

# Suggested Answer\_Syl12\_Dec2014\_Paper 13

## FINAL EXAMINATION

### GROUP III

(SYLLABUS 2012)

## SUGGESTED ANSWERS TO QUESTIONS

DECEMBER 2014

### Paper-13 : CORPORATE LAWS & COMPLIANCE

Time Allowed : 3 Hours

Full Marks : 100

The figures in the margin on the right side indicate full marks.

- Please
- (1) Write answers to all parts of a question together.
  - (2) Open a new page for answer to a new question.
  - (3) Indicate in the front page of the answer book the questions attempted.

Where necessary, suitable assumptions may be made and disclosed by way of a Note.

#### SECTION A

Answer Question No. 1 which is compulsory (Carrying 20 Marks) and also answer any four (Carrying 15 Marks each) from rest in this Section.

1. (a) M/S ANAND STEEL LTD. showed a net balance in the Profit and Loss Account for the last five years as follows:

Financial Year 2009-10	Loss	Rs. 125 Lakh (Dr.)
Financial Year 2010-11	Profit	Rs. 180 Lakh (Cr.)
Financial Year 2011-12	Loss	Rs. 110 Lakh (Dr.)
Financial Year 2012-13	Profit	Rs. 180 Lakh (Cr.)
Financial Year 2013-14	Profit	Rs. 190 Lakh (Cr.)

The Board of Directors of the Company propose to donate a sum of Rs. 25 Lakh to a Social Organization (approved/bonafide) engaged in Education and Health Care of Backward Community in the locality.

Examine with reference to the provisions of the Companies Act, 2013, whether the proposed donation is within the powers of the Board of Directors of the Company. 2

- (b) In case of application for oppression and mismanagement, how far the following situations hold good under the provisions of companies Act, 1956.

- (i) Application by minority shareholders holding majority beneficial interest.
- (ii) Application by a group of shareholders against non-declaration of dividend. 2+1=3

- (c) TREEZA LTD. declared dividend for the Financial Year 2013-2014 on 1st July, 2014 but did not pay the same to the shareholders within the prescribed time. Explain with reference to the provisions of Companies Act, 2013.

- (I) What are the penal provisions against such violation?
- (II) Under what circumstances no offence shall be deemed to have been committed? 2+2=4

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(d) Mr. Anuj is a director in State Bank of India. On the ground of his misconduct to the interest of the depositors, the Reserve Bank of India terminates his service.  
Decide whether the Reserve Bank of India can do so under the Banking Regulation Act, 1949. 3

(e) The shares of MNC LTD. were listed on a recognized stock exchange. The stock exchange delists the shares of the company. Referring to the provisions of the Securities Contracts (Regulation) Act, 1956, advise the company on the remedies available to the company against the order of the stock exchange. 3

(f) (i) 'The German Corporate Governance system is based around a dual board system'.  
Elucidate this statement. 3  
(ii) Why does construction industry fail to embrace WLCC? 2

## Answer:

1. (a) Section 181 of the Companies Act, 2013 states that the Board of Directors of a company may contribute to bonafide charitable and other funds.  
Provided that prior permission of the company in general meeting shall be required for such contribution in case any amount the aggregate of which, in any financial year, exceed five percent, of its average net profits for the three immediately preceding financial years.  
In the given case the Board of Directors is not empowered to contribute to Rs. 25 lakhs as it exceeds 5% of average profits of the preceding three years i.e.  $Rs.(-110+180+190) \times 5\% = Rs.13$  lakhs. Hence, prior permission of the shareholders are to be obtained by the Board of Directors of Anand Steel Ltd.

(b) (i) Persons who hold majority of beneficial interest but minority of voting power can complain of oppression which term includes not merely obtaining unfair pecuniary advantage but also an overwhelming desire for power (Re Hammer Ltd. 109 L.J. 25 C.A.). The remedy is analogous to winding up but before seeking winding up, a member must exhaust his remedy.

(ii) Non declaration of dividend when it does not lead to devaluation of shares is not an act of mismanagement. (V.J Thomas Vetton Vs Kuttanad Rubber Co. Ltd. (1964).

(c) (i) Sec. 127 of the Companies Act, 2013 states that where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within thirty days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen percent, per annum during the period for which such default continues.

(ii) No offence under section 127 of Companies Act, 2013 shall be deemed to have been committed:

(a) where the dividend could not be paid by reason of the operation of any law;

(b) where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has been communicated to him;

(c) where there is a dispute regarding the right to receive the dividend ;

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- (d) where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholders; or
- (e) where, for any other reason, the failure to pay the dividend or to post the warrant within the period under section 127(1) was not due to default on the part of the company.
- (d) Under section 36AA of the Banking Regulation Act, 1949, RBI can terminate any Chairman, Director, Chief Executive, other officials or any employee of the bank where it considers desirable to do so particularly when RBI is of the opinion that conduct of such persons is detrimental to the interest of the depositors or for securing proper management of the banking company. Before such termination concerned person should be given opportunity to be heard of. Such terminate officials can make appeal to the Central Govt. within 30 days from the date of communication of such termination order. The decision of the Central Govt. cannot be called into question. In case an order is issued pursuant to this section the concerned person shall cease to hold his office for a period of not exceeding 5 years as may be specified in the order. Contravention of the above provision shall be punishable with a fine, which may extent to Rs. 250 per day.
- (e) Section 21A of the Securities Contracts (Regulation) Act, 1956 describes the provisions regarding delisting of securities by a recognized stock exchange.
- A recognized stock exchange may delist the securities, after recording the reasons therefore, from any recognized stock exchange on any of the ground or grounds as may be prescribed under this Act. Provided that the securities of a company shall not be delisted unless the company concerned has been given a reasonable opportunity of being heard.
  - A listed company or an aggrieved investor may file an appeal before the Securities Appellate Tribunal against the decision of the recognized stock exchange delisting the securities within fifteen days from the date of the decision of the recognized stock exchange delisting the securities and the provisions of section 22B to 22E of this Act shall apply, as far as may be, to such appeals; Provided that the Securities Appellate Tribunal may, if it is satisfied that the company was prevented by sufficient cause from filling the appeal within the said period, allow it to be filled within a further period not exceeding one month. MNC Ltd. may be advised accordingly.
- (f) (i) 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.
- (ii) The reasons why construction industry fails; to embrace WLCC are:

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- The lack of universal methods and standard formats for calculating whole life costs.
- The difficulty in integration of operating and maintenance strategies at the design phase.
- The scale of the data collection exercise, data inconsistency.
- The requirement for an independently maintained database on performance and cost of building components

2. (a) **Mr. Abir, a Cost Accountant and an Independent Director of Gurgaon Auto Ancillaries Ltd. will be abroad for three months from 10-11-2014. The Company wants to appoint Mr. Rahul as an alternate Director in place of Mr. Abir. Draft a Board Resolution authorising the appointment.** **4**

(b) **HILTON LTD. was incorporated on 1st January, 2012. On 1st July, 2014 a political party approaches the company for a contribution of Rs.12 lakh for political purpose. Advise in respect of the following under Companies Act, 2013,**

(i) **Is the company legally authorised to give this political contribution?**

(ii) **Will it make any difference, if the company was incorporated on 1st December, 2010?**

(iii) **Can the company be penalized for defiance of rules in this regard?** **2+2+2=6**

(c) **MODERN INSURANCE LTD. has issued a policy on 25th March, 2014 for Fire Risk favouring one of the leading Corporate House in the country without the actual receipt of premium and it was reflected as premium receivable as at 31st March, 2014. The company maintained that it is a usual practice in respect of big customers and the money was collected on 5th April, 2014. There was a fire accident in the premises of the insured on 31st March, 2014 and a claim was lodged for the same. The Insurance Company also made a provision for claim. Please respond.** **3**

(d) **Write a note on disclaimer of onerous property as per Companies Act, 1956.** **2**

**Answer:**

2. (a)

**GURGAON AUTO ANCILLARIES LTD.  
Meeting of the Board of Directors.**

**Resolution on Agenda Item 102.3**

**Date: 06.11.2014**

RESOLVED THAT in pursuance of Sec.161 (2) of the Companies Act, 2013 read with Article No..... of the Articles of Association of the Company, MR. RAHUL who is not a Director/Alternate Director of the company, be and is hereby appointed as an Alternate Director of the Company in place of MR. ABIR, an Independent Director for a period of, three months commencing from 10.11.2014 or such further period till the return of Mr. Abir from abroad but not longer than that permissible to Mr. Abir for his tenure as a Director in the company.

FURTHER RESOLVED THAT the Board endorses the recommendation of the Appointment and Remuneration Committee of the Board approving on verification the eligibility of Mr. Rahul to be appointed as an Independent Director and who is otherwise not disqualified for appointment.

RESOLVED FURTHER THAT the Company Secretary be and is hereby authorized to file returns and issue notice for appointment of Mr. Rahul in various committee of the Board.

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(b) According to Section 182 of the Companies Act, 2013:

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

(ii) The following companies are not allowed to contribute to any political party:-

(a) a Government company

(b) a company which has been in existence for less than three financial years.

In the given case:

(1) HILTON LTD. cannot make any political contribution because the company is not in existence for a period of 3 financial years.

(2) If Hilton Ltd. were incorporated on 01.12.2010 it may make a political contribution as on 01.07.2014 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 aggregate of the amount which may be so contributed by the company in any financial year shall not exceed seven and a half percent of its average net profits during the three immediately preceding financial years.

(b) No such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors and such resolution shall be deemed to be justification in law for the making and the acceptance of the contribution authorized by it.

(c) The company shall disclose in its profit and loss account any amount or amounts contributed by it to any political party during the financial year to which that account relates, giving particulars of the total amount contributed and the name of the party to which such amount has been contributed.  
[Section 182 (3)]

(3) If a company makes any contribution in contravention of the provisions in this section, the company shall be punishable with fine which may extend to five times the amount so contributed and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months and with fine which may extend to five times the amount so contributed.

(c) No risk can be assumed by the insurer unless the premium is received. According to section 64VB of the Insurance Act, 1938, no insurer should assume any risk in India in respect of any insurance business on which premium is ordinarily payable in India unless and until the premium payable is received or is guaranteed to be paid by such person in such manner and within such time, as may be prescribed, or unless and until deposit of such amount, as may be prescribed, is made in advance in the prescribed manner. The premium receipt of insurance companies carrying on general insurance business normally arise out of three sources, viz., premium received from direct business, premium received from reinsurance business and the share of co-insurance-premium. In view of the above, the insurance company is not liable to pay the claim and hence no provision for claim is required.

(d) Disclaimer of onerous property (Section 535)

Where any part of the property of a company which is being wound up consists of

(i) land of any tenure, burdened with onerous covenants ;

(ii) shares or stock in companies ;

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- (iii) any other property which is un-saleable or is not readily saleable, by reason of its binding the possessor thereof either to the performance of any onerous act or to the payment of any sum of money ; or
- (iv) unprofitable contracts ;

the liquidator of the company, notwithstanding that he has endeavored to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, or done anything in pursuance of the contract, may, with the leave of the Court and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the Court, disclaim the property : Provided that, where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the Court.

3. (a) **MANTOP LTD. is a London based Company having several business units all over the world. It has a unit for manufacturing laptop, with its headquarters in Pune. It has a branch at Seoul, South Korea which is controlled by the Headquarters in Pune. What would be the residential status under the Foreign Exchange Management Act, 1999 of laptop units in Pune and that of Seoul branch?** 4
- (b) **Mr. Samart, an officer of PUNE TEXTILE MILLS LTD. was in possession of Rs. 1 lakh and occupation of the quarter of the said Mills even after his retirement and neglected the notice of the Company to return back the properties. State the punishment prescribed under the Companies Act, 2013 for wrongful withholding of property.** 3
- (c) **The board meeting of MANO LTD. was held on 10th June, 2014 at Lucknow at 10.30 a.m. At the time of starting the board meeting, the number of directors present were 8. The total number of directors in the company were 10. The board transacted eight items in the board meeting on that day. At 12 noon after the completion of four items in the agenda, 5 directors left the meeting. Examine the validity of all these transactions explaining the relevant provisions of the Companies Act, 1956.** 4
- (d) **Honest Limited, a company incorporated in India has six members in its Audit Committee. Due to recessionary conditions in India the revenue of the company is going down and there is slow down in other activities of the company. Therefore, it was expected that there would not be significant work for members of the Audit Committee. Considering the overall recession in the company and the economy, the members of the Committee decided unanimously to meet once in a year only on March 31, 2014. They reviewed monthly information system of the Company and found no errors. Would you consider the decision taken by the Audit Committee is in line with the Clause 49 of the (SEBI) Listing Agreement?** 4

**Answer:**

3. (a) Section 2(u) of the Foreign Exchange Management Act (FEMA) 1999, defines a 'person'. As per this definition, the following shall be covered in the definition of a 'person'.

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(i) A company

(ii) 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':

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

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

In the given case, **Mantop Ltd. (London)** its headquarters in Pune as well as Seoul Branch is a 'person'. Therefore, residential status under FEMA shall be determined for each of them separately.

- Mantop Ltd. (London) does not fall under any of the clauses of the definition of a 'person resident in India'. Therefore, Mantop Ltd. (London) is a person resident outside India.
- The Pune headquarters of Mantop Ltd. (London) '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 Seoul Branch of Mantop Ltd. (London), though not owned, is controlled by the Pune headquarters. The Seoul 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'.

(b) The punishment for wrongful withholding of property as stated in Section 452 of the Companies Act, 2013 states that

(1) If any officer or employee of a company—

- (i) wrongfully obtains possession of any property, including cash of the company; or
- (ii) having any such property including cash in his possession, wrongfully withholds it or knowingly applies it for the purposes other than those expressed or directed in the articles and authorised by this Act, he shall, on the complaint of the company or of any member or creditor or contributory thereof, be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

(2) The Court trying an offence under sub-section (1) may also order such officer or employee to deliver up or refund, within a time to be fixed by it, any such property or cash wrongfully obtained or wrongfully withheld or knowingly misapplied, the benefits that have been derived from such property or cash or in default, to undergo imprisonment for a term which may extend to two years.

(c) Section 287 of the Companies Act, 1956, provides for the quorum for meeting. The quorum for a meeting of the Board of Directors of a company shall be one third of its total strength (any fraction contained in the said one third being rounded off as one), or two directors, whichever is higher. Where at any time the number of interested directors exceeds or is equal to two thirds of the total strength, the number of remaining directors, that is to say, the number of directors who are not interested present at the meeting being not less than two shall be the quorum during such time. In this case, the quorum is 4 (i.e.  $1/3$ rd of 10 =  $3 \frac{1}{3}$  rounded off as 4).

Hence, the quorum was present at the time of commencement of meeting. As a rule, in the case of a meeting of the Board of Directors, the meeting cannot transact any business, unless a quorum is present at the time of transacting the business. It is not enough that a quorum was present at the commencement of the business. The quorum of the Board is required at every stage of the meeting and unless a quorum is present at every stage, the business transacted is void. (Balakrishna V. Balu Subudhi AIR 1949 Pat

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184).

In the given situation four items were transacted with the quorum and thus they are valid. Other four items were transacted after 5 directors left the meeting resulting in the reduction of quorum as only 3 directors were present as against the required quorum of 4 directors. Hence, such four transactions are void.

(d) One of the following additional requirement as stipulated under clause 49 on which Section 292A of Companies Act, 1956 (relating to audit committee ) is silent is - The audit committee shall meet at least four times in a year. The gap between two meetings should not be more than four month.

Besides, there is a mandatory review requirement and to review only monthly information system is not sufficient. Here the audit committee members reviewed only monthly information system of the company and the same is not sufficient as per clause 49.

The Audit Committee shall mandatorily review the following information as per Clause 49

1. Management discussion and analysis of financial condition and the results of operations;
2. Statement of significant related party transactions (as defined in the audit committee) submitted by the management
3. Management letters/letters of internal control weaknesses issued by the statutory auditors;
4. Internal audit reports relating to internal control weaknesses; and
5. The appointment, removal and terms of remuneration of the Chief Internal auditor shall be subject to review by the Audit Committee.

Applying the above, the decision taken by the audit committee is not in line with the clause 49 of the (SEBI) Listing Agreement.

**4. (a) M PRIVATE LTD. had taken overdrafts from two Banks with a limit of Rs. 10 Lakhs each against the security of Fixed Deposit it had with those Banks and an unsecured overdraft from a financial institution of Rs. 9 Lakhs. The said loans were outstanding as at 31st March, 2014. The paid up capital and reserves of the company as at that date was Rs. 40 Lakhs and its turnover during the financial year ended on 31st March, 2014 was Rs. 3 Crores. The management of the company is of the opinion that CARO, 2003 is not applicable to it, because turnover and paid-up capital were within the exemption limits prescribed and loans taken against the fixed deposits cannot be considered. The company further contended that loan limit is to be reckoned per Bank or Financial Institution and not to be aggregated.**

**Comment with reference to the provisions of Companies Act, 1956.**

**3**

**(b) Under what circumstances a Managing Director or whole time Director is not entitled to compensation for loss of office under the Companies Act, 2013?**

**5**

**(c) What is e-Governance? What are the advantages of e-Filing?**

**2+2=4**

**(d) Explain the "Majority" required for approving the scheme of amalgamation in a meeting of members of a company called as per directions of the Court.**

**Examine further whether the scheme should be approved by the preference share holders under Companies Act, 1956.**

**2+1=3**

**Answer:**

**4. (a)** The Companies (Auditor's Report) Order (CARO), 2003, exempts private limited companies from its application which fulfils all the following conditions:

- (i) its paid-up capital and reserves are rupees fifty lakh or less;



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- (ii) its outstanding loan from any bank or financial institution are rupees twenty five lakh or less: and
- (iii) its turnover does not exceed rupees five crore.

In the case of M Private Ltd., its paid-up capital less than Rs. 50 lakhs, turnover is less than Rs. 5 crores but its outstanding loan from banks and financial institution is Rs. 29 Lakhs. Loans against Fixed deposits are to be taken into consideration to compute the outstanding loan from any bank or financial institution. For the limit of Rs. 25 lakhs as loans from banks and financial institutions, all loans from banks and financial institutions are to be taken cumulatively. Hence, the contention of the company is not correct. Here, M Private Ltd. does not satisfy all conditions and CARO, 2003. therefore, will be applicable.

(b) Sec 202 (1) of the Companies Act, 2013 states that a company may make payment to a managing or whole-time director or manager, but not to any other director, by way of compensation for loss of office, or as consideration for retirement from office or in connection with such loss or retirement.

(2) No payment shall be made under sub-section (1) in the following cases, namely:—

- (a) where the director resigns from his office as a result of the reconstruction of the company, or of its amalgamation with any other body corporate or bodies corporate, and is appointed as the managing or whole-time director, manager or other officer of the reconstructed company or of the body corporate resulting from the amalgamation;
- (b) where the director resigns from his office otherwise than on the reconstruction of the company or its amalgamation as aforesaid;
- (c) where the office of the director is vacated under sub-section (1) of section 167;
- (d) where the company is being wound up, whether by an order of the Tribunal or voluntarily, provided the winding up was due to the negligence or default of the director;
- (e) where the director has been guilty of fraud or breach of trust in relation to, or of gross negligence in or gross mismanagement of, the conduct of the affairs of the company or any subsidiary company or holding company thereof; and
- (f) where the director has instigated, or has taken part directly or indirectly in bringing about, the termination of his office.

(c) Electronic Governance is the application of information technology to the Government functioning in order to bring about Simple, Moral, Accountable, Responsive and Transparent (SMART) Governance. E-Governance is a highly complex process requiring provision of hardware, software, networking and re-engineering of the procedures for better delivery of services.

Traditionally, the interaction between citizens or business and Government agency takes place in a Government office. In E-Governance, the interaction takes place virtually using Internet based technology, thus reducing time and cost involved. Even better, E-Governance enhances the citizens and business access to Government information and services and provides new ways to increase citizen participation in the democratic process.

### **Advantages of e-Filing**

- Business shall be enabled to register a company and file statutory documents quickly and easily.
- Public to get easy access to relevant records and get their grievances redressed effectively.
- Professionals to be able to offer efficient services to their client companies.

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- Financial Institutions to find registration and verification of charges easy.
- Government to ensure proactive and effective compliance of relevant laws and corporate governance.
- MCA employees shall be enabled to deliver best of services.

(d) Majority in number representing three-fourths in value of members or class of members, as the case may be, present and voting either in person or by proxy, where proxies are allowed under the rules made under Section 643 must approve the scheme or arrangement providing for amalgamation of companies [Section 391(2)] Any member who though present at the meeting, does not vote for or against, but remains neutral, is not to be taken under consideration.

As the expression used is member, not only holders of equity shares but also preference shares and equity shares are ordered by the court to be held separately, the three-fourths majority of each class will have to be ascertained separately.

5. (a) Explain the conditions for order of winding up of the sick Industrial company under section 424G(1) of the Companies Act, 1956. 2
- (b) AKSHAY LTD. has advanced a loan of Rs. 1,00,000 to one of its Directors in contravention of the provisions of Sec. 185 of the Companies Act, 2013. State the consequences of such contravention. 3
- (c) Explain the different tools of corporate restructuring. 5
- (d) Explain 'Competition Advocacy' under the Competition Act, 2002. 3
- (e) A Housing Society started banking business which was ultra vires the regulations governing the said society. On its winding up, the assets were composed partly of the shareholders' money and partly of the ultra vires depositor's money. Discuss the rights of the shareholders and depositors. 2

**Answer:**

5. (a) Where the Tribunal, after making inquiry under section 424 B and after consideration of all the relevant facts and circumstances and after giving an opportunity of being heard to all concerned parties, is of the opinion that the sick industrial company is not likely to make its net worth exceed the accumulated losses within a reasonable time while meeting all its financial obligations and that the company as a result thereof is not likely to become viable in future and that it is just and equitable that the company should be wound up, it may record its findings and order winding up of the company.
- (b) If any loan is advanced or a guarantee of security is given or provided in contravention of the provisions of sub-section (1) of Section 185 of the Companies Act, 2013, the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, and the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend, to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.
- (c) **Corporate Restructuring Tools:** In India, the concept has caught on like wildfire, with a merger or two reported frequently. The process of restructuring through mergers and

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amalgamations has been a regular feature in the developed and free economy nations like USA and European countries, particularly in the UK, where hundreds of mergers take place every year. There are many tools and strategies by which or through which Corporate Restructuring can be processed: such as amalgamations, mergers, demergers reverse mergers, takeovers, acquisitions, joint ventures, disinvestment, buyback of shares etc.

- **Amalgamation**  
It is the process of combining or uniting multiple entities into one form. The term amalgamation is not defined under the Companies Act, 1956. Generally speaking amalgamation is a legal process by which two or more companies are joined together to form a new entity or one or more companies are to be absorbed or blended with another.
- **Reverse Merger**  
It is when a private company purchases control of a public company and then carries out a merger with a private company. With a reverse merger, the private company shareholders receive most of the shares of the public company and control of the Board. A reverse merger is a quick way of going public with the timetable being only a couple of weeks.
- **Normal Merger**  
Merger is an arrangement whereby the assets of two or more companies become vested in or under the control of one company, which may or may not be one of the original two companies, which has as its shareholders, all or substantially all, the shareholders of the two companies.
- **Demerger**  
The act of splitting off a part of an existing company to become a new company, which operates completely separately from the original company. Shareholders of the original company are usually given an equivalent stake of ownership in the new company.
- **Take-over**  
It is the purchase of one company by another. The term refers to the acquisition of a public company whose shares are listed on the Stock Exchange, in contrast to the acquisition of a private company.
- **Joint Venture:**  
Two parties (individuals or companies), incorporate a company in India. The business of one party is transferred to the company and, as a consideration for such a transfer; shares are issued by the company and subscribed by that party. The other party subscribes to the shares in cash. The parties subscribe to the shares of the Joint venture Company in agreed proportion in cash and start a new business.
- **Disinvestment:**  
It means to sell off certain assets, such as a manufacturing plant, a division or subsidiary, or product line.
- **Buyback:**  
The repurchase of outstanding shares by an company, in order to reduce the number of shares on the market. Companies will buyback shares either to increase the value of shares still available or to eliminate any threats by shareholders who may be looking for controlling powers.

## (d) Competition Advocacy [Section 49]

The Central Government may, in formulating a policy on competition (including review of laws related to competition), or any other matter, and a State Government may, in formulating a policy on competition or on any other matter, as the case may be, make a reference to the Commission for its opinion on possible effect of such policy on

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competition and on receipt of such a reference, the Commission shall, within sixty days of making such reference, give its opinion to the Central Government or the State Government as the case may be, which may thereafter take further action as it deems fit.

The opinion given by the Commission under sub-section (1) shall not be binding upon the Central Government or the State Government as the case may be in formulating such policy.

The Commission shall take suitable measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues.

(e) When the lender's money and that of the company have become mixed up and the two can't be separated from each other, the lender may claim *pari passu* distribution of the assets with shareholders in the event of the winding up of the company. Hence, the entire remaining amount should be apportioned between the shareholders and *ultra vires* depositors in proportion to the amount paid up by them respectively.

**(6) (a) Examine with reference to the provisions of the Companies Act, 1956 whether winding up can be ordered by the Court in case the Board of Directors of the Company decide to discontinue one of its business. Would your answer differ in case the company suspends the entire business? Explain. 2+1=3**

**(b) Under section 603 of the Companies Act, 1956, what are the particulars required to be included in a prospectus to be issued by an existing Foreign Company? 3**

**(c) Which is the apex body to ensure integrated operation of the power system in a state? What are the duties of this authority? 1+3=4**

**(d) Explain the objective of the prevention of Money Laundering Act (PMLA), 2002. 3**

**(e) How disputes are resolved under the SARFAESI Act, 2002? 2**

**Answer:**

**(6) (a)** Section 433(c) of Companies Act, 1956 lays down that if the company does not commence its business within a year from its incorporation or suspends its business for a whole year, the company may be wound up by the court.

Where a company having many business discontinues one of them, it cannot be said to have suspended business. The suspension must of the entire business and not of a part of it. Even if the work of all the business has been suspended, then too it will still be open to the court to examine whether it will be possible for the company to continue its business. (*Paramjit Lal Badhwar v. Prem Spg. & Wvg. Mills Ltd* (1983) 3 Comp. LJ 237.

Therefore, in the present case since the company in question has decided to discontinue only one of its businesses, it cannot be said to be a ground for winding up by the court. The answer would certainly differ in case the company suspends the entire business and the court in its opinion find that there is no possibility of continuation of the business by the company. The court may order winding up on the above ground.

**(b)** Under section 603, of Companies Act, 1956, the prospectus to be issued by an existing or intended foreign company in India must be dated and contains particulars with respect to the following matters:

(i) the instrument constituting or defining the constitution of the company;

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- (ii) the enactments or provisions having the force of enactments, by or under which the incorporation of the company was effected;
  - (iii) an address in India where the said instrument, enactments, or provision, or copies thereof, and if the same are not in English, a translation thereof certified in the prescribed manner, can be inspected;
  - (iv) the date on which and the country in which the company was incorporated;
  - (v) whether the company has established a place of business in India, and, if so, the address of its principal office in India.
- (c) The State Load Despatch Centre as per sec. 32 of Indian Electricity Act shall be the apex body to ensure integrated operation of the power system in a State.  
The State Load Despatch Centre shall -
- (a) be responsible for optimum scheduling and despatch of electricity within a State, in accordance with the contracts entered into with the licensees or the generating companies operating in that State;
  - (b) monitor grid operations;
  - (c) keep accounts of the quantity of electricity transmitted through the State grid;
  - (d) exercise supervision and control over the intra-state transmission system; and
  - (e) be responsible for carrying out real time operations for grid control and despatch of electricity within the State through secure and economic operation of the State grid in accordance with the Grid Standards and the State Grid Code.
  - (f) levy and collect such fee and charges from the generating companies and licensees engaged in intra-State transmission of electricity as may be specified by the State Commission.
- (d) (1) **Money Laundering** actually refers to a process or system by which money is actually generated from serious crimes, but they are given such shape (by disguising its origin into a series of transactions) that it looks like it has originated from legitimate sources. PMLA has been enacted as part of India's commitment to fight all forms of economic crimes.
- (2) **Date and extent:** PMLA, 2002 came into force w.e.f. 1<sup>st</sup> July 2005. It extends to the whole of India.
- (3) **Objectives of PMIA:**
- (i) To prevent money laundering, and to provide for confiscation of property derived from or involved in money laundering and for matters connected therewith or incidental thereto.
  - (ii) To avoid channelising of money into illegal activities and providing for attachment and seizure of property and records, stringent punishment, including rigorous imprisonment of upto 10 years and fine of upto Rs. 5 Lakhs.
- (e) As per section 11 of SARFAESI Act, 2002 where any of dispute relating to securitisation or reconstruction or non-payment of any amount due including interest arises amongst any of the parties, namely, the bank, or financial institution or securitisation company or reconstruction company or qualified or institutional buyer, such dispute shall be settled by conciliation or arbitration as provided in the Arbitration and Conciliation Act, 1996, as if the parties to the dispute have consented in writing for determination of such dispute by conciliation or arbitration and the provisions of that Act shall apply accordingly.

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## Section B

Answer any two Questions from Question No. 7(a) to 7(c).

	10x2=20
(7) (a) (i) State the factors influencing Corporate Social Responsibility. (C.S.R.)	5
(ii) Why whole life risk monitoring is essential for ensuring effective implementation of risk control measures?	5
(b) (i) State OECD guidelines for corporate Governance of State owned Enterprises.	6
(ii) Explain corporate citizenship as a new way to market CSR.	4
(c) (i) "Corporate Social Responsibility is not Charity". Discuss.	6
(ii) Explain the role of subjectivity in WLCC.	4

**Answer:**

7. (a) (i) Many factors and influences, including the following, have led to increasing attention being devoted to CSR:
- Globalization- coupled with focus on cross-border trade, multinational enterprises and global supply chains - is increasingly raising CSR concerns related to human resources management practices, environmental protection, and health and safety among other things.
  - Governments and intergovernmental bodies, such as the United Nations, The OECD and the ILO have developed compacts, declarations, guidelines, principles and other instruments that outline social norms for acceptable conduct.
  - Advances in communications technology, such as the Internet, Cellular phones and personal digital assistants, are making it easier to track corporate activities and disseminate information about them. Non-governmental organization now regularly draw attention through their websites to business practices they view as problematic.
  - Consumers and investors are showing increasing interest in supporting responsible business practices and demanding more information on how companies are addressing risks and opportunities related to social, and environmental issues.
  - Numerous serious and high-profile breaches of corporate ethics have contributed to elevated public mistrust of corporations and highlighted the need for improved corporate governance, transparency, accountability, and ethical standards
  - Citizens in many countries are making it clear that corporations should meet standards of social and environmental care, no matter where they operate.
  - There is increasing awareness of the limits of government legislative and regulatory initiatives to effectively capture all the issues that CSR addresses.
  - Businesses are recognizing that adopting an effective approach to CSR can reduce risk of business disruptions, open up new opportunities, and enhance brand and company reputation.
- (ii) **Whole life risk monitoring and feedback**  
The issue of risk monitoring is essential for ensuring effective implementation of risk control measures. Active risk monitoring ensures that effective response measures to manage the risks are appropriately implemented. Since we are dealing with the life-cycle of projects, the initial decision conditions may change over-time, which could lead to the change of risks. Hence, a feedback and continuous assessment of risk

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through the entire life span of the project is very important in the process of whole life-cycle costing. This process should include tracking the effectiveness of the planned risk responses, reviewing any changes in priority of response management, monitoring the state of the risks, updating the whole life-cycle analysis accordingly and reviewing the economic performance indicators to check whether the investment decision is still valid or otherwise. In this way risk monitoring not only evaluates the performance of risk response strategies but also serves as a continuing feedback or audit mechanism.

The application of the above framework should take place during the early stages of asset development as well as at every project milestone, and should continue throughout the whole life of the asset. The information generated from the WLCC risk management framework should inform decision makers on which input data has the most impact on the WLCC result and how robust the final decisions are.

**(b) (i) OECD Guidelines for Corporate Governance or State-owned Enterprises**

Many of the developing countries still continue to have a dominant presence of state-owned enterprises. Hence, OECD thought it appropriate to evolve a set of governance guidelines for the state-owned enterprises as it did for the private enterprises in member countries. According to OECD, A major challenge is to find a balance between the State's responsibility for actively exercising its ownership functions, such as, the nomination and election of the board, while at the same time refraining from imposing undue political interference in the management of the company. Another important challenge is to ensure that there is a level playing field in markets where private sector companies can compete with the State owned enterprises, and that governments do not distort competition in the way they use their regulatory or supervisory powers.

According to OECD, the guidelines suggest that the state should exercise its ownership functions through a centralized ownership entity, or effectively coordinated entities, which should act independently and in accordance with a publicly disclosed ownership policy. The guidelines also suggest the strict separation of the state's ownership and regulatory functions. If properly implemented, these and other recommended reforms would go a long way to ensure that state ownership is exercised in a professional and accountable manner, and that the state plays a positive role in improving corporate governance across all sectors of our economies. The result would be healthier, more competitive, and transparent enterprises.

The major recommendations in OECD guidelines are as discussed below:

1. There should be a clear separation between the states ownership function and other state functions
2. SOEs should not be exempt from the application of general laws and regulations.
3. SOEs should face competitive conditions regarding access to finance.

**(ii) Corporate Citizenship: a new way to market CSR**

A new terminology that has been gaining grounds in the business community today is Corporate Citizenship. So what is Corporate Citizenship and is this fundamentally different from corporate social responsibility? Corporate Citizenship is defined by the Boston College Center 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.

The major recommendations in OECD guidelines are as follows:

1. Ensuring an effective legal and regulatory framework for state –owned enterprises

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2. State acting as an informed and active owner and establish a clear and consistent ownership policy.
3. Equitable treatment of share- holders- The SOEs should recognize rights of all shareholders and in accordance with the OECD principles of corporate governance ensure their equitable treatment and equal access to corporate information.
4. The state ownership policy should fully recognize the state-owned enterprises' responsibilities towards stakeholders and report their relations with them.
5. Transparency and disclosure - State owned enterprises should observe high standards of transparency and disclosure as per OECD principles of corporate governance.

**(c) (i) Corporate Social Responsibility is not charity**

There have been evidences that record a paradigm shift from charity to a long-term strategy, yet the concept still is believed to be strongly linked to philanthropy. There is a need to bring about an attitudinal change in people about the concept.

By having more coherent and ethically driven discourses on CSR, it has to be understood that CSR is about how corporates place their business ethics and behaviors to balance business growth and commercial success with a positive change in the stakeholder community.

Several corporates today have specific departments to operationalize CSR. There are either foundations or trusts or a separate department within an organization that looks into implementation of practices.

Being treated as a separate entity, there is always a flexibility and independence to carry out the tasks.

But often these entities work in isolation without creating a synergy with the other departments of the corporate. There is a need to understand that CSR is not only a pure management directive but it is something that is central to the company and has to be embedded in the core values and principles of the corporate.

Whatever corporates do within the purview of CSR has to be related to core business. It has to utilize things at which corporates are good; it has to be something that takes advantage of the core skills and competencies of the companies. It has to be a mandate of the entire organization and its scope does not simply begin and end with one department in the organization.

While there have been success stories of short term interventions, their impact has been limited and have faded over a long period of time. It is essential for corporates to adopt a long term approach rather than sticking to short term interventions, involving the companies and employees in the long-term process of positive social transition. A clearly defined mission and a vision statement combined with a sound implementation strategy and a plan of action firmly rooted in ground realities and developed in close collaboration with implementation partners, is what it takes for a successful execution of CSR.

An area that can be looked upon is the sharing of best practices by corporates. A plausible framework for this could be bench-marking. While benchmarking will help corporates evaluate their initiatives and rank them, it will also provide an impetus to others to develop similar kind of practices. Credibility Alliance, a consortium of voluntary organizations follows a mechanism of accreditation for voluntary sector. Efforts have to be directed towards building a similar kind of mechanism for CSR as well.



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### (ii) Subjectivity in WLCC

The issue of subjectivity and vagueness is also a very important facet of WLCC. Subjectiveness, vagueness and ambiguity (used interchangeably) are different from randomness. Randomness deals with uncertainty (In terms of probability) concerning occurrence or non-occurrence of an event. Subjectivity, on the other hand, has to do with the imprecision and inexactness of events and judgments including probability judgments. Many WLCC decision problems involve variables and relationships that are difficult, if not possible, to measure precisely. For example, probability judgments about issues like inflation, operation costs, etc. are not always precise in WLCC and often cost analysts use subjective expression to express their probability judgments. This applies to probability judgments as well as the costs and benefits in many WLCC decision problems. The requirement for high levels of precision may cause WLCC models to lose part of their relevance to the real world by ignoring some of the relevant decision attributes because these variables are incapable of precise measurement or because their inclusion may increase the complexity of the models. Hence, the key to successful WLCC and risk assessment is to build models that require little information-no more than the users can provide.