FINAL EXAMINATION

GROUP III

(SYLLABUS 2012)

SUGGESTED ANSWERS TO QUESTIONS

JUNE 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) **Mr. Kachi was appointed as an additional Director of ROYAL Ltd. w. e. f. 1st October 2015, in a casual vacancy by way of a circular resolution passed by the Board of Directors. The next annual general meeting of the company was due on 31st March 2016, but the same was not held due to delay in the finalization of the accounts. Some of the shareholders of the company have questioned the validity of the appointment of Mr. Kachi and his continuation as additional Director beyond 31st March 2016.**
Advise the company on the complaint made by the shareholders. **5**

(b) **The Board of Directors of a newly incorporated Banking Company is required to file the accounts and balance sheet. Advise the Board of Directors about the law relating to preparation, signing and filing of accounts and balance sheet under the provisions of the Banking Regulation Act, 1949.** **5**

(c) **An arrangement has been made among the cotton producers that the cotton produced by them will not be sold to mills below a certain price. The arrangement is in writing but it is not intended to be enforced by legal proceeding. Examine whether the said arrangement can be considered as an agreement within the meaning of Section 2(b) of**

the Competition Act, 2002. ***5***

(d) Forex Dealers Ltd. is an Authorised Person within the meaning of Foreign Exchange Management Act, 1999. Reserve Bank of India issued certain directions to the said Authorised person to file certain returns which it failed to file. You are required to state the penal provisions to which the said Authorised Person has exposed itself. ***5***

(e) Analyse Corporate Social Responsibility as a Corporate Brand. ***5***

Answer:

1. (a)

Under Section 161(1) of the Companies Act, 2013 the article of a company may confer on its Board of Directors the power to appoint, other than a person who fails to get appointed as a director in a general meeting, as an additional director at any time who shall hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier.

Further, section 161(4) states that in the case of a public company, 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.

In the given case, Mr. Kachi has been appointed as an additional director in order to fill in a casual vacancy. A casual vacancy on the Board can be filled only by means of a board resolution passed at a meeting of the Board and not by circulation. Therefore, the appointment of Mr. Kachi is invalid.

However, it is rather strange that in the given case Mr. Kachi has been appointed as an additional director to fill a casual vacancy in Board. Actually, additional directors are appointed by the Directors (if authorized by the Articles) to increase the number of directors within the legally prescribed limits and not to fill a casual vacancy. In case Mr. Kachi had been appointed as an additional director not to fill a casual vacancy, his appointment could have been made by a resolution by circulation under section 161(1) and he would have held office till the date of the next AGM or the last date when the next AGM should been held, whichever is earlier. In the given case, as the AGM was due on 31st March 2016 which is presumably the last date for holding it, therefore his appointment would terminate on 31st March 2016.

1. (b)

Law related to preparation, signing and filing of Accounts and Balance Sheet:

Preparation of Accounts and Balance Sheet:
According to section 29 of the Banking Regulation Act. 1949, every Banking Company incorporated In India, In respect of all business transacted by it and through its branches in India, shall prepare a balance sheet and profit & loss account as on the last working day of the Accounting year (which is April to March i.e. 31st March) in the Form "A" and "B'' given in the third schedule of the Act.

Signing of Accounts and Balance Sheet:
The amalgamated Balance Sheet and Profit and Loss Account should be signed by the manager or the principal officer of the company. and at least three Directors where there are more than three directors or where there are not more than three directors, by all the directors.

In case of banking companies incorporated outside India by the manager or agent of the principal officer of the company in India.

Filing/ submission Balance Sheet & Profit and Loss Account:
Sections 31 and 32 of the Banking Regulation Act, 1949 lay down the procedure for the filing of the accounts and balance sheet. The accounts and balance sheet along with auditor's report shall be published in prescribed manner and three copies thereof shall be furnished as returns to Reserve Bank of India (RBI) within three months from the end of the period lo which they refer. The RBI may extend the period by a further period of not exceeding three months.

These three copies of accounts and balance sheet along with auditor's report shall be sent by the banking company lo the Registrar of Companies, at the same time while sending the same to RBI.

1. (c)

As per section 2(b) of the Competition Act, 2002, an agreement includes any arrangement or understanding or action in concert: -
(i) Whether or not, such arrangement, understanding or action is format or in writing; or
(ii) Whether or not, such arrangement, or understanding or action is intended to be enforceable by legal proceedings.

In the given case the understanding reached among the cotton producers not to self below a certain price shall amount to an agreement as defined under section 2(b) notwithstanding the fact that through the arrangement is in writing but not intended to be enforced by legal proceeding.

1. (d)

In accordance with the provisions of the Foreign Exchange Management Act, 1999 as contained in section 11(3), where any authorized person contravenes any direction given by the Reserve Bank of India under the said Ad or fails to file any return as directed by the Reserve Bank of India, the Reserve Bank of India may, after giving reasonable opportunity of being heard, impose on Authorised Person a penalty which may extend to ten thousand rupees and in the case of continuing contraventions with an additional penalty which may extend to two thousand rupees for every day during which such contravention continues.

Since as per the facts given in the question, the Authorized person, namely, Forex Dealers Ltd., has failed to file the return as directed by the Reserve Bank of India, according to the above provisions it has exposed itself to a penalty which may extend to ₹ 10,000 and in the case of continuing contraventions in the nature of failure to file the return, with an additional penalty which may extend to ₹ 2,000 for every day during which such contravention continues.

1. (e)

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

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

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

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

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

The sense of fulfilling the social responsibility leaves them with a feeling of elation. Moreover it

serves as a soothing diversion from the mundane workplace routine and gives one a feeling of satisfaction and a meaning to their lives.

2. (a) Industrial Finance Corporation of India, established under the Industrial Finance Corporation Act, 1948 having its registered office at Mumbai issued 8% redeemable bonds redeemable after 7 years. These bonds were issued directly to the members of the public and not through mechanism of stock exchanges.
You are required to state with reference to the provisions of Securities Contracts (Regulation) Act, 1956, whether such direct issue of bonds by the Industrial Finance Corporation of India is not violating the provisions of the said Act. 4

(b) Some changes in the particulars of a Director, who has already obtained a Director Identification Number have taken place. Now the Director wants to incorporate the changes in his DIN in the database maintained by the Central Government in this regard. Describe the procedure to be followed by the Director. 4

(c) The Articles of Association of Rajasthan Toys Private Limited provide that the maximum number of Directors in the company shall be 10. Presently, the company is having 8 directors. The Board of Directors of the said company desire to increase the number of directors to 16. Advise whether under the provisions of the Companies Act, 2013 the Board of Directors can do so. 4

(d) Audit Committee is to be formed by each and every company and the auditor has right to vote in the meeting of such Audit Committee, Comment. 4

Answer:

2. (a)

In order to prevent undesirable transactions in securities and to promote healthy stock market, the Securities Contracts (Regulation) Act, 1956 was enacted and all the Stock Exchanges in the country are registered under this Act. Section 40 of the Companies Act, 2013 states that offer of shares or debentures to public for subscription shall be made only after the permission of a Stock exchange.

Section 28(1) of the Securities Contracts (Regulation) Act, 1956 states that the provisions of this Act shall not apply to the Government, the Reserve Bank of India, any local authority, or corporation set up by a special law or any person who has effected any transaction with or through the agency of any such authority as stated earlier.

As stated in the question Industrial Finance Corporation of India is a corporation set up under the Industrial Finance Corporation Act, 1948. i.e. under a special statute enacted by the Parliament

Therefore, this Corporation does not need any permission from a Stock Exchange to issue any Bond or other securities. Accordingly, it has not violated the provisions of the Securities Contracts (Regulation) Act, 1956. The nature and tenure of the Bonds are immaterial.

2. (b)

Intimation of changes in particulars specified in DIN application:

The Companies (Appointment and Qualification of Directors) Rules, 2014 provides for the procedure for intimation of changes in particulars specified in the DIN application according to which:

Every individual who has been allotted a DIN under these rules shall, in the event of any change in his particulars as stated in Form DIR-3, intimate such change(s) to the Central Government within a period of thirty days of such change(s) in Form DIR-6 in the following manner, namely :-

A. the applicant shall download Form DIR-6 from the portal and fill in the relevant changes, attach copy of the proof of the changed particulars and verification in the Form DIR-7 all of which shall be scanned and submitted electronically;
B. the form shall be digitally signed by a chartered accountant in practice or a company secretary in practice or a cost accountant in practice;
C. the applicant shall submit the Form DIR-6

2. (c)

Under section 149(1) of the Companies Act, 2013 every company shall have a Board of Directors consisting of individuals as directors and shall have a minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company; and a maximum of fifteen directors.

The proviso to section 149(1) states that a company may appoint more than fifteen directors after passing a special resolution.

From the, provisions of section 149 (1) as above, though the minimum number of directors may vary depending on whether the company is a public company, private or a one person company, the maximum number of directors is the same for all types at 15 directors.

In the given case since the number of directors is proposed to be increased to 16, the company will be required to comply with the following provisions:

(i) Alter its Articles of Association under section 14 of the Act;
(ii) Authorise the maximum number of directors to 16 by means of a special resolution of members passed at a duly convened general meeting of the company.

2. (d)

Formation of Audit Committee:

As per section 177 of the Companies Act, 2013 read with the Companies (Meeting of Board and its Powers) Rules, 2014, audit committee is to be formed by every listed company and following classes of companies:

(i) all public companies with a paid up capital of ten crore rupees or more,

(ii) all public companies having turnover of one hundred crore rupees or more,

(iii) all public companies having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more.

Further, the auditor shall have the right to be heard in the meetings of the Audit Committee when it considers the Auditor's Report but shall not have the right to vote.

3. (a) Explain the power of Securities and Exchange Board to regulate issue and transfer of securities under Companies Act, 2013, 6

(b) The promoters of Welcome Company incorporated on 8th June, 2015 have entered into a contract with A on 10th May, 2015 for supply of goods. After incorporation, the company does not want to proceed with the contract. As a company advisor, advise the management of the company, referring to the provisions of the Companies Act, 2013. 5

(c) A Life Insurance Policy in favour of Raj Kumar came into force on 1st February, 2012. In January, 2015, the insurer came to know that there was a misstatement in the proposal for insurance regarding the age of the nominee. Decide, under the provisions of the Insurance Act, 1938, whether the said Insurance policy can be called in question? 5

Answer:

3.(a)

Power of Securities and Exchange Board to regulate issue and transfer of securities, etc. (Section 24)

This section 24 of the Companies Act, 2013 seeks to provide that issue and transfer of securities etc of the listed companies/companies which intend to get their securities listed shall be administered by SEBI and the Central Government, as required. The section says that –

1. The provisions contained in this chapter III (Prospectus and allotment,) Chapter IV (share capital and debenture) and in section 127 (Punishment for failure to distribute dividends) shall-
   (a) Where the provisions relate to

(i) issue and transfer of securities and

(ii) non-payment of dividend, by listed companies or those companies which intend to get their securities listed on any recognized stock exchange in India, except as provided under this Act be administered by the Securities and Exchange Board by making regulations in this behalf

(b) In any other case, be administered by the Central Government.

The sections further explains that all powers relating to all other matters with respect to prospectus, return of allotment, redemption of preference shares and any other matters specifically provided in this Act, shall be exercised by the Central Government, the Tribunal or the Registrar, as the case may be.

2. The Securities and Exchange Board shall, in respect of matters specified above and the matters delegated to it under proviso of section 458(1) [provisions relating to the forward dealing and the insider trading], exercise the powers conferred upon it by the Securities and Exchange Board of India Act, 1992.

3.(b)

(i) It is not only the company which is allowed, under the Specific Relief Act, to adopt and enforce its pre-incorporation claims against third parties, Section 19 of the Specific Relief Act also allows, the other party to enforce the contract against the company if (i) the company had adopted the same after incorporation, and (ii) the contract is warranted by the terms of incorporation. Contracts like preparation and printing of the memorandum, and articles, remunerating the professionals, if any, for securing the registration of the company, renting premises, hiring secretarial staff are envisaged under the Act.

(ii) Pre-incorporation contracts in general are void ab initio, and hence not binding on the company. However, under Section 19(e) of the Specific Relief Act, 1963, the party to the contract can enforce the contract against the company, if

(a) The company had adopted the same after incorporation, and

(b) The contract is warranted by the terms of incorporation.

Thus, unless the company adopts the contract, the other Party cannot enforce the same against the Company. There shall be no personal liability for the Promoter, if the agreement provides that-

(i) His liability shall cease once the Company adopts the agreement, and

(ii) Either party may rescind the agreement, if the Company does not adopt it within a specified time.

3.(c)

Policy not to be called in question on ground of mis-statement after two years:
According to section 45 of the Insurance Act, 1938, no policy of life insurance is effected after the expiry of two years from the date on which it was effected be called in question by an insurer on the ground that statement made in the proposal or in any report of a medical officer, or referee, or friend of the insured, or in any other documents leading to the issue of the policy, was inaccurate or false, unless the insurer shows that such statement was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the policy-holder and that the policy-holder knew at the time of making it that the statement was false or that it suppressed facts which it was material to disclose.

Provided that nothing in this section shall prevent the insurer from calling for proof of age at any time if he is entitled to do so, and no policy shall be deemed to be called in question merely because the terms of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal.

Thus, the insurance policy cannot be called in question. Correction as to the age of the nominee can be made at any time and so in the terms of the policy can be adjusted on subsequent proofs.

4.(a) (i) Define the expression "Accounting Standards" within the meaning of Companies Act, 2013. 4

(ii) Is it legally necessary for the every producer company to appoint a whole-time secretary under the provision of the Companies Act, 1956. 2

(b) Mr. Biron was appointed as the Managing Director of NIVA LTD. for a period of 5 years w.e.f. 1st January,2014. Since his work was found unsatisfactory, his services were terminated from 20th October, 2015 by paying compensation for the loss of office as provided in the agreement entered into by the company. Later, the company discovered that during his tenure of office Mr. Biron was guilty of many corrupt practices and that he should have been removed without payment of compensation.
Advise the company whether the services of Managing Director can be terminated without payment of compensation as provided in the agreement and whether the company can recover the amount already paid to Mr. Biron. 5

(c) A notice was sent to Mr. Left by the Registrar to furnish the information related to a business transacted during his tenure in the X Company. Mr. Left ignored the notice considering that he is no more an employee of X Company. Registrar issued the summon against Mr. Left. Explain in the light of the Companies Act, 2013 about the liability of the Mr. Left in the given case. 5

Answer:

4.(a)(i)

As per sub-section (2) of Section 2 of the Companies Act, 2013, the expression "accounting standards" means the standards of accounting or any addendum thereto for companies or class of companies referred to in section 133. As per Section 133, the standards of accounting recommended by the Institute of Chartered Accounts of India constituted under the Chartered Accountants Act, 1949 as may be prescribed by the Central Government in consultation with and after examination of the recommendations made by the National Financial Reporting Authority established under section 132 of the said Act.
Rule 7 of the Companies (Accounts) Rules, 2014, further states that the standards of accounting specified under the Companies Act, 1956. Shall be deemed to be the accounting standards until the according standards are prescribed by the Central Government under section 133.

4.(a)(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.

4.(b)

According to Sec. 202 of the Companies Act, 2013 a Managing Director is entitled to be paid compensation for loss of office. However, Sec 202(2)(e) of the Companies Act, 2013 provides that no compensation is payable if the director concerned has been guilty of fraud or breach of trust or of gross negligence in or gross mismanagement in the conduct of the affairs of the Company.

However, in the present case, compensation amount was paid and subsequently the misconduct on the part of Mr. Biron was noticed by the company. In the case of Bell -Vs-Lever Bros (1932), Lever Bros removed their managing director of a subsidiary by paying them compensation. It was afterwards discovered that during his tenure of office he had been guilty of so many breaches of duty and corrupt practices that he could have been removed without compensation. As action *was* then commenced to recover back the compensation money. It was heal that Bell was not bound to refund the compensation money and to disclose any breach of his fiduciary obligation so as to give the company an opportunity to dismiss him. Thus, in normal circumstances, the company (NIVA Ltd.) is entitled to terminate the services of Mr. Biron as Managing Director without payment of compensation as he was guilty of many corrupt practices. In the present case, however, the company will not be able to recover the compensation money already paid to Mr. Biron, Managing Director.

4.(c)

Power of the Registrar to call for information, explanation or documents:
According to section 206(1) of the Companies Act, 2013, where on a scrutiny of any document filed by a company or on any information received by him the Registrar is of the opinion that any further information or explanation or any further documents relating to the company is necessary, he may by a written notice require the company—
(a) to furnish in writing such information or explanation; or
(b) to produce such documents,
within such reasonable time, as may be specified in the notice.

Further, proviso to sub-section (2) of section 206 provides that where such information or explanation relates to any past period, the officers who had been in the employment of the company for such period, if so called upon by the Registrar through a notice served on them in writing shall also furnish such information or explanation to the best of their knowledge.

In the given instance, Mr. Left is a past member of the company. Registrar by serving notice asked Mr. Left to furnish the information related to the business transaction made during his tenure. So as per the above provision, where such information or explanation relates to any past period, the officers who had been in the employment of the company for such period, if so called upon by the Registrar through a notice served on him, he has a duty to give such information / explanation to the best of his knowledge. Mr. Left is liable to provide such information.

5. (a) Board of Directors of PBX Limited held a board meeting on 2nd May, 2014 at its registered office. You are required to state the salient points to be taken into account while drafting the minutes of the said board meeting. 6

(b) A listed Public Company was ordered to be wound up by the order of the Chennai High Court. While ordering the winding up, the Court ordered the Official Liquidator to submit a preliminary report to the Court as per the provisions contained in the Companies Act. Referring to the provisions of the Companies Act, 1956, state briefly the details to be given in the preliminary report of the official liquidator. 5

(c) Explain Asset Reconstruction, Financial Assets under the Securitization and Reconstruction of Financial Assets and Enforcement of Security and Interest Act, 2002. 5

Answer:

5.(a)

While drafting the minutes of a board meeting following salient points should be kept in mind:
(a) the minutes may be drafted in a tabular form or they may be drafted in the form of a series of

paragraphs, numbered consecutively and with relevant headings.

(b) the place, date and time of the meeting should be stated.

(c) The chairman of the meeting must be mentioned. The general phrase used in the Minutes is "Mr._____, chairman of the meeting took the chair and called the meeting to order".

(d) the minutes should clearly mention the attendance and the constitution of the meeting, i.e., persons present and the capacity in which present, e.g. name of the person chairing the meeting, names of the directors and secretary, identifying them as director or secretary, names of persons in attendance like auditor, internal auditor etc. The minutes should also contain the subject of leave of absence granted, if any, to any of the board members.

(e) Contents of the meeting giving serial number of the minutes, brief subject heading, full terms of the resolution adopted including the statistical details, if any.

(f) The adoption of the Minutes of the previous Board Meeting must be the first item on the Agenda by the directors giving their approval and the Chairman signing the Minutes as proof of approval of the Minutes.

(g) Conduct of the business at the meeting should be recorded in the chronological sequence as per the Agenda.

(h) In respect of each item of business the names of the directors dissenting or not concurring with any resolution passed at the board meeting should be mentioned.

(i) Reference about interested directors abstaining from voting is also required to be stated in the minutes.

(j) Chairman's signature and date of verification of minutes as correct.

5.(b)

As soon as the winding up order is received by the official liquidator, a preliminary report is required to be submitted to the Court. This report should be submitted as soon as the Liquidator receives the Statement of Affairs from the persons who were directors of the company at the time of winding up. There is a time limit of six months within which the official Liquidator is required to submit his preliminary report to the court.

The preliminary report should contain the following details:

1. The amount of capital issued, subscribed and paid up.
2. The estimated amount of assets and liabilities giving separately (a) cash and negotiable securities, (b) debts due from contributories, (c)debts due to the company and securities, if any, available in respect thereof, (d) movable and immovable properties belonging to the company, (e) unpaid calls.
3. If the company has failed, the causes of the failure.
4. The opinion of the liquidator as to whether any further enquiry is desirable as to any matter relating to promotion, formation or failure of the company or the conduct of the business thereof.

The Official Liquidator has also the power to make a further report if in his opinion the company

was formed with a view to commit a fraud or a fraud has been committed in respect of any matter which in his opinion is desirable to bring to the notice of the court.

5.(c)

Asset Reconstruction:

Asset Reconstruction' means acquisition by any securitization company or reconstruction company of any right or interest of any bank or financial institutor in any financial assistance for the purpose of realization of such financial assistance. (Section 2(b) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.)

Financial Assets

Financial Assets' means debt or receivables and includes:

(i) a claim to any debt or receivables or part thereof, whether secured or unsecured; or

(ii) any debt or receivables secured by mortgage of, or charge on, immovable property; or a mortgage, charge, hypothecation or pledge of movable property; or

(iii) any right or interest in the security, whether full or part underlying such debt or receivables; or

(iv) any beneficial interest in property, whether movable or immovable or in such debt, receivables, whether such interest is existing, future accruing, conditional or contingent; or

(v) any financial assistance. [Section 2(1)].

6. (a) Mr. Clever has been arrested for a cognizable and non-bailable offence punishable for a term of imprisonment for more than three years under the Prevention of Money Laundering Act, 2002.Advise, as to how can he be released on bail in this case? 5

(b) Answer the following with reference to a scheme of amalgamation of companies explaining the relevant provisions of the Companies Act, 1956:

(i) Whether companies being amalgamated must be companies registered in India. 3

(c) Company Y with a paid-up capital of ₹50 lakhs entered into a contract with company Z in which a director of Y is holding equity shares of the nominal value of ₹50,000. The director did not disclose his interest at the Board meeting under section 184 of the Companies Act, 2013. Is the director liable for his act? 3

(d) Star Gold Ltd. declared and paid dividend in time to all its equity holders for the financial year 2014- 15, except in the following two cases: 5

(i) Mrs. Sheela, holding 250 shares had mandated the company to directly deposit the dividend amount in her bank account. The company accordingly remitted the dividend but the bank returned the payment on the ground that there was difference in surname of the payee in the bank records. The company, however, did not inform

Mrs. Sheela about this discrepancy.

(ii) Dividend amount of ₹50,000 was not paid to Mr. Mohan, deceased, in view of court order restraining the payment due to family dispute about succession.

You are required to analyse these cases with reference to provisions of the Companies Act, 2013 regarding failure to distribute dividends.

Answer:

6.(a)

Section 45 of the Prevention of Money Laundering Act 2002, provides that the offences under the Act shall be cognizable and non-boilable. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond unless-

(i) The Public Prosecutor has been given an opportunity to oppose the application for such release and

(ii) Where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not only guilty of such offence and that he is not likely to commit any offence while on bail.

In case of any person who is under the age of 16 years or in case of woman or in case of a sick or infirm person, the Special Court can direct the release of such person on bail.

6.(b)

A scheme of compromise or arrangement may provide for amalgamation of companies under section 394 of the Companies Act, 1956. Section 394(4)(b) defines the 'transferee' and 'transferor' companies. While the 'transferee company' does not include any company other than a company within the meaning of the Companies Act, 1956, the transferor company includes anybody corporate whether a company within the meaning of the Companies Act or not. Hence the scheme of the amalgamation may provide for transfer of the foreign companies to Indian companies.

6.(c)

As per section 184(2) of the Companies Act. 2013 the disclosure of the interest by directors do not apply to any contract or arrangement within two companies where any of the directors of one company or two or more of them together holds or hold not more than 2% of the paid up share capital in the other company. In the present case, the holding of the director of Y in company Z is less than 2% [(50,000/50,00,000)×100%=1%] the director is not liable.

6.(d)(i)

Section 127 of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time. One of such situations is where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has not been communicated to her.

In the given situation, the company has failed to communicate to the shareholder Mrs. Sheela about non-compliance of her direction regarding payment of dividend. Hence, the penal provisions under section 127 will be applicable.

6.(d)(ii)

Section 127, inter-alia, provides that no offence shall be deemed to have been committed where the dividend could not be paid by reason of operation of law.

In the present circumstance, the dividend could not be paid because it was not allowed to be paid by the court until the matter was resolved about succession. Hence, there will not be any liability on the company and its Directors etc.

7. (a) "The development of Corporate Governance in the UK was initially the findings of a Trilogy of Codes". Explain the same in brief. 6

(b) What do you mean by Hedging and Pledging? Explain the factors in determining vote recommendations for the election of directors, 5

(c) What are the advantages of a formal governance structure? 5

Answer:

7.(a)

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

Cadbury Report (1992)

Following various financial scandals and collapses (Coloroll and Polly Peck, to name but two) and a perceived general lack of confidence in the financial reporting of many UK companies, the Financial Reporting Council, the London Stock Exchange, and the accountancy profession established the Committee on the Financial Aspects of Corporate Governance in May 1991.

After the Committee was set up, the scandals at BCCI and Maxwell happened, and as a result, the committee interpreted its remit more widely and looked beyond the financial aspects to Corporate Governance as a whole. The Committee was chaired by Sir Adrian Cadbury and, when the Committee reported in December 1992, the report became widely known as 'the Cadbury Report'.

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

Greenbury Report (1995)

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

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

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

Hampel Report (1998)

The Hampel Committee was set up in 1995 to review the implementation of the Cadbury and Greenbury Committee recommendations. The Hampel Committee reported in 1998. The Hampel Report said: 'We endorse the overwhelming majority of the findings of the two earlier

committees'. There has been much discussion about the extent to which a company should consider the interests of various stakeholders, such as employees, customers, suppliers, providers of credit, the local community, etc., as well as the interests of its shareholders. The Hampel report stated that the directors as a board are responsible *for* relations *with* stakeholders; but they are accountable *to* the shareholders'. However, the report does also state that directors can meet their legal duties to shareholders, and can pursue the objective of long-term shareholder value successfully, only by developing and sustaining these stakeholder relationships'.

The Hampel Report, like its precursors, also emphasized the important role that institutional investors have to play in the companies in which they invest (investee companies). It is highly desirable that companies and institutional investors engage in dialogue and that institutional investors make considered use of their shares, in other words, institutional investors should consider carefully the resolutions on which they have a right to vote and reach a decision based on careful thought, rather than engage in 'box ticking'.
The combined code due together the recommendations of the Cadbury, Greenbury and Hampel reports. It has two sections, one aimed at companies and another aimed at Institutional Investors.

7.(b)

Hedging and Pledging
Current ISS policy provides for the recommendation of a negative vote for directors, whether individually or as part of a committee or the entire board, due to material failures of risk oversight at the company. The 2013 updates expand the examples of a failure of "risk oversight" to include, among other things, the hedging of company stock and the significant pledging of company stock as collateral for a loan. These practices are seen as severing the alignment of interests between the officers and directors and the shareholders. Hedging of company stock at any level and in any form poses enough of a problem to warrant a negative vote recommendation. For companies in which officers or directors have pledged company stock as collateral, ISS considers the following factors in determining vote recommendations for the election of directors:

- Presence in the company's proxy statement of an anti-pledging policy that prohibits future pledging activity;
- Magnitude of aggregate pledged shares in terms of total common shares outstanding or market value or trading volume;
- Disclosure of progress or lack thereof in reducing the magnitude of aggregate pledged shares over time;
- Disclosure in the proxy statement that shares subject to stock ownership and holding requirements do not include pledged company stock; and
- Any other relevant factors.

7.(c)

The advantages of a formal governance structure are several. First of all, there is defined structure with defined channels for decision making and clear lines of responsibility. Secondly, the board can tackle areas that may be sensitive from a family viewpoint but which nonetheless need to be dealt with succession planning is a case in point (deciding who would be best to fill key roles in the business should the existing incumbents move on, retire, or die). Succession planning is important too in the context of raising external equity because, once a family business starts to seek external equity investment, then shareholders will usually want to know that succession planning is in place. The third advantage of a formal governance structure is also one in which external shareholders would take a keen interest: the appointment of non executive directors. It may be that the family firm, depending on its size, appoints just one, or maybe two, non executive directors. The key point about the non executive director appointments is that the persons appointed should be independent; it is this trait that will make their contribution to the family firm a significant one. Of course, the independent non-executive directors should be appointed on the basis of the knowledge and experience that they can bring to the family firm.

8. (a) Explain the introduction of Memorandum of Understanding (MOU) system in India. 6

(b) What are the implementation guidance of the Corporate Social Responsibility (CSR) policy as per the CSR voluntary Guidelines 2009? 5

(c) Returns on invested capital costs are essential in making decisions on investment scenarios. Explain different capital costs need to be assessed in Whole Life Cycle Costing. 5

Answer:

8.(a)

The Memorandum of Understanding (MoU) system in India was introduced in the year 1986, after the recommendations of the Arjun Sengupta Committee Report (1984). Twenty six years after its inception, the MoU system has evolved and is being and is being strengthened, through regular reviews, to become a management tool that helps in performance evaluation as well as performance enhancement of CPSEs in the country.

In the backdrop of the dynamic external environment, "world-wide competition" and globalization, it is critical that the MoU system is strengthened such that it facilitates the CPSEs in becoming economically viable through efficient management and control. Hence, the MoU

system aims at offering autonomy to CPSEs and is designed such that it can aid in the assessment of the extent to which mutually agreed objectives (Mandal, 2012) are achieved. This section of the report traces the evolution of the MoU system through various committee reports and highlights the major observations, along with the actions taken thereafter. This would act as an indicator of the developments that have happened in the MoU system in India and, through the study of extant literature, would also highlight the areas of concern raised after each study.

The various committees formed over the years are though

1. Arjun Sengupta Committee Report (1984)
2. National Council of Applied Economic Research (2004)
3. Report of the Working Group (2008)
4. S.K. Roongta Committee Report (2011)
5. Mankad Committee and Task Force (2012)

8.(b)

Implementation Guidance

1. The CSR policy of the business entity should provide for an implementation strategy which should include identification of projects/ activities, setting measurable physical targets with timeframe, organizational mechanism and responsibilities, time schedules and monitoring. Companies may partner with local authorities, business associations and civil society/non government organizations. They may influence the supply chain for CSR initiative and motivate employees for voluntary effort for social development. They may evolve a system of need assessment and impact assessment while undertaking CSR activities in a particular area. Independent evaluation may also be undertaken for selected projects/activities from time to time.

2. Companies should allocate specific amount in their budgets for CSR activities. This amount may be related to profits after tax, cost of planned CSR activities or any other suitable parameter.

3. To share experiences and network with other organizations the company should engage with well established and recognized programmes/platforms which encourage responsible business practices and CSR activities. This would help companies to improve on their CSR strategies and effectively project the image of being socially responsible.

4. The companies should disseminate information on CSR policy, activities and progress in a structured manner to all their stakeholders and the public at large through their website, annual reports, and other communication media.

8.(c)

Returns on invested capital costs are essential in making decisions on investment scenarios. This requires a combination of knowledge about the investment in question, skill for analysis and elicitation of decisions from the existing information, experience and judgment. The capital cost for acquiring a facility will not be known with certainty until the facility is developed and handed over for operation. Hence, the information required for carrying out whole life-cycle cost and economic viability analysis relies on the availability of previously documented cases and speculative assumptions. The capital cost objectives that need to be assessed include:

- Land acquisition cost. The location, and land viability may have a direct effect on the whole life cost and life expectancy of a facility.
- Pre-design costs. The amounts of time in quality of information generated (development of the brief and facility specification) at this stage have great consequences on the quality and operation of a facility. The investors have a good opportunity to optimize the whole life cost of a facility through the selection of component and functional flexibility. Ideally, the issues relating to obsolescence should be investigated, accounted for as cost at this stage.
- Design cost. The quality of design in terms of error, detailing and buildability will have a direct effect on the cost of production and operation. A high quality building might also require higher costs in use in order to maintain its high aesthetic quality in use (Ashworth and Hogg 2000).
- Development and production costs. The quality of workmanship is directly related to the level of maintenance. It is important to ensure that quality control is in place to ensure sound construction practices are used.
- Fees
- Risk costs
- Financial costs, tax, interest, etc.