, maximum all-in-cost ceiling, etc. The parameters apply in totality and not on a standalone basis. The framework for raising loans through ECB (herein after referred to as the ECB Framework) comprises the following three tracks:

- (1) Medium term foreign currency denominated ECB with minimum average maturity of 3/5 years.
- (2) Long term foreign currency denominated ECB with minimum average maturity of 10 years.
- (3) Indian Rupee (₹) denominated ECB with minimum average maturity of 3/5 years.

Forms of ECB: The ECB Framework enables permitted resident entities to borrow from recognized nonresident entities in the following forms:

- (a) Loans including bank loans.
- (b) Securitized instruments (e.g., floating rate notes and fixed rate bonds, non-convertible, optionally convertible or partially convertible preference shares/debentures).
- (c) Buyers' credit.
- (d) Suppliers' credit.
- (e) Foreign Currency Convertible Bonds (FCCBs).
- (f) Financial Lease, and
- (g) Foreign Currency Exchangeable Bonds (FCEBs),

6(b) The term "security interest" has been defined in section 2(zf) of the SARFAESI Act, 2002, as amended by the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016 (Amendment Act).

Broadly, it includes the following: a. Where the property is tangible in nature: (i) Right title or interest those created for security; (ii) Mortgage created under section 58 of the Transfer of Property Act, 1881 conferring the right to the lender to sell the property on default; (iii) Charge created on immovable property under section 100 of the Transfer of Property Act, 1881; (iv) Hypothecation created on movable property - defined in section 2(1)(n) of the SARFAESI Act, 2002 and includes all forms of security interest created on movable properties except by virtue of which the possession is taken by the creditor, i.e., pledge; (v) Assignment of rights created for the purpose of creating a security and not for the purpose of transferring. (vi) Right or interest created by way of financial lease, hire purchase or conditional sale -

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Though from legal point of view, these are ownership interests, however, for the purpose of SARFAESI Act, these have been recognised as security interests.

SARFAESI Act defines the term borrower in section 2(f) in the following manner - "borrower" means any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution and includes a person who becomes borrower of a securitisation company or reconstruction company consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance;

As stated in the law quoted above, the term borrower includes anyone who has extended guarantee for a financial assistance. Therefore, enforcement proceedings under the SARFAESI Act can be initiated against the guarantors as well. Note, however, that SARFAESI is available only for enforcement of security interest. That is, if the guarantor has granted a security interest, the same may be enforced under SARFAESI.

Yes.

There is no specific provision in the Act which requires the secured lender to proceed first against the principal borrower and then against the guarantor.

7(a) The Financial Reporting Council (FRC) is responsible for high standards of Corporate Governance. Explain this statement along with the aims of FRC [8]

(b) What is the minimum contribution the companies are required to make towards CSR as per Companies Act, 2013. [8]

Answer:

7(a) Financial Reporting Council

The Financial Reporting Council (FRC) has six operating bodies: the Accounting Standards Board (ASB), the Auditing Practices Board (APB) the Board for Actuarial Standards (BAS), the Professional oversight Board, the Financial Reporting Review Panel (FRRP) and the Accountancy and Actuarial Discipline Board (AADB). The importance placed on corporate governance is evidenced by the fact that, in March 2004, the FRC set up a new committee to lead its work on corporate governance. Overall, the FRC is responsible for promoting high standards of corporate governance. It aims to do so by:

- maintaining an effective Combined Code on Corporate Governance and promoting its widespread application;
- ensuring that related guidance, such as that on internal control, is current and relevant;
- influencing EU and Global Corporate Governance Developments;
- helping to promote boardroom professionalism and diversity; • encouraging constructive interaction between company boards and institutional shareholders. The FRC has carried out several consultative reviews of the Combined Code which led to the amended Combined Code in 2006, and subsequently in 2008. The latest review took place in 2008. The frequency of the reviews are both an indicator of the FRC's responsibility for corporate governance of UK companies which involves leading public debate in the areas and its response to the global financial crisis which has, in turn, affected confidence in aspects of corporate governance

7(b) Required minimum contribution of the Companies towards CSR:

(A) The Board of every company shall ensure that the company spends, in every financial

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year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR Policy.

(B) The company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for CSR activities.

(C) If the company fails to spend such amount, the Board shall, in its report, specify the reasons for not spending the amount.

(D) Companies may build CSR capacities of their own personnel as well as those of their implementing agencies through Institutions with established track records of at least three financial years. However, such expenditure shall not exceed five percent of total CSR expenditure of the company in one financial year.

8. Write short notes any four of the following:

4X4=16

(a) Producer Companies

(b) Benefits of Listing

(c) Explain the right of a citizen to obtain foreign exchange under "current account transaction".

(d) Activities not to be considered as CSR Activities

(e) Disadvantage of the Family Businesses over Non-Family Businesses

Answer:

8(a) Producer Companies

The Companies (Amendment) Act, 2002 has introduced provisions relating to Producer Companies vide Sections 581A to 581ZT under Part-IXA of the Companies Act, 1956. Section 465 of the Companies Act, 2013, deals with the provisions relating to repeal of certain enactments and savings. However, Section 465 (1) of the Companies Act, 2013 has retained the provisions relating to Producer Companies and clarifies that these provisions shall continue to be in force in a manner as if the Companies Act, 1956 has not been repealed until a special Act is enacted for Producer Companies.

In view of the explicit provisions contained in the Companies Act, 2013, the Producer Companies are continued to be governed by the Companies Act, 1956 (Section 581A to 581ZT) for the time being. Thus, under this topic 'Producer Companies', wherever the word 'Act' is used, it refers to the Companies Act, 1956.

It must be understood that the concept of Producer companies has not taken off despite there being enough potential in view of some of the irritants like restricted tenure of directors of maximum five years. People who have for long been associated with co-operative and other such movements in India have found that the tenure of five years is too short and would force people out of the producer companies. The tenure should be suitably enhanced. The Government has done well to retain the old provisions of Companies Act, 1956, but should give a try to remove the irritants so that the movement takes off.

8(b) Benefits of Listing

The following benefits are available when securities are listed by a company in the stock exchange:

(a) public image of the company is enhanced.

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- (b) the liquidity of the security is ensured making it easy to buy and sell the securities in the stock exchange.
- (c) tax concessions are made available both to the investors and the companies.
- (d) listing procedure compels company management to disclose important information to investors enabling them to make crucial decisions with regard to holding or disposing of such securities.
- (e) Shares for listed companies command better credibility as they could be offered as security for loans from Banks and Fls.

8(c) Current account transaction means any transaction which is not a capital account transaction and includes:-

- (i) Trade payments and short term banking and credit facilities in the ordinary course of business;
 - (ii) Payment of interest and income from investment;
 - (iii) Remittance of living expenses of parents, spouse and children residing abroad on their foreign travel for medical facilities and education of children;
- Any citizen can draw foreign exchange from authorised person, subject to any restriction imposed by RBI.

8(d) Activities not to be considered as CSR Activities: The Companies (CSR Policy) Rules, 2014 provides for some activities which are not considered as CSR activities:

- (1) The CSR projects or programs or activities undertaken outside India.
- (2) the CSR projects or programs or activities that benefit only the employees of the company and their families.
- (3) Contribution of any amount directly or indirectly to any political party under section 182 of the Act.
- (4) Expenses incurred by companies for the fulfillment of any Act/Statute of regulations (such as Labour Laws, Land Acquisition Act etc.) would not count as CSR expenditure under the Companies Act.

8(e) 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.