PAPER 13 – Corporate Laws & Compliance
SECTION A

[Answer to Q.No.1 is compulsory and attempt any 4 from the rest]

1. (a) A government company holds 49% of the subscribed share capital in Smart & Co. Ltd. Mr. R has been appointed as the auditor at the Annual General Meeting of Smart & Co. Ltd. through an ordinary resolution. Certain members of the company object to this appointment on the ground that the appointment of auditors is violative of the provisions of the Companies Act, 1956. Examine the legal position with reference to the relevant provisions of the Companies Act, 1956. [5]

(b) ABC Company Ltd. in its first general meeting appointed 6 directors whose period of office is liable to be determined by rotation. Briefly explain the procedure and rules regarding retirement of these directors. Will it make any difference, if ABC Company Ltd. does not carry on business for profit? [5]

(c) Amar Textiles Ltd. is a company engaged in manufacture of fabrics. The Company has investments in shares of other bodies corporate including shares in Amar Cotton Co. Ltd. and it has also advanced loans to other bodies corporate. The aggregate of all the investments made and loans granted by Amar Textiles Ltd. exceeds 60% of its paid up share capital and free reserves and also exceeds 100% of its free reserves. In course of its business requirements, Amar textiles Ltd. has obtained a term loan from Industrial Development Bank of India (a Public Financial Institution within the meaning of section 4A of the companies Act, 1956) and the same is still subsisting. Now the company wants to increase its holding from 70% to 80% of the equity share capital in Amar Cotton Co. Ltd. by purchase of additional 10% shares from other existing shareholders.
State the legal requirements to be complied with by Amar Textiles Ltd. under the provisions of the companies Act, 1956 to give effect to the above proposal.
Will your answer be different if Amar Textiles Ltd. would have defaulted in payment of matured fixed deposits accepted by it from the public? [5]

Answer 1(a):

The given problem relates to Section 224A of the Companies Act, 1956.

The legal position

1. Requirement of special resolution for appointment or reappointment of auditors

The appointment or reappointment of an auditor shall be made by a special resolution if not less than 25% of the subscribed share capital, whether singly or in any combination is held, by:

(i) A Public Financial Institution;
(ii) A Government Company;
(iii) The Central Government;
(iv) Any State Government;

(v) Any financial or other institution established by any Provincial or State Act in which a State Government holds not less than 51% of the subscribed share capital;
(vi) A nationalised bank;
(vii) An insurance company carrying on general insurance business.

2. Consequences of failure to pass the special resolution

Where a company to which this section applies omits or fails to pass a special resolution it shall be deemed that no auditor or auditors had been appointed by the company and thereupon the company shall, within 7 days, give notice of that fact to the Central Government and the Central Government may appoint a person to fill the vacancy.

The given case

A Government Company holds 49% of the subscribed share capital in Smart & Co. Ltd. Therefore, the provisions of section 224A must be complied with for appointing the auditors. However, Mr. R has been appointed as the auditor at the Annual General Meeting by passing an ordinary resolution.

Conclusion

The appointment of Mr. R as an auditor in the annual general meeting is violative of the provisions of section 224A. This is so because a Government Company holds more than 25% of the subscribed share capital of Smart & Co. Ltd., and therefore, the appointment of auditors requires a special resolution. Accordingly, the contention of the shareholders that appointment of auditors is violative of the certain provisions of the Companies Act, 1956 (viz. Section 224A) is correct, and so it shall be deemed that no auditors were appointed by Smart & Co. Ltd.

In this case, Smart & Co. Ltd. is required to intimate to the Central Government the fact that no auditors were appointed in the Annual General Meeting. Such intimation shall be given within 7 days of conclusion of the Annual General Meeting. Thereafter, the Central Government shall fill the vacancy.

Answer 1(b):

Not less than 2/3rd 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 2/3rd 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 255).

As per section 256, at the first annual general meeting and every subsequent annual general meeting, 1/3rd [or nearest to 1/3rd) of directors liable to retire by rotation (determined as per section 255) 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 (1/3rd 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 263).

In case ABC Company Limited does not carry on business for profit, section 263A will get attracted. As per section 263A, nothing contained in sections 177, 255, 256 and 263 shall affect any provision in the articles of a company for the election by ballot of all its directors at each annual general meeting if such company does not carry on business for profit or prohibits the payment of a dividend to its members. Accordingly, ABC Company Limited may elect its directors by ballot.

Answer 1(c):

As per section 372A (8), any loans, investments etc. made by a holding company in its wholly owned subsidiary are outside the preview of Section 372A. However, Amar Cotton Co. Ltd. is not a wholly owned subsidiary of Amar Textiles Ltd. and hence investment in Amar Cotton Co. Ltd. is not covered by the exemption under section 372 (8).

The aggregate of loans and investments already made by Amar Textiles Ltd. exceeds the two limits of 60% and 100% specified under section 372A. Therefore, the company can make new inter-corporate investments only by passing a special resolution.

The proposed investment can be made as follows:

(a) A resolution shall be passed at a Board meeting with the consent of all the directors present.
(b) A special resolution shall be passed in the general meeting. The notice of special resolution must indicate clearly the specific limits, the particulars of the body corporate in which the investment is proposed to be made, the purpose of the investment, specific source of funding and other similar details.
(c) IDBI is a Public Financial Institution within the meaning of section 4A. Since, the aggregate investments exceed the limit of 60%, prior approval of IDBI shall be obtained.
(d) The company shall enter the prescribed particulars of the investment in the register maintained for this purpose within 7 days of making the investment.
(e) The company shall ensure that no default in compliance with section 58A (relating to public deposits) is subsisting.

If the company has defaulted in repayment of public deposits, the company cannot make any investments even if special resolution and resolution of Board is passed. The investments can be made only after the default has been made good.

2. (a) Mr. Raj, a director of PQR Ltd., submitted his resignation from the post of director to the Board of directors on 30th June, 2010 and obtained a receipt therefore on the same day. The Board of directors of PQR Ltd. neither accepted the resignation nor did it file Form No. 32 with the registrar of companies. You are required to state whether Mr. Raj ceases to be the director of PQR Ltd. and if yes, since when? [5]

(b) The Directors of Infotech Consultants Ltd, registered in Calcutta, propose to hold the next Board Meeting in May 2008. They seek your advice in respect of the following matters –

(i) Can the Board Meeting be held in Chennai, when all the Directors of the Company reside at Calcutta?
(ii) Can the Board meeting be called on a Public Holiday and that too after business hours as majority of the Directors of the Company have gone to Chennai on vacation?
(iii) Is it necessary that the notice of the Board meeting should specify the nature of business to be transacted? [3]

(c) Modern Technologies Limited, an Unlisted Company, proposed to finance its expansion programme by issuing Equity Shares to public. The company has been making good profits every year from the commencement of business on 1st April 2003, but it has not declared dividend so far. The Company was started with initial Equity Share Capital of ₹3 Crores in Jan 2003. The Paid-up Equity Share Capital and Free Reserves as per the latest Audited Balance Sheet as at 31st March, 2010 amounted to ₹5 Crores and ₹10 Crores respectively.

State the conditions which are required to be fulfilled by an Unlisted Company under the SEBI (ICDR) Regulations, 2009 in order to be eligible to make an IPO and also examine whether Modern Technologies Limited is eligible to make the proposed Public issue. [4]

(d) Tomato Ltd., a vehicles manufacturing company in India has received an order from a transport company in Italy for supply of 100 Trucks on lease. You are required to state, how the said Tomato Ltd. can accept such an order. [3]

Answer 2(a):

The resignation takes effect immediately without any need for its acceptance where the articles do not contain any provision relating to resignation of directors or where the articles allow the director to resign at any time. However, a managing director cannot resign by merely sending a resignation. His resignation becomes effective only when the company accepts the resignation and relieves him from the office.

The given case is discussed as follows:
It is the duty of the company to file with the registrar a statement of changes made in the particulars of directors, manager and secretary; a director is not required to submit his resignation to the registrar.
Further, filing of Form No. 32 is only a consequential act; it is not an act to be complied with in order to make a resignation valid. Therefore, the resignation of a director shall be valid notwithstanding the fact that it has not been filed with the registrar by the company and the director so resigning.

The resignation of Mr. Raj shall take effect immediately (i.e., w.e.f. 30.06.2010), without requiring any acceptance by the Board in the following cases:
(a) If the articles of PQR Ltd. do not contain any provision relating to resignation of directors.
(b) If the articles of PQR Ltd. give a right to the directors to resign at any time.

However, in the following cases, the resignation of Mr. Raj shall take effect only on acceptance (and then Mr. Raj shall cease to be a director):
(a) If Mr. Raj is managing director or whole time director of the company.
(b) If the articles of the company state that the resignation of a director shall be effective only when accepted by the Board.
(c) If the letter of resignation submitted by Mr. Raj requires acceptance.

Answer 2(b):

1. **Place:** Board Meeting need not be held only at the "Registered Office". It can be held at any convenient place, different from the Registered Office also. Also Directors can hold a Board Meeting in a foreign Country, if circumstances justify it.

2. **Time:** Sec. 166 requires that AGM shall be held during business hours, and on a day this is not a Public Holiday. There is no similar provision for Board Meetings, and hence Board Meetings may also be held on Public Holidays or after business hours. So, Board Meeting can also be held on a Public holidays unless AOA provides otherwise.

3. **Agenda:** Law does not require an agenda for a Board Meeting, and any business whatsoever can be transacted at the Board Meeting. The Board can transact business even without a formal agenda.

Answer 2(c):

Conditions:
1. Net Tangible Assets of at least ₹3 Crores in each of the preceding 3 full years (of 12 months each), of which not more than 50% is held in monetary assets.
2. Track record of Distributable Profits for at least 3 out of immediately preceding 5 years.
3. Net Worth of atleast ₹1 Crore in each of the preceding 3 full years.
4. Where the Company has changed its name within the last one year, 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.
5. 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.

Conclusion:
Since all the conditions are satisfied, the Company is eligible to make a public Issue of Shares to a maximum of 5 times of its pre-issue Net worth as per latest audited balance sheet. i.e., ₹5 x [₹5 Crores Capital + ₹10 Crores Reserves] = ₹75 Crores.

Answer 2(d):
Taking any goods out of India to a place outside India amounts to 'export' [Section 2(I)]. As per Regulation 14 of Foreign Exchange Management (Export of Goods and Services) Regulations,

2000, export of goods on lease or hire or under any arrangement or in any other manner other than sale or disposal of such goods requires approval of the Reserve Bank of India.
In the given case, Tomato Ltd. proposes to supply on lease 100 trucks to Italy. Lease of trucks to Italy involves taking goods to Italy (i.e., outside India), and so lease of trucks to Italy is 'export' within the meaning of section 2(I). Since lease of truck does not amount to sale or disposal of goods, exporting goods by way of lease requires the permission of Reserve Bank of India.

3. (a) BOD of M/s RP Ltd., in its meeting held on 29th May, 2013 declared an interim dividend payable on paid up equity share capital of the company. In the Board meeting scheduled for 10th June, 2013, the Board wants to revoke the said declaration. You are required to state with reference to the provisions of the Companies Act, 1956 whether the BOD can do so. [3]

(b) 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? [6]

(c) M/s Raman Limited was wound up by the court. The official liquidator invited claims from the creditors which stood as under:

Income Tax dues	**₹11.00 lakhs**
Sales Tax dues	**₹05.00 lakhs**
Dues of workers	**₹25.00 lakhs**
Unsecured loans payable to directors	**₹25.00 lakhs**
Trade creditors who supplied raw material	**₹15.00 lakhs**
Secured creditors being the bankers of the company	**₹75.00 lakhs**
Total	**₹156.00 lakhs**

Official Liquidator could realize only ₹80.00 lakhs by sale of the assets and realization made from company's debtors, which is not sufficient to pay to all the creditors. Please decide the order of priority for payment to creditors explaining the relevant provisions of the Companies Act, 1956. [6]

Answer 3(a):

Any dividend in between two annual general meetings of the company, or before or after the closure of annual accounts for any particular year is referred as interim dividend. Dividend, once declared, becomes a debt payable by the company and after declaration, dividend cannot be cancelled. The Companies (Amendment) Act, 2000 inserted sub-section (1A), (1B) and (1C) in section 205. These new provisions specifically authorize the BOD to declare interim dividend and that the provisions of section 205, 205A, 205C, 206, 206A and 207 shall apply to any interim dividend also as they apply in case of final dividend. Therefore, interim dividend also cannot be cancelled.

In view of the above discussion, it can be concluded since the Board of RP Ltd. has already declared interim dividend, it cannot be revoked.

Answer 3(b):

1. **Eligibility condition:** The following Members shall have the right to apply to Tribunal u/s 397 & 398:

COMPANY	ELIGIBLE MEMBERS
(a) Having Share Capital	Least of the following: • Not less than 100 Members of the Company, or • Not less than 1/10th of the total number of its Members, or • Any Member(s) holding not less than 1/10th of the Issued Share Capital. Note: Members are eligible to apply only if all moneys / calls due on their Shares have been paid.
(b) Not having Share Capital	Not less than 1/5th of the total number of its Members.

2. **Analysis:** Preference Shareholders are also "Members". In the above case, the eligible applicant(s) are least of the following –

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

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

Answer 3(c):

Section 529A(1) provides that in the winding-up of a company, the following dues shall be paid in priority to all other debts irrespective of anything contained in any other provision of this Act or any other law for the time being in force:

(a) Workmen's dues; and
(b) Debts due to secured creditors to the extent such debts rank under clause (c) of the proviso to sub-section (1) of section 529 pari passu with such dues, shall be paid in priority to all other debts.

The debts listed under section 529A shall be paid in full unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.

The order of payment of liabilities adopted by the liquidator shall be as under:

1. Overriding preferential payments under section 529A (i.e., workmen's dues and debts due to secured creditors).
2. Costs and expenses of winding up.
3. Preferential payments under section 530.
4. Creditors secured by a floating charge.
5. Unsecured creditors.

In the present case, ₹80 lakhs have been realised by the sale of all the assets of the company. The amount due to secured creditors is ₹75 lakhs and the workmen's dues are ₹25 lakhs. Overriding preferential payments (workmen's dues and secured creditors) amount to ₹100 lakhs.

Therefore, the workmen's dues and dues payable to secured creditors shall abate in equal proportions, i.e., payments to workmen and secured creditors shall be made in the proportion of amount owed by the company to them (i.e., in the ratio of 75:25). Accordingly, the workers shall be paid ₹20 lakhs and the secured creditors shall be paid ₹50 lakhs. No payment shall be made to the Government authorities for income tax dues, sales tax dues, unsecured loans payable to directors or to trade creditors who supplied raw material.

4. (a) Joe Ltd. was incorporated in London with a paid up capital of 20 million pounds. Mr. Y an Indian Citizen holds 25% of the Paid Up Capital. X Ltd., a Company registered in India holds 30% of the Paid Up Capital of Joe Ltd. Joe Ltd. has recently established a Share Transfer Office at New Delhi. The Company seeks your advice as to what formalities it should observe as a Foreign Company. State briefly the requirements relating to filing of accounts with the ROC by the Foreign Company in respect of its global business as well as Indian business. [7]

(b) The promoters of a Company to be registered under the Companies Act, 1956 having its main object of carrying on the business as manufacture and stockiest of Iron and Steel, proposes that the name of the Company is to be 'Abha Steel Bank Limited'. You are required to state whether the said company with the proposed name can be registered. [3]

(c) On 24th January 2010, the Board of Directors of M/s. Bold Limited appointed Mr. A as the company's Sole Selling Agent for a period of 5 years. At the first general meeting of the company, held after the Board Meeting, on 29th September 2010, the above appointment was disapproved. Referring to the provisions of the Companies Act, 1956:
(i) State the date from which the above appointment comes to an end.
(ii) What would be your answer in case a clause in the above appointment that "the appointment must be made by the company in General Meeting" was not inserted as a condition? [5]

Answer 4(a):

The following issues are relevant in this regard:

1. Indian citizens / Bodies holding 50% Share Capital in Foreign Company:

(a) Where not less than 50% of the Paid-Up Share Capital (Equity or Preference or partly in both) of a Foreign Company is held by one or more: (a) citizens of India, and/or (b) Bodies Corporate incorporated in India, whether singly or in the aggregate, such Company shall comply with such of the provisions of the Act with regard to the business carried on by it in India, as if it were a Company incorporated in India.

(b) In the above case, Joe Ltd. is a Company where 55% of the Paid-Up Capital is held in the above manner. Hence, it has to comply with the provisions of the Act with regard to the business carried on by it in India, as if it were a Company incorporated in India.

2. Obligations of a Foreign Company:

(a) Financial Statements [World or Global Business Accounts]:

(i) Every Foreign Company shall, in every **calendar year**, make out a Balance Sheet and Profit and Loss Account. The form, annexures, attachments (including, relating to every Subsidiary) of such Balance Sheet and P & L A/c shall as if it had been a Company within the meaning of this Act, have been required to make out and lay before in General Meeting.

(ii) The Central Govt. is empowered to exempt/modify the above requirements in respect of any Foreign Company or Class of Foreign Companies, by notification in the Official Gazette.

(b) Filing with ROC: The following shall be delivered/filed with the ROC. 3 copies of:

(i) Balance Sheet and P & L A/c, along with its annexures and attachments, as submitted by it to the prescribed authority in the country of its incorporation, [If such document is not in the English language, a certified translation thereof shall be annexed to it.]

(ii) List of all places of business established by the Company in India as at the date of Balance Sheet.

(c) Indian Business Accounts:

(i) In respect of Indian Business, a Foreign Company shall file 3 copies of its Balance Sheet and P & L A/c, prepared in Indian Rupees, as per Schedule VI requirements.

(ii) Indian Business Accounts shall be audited by a Chartered Accountant practicing in India.

(d) Time Limits: The accounts shall be filed with the ROC, within 9 months of the close of the financial year. ROC may extend this period by further 3 months.

Answer 4(b):

Section 7 of the Banking Regulation Act, 1949 states that:

1. **Use of words Bank, Banker or Banking:** No Company other than a banking Company shall use as part of its name or in connection with its business any of the words "Bank", "Banker" or "Banking" and no Company shall carry on the business of banking in India unless it uses as part of its name at least one of such words.
2. No firm, individual or group of individuals shall, for the purpose of carrying on any business, use as part of its or his name any of the words "bank", "banking" or "banking Company".
3. **Not Applicable:** Section 7 not applicable under the following circumstances:
   (a) A Subsidiary of a banking Company formed for one or more of the purposes mentioned in u/s 19(1), whose name indicates that it is a subsidiary of that banking Company;
   (b) Any association of Banks formed formed for the protection of their mutual interests and registered u/s 25 of the Companies Act.

Therefore, Company cannot have the name "ABC Steel Bank".

Answer 4(c):

The legal position

(a) Where the Board of directors of a company appoints a Sole Selling Agent, such appointment shall be subject to the condition that the appointment shall cease to be valid if it is not approved by the shareholders in the first general meeting held after the date of the appointment.
(b) If the shareholders in the general meeting disapprove the appointment, the appointment shall cease to be valid with effect from the date of that general meeting.
(c) The provisions regarding incorporation of this condition are mandatory. If there is no such condition, the agreement will be void ab initio even if the appointment is approved by the general meeting [Arantee Manufacturing Corporation v Bright Bolts Pvt. Ltd. AIR (1967) 37 Comp Cas 758; Department Circular No. 12(11)-CL- VI/68, dated 6.11.1968].

The given case

(i) Mr. A has been appointed by the Board of Directors on 24th January, 2010. At the first general meeting held after the date of appointment of Mr. A, the appointment of Mr. A has been disapproved. Therefore, the appointment of Mr. A comes to an end with effect from the date of the first general meeting, viz. 29th September, 2010.
(ii) In case the appointment of Mr. A had been made without any condition regarding approval of his appointment in the first general meeting, the appointment of Mr. A would have been void ab initio. In such a case, the question of cessation of office does not arise at all, since the appointment is altogether void.

5. (a) A company made a profit of ₹500 lakh during the financial year 2012–13. The Board of directors passed a resolution making a donation of ₹100 lakh to Gandhi National Memorial Fund. Discuss the validity of the decision of the directors. [4]

(b) What are the qualifications to be appointed as members of Central Commission as per The Indian Electricity Act, 2003? Also state the functions of the Central Commission.[3+4=7]

(c) The association of Truck Operators of India by agreement insisted that members of the association shall not deal with non-members in transportation of goods. The association claims that this agreement is entered for the welfare of trade and not for any other purpose. Would this agreement be under the purview of the Act? Will the answer be different if the association attempts to control the provisioning of services rendered by its members? [4]

Answer 5(a):

As per section 293B, a company is empowered to contribute such amount as it thinks fit to:

- the National Defence Fund; or
- any other fund approved by the Central Government for the purpose of National Defence.

Gandhi National Memorial Fund is not an approved fund for the purpose of National Defence. Therefore, donation to this fund can be made only in accordance with the requirements of section 293(1)(e).

As per section 293(1)(e), prior consent of the shareholders in general meeting is required for making a charitable contribution if the amount contributed in a financial year exceeds:

(a) ₹50,000; or
(b) 5% of average net profits (as determined under sections 349 and 350) during 3 immediately preceding financial years, whichever is greater.

In the given case, figures of net profit for only one year have been given. Therefore, it has been assumed that company made a profit of ₹500 lakhs in each of the 3 financial years immediately preceding the date of contribution, and so the average profits comes to ₹500 lakhs. Since, the contribution to Gandhi National Memorial Fund of ₹100 lakhs exceeds the limits specified in the section (i.e. ₹50,000 or ₹25 lakhs, being 5% of 500 lakhs, whichever is higher), the contribution requires the consent of shareholders in the general meeting. Since, the Board has passed a resolution without the consent of general meeting, such resolution is not valid.

Answer 5(b):

Qualification for appointment of Members of Central Commission [Section 77]:

1. The Chairperson and the Members of the Central Commission shall be persons having adequate knowledge of, or experience in, or shown capacity in, dealing with, problems relating to engineering, law, economics, commerce, finance or, management and shall be appointed in the following manner, namely:
   (a) one person having qualifications and experience in the field of engineering with specialisation in generation, transmission or distribution of electricity;
   (b) one person having qualifications and experience in the field of finance;
   (c) two persons having qualifications and experience in the field of economics, commerce, law or management:

Provided that not more than one Member shall be appointed under the same category under clause (c).

2. Notwithstanding anything contained in sub-section (1), the Central Government may appoint any person as the Chairperson from amongst persons who is, or has been, a Judge of the Supreme Court or the Chief Justice of a High Court:
   Provided that no appointment under this sub-section shall be made except after consultation with the Chief Justice of India.

3. The Chairperson or any other Member of the Central Commission shall not hold any other office.

4. The Chairperson shall be the Chief Executive of the Central Commission.

Functions of Central Commission [Section 79]:

1. The Central Commission shall discharge the following functions, namely:
   (a) to regulate the tariff of generating companies owned or controlled by the Central Government;
   (b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;
   (c) to regulate the inter-State transmission of electricity;
   (d) to determine tariff for inter-State transmission of electricity;
   (e) to issue licenses to persons to function as transmission licensee and electricity trader with respect to their inter-State operations;
   (f) to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;
   (g) to levy fees for the purposes of this Act;
   (h) to specify Grid Code having regard to Grid Standards;
   (i) to specify and enforce the standards with respect to quality, continuity and reliability of service by licensees;
   (j) to fix the trading margin in the inter-State trading of electricity, if considered, necessary;
   (k) to discharge such other functions as may be assigned under this Act.

2. The Central Commission shall advise the Central Government on all or any of the following matters, namely:
   (a) formulation of National electricity Policy and tariff policy;
   (b) promotion of competition, efficiency and economy in activities of the electricity industry;
   (c) promotion of investment in electricity industry;
   (d) any other matter referred to the Central Commission by that Government.

3. The Central Commission shall ensure transparency while exercising its powers and discharging its functions.

4. In discharge of its functions, the Central Commission shall be guided by the National Electricity Policy, National Electricity Plan and Tariff Policy published under section 3.

Answer 5(c):

Horizontal Anti-Competitive Agreements [Sec. 3(3)]:

Any agreement entered into between Enterprises or Association of Enterprises, or Person or Association of Persons, or between any Person and Enterprise or practice carried on, or decision taken by, any Association of Enterprises or Association of Persons, including Cartels, engaged in identical or similar trade of goods or provision of services which:

(a) directly or indirectly determines purchase or sale prices,
(b) limits or controls production, supply, markets, technical development, investment or provision of services,
(c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way,
(d) directly or indirectly results in bid rigging or collusive bidding,
shall be presumed to have an appreciable adverse effect on competition.

Note:

- **Exception:** An agreement entered into by way of Joint Ventures and which increases the efficiency in production, supply, distribution, storage, acquisition, or control of goods or provision of services, shall not be presumed anti-competitive.
- **"Bid Rigging"** means any agreement, between enterprises or persons engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process of bidding.

Therefore, in the given case,
Agreement is horizontal anti-competitive, hence void and control or provisioning of services is also void, sec. 3(3)(b).

6. (a) Gayatri, a resident in India is likely to inherit an immovable property in USA from her father, who is a resident outside India. Advise Gayatri about the restrictions, if any, in this regard. Will your answer be different if she is likely to inherit foreign securities? [4]

(b) XYZ Automobiles Limited intends to make a public issue of 2,00,00,000 equity shares of ₹10 each through the 100% book building process indicating a price band.
You are required to answer the following with reference to the SEBI (Disclosure and Investor Protection) guidelines:
(i) What is the price band that can be indicated in the red herring prospectus, if the floor price is proposed to be fixed at ₹300 per equity share?
(ii) What are the restrictions, if the company wants to revise the price band during the bidding period?

(iii) How the shares are to be allocated to different categories of investors like Qualified Institutional Buyers, Retail Individual Investors, etc.? [8]

(c) ABC Producer Company Limited was incorporated on 1st April, 2008. At present it has got 200 members and its Board consists of 10 directors. The Board of directors of the company seeks your advice on the following proposals:
Appointment of one expert director and one additional director by the Board for a period of four years. Advise the Board of directors explaining the relevant provisions of the Companies Act, 1956. [3]

Answer 6(a):

Holding etc. of Currency, Security and Property [Sec. 6(4) & 6(5)]:

(a) A person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India, if such currency, security or property was:
- Acquired, held or owned by such person when he was resident outside India, or
- Inherited from a person who was resident outside India.

(b) A person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India, if such currency, security or property was:
- Acquired, held or owned by such person when he was resident in India, or
- Inherited from a person who was resident in India.

Note: However, Current Income on such assets like rent, dividend, interest etc. have to be repatriated to India within the prescribed time limit as specified in Regulation 5(i) of FEM (Realisation, Repatriation and Surrender of Foreign Exchange), 2000.

There are no restrictions with regard to inheritance of either immovable property situated outside India or of foreign security, from a person resident outside India. Further, such inheritance does not require approval of RBI. Hence, Gayatri can hold the immovable property/foreign security, after such inheritance.

Answer 6(b):

The provisions relating to book building are contained in Part A of Schedule XI to the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009. The relevant Clauses of Schedule XI are discussed below:

As per Sub-Clause (b) of Clause (8), where the issuer decides to opt for price band instead of floor price, the issuer shall also ensure compliance with the following conditions:

(i) The cap of the price band should not be more than 20%, of the floor of the band; i.e. cap of the price band shall be less than or equal to 120% of the floor of the price band;
(ii) The price band can be revised during the bidding period in which case the maximum revision on either side shall not exceed 20% i.e. floor of price band can move up or down to the extent of 20% of floor of the price band disclosed in the red herring prospectus and the cap of the revised price band will be fixed in accordance with clause (i) above;

(iii) Any revision in the price band shall be widely disseminated by informing the stock exchanges, by issuing press release and also indicating the change on the relevant website and the terminals of the syndicate members.

(iv) In case the price band is revised, the bidding period shall be extended as per provisions of sub-regulation (2) of regulation 46.

Applying the provisions of the said Clause to the given case:

(i) The price band that can be indicated in the red herring prospectus, shall be ₹300 to ₹360.

(ii) The price band can be revised during the bidding period. However, the maximum revision on either side shall not exceed 20% of the floor price. Thus, floor of the price band can move up or down to the extent of 20% of the floor price disclosed in the red herring prospectus, and the cap of the price band shall not be more than 20% of the revised floor price. Accordingly, in the given case, the revised price band can be ₹240 to ₹288 on the lower side, or ₹360 to ₹432 on the upper side.

Any revision in the price band shall be widely disseminated by informing the stock exchange, by issuing press release and also indicating the change on the relevant website and terminals of the syndicate members. Also, the bidding period shall be extended for a further period of 3 days, subject to the total bidding period not exceeding 13 days.

(iii) As per Regulation 43 of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, in an issue made through the book building process, the allocation in the net offer to public category shall be made as follows:

(a) not less than 35% to retail individual investors;

(b) not less than 15% to non-institutional investors;

(c) not more than 50% to qualified institutional buyers, 5% of which shall be allocated to mutual funds.

Answer 6(c):

As per section 581P, the Board may co-opt one or more expert directors or an additional director not exceeding 1/5th of the total number of directors. Further, every person shall hold the office of a director for a period not less than 1 year but not exceeding 5 years, as may be specified in the articles. The total number of directors in the present case is 10. The number of expert directors and additional directors shall not exceed 2. Therefore, it is permissible for the Board to appoint one expert director and one additional director for a period of four years.

SECTION B

[Answer any five questions from Q.No.7 (a) to (f)]

7. (a) What is Corporate Citizenship? Is this fundamentally different from Corporate Social Responsibility? [5]

(b) Discuss the OECD Guidelines for Corporate Governance of State-owned Enterprises.[5]

(c) "The development of Corporate Governance in the UK was initially the findings of a trilogy of codes." Explain the same in brief. [5]

(d) "Family ownership of firms is the prevalent form of ownership in many countries around the globe."
In view of the above statement, explain the concept and need of Ownership structures.[5]

(e) Write short notes on:
(i) Whole Life Cycle Costing
(ii) Golden Parachute Proposals [2.5*2=5]

(f) What are the pros and cons in adopting Corporate Social Responsibility? [5]

Answer 7(a):

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:

(i) Minimise harm,
(ii) Maximise benefit,
(iii) Be accountable and responsive to key stakeholders and
(iv) 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 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 with in one way or another.

While some of these initiatives may be labeled as corporate citizenship by some organisations, there basic message and purpose is the same.

Answer 7(b):

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.

The major recommendations in OECD guidelines are as discussed below:

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

- There should be a clear separation between the state's ownership function and other state functions that may influence the conditions for state-owned enterprises, particularly with regard to market regulation.
- SOEs should not be exempt from the application of general laws and regulations. Stakeholders including competitors, should have access to efficient redress.
- SOEs should face competitive conditions regarding access to finance. Their relations with state-owned banks, state-owned financial institutions, and other state-owned companies, should be based on purely commercial grounds.

State acting as an owner

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

- The government should develop and issue an ownership policy that defines the overall objectives of state ownership, the state's role in corporate governance of SOEs, and how it will implement its ownership policy.
- The government should not be involved in the day-to-day management of SOEs and allow them full operational autonomy to achieve their defined objectives.
- The state should let SOE boards exercise their responsibilities and respect their

independence.

- The state should exercise its ownership rights according to the legal structure of each company. Keeping this in mind, it should ensure that remuneration schemes for SOE board members foster the long-term interest of the company, and can attract and motivate qualified professionals.

Equitable treatment of shareholders

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

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

Relations with stakeholders

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

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

Transparency and disclosure

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

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

Responsibilities of the boards of state-owned enterprises

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

- The boards of SOEs should be assigned a clear mandate and ultimate responsibility for the company's performance. The board should be fully accountable to the owners, act in the best interest of the company, and treat all shareholders equally.
- SOE boards should carry out their functions of monitoring of management and strategic

guidance, subject to the objectives set by the government and the ownership entity. They should have the power to appoint and remove the CEO.

- The boards of SOEs should be so composed that they can exercise objective and independent judgement. Good practice calls for the chair to be separate from the CEO.
- SOE boards should carry out an annual evaluation to appraise their performance.

Answer 7(c):

As in other countries, the development of Corporate Governance in the UK was initially the findings of a trilogy of codes: the Cadbury Report (1992), the Greenbury Report (1995), and the Hampel Report (1998). These are explained as under:

Cadbury Report (1992)

Following various financial scandals and collapses (Coloroll and Polly Peck, to name but two) and a perceived general lack of confidence in the financial reporting of many UK companies, the Financial Reporting Council, the London Stock Exchange, and the accountancy profession established the Committee on the Financial Aspects of Corporate Governance in May 1991. After the Committee was set up, the scandals at BCCI and Maxwell happened, and as a result, the committee interpreted its remit more widely and looked beyond the financial aspects to Corporate Governance as a whole. The Committee was chaired by Sir Adrian Cadbury and, when the Committee reported in December 1992, the report became widely known as 'the Cadbury Report'.

The recommendations covered: the operation of the main board; the establishment, composition, and operation of key board committees; the importance of, and contribution that can be made by, non-executive directors; the reporting and control mechanisms of a business. The Cadbury Report recommended a code of Best Practice with which the boards of all listed companies registered in the UK should comply, and utilized a 'comply or explain' mechanism. This mechanism means that a company should comply with the code but, if it cannot comply with any particular aspect of it, then it should explain why it is unable to do so. This disclosure gives investors detailed information about any instances of non-compliance and enables them to decide whether the company's non-compliance is justified.

Greenbury Report (1995)

The Greenbury committee was set up in response to concern at both the size of directors' remuneration packages and their inconsistent and incomplete disclosure in companies' annual reports. It made, in 1995, comprehensive recommendations regarding disclosure of directors' remuneration packages. There has been much discussion about how much disclosure there should be of directors' remuneration and how useful detailed disclosures might be. Whilst the work of the Greenbury Committee focused on the directors of public limited companies, it hoped that both smaller listed companies and unlisted companies would find its recommendations useful.

Central to the Greenbury report recommendations were strengthening accountability and enhancing the performance of directors. These two aims were to be achieved by (i) the presence of a remuneration committee comprised of independent non-executive directors who would report fully to the shareholders each year about the company's executive remuneration policy, including full disclosure of the elements in the remuneration of individual directors; and (ii) the adoption of performance measures linking rewards to the performance of both the company and individual directors, so that the interests of directors and shareholders were more closely aligned.

Since that time (1995), disclosure of directors' remuneration has become quite prolific in UK company accounts.

Hampel Report (1998)

The Hampel Committee was set up in 1995 to review the implementation of the Cadbury and Greenbury Committee recommendations. The Hampel Committee reported in 1998. The Hampel Report said: 'We endorse the overwhelming majority of the findings of the two earlier committees'. There has been much discussion about the extent to which a company should consider the interests of various stakeholders, such as employees, customers, suppliers, providers of credit, the local community, etc., as well as the interests of its shareholders. The Hampel report stated that the directors as a board are responsible *for relations with* stakeholders; but they are accountable *to* the shareholders'. However, the report does also state that directors can meet their legal duties to shareholders, and can pursue the objective of long-term shareholder value successfully, only by developing and sustaining these stakeholder relationships'.

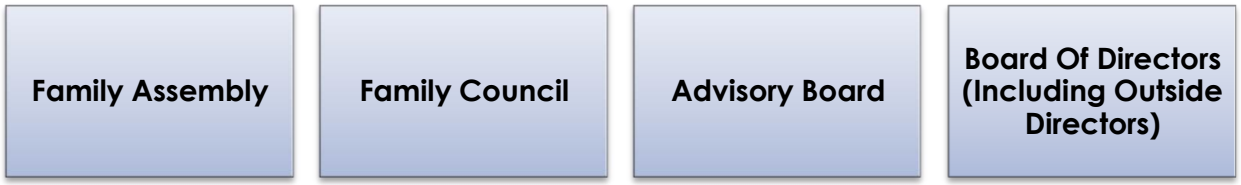
The Hampel Report, like its precursors, also emphasized the important role that institutional investors have to play in the companies in which they invest (investee companies). It is highly desirable that companies and institutional investors engage in dialogue and that institutional investors make considered use of their shares, in other words, institutional investors should consider carefully the resolutions on which they have a right to vote and reach a decision based on careful thought, rather than engage in 'box ticking'.

Answer 7(d):

In many countries, family-owned firms are prevalent. Corporate governance is of relevance to family-owned firms, which can encompass a number of business forms including private and publicly quoted companies, for a number of reasons. Family-owned firms may face difficulties in initially finding appropriate independent non-executive directors but the benefits that such directors can bring is worth the time and financial investment that the family-owned firm will need to make.

One advantage of a family-owned firm is that there should be less chance of the type of agency problems. This is because ownership and control rather than being split are still one and the same, and so the problems of information asymmetry and opportunistic behaviour should (in theory, at least) be lessened. As a result of this overlap of ownership and control, one would hope for higher levels of trust and hence less monitoring of management activity should be necessary. However, problems may still occur and especially in terms of potential for minority shareholder oppression, which may be more acute in family-owned firms.

In family business group firms, the concern is that managers may act for the controlling family, but not for shareholders in general. These agency issues are: the use of pyramidal groups to separate ownership from control, the entrenchment of controlling families, and non-arm's-length transactions (aka 'tunneling') between related companies that are detrimental to public investors.



Possible stages in a family firm's governance

The advantages of a formal governance structure are several. First of all, there is a defined structure with defined channels for decision-making and clear lines of responsibility. Secondly, the board can tackle areas that may be sensitive from a family viewpoint but which nonetheless need to be dealt with - succession planning is a case in point (deciding who would be best to fill key roles in the business should the existing incumbents move on, retire, or die). Succession planning is important too in the context of raising external equity because, once a family business starts to seek external equity investment, then shareholders will usually want to know that succession planning is in place. The third advantage of a formal governance structure is also one in which external shareholders would take a keen interest: the appointment of non-executive directors. It may be that the family firm, depending on its size, appoints just one, or maybe two, non-executive directors. The key point about the non-executive director appointments is that the persons appointed should be indepen-dent; it is this trait that will make their contribution to the family firm a significant one. Of course, the independent non-executive directors should be appointed on the basis of the knowledge and experience that they can bring to the family firm: their business experience, or a particular knowledge or functional specialism of relevance to the firm, which will enable them to 'add value' and contribute to the strategic development of the family firm. Another advantage of family-owned firms may be their ability to be less driven by the short-term demands of the market. Of course, they still ultimately need to be able to make a profit but they may have more flexibility as to when and how they do so.

Cadbury (2000) sums up the three requisites for family firms to manage successfully the impacts of growth: 'They need to be able to recruit and retain the very best people for the business, they need to be able to develop a culture of trust and transparency, and they need to define logical and efficient organisational structures'. A good governance system will help family firms to achieve these requisites.

Answer 7(e):

(i) Whole Life Cycle Costing (WLCC):

Towards the late 1990s, the concepts of 'whole life costing' (WLC) and 'whole life-cycle costing' (WLCC) emerged. The terms whole life costing and whole life-cycle costing are interchangeable. WLCC is a new term that appears to have been adopted by many building economists involved in the preparation of forecasts for the long-term cost assessments of capital projects.

'Whole life-cycle costing (WLCC) is a dynamic and ongoing process which enables the stochastic assessment of the performance of constructed facilities from feasibility to disposal. The WLCC assessment process takes into account the characteristics of the constructed facility, reusability, sustainability, maintainability and obsolescence as well as the capital, maintenance, operational, finance, residual and disposal costs. The result of this stochastic assessment forms the basis for a series of economic and noneconomic performance indicators relating to the various stakeholders' interests and objectives throughout the life-cycle of a project.'

Currently, the application of WLCC in the construction industry is still hindered significantly by the lack of standard methods and the excuse of lack of sound data upon which to arrive at accurate decisions. As a result, the output from WLCC models is looked on as unreliable.

Combined with WLCC, risk assessment should form a major element in the strategic decision making process during project procurement and also in value analysis, especially in today's highly uncertain business environment. WLCC decisions are complex and usually comprise an array of significant factors affecting the ultimate cost decisions. WLCC decisions generally have multiple objectives and alternatives, long-term impacts, multiple constituencies in the procurement of construction projects, generally involve multiple disciplines and numerous decision makers, and always involve various degrees of risk and uncertainty. Project cost, design and operational decision parameters are often established very early in the life of a given building project. The existing methods do not adequately quantify the true economic impacts of many quantitative and qualitative parameters.

(ii) Golden Parachute Proposals:

The Securities and Exchange Commission's (the "SEC") new disclosure and advisory vote requirements for compensation based on or relating to merger and similar transactions, often referred to as golden parachute arrangements, became effective for proxy statements and other acquisition related filings initially filed on or after April 25, 2011 for Corporate Governance in USA. The SEC adopted the rules to implement Section 951 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").

The Dodd-Frank Act requires companies to hold separate shareholder votes on potential "golden parachute" payments when they seek approval for mergers, sales and certain other transactions. In determining the recommendation with respect to a golden parachute proposal, the 2013 Updates include the consideration of any existing change-in-control arrangements maintained with named executive officers, rather than focusing only on the new or extended arrangements. The list of features considered problematic has been refined. Recent amendments that incorporate problematic features will tend to carry more weight in the overall

analysis. However, close scrutiny will also be given if multiple legacy problematic features are present.

Answer 7(f):

Pros & Cons of adopting Corporate Social Responsibility:

Corporate social responsibility refers to a method of running a company that seeks to address not only profitability, but also the environmental and social consequences of the business. While most corporate social responsibility concerns are directed at very large businesses, even small and medium-sized businesses that employ a large number of local residents or participate in environmentally problematic industries can face pressure to adopt corporate social responsibility.

Costs

Cost represents one of the biggest arguments against adopting corporate social responsibility as a policy. Programs to reduce environmental impact often require expensive changes in equipment or ongoing costs without any clear way to recoup those losses. The decision to maintain domestic production facilities or call centers or to buy from domestic producers rather than outsource or move production overseas can drive up costs for a business. Additionally, there is no clear evidence that adhering to a policy of corporate social responsibility generates a significant increase in sales or profit.

Improved Company Reputation

Embracing a policy of corporate social responsibility, paired with genuine action, can serve to build or improve the reputation of a business. If a company's behavior creates a negative backlash that leads to lost profitability -- over environmental issues, for example -- corporate social responsibility becomes a method to repair reputation damage and restore profitability. In other cases, adopting such a policy works as part of a business' essential brand, and consumers often demonstrate more loyalty to brands that can demonstrate a commitment to environmental concerns.

Shareholder Resistance

Some investors do look to acquire stock in socially responsible corporations, but, on the whole, investors purchase stock on the expectations of turning a profit. While some companies, such as Toyota and GE, have profited from corporate social responsibility, companies that adopt such policies often prove as likely to lose money. Given the spotty track record of corporate social responsibility in demonstrating profit increase, investors may resist attempts by executives to move a company in that direction.

Better Customer Relations

One of the hallmarks of corporate social responsibility is staying involved in the communities where the business operates. This community involvement goes a long way toward building trust between customers and the business. If a business builds trust with its customers, they tend to give the business the benefit of the doubt if something goes wrong, rather than assuming malicious intent or raw negligence. Customers also tend to stick with businesses they trust, rather than actively seeking out new companies, which helps keep a business profitable over the long haul.