

Paper-13: CORPORATE LAWS AND COMPLIANCE

Answer to PTP_Final_Syllabus 2012_June2016_Set 1

	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]

- (i) The Registrar of Padma Co. Ltd issued on 8th February, 2013, a Certificate of Incorporation dated 5th February, 2016. An allotment of shares was made on 5th February, 2016. Is the allotment void. Comment. 3**

- (ii) State the provisions that would be attracted for non-compliance of maintenance of books of accounts u/s 128 of Companies Act, 2013. 3**

- (iii) Debenture with voting rights can be issued only if permitted by the Articles of Association. Comment. 3**

- (iv) Special resolution is to be passed for winding up by court. Comment. 3**

- (v) State the sources from where a Bonus issue may be funded as per SEBI (ICDR), 2009 – Regulation 94. 3**

- (vi) Write short note on Corporate Governance Committee. 3**

- (vii) Discuss briefly the Corporate Citizenship. 2**

Answer:

(i) The effective date of incorporation is the date mentioned in the Certificate of Incorporation. In the given case, the date mentioned on the Certificate of Incorporation is 5th February, 2016, though the certificate has been issued on 8th February, 2016. Hence the allotment of shares made in the given case is valid. [Jubilee Cotton Mills vs Lewis]

(ii) Non-compliance of Maintenance of books of accounts would attract the following punishment to the following persons:

1. Persons Covered

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- Managing Director
- Whole-Time Director in charge of Finance
- Chief Financial Officer
- Any person authorized by Board of Directors to ensure compliance with Sec. 128

2. Punishment

- Imprisonment of maximum 1 year, or
- Fine of Minimum ₹ 50,000, Maximum ₹5,00,000 or
- Both.

(iii) Debenture holders are mere lenders to the company, who are generally secured for payment. Hence they do not have any right as to voting in meetings. A company shall not issue any debentures carrying any voting right [Sec 71(2) of Companies Act, 2013]. Hence, a company cannot issue any debentures carrying voting rights at any meeting of the company, whether generally or in respect of any particular class of business. So, the given statement is incorrect.

(iv) As per Section 433(a) of Companies Act, 1956, the members of a Company, by passing a special resolution, may resolve that the company would be wound up by the Court. However this method is not very common because when the members decide to wind-up the Company, voluntary winding-up is preferable, since –

- (a) It is cheaper and speedier
- (b) Liquidator is appointed by the Members, and
- (c) Members have better control over the winding-up proceedings.

(v) Sources of Bonus Issue [Regulation -94]

1. The Bonus issue shall be made out of Free Reserves built out of genuine profits or securities premium collected in cash only and reserves created by revaluation of Fixed Assets shall not be capitalized for the purpose of issuing bonus shares.
2. Bonus share shall not be issued in lieu of dividend.

(vi) Corporate Governance Committee: A company may constitute Corporate Governance Committee to develop and recommended the board a set of corporate governance guidelines applicable to the company, implement policies and processes relating to corporate governance principles to review periodically, the corporate governance guideline of the company. Many companies give the mandate of corporate governance to nomination committee and is given the nomenclature Nomination and Corporate Governance Committee.

(vii) Corporate citizenship means and requires that the corporate should act, behave and perform like a good citizen and contribute their best to their stakeholders. They should keep away from the profit maximisation theory and should understand that they can exist for a long lime only if they are committed to the nation, society and the public at large.

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Question 2: Answer any four questions

[60 Marks]

Question 2(a)

- (i) State the manner of investment of assets by an insurer, as per Insurance Act, 1938.
- (ii) Mr. Ram Kamal is an Indian Citizen. He has been residing in India since his birth. He left India for employment in Australia on 25th February, 2001. The contract of employment is for 2 years. He comes back on 24th February, 2003. What is his residential status for the financial years 2000-01, 2001-02, 2002-03 and 2003-04?
- (iii) The agenda for the meeting of the Board of Directors of Brilliant Ltd held on 20-09-2014 for adopting the annual accounts for the year ended 31-03-2014 included an item relating to payment of dividend. At the Meeting it became apparent that the profits made during the year ended 31-03-2014 were inadequate to declare dividend. The Board was keen to maintain the rate of 20% dividend on the Equity Shares as declared in the previous years so as to maintain the image of the Company. The Company has some accumulated profits earned in previous years, which were transferred to Reserves. Advise the Company as to how it should go about to achieve the objective to pay dividend at the rate of 20% on the Equity Shares.

[5+5+5 =15]

Answer:

- (i) The manner of investment of assets by an insurer is stated in Section 27, 27A, 27B and 27C of Insurance Act, 1938.
1. Investment of certain sum by an insurer carrying on life insurance business [Section 27(1)]
- Every insurer shall invest and at all times keep invested assets equivalent to not less than the sum of –
- (a) the amount of his liabilities to holders of life insurance policies in India on account of matured claims, and
- (b) the amount required to meet the liability on policies of life insurance maturing for payment in India, less -
- (i) the amount of premiums which have fallen due to the insurer on such policies but have not been paid and the days of grace for payment of which have not expired, and
- (ii) any amount due to the insurer for loans granted on and within the surrender values of policies of life insurance maturing for payment in India issued by him or by an insurer whose business he has acquired and in respect of which he has assumed liability in the following manner:
2. (a) 25% of the said sum in Government securities, a further sum equal to not less than 25% of the said sum in Government securities or other approved securities; and

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(b) the balance in any of the approved investments, as may be specified by the regulations subject to the limitations, conditions and restrictions specified therein.

3. Investment of certain sum by an insurer carrying on general insurance business [Section 27(2)]

In the case of an insurer carrying on general insurance business, 20% of the assets in Government Securities, a further sum equal to not less than 10% of the assets in Government Securities or other approved securities and the balance in any other investment in accordance with the regulations of the Authority and subject to such limitations, conditions and restrictions as may be specified by the Authority in this regard.

(ii) The given problem can be answered as follows:

Financial year 2000-01: Mr. Ram Kamal resided in India for the whole year in the preceding financial year, i.e., 1999-2000. However, he leaves India for employment outside India in the current financial year, i.e., 2000-01. It is immaterial whether the period of employment is certain or not. Therefore, for the financial year 2000-01 he is a 'Person resident outside India'.

Financial year 2001-02: Mr. Ram Kamal resided for more than 182 days in the preceding financial year, i.e., 2000-01. However, he has left India for employment outside India. Therefore, he is a 'Person resident outside India'.

Financial year 2002-03: Mr. Ram Kamal did not reside at all in the preceding financial year, i.e., 2001-02. Therefore, he shall be a 'Person resident outside India' for the financial year 2002-03.

Financial year 2003-04: Mr. Ram Kamal resided for less than 183 days in the preceding financial year, i.e., 2002-03. Therefore, he shall be a 'Person resident outside India' for the financial year 2003-04.

(iii) Dividends out of Reserves can be declared as per Companies (Declaration and Payment of Dividend) Rules, 2014. In case of inadequacy or absence of profits in any year, a Company can declare dividend only out of Free Reserves, on fulfilling the three conditions below:

Rule	Related Point
Rate of Dividend should be \leq Average Rates of Dividend, if any, of 3 immediately preceding years,	<ul style="list-style-type: none">• This Rule is not applicable for a Company which has not declared any Dividend in each of 3 preceding Fin Years.
Amt withdrawn: Amount to be withdrawn from Accumulated Profits \leq 1/10 th of its Paid-Up Capital and Free Reserves.	<ul style="list-style-type: none">• Amount withdrawn shall first be utilised to set off Current Year Losses, before declaration of Equity Dividend.• Paid Up Capital and Free Reserves are as per latest audited Financial Statement.

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Reserves Balance: Balance in Reserves after such withdrawal \geq 15% of its Paid-Up Share Capital.	• Paid Up Capital and Free Reserves are as per latest audited Financial Statement.
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Question 2(b)

(i) ABC Private Ltd was incorporated on 15-09-2015 in the State of Maharashtra by a group of Professional Engineers without any knowledge about the maintenance of the books of account. The Company has appointed you as the Chief Account Officer at New Delhi where the books of account will be maintained. Advise the management with respect to the following under the Companies Act:-

(A) The nature of books to be maintained.

(B) The period for which the accounts have to be preserved, and

(C) The steps to be taken if the books of accounts are to be kept in New Delhi.

(ii) Ashutosh, a practising Chartered Accountant, is attending to the tax matters of Global Florist Ltd, and for that purpose has to regularly attend to the Company from 10.00 A.M. to 2.00 P.M. on all working days. He is paid ₹20,000 p.m. for the same. Global Florist Ltd intends to appoint Ashutosh as its Auditor at the ensuing General Meeting. Advise whether Ashutosh can accept the appointment.

(iii) The Board Meeting of ABC Ltd had the following schedules - 1st January, 30th June, 1st July, and 31st December. The meeting on 31st December could not be held for want of quorum. State whether the Board Meetings were held validly, and also state what shall be the Date of Adjourned Meeting if that day happens to be a National holiday.

(iv) State the rule of holding Board meetings in case of One-person Company.

[5+5+4+1 = 15]

Answer:

(i) The relevant provisions related to books of accounts as per Section 128 of Companies Act, 2013 are as follows:

(A) The nature of books to be maintained.

1. Books of Accounts,
2. Other relevant Books and Papers,
3. Financial Statements for every Financial Year

(B) The period for which the accounts have to be preserved

1. The books of Accounts along with vouchers shall be kept by every company for eight preceding Financial years.

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2. The company in existence less than eight years, shall maintain books in respect of all such preceding years.
3. If the Central Government has ordered an investigation on the company, it should maintain the books for such longer period as directed in this regard.

(C) The steps to be taken if the books of accounts are to be kept in New Delhi.

Books can be maintained at any of the following places:

1. Registered Office,
2. Any other place in India as Board of Directors may decide. In this case, a written notice shall be filed with ROC providing full address of other place, within 7 days of the decision.

Hence to keep books of Accounts in New Delhi the above procedure is to be followed.

(ii) The details of appointment is as follows:

1. **Employee / Officer:** As per Sec. 141(3), an Employee or an Officer of a Company cannot be appointed as its Auditor.
2. **Contract for Services [Sec.144]:** An Auditor may render only those other Services as approved by the BOD or the Audit Committee. These may relate to Taxation, Finance, etc. but the contract should be a "Contract for Services" (retainership), and not a "Contract of Service" (i.e. employment).
3. **Manner of Fees and Work Timings:** There is no prohibition for charging fee on monthly basis towards other services rendered. In the given case, Ashutosh attends office regularly from 10.00 A.M. to 2.00 P.M. on all working days. It should be seen that he is not bound by the office timings but is attending to tax matters regularly during office working hours according to his own convenience.
4. **Nature of Ashutosh's Contract:** In the given case, it is not clear whether Mr. Ashutosh is an Officer or Employee of the Company on a part-time basis, or is a retainer for tax matters.
5. **Conclusion:** Ashutosh's appointment is subject to the nature of the present engagement. If it is a part-time service contract, he cannot be appointed as Auditor. On the other hand, if it is only a retainership, he may be appointed as a Company Auditor, subject to compliance with other qualifications / conditions under Companies Act.

(iii) The rule of conducting a Board Meeting is stated in Section 173 of Companies Act, 2013. The said rule states that,

1. First Board meeting shall be held within 30 days of the date of incorporation, for all companies.
2. Frequency of subsequent Board meeting should be:

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- (a) Minimum 4 meetings every year
- (b) Not more than 120 days gap between two meetings.

The Central Government may, by notification in the Official Gazette, exempt any class or description of companies from this requirement or modify the application of the rule above.

In the given case, the contraventions are:

1. More than 120 days gap between two meetings and the fourth meeting is not held as such.
2. It is to be remembered that adjourned meeting cannot be held on a National Holiday it will be held on next succeeding day not being a National Holiday, unless the AOA provides otherwise.

(iv) For One Person Company with only one Director, Sec.173 & 174 are not applicable, i.e. One Director - so no Meeting, and no Quorum is required

Question 2(c)

(i) Rishab is a Director of Yoga Ltd, Gym Ltd and Pilates Ltd. Yoga Ltd was regular in filing Annual Returns, but did not file Annual Accounts for the year ended 31.03.2013. Further, Yoga Ltd failed to pay interest on loans taken from a Public Financial Institution from 01.01.2013 onwards, and also failed to repay the matured deposits on due date from 01.04.2013 onwards.

Rishab is proposed to be appointed as Additional Director of Free Limited on 01.06.2014. Free Ltd has sought a declaration from Rishab, to the effect that the disqualification u/s 164(2) is not applicable in his case. Rishab seeks your advice on the following -

1. Whether it is in order for him to give declaration sought by Free Ltd in view of the defaults committed by Yoga Ltd?
2. Whether he can continue as a Director in Gym Ltd and Pilates Ltd and also seek re-appointment when he retires by rotation at the AGMs of the respective Companies to be held in September 2014.
3. Advise Rishab on the above. Would your answer be different, if Rishab resigned his office of Director in Yoga Ltd on 31.12.2013?

(ii) The Balance Sheet of Keshav Ltd as at 31st March disclose the following position- in ₹ Crores

Share Capital	100
Reserves & Surplus	300
Secured Loans	150
Unsecured Loans	100
Current Liabilities	70

Mr. Sumit, the Managing Director of the Company approaches the Robust Bank for a Secured Loan ₹ 600 Crores to finance the new projects to be taken up shortly. The Bank seeks your advice whether it can grant the loan of ₹ 600 Crores on the application of Mr. Sumit. Advise the Robust Bank.

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(iii) The Paid Up Share Capital of Advanced Casting Pvt Ltd is ₹1 Crore consisting of 8,00,000 Equity Shares of ₹10 each fully paid up and 2,00,000 Convertible Preference Shares of ₹10 each fully paid up. Quality Forgings Pvt Ltd and Supreme Engineering Pvt Ltd are holding 3,00,000 Equity Shares and 2,50,000 Equity Shares respectively. Quality Forgings Pvt Ltd and Supreme Engineering Pvt Ltd are the Subsidiaries of Unique Machineries Pvt Ltd. Examine –

1. Whether Advanced Casting Pvt. Ltd is the Subsidiary of Unique Machineries Pvt. Ltd.
2. Will your answer be different if Unique Machineries Pvt. Ltd controls the Composition of Board of Directors of Advanced Casting Pvt. Ltd?

[6+4+5 = 10]

Answer:

(i) Disqualifications as stated in Section 164(2) of Companies Act, 2013 is as under:

Any Company (Public or Private) has –

- (a) not filed Financial Statements or Annual Returns for any continuous period of 3 financial years, or
- (b) failed to –
- repay Deposit accepted by it or interest thereon on the due date, or and such failure
 - redeem its Debentures on the due date, or payment of interest due thereon, or
 - pay any dividend declared,
- and such failure to pay or redeem continues for 1 year or more, **then**

Any person who is or has been a Director of the above Defaulting Company is disqualified to be

- (a) re-appointed as Director in that Company (i.e., Defaulting Company), OR
(b) appointed as Director in any other Company,

for 5 years from the date of failure by the Defaulting Company

The Companies (Appointment and Qualification of Directors) Rules, 2014 applies to all Companies.)

In the given case,

- Annual Returns not filed only for 1 year, hence not covered u/s 164(2). Interest on Loans from PFI not covered u/s 164(2). However, Matured Deposits not repaid for 1 year or more, hence disqualification u/s 164(2) is attracted.
- Rishab cannot give the declaration to Free Ltd. He cannot be re-appointed in Gym Ltd or Pilates Ltd.
- If he had resigned from Yoga Ltd, he is not affected by disqualification, and can be appointed in Free Ltd and Pilates Ltd.

(ii) Borrowing above 100% of (Paid Up Capital + Free Reserves) [Sec. 180(1)(c)]

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To borrow money, where the money to be borrowed, together with the money already borrowed by the Company will exceed aggregate of its Paid-Up Share Capital and Free Reserves apart from temporary loans obtained from the company's bankers in the ordinary course of business, the Board of every company (Private or Public) can exercise its powers with the consent of the shareholders in a General meeting, by passing a special resolution.

In the given case,

- Paid up Capital (₹100 Crores) + Free Reserves (₹300 Crores) = ₹400 Crores, out of which present Borrowings (Secured and Unsecured Loans) = ₹ 250 Crores.
- Hence, Maximum Amount that can be borrowed u/s 180 without Shareholders' approval is ₹150 Crores.
- The Management should convene an EGM, obtain approval by Special Resolution, specifying the amount upto which Board can borrow u/s 180(1)(c).

(iii) Issue 1: Quality Forgings Pvt. Ltd and Supreme Engineering Pvt. Ltd are holding Capital amounting to (30,00,000 + 25,00,000) = ₹ 55,00,000 of Advanced Castings Pvt. Ltd, out of ₹ 1 Crore Total Share Capital.

As Quality Forgings Pvt. Ltd and Supreme Engineering Pvt. Ltd are already the Subsidiaries of Unique Machineries Pvt. Ltd, Unique Machineries Pvt. Ltd will be treated as holding more than half of the Nominal Value of Equity Share Capital of Advanced Castings Pvt. Ltd. Hence, Advanced Casting Pvt. Ltd is a Subsidiary of Unique Machineries Pvt. Ltd.

Issue 2: If Unique Machineries Pvt. Ltd controls the composition of Board of Directors of Advanced Casting Pvt. Ltd. it will also be treated as Holding Company. The percentage of shareholding is not required to be analysed in such a case.

Question 2(d)

(i) Sunshine limited was incorporated on 1st April 2007. The Company got its Shares listed at Bombay Stock Exchange on 30th September 2012. The Company at an Extra-Ordinary General Meeting held on 31st October 2014, decided to go for public issue of Equity Shares to an extent of ₹300 Crores. The Net Worth of the Company as per the audited Balance Sheet in the financial years 2012-2013 and 2013-2014 was ₹50 Crores and ₹60 Crores respectively. During the financial year 2013-2014, the Company had already issued Equity Shares amounting to ₹20 Crores. There is no change in the name of the Company or its business activities during the financial year 2013-2014. Referring to SEBI Guidelines, advice the Company on the following -

1. **Whether the Company can go ahead with the public issue of Equity Shares as stated above?**
2. **What would be your advice in case the Net Worth of the Company as per audited Balance Sheet in the Financial Year 2012-2013 and 2013-2014 was ₹20 Crores and ₹30 Crores respectively?**
3. **What would be the position in case the Company in question changed its name to Sundown Ltd during the year 2013-2014, 3 months before filing the offer document**

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and the revenue due to change of business activity suggested by the new name during the financial year 2013-2014 was 40% less than the Total Revenue for the financial year 2012-2013 reckoned from the date of filing the offer document?

(ii) Write a note on Central Registry and its related issues, as per SARFAESI Act, 2002.

(iii) Akshat who was appointed as a Director at the last AGM resigned. The Board filled up the vacancy by appointing Mr. Dinda. But within few days of his becoming Director, Mr. Dinda died. The Board wishes to appoint Zarun in place of Mr. Dinda in the next Board Meeting. Can the Board do so?

[5+6+4 = 15]

Answer:

(i) Basic Conditions: A Listed Company shall be eligible to make a Public Issue of Equity Shares or any other security which may be converted into or exchanged with Equity Shares at a later date, if it satisfies the following conditions –

1. The aggregate of the proposed issue and all previous issues made in the same financial year in terms of size (i.e. offer through Offer Document + Firm Allotment + Promoters Contribution through the Offer Document), does not exceed 5 times its Pre-Issue Net Worth as per the audited Balance Sheet of the last financial year.
2. If the Company has changed its name within the last 1 year (reckoned from the date of filing the Offer Document), at least 50% of the revenue for the preceding 1 full year is earned by the Company from the activity suggested by the new name.

Alternative Condition: A listed company which does not fulfil the conditions given above, shall be eligible to make a Public issue subject to complying with the alternative conditions specified for Unlisted Companies.

In the given case,

- During Financial Year 2014-2015, the Company is eligible to issue a maximum of 5 times of its pre-issue Net Worth, i.e ₹ 60 Crores x 5 times = ₹ 300 Crores. Issue amount of previous year 2013-2014 is not relevant.
- If the Net Worth during the Fin. Year 2013-2014 was ₹30 Crores, the Company is eligible to issue ₹ 30 x 5 = ₹150 Crores only through Public Issue.
- Otherwise the Company should comply with the alternative conditions.

(ii) Central Registry [Section 20]

(ii) Objective: The Central Government may by notification set-up or cause to be set-up a Registry to be known as the "Central Registry" with its own seal, for the purposes of registration of transaction of securitisation and reconstruction of financial assets and creation of security interest under the SARFAESI Act, 2002.

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(iii) Offices: The Head Office of the Central Registry shall be at such place as the Central Government may specify and for the purpose of facilitating registration of transactions, Branch Offices of the Central Registry may be established at such other places as the Central Government may think fit.

(iv) Jurisdiction: The Central Government may by notification define the territorial limits within which an office of the Central Registry may exercise its functions.

(v) Supplementary provisions: The provisions of the SARFAESI Act, 2002 pertaining to the Central Registry shall be in addition to and not in derogation of any of the provisions contained in the Registration Act, 1908, the Companies Act, the Merchant Shipping Act, 1958, the Patents Act, 1970, the Motor Vehicles Act, 1988 and the Designs Act, 2000 or any other law requiring registration of charges and shall not affect the priority of charges or validity thereof under those Acts or laws.

(vi) Central Registrar [Sec.21]:

- a. Appointment: The Central Government may by notification appoint a person for the purpose of registration of transactions relating to Securitisation, reconstruction of financial assets and security interest created over properties, to be known as the Central Registrar.
- b. Other Officers: The Central Government may appoint such other officers with such designations as it thinks fit for the purpose of discharging under the superintendence and direction of the Central Registrar, such functions of the Central Registrar which have been delegated to them.

(vii) Central Register [Sec.22]:

- a. Contents: A Central Register shall be kept at the head office of the Central Registry for entering the particulars of the transactions relating to - (a) Securitisation of financial assets, (b) reconstruction of financial assets, and (c) creation of security interest.
- b. Computerised form: The Central Registrar may keep the records wholly or partly in Computer, Floppies, Diskettes or in any other electronic form subject to the prescribed safeguards.
- c. Control: The register shall be kept under the control and management of the Central Registrar.

(iii)

1. Casual Vacancy u/s 161(4) is a vacancy arising in the office of the Director appointed by the Company in General Meeting before the expiry of his term of office,
2. Here, the vacancy on account of death of Mr. Dinda cannot be considered as a casual vacancy in the office of the Director, as the appointment of Mr. Dinda himself was not originally made by the Company in General Meeting.
3. However, for interest of the smooth working of a Company, if the casual vacancy is in an office which was filled by election at a General Meeting, then the Board may fill

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the casual vacancy as many times as necessary, i.e. if the original appointment was made by the Company in the General Meeting any subsequent casual vacancy to the office of the Director can be filled by the Board. [Company News & Notes 01,07.1963 Issue]

4. Hence, in the above case, the Board can appoint Zarun as Director.

Question 2(e)

- (i) **The Issued, Subscribed and Paid Up Share Capital of ABC Nidhi Company Ltd is ₹ 10 Lakhs consisting of 90,000 Equity Shares of ₹ 10 each fully paid up, and 10,000 Preference Shares of ₹ 10 each fully paid up. Out of the Members of the Company, 400 Members holding one Preference Share each and 50 Members holding 500 Equity Shares applied for relief u/s 397 & 398. As on the date of petition, the Company had 600 Equity Shareholders and 5,000 Preference Shareholders. Examine whether the above petition is maintainable. Will your answer be different, if Preference Shareholders have subsequently withdrawn their consent?**
- (ii) **State what you understand by MCA 21. List the key benefits of MCA 21 Project to various Stakeholders?**
- (iii) **Describe the various measures that can be availed by a securitization or reconstruction company for its asset reconstruction.**

[6+5+4 = 15]

Answer:

- (i) The following members shall have the right to apply to tribunal u/s 397 & 398 of Companies Act, 1956.

For a company having share capital, least of the following:

- Not less than 100 members of the Company, or
- Not less than one-tenth of the total number of its members, or
- Any member(s) holding not less than one-tenth of the issued share capital.

It is to be noted that members are eligible to apply only if all moneys/ calls due on their shares have been paid.

In the given case,

Preference Shareholders are also "Members". Hence, the Eligible Applicant(s) are least of the following -

- Minimum Number of Members = 100 Members.
- Total Number of Members = 600 + 5,000 = 5,600, 1/10th thereon = 560 Members.
- Total Issued Capital = ₹10,00,000. Value of Shares held by the Applicants = (500 Equity Shares x ₹ 10) + (400 Members x 1 Pref. Share x ₹10) = ₹ 90,000. (Min required = ₹ 1,00,000)

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Conclusion: Application made by 450 Members, so, least of the above (not less than 100 Members) condition is satisfied. Hence, application is valid and maintainable. Subsequent withdrawal of consent does not affect the maintainability of the petition.

- (ii) MCA 21 Project is a project of the Ministry of Corporate Affairs carried out under the National e-governance Programme of the Government – an online portal www.mca.gov.in to enable e-filing under the Companies Act, 2013.

Key Benefits of MCA 21 Project to various Stakeholders:

1. Expeditious incorporation of Companies.
2. Simplified and ease of convenience in filing of Forms/ Returns.
3. Better compliance management.
4. Total transparency through e-Governance.
5. Customer-centric approach.
6. Increased usage of professional certificate for ensuring authenticity and reliability of Forms/ Returns.
7. Building up a centralized database repository of corporate data.
8. Enhanced service level fulfillment.
9. Inspection of Public Documents of Companies anytime from anywhere.
10. Registration as well as verification of charges anytime from anywhere.
11. Timely redressal of Investor Grievances.
12. Availability of more time for MCA Employees for monitoring and supervision.

- (iii) Without prejudice to the provisions contained in any other law for the time being in force, a securitisation company or reconstruction company may, for the purposes of asset reconstruction, having regard to the guidelines framed by the Reserve Bank in this behalf, provide for any one or more of the following measures, namely:--

1. the proper management of the business of the borrower, by change in, or takeover of, the management of the business of the borrower;
2. the sale or lease of a part or whole of the business of the borrower;
3. rescheduling of payment of debts payable by the borrower;
4. enforcement of security interest in accordance with the provisions of this Act;
5. settlement of dues payable by the borrower;
6. taking possession of secured assets in accordance with the provisions of this Act.
7. to convert any portion of debt into shares of a borrower company:

Provided that conversion of any part of debt into shares of a borrower company shall be deemed always to have been valid, as if the provisions of this clause were in force at all material times.

Question 3: Answer any two questions

[20 Marks]

Question 3(a)

- (i) State the advantages of Good Corporate Citizenship.**

(ii) Would you advocate the following understandings with relation to CSR? Discuss.

- **Businesses invest the money, therefore they decide the modus operandi of the CSR initiative**
- **Financial resources alone can meet CSR needs of an enterprise.**
- **CSR is interchangeable with corporate sponsorship, donation or other philanthropic activities.**

[5+5 =10]

Answer:

(i) Business cannot exist in isolation; business cannot be oblivious to societal development. The social responsibility of business can be integrated into the business purpose so as to build a positive synergy between the two.

1. CSR creates a favourable public image, which attracts customers. Reputation or brand equity of the products of a company which understands and demonstrates its social responsibilities is very high. Customers trust the products of such a company and are willing to pay a premium on its products. Organizations that perform well with regard to CSR can build reputation, while those that perform poorly can damage brand and company value when exposed. Brand equity is founded on values such as trust, credibility, reliability, quality and consistency.
2. CSR activities have its advantages. It builds up a positive image encouraging social involvement of employees, which in turn develops a sense of loyalty towards the organization, helping in creating a dedicated work force proud of its company. Employees like to contribute to the cause of creating a better society. Employees become champions of a company for which they are proud to work.
3. Society gains through better neighbourhoods and employment opportunities, while the organization benefits from a better community, which is the main source of its workforce and the consumer of its products.
4. Public needs have changed leading to changed expectations from consumers. The industry/business owes its very existence to society and has to respond to needs of the society.
5. The company's social involvement discourages excessive regulation or intervention from the Government or statutory bodies, and hence gives greater freedom and flexibility in decision-making.
6. The internal activities of the organization have an impact on the external environment, since the society is an inter-dependent system.

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7. A business organization has a great deal of power and money, entrusted upon it by the society and should be accompanied by an equal amount of responsibility. In other words, there should be a balance between the authority and responsibility.
8. The good public image secured by one organization by their social responsiveness encourages other organizations in the neighborhood or in the professional group to adapt themselves to achieve their social responsiveness.
9. The atmosphere of social responsiveness encourages co-operative attitude between groups of companies. One company can advise or solve social problems that other organizations could not solve.
10. Companies can better address the grievances of its employees and create employment opportunities for the unemployed.
11. A company with its –ear to the ground through regular stakeholder dialogue is in a better position to anticipate and respond to regulatory, economic, social and environmental change that may occur.
12. Financial institutions are increasingly incorporating social and environmental criteria into their assessment of projects. When making decisions about where to place their money, investors are looking for indicators of effective CSR management.

In a number of jurisdictions, governments have expedited approval processes for firms that have undertaken social and environmental activities beyond those required by regulation.

(ii) In the absence of a universally accepted definition for CSR, there are some myths that surround the concept, and the ones stated are a few of the same. They should be dealt as follows.

Myth # 1: Businesses invest the money, therefore they decide the modus operandi of the CSR initiative

There is a notion that since businesses invest money in society, they are the one who will be deciding upon the modus operandi of the CSR initiative. However this is not true. CSR driven by the mandate of an enterprise alone may not generate desired results. Stakeholders must be involved from the onset in defining an initiative to make it successful. Corporates must not assume that they understand the needs of a community by taking them at face value; stakeholder's needs must be considered within the local context and culture.

Myth # 2: Financial resources alone can meet CSR needs of an enterprise.

In fact, financial resources are only part of the equation. Besides financial resources, it is equally or even more important for the CSR programmes to be well defined and well accompanied by adequate human resources if they are to meet the intended objectives.

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Myth # 3: CSR is interchangeable with corporate sponsorship, donation or other philanthropic activities.

The focus of responsible business practices in the profit sector is hitherto largely confined to community charity-based projects.

While this may have been relevant for the historical context in the mid-90s when Carroll's definition was coined, the current thinking of CSR has moved beyond philanthropy to in fact en-compass all internal and external segments of business operations: employees, market environment and community.

The rationale for CSR has been articulated in a number of ways. In essence, it is about building sustainable businesses, which need healthy economies, markets and communities.

Question 3(b)

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

(ii) Triple Bottom Line Approach of Corporate Social Responsibility (CSR). Discuss.

[5+5 = 10]

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. Circular No. CFD/Policy Cell/7/2014, dated 15-09-2014 provides that the Clause 49 of the Listing Agreement shall be applicable to all companies whose equity shares are listed on a recognized stock exchange. However, compliance with the provisions of Clause 49 shall not be mandatory, for the time being, in respect of the following class of companies:

- (a) Companies having paid up equity share capital not exceeding ₹10 crore and Net Worth not exceeding ₹25 crore, as on the last day of the previous financial year:
Provided that where the provisions of Clause 49 becomes applicable to a company at a later date, such company shall comply with the requirements of Clause 49 within six months from the date on which the provisions became applicable to the company.
- (b) Companies whose equity share capital is listed exclusively on SME and SME-ITP Platforms.

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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 The Securities and Exchange Board of India Act, 1992 read with Securities Contracts (Regulation) Act 1956, revised the existing clause 49 of the Listing agreement from time to time. 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 Companies Act, 2013 and their subsequent amendments, 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) Within the broader concept of corporate social responsibility, the concept of Triple Bottom Line (TBL) is gaining significance and becoming popular amongst corporate. Coined in 1997 by John Ellington, noted management consultant, the concept of TBL is based on the premise that business entities have more to do than make just profits for the owners of the capital, only bottom line people understand. "People, Planet and Profit" is used to succinctly describe the TBL. "People" (Human Capital) pertains to fair and beneficial business practices toward labour and the community and region in which a corporation conducts its business. "Planet" (Natural Capital) refers to sustainable environmental practices. It is the lasting economic impact the organization has on its economic environment. A TBL company endeavors to benefit the natural order as much as possible or at the least does no harm and curtails environmental impact. "Profit" is the bottom line shared by all commerce. The people issues faced by the organization includes -

- i) Health
- ii) Safety
- iii) Diversity
- iv) Ethnicity
- v) Education and literacy
- vi) Prevention of child labour
- vii) Differently – abled

The planet concerns include

- i) Climate change
- ii) Energy
- iii) Water
- iv) Air pollution
- v) Waste management

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vi) Ozone layer depletion, etc.

The need to apply the concept of TBL is caused due to –

- i) Increased consumer sensitivity to corporate social behavior
- ii) Growing demands for transparency from shareholders/stakeholders
- iii) Increase environmental regulation
- iv) Legal costs of compliances and defaults
- v) Concerns over global warming
- vi) Increased social awareness
- vii) Awareness about and willingness for respecting human rights
- viii) Media's attention to social issues
- ix) Growing corporate participation in social up-liftment

While profitability is a pure economic bottom line, social and environmental bottom lines are semi or non - economic in nature so far as revenue generation is concerned but it has certainly a positive impact on long term value that an enterprise commands. But discharge of social responsibilities by corporate is a subjected matter as it cannot be measured with reasonable accuracy.

Question 3(c)

(i) What are the CORE elements of the Corporate Social Responsibility (CSR) policy as per the CSR Voluntary Guidelines, 2009?

(ii) According to Altered Images: The 2001 State of Corporate Responsibility in India Poll' a survey conducted by TATA Energy Research Institute (TERI), the evolution of CSR in India has followed a chronological evolution of 4 thinking approaches.—Explain the same.

[5+5 = 10]

Answer:

(i) The Government of India released guidelines to assist companies in India to understand the new voluntary Corporate Social Responsibility Code. As per these guidelines, the core elements that one must consider while establishing such a CSR policy are as under:

1. Care for Stake Stakeholders - Respect the interests of all your stakeholders such as shareholders, customers, suppliers, society at large.
2. Ethical functioning - Ensure that your Company maintains the highest levels of standards in ethics, transparency and accountability.
3. Respect for Workers' Rights and Welfare - Ensure fair treatment of all employees by instituting policies covering key aspects such as safety, hygiene, training, healthcare, grievance redressal. anti-discrimination etc.
4. Respect for Human Rights - Ensure that there are no Human Rights violations in the operations - either with employees, customers, society, production, labour etc.
5. Respect for Environment - Ensure sustainability of key natural resources and optimal utilization of land, water, energy to minimize the impact on the environment.
6. Social and Inclusive Development - Respect the area what you work in and the

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people that work for you. Include the community through economic and social improvement activities.

- (ii) According to "Altered Images: the 2001 State of Corporate Responsibility in India Poll", a survey conducted by Tata Energy Research Institute (TERI), the evolution of CSR in India has followed a chronological evolution of 4 thinking approaches:

Ethical Model (1930-1950): One significant aspect of this model is the promotion of "trusteeship" that was revived and reinterpreted by Gandhiji. Under this notion the businesses were motivated to manage their business entity as a trust held in the interest of the community. The idea prompted many family run businesses to contribute towards socio-economic development. The efforts of Tata group directed towards the well being of the society are also worth mentioning in this model.

Statist Model (1950 -1970s): Under the aegis of Jawahar Lal Nehru, this model came into being in the post independence era. The era was driven by a mixed and socialist kind of economy. The important feature of this model was that the state ownership and legal requirements decided the corporate responsibilities.

Liberal Model (1970s -1990s): The model was encapsulated by Milton Friedman. As per this model, corporate responsibility is confined to its economic bottom line. This implies that it is sufficient for business to obey the law and generate wealth, which through taxation and private charitable choices can be directed to social ends.

Stakeholder Model (1990s - Present): The model came into existence during 1990s as a consequence of realisation that with growing economic profits, businesses also have certain societal roles to fulfill. The model expects companies to perform according to "triple bottom line" approach. The businesses are also focusing on accountability and transparency through several mechanisms.