FINAL EXAMINATION

GROUP III

(SYLLABUS 2012)

SUGGESTED ANSWERS TO QUESTIONS

DECEMBER 2016

Paper-13 : CORPORATE LAWS AND 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.

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

Answer Question No. 1 (carrying 20 marks) which is compulsory and also answer any five (carrying 16 marks each) from Question No. 2 to Question No. 8.

1. Answer any four from the following: 5×4= 20

(a) List out the matters not to be dealt with in a meeting through Video conferencing or other audio visual means as prescribed under the companies Act 2013 and the rules made thereunder. 5

(b) Fill in the blanks: 1×5 = 5

(i) No Banking Company shall create any charge upon any …….. capital of the company, any such charge shall be ……..

(ii) Unless the Articles of Association of the producer company provide for a larger number,……..of the total number of members of the Producer Company shall be the Quorum for its Annual General Meeting.

(iii) ……. in relation to electricity, means the sale of electricity to a licensee or consumer.

(iv) A person is not eligible for appointment as auditor of any company, if he is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company in excess of rupees ……..

(v) The amount of the Dividend, including Interim dividend, shall be deposited in a scheduled bank in a separate account within …….. days from the date of declaration of such dividend.

(c) State whether the following statements are TRUE OR FALSE: 1×5= 5

(i) The Financial Reporting Council (FRC) has five operational bodies.

(ii) The board of every Company having specified networth or turnover or net profit during any financial year shall ensure that the Company spends, in every financial year, at least five per cent of the average net profits of the Company made during the three immediately preceding financial years in pursuance of its Corporate Social Responsibility Policy.

(iii) A Company, other than a Government Company and a Company which has been in existence for less than two financial years, may contribute any amount directly or indirectly to any political party.

(iv) The maximum number of Public companies in which a person can be appointed as a director shall not exceed twenty.

(v) Auditor's Report shall be read before the company in General Meeting and shall be open to inspection by any member of the company.

(d) Minu Ltd. wants to make an initial offer of its securities. Advise the company on the following issues under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009:

(i) Extent of promoters contribution:

(ii) Lock in period of securities held by promoters; 2+3=5

(e) What is Corporate Social Responsibility? Why is it needed in Indian Business environment? 5

Answer: 1

(a) The following matters shall not be dealt with in any meeting held thorugh video conferencing or other audio visual means: -

(i) The approval of the Annual Financial Statements.

(ii) The approval of the Board's report.

(iii) The approval of the prospectus.

(iv) The Audit Committee Meeting for consideration of Financial Statements including consolidated Financial statements, if any to be approved by the Board under sub-section (1) of section 134 of the act and

(v) The approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

(b) (i) Unpaid/Invalid.

(ii) 1/4th

(iii) Supply

(iv) Five lakhs

(v) Five

(c) (i) False

(ii) False

(iii) False

(iv) False

(v) False

(d) (1) Extent of promoters contribution- As per the regulation 32 of the SEBI (ICDR) Regulations, 2009, the promoters of the issuer shall contribute in the case of an initial public offer, not less than twenty per cent of the post issue capital:

Provided that in case the post issue shareholding of the promoters is less than twenty per cent, alternative investment funds may contribute for the purpose of meeting the shortfall in minimum contribution as specified for promoters, subject to a maximum of ten per cent of the post issue capital.

(2) Lock-in period of specified securities held by promoters- As per the regulation 36 of the SEBI (ICDR) Regulations, 2009, in an initial public offer, the specified securities held by promoters shall be locked-in for the period as stipulated hereunder:

(a) minimum promoters' contribution including contribution made by alternative" investment funds shall be locked-in for a period of three years from the date of commencement of commercial production or date of allotment in the public issue, whichever is later;

(b) promoters' holding in excess of minimum promoters' contribution shall be locked-in for a period of one year:

The expression "date of commencement of commercial production" means the last date of the month in which commercial production in a manufacturing company is expected to commence as stated in the offer document.

(e) Corporate Social Responsibility is the continuing commitment by businesses to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the-local community and society at large.

Need for social responsibility:

(i) Eradicating extreme hunger and poverty
(ii) Promotion of education
(iii) Promoting gender equality and empowering women
(iv) Reducing child morality and improving maternal health
(v) Ensuring environmental sustainability
(vi) Social business projects
(vii) Employment enhancing vocational skills
(viii) Combating human immunodeficiency virus, malaria & other diseases
(ix) Contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central or State Govt. for socio-economic development and relief fund / funds for the welfare of the scheduled castes, the scheduled tribes, other backward classes, minorities and women, and
(x) Such other matters as may be prescribed

2. (a) Examine the validity of the following appointments with reference to the provisions of the Companies Act 2013:

(i) Mr. Person together with one of his relatives holds 3% of the total voting power of XYZ Ltd. The Board of Directors of the company appointed him as an independent director.

(ii) ABC Ltd., a listed company having 5,000 small shareholders, upon receiving notice from 400 of such small shareholders has refused to appoint a small shareholders' director under section 151 of the Companies Act, 2013.

(iii) Mr. D, who fails to get appointed as a director in the general meeting of AJD Limited, subsequently was appointed as an additional director by the Board of Directors of the company. 1+2+1=4

(b) Mr. Raman is a Managing Director of X company. He resigns from his office as a result of amalgamation of the X Company with the other body corporate. Further he is appointed as the Managing director of the body corporate resulting from the amalgamation. State in the light of the Companies Act, 2013 whether in this situation, is company liable towards Managing Director to compensate for the loss of office after his resignation. 5

(c) (i) What are the duties of the inspector as enumerated in Sec.223 of the Companies Act, 2013 in relation to his repot?

(ii) Is it obligatory for every Producer company to appoint a whole-time secretary under the provisions of the Companies Act, 1956? 5+2 = 7

Answer: 2

(a) (i) An independent director means a director who, neither himself nor any of his relatives holds together with his relatives 2% or more of the total voting power of the company [Section 149(6) of the Companies Act, 2013].

In the given problem, Mr. Person holds together with his relatives 3% of the total voting power of XYZ Ltd. Hence his appointment as an independent director is not valid.

(ii) According to section 151 of the Companies Act, 2013, a listed company may have one director elected by such small shareholders in such manner and on such terms and conditions as given in rule 7 of the Companies (Appointment and Qualification of directors) Rules, 2014.

As per the rule, a listed company, may upon notice of not less than

(a) one thousand small shareholders; or

(b) one- tenth of the total number of such shareholders,

Whichever is lower, have a small shareholders' director elected by the small shareholders.

Thus, according to the provisions stated above, since the number of small shareholders of ABC Ltd. who applied is less than 1000 and 500 (1/10th of the total 5000) small shareholders, ABC Ltd. can validly refuse to appoint such a director.

(iii) According to section 161(1) of me Companies Act, 2013, a person who fails to get appointed as a director in a General-Meeting, cannot be appointed as an additional director.

Hence the appointment of Mr. D as an additional director in AJD Ltd. is not valid.

(b) According to Section 202 of the Companies Act. 2013, 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.

However, in certain situations, no compensation shall be made by the company. As per the situation given in Section 202(2)(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; no company shall make payment by way of compensation for loss of office to a managing or whole-time director or manager.

As per the facts given in the question, Mr. Raman, a Managing Director of X company resigns from his office as a result of amalgamation of the said company with the other body corporate. He is appointed as Managing Director of the Body Corporate resulting from the amalgamation. So accordingly, as per the above stated provision, company shall not make compensation to Mr. Raman for the loss of office due to his resignation on account of amalgamation of the company with other body corporate.

(c) (i) Section 223 of the Companies Act, 2013 deals with Inspector's report. The following provisions are applicable in respect of the Inspector's report on investigation:

(i) Submission of interim report and final report [Sub section (1)]: An inspector appointed under this Chapter (Chapter XIV- Inspection, Inquiry and Investigation) may, and if so directed by the Central Government shall, submit interim reports to that Government, and on the conclusion of the investigation, shall submit a final report to the Central Government.

(ii) Report to be in writing or printed [Sub section (2)]: Every report made under sub section (1) above, shall be in writing or printed as the Central Government may direct.

(iii) Obtaining copy or report [Sub section (3)]: A copy of the above report may be obtained by making an application in this regard to the Central Government.

(iv) Authentication of report [Sub section (4)]: The report of any inspector appointed under this Chapter shall be authenticated either—

(a) by the seal of the company whose affairs have been investigated; or
(b) by a certificate of a public officer having the custody of the report, as provided under section 76 of the Indian Evidence Act, 1872, and such report shall be admissible in any legal proceeding as evidence in relation to any matter contained in the report.

(v) Exceptions: Nothing in this section shall apply to the report referred to in section 212 of the Companies Act, 2013.

(c) (ii) Under section 581X of the companies Act- 1956 every Producer Company having an average turnover exceeding ₹5 crores in each of three consecutive financial years shall have a whole time secretary who is a member of ICSI.

3. (a) (i) State the main features of the qualified and Independent Audit Committee set up under clause 49 of the listing agreement.

(ii) Bombay Textiles Limited and Gujarat Textiles Limited marketing their products in India propose to be amalgamated. The enterprise created as a result of the said amalgamation will have assets of value of ₹300 crore and turnover of ₹1,000 crore. Examine whether the proposed amalgamation attracts the provisions of the Competition Act, 2002. 6+2= 8

(b) (i) X a newly established insurance company started the business of health insurance. It decided to get itself registered with the paid up equity capital of ₹99 crore excluding the preliminary expenses incurred during formation and registration. Examine in the light of the Insurance Act, 1938, whether X can be registered and can conduct the insurance business.

(ii) RST Ltd. is a securitization and reconstruction company under SARFAESI Act, 2002. The

certificate of registration granted to it was cancelled. State the authority which can cancel the registration and the right of RST Ltd. against such cancellation. 5+3=8

Answer: 3

(a) (i) The main features of a qualified and independent audit committee to be set up under clause 49 of listing agreement are as follows:

1. The audit committee shall have minimum three directors as members. Two-thirds of the members of audit committee shall be independent directors;
2. All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise;

   Explanation (i): The term "financially literate" means the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows.

   Explanation (ii): A member will be considered to have accounting or related financial management expertise if he or she possesses experience in finance or accounting, or requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.
3. The Chairman of the Audit Committee shall be an independent director;
4. The Chairman of the Audit Committee shall be present at Annual General Meeting to answer shareholder queries;
5. The Audit Committee may invite such of the executives, as it considers appropriate (and particularly the head of the finance function) to be present at the meetings of the committee, but on occasions it may also meet without the presence of any executives of the company. The finance director, head of internal audit and a representative of the statutory auditor may be present as invitees for the meetings of the audit committee;
6. The Company Secretary shall act as the secretary to the committee.,

(ii) Section 5 deals with combination of enterprises and persons. The amalgamation of enterprises shall be a combination of such enterprises if the enterprise created as a result of the amalgamation, as the case may be, have either in India, the assets of the value of more than ₹1,500 crores or turnover more than ₹4500 crores.

Hence, in the present case, the proposed amalgamation of Bombay Textiles Limited and Gujarat Textiles Limited will not attract the provisions of the Competition Act, 2002 as they have assets of_ value of ₹300 crore and turnover of ₹1000 crore which are less than specified under the provisions.

(b) (i) **Requirements as to Capital:** As per the Insurance Laws (Amendment) Act, 2015, section 6 of the Insurance Act, 1938, has been amended. According to which the requirements as to capital for registration of the insurer has been modified. No insurer (not being an insurer as defined in sub-clause (d) of clause (9) of section 2) carrying on the business of life insurance, general insurance, health insurance or reinsurance in India or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall be registered unless he has minimum paid up equity capital as prescribed below-

Type of Insurance Business	**Minimum Paid-up equity capital required (with a provision for further enhancement & Paid-up equity excludes preliminary expenses incurred during**

	formation and registration)
Life insurance or general insurance	₹100 crore
Health insurance (exclusively)	₹100 crore
Re-insurance (exclusively)	₹200 crore (besides re-insurer shall not be registered unless he has net owned funds of not less than ₹5,000 crore)

In the given case, X an insurance company is an insurer carrying business of health insurance. For registration as per the above provision, minimum-paid-up equity capital required for conduct of business of health insurance is ₹100 crore. Since paid up equity capital of X insurance company is less than 100 crore, so it cannot be registered for carrying of the insurance business.

(ii) **Cancellation of certificate of Registration under SARFAESI Act, 2002 –** The Reserve Bank of India may cancel a certificate of registration granted to a securitisation and reconstruction company for the reasons stated in Section 4 of SARFAESI Act, 2002.

RST Ltd., can prefer an appeal to the Central Government (Secretary, Ministry of Finance, Government of India) within a period of 30 days from the date on which order of cancellation was communicated to it. The Central Government must also give such company a reasonable opportunity of being heard before rejecting the appeal. If RST Ltd., is holding investments of qualified institutional buyers at the time of cancellation of certificate of registration, it shall be deemed to be a securitisation and reconstruction company until it repays the entire investments held by it, together with interest if any, within such period as may be specified by the Reserve Bank.

4. (a) (i) MS LOMIA a resident outside India, is likely to inherit from her father some immovable property in India. Are there any restrictions under the provisions of the Foreign Exchange Management Act, 1999 in acquiring or holding such property?

State, whether Ms Lomia can sell the property and repatriate outside India the sale proceeds.

(ii) A group of shareholders of DEPLOMAT TECHNO LTD., filed an application before the Company Laws Tribunal (CLT) alleging various acts of frauds and mismanagement by MR. SUNNY the Managing Director and his associates. During the course of hearing before the Company Laws Tribunal (CLT), the authorized representatives of the said company contended that the alleged transactions had taken place several years ago and the company has already removed the Managing Director, who was responsible for such transactions and hence there is no case before the CLT to interfere in the working of the company. Against the submissions on behalf of the company, the applicants submitted that although the fraudulent transactions were done in the past and the Managing Director has been removed, but the company is still controlled by the person, who are in league with the erstwhile Managing Director and are working as his Henchman. State, the merits of the applicants' arguments and power of the Company Laws Tribunal (CLT) according to the provisions of the Companies Act, 2013. 2+4=6

(b) (i) Explain the powers of Reserve Bank of India to control advances by Banking Company under the Banking Regulation Act, 1949.

(ii) Mr. Gordon who is registered as an intermediary fails to enter into an agreement with his client and hence penalized by SEBI under section 15B of SEBI Act 1992. Advise Mr. Gordon as to what remedies are available to him against the order of SEBI. 5+5=10

Answer: 4

(a) (i) As per sec, 6(5) of the FEMA, 1999, a person resident outside India may hold, own transfer or invest in India currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who-was resident in India.

In the present case; MS Lomia may acquire or hold immovable property following the provisions laid down under Sec. 6 (5) as her father was resident in India. Ms. Lomia can even sell the property and repatriate outside India the sale proceeds of such immovable Property.

(ii) Section 241 of companies Act, 2013 deals with the relief from oppression and mismanagement if the affairs of the company are being conducted in a manner oppressive to any member of the company or in a manner harmful or prejudicial to the company. The word is 'being conducted' and that should mean that the oppression and mismanagement should be continuous at the time when the relief is sought. The application is made to CLT which can take measure to give relief from oppression and mismanagement to the application. From the language it is clear that the Company Laws Tribunal (CLT) has no power if the oppression and mismanagement has been done in the past. According to the Act, the CLT can take following steps in the present case:

1. It can cancel any transfer of property within 3 months from the date of application.
2. It can use powers u/s **246 (Application of certain provisions to proceedings u/section 241 or section 245) of Companies Act, 2013** to direct the refund of any funds that has been earned or retained by the directors, officers or managers of the company.
3. Ask the applicant to be more specific and cite examples in support of his or her—application.

(b) (i) **Power of Reserve Bank to Control advances by banking companies [Section 21]**

i. Where the Reserve Bank is satisfied that it is necessary or expedient in the public interest or in the interests of depositors or banking policy so to do, it may determine the policy in relation to advances to be followed by banking companies generally or by any banking company in particular, and when the policy has been so determined, all banking companies or the banking company concerned, as the case may be, shall be bound to follow the policy as so determined.

ii. Without prejudice to the generality of the power vested in the Reserve Bank under sub-section (1) the Reserve Bank may give directions to banking companies, either generally or to any banking company or group of banking companies in particular, as to

(a) the purposes for which advances may or may not be made,

(b) the margins to be maintained in respect of secured advances,

(c) the maximum amount of advances or other financial accommodation which, having regard to the paid-up capital, reserves and deposits of a banking company and other relevant considerations, may be made by that banking company to any one company, firm, association of persons or individual,

(d) the maximum amount up to which, having regard to the considerations referred to in clause (c), guarantees may be given by a banking company on behalf of any one company, firm, association of persons or individual, and

(e) the rate of interest and other terms and conditions on which advances or other financial accommodation may be made or guarantees may be given.

iii. Every banking company shall be bound to comply with any directions given to it under this section.

(b) (ii) **Remedies against SEBI order:** Section 15B of the Securities and Exchange Board of India Act. 1992 lays down that if any person, who is registered as an intermediary and is required under this Act or any rules or regulations made there under, to enter into an agreement with his client fails to enter into such agreement, he shall be liable to a penalty of one Lakh rupees for each day during which such failure continues or one crore rupees, whichever is less. Mr. Gordon has been penalized under the above mentioned provision. Two remedies are available to Mr. Gordon in this matter:-

(i) Appeal to the Securities Appellate Tribunal:

Section 15T of the SEBI Act, 1992 provides that any person aggrieved by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act or the rules or regulations made there under may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.

Such appeal shall be filed within a period of 45 days from the date on which a copy of the order made by the Board is received and it shall be in such form and be accompanied by such fee as may be prescribed. However, the Tribunal may entertain an appeal after satisfied that there was sufficient cause for not filing it within the said period. The Tribunal may, after giving the parties and opportunity of being heard, pass such orders as it thinks fit, confirming, modifying or setting aside the order appealed against.

(ii) Appeal to the Supreme Court:

Section 15Z of the SEBI Act, 1992 provides that any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the SUPREME Court within 60 days from the date of communication of the decision or order to him on any question or fact or law arising out of such order. The SUPREME Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal with in the said period, allow it to be filed within a further period not exceeding 60 days.

5. (a) (i) Renuka Spinning Mills Ltd. is a sick company and has accumulated losses of ₹10 crores. The company has ₹12 crores in its share Premium Account. The Management desires to adjust the accumulated losses against the share premium balance. Advise the company giving your reasons in accordance with the provisions of the Companies Act, 2013

(ii) How a trial under the prevention of money Laundering Act, 2002 is conducted in Special Courts? 4+4=8

(b) (i) Explain the law laid down under the Companies Act, 2013 in respect of filing of Annual Financial Statements with Registrar of Companies (ROC) in the following two situations who is liable for the default.

(1) Where financial statements of the Company are filed with the R.O.C. after 11 months from the due date?

(2) Where financial statements are not at all filed by the Company with R.O.C.? 2+2=4

(ii) Explain the provisions laid down under the Companies Act, 2013 in respect of the formation of the Rehabilitation and Insolvency Fund for the purposes of rehabilitation, revival and liquidation of the sick companies. 4

Answer: 5

(a) (i) Application of Share Premium Account: Section 52 of the Companies Act, 2013 (herein after referred as the Act) deals with the application of premium received on issue of shares. Subsection (1) of the said section provides that where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to an account called "Securities Premium Account" and the provisions of this Act relating to reduction of share capital of a company except as provided in this section shall apply as if the securities premium account was the paid up share capital of the company. Sub-section (2) of the said section provides that notwithstanding anything contained in sub-section (1), securities premium account may be applied by the company for issue of bonus shares; writing off the preliminary expenses; writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company; in providing for the premium payable on redemption of any redeemable preference shares or any debentures of the company; for the purchase of its own shares or other securities. In view of these provisions of the Companies Act, 2013, it is not permitted to adjust its accumulated losses against the securities premium account.

(a) (ii) As per Sec.43 of the Prevention of Money Laundering Act, 2002, the Central Government, in consultation with the Chief Justice of the High Court, shall for trial of offence punishable under Sec.4 by notification designate one or more courts of session as special Court or courts for such area or areas or for such class or case or group of cases as may be specified in the notification.

Here, "High Court" means the High Court of the State in which a Session Court designated as Special Court was functioning immediately before such designation.

While trying an offence under this Act, a special Court shall also try an offence, other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

(b) (i) Under Section 403 of the Companies Act, 2013 any document may be filed within 270 days from the date by which it should have been filed under the Act. Any such document be also filed after 270 days on payment of fee and additional fee as may be prescribed, and the company and its officers who are-in-default shall be liable for the penalty or punishment provided under the Act.

Accordingly, in the present case, the financial statement has been filed after 270 days. Thus, the company may file the same on payment of fee and additional fee after 11 months. The company and its officers may approach ROC for compounding the offence, to avoid any prosecution by ROC for such failure Or default.

(iii) Under section 137 (3) of the Companies Act, 2013, if a company fails to file the financial statement, the company and the Managing director and the Chief Financial officer, if any, and in their absence, any other director who is charged by the Board with the responsibility of complying with the extent provisions, and in the absence of any such director, all the directors of the company, shall be punishable.

(ii) Rehabilitation and Insolvency Fund:

1) There shall be formed a Fund to be called the Rehabilitation and Insolvency Fund for the purposes of rehabilitation, revival and liquidation of the sick companies.

(2) There shall be credited to the Fund—

(a) the grants made by the Central Government for the purposes of the Fund;
(b) the amount deposited by the companies as contribution to the Fund;
(c) the amount given to the Fund from any other source; and
(d) the income from investment of the amount in the Fund.

(3) A company which has contributed any amount to the Fund shall, in the event of proceedings initiated in respect of such company under this Chapter or Chapter XX,

may make an application to the Tribunal for withdrawal of funds not exceeding the amount contributed by it, for making payments to workmen, protecting the assets of the company or meeting the incidental costs during proceedings.

(4) The Fund shall be managed by an administrator to be appointed by the Central Government in such manner as may be prescribed.

6. (a) (i) What are the qualifications required to be appointed Chairperson and members of the Appellate Tribunal as per the Indian Electricity Act, 2003?

(ii) "Decision taken by the Board of Directors cannot be altered or changed by the shareholders even if they want to approve it with unanimous majority". Comment with reference to the provisions of the Companies Act, 2013. 5+3=8

(b) MR. AMAN a 15% shareholder of a company and other shareholders have lost confidence in the Managing Director (MD) of the company. He is a director not liable to retire by rotation and was re-appointed as Managing Director for 5 years w.e.f. 01.04.2015 in the last Annual General Meeting of the company.

Mr. Aman seeks your advice to remove the MD after following the procedure laid down under the Companies Act, 2013.

(i) Specify the steps to be taken by Mr. Aman and the company in his behalf;

(ii) Draft a suitable resolution to be passed for removal of MD;

(iii) Is it necessary to state reasons to support the resolution for his removal? 3+2+1= 6

(c) Does the scheme of compromise or arrangement under the Companies Act, 2013 require approval of preference shareholders? 2

Answer: 6

(a) (i) **Qualification for appointment of Chairperson and Member of the Appellate Tribunal [Section 113]**

1) A person shall not be qualified for appointment as the Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal unless he-

(a) in the case of the Chairperson of the Appellate Tribunal, is, or has been, a judge of the Supreme Court or the Chief Justice of a High Court; and

(b) in the case of a Member of the Appellate Tribunal,-

(i) Is, or has been, or is qualified to be, a Judge of a High Court; or

(ii) is, or has been, a Secretary for at least one year in. the Ministry or Department of the Central Government dealing with economic affairs or matters or infrastructure; or

(iii) is, or has been, a person of ability and standing, having adequate knowledge or experience in dealing with the matters relating to electricity generation, transmission and distribution and regulation or economics, commerce, law or management.

2) The Chairperson of the Appellate Tribunal shall be appointed by the Central Government after consultation with the Chief Justice of India.

3) The Members of the Appellate Tribunal shall be appointed by the Central! Government on the recommendation of the Selection Committee referred to in section 78.

4) Before appointing any person for appointment as Chairperson or other Member of the Appellate Tribunal, the Central Government shall satisfy itself that such person

does not have any financial or other interest which is likely to affect prejudicially his functions as such Chairperson or Member.

(a) (ii) The statement is true. If some powers are vested in directors, they and they alone can exercise these powers. Shareholders will not dictate them how to use these powers. The directors while exercising their powers do not act as agents for the majority or even all the members and hence the members cannot supersede the powers of directors. The shareholders can however change the directors if they so wish, as the directors are elected or removed in general meeting but they just cannot dictate the director. If the power being exercised by the directors is given to them by the AOA. The shareholders can make' alterations to Articles.

(b) (i) Under Section 169 of the Companies Act, 2013, a company may, by ordinary resolution, remove a director before the expiry of his tenure." For the purpose, special notice from a shareholder (MR. AMAN in the present case) shall be required to be given to the company for moving a resolution to remove a director. On receipt of notice, the company shall forthwith send a copy thereof to the director concerned (MD in the present case) and he shall be entitled to be heard on the proposed resolution at the meeting. Copy of the representation, if any, made by the director be also sent to all members of the company to who notice of the general meeting is normally .sent. In case, the representation is received too Jate, the same, shall be read at the meeting. The representation need not be sent if the Company Law Board (now Tribunal) is satisfied that it will cause needless publicity for defamatory matter. Under Section 115 (Resolution requiring special notice), special notice of the intention to move the resolution shall be given not less than 14 days before the meeting.

In the present case, if the AGM is due to be held, Mr. Aman may send the special notice 14 days before the AGM. He already holds more than 10% shares in the company. Once the ordinary resolution is passed in the general meeting, MD will cease to be a director of the company and consequently MD of the company.

(ii) Mr. Aman may give special notice or his intention to move the following resolution, as ordinary resolution: "RESOLVED THAT Mr..... Managing Director of the Company be and is hereby removed as a director of the company under Section 169 of the Companies Act, 2013 with immediate effect."

(iii) A statement of reasons is not necessary to support the resolution for removal of a director. LIC vs. Escorts Ltd.(2013) 59Comp. Cases548 (SC).

(c) **Preference shareholders:** The term 'member' includes preference shareholders also. Further, preference shareholders are a class of members and their rights may be affected differently in the proposed scheme of arrangement. Hence their approval is also required.

If the Court directs separate meeting of preference shareholders and equity shareholders, then the scheme should be approved by requisite majority in both such meetings held as per directions of the Court.

7. (a) The Companies Act, 2013 has introduced several provisions which would change the way Indian Corporate do business and one such provision is spending on Corporate Social Responsibility (CSR) activities which has assumed considerable importance.
Discuss the provisions governing CSR as provided in the Companies Act, 2013 and the Rules made thereunder. 8

(b) The Financial Reporting Council (FRC) is responsible for high standards of Corporate Governance.
Explain this statement along with the aims of FRC. 8

Answer: 7

(a) 1. CSR applies to the following classes of companies during any financial year:

(i) Companies having Net Worth of rupees five hundred crore or more;

(ii) Companies having turnover of rupees one thousand crore or more,

(iii) Companies having Net Profit of rupees five crore or more

2. The companies specified above shall constitute a Corporate Social Responsibility Committee (CSR Committee) of the Board

3. The CSR Committee shall consist, of three or more Directors, out of which at least one Director shall be an Independent Director.

4. After taking into account the recommendations of the CSR Committee, the Board shall approve the CSR Policy for the company.

5. The contents of the Policy shall be disclosed in the Board's report.

6. It shall also be placed on the Company's website, if any, in a manner to be prescribed by the Central Government.

7. The Board shall ensure that the activities as are included in the CSR Policy (from the activities as specified in Schedule VII) are undertaken by the Company.

The following additional features of the Section are relevant.

1. While spending the amount earmarked for CSR activities, the company shall give preference to the local area and areas around it where it operates;

2. If the Company fails to spend the amount, the Board shall specify the reasons for not spending the amount in the Board's Report.

3. The eligible companies are required to spend in every financial year at least two percent of the Average Net Profits of the Company made during the three immediately preceding financial years in pursuance of its CSR policy. (SEC 135)

(b) **Financial Reporting Council**

The Financial Reporting Council (FRC) has six operating bodies: the Accounting Standards Board (ASB), the Auditing Practices Board (APB) the Board for Actuarial Standards (BAS), the Professional oversight Board, the Financial Reporting Review Panel (FRRP) and the Accountancy and Actuarial Discipline Board (AADB).

The importance placed on corporate governance is evidenced by the fact that, in March 2004, the FRC set up a new committee to lead its work on corporate governance.

Overall, the FRC is responsible for promoting high standards of corporate governance. It alms to do so by:

- maintaining an effective Combined Code on Corporate Governance and promoting its widespread application;
- ensuring that related guidance, such as that an internal control, is current and relevant;
- influencing EU and Global Corporate Governance Developments;
- helping to promote boardroom professionalism and diversity;
- encouraging constructive interaction between company boards and institutional shareholders.

The FRC has carried out several consultative reviews of the Combined Code which led to the amended Combined Code in 2006, and subsequently in 2008. The latest review took place in 2008. The frequency of the reviews are both an indicator of the FRC's responsibility for corporate governance of UK companies which involves leading public debate in the areas and its response to the global financial crisis which has, in turn, affected confidence in aspects of corporate governance.

The FRC website mentions the independent review of the governance of banks and other financial institutions carried out by Sir David Walker. The Walker Review published its draft recommendations in July 2009, some of the recommendations could be taken forward through amendments to the Combined Code. The FRC is considering the extent to which the Walker Review recommendations may be applicable for some or all listed companies in other sectors.

8. (a) Define Corporate Citizenship. Explain the relation between Corporate Citizenship and Corporate Social Responsibility. 8

(b) What are the responsibilities of the Board of State Owned Enterprises? 4

(c) What are the possible stages in a family firm's governance? 4

Answer: 8

(a) A new terminology that has been gaining grounds in the business community today is Corporate Citizenship. Corporate citizenship is defined by 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.

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

(i) Minimise harm,
(ii) Maximise benefit,
(iii) Be accountable and responsive to key stakeholders and
(iv) Support strong financial results

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

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

Corporate Social Responsibility is not a fad or a passing trend. It is a business imperative that many Indian companies are either beginning to think about or are engaging with in one way or another.

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

(b) **Responsibilities of The Boards of State- Owned Enterprises**

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

- the boards of SOEs should be assigned a clear mandate and ultimate responsibility for the company's performance. The board should be fully accountable to the owners, act in the best interest of the company, and treat all shareholders equally.
- SOE boards should carry out their functions of monitoring of management and strategic guidance, subject to the objectives set by the government and the ownership entity. They should have the power to appoint and remove the CEO.
- The boards of SOEs should be so composed that they can exercise objective and independent judgment. Good practice calls for the chair to be separate from the CEO.
- SOE boards should carry out an annual evaluation to appraise their performance.

(c) **Possible stages in a family firm's governance**

A particular knowledge or functional specialism of relevance to the firm which will enable them to add value and contribute to the strategic development of the family firm.

Cadbury (2000) sums up the three requisites for family firms to manage successfully the impacts of growth:

- they need to be able to recruit and retain the very best people for the business,
- they need to be able to develop a culture of trust and transparency, and
- they need to define logical and efficient organizational structures.

A good governance system will help family firms to achieve these requisites. Bammens and Voordeckers (2009), in a study of family firms in Belgium find that contrary to traditional agency wisdom, family firm boards devote substantial attention to controlling the management team, those family firms that employ trust and control in a complementary manner will be most effective.

In the context of succession planning, Bennedsen et at (2006), in a study of family firms in Denmark, report that their empirical results demonstrate that professional, non-family CEOs provide extremely valuable services to the organization they head. On the other hand, they report that family CEO underperformance is particularly large in fast growing industries, industries with a highly skilled labour force and relatively large firms.