

Paper-13: CORPORATE LAWS AND COMPLIANCE

Answer to PTP_Final_Syllabus 2012_Dec2015_Set 3

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

Paper-13: CORPORATE LAWS AND COMPLIANCE

Full Marks: 100

Time Allowed: 3 Hours

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

Question 1: Answer all questions

[20 Marks]

- (a) Poppy Limited, a banking company maintained the record of all transactions for a period of 3 years from the date of cessation of the transactions between the clients and the company. Decide whether the Company has fulfilled its obligation under the provisions of the Prevention of Money Laundering Act, 2002. **3**
- (b) Mrs. Sukla, a resident outside India, is likely to inherit from her father some immovable property in India. Are there any restrictions under the provisions of the Foreign Exchange Management Act, 1999 in acquiring or holding such property? State whether Mrs. Sukla can sell the property and repatriate outside India the sale proceeds. **3**
- (c) Indus Inc. is a company registered in USA and carrying on Trading Activity, with Principal Place of Business in Mumbai. Since the company did not obtain registration or make arrangement to file Return, the State VAT Officer having jurisdiction, intends to serve show cause notice on the Foreign Company. As Standing Counsel for the Department, advise the VAT Officer on valid service of Notice. **3**
- (d) The Super Traders Association was constituted by two Joint Hindu Families consisting of 51 major and 5 minor members. The Association was carrying the business of trading as retailers with the object for acquisitions of gain. The Association was not registered as a company under the Companies Act or other law. State whether Super Traders Association is having any legal status? Will there be any change in the status of this Association if the members of the Super Traders Association is subsequently reduced to 45. **3**
- (e) Desert Rose Limited submitted the documents for incorporation on 5th October, 2014. It was incorporated and certificate of incorporation of the company was issued by the Registrar on 20th October, 2014. The company on 14th October, 2014 entered into a contract which created its contractual liabilities. The company denies the said liability on the ground that company is not bound by the contract entered into prior to issuing of certificate of incorporation. Decide under the provisions of the Companies Act, 2013 whether the company can be exempted from the said contractual liability. **3**
- (f) "In the long run those business who do not respond to society's needs favorably, will survive". Comment **3**
- (g) How the meetings of the audit committee should be undertaken as per clause 49 of listing agreement. **2**

Answer:

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(a) As per section 12, the records of prescribed transactions shall be maintained for a period of 5 years from the date of such transaction (viz. the transaction between the clients and the banking company).

In the given case, Poppy Limited has maintained the records of transactions only for a period of 3 years from the date of cessation of the transactions. Thus, Poppy Limited has failed to maintain the records for the period of 5 years as prescribed under section 12. Therefore, Poppy Limited has defaulted in compliance of section 12.

(b) As per Section 6(5), a person resident outside India may hold, own or transfer any immovable property situated in India if such property is inherited from a person resident in India.

Accordingly, Mrs. Sukla is entitled to acquire as well as hold the immovable property in India inherited by her. Also, Mrs. Sukla is entitled to sell the immovable property in India and repatriate outside India the sale proceeds of such immovable property.

(c) The VAT Officer is advised to serve the show cause notice on the foreign company in accordance with the provisions of section 383 of the Companies Act, 2013, i.e. by addressing it to the person whose name and address had been delivered to the Registrar under section 380, and sending it to such person by -

- (i) post; or
- (ii) hand delivery; or
- (iii) electronic mode, viz. e-mail.

(d) Super Traders Association is an illegal association since the number of adult members exceeds 50.

Effect of subsequent reduction in number of members would not make any change in the status of Super Traders Association, since an illegal association continues to be an illegal association even though, subsequently, the number of members is reduced below 50.

(e) The company is not bound by the contract entered into on 20.10.2014 since a pre-incorporation contract is not binding on the company, as the company was not in existence when such contract was entered into. Thus, the company is exempted from the said liability.

However, the company shall be bound by the contract entered into on 20.10.2014, if the company, after incorporation, has adopted the pre-incorporation contract in accordance with the provisions of Sec. 15 and 19 of Specific Relief Act, 1963.

(f) Society gives business the license to exist which may be revoked or amended at anytime if the business fails to fulfill the expectations of the society. Thus, in order to retain its powers, a business organization should fulfill its social responsibility. The iron law states that, in the long run, those who do not use power in a manner which society considers responsible will tend to lose it. The implication of the 'iron rule' is that the business organizations must recognize that avoiding social responsibility would lead to the gradual erosion of power. Hence, the given statement is incorrect.

(g) The Audit Committee should meet at least four times in a year and not more than four months shall elapse between two meetings. The quorum shall be either two members or one third of the members of the audit committee whichever is greater, but there should be a minimum of two independent members present.

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Question 2: Answer any four questions

[60 Marks]

Question 2(a)

- (i) Examine the validity of the resolution passed at the Annual General Meeting of a public company for payment of dividend at a rate higher than that recommended by the board of directors.
- (ii) Explain the manner in which the 'Accounting Standards' may be prescribed under the Companies Act, 2013.
- (iii) Abhishek Company Ltd. in its first general meeting appointed six directors whose period of office is liable to be determined by rotation. Briefly explain the procedure and rules regarding retirement of these directors.

[4+6+5 = 15]

Answer:

- (i) 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:
- (a) 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.
 - (b) The rate of dividend proposed/recommended by the Board may be reduced by the members.
 - (c) The rate of dividend proposed/recommended by the Board cannot be increased by the members.
 - (d) 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.

(ii) The Accounting Standards are prescribed under section 133 of the Companies Act, 2013. The provisions of section 133 are explained as follows:

- The power to prescribe the accounting standards vests with the Central Government.
- Stages in prescribing the accounting standards are as follows:
 - (a) At the first stage, the Institute of Chartered Accountants of India (ICAI) recommends the Standards of Accounting.
 - (b) At the second stage, these Standards of Accounting shall be examined by the National Financial Reporting Authority (NFRA). NFRA may also make its own recommendations.
 - (c) At the third stage, the Central Government examines the recommendations made by NFRA. Then, the Central Government may prescribe, after consultation with NFRA, the Accounting Standards.
- The standards of accounting as specified under the Companies Act, 1956 shall be deemed to be the accounting standards until accounting standards are specified by the Central Government under section 133 of the Companies Act, 2013 (Rule 7(1) of the Companies (Accounts) Rule, 2014).

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- Till the National Financial Reporting Authority is constituted under section 132 of the Act, the Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by ICAI in consultation with and after examination of the recommendations made by the National Advisory Committee on Accounting Standards constituted under section 210A of the Companies Act, 1956 (Rule 7(2) of the Companies (Accounts) Rule, 2014).

(iii) Not less than $\frac{2}{3}$ rd of total number of directors shall be the directors whose period of office is liable to determination by retirement by rotation (any fraction contained in that $\frac{2}{3}$ rd shall be rounded off as 1).

Such directors are referred to as rotational directors. However, the articles of a company may provide for greater number of rotational directors. Articles may even provide that all the directors shall be rotational directors [Section 152(6)].

As per 152(6), at the first annual general meeting and every subsequent annual general meeting, $\frac{1}{3}$ rd (or nearest to $\frac{1}{3}$ rd) of directors liable to retire by rotation shall retire from the office. The directors liable to retire by rotation shall be those who have been longest in the office. In case, two or more directors were appointed on the same day, the directors liable to retire shall be determined by an agreement between them. In the absence of any such agreement, their names shall be determined by lots.

In the given case, it is given that the first general meeting has appointed 6 directors whose period of office is liable to be determined by rotation. It means that all the 6 directors appointed in the first general meeting shall be the rotational directors. Therefore, 2 directors ($\frac{1}{3}$ rd of 6) shall retire at the ensuing annual general meeting. These directors shall be eligible for reappointment.

A separate resolution shall be moved for reappointment of both the directors (Section 162 of the Companies Act, 2013).

Question 2(b)

(i) A company is required to pay dividend to its shareholders within 30 days of its declaration. State the circumstances when a company will not be deemed to have committed any offence even if it does not pay within 30 days.

(ii) What are the legal provisions to be complied with, in respect to remuneration of auditors.

(iii) In Arjun Ltd. three Directors were to be appointed. The item was included in agenda for the Annual General Meeting scheduled on 30th September, 2014, under the category of 'Ordinary Business'. All the three persons as proposed by the Board of Directors were elected as Directors of the company by passing a 'single resolution' avoiding the repetition (multiplicity) of resolution. After the three directors joined the Board, certain members objected to their appointment and the resolution. Examine the provisions of Companies Act, 2013 and decide whether the contention of the members shall be tenable and whether both the appointment of Directors and the 'single resolution' passed at the Company's Annual General Meeting shall be void.

[6+5+4 = 15]

Answer:

(i)

(a) Time limit for payment of dividend - The dividend shall be paid within 30 days from the date of declaration of dividend.

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(b) **Exceptions** - In the following cases, no default is deemed to have been committed by the company, even though the dividend is not paid within 30 days of its declaration:

1. Where dividend could not be paid by reason of the operation of any law.
2. Where a shareholder has given directions to the company regarding payment of dividend, but those directions cannot be complied with.
3. Where dividend is lawfully adjusted by the company against any sum due to it from the shareholder.
4. Where there is a dispute regarding the right to receive the dividend.
5. Where the non-payment of dividend is not due to any default of the company.

(c) **Penalty for non-payment**

1. **Director:** Every director who is knowingly a party to the default shall be liable for simple imprisonment upto 2 years and a fine of ₹ 1,000 per day for each day of default.
2. **Company:** The Company shall be liable to pay simple interest @ 18% per annum during the period for which the default continues.

(ii) The provisions relating to remuneration of auditors are explained as follows:

1. **Remuneration to be fixed in general meeting** - The remuneration of the auditor of a company shall be fixed -
(a) in the general meeting; or
(b) in such manner as may be decided in the general meeting.

2. **Remuneration to be fixed by the Board** - In case, the first auditor is appointed by the Board, the remuneration of the first auditor shall be fixed by the Board.

3. **Certain sums to be included in remuneration**

- The remuneration shall, in addition to the fee payable to an auditor, include -
(a) the expenses, if any, incurred by the auditor in connection with the audit of the company; and
(b) any facility extended to the auditor.
- However, the remuneration shall not include any remuneration paid to the auditor for any other service rendered by him at the request of the company.

(iii) At a general meeting, two or more persons cannot be appointed as directors by a single resolution unless a resolution that appointment shall be so made has first been agreed to by the meeting without any vote being cast against it. A resolution moved in contravention of this provision shall be void, whether or not objection was raised at the time when such resolution was passed (Section 162).

In the present case, appointment of 3 directors has been made by passing a single resolution. The resolution is void since before moving the resolution for appointment of 3 directors by a single resolution, no resolution was passed to the effect that the appointment of 3 directors shall be made by a single resolution. It is immaterial that no member objected to such appointments.

Thus, the contention of the members that the appointment of the 3 directors is void, is correct. Also, the single resolution passed for appointments, is void.

Question 2(c)

(i) Is it possible for the Board of directors of the company to revoke the dividend declared at the Annual General Meeting?

(ii) Is it possible for a retiring director to continue in his office beyond the date of the annual general meeting which had to be adjourned due to disturbances at the meeting? Explain.

(iii) A Public Company secures residential accommodation for the use of its managing director by entering into a license arrangement under which the company has to deposit a certain amount with the landlord to secure compliance with the terms of the license agreement. Can it be considered as a loan to a director?

[5+7+3 = 15]

Answer:

(i) No revocation of dividend

Revocation of dividend is not possible. Section 127 of the Companies Act, 2013 requires that dividend once declared must be paid within 30 days of its declaration. Section 127 of the Companies Act, 2013 also contains certain grounds on which non-payment of dividend does not result in a penalty. 'Revocation of dividend' is not a ground for non-payment of dividend as per Section 127 of the Companies Act, 2013. Therefore, dividend once declared becomes a debt due from the company and so it cannot be revoked.

Exceptions

In the following cases, the declared dividend may be revoked:

- (a) Where declaration of dividend is ultra vires (i.e., where dividend is declared although the company has not earned sufficient profits), the declared dividend can be revoked. However, if illegally declared dividend is paid, the directors shall be liable to indemnify the company, i.e., they shall be personally liable.
- (b) Where the company ceases to be a going concern, declared dividend may be revoked. For example, if, after declaration of dividend, but before payment of dividend, certain events happen which make the 'going concern' assumption invalid (e.g., loss of undertaking of the company by fire), declared dividend may be revoked.

Complaint relating to non-payment of dividend

- (a) Right to complain: Where an application for transfer of shares {i.e., transfer deed} is presented to the company, but the company wrongfully refuses to transfer the shares, complaint for non-payment of dividends can be made by the transferor and not by the transferee.
- (b) Jurisdiction of Court: Failure to pay dividend arises at the place where the registered office of the company is situated. Therefore, only the court having jurisdiction over the registered office can entertain the complaint (Hanuman Prasad Gupta v Hiralal).

(ii) At every annual general meeting, 1/3rd (or nearest to 1/3rd) of rotational directors shall retire from office [Section 152(6)]. If the place of retiring director is not filled and the meeting has not resolved not to fill the vacancy, the meeting shall be adjourned automatically to the next week at the same time and place or if that day is a public holiday, then to next succeeding day which is not a public holiday. If at the adjourned meeting also, the place of retiring director is not filled and the meeting has not resolved not to fill the vacancy, the retiring directors shall be deemed to be reappointed [Section 152(7)].

Where the company does not hold annual general meeting, the directors liable to retire at the annual general meeting cannot continue in office [B.R. Kundra v Motion Pictures Association (1976) 46 Comp Cas 339].

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In the given case the annual general meeting has been duly convened and therefore the directors have fulfilled their obligation of convening the annual general meeting. So, pending the decision in the annual general meeting, a retiring director can continue in office even after the date of annual general meeting. His reappointment depends upon the decision taken in the adjourned annual general meeting and may be discussed as follows:

- (a) If the adjourned meeting resolves to reappoint him, he shall be reappointed.
- (b) If the resolution for the reappointment of retiring director is lost in the adjourned annual general meeting, he shall not be reappointed.
- (c) If no resolution is passed at the adjourned meeting relating to his appointment and the adjourned meeting does not resolve not to fill the vacancy, he shall be automatically reappointed. However, the automatic reappointment shall not apply in the following cases:
 - (i) Where a resolution for his appointment was put and lost.
 - (ii) Where a resolution is required for his appointment.
 - (iii) Where he is disqualified for appointment.
 - (iv) Where the retiring director has, in writing, expressed his unwillingness to be reappointed.
 - (v) Where a resolution in contravention of section 162 is passed.

(iii) As per section 185 of the Companies Act, 2013, no company shall, directly or indirectly, make any loan to a director.

In the present case, the company has provided the managing director with a housing accommodation. It does not amount to a loan because of the following reasons:

- The company has not given any deposit or advance to the managing director. The amount deposited with the landlord cannot be said to be an 'indirect loan' to the managing director.
- It is a usual practice to give a security deposit to the landlord with whom a rent or lease agreement is entered into. Thus, the company has made the security deposit on account of bonafide business considerations.
- It is of no concern of the managing director as to the terms on which the company secures residential accommodation for him.

It is the company and not the director who has entered into the lease agreement. Therefore, the company can at anytime use the accommodation for any other purpose and the managing director will have to vacate it, as and when desired by the company.

Question 2(d)

(i) Notice has been received from a member proposing himself for appointment as a director after the issue of notice convening the annual general meeting. As a secretary of a public company, how will you deal with the above situation?

(ii) Yash, one of the directors of the company, sends a letter to the company secretary for convening the Board meeting at an early date. Comment.

(iii) Advise M/s Super Flop Ltd. in respect of payment of remuneration of ₹ 40,000 per month to the whole time director of the company running in loss and having an effective capital of ₹ 95.00 lacs.

[6+4+5 = 15]

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Answer:

(i) Section 160 recognises the right of a person, who is not a retiring director, to stand for directorship. A notice received under section 160 shall be valid, if it complies with the following requirements:

- The notice is given at least 14 days before the general meeting.
- It is deposited at the registered office of the company.
- The notice is signed by the person eligible to give notice.
- A sum of ₹ 1 lakh or such higher amount as may be prescribed, is deposited along with the notice.

As per Section 101, the notice of every general meeting shall be sent by the company to the members at least 21 clear days before the meeting. However, section 160 does not require that the notice to be given to the company under section 160 must be received by the company before issue of notice of the general meeting by the company.

In the present case, the notice under section 160 has been received by the company from a member after the company has issued the notice of the annual general meeting. The notice given by the member shall be in accordance with the provisions of section 160 if it is received by the company at least 14 days before the general meeting and the notice complies with other requirements of section 160. In case, the notice given by the member is in accordance with the provisions of section 160, the company shall inform its members about the candidature of the proposed director by serving individual notices or by advertisement in accordance with the provisions of section 160 read with Rule 13 of the Companies (Appointment and Qualification of Directors) Rules, 2014.

(ii) Regulation 67 of Table F provides that any director may requisition a Board meeting. On such requisition -

- (a) the manager or the secretary shall summon the Board meeting; and
- (b) any director may summon the Board meeting.

However, neither the Companies Act, 2013 nor Table F contains any provision regarding postponement of a Board meeting or convening a Board meeting at an early date. Thus, a Board meeting may be convened at an early date if the articles of the company contain a provision in this regard. However, in the absence of any provision in the articles, the secretary should consult the chairman or the managing director and discuss the suitability of holding the Board meeting at an early date.

(iii) Remuneration to a whole time director or managing director may be paid by way of monthly payment or/and specified percentage of net profits. However, except with the approval of the company in general meeting, such remuneration shall not exceed -

- (a) 5% of net profits, if the company has one whole time director or managing director or manager; or
- (b) 10% of net profits, if the company has more than one whole time director or managing director or manager, taken together.

Section II of Part II of Schedule V empowers a company to pay minimum remuneration to its whole time director, managing director or manager, even in case of inadequacy of profits or in case of a loss. As per Section II of Part II of Schedule V, the remuneration to a whole time director depends upon the effective capital of the company. In case of a company having an effective capital of less than ₹ 5 crore, the remuneration payable to whole time director shall not exceed ₹ 30 Lakh per year.

In the given case, M/s Super Flop Ltd. has suffered a loss and so it may pay remuneration to its

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whole time director in accordance with Section II of Part II of Schedule V. Since the effective capital of the M/s Super Flop Ltd. is less than ₹ 5 crore, it may pay a maximum of ₹ 30 Lakh per year to its whole time director. Since the remuneration proposed to be paid to the whole time director is ₹ 40,000 per month, it is permissible, and therefore, no approval of the Central Government is required.

Question 2(e)

(i) The Board of directors of M/s. Serious Consultants Limited, registered in Calcutta, proposes to hold the next Board meeting in the month of December, 2014. They seek your advise in respect of the following matters:

- 1. Can the Board meeting be held in Chennai, when all the directors of the company reside at Calcutta?**
- 2. Whether the Board meeting can be called on a national holiday and that too after business hours as the majority of the directors of the company have gone to Chennai on vacation.**
- 3. Is it necessary that the notice of the Board meeting should specify the nature of business to be transacted?**

Advise with reference to the relevant provisions of the Companies Act, 2013.

(ii) The Central Government has powers to fix limit on remuneration of managerial personnel. Comment.

(iii) Explain the duty of the Registrar to make a report on the inspection made by him.

[(2.5+3+2.5) + 4+3 = 15]

Answer:

(i) There is no provision in the Companies -Act, 2013 which requires that a Board meeting shall be held -

- (a) only on a day that is not a national holiday;
- (b) only at the registered office of the company or at any other place within the city, town or village in which the registered office of the company is situated;
- (c) only during business hours.

The answer to the given problem is as under:

1. Section 96 requires that an annual general meeting shall be held only at the registered office of the company or at any other place within the city, town or village in which the registered office of the company is situated. However, there is no similar provision in respect of holding of a Board meeting. As such, a Board meeting can be held anywhere in India or even outside India.

2. As per section 174, if a Board meeting could not be held for want of quorum, then, unless the article otherwise provide, the meeting shall automatically stand adjourned to the same day, time and place in the next week, or if that day is a national holiday, then to next succeeding day, which is not a national holiday. It means that a Board meeting adjourned for want of quorum can be held only on a day which is not a national holiday. However, there is nothing in the Act which prohibits the holding of an original Board meeting on a national holiday. Similarly, the Act does not require that a Board meeting shall be held only during business hours.

In the instant case, the directors intend to hold a Board meeting on a national holiday and after business hours, which is permissible.

3. No form or contents of notice has been specified by the Act. Agenda of a Board meeting is not required to be sent along with the notice of a Board meeting unless there is some

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express provision of the Ac which requires a specific notice to move a resolution at a Board meeting.

Therefore, the notice of Board meeting need not specify the nature of business to be transacted.

(ii) The Central Government or a company may, while according its approval under section 196, to any appointment or to any remuneration under section 197 in respect of cases where the company has inadequate or no profits, fix the remuneration within the limits specified in this Act, at such amount or percentage of profits of the company, as it may deem fit and while fixing the remuneration, the Central Government or the company shall have regard to the following:

- (a) The financial position of the company
- (b) The remuneration or commission drawn by the individual concerned in any other capacity
- (c) The remuneration or commission drawn by him from any other company
- (d) Professional qualifications and experience of the individual concerned
- (e) Such other matters as may be prescribed.

3. The duties of the Registrar is as follows:

- (a) After the inspection of the books of account or an inquiry under section 206 and other books and papers of the company under section 207, the Registrar or inspector shall submit a report in writing to the Central Government along with such documents, as he may deem fit.
- (b) The report of the Registrar may include a recommendation that further investigation into the affairs of the company is necessary. The Registrar shall state the reasons supporting such recommendation.

Question 3: Answer any two questions

[20 Marks]

Question 3(a)

(i) Analyze CSR as a Corporate Brand

(ii) Discuss the relevance of OECD Guidelines for Corporate Governance of State-owned enterprises.

[5+5 =10]

Answer

(i) CSR as a Corporate Brand:

In an economy where corporates strive for a unique selling proposition to differentiate themselves from their competitors, CSR initiatives enable corporates to build a stronger brand that resonates with key external stake-holders – customers, general public and the government.

Businesses are recognising that adopting an effective approach to CSR can open up new opportunities, and increasingly contribute to the corporates' ability to attract passionate and committed workforces.

Corporates in India are also realising that their reputation is intrinsically connected with how well they consider the effects of their activities on those with whom they interact. Wherever the corporates fail to involve parties, affected by their activities, it may put at risk their ability to create wealth for themselves and society.

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Therefore, in terms of business, CSR is essentially a strategic approach for firms to anticipate and address issues associated with their interactions with others and, through those interactions, to succeed in their business endeavours. The idea that CSR is important to profitability and can prevent the loss of customers, shareholders, and even employees is gaining increasing acceptance.

Further, CSR can help to boost the employee morale in the organisation and create a positive brand-centric corporate culture in the organisation. By developing and implementing CSR initiatives, corporates feel contented and proud, and this pride trickles down to their employees.

The sense of fulfilling the social responsibility leaves them with a feeling of elation. Moreover it serves as a soothing diversion from the mundane workplace routine and gives one a feeling of satisfaction and a meaning to their lives.

(ii) The relevance of OECD Guidelines for Corporate Governance of State-owned enterprises:

Many of the developing countries still continue to have a dominant presence of state-owned enterprises. Hence, OECD thought it appropriate to evolve a set of governance guidelines for the state-owned enterprises as it did for the private enterprises in member countries. 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-ordinated 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. If properly implemented, these and other recommended reforms would go a long way to ensure that state ownership is exercised in a professional and accountable manner, and that the state plays a positive role in improving corporate governance across all sectors of our economies. The result would be healthier, more competitive, and transparent enterprises'.

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.
- State-owned Enterprises should not be exempt from the application of general laws and regulations. Stakeholders including competitors should have access to efficient redress and an even-handed ruling when they believe that their rights have been violated.

State-owned Enterprises 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.

Question 3(b)

(i) What is the role of SEBI in promoting Corporate Governance?

(ii) What is Corporate Citizenship? Is this fundamentally different from Corporate Social Responsibility?

Answer

(i) The role of SEBI in promoting Corporate Governance:

Good Governance in capital market has always been high on the agenda of SEBI. This is evident from the continuous updation of guidelines, rules and regulations by SEBI for ensuring transparency and accountability. In the process, SEBI had constituted a Committee on Corporate Governance under the Chairmanship of Shri Kumar Mangalam Birla.

Based on the recommendations of the Committee, the SEBI had specified principles of Corporate Governance and introduced a new clause 49 in the Listing agreement of the Stock Exchanges in the year 2000. These principles of Corporate Governance were made applicable in a phased manner and all the listed companies with the paid up capital of ₹3 crores and above or net worth of ₹25 crores or more at any time in the history of the company, were covered as of March 31, 2003.

SEBI, as part of its endeavour to improve the standards of corporate governance in line with the needs of a dynamic market, constituted another Committee on Corporate Governance under the Chairmanship of Shri N. R. Narayana Murthy to review the performance of Corporate Governance and to determine the role of companies in responding to rumour and other price sensitive information circulating in the market in order to enhance the transparency and integrity of the market.

With a view to promote and raise the standards of Corporate Governance, SEBI on the basis of recommendations of the Committee and public comments received on the report and in exercise of powers conferred by Section 11(1) of the Securities and Exchange Board of India Act, 1992 read with section 10 of the Securities Contracts (Regulation) Act 1956, revised the existing clause 49 of the Listing agreement vide its circular SEBI/MRD/SE/31/2003/26/08 dated August 26, 2003. It clarified that some of the sub-clauses of the revised clause 49 shall be suitably modified or new clauses shall be added following the amendments to the Companies Act 1956 and 2013, the Companies (Amendment) Bill/Act 2003, so that the relevant provisions of the clauses on Corporate Governance in the Listing Agreement and the Companies Act remain harmonious with one another.

(ii) A new terminology that has been gaining grounds in the business community today is Corporate Citizenship. Corporate citizenship is defined by the Boston College Centre for Corporate Citizenship, as the business strategy that shapes the values underpinning a company's mission and the choices made each day by its executives, managers and employees as they engage with society.

According to this definition, the four key principles that define the essence of corporate citizenship are:

- Minimise harm,
- Maximise benefit,
- Be accountable and responsive to key stakeholders and
- Support strong financial results.

Corporate citizenship, sometimes called corporate responsibility, can be defined as the ways in which a company's strategies and operating practices affect its stakeholders, the natural environment, and the societies where the business operates. In this definition, corporate citizenship encompasses the concept of corporate social responsibility (CSR), which involves companies, explicit and mainly discretionary efforts to improve society in some way, but is also directly linked to the company's business model in that it requires companies to pay attention to all their impacts on stakeholders, nature, and society. Corporate citizenship is, in this

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definition, integrally linked to the social, ecological, political, and economic impacts that derive from the company's business model; how the company actually does business in the societies where it operates; and how it handles its responsibilities to stakeholders and the natural environment.

Thus, corporate citizenship, similar to its CSR concept, is focusing on the membership of the corporation in the political, social and cultural community, with a focus on enhancing social capital. Notwithstanding the different terminologies and nomenclature used, the focus for companies today should be to focus on delivering to the basic essence and promise of the message that embodies these key concepts – CSR and Corporate Citizenship.

Corporate Social Responsibility is not a fad or a passing trend, it is a business imperative that many Indian companies are either beginning to think about or are engaging within one way or another. While some of these initiatives may be labeled as corporate citizenship by some organisations, their basic message and purpose is the same.

Question 3(c)

(i) Can whole life risk be analysed?

(ii) Discuss, "Governance in India – The Path Ahead"

[5+5 = 10]

Answer

(i) Several methodologies are available to deal with WLCC risk analysis. The techniques that can be used in WLCC risk assessment decision making might be summarised as deterministic, probabilistic and AI. Deterministic methods measure the impact on project outcomes of changing one uncertain key value or a combination of values at a time. In contrast, probabilistic methods are based on the assumption that no single figure can adequately represent the full range of possible outcomes of a risky investment (Fuller & Petersen 1996). Rather, a large number of alternative outcomes must be considered and each possibility must be accompanied by an associated probability from a probability distribution, followed by a statistical analysis to measure the degree of risk. Using a deterministic approach, the analyst determines the degree of risk on a subjective basis. AI methods differ from the above approaches and use historical data to model cost and uncertainty in WLCC analysis. None of these techniques can be applied to every situation. The best method depends on the relative size of the project, availability of data and resources, computational aids and skills, and user understanding of the technique being applied.

Following the identification, quantification and development of risk responses, the related vulnerabilities of building assets need to be determined and planned for. This provides the basis on which risk management plans and decisions are made. The risk management planning process is concerned with putting in place the procedure for:

- (i) What response actions are needed
- (ii) When these response actions are needed
- (iii) How these actions are implemented
- (iv) Who is responsible for the implementation, control and monitoring of the actual progress of risk responses and management strategies that have been developed to deal with the identified risk.

(ii) Governance in India: The Path Ahead

The Indian economy on the eve of the Twelfth Plan is characterized by strong macro-fundamentals and good performance over the Eleventh Plan period, though clouded by some slowdown in growth in the current year with continuing concern about inflation and a sudden increase in uncertainty about the global economy. The objective of the Eleventh Plan was faster and inclusive growth and the initiatives taken in the Eleventh Plan period have resulted in substantial progress towards both objectives. Inevitably, there are some weaknesses that need to be addressed and new challenges that need to be faced. Some of the challenges themselves emanate from the economy's transition to a higher and more inclusive growth path, the structural changes that come with it and the expectations it generates. There are external challenges also arising from the fact that the global economic environment is much less favourable than it was at the start of the Eleventh Plan. These challenges call for renewed efforts on multiple fronts, learning from the experience gained, and keeping in mind global developments. We focus on the backdrop of target setting and areas of focus of the Eleventh Plan. India entered the Eleventh Plan period (2007-2012) with an impressive record of economic growth. The vision for the Eleventh Plan prominently included an improvement in governance. Over the years, the governments at the Centre and the States have launched a large number of initiatives at substantial public expense to achieve the objectives of growth with poverty alleviation and inclusiveness. Experience suggests that many of these initiatives have floundered because of poor design, insufficient accountability and also corruption at various levels. Increasingly, there is demand for effective implementation without which expanded government intervention will be infructuous. The strategy for the Eleventh Plan was therefore aimed at bringing about major improvements in governance which would make government-funded programmes in critical areas more effective and efficient. The best possible way of achieving this objective may be by involving communities in both the design and implementation of such programmes, although such involvement may vary from sector to sector. For achieving the vision of the Eleventh Plan, it is extremely important to experiment with programme design to give more flexibility to decision making at the local level. It is especially important to improve evaluation of the effectiveness of how government programmes work and to inject a commitment to change their designs in the light of the experience gained. Evaluation must be based on proper benchmarks and be scientifically designed to generate evidence-based assessment of different aspects of programme design. Along with greater transparency and feedback from community participation, this is particularly important in the case of programmes delivering services directly to the poor. Accountability and transparency are critical elements of good governance. The Right to Information Act (RTI) enacted in 2005 empowers people to get information and constitutes a big step towards transparency and accountability.