PAPER 13 – Corporate Laws & Compliance
SECTION A

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

1. **(a) Mr. Sanchay was appointed as an Additional Director of Conservative Finance Ltd. w.e.f. 1st October 2011 in a casual vacancy by way of a circular resolution passed by the Board of Directors. The next AGM of the Company was due on 31st March 2012 but the same was not held due to delay in the finalization of the accounts. Some of the Shareholders of the Company have questioned the validity of the appointment of Mr. Sanchay and his continuation as Additional Director beyond 31st March 2012. Advise the Company on the complaints made by the Shareholders. [4]**

(b) Examine with reference to the provisions of the Companies Act, 1956 the validity of the following:

(i) A scheme provides for Amalgamation of a 'Foreign Company' with a Company registered under the Companies Act, 1956.

(ii) The statement forwarded with the notice convening a meeting of its members pursuant to Court's Direction under Section 391 contains only 'Exchange Ratio' without details of its calculation.

(iii) At the time of filing of the petition for Amalgamation, the object clause of both the Transferor and Transferee Companies does not contain power to Amalgamate. [3]

(c) Mr. Shyam goes abroad for four months from 04.01.2012 and an alternate director has been appointed in his place. Therefore, advice as to sending of notice as required under section 286 of the Companies Act, 1956. [2]

(d) ABC Company Limited, a closely held company comprised two groups of shareholders - one foreign and the other Indian. The foreign group held 55% and the Indian 45% of the shares of the company. The Articles of Association of the company provided all the matters of the mutual understanding of both the groups. The Articles also contained the provisions enabling the two groups to enjoy equal amount of managerial power. The relationship between the two groups could not last for a long time and differences arose between them. The two groups could not operate, leading to a deadlock. The Indian group, therefore, complained to the Company Law Board for action against the foreign group for oppression.
Referring the provisions of the Companies Act, 1956, decide:

(i) Whether the contention of the Indian group that the foreign group is acting in a manner oppressive to the Indian group will sustain?

(ii) What relief can the Company Law Board grant to the petitioners in this case? [4]

(e) ABC Banking Company Limited has advanced a sum of ₹25.00 lacs to Mr. Reliable, a director of the company, to meet his personal liabilities but due to some adverse conditions, Mr. Reliable is not in a position to repay the loan. The Board of directors of the company is considering to remit a sum of ₹10.00 lacs. The Board of Directors seeks your advice. [2]

Answer 1(a):

The given problem relates to sections 260 and 262 of the Companies Act, 1956.

The Legal Position

Additional Directors (Section 260)

- The Board may appoint the additional directors in pursuance of the provisions of section 260.
- The Board may, in its discretion, appoint the additional directors whenever it deems fit.
- The appointment of additional directors can be made by the Board either by passing a resolution at a Board meeting or by passing a resolution by circulation.
- An additional director holds office upto the date of next annual general meeting. A director appointed as an additional director vacates his office, at the latest, on the last day on which the annual general meeting could have been called as required by section 166, and cannot continue in office thereafter on the ground that the meeting was not or could not be called within the time prescribed under section 166 [Krishna Prasad Pilani v Colaba Land and Mills Co. (1959) 29 Comp Cas 273; Departmental Circular No. 8/3(260)/63-PR, dated 05.02.1963].

Director filling a casual vacancy (Section 262)

- The Board is authorised to fill a casual vacancy arising in the office of a director appointed in general meeting.
- The director filling a casual vacancy shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.
- A casual vacancy cannot be filled by passing a resolution by circulation under section 289.

The given case

- The Board has appointed Mr. Sanchay as an additional director in a casual vacancy.
- The appointment of additional director has been made by passing a circular resolution.
- The last date for holding the annual general meeting was 31st March, 2012. The annual general meeting has not been held till 31st March, 2012.
- The issue raised in the given problem is:

  (a) Whether appointment of Mr. Sanchay is valid or not; and
  (b) Whether Mr. Sanchay can continue after 31st March, 2012.

Analysis of the case

1. Neither section 260 nor section 262 authorises the Board to appoint an additional director to fill the casual vacancy.

- If appointment of Mr. Sanchay is made as an additional director, then, the provisions of section 260 apply, and so such appointment cannot amount to filling a casual vacancy.

- If Mr. Sanchay is appointed to fill a casual vacancy, then, the provisions of section 262 apply to him, and so Mr. Sanchay shall not be an additional director.

- Thus, a combined reading of sections 260 and 262 makes it clear that the appointment of Mr. Sanchay as an additional director to fill the casual vacancy is not possible at all.

2. Mr. Sanchay has been appointed to fill the casual vacancy by passing a circular resolution. Since, the appointment of a director filling a casual vacancy requires passing of a resolution in a board meeting only, therefore, the appointment of Mr. Sanchay is in contravention of section 262, and is therefore, invalid.

Conclusion

- The complaint made by the shareholders is valid.
- The appointment of Mr. Sanchay is not valid since it is in contravention of sections 260 and 262.
- Mr. Sanchay cannot continue as a director after the date of annual general meeting, since his very appointment is void ab initio.

Answer 1(b):

(i) A transferor company in a scheme of amalgamation under Sec. 394 may be anybody corporate. This includes a foreign company. But a transferee company shall be a company registered under the Companies Act, 1956. Therefore, a scheme providing for amalgamation of a foreign company with a company registered under the Companies Act, 1956 is valid.

(ii) The statement forwarded with the notice under Sec. 391 shall provide all material facts including details as to calculation of "Exchange Ratio".

(iii) The power to amalgamate shall be present. If this is not so the petition is invalid.

Answer 1(c):

Notice of every Board meeting shall be given in writing to every director for the time being in India and to every other director at his usual address in India (Section 286).

As can be seen, section 286 does not specifically state that notice to an alternate director shall be served. However, an alternate director is a director in his own right. He is not a proxy or representative of the original director. The grounds of vacation of office also apply to him as these apply to the original director, e.g., an alternate director shall vacate office if he does not attend the Board meetings as contemplated by section 283(1)(g). As such, it is implied that notice to an alternate director is to be given. Thus, notice should be served to both, the alternate director as well as the original director. Notice to Mr. Shyam, who is outside of India, shall be served at his usual address in India.

Answer 1(d):

Reference may be made to the provisions of Sec. 397. Thus, the CLB (now Tribunal) has substantial powers to provide relief to the company. But it should be seen whether there is oppression in this case. The two groups enjoy equal amount of managerial power under the Articles. Due to misunderstanding there is a dead lock. In a situation like this where the rival groups are equal in strength there may be no oppression at all. This view is supported by the decision in Gnanasambandam (CP) Vs. Tamilnadu Transports (Coimbatore) Pvt. Ltd. (1971).

Further, cases of deadlock may not be a case for winding up. At best, the CLB may direct either group to buy out the shares of the other and failing which the company may be wound up on the grounds that it is Just and Equitable so to do.

Conclusion:

(i) As the two groups are equal in strength and there is a deadlock, there is no oppression.

(ii) If at all the CLB decides to grant relief it may order the foreign group, which holds 55% of the share capital to buy out the minority Indian group. (Yasovardhan Saboo Vs. Groz Beckert Saboo Ltd. (1993).

Answer 1(e):

Section 20A of the Banking Regulation Act, 1949 provides that except with the prior approval of RBI, a banking company shall not remit in whole or in part any debt due to it by:

(a) Any of its Directors, or
(b) Any firm or company in which any of its Directors is interested as Director, Partner, Managing Agent or Guarantor, or
(c) Any individual, if any of its Directors, is his Partner or Guarantor.

Sub-section (2) further provides that any remission of debt in contravention of the aforesaid shall be void and of no effect.

2. (a) Mr. Vivaan, a chartered accountant is a director in PQR Limited. The company proposes to appoint or engage the firm Vivaan and Co. in which Mr. Vivaan is a partner in one or more of the following capacities:
(i) Consultants on regular retainer basis.
(ii) Authorised representative to appear before tribunals.
Discuss whether the provisions of section 314 of the Companies Act are attracted in the above situations. [4]

(b) M/s XYZ Ltd. was incorporated on 1st January, 2010. On 1st November, 2012 a political party approaches the company for a contribution of ₹10 lakhs for political purpose. Advise in respect of the following:
(i) Is the company legally authorised to give this political contribution?
(ii) Will it make any difference, if the company was in existence on 1st October, 2009?
(iii) Can the company be penalised for defiance of rules in this regard? [6]

(c) Printed Computer is a Singapore based company having several business units all over the world. It has a unit for manufacturing computer printers with its headquarters in Pune. It has a branch in Dubai which is controlled by the headquarters in Pune. What would be the residential status under FEMA, 1999 of printer units in Pune and that of Dubai branch? [5]

Answer 2(a):

The restrictions on holding of an office or place of profit under section 314 do not extend to rendering of professional services, such as services rendered by doctor, engineer, architect, chartered accountant, advocate or solicitor [Re, Harper Ticket Issuing and Recording Machines Ltd. (1912) WN 263]. It is considered that an advocate or solicitor appears in a Court of law as an officer of the Court. Such appearance and receiving fees on that account cannot lead to an inference of an office or place of profit, However, if the advocate or solicitor is appointed on a regular retainership basis, section 314 shall apply [Department Circular No. 14/75 98/12/314(1B)/75-CL-V), dated 05.06.1975].

(i) In the given case, the appointment of Vivaan and Co. is made on regular retainership basis and so it amounts to holding of an office or place of profit. Section 314(1) would apply to such appointment if Vivaan and Co., draws remuneration of ₹50,000 or more. If Vivaan and Co. draws remuneration exceeding ₹2,50,000 per month, section 314(1B) will apply.
(ii) Where a chartered accountant undertakes a particular case and professional fees is paid to him, he renders the services in a professional capacity. Consequently, it does not amount to an office or place of profit and therefore section 314 is not attracted. Engaging a person in a particular case or for undertaking a particular assignment of consultancy, or rendering advice on a specific matter, shall not by itself constitute appointment to an office or place of profit.

However, if the terms of engagement are that he should attend to all the cases or act as adviser in the connected matters, whether generally or in a particular city or town, then, even though he may be paid on a case to case basis, it shall amount to appointment to an 'office or place of profit' under the company.

Answer 2(b):

As per section 293A, the following companies shall not make a political contribution:
(a) A Government company.
(b) A company which has been in existence for less than 3 financial years.

In the given case:
(i) M/s XYZ Ltd. cannot make any political contribution because the company is not in existence for a period of 3 financial years.
(ii) If XYZ were incorporated on 01.10.2009, it may make a political contribution as on 01.11.2012 because in such a case, it would have been in existence for 3 financial years. However, it shall comply with the following conditions:
   (a) The amount of contribution shall not exceed 5% of average net profits (as determined under sections 349 and 350) during 3 immediately preceding financial years.

(b) The Board shall make a political contribution only by passing a resolution at a Board meeting.

(c) The company shall disclose in its profit and loss account the amount of political contribution and the name of the political party or the person to whom such amount has been contributed.

(iii) If a company makes a political contribution in contravention of section 293A, following consequences shall follow:

(a) The company shall be punishable with fine which may extend to 3 times the amount so contributed.

(b) Every officer of the company who is in default shall be punishable with imprisonment up to 3 years and shall also be liable to fine.

Answer 2(c):

Section 2(u) defines a 'person'. As per this definition, the following shall be covered in the definition of a 'person':

(a)A company.

(b)Any agency, office or branch owned by a 'person'.

Section 2(v) defines a 'person resident in India'. As per this definition, the following shall be covered in the definition of a 'person resident in India':

(a)An office, branch or agency in India owned or controlled by a person resident outside India.

(b)An office, branch or agency outside India owned or controlled by a person resident in India.

In the given case, Printed Computers (Singapore), its headquarters in Pune as well as Dubai Branch is a 'person'. Therefore, residential status under FEMA shall be determined for each of them separately.

- Printed Computers (Singapore) does not fall under any of the clauses of the definition of a 'person resident in India'. Therefore, Printed Computers (Singapore) is a person resident outside India.
- The Pune Headquarters of Printed Computers is a 'person resident in India' since it falls under the clause 'an office, branch or agency in India owned or controlled by a person resident outside India'.
- The Dubai branch of Printed Computers (Singapore), though not owned, is controlled by the Pune headquarters. The Dubai branch is a 'person resident in India' since it falls under the clause 'an office, branch or agency outside India owned or controlled by a person resident in India'.

3. (a) Mr. Naman holding 3% Shares in OPQ Ltd., became a Director of this Company on 01.05.2011. The Company prior to his appointment as Director, had commenced transactions with A Ltd. in the next Board Meeting to be held on 10.05.2011, the Board proposes to discuss about price revisions sought for by A Ltd. Briefly explain –

(i) Whether Mr. Naman should make a disclosure of his interest in A Ltd, assuming that the Company is going to have transactions with A Ltd. on a continuous basis, if yes, when and how? When should it be renewed?

(ii) Can he vote in the price revision resolution in the Board Meeting?

(iii) You are informed that Mr. Naman holds 1.5% of the Share Capital of A Ltd and that his wife holds another 3% of the Share Capital of A Ltd. [3]

(b) Mr. Zen was appointed as a Member of the Competition Commission of India by Central government. He has a professional experience in international business for a period of 12 years, which is not a proper qualification for appointment of a person as member. Pointing out this defect in the Constitution of Commission, Mr. Yen, against whom the commission gave a decision, wants to invalidate the proceedings of the commission. Examine with reference to the provisions of the Competition Act, 2002 whether Mr. Yen will succeed. [6]

(c) The Official Liquidator of Arya Ltd (in liquidation) instituted misfeasance proceedings u/s 543 against 'A', a Director of the Company in liquidation. During the pendency of misfeasance proceedings, 'A' died. What is meant by Misfeasance? Is it possible for the Official Liquidator to implead the legal representatives of 'A' and continue the proceeding against them? [2+4=6]

Answer 3(a):

1. Disclosure of Interest: Mr. Naman should disclose his interest as required u/s 299.

- The words 'becomes concerned or interested' occurring in the provision denotes a present state of thing.
- In case of a person who was actually concerned or interested in the contract or arrangement, the liability for disclosure arises the moment he accepts office as Director.
- If a Director acquired interest in a running transaction of the Company, he should disclose this fact at the next Board Meeting held after he becomes so interested.

2. Voting at Board Meeting:

(a) U/s 300, an Interested Director shall not vote on the resolution in respect of the contract in which he is interested.
(b) However, provisions of Sec. 300 are not applicable if the interest of the Director consists solely of his holding only Qualification Shares, or less than 2% of the Paid-Up Capital in the other Company.
(c) In the given case, Mr. Naman holds 1.5% of the Share Capital of A Ltd, and his wife holds another 3% in the Share Capital of A Ltd, and therefore it cannot be said that he is interested only to the extent of less than 2% of the Paid-Up Share Capital of A Ltd.
(d) Hence, Mr. Naman should not participate and vote in the Board Meeting to be held on 10.05.2011, in the matter pertaining to A Ltd.

Answer 3(b):

The given problem relates to section 15 of the Competition Act, 2002. As per section 15, no act or proceeding of the Commission shall be invalid merely by reason of:

(a) any vacancy in the Commission; or
(b) any defect in the constitution of the Commission; or
(c) any defect in the appointment of a person acting as a Chairperson or as a Member; or

(d) any irregularity in the procedure of the Commission not affecting the merits of the case.

Applying the provisions of section 15, the mere fact that one of the members of the Commission was not qualified for appointment, does not affects the merits of the case. It is a mere defect in the constitution of the Commission. Therefore, the contention of Mr. Yen that the proceedings of the Commission are not valid, is incorrect.

Answer 3(c):

The term 'Misconduct' covers any breach of duty resulting in misapplication of assets or property of the Company. "Misfeasance" covers those cases where:

(a) there is dishonesty or fraud or culpable negligence, or
(b) there is an improper exercise of lawful authority.

Situations of 'Misfeasance': Sec. 543 is applicable, if in the course of winding-up of a Company, it appears that -

Person liable	Act/omission covered u/s 543
(a) any person who has taken part in the promotion or formation of the Company, or (b) any past or present Director, Manager, Liquidator or Officer of the Company.	▪ Has misapplied, or retained, or become liable or accountable for, any money or property of the Company, or ▪ Has been guilty of any misfeasance or breach of trust in relation to the Company.

For creation of liability u/s 543, it must be shown that there has been dishonesty or fraud, or atleast gross and culpable negligence. An honest mistake not amounting to culpable negligence or breach of duty, should not be considered as "misfeasance". – **Ayyangar vs Official Assignee**

- The proceedings commenced against the Delinquent Director of a Company in liquidation u/s 542 and 543 can be continued after his death against his legal representatives.
- The amount declared to be due in such misfeasance proceedings can be realized from the estate of the deceased in the hand of his legal representatives.
- However, the legal representative would not be liable for any sum beyond the value of the estate of the deceased in their hands. **[Official Liquidator vs Parthasarathy Sinha 53 CC 163 (SC) Official Liquidator, Supreme Bank Ltd vs PA Tendolkar 43 CC 382 (SC)]**

The cause of action in a misfeasance proceeding against the Director or other Delinquent Officer initiated u/s 543, survives and can be continued against the legal representatives.

4. (a) Mr. BPK was appointed as the sole selling agent of M/s KMP Ltd. w.e.f 1st January 2010 for a period of 5 years. Mr. BPK earned his remuneration as following during the years 2010 to 2012:

Year	Amount of remuneration
2010	**₹4,41,000**
2011	**₹6,32,000**

2012	**₹7,45,000**

On and from 1st January 2013, the sole selling agency agreement was terminated by M/s KMP Ltd. You are required to calculate the amount of compensation payable by the said company to Mr. BPK under the provisions of the Companies Act, 1956.

What would be your answer in a case where the said M/s KMP Ltd. was amalgamated with another company with effect from 1st January 2013 and Mr. BPK refused to act as the sole selling agent of the amalgamated company after amalgamation. [3+2=5]

(b) The Central Govt. acquired a Banking Company. The scheme of acquisition, apart from other matters, provided for the quantum of compensation payable to the shareholders of the acquired Bank. Some Shareholders are not satisfied with the amount of compensation fixed under the scheme of acquisition.

Is there any remedy available to the shareholders under the provisions of the Banking Regulation Act, 1949? [3]

(c) Mr. Lalit, a member of a Producer Company, wants to transfer his shares. State as to how he can transfer his shares under the provisions of the Companies Act, 1956. [5]

(d) Distinguish between Insolvency and Winding-up. [2]

Answer 4(a):

(i) According to section 294A, where the office of a sole selling agent is vacated for any reason other than those specified under that section then the company shall be liable to pay compensation and the amount of compensation shall not exceed the remuneration which he would have earned if he would have been in office for the unexpired residue of his term, or for three years, whichever is shorter, calculated on the basis of the average remuneration actually earned by him during a period of three years immediately preceding the date on which his office ceased or was terminated, or where he held his office for a period lesser than three years, then average remuneration actually earned by him during such lesser period.

In the given case, based on the above provision of the Companies Act, 1956 Mr. BPK is entitled to compensation for the remaining term of his office i.e., 2 years. The amount if compensation is to be calculated on the basis of average of preceding three years' remuneration i.e., (₹4,41,000 + ₹6,32,000 + ₹7,45,000)/3 = ₹6,06,000. Thus, the amount of compensation shall not exceed ₹12,12,000 i.e. ₹6,06,000 x 2.

(ii) According to section 294A, the company shall not be liable to pay compensation to the sole selling agent for loss of office where the sole selling agent vacates office for facilitating any scheme of compromise or arrangement and he is reappointed in the new company. Since the question Mr. BPK refuses to act as sole selling agent in the amalgamated company, he is not entitled for any compensation. He would have been entitled for compensation had he not been offered to be appointed in the amalgamated company.

Answer 4(b):

Compensation to Shareholders of the Acquired Bank [Sec. 36AG]:

1. **Recipient:** The Central Govt. / Transferee Bank shall give the compensation determined in the prescribed manner, to:
   (a) Registered Shareholder of the acquired Bank, or
   (b) Where the acquired Bank is a Banking Company incorporated outside India, the acquired Bank
2. **Reference to Tribunal:**
   (a) Request: If the amount of compensation offered is not acceptable to any person to whom the compensation is payable, the aggrieved person may request the Central Govt. in writing to have the matter referred to the Tribunal. Such a request shall be made before the date notified by the Central Govt.
   (b) Eligible Persons: The Central Govt. shall have the matter referred to the Tribunal for decision, if it receives requests from:
   - Not less than 1/4th in number of the Shareholders holding not less than 1/4th in value of the Paid up Share Capital of the acquired Bank, or
   - Where the acquired Bank is a Banking Company incorporated outside India, from the acquired Bank.
3. **Finality of compensation:** If before the notified date, the Central Govt. does not receive requests as required, the amount of compensation offered, and where a reference has been made to the Tribunal, the amount determined by it, shall be the compensation payable and shall be final and binding on all parties concerned.

Answer 4(c):

Shares of a Member of a Producer Company shall be transferable only as per the following principles:

1. **Transfer to Active Member only:** A Member of a Producer Company may after obtaining the previous approval of the Board, transfer the whole or part of his shares along with any special rights, to an Active Member, at par value.
2. **Transmission on Death of Member:**
   (a) Every Member shall, within 3 months of his becoming a Member in the Producer Company, nominate a person to whom his shares in the Producer Company shall vest in the event of his death. The nomination shall be made in the manner specified in the Articles.
   (b) On the death of the Member, the Nominee shall become entitled to all the rights in the Shares of the Producer Company. The BOD shall transfer the shares of the deceased Member to his Nominee.
   (c) If the Nominee is not a Producer, the Board shall direct the surrender of shares, together with Special Rights, if any, to the Producer Company, at par value or such other value as may be determined by the Board.
3. **Surrender of Shares:**
   (a) Situation: Where the BOD of a Producer Company is satisfied that:
   - Any member has ceased to be a Primary Producer, or

- Any member has failed to retain his qualifications to be a Member as specified in the Articles.

(b) BOD's Power: BOD shall direct the surrender of shares together with special rights, if any, to the Producer Company, at par value or such other value as the BOD may determine.

(c) Procedure: The Member must be served with a prior written notice and given an opportunity of being heard, before the direction for surrender of shares is given by BOD.

Note: Surrender is also applicable if the Nominee of a deceased Member is not a Producer. However, no prior notice/hearing opportunity need be given in such case.

Answer 4(d):

Particulars	Insolvency	Winding-up
Individual	Only an individual can be adjudged as an insolvent. An individual cannot be "wound-up" or "dissolved".	A Company can only be wound-up. It cannot be "adjudged insolvent", even if it is unable to pay its debts.*
Debts	A person can be adjudged insolvent, only when he is unable to pay his debts/liabilities.	A Company can be wound-up even when it is financially sound, e.g., voluntary winding-up.
Vesting of Assets	In insolvency proceedings, the assets/property of the person is vested in the Official Assignee/Receiver.	The property remains vested in the Company, but its administration is taken over by the Liquidator.
Status at end	After completion of insolvency proceedings, the insolvent is discharged from all his debts, and becomes a legal person.	After completion of winding-up, the Company will be dissolved. Its legal status comes to an end.

Note: It is common to use the term "Insolvent Company", where a Company is unable to pay its debts.

5. (a) Following is the latest audited Balance Sheet of ABC Ltd.

Capital and liabilities	₹	Assets	₹
Equity Share Capital (10000 shares of 100 each)	**10,00,000**	**Goodwill**	**1,00,000**
Less: Calls unpaid	**10,000**	**Land and Buildings**	**10,50,000**
	9,90,000	**Plant and machinery**	**20,25,000**
Preference Share Capital	**1,50,000**	**Equity shares in A Ltd.**	**1,25,000**
Securities Premium A/c	**1,50,000**	**Preference shares in B Ltd.**	**50,000**
Capital Redemption Reserve	**2,25,000**	**Debentures in C Ltd.**	**1,00,000**
General Reserve	**5,00,000**	**Shares in P Ltd.**	**2,25,000**
Profit & Loss A/c	**2,20,000**	**Capital in Z & Co.**	**1,00,000**
Sinking Fund Reserve	**1,10,000**	**Current Assets**	**55,000**
Dividend Equalisation Reserve	**60,000**		
Loan from TIIC	**10,00,000**		
Deposits from S Ltd.	**2,00,000**		
Current Liabilities	**1,25,000**		

Provision for Taxation	**1,00,000**		
	38,30,000		**38,30,000**

The following is the additional relevant information:

1. **Of the equity shares capital, 3,000 shares have been issued as rights shares and 2,000 shares as bonus shares.**
2. **B Ltd. is subsidiary of ABC Ltd. with 90% shareholding, whereas A Ltd. is wholly owned subsidiary of ABC Ltd.**
3. **Z & Co. is a partnership firm. The directors seek advice as to whether the following additional investments can be made by a decision taken in a Board Meeting:**

(i) Loan to A Ltd. ₹10,00,000
(ii) Debentures in B Ltd ₹2,25,000
(iii) Purchase of shares of Shree Ltd. in the open market ₹95,000
State reasons. [8]

(b) MAR Ltd wants to issue certain shares on preferential basis and has sought your advice in respect of pricing the shares for such issue. State the guidelines issued by SEBI in respect of pricing of the issue of shares on a preferential basis. [7]

Answer 5(a):

Step 1: Calculation of paid up capital and free reserves:

Paid Up Capital: Equity Share Capital	10,00,000
Less: Calls Unpaid	10,000
	9,90,000
Preference Share Capital	1,50,000
Total	**11,40,000**

NOTE: Preference Share Capital is to be included for calculating paid up capital.

Free Reserves: Securities Premium	1,50,000
General Reserve	5,00,000
Profit & Loss Account	2,20,000
Dividend Equalisation Reserve	60,000
Total	**9,30,000**

NOTE: Capital Redemption Reserve and Sinking Profit Reserve are not available for distribution as dividend and therefore shall not be considered for computing free reserves.

Step 2: Calculation of the limits:

- (A) 60% of Paid up Capital and free reserves
  = 60% of (11,40,000 + 9,30,000)
  = 60% of (20,70,000)
  = 12,42,000

- (B) 100% of Free Reserves as computed above ₹9,30,000

- (A) or (B) whichever is higher ₹12,42,000

Step 3: Computation of Value of transactions as per Balance Sheet:

Preference Shares in B Ltd	50,000
Debentures In C Ltd	1,00,000
Shares in P Ltd	2,25,000
	3,75,000

NOTE:

1. Equity Shares in A Ltd is not considered as acquisition of shares by a holding company in its wholly owned subsidiary is exempted from the provisions of 372 A. The shares are not to be considered while computing Limits.
2. As Z & Co., is a partnership firm the capital therein is not considered.

Step 4: Computation of Proposed Investments:

Debentures in B Ltd	2,25,000
Purchase of shares in Shree Ltd	95,000
	3,20,000

- The aggregate of the investments already made ₹ (3,75,000) together with the proposed investments of ₹(3,20,000) amounts to ₹6,95,000.
- This is well within the ceiling limit of ₹12,42,000 computed in step 2 above.
- Therefore there is no requirement as to previous approval by way of special resolution.
- The Board of directors should approve the proposed transactions at a meeting of the board by passing a resolution agreed to by all the directors present at the meeting.
- Previous approval of M/s. TIIC a PFI is not required as:
  (a) There is no default towards TIIC and
  (b) The aggregate of the value of the transactions (₹6,95,000) does not exceed 60% paid up capital and free reserves i.e. ₹12,42,000.

Answer 5(b):

1. **Pricing of Shares:** The minimum issue price for the Preferential Issue is determined as under –

Where Equity Shares of a Company have been listed on a Stock Exchange	Minimum Issue Price = Higher of the following
A. For a period of 6 months or more as on the relevant date	Average of the weekly high and low of the closing prices of the related Shares quoted on the Stock Exchange: (a) During the 26 weeks preceding the relevant date, or (b) During the 2 weeks preceding the relevant date.
B. For a period of less than 26 weeks as on the relevant date	(a) Price at which Shares were issued by the Company in its IPO, or (b) Value per share arrived at in a scheme of arrangement u/s 391 to 394 of the Companies Act,

	pursuant to which the Shares of the Company were listed, (c) Average of the weekly high and low of the closing prices of the related Shares quoted on the Stock Exchange: ▪ During the period Shares have been listed preceding the relevant date, or ▪ During the 2 weeks preceding the relevant date. **Note:** On completing a period of 26 weeks of listing, the Company shall re-compute the price as per (A) above, and the difference shall be paid by the Allottees to the Company, if such re-computed price is less than the earlier Issue Price.

Note:

- "Relevant Date" means the date 30 days prior to the date on which the meeting of General Body of Shareholders is held, u/s 81(1A) of the Companies Act, to consider the proposed issue.
- Where Shares are issued on preferential basis, pursuant to a scheme approved under the Corporate Debt Restructuring framework of RBI, the date of approval of the Corporate Debt Restructuring package shall be the relevant date. [R – 71]
- In case of preferential issue of convertible securities, either the relevant date referred to in clause (a) of this regulation or a date 30 days prior to the date on which the holders of the convertible securities become entitled to apply for the Equity Shares.
- Any preferential issue of specified securities, to QIBs not exceeding 5 in number, shall be made at a price not less than the average of the weekly high and low of the closing prices of the related equity shares quoted on a recognized stock exchange during the 2 weeks preceding the relevant date.
- 'Stock Exchange' means any of the Recognised Stock Exchanges in which the equity shares are listed and in which the highest trading volume in respect of the equity shares of the issuer has been recorded during the preceding 26 weeks prior to the relevant date.

2. Payment of Consideration:

(a) Full consideration of specified securities other than warrants issued under this Chapter shall be paid by the allotted at the time of allotment of such specified securities. However, that in case of a preferential issue of specified securities pursuant to a scheme of corporate debt restructuring as per the corporate debt restructuring framework specified by the Reserve Bank of India, the allottee may pay the consideration in terms of such scheme.

(b) An amount equivalent to at least 25% of the consideration as determined above shall be paid against each warrant on the date of allotment of warrants.

(c) The balance 75% of the consideration shall be paid at the time of allotment of equity shares pursuant to exercise of option against each such warrant by the warrant holder.

(d) In case the warrant holder does not exercise the option to take equity shares against any of the warrants held by him, the consideration paid in respect of such warrant shall be forfeited by the Issuer.

3. **Pricing of Shares on conversion:** Where PCDs / FCDs / other convertible instruments are issued on a preferential basis, providing for the Issuer to allot Shares at a future date, the Issuer shall determine the price at which the Shares could be allotted, in the same manner as specified for pricing of Shares allotted in lieu of warrants as indicated above.

4. **Exclusions:** the provisions relating to Pricing of Preferential Allotment and Lock in period requirements shall not apply to Shares allotted to any financial institution within the meaning Sec. 2(h)(ia) and 2(h)(ii) of the Recovery of Debts due to Banks and Financial Institutions Act, 1993.

6. (a) What are the powers of the Central Govt. under IRDA Act, 1999? Can Central Govt. supersede the IRDA? [6]

(b) The promoters of ABC Ltd., an Unlisted Company, decide to go for a public issue. They seek your advice in respect of the following matters:

(i) Can equity shares be reserved in Firm Allotment Category for Promoters, at a price different from the price at which shares are offered to Public?

(ii) Circumstances in which equity shares can be issued in denomination of ₹2 per share.

(iii) Need for past track record of distributable profits.

(iv) Requirement of Net Tangible Assets in previous years. [4]

(c) A Ltd. and B Ltd. both dealing in Chemicals and Fertilizers have entered into an agreement to jointly promote the sale of their products. A complaint has been received by the CCI stating that the agreement between the two is Anti-Competitive and against the interest of other in the trade. Examine what are the factors the CCI will take into account to determine whether the agreement in question will have any appreciable adverse effect on competition in the market. [5]

Answer 6(a):

1. **Power of Central Government to issue directions [Section 18]**

(1) Without prejudice to the foregoing provisions of this Act, the Authority shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy, other than those relating to technical and administrative matters, as the Central Government may give in writing to it from time to time:

Provided that the Authority shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government, whether a question is one of policy or not, shall be final.

2. **Power of Central Government to supersede Authority [Section 19]**

(1) if, at any time, the Central Government is of the opinion:

(a) that, on account of circumstances beyond the control of the Authority, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or

(b) that the Authority has persistently defaulted in complying with any direction given by the Central Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Authority or the administration of the Authority has suffered; or

(c) that circumstances exist which render it necessary in the public interest so to do, the Central Government may, by notification and for reasons to be specified therein, supersede the Authority for such period, not exceeding six months, as may be specified in the notification and appoint a person to be the Controller of Insurance under section 2-B of the Insurance Act, 1938 (4 of 1938), if not already done:

Provided that before issuing any such notification, the Central Government shall give a reasonable opportunity to the Authority to make representations against the proposed supersession and shall consider the representations, if any, of the Authority.

(2) Upon the publication of a notification under sub-section (1) superseding the Authority:

(a) the Chairperson and other members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Authority shall, until the Authority is reconstituted under sub-section (3), be exercised and discharged by the Controller of Insurance; and

(c) all properties owned or controlled by the Authority shall, until the Authority is reconstituted under sub-section (3), vest in the Central Government.

(3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government shall reconstitute the Authority by a fresh appointment of its Chairperson and other members and in such case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed disqualified for re-appointment.

(4) The Central Government cause a copy of the notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

3. Power to make rules [Section 24]

(1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(a) the salary and allowances payable to, and other terms and conditions of service of, the members other than part-time members under sub-section (1) of section 7;

(b) the allowances to be paid to the part-time members under sub-section (2) of section 7;

(c) such other powers that may be exercised by the Authority under clause (q) of sub-section (2) of section 14;

(d) the form of annual statement of accounts to be maintained by the Authority under sub-section (1) of section 17;

(e) the form and the manner in which and the time within which returns and statements and particulars are to be furnished to the Central Government under sub-section (I) of section 20;
(f) the matters under sub-section (5) of section 25 on which the Insurance Advisory Committee shall advise the Authority;
(g) any other matter which is required to be, or may be, prescribed, or in respect of which provision is to be or may be made by rules.

4. Power to remove difficulties [Section 29]

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the appointed day.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Note:

(a) Rules and regulations to be laid before Parliament [Section 27]

Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of 30 days which may be comprised in one session or in 2 or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

(b) Application of other laws not barred [Section 28]

The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Answer 6(b):

(i) Differential Pricing is a process by which the Shares of the Company are issued at two different prices depending on the type of the allottees.
Such differential pricing shall be allowed in respect of – (a) Higher Price for Firm Allotment Category Applicants, (b) Issue to Retail Individual Investors, (c) Composite Public and rights Issue and (d) Employees in case the issuer opts for the alternate method of book-building in terms of Part D of Schedule XI.
(ii) An issuer making IPO shall determine the face value of shares as follows:

Issue Price	Face Value
Less than ₹500	₹10 per share.
₹500 or more	Can be below ₹10 per share, but shall not be less than ₹1 per

	share.

(iii) Earlier it was required to maintain a track record of distributable profits in terms of section 205 of the Companies Act, 1956, on both standalone as well as consolidated basis for at least 3 out of the immediately preceding 5 years, but now it has been substituted by SEBI (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2012, w.e.f. 12.10.2012 as:

"It has a minimum average pre-tax operating profit of rupees fifteen crore, calculated on a restated and consolidated basis, during the three most profitable years out of the immediately preceding five years."

(iv) Requirement of Net Tangible Assets:

"It should have net tangible assets of at least three crore rupees in each of the preceding three full years (of twelve months each), of which not more than fifty per cent are held in monetary assets:

Provided that if more than fifty per cent of the net tangible assets are held in monetary assets, the issuer has made firm commitments to utilize such excess monetary assets in its business or project:

Provided further that the limit of fifty per cent on monetary assets shall not be applicable in case the public offer is made entirely through an offer for sale."

Answer 6(c):

For determining whether a Combination would have the effect of or is likely to have an appreciable adverse effect on competition in the relevant market, the CCI shall have due regard to all or any of the following factors:

1. Actual and potential level of competition through imports in the market,
2. Extent of barriers to entry into the market,
3. Level of combination in the market,
4. Degree of countervailing power in the market,
5. Likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins,
6. Extent of effective competition likely to sustain in a market,
7. Extent to which substitutes are available or are likely to be available in the market,
8. Market share, in the relevant market, of the persons or enterprise in a combination individually and as a combination,
9. Likelihood that the combination would result in the removal of a vigorous and effective competitor(s) in the market,
10. Nature and extent of vertical integration in the market,
11. Possibility of a failing business,
12. Nature and extent of innovation,
13. Relative advantage, by way of the contribution to the economic development, by any combination having or likely to have appreciable adverse effect on competition,
14. Whether the benefits of the combination outweigh the adverse impact of the combination, if any.

SECTION B

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

7. (a) "The German Corporate Governance system is based around a dual board system". Elucidate the statement. [5]

(b) Discuss the various reasons for Corporate Social Responsibility (CSR). [5]

(c) Briefly discuss the various issues regarding the MoU System in Indian CPSEs. [5]

(d) "The typical organizational structure of PSUs makes it difficult for the implementation of corporate governance practices as applicable to other publicly-listed private enterprises." In view of the above, list the difficulties encountered in governance. [5]

(e) Write short notes on:
(i) Corporate Governance in Germany
(ii) Risk and uncertainty in Whole Life Cycle Costing [2.5*2=5]

(f) 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]

Answer 7(a):

The committee on corporate governance in Germany was chaired by Dr. Gerhard Cromme and is usually referred to as the Cromme Report or Cromme Code. The code harmonizes a wide variety of laws and regulations and contains recommendations and also suggestions for complying with international best practice on Corporate Governance. The Cromme Code was published in 2002 and was amended in 2005.

The German Corporate Governance system is based around a dual board system, and essentially, the dual board system comprises a **management board *(Vorstand)*** and a **supervisory board *(Aufsichtsrat)***.

The management board is responsible for managing the enterprise. Its members are jointly accountable for the management of the enterprise and the chairman of the management board co-ordinates the work of the management board. On the other hand, the supervisory board appoints, supervises, and advises the members of the management board and is directly involved in decisions of fundamental importance to the enterprise. The chairman of the supervisory board co-ordinates the work of the supervisory board. The members of the supervisory board are elected by the shareholders in general meetings. The co-determination principle provides for compulsory employees representation. So, for firms or companies which have more than five hundred or two thousand employees in Germany, employees are also represented in the supervisory board which then comprises one-third employee representative or one-half employee representative respectively. The representatives elected by the

shareholders and representatives of the employees are equally obliged to act in the enterprise's best interests.

The idea of employee representation on boards is not always seen as a good thing because the employee representatives on the supervisory board may hold back decisions being made that are in the best interests of the company as a whole but not necessarily in the best interests of the employees as a group. An example, would be where a company wishes to rationalize its operations and close a factory but the practicalities of trying to get such a decision approved by employee representatives on the supervisory board, and the repercussions of such a decision on labour relations, prove too great for the strategy to be made a reality.

Answer 7(b):

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. The major reasons for CSR can be outlined as:

1. Globalisation

As a consequence of cross-border trade, multinational enterprises and global supply chains, there is an increased awareness on CSR concerns related to human resource management practices, environmental protection, and health and safety, among other things. Reporting on the CSR activities by corporates is therefore increasingly becoming mandatory.

In an increasingly fast-paced global economy, CSR initiatives enable corporates to engage in more meaningful and regular stakeholder dialogue and thus be in a better position to anticipate and respond to regulatory, economic, social and environmental changes that may occur.

There is a drive to create a sustainable global economy where markets, labour and communities are able to function well together and companies have better access to capital and new markets.

Financial investors are increasingly incorporating social and environmental criteria when making decisions about where to place their money, and are looking to maximise the social impact of the investment at local or regional levels.

2. International Legal Instruments and Guidelines

In the recent past, certain indicators and guidelines such as the SA 8000, a social performance standard based on International Labour Organization Conventions have been developed. International agencies such as United Nations and the Organization for Economic Co-operation and Development have developed compacts, declarations, guidelines, principles and other instruments that set the tone for social norms for organisations, though these are advisory for organisations and not mandatory.

One of the United Nations Millennium Development Goals calls for increased contribution of assistance from country states to help alleviate poverty and hunger, and states in turn are advising corporates to be more aware of their impact on society. In order to catalyze actions in

support of the MDGs, initiatives such as Global Compact are being put in place to instrumentalise CSR across all countries.

As the world's largest, global corporate citizenship initiative by the UN, the Global Compact, a voluntary initiative is concerned with building the social legitimacy of business.

The Global Compact is a framework for businesses that are committed to aligning their business operations and strategies with ten universally accepted principles that postulate that companies should embrace, support and enact, a set of core values in the areas of human rights, labour standards, the environment, and anti-corruption.

3. Changing Public Expectations of Business

Globally companies are expected to do more than merely provide jobs and contribute to the economy through taxes and employment. Consumers and society in general expect more from the companies whose products they buy. This is coherent with believing the idea that whatever profit is generated is because of society, and hence mandates contributing a part of business to the less privileged.

Further, separately in the light of recent corporate scandals, which reduced public trust of corporations, and reduced public confidence in the ability of regulatory bodies and organisations to control corporate excess. This has led to an increasing expectation that companies will be more open, more accountable and be prepared to report publicly on their performance in social and environmental arenas.

4. Corporate Brand

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

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

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

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

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

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

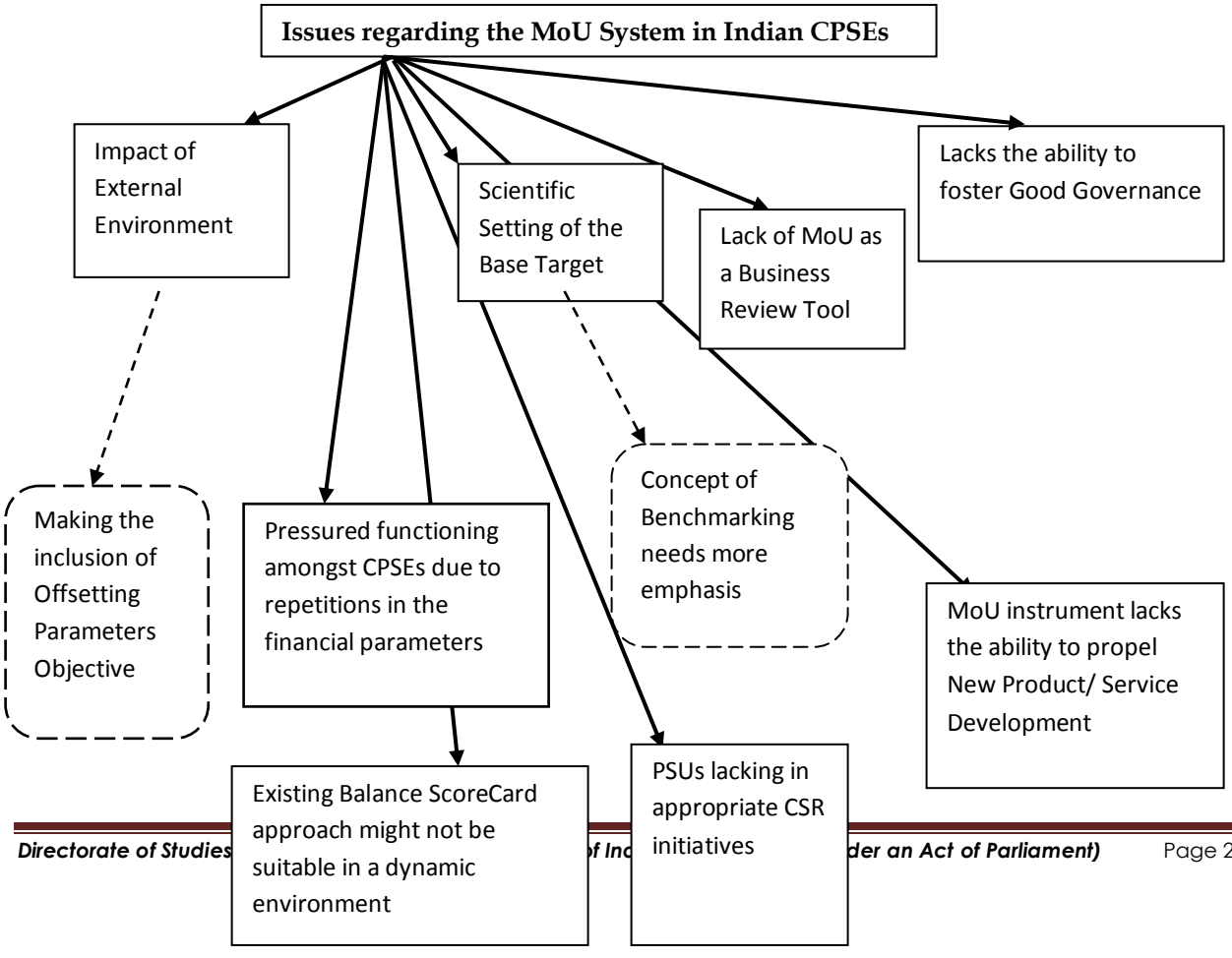
Answer 7(c):

The Memorandum of Understanding (MoU) is a negotiated document between the Government, acting as the owner of Centre Public Sector Enterprise (CPSE) and the Corporate Management of the CPSE. It contains the intentions, obligations and mutual responsibilities of the Government and the CPSE and is directed towards strengthening CPSE management by results and objectives rather than management by controls and procedures.

The beginnings of the introduction of the MoU system in India can be traced to the recommendation of the Arjun Sengupta Committee on Public Enterprises in 1984. The first set of Memorandum of Undertaking (MoU) was signed by four Central Public Sector Enterprises for the year 1987-88. Over a period of time, an increasing number of CPSEs was brought within the MoU system. Further impetus to extend the MoU system was provided by the Industrial Policy Resolution of 1991 which observed that CPSEs will be provided a much greater degree of management autonomy through the system of Memorandum of Undertaking.

Broadly speaking, the obligations undertaken by CPSEs under the MoU are reflected by three types of parameters i.e., (a) financial (b) physical and (c) dynamic.

The Figure below clearly brings out the several challenges which the MoU system in India, currently faces.



- Dark Lines Connect Broad Themes (Issues)
- Dotted lines connect Sub-Themes (Issues)

Despite the overwhelming success of the MOU system, there is a need to strengthen the exercise further to make it more value added. Some of the suggestions in this regard are as follows:

- CPSEs may detract themselves from soft targeting. This could be seen from the fact that your MOU goals set by most of the CPSEs are achieved in the third quarter of a financial year itself.
- The internal systems need to be revamped to contribute to MOU effectiveness. This may mean making the internal budgeting, pricing, materials control, MIS, performance appraisal, recruitment systems to be brought in line with the goals set in MOU.
- There is a need to percolate MOU system down the line.
- The wage negotiations should go beyond the managerial cadre in the same split and form as in the case of the process followed relating to executives.
- Balance scorecard concept should be stressed further to yield a composite MOU index.
- The basic targets need to be fixed very carefully and questioning the very logic of taking the previous year's accomplishments as good.

Answer 7(d):

While routine governance regulations become applicable for public sector companies formed under the Companies Act, 1956 and come under the purview of SEBI regulations the moment they mobilize funds from the public, the typical organizational structure of PSUs makes it difficult for the implementation of corporate governance practices as applicable to other publicly-listed private enterprises. The typical difficulties faced are:

- The board of directors will comprise essentially of bureaucrats drawn from various ministries which are interested in the PSU. In addition, there may be nominee directors from banks or financial institutions who have loan or equity exposures to the unit. The effect will be to have a board much beyond the required size, rendering decision-making a difficult process.
- The chief executive or managing director (or chairman and managing director) and other functional directors are likely to be bureaucrats and not necessarily professionals with the required expertise. This can affect the efficient running of the enterprise.
- Difficult to attract expert professionals as independent directors. The laws and regulations may necessitate a percentage of independent component on the board; but many professionals may not be enthused as there are serious limitations on the impact they can make.
- Due to their very nature, there are difficulties in implementing better governance practices. Many public sector corporations are managed and governed according to the whims and fancies of politicians and bureaucrats. Many of them view PSUs as a means to their ends. A

lot of them have turned sick due to overdoses of political interference, even when their areas of operations offered enormous opportunities for advancement and growth. And when the economy was opened up, many of them lacked the competitiveness to fight it out with their counterparts from the private sector.

Answer 7(e):

(i) Corporate Governance in Germany:

The German corporate governance system could be termed an 'insider' system. The German Corporate Governance system is based around a dual board system, and essentially, the dual board system comprises a management board *(Vorstand)* and a supervisory board *(Aufsichtsrat)*. The management board is responsible for managing the enterprise. Its members are jointly accountable for the management of the enterprise and the chairman of the management board co-ordinates the work of the management board. On the other hand, the supervisory board appoints, supervises, and advises the members of the management board and is directly involved in decisions of fundamental importance to the enterprise. The chairman of the supervisory board co-ordinates the work of the supervisory board. The members of the Supervisory board are elected by the shareholders in general meetings. The co-determination principle provides for compulsory employees representation. So, for firms or companies which have more than five hundred or two thousand employees in Germany, employees are also represented in the supervisory board which then comprises one-third employee representative or one-half employee representative respectively. The representatives elected by the shareholders and representatives of the employees are equally obliged to act in the enterprise's best interests.

The committee on corporate governance in Germany was chaired by Dr. Gerhard Cromme and is usually referred to as the Cromme Report or Cromme Code. The code harmonizes a wide variety of laws and regulations and contains recommendations and also suggestions for complying with international best practice on Corporate Governance.

The Cromme Code was published in 2002 and is split into a number of sections, starting with a section on shareholders and the general meeting. The Cromme Code also reflects some of the latest developments in technology. The Cromme Code was amended in 2005.

Table: Key characteristics influencing German corporate governance

Feature	Key characteristic
Main business form	Public or private companies limited by shares
Predominant ownership structure	Financial and non-financial companies
Legal system	Civil law
Board structure	Dual
Important aspect	Compulsory employee representation on supervisory board.

(ii) Risk and uncertainty in Whole Life Cycle Costing:

'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. 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. Often, these parameters are chosen based on owner's and project team's personal experiences or on an ad hoc static economic analysis of the anticipated project costs. While these approaches are common, they do not provide a robust framework for dealing with the risks and decisions that are taken in the evaluation process. Nor do they allow for a systematic evaluation of all the parameters that are considered important in the examination of the WLCC aspects of a project. The existing methods also do not adequately quantify the true economic impacts of many quantitative and qualitative parameters.

Decisions about building-related investments typically involve a great deal of uncertainty about their costs and potential savings. Performing a WLCCA greatly increases the likelihood of choosing a project that saves money in the long run. Yet, there may still be some uncertainty associated with the WLCC results. WLCCAs are usually performed early in the design process when only estimates of costs and savings are available, rather than certain dollar amounts. Uncertainty in input values means that actual outcomes may differ from estimated outcomes.

There are techniques for estimating the cost of choosing the "wrong" project alternative. Deterministic techniques, such as sensitivity analysis or breakeven analysis, are easily done without requiring additional resources or information. They produce a single-point estimate of how uncertain input data affect the analysis outcome. Probabilistic techniques, on the other hand, quantify risk exposure by deriving probabilities of achieving different values of economic worth from probability distributions for input values that are uncertain. However, they have greater informational and technical requirements than do deterministic techniques. Whether one or the other technique is chosen depends on factors such as the size of the project, its importance, and the resources available. Since sensitivity analysis and break-even analysis are two approaches that are simple to perform, they should be part of every WLCCA.

Answer 7(f):

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 socioeconomic 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.