

# **FINAL EXAMINATION**

## **GROUP - III**

### **(SYLLABUS 2016)**

## **SUGGESTED ANSWERS TO QUESTIONS**

### **DECEMBER - 2019**

#### **Paper-13 : CORPORATE LAWS & COMPLIANCE**

Time Allowed : 3 Hours

Full Marks : 100

The figures in the margin on the right side indicate full marks.  
Answer Question No. 1 which is compulsory, carrying 20 marks and  
answer any five questions from Question No. 2 to Question No. 8.

1. Answer all questions.

(a) Multiple choice questions:

2x10=20

- (i) The company shall furnish to the Registrar verification of its registered office within a period of \_\_\_\_\_ from the date of its incorporation.
- (A) 30 days
  - (B) 45 days
  - (C) 60 days
  - (D) 90 days
- (ii) Out of following which item cannot be exercised by the Board of Directors of ABC Ltd.?
- (A) To diversify the business of the company
  - (B) To take over a company
  - (C) To approve amalgamation, merger or the reconstruction
  - (D) To sell of the whole or substantially the whole of the undertaking of the company.
- (iii) The board may fill any casual vacancy in the office of an auditor within 30 days but where such vacancy is caused by the resignation of an auditor, such appointment shall also be approved by the company at a general meeting concerned within \_\_\_\_\_ of the recommendation of the Board.
- (A) one month
  - (B) two months
  - (C) three months
  - (D) six months

## **SUGGESTED\_ANSWERS TO QUESTIONS\_SYL2016\_Dec2019\_PAPER-13**

---

- (iv) In case the Comptroller and Auditor General of India does not appoint first auditor within the stipulated date who will appoint such auditor within next 30 days?
- (A) Shareholders
  - (B) Board of Directors
  - (C) Managing Directors
  - (D) Company Secretary
- (v) Under which principle of Corporate Governance, it implies the responsibility of the Chairman, the Board of Directors and the Chief Executive for the use of company's resources in the best interest of the company and its shareholders?
- (A) Independence
  - (B) Accountability
  - (C) Transparency
  - (D) Ethics
- (vi) Any person aggrieved by an order of NCLT may prefer an appeal to the Appellate Tribunal within a period of \_\_\_\_\_ from the date on which a copy of the order of the Tribunal is made available to the person aggrieved.
- (A) 120 days
  - (B) 60 days
  - (C) 45 days
  - (D) 30 days
- (vii) Which of the following is not the objective of The Prevention of Money Laundering Act, 2002?
- (A) To prevent and control money laundering
  - (B) To confiscate and seize the property obtained from the laundered money
  - (C) To generate profit for an individual or a group
  - (D) To deal with any other issue connected with money laundering in India
- (viii) A promise whereby the assured undertakes that some particular thing shall or shall not be done or that some conditions shall be fulfilled or affirms or negatives the existence of a particular state of facts. This principle of Insurance is known as
- (A) Warranty
  - (B) Good faith
  - (C) Conditions
  - (D) Indemnity
- (ix) Which of the following is not the benefits of CSR Programme?
- (A) Mutual trust
  - (B) Attracting and retaining employees
  - (C) Communities as suppliers
  - (D) Enhancing corporate reputation

## SUGGESTED\_ANSWERS TO QUESTIONS\_SYL2016\_Dec2019\_PAPER-13

- (x) An agreement or arrangement in writing for transfer of assets, or funds, goods or services, from or to the corporate debtor is known as
- (A) Transfer
  - (B) Transfer of property
  - (C) Transaction
  - (D) Transmission

Answer:

1.

(i)	A	30 days (Section 12 of the Companies Act, 2013)
(ii)	D	As per section 180(i) of the Companies Act, 2013 the Board of Directors has no power to sell / lease or otherwise dispose of the whole or substantially, the whole of undertaking of the Company.
(iii)	C	Three Months. Such appointment shall also be approved by the company at a general meeting concerned within three months of the recommendations of the Board.
(iv)	B	Board of Directors - In case the Comptroller and Auditor General of India does not appoint first auditor, Board of Directors appoint such auditor within next 30 days.
(v)	B	Accountability - Under Accountability principle of corporate governance it implies the responsibility of the chairman, the Board of Directors and the chief executive for the use of companies resources in the best interest of Company and its shareholders.
(vi)	C	45 days (Sec. 421 of the Companies Act, 2013)
(vii)	C	To generate profit for an individual or a group. To generate profit for an individual or a group is not the objective of the prevention of Money laundering Act 2002.
(viii)	A	Warranty - Under the principle of warranty, promise whereby the assured undertakes that some particular thing shall or shall not be done or that some condition shall be fulfilled or affirms or negatives the existence of a particular state of facts.
(ix)	A	Mutual trust - Mutual trust is not the benefits of CSR Programme.
(x)	C	Transaction - An agreement or arrangement in writing for transfer of assets, or funds, goods or services, from or to the corporate debtor is known as transaction.

2. (a) The Board of Directors of XYZ Company Limited at its meeting declared a dividend on its paid-up equity share capital which was later on approved by the company's Annual General Meeting. In the meantime, the directors at another meeting of the Board decided by passing a resolution to divert the total dividend to be paid to shareholders for purchase of investments for the company. As a result, dividend was paid to shareholders after 45 days. Examining the provisions of the Companies Act, 2013, state:
- (i) Whether the act of directors is in violation of the provisions of the Act and also the consequences that shall follow for the above act of directors?

(ii) What would be your answer in case the amount of dividend to a shareholder is adjusted by the company against certain dues to the company from the shareholder? 6

(b) (i) An understanding has been reached among the manufacturers of cement to control the price of cement, but the understanding is not in writing and it is also not intended to be enforced by legal proceedings.

Examine whether the above understanding can be considered as an 'Agreement' with the meaning of Section 2(b) of the Competition Act, 2002.

(ii) Soma Nidhi Limited proposes to reappoint Mr. X, a director who has completed a term of 10 consecutive years as a Director of the Nidhi.

State your views the validity of the above proposals with reference to Nidhi Rules, 2014 formulated under Companies Act, 2013. 3+3=6

(c) Answer the following in a few words: 1x4=4

(i) Which type of Public Enterprise is established under a Special Act of the Parliament?

(ii) How can a foreign company access Indian Securities market for raising funds?

(iii) Which type of listing provides arbitrage opportunities to the investor?

(iv) How many times extension of the period of Corporate Insolvency Resolution process can be granted?

**Answer:**

2. (a) According to section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the Unpaid Dividend Account.

Further, according to section 127 of the Companies Act, 2013, 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 30 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 is liable for the punishment under the said section.

In the present case, the Board of Directors of XYZ Company Limited at its meeting declared a dividend on its paid-up equity share capital which was later on approved by the company's Annual General Meeting. In the meantime, the directors at another meeting of the Board decided by passing a resolution to divert the total dividend to be paid to shareholders for purchase of investment for the company. As a result, dividend was paid to shareholders after 45 days.

## **SUGGESTED\_ANSWERS TO QUESTIONS\_SYL2016\_Dec2019\_PAPER-13**

---

- (i) 1. Since, declared dividend has not been paid or claimed within 30 days from the date of the declaration to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the Unpaid Dividend Account.
2. The Board of Directors of XYZ Company Limited is in violation of section 127 of the Companies Act 2013 as it failed to pay dividend to shareholders within 30 days due to their decision to divert the total dividend to be paid to shareholders for purchase of investment for the company.

Consequences: The following are the consequences for the violation of above provisions:

- (a) 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 shall also be liable for a fine which shall not be less than one thousand rupees for every day during which such default continues.
- (b) The company shall also be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.
- (ii) If the amount of dividend to a shareholder is adjusted by the company against certain dues to the company from the shareholder, then failure to pay dividend within 30 days shall not be deemed to be an offence under Proviso to section 127 of the Companies Act 2013.
- (b) (i) Agreement  
'Agreement' includes any arrangement or understanding or action in concert:
- (i) Whether or not, such arrangement, understanding or action is formal or in writing or
- (ii) Whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings. [Section 2(b)].

In view of the above definition of 'agreement', and understanding reached by the cement manufacturers to control the price of cement will be an 'agreement' within the meaning of section 2(b) of the Competition Act, 2002 even though the understanding is not in writing and it is not intended to be enforceable by legal proceedings.

- (ii) According to Rule - 17 of the Nidhi Rules, 2014, the Director of a Nidhi shall hold office for a term up to ten consecutive years on the Board of Nidhi and he shall be eligible for re-appointment only after the expiration of two years of ceasing to be a Director.

Hence, in the instant case Soma Nidhi Limited cannot reappoint Mr. X as a director for a period of two years after completion of ten consecutive years.

- (C) (i) Statutory Corporation  
(ii) Through issue of Indian Depository Receipt (ICDRs)  
(iii) Multiple listing.  
(iv) Shall not be granted more than once.

3. (a) On the ground of conviction for an offence dealing with related party transaction. Mr. Bat was disqualified to hold the directorship in XYZ Limited. The Board filled up the vacancy by appointing Mr. Samarth as a director on 3rd April, 2018 which was subsequently approved by the members in the immediate next general meeting. Unfortunately, Mr. Samarth expired on 15th May, 2018 after working about 40 days as a director. The Board now wishes to fill up the said vacancy by appointing Mr. Ball in the forthcoming meeting of the Board. Advise the Board on the validity of the following appointments as per the provisions under the Companies Act, 2013:
- (i) Appointment of Mr. Samarth in place of Mr. Bat.  
(ii) Appointment of Mr. Ball in place of Mr. Samarth. 6

- (b) (i) Domes India Limited owes a sum of ₹ 2,80,000 to S, who assigns this debt to his two creditors, Mr. R—to the extent of ₹ 1,40,000 and Mr. M—to the extent of ₹1,40,000. Mr. M makes a demand for his money from the company by giving a legal notice. The company could not meet Mr. M's demand or otherwise satisfy him till the expiry of four weeks from the date of notice. Mr. M, therefore, moves to NCLT with an application for initiation of Insolvency and Bankruptcy Code, 2016, decide whether an application filed by Mr. M can be accepted by NCLT.

- (ii) State the matters to be dealt with in the Management Discussion and Analysis Report as per SEBI guidelines on Corporate Governance. 3+3=6

- (c) State whether the following statements are 'True' or 'False' and give reasons therefor: 1x4=4
- (i) 'Overseas Citizen of India (OCI)' means a person resident outside India who is a citizen of India.  
(ii) As per the SS-I (Secretarial standards on the meeting of Board), Quorum is not required to be present throughout the meeting.  
(iii) Locked-in securities of Promoter shall not be eligible for pledge with commercial banks, financial institutions as collateral security.  
(iv) 'Asset Reconstruction Company' means a company registered with Reserve Bank under section 3 for the purposes of carrying on the business of either asset reconstruction or securitisation.

**Answer:**

3. (a) Section 161(4) of the Companies Act, 2013 provides that if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board which shall be subsequently approved by members in the

immediate next general meeting.

Provided that any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.

- (i) In view of the above provisions, in the given case, the appointment of Mr. Samarth in place of the disqualified director Mr. Bat was in order. In normal course, Mr. Samarth could have held his office as director up to the date to which Mr. Bat would have held the same.
- (ii) As per facts, Mr. Samarth expired on 15<sup>th</sup> May, 2018 and again a vacancy has arisen in the office of director owing to death of Mr. Samarth who was appointed by the board and approved by members to fill up the casual vacancy resulting from disqualification of Mr. Bat. Vacancy arising on the Board due to vacation of office by the director appointed to fill a casual vacancy in the first place, does not create another casual vacancy as section 161 (4) clearly mentions that such vacancy is created by the vacation of office by any director appointed by the company in general meeting. Hence, the Board cannot fill in the vacancy arising from the death of Mr. Samarth. So cannot appoint Mr. Ball in the office of Mr. Samarth.

The Board may however appoint Mr. Ball as an additional director under section 161 (1) of the Companies Act, 2013 provided the articles of association authorises the board to do so, in which case Mr. Ball will hold the office up to the date of the next annual general meeting or the last date on which the AGM should have been held, whichever is earlier.

- (b) (i) Financial creditor can initiate corporate insolvency resolution process himself or jointly with other financial creditors against corporate debtor on default of payment of debt of ₹ 1,00,000/- or more. Assignee of financial debt is also financial creditor as per section 5 (7) of the IBC, 2016. Mr. M's application can be accepted by NCLT if Company fails to pay debt within stipulated time. Application should be supported with a copy of the assignment or transfer agreement and other relevant documents as may be required to demonstrate the assignment or transfer.
- (ii) Management
  - A Management Discussion and Analysis Report should form part of the annual report to the shareholders; containing discussion on the following matters.
  - 1. Opportunities and threats.
  - 2. Segment-wise or product-wise performance.
  - 3. Risks and concerns.
  - 4. Discussion on financial performance with respect to operational performance.
  - 5. Material development in human resource / industrial relations front.

## **SUGGESTED\_ANSWERS TO QUESTIONS\_SYL2016\_Dec2019\_PAPER-13**

---

(c) (i) False

'Overseas Citizen of India (OCI)'

Means a person resident outside India who is registered as an Overseas Citizen of India Card holder under Section 7(A) of the citizenship Act, 1955. (Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018.

(ii) False

As per SS-I (Secretarial Standards on the meeting of the Board) Quorum shall be present throughout the meeting.

(iii) False

Locked in Securities of Promoter shall be eligible for pledge with Commercial Banks, financial institutions as Collateral Security [SEBI (ICDR) Regulations 2018]

(iv) False

"Asset reconstruction Company" means a Company registered with Reserve Bank under Section 3 for the purposes of Carrying on the business of asset reconstruction or Securitization, or both [Section 2 (ba)]

4. (a) The Articles of Association of a listed company provides for fixed payment of sitting fee for each meeting of Directors subject to maximum of ₹ 30,000. In view of the increased responsibilities of Independent Directors of listed Companies, the Company proposes to increase the sitting fee to ₹ 45,000 per meeting. Advise the company about the requirement under the Companies Act, 2013 to give effect to the proposal.

4

(b) XYZ Limited was incorporated by furnishing false informations. As per the Companies Act, 2013, state the power of the Tribunal in this regard.

4

(c) Briefly state the compliance requirements under Companies Act, 2013 regarding risk management policy.

4

(d) Fill in the Blanks:

1x4=4

(i) Under IBC 2016, the resolution plan shall be approved by the Committee of Creditors by a vote of not less than \_\_\_\_\_ per cent of voting share of the financial creditors.

(ii) Reserve Bank of India may check the condition that the asset reconstruction company has not incurred any loss in the \_\_\_\_\_ preceding financial years.

(iii) Sec. 25 of the Banking Regulation Act, 1949, requires for the maintenance of assets equivalent to at least \_\_\_\_\_% of its demand and time liabilities in India at the close of business of the last Friday of every quarter.

(iv) According to section 14 of the Banking Regulation Act, 1949, no banking company shall create any charge upon its \_\_\_\_\_ capital, and any such charge, if created, shall be invalid.

Answer:

4. (a) Section 197(5) of the Companies Act, 2013 provides that a director may receive remuneration by way of fee for attending the Board/Committee meetings or for any other purpose as may be decided by the Board, provided that the amount of such fees shall not exceed the amount as may be prescribed. The Central Government through rules prescribed that the amount of sitting fees payable to a director for attending meetings of the Board or committees thereof may be such as may be decided by the Board of directors or the Remuneration Committee thereof which shall not exceed the sum of ₹ 1 lakh per meeting of the Board or committee thereof. Further, the Board may decide different sitting fee payable to independent and non-independent directors other than whole-time directors.

From the above, it is clear that fee to independent directors can be increased from ₹30,000 to ₹ 45,000 per meeting by passing a resolution in the Board Meeting and alternating the Articles of Association by passing Special Resolution.

- (b) According to section 7(7) of the Companies Act, 2013:

Incorporation by furnishing of incorrect information: Without prejudice to the provisions of sub-section (6), where a company has got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants,—

- (a) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or
- (b) direct that liability of the members shall be unlimited; or
- (c) direct removal of the name of the company from the register of companies; or
- (d) pass an order for the winding up of the company; or
- (e) pass such other orders as it may deem fit:

Provided that before making any order under this sub-section,—

- (i) the company shall be given a reasonable opportunity of being heard in the matter; and
- (ii) the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

- (c) Companies Act, 2013 has introduced various provisions relating to ease of doing business while ensuring the governance and transparency are maintained in the way the business is conducted. One of the key compliance requirement introduced towards the governance and transparency is the introduction of Risk Management as a policy and process in the Companies Act, by which the board and audit committee have been vested with specific responsibilities in assessing the robustness of risk management policy, process and systems.

- Sec 134 (3) There shall be attached to (Financial) statements laid before a

company in general meeting, a report by its Board of Directors, which shall include -

- a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company:
- Sec 177 (4) Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, inter alia, include,-
- evaluation of internal financial controls and risk management systems;

Hence as per Companies Act, 2013 it is mandatory for the Companies to development and implementation of a risk management policy and Audit Committee shall evaluate the risk management systems.

- (d) (i) 66%
- (ii) 3 (three)
- (iii) 75%
- (iv) unpaid

5. (a) One of the Objects Clauses of the Memorandum of Association of Info Company Limited conferred upon the company, power to sell its undertaking to another company with identical objects. Company's Articles also conferred upon the directors powers to sell or otherwise deal with the property of the company. At an Extraordinary General Meeting of the company, members passed an ordinary resolution for the sale of its assets on certain terms and authorized the directors to carry out the sale. Directors refused to comply with the wishes of the members where upon it was contended on behalf of the members that they were the principals and directors being their agents, were bound to give effect to their (members') decisions.

Examining the provisions of the Companies Act, 2013, answer the following:

Whether the contention of members against the non-compliance of members' decision by the directors is tenable.

Whether it is possible for the members to usurp the powers, which by the Articles are vested in the directors by passing a resolution in the general meeting. 6

- (b) Runway Infrastructure Limited entered into a contract with Royal forgings (a partnership firm), in which wife of Mr. Patrick, a director of the Runway Infrastructure Limited is a partner. The contract is for supply of certain components by the firm for a period of three years with effect from 1st September, 2018 on credit basis. Explain the requirements under the Companies Act, 2013, which should have been complied with by Runway Infrastructure Limited before entering into contract with Royal forgings.

What would be your answer in case Royal forgings is a private limited company in which wife of Mr. Patrick is holding shares? 5

- (c) (i) Is it mandatory to obtain Regulatory approvals for scheme of compromise/ arrangements as per section 230(5) of the Companies Act, 2013? Explain.

- (ii) You, an individual shareholder found that the Directors representing the majority of shareholders perform an illegal or ultra vires act for the company. What is the action you may take to restrain such an act? 3+2

**Answer:**

5. (a) Powers of Board: In accordance with the provisions of the Companies Act, 2013, as contained under Section 179(1), the Board of Directors of a Company shall be entitled to exercise all such powers and to do all such acts and things, as the Company is authorized to exercise and do:

Provided that in exercising such power of doing such act or thing, the Board shall be subject to the provisions contained in that behalf in this Act, or in the memorandum or articles, or in any regulations not inconsistent therewith and duly made there under including regulations made by the Company in general meeting.

Provided further that the Board shall not exercise any power or do any act or thing which is directed or required, whether under this Act or by the members or articles of the Company or otherwise to be exercised or done by the Company in general meeting.

Section 180 (1) of the Companies Act, 2013, provides that the powers of the Board of Directors of a Company which can be exercised only with the consent of the Company by a special resolution. Clause (a) of Section 180 (1) defines one such power as the power to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the Company owns more than one undertaking of the whole or substantially the whole or any of such undertakings.

Therefore, the sale of the undertaking of a Company can be made by the Board of Directors only with the consent of members of the Company accorded vide a special resolution.

Even if the power is given to the Board by the memorandum and articles of the Company, the sale of undertaking must be approved by the shareholders in general meeting by passing a special resolution.

Therefore, the correct procedure to be followed is for the Board to approve the sale of the undertaking clearly specifying the terms of such sale and then convene a general meeting of members to have the proposal approved by a special resolution.

In the given case, the procedure followed is completely incorrect and violative of the provisions of the Act. The shareholders cannot on their own make out a proposal of sale and pass an ordinary resolution to implement it through the directors.

The contention of the shareholders is incorrect in the first place as it is not within their

authority to approve a proposal independently of the Board of Directors. It is for the Board to approve a proposal of sale of the undertaking and then get the members to approve it by a special resolution. Accordingly, the contention of the members that they were, the principals and directors being their agents were bound to give effect to the decisions of the members is not correct.

Further, in exercising their powers the directors *do not* act as agent for the majority of members or even all the members. The members therefore, cannot by/resolution passed by a majority or even unanimously supersede the powers of the directors or instruct them how they shall exercise their powers. The shareholders have, however, the power to alter the Articles of Association of the Company in the manner they like subject to the provisions of the Companies Act, 2013.

- (b) The contract for supply of components entered into between Runway Infrastructure - Limited and Royal forgings, a partnership firm (in which wife of Mr. Patrick, a director of the company is a partner) attracts Section 184, 188 and 189 of the Companies Act 2013.

As per Section 188, company cannot enter into contract with firm for supply or purchase of goods or material where director of company or his relative is partner of firm without approval of Board of directors at board meeting. As per Section 184, interested directors must disclose his interest at board meeting at which said business is to be discussed. Interested directors should not take part in the discussion or voting at board meeting. If he does vote, his vote shall not be counted. In case of Private limited Company interested director can participate in the board meeting after disclosure of interest.

As per Section 189, prescribed particulars of the contract must be entered into the Register of Contract in which directors are interested in Form MBP-4. Every entry made in Register should be authenticated by Company Secretary of company or any other person authorised by Board. After each entry in the register, it shall be placed before the next board meeting and shall be signed by all the directors present thereat

Based upon discussion of the above provisions:

If the value of the contract or transaction is exceeded than limit specified, prior approval of shareholders is required to be obtained. Question does not suggest value of transaction. Assuming that it is within limits specified under the Act consent of shareholders is not required.

If Royal forgings is a private limited company: The provision of Section 188 are applicable to it As the directors wife (i.e. Patrick's wife) is member of Royal forgings private limited.

Section 184 is not applicable as Mr. Patrick, director of runway Infrastructure Limited is neither director nor holding any shares in Royal Forgings Private Limited. Shares held by Mr. Patrick's wife are not to be considered. Hence the provisions of Section 184 are not attracted.

## **SUGGESTED\_ANSWERS TO QUESTIONS\_SYL2016\_Dec2019\_PAPER-13**

---

- (c) (i) Notice to be sent to the regulators seeking their representations Section 230(5) states that a notice under Sub-Section (3) along with all the documents in such form as may be prescribed shall also be sent to the Central Government, the income-tax authorities, the Reserve Bank of India, the Securities and Exchange Board, the Registrar, the respective stock exchanges, the Official Liquidator, the Competition Commission of India established under Sub-Section (1) of Section 7 of the Competition Act, 2002, if necessary, and such other sectoral regulators or authorities which are likely to be affected by the compromise or arrangement and shall require that representations, if any, to be made by them shall be made within a period of thirty days from the date of receipt of such notice, failing which, it shall be presumed that they have no representations to make on the proposals.
- (ii) The majority of shareholders have no right to confirm an illegal or ultravires transactions of the company. In such case an individual shareholder has right to restrain the company by an order or injunction of the court from carrying out an ultravires acts.
6. (a) Referring to the provisions of the Securities Contracts (Regulation) Act, 1956, state how a recognized stock exchange may delist the securities and how an appeal may be filed by an aggrieved investor against the decision of stock exchange for delisting of securities. 4
- (b) What is the suggested framework for Business Responsibility Report? Explain. 4
- (c) The Management of Gangotri Ltd. was taken by LBV Bank Ltd. (secured creditor) complying the provisions of SARFAESI Act, 2002 who appointed two Directors. The Board of Directors of Gangotri Ltd., duly authorized by its Articles, appointed two Alternate Directors and the majority of the Directors made a declaration required for voluntary liquidation proceedings. A special resolution requiring the Company to be liquidated voluntarily by appointing an insolvency professional to act as the Liquidator was passed at the general meeting of the Company. The Board of Directors and the Shareholders passed the resolutions without the approval/consent of Directors appointed by LBV Bank Ltd. Discuss the validity of the above resolutions under SARFAESI Act, 2002. Does an unsecured Creditor have recourse to this Act? 4
- (d) During investigations conducted on the affairs of a company in the public interest, the inspector observed that the Directors of the company had been acting on the instructions of the holding company and he proceeded to investigate the holding company. Is Inspector permitted to do so under the provisions of the Companies Act, 2013? 4

**Answer:**

6. (a) According to section 21A of the Securities Contracts (Regulation) Act, 1956 the delisting of securities may take place in the following manner-

- (1) A recognized stock exchange may delist the securities, after recording the reasons thereto, from any recognized stock exchange on any of the ground/s 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.

- (2) 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 filing the appeal within the said period, allow it to be filed within a further period not exceeding one month.

### **(B) Business Responsibility Report - Suggested Framework**

This report may be presented in three parts as detailed below:

**Part - A** of the report includes basic information and data about the operations of the business entity so that the reading of the report becomes more contextual and comparable with other similarly placed businesses.

**Part - B** of the report incorporates the basic parameters on which the business may report their performance. Efforts have been made to keep the reporting simple keeping in view the fact that this framework is equally applicable to the small businesses as well. The report may be prepared in a free format with the basic performance indicators being included in the same. In case the business entity has chosen not to adopt or report on any of the Principles, the same may be stated along with, if possible, the reasons for not doing so.

**Part-C** of the report incorporates two important aspects on Business" Responsibility reporting. Part C - 1 is a disclosure on by the business entity on any negative consequences of its operations on the social, environmental and economic fronts. The objective is to encourage the business to report on this aspect in a transparent manner so that it can channelize its efforts to mitigate the same. Part C - 2 is aimed at encouraging the business to continuously improve its performance in the area of Business Responsibility.

- (c) Management of borrower taken by the secured creditor (Section 15 of the SARFAESI Act, 2002): Where the management of the business of a borrower, being a company is taken over by (he secured creditor then, notwithstanding anything contained in the said Act or in the memorandum or articles of association of such borrower -
- (a) it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company;
  - (b) no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the secured creditor;

## SUGGESTED\_ANSWERS TO QUESTIONS\_SYL2016\_Dec2019\_PAPER-13

Accordingly, in the given situation in the question, appointment of alternate directors by the BoD of Gangotri Ltd. though authorised by its Articles, is not valid, and the special resolution so passed by majority for voluntary liquidation passed at general meeting shall not be given effect due to lack of consent of LBV Bank Ltd.

An unsecured creditor doesn't have recourse to this Act.

- (d) Investigation into affairs of related companies: Section 219 of the Companies Act, 2013, provides for power of Inspector to conduct investigation into the affairs of related companies etc., if an inspector appointed under section 210 or section 212 or section 213 to investigate into the affairs of a company considers it necessary for the purposes of the investigation, to investigate also the affairs of
- (a) any other body corporate which is, or has at any relevant time been the company's subsidiary company or holding company, or a subsidiary company of its holding company;
  - (b) any other body corporate which is, or has at any relevant time been managed by any person as managing director or as manager, who is, or was, at the relevant time, the managing director or the manager of the company;
  - (c) any other body corporate whose Board of Directors comprises nominees of the company or is accustomed to act in accordance with the directions or instructions of the company or any of its directors; or
  - (d) any person who is or has at any relevant time been the company's managing director or manager or employee, he shall, subject to the prior approval of the Central Government, investigate into and report on the affairs of the other body corporate or of the managing director or manager, in so far as he considers that the results of his investigation are relevant to the investigation of the affairs of the company for which he is appointed.

Therefore, the inspector shall subject to the prior approval of the Central Government, investigate into and report on the affairs of the other body corporate or of to Managing Director or Manager, in so far as he considers that the results of his investigation are relevant to the investigation of the affairs of the Company for which he is appointed. In view of above, the Inspector is permitted to investigate the holding company.

7. (a) What is meant by Corporate Governance? State the major 'characteristics' of good corporate governance. 4

- (b) Match the following items in Column 'A' with items shown in Column 'B': 1x4=4

Column 'A'		Column 'B'	
(i)	Penalty under Sec. 15D of SEBI Act, 1992 for certain defaults in case of Mutual Funds.	(a)	Not less than ₹ 1 lakh and may extend ₹ 1 crore.
(ii)	Penalty under Sec. 15F of SEBI Act, 1992 for failure to issue Act, 1992 for failure to issue	(b)	Not less than ₹5 lakh but which may extend to ₹25 crore or three times the amount of profits made out of insider trading, whichever is higher.

## SUGGESTED\_ANSWERS TO QUESTIONS\_SYL2016\_Dec2019\_PAPER-13

(iii)	Penalty under Sec. 15HA of SEBI Act, 1992 for fraudulent and unfair trade practices.	(c)	Not less than ₹1 lakh and may extend to ₹1 lakh per day for continuous failure subject to a maximum of ₹1 crore.
(iv)	Penalty under Sec. 15HB for contravention where no separate penalty has been provided.	(d)	Not less than ₹1 lakh.

(c) State some of the devices by which trade based money laundering is done. 4

(d) Mr. Daksh, an Indian National desires to obtain foreign exchange for the following purposes: 4

(i) Payment to be made for securing health insurance from a company abroad.

(ii) Payment of commission on exports under Rupee State Credit Route.

Advise whether he can get foreign exchange and if so, under what condition?

**Answer:**

7. (a) Corporate Governance: Simply stated, 'Governance' means the process of decision making and the process by which decisions are implemented. The term corporate governance is understood and defined in various ways. Corporate governance can be defined as the formal system of accountability and control for ethical and socially responsible organisational decisions and use of resources and accountability relates to how well the content of workplace decisions is aligned with the organisations strategic direction. Control involves the process of auditing and improving organisation decisions and actions. Good corporate governance has the following major characteristics:

- (i) Participatory
- (ii) Consensus oriented
- (iii) Accountable
- (iv) Transparent
- (v) Responsive
- (vi) Effective and efficient
- (vii) Equitable and inclusive and
- (viii) Follows the rule of law.

(b)

Column 'A'		Column 'B'	
(i)	Penalty under Sec. 15D of SEBI Act, 1992 for certain defaults in case of Mutual Funds.	(c)	Not less than ₹1 lakh and may extend to ₹1 lakh per day for continuous failure subject to a maximum of ₹1 crore.
(ii)	Penalty under Sec. 15F of SEBI Act, 1992 for failure to issue Act, 1992 for failure to issue	(d)	Not less than ₹1 lakh.
(iii)	Penalty under Sec. 15HA of SEBI Act, 1992 for fraudulent and unfair trade practices.	(b)	Not less than ₹5 lakh but which may extend to ₹25 crore or three times

			the amount of profits made out of insider trading, whichever is higher.
(iv)	Penalty under Sec. 15HB for contravention where no separate penalty has been provided.	(a)	Not less than ₹ 1 lakh and may extend ₹ 1 crore.

- (c) (1) **'Over-Invoicing' and 'Under-Invoicing' of Goods and Services:** Money laundering through the over-invoicing and under-invoicing of goods and services, which is one of the oldest methods of fraudulently transferring value across borders, remains a common practice today. The key element of this technique is the misrepresentation of the price of the good or service in order to transfer additional value between the importer and exporter. Over-invoicing of exports is one of the most common trade-based money laundering techniques used to move money. This reflects the fact that the primary focus of most customs agencies is to stop the importation of contraband and ensure that appropriate import duties are collected.
- (2) **Multiple-Invoicing of Goods and Services:** Another technique used to 'launder' funds involves issuing more than one invoice for the same trade transaction. By invoicing the same good or service more than once, a money launderer or terrorist financier is able to justify multiple payments for the same shipment of goods or delivery of services. Unlike over-invoicing and under-invoicing, it should be noted that there is no need for the exporter or importer to misrepresent the price of the good or service on the commercial invoice.
- (3) **Over-Shipment and Under-Shipment of Goods and Services:** In addition to manipulating export and import prices, a money launderer can overstate or understate the quantity of goods being shipped or services being provided. In the extreme, an exporter may not ship any goods at all, but simply collude with an importer to ensure that all shipping and customs documents associated with this so called "phantom shipment" are routinely processed. Banks and other financial institutions may unknowingly be involved in the provision of trade financing for these phantom shipments.
- (4) **Falsely Described Goods and Services:** In addition to manipulating export and import prices, a money launderer can misrepresent the quality or type of a good or service. For example, an exporter may ship a relatively inexpensive good and falsely invoice it as a more expensive item or an entirely different item. This creates a discrepancy between what appears on the shipping and customs documents and what is actually shipped. The use of false descriptions can also be used in the trade in services, such as financial advice, consulting services and market research.
- (d) Any person may sell or draw foreign exchange to or from an authorized person if such sale 'or drawal is a current account transaction. However, the Central Government may in public interest and in consultation with the RBI, impose such reasonable restrictions for current account transactions as may be prescribed (Section 5). The Central Government has framed Foreign Exchange Management (Current Account Transactions) Rules, 2000.

## **SUGGESTED\_ANSWERS TO QUESTIONS\_SYL2016\_Dec2019\_PAPER-13**

---

The Rules stipulate some prohibitions and restrictions on drawal of foreign exchange for certain purposes. In the light of provisions of these rules, the answer to the given problem is as follows:

- (i) Drawl of foreign exchange for securing health insurance from a company abroad does not fall under any of the Schedules I, II or III. Therefore, such a transaction is permitted without any restriction or condition.
- (ii) Rule 3 read with Schedule I of Foreign Exchange Management (Current Account Transactions) Rules, 2000 prohibits payment of commission on exports under Rupees State Credit Route (except commission upto 10% of invoice value of exports of tea and tobacco). Therefore, payment of commission on exports under Rupee State Credit Route is prohibited unless such commission is paid for export of tea and tobacco, and the commission does not exceed 10% of invoice value of exports.

**8. Write short notes on any four of the following:**

**4x4=16**

- (i) Functions of Winding up committee**
- (ii) Duties of Interim resolution Professionals**
- (iii) Sufficiency of assets with reference to Sec. 64V of the Insurance Act, 1938**
- (iv) "Unpublished Price sensitive information" under Regulation (2n) of Part F of SEBI (Prohibition of Insider Trading) Regulation, 2015**
- (v) The OECD Guidelines on corporate governance of state owned enterprises**

**Answer:**

**8. (i) Functions of winding up committee**

Section 277(5) states that the Company Liquidator shall be the convener of the meetings of the winding up committee which shall assist and monitor the liquidation proceedings in following areas of liquidation functions, namely:

- (a) taking over assets.
- (b) examination of the statement of affairs.
- (c) recovery of property, cash or any other assets of the company including
- (d) benefits derived therefrom.
- (e) review of audit reports and accounts of the company.
- (f) sale of assets.
- (g) finalization of list of creditors and contributories.
- (h) compromise, abandonment and settlement of claims.
- (i) payment of dividends, if any. and
- (j) any other function, as the Tribunal may direct from time to time.

**(ii) Duties of interim resolution professional**

The interim resolution professional shall perform the following duties - Section 18(1) of Insolvency and Bankruptcy Code, 2016.

- (a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to— (i) business operations for the previous two years (ii) financial and operational payments for the previous two years (iii) list of assets and liabilities as on the initiation date; and (iv) such other matters as may be specified.
- (b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under Sections 13 and 15.
- (c) constitute a committee of creditors.
- (d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors.
- (e) file information collected with the information utility, if necessary; and
- (f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets.
- (g) perform such other duties as may be specified by the Board.

**(iii) Sufficiency of assets (Section 64V)**

Every insurer and re-insurer shall at all times maintain an excess of value of assets over the amount of liabilities of, not less than fifty per cent of the amount of minimum capital as stated under section 6 and arrived at in the manner specified by the regulations. An insurer or re-insurer, as the case may be, who does not comply with shall be deemed to be insolvent and may be wound-up by the court on an application made by the Authority. The Authority shall by way of regulation made for the purpose, specify a level of solvency margin known as control level of solvency on the breach of which the Authority shall act in accordance with without prejudice to taking of any other remedial measures as deemed fit.

Thus, the amendment Act incorporates enhancements in the Insurance Laws in keeping with the evolving insurance sector scenario and regulatory practices across the globe. The amendments will enable the Regulator to create an operational framework for greater innovation, competition and transparency, to meet the insurance needs of citizens in a more complete and subscriber friendly manner. The amendments are expected to enable the sector to achieve its full growth potential and contribute towards the overall growth of the economy and job creation.

**(iv) Regulation 2(n): "Unpublished price sensitive information"**

"unpublished price sensitive information" means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following:

- (i) financial results;
- (ii) dividends;
- (iii) change in capital structure;

- (iv) mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;
- (v) changes in key managerial personnel; and
- (vi) material events in accordance with the listing agreement.

(v) The OECD guidelines focused on the following areas:

**(1) Rationales for State Ownership**

The state exercises the ownership of SOEs in the interest of the general public. It should carefully evaluate and disclose the objectives that justify state ownership and subject these to a recurrent review.

**(2) The State's Role as an Owner**

The state should act as an informed and active owner, ensuring that the governance of SOEs is carried out in a transparent and accountable manner, with a high degree of professionalism and effectiveness.

**(3) State-Owned Enterprises in the Marketplace**

Consistent with the rationale for state ownership, the legal and regulatory framework for SOEs should ensure a level playing field and fair competition in the marketplace when SOEs undertake economic activities.

**(4) Equitable Treatment of Shareholders and other Investors**

Where SOEs are listed or otherwise include non-state investors among their owners, the state and the enterprises should recognise the rights of all shareholders and ensure shareholders' equitable treatment and equal access to corporate information.

**(5) Stakeholder Relations and Responsible Business**

The state ownership policy should fully recognise SOEs' responsibilities towards stakeholders and request that SOEs report on their relations with stakeholders. It should make clear any expectations the state has in respect of responsible business conduct by SOEs.

**(6) Disclosure and Transparency**

State-owned enterprises should observe high standards of transparency and be subject to the same high quality accounting, disclosure, compliance and auditing standards as listed companies.

**(7) The Responsibilities of the Boards of State-Owned Enterprises**

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