

FINAL EXAMINATION

GROUP - III

(SYLLABUS 2016)

SUGGESTED ANSWERS TO QUESTIONS

JUNE - 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 mentioned below. Mark the correct answer (Only indicate A or B or C or D and give justification.

Multiple choice questions:

2x10=20

- (i) The asset in respect of which no default in repayment of principal or payment of interest has occurred is known as
- (A) Non-performing Asset
 - (B) Standard Asset
 - (C) Sub-standard Asset
 - (D) Doubtful Asset
- (ii) A person who fails to get appointed as a director in a general meeting cannot be appointed as
- (A) Additional director
 - (B) Alternate director
 - (C) Independent director
 - (D) Nominee director
- (iii) Which of the following is not the correct manner in the event of any change in his particulars as stated in Form DIR-3, an applicant intimate such change to the Central Government within a period of 30 days of such change in Form DIR-3?
- (A) The applicant shall download Form DIR-6 from the portal.
 - (B) The form shall be digitally signed by CA or CS or CMA.
 - (C) The applicant shall submit the fees.
 - (D) The applicant shall submit the form DIR-6.

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- (iv) In which of the following principle, every members holds equal rights with other members of the company in the same class? The scale of rights of members of the same class must be held evenly for smooth functioning of the company.
- (A) Interference
 - (B) Non-interference
 - (C) Indifference
 - (D) Difference
- (v) SEBI has three functions rolled into one body. Which of the following is not the function of SEBI?
- (A) Quasi-legislative
 - (B) Quasi-judicial
 - (C) Quasi-executive
 - (D) Quasi-official
- (vi) Which of the following is not the condition for issue of IDR?
- (A) Issue size should not be more than ₹ 50 crores.
 - (B) Minimum application amount should be ₹ 20,000.
 - (C) At least 50% of the IDR issued should be allotted to qualified institutional buyers on proportionate basis.
 - (D) There will be only denomination of IDR of the issuing company.
- (vii) Which of the following FDI in resident entities is not eligible as investee entities?
- (A) FDI in an India company
 - (B) FDI in Partnership
 - (C) FDI in HUF
 - (D) FDI in LLP
- (viii) For the appointment, reappointment, remuneration and removal of the director of a banking company, prior approval of _____ should be obtained.
- (A) Chairman
 - (B) RBI
 - (C) Managing Director
 - (D) Finance Secretary
- (ix) A Nidhi shall not accept deposit exceedingtimes of its net owned funds
- (A) Ten times
 - (B) Fifteen times
 - (C) Twenty times
 - (D) Twenty five times
- (x) Which of the following Committee was formed by SEBI for improving standards of Corporate Governance of Listed Companies in India?
- (A) Naresh Chandra Committee
 - (B) N.R. Narayan Murthy Committee
 - (C) Kotak Committee
 - (D) Kumar Mangalam Birla Committee

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Answer:

1.

(i)	B	Standard Asset	Standard Assets means asset In respect of which no default in repayment of principal or payment of Interest has occurred or is perceived and which has neither shown signs of any problem relating to re-payment of principal sum or interest nor does it carry more than normal risk attached to the business.
(ii)	A	Additional director	A person who fails to get appointed as a director in a general meeting cannot be appointed as Additional director.
(iii)	C	The applicant shall submit the fees	While submitting form DIR-6, the applicant does not require to submit fees.
(iv)	B	Non Interference	In the principle of non interference every members holds equal rights with other members of the company in the same class. The scale of rights of members of the same class must be held evenly for smooth functioning of the company.
(v)	D	Quasi-official	SEBI has three functions rolled into one body. Quasi-Legislative, Quasi-judicial and Quasi- executive.
(vi)	A	Issue size should not be more than ₹ 50 crores	Issue size should not be less than ₹ 50 crores.
(vii)	C	FDI in HUF	FDI in Indian Company, partnership and LLP are eligible as investee entities.
(viii)	B	RBI	According to Section 35 (B) prior approval of RBI should, be obtained for the appointment, reappointment, remuneration and removal of the director of a banking company.
(ix)	C	Twenty times	A Nidhi shall not accept deposit exceeding Twenty times of its Net owned funds as per its last audited financial statements.
(x)	C	Kotak Committee	SEBI had formed a committee for improving standards of Corporate Governance of listed Companies in India under the chairmanship of Uday Kotak.

2. (a) (i) **Although Company is an artificial person, it can still own property and enter into contracts — Comment.** 2

(ii) **State with reasons whether the following statements are 'True' or 'False'**

(I) The liability in respect of offences committed under the Companies Act, 2013 by the officers in default of the transferor Company prior to its merger or

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amalgamation shall not continue after such merger or amalgamation.

(II) Only a natural person who is an Indian Citizen shall be eligible to incorporate a one-person Company. 1+1=2

(iii) State briefly the requirements relating to filing of accounts with the Registrar of Companies by the Foreign Company in respect of Global Business as well as Indian Business. 2

(iv) Define the terms 'Mediation' and 'Conciliation'. 1+1=2

(b) Simplex Ltd. has a credit balance of ₹ 10,00,000 in Securities Premium Reserve. It did not earn profit during the year and thus was unable to declare dividend. Bapi, the accountant of the Company, suggested that Securities Premium Reserve of ₹ 10,00,000 may be used for payment of dividend. Comment. 4

(c) Explain the particulars required to be contained in Directors Responsibility Statement as per provision of the Companies Act, 2013. 4

Answer:

2. (a) (i) It is true that Company is an artificial person as it is created by law. However, like a natural person a Company may also own property and enter into contracts. Being an artificial person, Company, enters into contracts through its Board of Directors (BOD). BOD enters into an agreement with others and indicates Company's approval through a common seal.

(ii) (a) False - As per Section 240 of the Companies Act, 2013, notwithstanding anything in any other law for the time being in force, the liability in respect of offences committed under this Act by the officers in default of the transferor Company prior to its merger or amalgamation shall continue after such merger or amalgamation.

(b) False - Only a natural person who is an Indian Citizen and resident in India shall be eligible to incorporate a one-person Company.

(iii) According to Sec. 381 of the Companies Act, 2013

(1) Every Foreign Company shall in every calendar year,

(a) make out a Balance Sheet and Profit & Loss account in such form, containing such particulars and including or having attached or annexed thereto such documents as may be prescribed under Rule 4 & 5 of the Companies (Regulation of foreign Companies) Rule 2014, and

(b) deliver a copy of those documents to the Registrar.

(iv) 'Mediation' means intervention of some third party in a dispute with the intention to resolve the dispute.

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'Conciliation' means the process of adjusting or settling disputes in a friendly manner through extra judicial means.

- (b) According to section 52 of the Companies Act, 2013, where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate 'amount of the premium received on those shares shall be transferred to a "securities premium account" and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the securities premium account were the paid-up share capital of the company.

The securities premium account may be applied by the company—

- (a) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;
- (b) in writing off the preliminary expenses of the company;
- (c) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;
- (d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or
- (e) for the purchase of its own shares or other securities, under section 68.

As such dividend cannot be declared.

- (c) **Contents of Directors Responsibility Statement** [Section 134(5) of the Companies Act, 2013]: The Directors' Responsibility Statement referred to in 134(3) (c) shall state that—

- 1. in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
- 2. the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;
- 3. the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;
- 4. the directors had prepared the annual accounts on a going concern basis;
- 5. the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.

Here, the term "internal financial controls" means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information; and

- (6) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating

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effectively.

3. (a) The Promoters of M/s Soma Limited, a listed public company propose to have the strength of the Board of Directors as eleven. They also propose to make the Managing Director and Whole Time Directors as directors not liable to retire by rotation. Advise on the following matters as per the provisions of the Companies Act, 2013:

(i) How many of the remaining directors will have to retire by rotation every year at the Annual General Meeting (AGM)?

(ii) For the purpose of increasing the strength, certain nominations were received to nominate candidates for contesting elections. One of the nominations was rejected by the directors as it was received after sending the notice of AGM and that too after the working hours of the last day on which nomination should have been received. 5

- (b) M/s Daga Limited (an unlisted company) without any public deposits as per the audited financial statements of the company as at March 31st, 2018 gives you the following informations:

Paid-up Share Capital	₹20 crores
Gross Turnover	₹500 crores
Bank Borrowings	₹50 crores (from a National Bank)
Other Borrowings	₹30 crores (from a Public Financial Institution)

Mr. Lodha, a Chartered Accountant employed in the finance and audit department of the company wants to form a Vigil Mechanism for directors and employees of the company. Advise whether it is mandatory for M/s Daga Limited to formulate a Vigil Mechanism for directors and employees of the company. 4

- (c) (i) DEF Limited is a listed company. The Board of Directors of the company at their meeting held on 1st November, 2018 approved the proposal to issue bonus shares in the ratio of 1:1. Such bonus issue is authorized by its Articles of Association for issue of bonus shares and capitalization of reserves. The company implemented the bonus issue on 15th November, 2018. Whether the company has contravened the provisions of Securities Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulation 2009? 4

(ii) The e-forms rolled out by the Ministry of Corporate Affairs (MCA) under the provisions of the Companies Act, 2013 and rules framed thereunder are mandatorily numbered alpha-numeric. Explain this concept. 3

Answer:

3. (a) (i) According to section 152(6)(c) of the Companies Act, 2013, 1/3rd of such of the Directors for the time being as are liable to retire by rotation, or their number is

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neither three nor a multiple of three, then, the number nearest to the $1/3^{\text{rd}}$ shall retire from office. Therefore the Directors liable to retire by rotation are $11 \times 2/3$ i.e. 7.3 or 8. (No. of directors to retire at AGM: $8 \times 1/3$ i.e. 2.67. Hence nearest to $1/3^{\text{rd}}$ is 3).

- (ii) According to section 160 of the Companies Act, 2013, a person who is not a retiring director in terms of section 152 shall, subject to the provisions of this Act, be eligible for appointment to the office of a director at any general meeting, if he has, not less than 14 days before the meeting, left at the registered office of the Company, a notice in writing under his hand signifying his candidature as a director.

In the instant case, one nomination was rejected by the directors as it was received after sending the notice of AGM and that too after the working hours of the last day on which nomination should have been received i.e. 14th day. Hence, the contention of the directors are valid.

- (b) Formation of vigil mechanism: According to Section 177(9) of the Companies Act, 2013, a Vigil mechanism shall be formed in:

- (a) Every listed Company, and
(b) Such other prescribed classes of companies.

Rule 7 of the Companies (Meetings of Board and its Powers) Rules, 2014 has prescribed the following class or classes of companies that shall constitute Vigil mechanism:

1. The Companies which accept deposits from the public;
2. The Companies which have borrowed money from banks and public financial institutions in excess of 50 crore rupees.

In the instant case, Daga Ltd. does not have any public deposits. They have borrowings from banks and public financial institutions of ₹ 80 Crores which is in excess of ₹ 50 crores. Since, the Company had borrowed from banks and Public Financial Institutions in excess of ₹50 crores as prescribed in Rule 7(2), the Company is mandatorily required to form a Vigil Mechanism for directors and employees of the Company.

- (c) (i) Bonus Issue: According to the provisions of Chapter IX of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, a listed issuer may issue bonus shares to its members if it is authorised by its articles of association for issue of bonus share, Capitalisation of reserves, etc.

An issuer, announcing a bonus issue after the approval of its board of directors and not requiring shareholders' approval for Capitalisation of profits or reserves for making the bonus issue, shall implement the bonus issue within fifteen days from the date of approval of the issue by its board of directors. According to the stated facts, Board of Directors of DEF Ltd. approved the proposal to issue of bonus shares in the meeting held on 1st November 2018. This issue of bonus shares, is without requiring shareholders' approval.

Accordingly, DEF Ltd. implemented the bonus issue within fifteen days from the date of approval of the issue by its board of directors (i.e. on 15th November 2018). So,

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DEF Ltd. is in compliance with the SEBI (ICDR) Regulation, 2009 and thus has not contravened.

- (ii) In order to facilitate easy understanding of the e-forms being rolled out under the provisions of Companies Act, 2013 and Rules made thereunder, forms under the Companies Act are mandatorily numbered alpha-numeric. Initial of forms is to be started with alphabet of two or three letters based on the subject of the Chapter, followed by serial number of the form. This will define the nature of the forms and would be easy to recognize.

- 4. (a) M/s RST and Co., a firm of Chartered Accountants, comprising of three partners R, S and T are Statutory Auditors of 50 companies as per details given below:**
- (i) Small Companies — 10**
 - (ii) Private Companies having paid-up share capital of less than ₹100 Crores — 20**
 - (iii) Private Companies having paid-up share capital of more than ₹ 100 Crores — 15**
 - (iv) Public Companies — 5**

Mr. R signs the Balance Sheet of 10 Small Companies and 10 Private Companies having paid-up share capital of less than ₹ 100 Crores. Mr. S signs the Balance Sheet of 10 Private Companies having paid-up share capital of less than ₹ 100 Crores and 5 Private Companies having paid-up share capital of more than ₹ 100 Crores. Mr. T signs the Balance Sheet of 10 Private Companies having paid-up share capital of more than ₹ 100 Crores and 5 Public Companies.

What is the maximum number of audits that the firm as a whole can accept and what is the maximum number of audits each individual partner can accept? 6

- (b) State briefly with reference to the applicable provisions of the Companies Act, 2013 read with rules thereunder whether an unlisted Public Company which is a wholly owned Subsidiary Company will be required to appoint Independent Directors. 2**

- (c) (i) PBX Pvt. Ltd. is a company in which there are 6 shareholders. Mr. Bala, who is a director and also the legal representative of a deceased shareholder holding less than one tenth of the share capital of the company made a petition to the tribunal for relief against oppression and mismanagement. Examine under the provisions of the Companies Act, 2013 whether the petition made by Mr. Bala is valid and maintainable. 4**

- (ii) Decide the liability of the person for commission of the act during the course of inspection, inquiry or investigation under the Companies Act, 2013:**

(I) A person who is required to make statement during the course of investigation pending against its company, is a party to the manipulation of documents related to the transfer of securities and naming of holders in the register of members by the company.

(II) An employee of the company publicized among his social networking of sound financial position of his organization in order to incite the public to

purchase the shares of its company. In actuality, the company was running in loss.

4

Answer:

4. (a) **Ceiling on Number of Audit:** As per section 141(3)(g) of the Companies Act, 2013, a person shall not be eligible for appointment as an auditor if he is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such person or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty Companies other than one person companies, dormant Companies, small Companies and private Companies having paid-up share capital less than ₹100 crores.

As per section 141(3)(g), this limit of 20 Company audits is per person. In the case of an audit firm having 3 partners, the overall ceiling will be $3 * 20 = 60$ Company audits. Sometimes, a chartered accountant is a partner in a number of auditing firms. In such a case, all the firms in which he is partner or proprietor will be together entitled to 20 Company audits on his account. Therefore, maximum number of audits that the firm M/S. RST & CO. as a whole can accept is 60 and maximum number of audits each individual partner can accept is 20 i.e. other than one person Companies, dormant Companies, small Companies and private Companies having paid-up share capital less than ₹ 100 crores.

In the given case, CAR is holding appointment in 20 Companies, i.e. 10 small companies and 10 private Companies having paid up share capital of less than ₹ 100 crores, whereas CA S is having appointment in 15 Companies i.e. 10 private Companies having paid up share capital of less than ₹ 100 crore and 5 private Companies having paid up share capital of more than ₹100 crore and CA T is having appointment in 5 public Companies and 10 private Companies having paid up share capital of more than ₹ 100 crores. In aggregate all three partners are having 50 audits.

As per section 141(3)(g) applying the above provisions, an auditor can accept more appointment as auditor = ceiling limit as per section 141(3)(g) - already holding appointments as an auditor.

Hence (1) CA R can accept 20 more audits. (2) CA S can accept $20 - 5 = 15$ more audits and (3) CA T can accept $20 - 15 = 5$ more audits.

As per the facts of the case, M/S. RST & CO. is already having 20 Company audits and they can also accept 40 more Company audits. In addition, they can also conduct the audit of one person Companies, small Companies, dormant Companies and private Companies having paid up share capital less than ₹ 100 crores.

As per section 141(3)(g) of the Companies act, 2013, M/S. RST &CO. can accept

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appointment as an auditor of 40 more Companies as under:

Total number of Audits available to the Firm	= 20 * 3 =	60
Number of Audits already taken by all the partners in their individual capacity	= 0 + 5 + 15 =	20
Remaining number of Audits available to the firm	=	40

- (b) As per section 149(6) read with Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, the public Companies of prescribed class shall require to appoint minimum 2 independent directors. However, vide Notification number G.S.R. 839(E) dated 5th July 2017 an amendment was issued through the Companies (Appointment and Qualification of Directors) Amendment Rules, 2017. It provided that an unlisted public Company which is a joint venture, a wholly owned subsidiary or a dormant Company will not be required to appoint independent Directors.
- (c) (i) According to section 244 of the Companies Act, 2013, in the case of a Company having share capital, the following member(s) have the right to apply to the Tribunal under section 241:
- (a) Not less than 100 members of the Company or not less than one-tenth of the total number of members, whichever is less; or
 - (b) Any member or members holding not less than one-tenth of the issued share capital of the Company provided the applicant(s) have paid all the calls and other sums due on the shares.

Legal heir of the deceased shareholder with minority status is entitled to file the petition.

In the given case, there are six shareholders. As per the condition (a) above, 10% of 6 i.e. 1 (round off 0.6) satisfies the condition. Therefore, in the light of the provisions of the Act, a single member (even the legal representative of a deceased shareholder) can present a petition to the Tribunal, regardless of the fact that he holds less than one-tenth of the Company's share capital.

Thus, the petition made by Mr. Bala is valid and maintainable.

- (ii) Section 229 of the Companies Act, 2013 states that where a person who is required to provide an explanation or make a statement during the course of inspection, inquiry or investigation, or an officer or other employee of a company or other body corporate which is also under investigation,—
- (a) destroys, mutilates or falsifies, or conceals or tampers or unauthorisedly removes, or is a party to the destruction, mutilation or falsification or concealment or tampering or unauthorised removal of, documents relating to the property, assets or affairs of the company or the body corporate;
 - (b) makes, or is a party to the making of, a false entry in any document concerning the company or body corporate; or
 - (c) provides an explanation which is false or which he knows to be false,

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-he shall be punishable for fraud in the manner as provided in section 447.

As per the above provision:

- (i) With respect to this part of the question, the person shall be liable for fraud. Since, in the given case, he is a party in the manipulation of documents relating to the transfer of securities and in the register of members of the company which is under investigation.
- (ii) Employee shall not be liable here, as the said company in which he is an employee, is not undergoing investigation. Secondly, the person purchasing the shares can act with due diligence before purchasing shares rather -fully relying on the publicity made on social networking.

5. (a) Discuss the National Voluntary Guidelines on "Business, when engaged in influencing public and regulatory policy, should do so in a responsible manner". 4

(b) Referring to the provisions of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 state the circumstances under which the Reserve Bank of India may cancel the certificate of registration granted to a Securitisation Company. 5

(c) (i) Mr. Z, a director of Southern Highway Tolls Private Limited, is duly authorized by the Board of Directors to prepare and file returns, report or other documents to the Registrar of Companies on behalf of the company. Though he filed all the required documents to Registrar in time, however, subsequently it was found that the filed documents were false and inaccurate in respect to material particulars (knowing it to be false) submitted to the Registrar. Discuss the penal provision under the Companies Act, 2013 in the light of the given situation. 4

(ii) Mr. Ganesh, an operational creditor filed an application for corporate insolvency resolution process. He does not propose for appointment of an interim resolution professional in the application. State the provisions given by the code in the given situation. State the term of such appointed IRP. 3

Answer:

5. (a) Principle 7: Businesses, when engaged in influencing public and regulatory policy, should do so in a responsible manner.

The principle recognizes that businesses operate within the specified legislative and policy frameworks prescribed by the Government, which guide their growth and also provide for certain desirable restrictions and boundaries.

The principle acknowledges that in a democratic set-up, such legal frameworks are developed in a collaborative manner with participation of all the stakeholders, including businesses.

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The principle, in that context, recognizes the right of businesses to engage with the Government for redressal of a grievance or for influencing public policy and public opinion.

The principle emphasizes that policy advocacy must expand public good rather than diminish it or make it available to a select few.

Core Elements

- (a) Businesses, while pursuing policy advocacy; must ensure that their advocacy positions are consistent with the Principles and Core Elements contained in these Guidelines.
 - (b) To the extent possible, businesses should utilize the trade and industry chambers and associations and other such collective platforms to undertake such policy advocacy.
- (b) Cancellation of Certificate of Registration (Section 4 of the securitisation & reconstruction of financial assets & enforcement of Security interest Act, 2002).

As per the section 4 of the Securitisation & Reconstruction of Financial Assets & Enforcement of security Interest Act, 2002, the Reserve Bank may cancel a certificate of registration granted to a securitization company or a reconstruction company, if such company-

- (i) ceases to carry on the business of securitisation or asset reconstruction; or
 - (ii) ceases to receive or hold any investment from a qualified institutional buyer; or
 - (iii) has failed to comply with any conditions subject to which the certificate of registration has been granted to it; or
 - (iv) at any time fails to fulfil any of the conditions referred to in clauses (a) to (g) of sub-section (3) of section 3; or
 - (v) falls to –
 - (a) comply with any direction Issued by the Reserve Bank under the provisions of this Act; or
 - (b) maintain accounts in accordance with the requirements of any law or any direction or order issued by the Reserve Bank under the provisions of this Act; or
 - (c) submit or offer for inspection its books of account or other relevant documents when so demanded by the Reserve Bank; or
 - (d) obtain prior approval of the Reserve Bank required under sub-section (6) of section 3.
- (c) **Penalty for false statements (Section 448 of the Companies Act, 2013)**
- (i) According to section 448 of the Companies Act, 2013, save as otherwise provided in this Act, if in any return, report, certificate, financial/statement, prospectus, statement or other document required by, or for, the purposes of any of the provisions of this Act or the rules made there under, any person makes a statement, -
 - (a) which is false in any material particulars, knowing it to be false; or

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(b) which omits any material fact, knowing it to be material,

he shall be liable under section 447.

In the present case, Mr. Z, a director of Southern Highway Tools Private Limited filed returns, report or other documents to Registrar in time, however, subsequently it was found that the filed documents were false and inaccurate in respect to material particulars (knowing it to be false) submitted to the Registrar.

Hence, Mr. Z shall be liable under section 447 for false statements.

- (ii) **Appointment of IRP:** As per Section 16 of the Code where the application for corporate insolvency resolution process is made by an operational creditor and no proposal for an interim resolution professional is made in the said application. The Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an Interim resolution professional.

The Board shall recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending, within ten days of the receipt of a reference from the Adjudicating Authority.

Period of appointment of IRP: The term of Interim Resolution Professional shall continue till the date of appointment of the resolution professional under section 22 of the Code.

6. (a) (i) **ABC Ltd., is a company which has a net worth of INR ₹ 200 crores, it manufactures rubber parts for automobiles. The sales of the company are affected due to low demand of its products.**

The previous year's financial state:

(₹ in Crore)

	March 31, 2019 (Current year)	March 31, 2018	March 31, 2017	March 31, 2016
Net Profit	3.00	8.50	4.00	3.00
Sales (turnover)	850	950	900	800

Does the company have an obligation to form a CSR Committee since the applicability criteria is not satisfied in the current financial year? 3

- (ii) Explain the concept of KMP (Key Managerial Personnel) as introduced by the Companies Act, 2013. 2

- (b) (i) Mr. Zupi was appointed as a Member of the Competition Commission of India by Central Government. He has a professional experience in international business for a period of 12 years, which is not a proper qualification for

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appointment of a person as member. Pointing out this defect in the Constitution of Commission, Mr. P. K. against whom the commission gave a decision, wants to invalidate the proceedings of the commission. Examine with reference to the provisions of the Competition Act, 2002 whether Mr. P. K. will succeed. **3**

(ii) M/s Samrat is a company engaged in providing services of supplying goods all over the world through aircrafts. The aircrafts of the said company is registered and insured in India with the reputed insurance company. Company found that the insurance policy of one of aircraft which is in Europe had expired. Company said to his officer to get new insurance policy of that aircraft in Europe. State the validity of such an act of registration of aircraft in Europe. **3**

(c) Explain the responsibilities of banking companies under the Prevention of Money Laundering Act, 2002. **5**

Answer:

6. (a) (i) It has been clarified that 'any financial year' referred to under sub section (1) of section 135 of the act read with rule 3(2) of companies CSR Rule,2014 implies 'any of the three preceding financial years'.

A company which meets the net worth, turnover of net profits criteria in any of the preceding three financial years, but which does not meet the criteria in the relevant financial year ,will still need to constitute a CSR committee and comply with provisions of sections 135(2) to(5) read with the CSR rules.

As per the criteria to constitute CSR committee -

- 1) Net worth greater than or equal to INR 500 Crores: This criterion is not satisfied.
- 2) Sales greater than or equal to INR 1000 crores: This criterion is not satisfied.
- 3) Net profit greater than or equal to INR 5 crores: This criterion is satisfied in financial year ended March 31, 2018.

Hence, the company will be required to form a CSR committee.

(ii) As per the provisions of section 203(1) of the companies Act 2013, every company belonging to such class or classes of companies as may be prescribed, shall have the following whole time key managerial personnel.

- (a) Managing Director or chief executive officer or manager and in their absence ,a whole-time Director;
- (b) Company secretary; and
- (c) Chief financial officer

(b) (i) As per section 15 of Competition Act 2002 any act or proceeding of the Commission shall not be invalidated merely on the ground of:

- (a) any vacancy in, or any defect in the constitution of the Commission; or
- (b) any defect in the appointment of a person acting as a Chairperson or as a member; or
- (c) any irregularity in the procedure of the Commission not affecting the merits of

the case.

Here in this case Mr. Zupi should have professional qualification of not less than 15 years as per section 8 of the Act but this disqualification will not invalidate the proceeding of the Commission.

- (ii) Given problem is based on the section 2CB of the Insurance Act, 1938. Said section deals with the Indian properties not to be insured with foreign insurers. According to the section, no person shall take out or renew any policy of insurance in respect of any property in India or any ship or other vessel or aircraft registered in India with an insurer whose principal place of business is outside India, without the permission of the IRDAI.

In the given case, act of registration of aircraft of M/s Samrat which is an Indian property, with an insurer in Europe, is an invalid act.

- (c) Section 12 provides for the obligation of Banking Companies, Financial Institutions and Intermediaries or a person carrying on a designated business or profession. According to subsection (1), every banking company, financial institution and intermediary or a person carrying on a designated business or profession shall –
- (a) maintain a record of all transactions, including information relating to transactions covered under clause (b), in such manner as to enable it to reconstruct individual transactions;
 - (b) furnish to the Director within such time as may be prescribed, information relating to such transactions, whether attempted or executed, the nature and value of which may be prescribed;
 - (c) verify the identity of its clients in such manner and subject to such conditions, as may be prescribed;
 - (d) identify the beneficial owner, if any, of such of its clients, as may be prescribed;
 - (e) maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients.

Every information maintained, furnished or verified, save as otherwise provided under any law for the time being in force shall be kept confidential.

The records referred to in clause (a) of sub-section (1) shall be maintained for a period of five years from the date of transaction between a client and the reporting entity.

The records referred to in clause (e) of sub-section (1) shall be maintained for a period of five years after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later.

The Central Government may, by notification, exempt any reporting entity or class of reporting entities from any obligation under this chapter.

SUGGESTED ANSWERS TO QUESTIONS_SYL2016_JUNE2019_PAPER-13

7. (a) (i) Which principle of insurance is related to the following statements?
(I) The cause for loss must be related to the purpose of insurance.
(II) The insured should not be allowed to make any profit by selling damaged or in the case of lost property being recovered. 1+1=2
- (ii) XYZ Ltd. issued prospectus for the subscription of its shares for ₹500 Crores. The issue was oversubscribed by 10 times. The company issued shares to all the applicants on pro-rata basis. Later SEBI inspected the prospectus and found some misleading statement about the management of the Company in it. SEBI imposed a penalty of ₹ 1 Crore and banned its two executive directors for dealing in securities market for three years.
Identify the function and its type performed by SEBI in above case. 2
- (iii) (I) Who shall be the competent authority for all decisions pertaining to arrest as per the provision of the Companies (Arrests in connection with investigation by serious Fraud Investigation office) Rules, 2017?
(II) Who is empowered to designate court of session as special courts for trial of offence of money laundering? 1+1=2
- (iv) Who can initiate insolvency resolution process? 2
- (b) Explain how the provisions of the Companies Act, 2013 relating to Audit Committee will help in achieving some of the objectives of Corporate Governance. 5
- (c) State briefly the effect of floating charge on the undertaking or property of the company when a company is being wound-up. 3

Answer:

7. (a) (i) (a) Principle of Causa Proxima
(b) Principle of Subrogation
- (ii) Protective Function
Prohibition of fraudulent and unfair trade practices
- (iii) (a) The Director of SFIO shall be the competent authority for all decisions pertaining to arrest.
(b) Central Government in consultation with the Chief Justice of High Court is empowered to designate court of session as special courts for trial of offence of money laundering.
- (iv) Where any Corporate debtor commits a default, a financial creditor, an operation creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner as provided (See 6 of the insolvency and Bankruptcy code, 2016.

(b) Companies, particularly public listed companies raise huge amounts of monies from the members of the public and public financial institutions. They owe it to all the vast number of persons and institutions who have reposed their faith in them and have invested in them, that their faith is rewarded both in terms of annual return and in terms of wealth appreciation in real terms. In order to achieve this it is vital to have the highest quality of corporate governance in the conduct of affairs of such companies. Thus, the role of audit committees have been enhanced, their responsibilities made more objective and the accountability, has increased substantially.

In this context the provisions of the Companies Act, 2013 have been framed to improve corporate governance standards and protect the interests of the public and the financial institutions who have invested in companies. These provisions may be highlighted as under:

1. The constitution of Audit Committees under section 177(2) requires the majority representation from independent directors. In other words, persons from within the management cannot form a majority in the Committee, thereby making the functioning of these committees more transparent;
2. The proviso to section 177(2) further requires the majority of members and the chairperson of the Audit Committees to be persons who can understand financial statements. This enables a meaningful exercise of the committee's functions by knowledgeable persons thereby increasing the effectiveness of such committees.
3. Now the terms of reference or the minimum, scope of work of an Audit Committee has been laid down in the act itself under section 177(4). By doing this the vagueness and doubt in the role and functions of such committees has been removed.
4. The Audit Committee shall have authority to investigate, into any matter in relation to the areas of its scope of functioning or referred to it by the Board and for this shall have power to obtain professional advice from external sources and have full, access to information contained in the records of the company. This provides the Audit Committee to function with a high degree of effectiveness by accessing external professional advice and the records of the company.
5. The recommendations of the Audit Committee are binding' on the Board to take appropriate corrective actions. In case the Board of Director refuses to accept the recommendations of the Audit Committee, it bound to disclose the same with the reasons for non acceptance, in Its report to the members of the company under section. 134 (3) which relates to the Directors Report on Financial Statements to the members of the company.

It will be seen from the above provisions of the Companies Act, 2013 that efforts have been made to make such committees more impartial, effective and accountable which will enable the company to improve the quality of its corporate governance thereby improving accountability and avoiding financial impropriety.

(c) **Effect of floating charge (Section 332)**

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As per Section 332, when a company is being wound up a floating charge on the undertaking or property of the company created within the twelve months immediately preceding the commencement of the winding up, shall, unless it is proved that the company immediately after, the creation of the charge was solvent, be invalid, except for the amount of any cash paid to the company at the time of, or subsequent to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five percent, per annum or such other rate as may be notified by the Central Government in this behalf.

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

4x4=16

- (i) List the quarterly compliances for a listed entity under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015**
- (ii) Constitution of the National Financial Reporting Authority**
- (iii) Acquisition and Transfer of Property in India by a Non-resident Indian or an Overseas Citizen of India**
- (iv) Benefits of CSR Programme**
- (v) Rights and duties of authorised representative of financial creditors**

Answer:

8. (i) Quarterly compliances- Listed Entity

A Listed company has to comply with the following quarterly compliances under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015:

1. Regulation 13(3):- Grievance Redressal Mechanism
The listed entity shall file with the recognized stock exchange(s) on a quarterly basis, within 21 days from the end of each quarter, a statement giving the number of investor complaints pending at the beginning of the quarter, those received during the quarter, disposed of during the quarter and those remaining unresolved at the end of the quarter.
2. Regulation 27(2):- Other Corporate Governance Requirements
A listed entity shall submit quarterly compliance report on corporate governance in the format as specified by the Board from time to time to the recognized stock exchange(s), within 15 days from close of quarter.
3. Regulation 31(1): Holding of Specified Securities and Shareholding Pattern.
A listed entity shall submit a statement showing holding of securities and shareholding pattern separately for each class of securities:-
 - (a) One day prior to listing of its securities on the stock exchange(s);
 - (b) On a quarterly basis, within 21 days from the end of each quarter; and,
 - (c) Within 10 days of any capital restructuring of the listed entity resulting in a change exceeding 2 per cent of the total paid-up share capital.

4. Regulation 33(3): Financial Results

The listed entity shall submit quarterly and year-to-date standalone financial results to the stock exchange within 45 days of end of each quarter, other than the last quarter.

5. Regulation 32(1): Statement of Deviation(S) Or Variation(S)

A listed entity shall submit to the stock exchange the following statement(s) on a quarterly basis for public issue, rights issue, preferential issue etc. -

(a) indicating deviations, if any, in the use of proceeds from the objects stated in the offer document or explanatory statement to the notice for the general meeting, as applicable;

(b) indicating category wise variation (capital expenditure, sales and marketing, working capital etc.) between projected utilization of funds made by it in its offer document or explanatory statement to the notice for the general meeting, as applicable and the actual utilization of funds.

- (ii) The National Financial Reporting Authority shall consist of a chairperson, who shall be a person of eminence and having expertise in accountancy, auditing, finance or law to be appointed by the Central Government and such other members not exceeding fifteen consisting of part-time and full-time members as may be prescribed.

Provided that the terms and conditions and the manner of appointment of the chairperson and members shall be such as may be prescribed.

Provided further that the chairperson and members shall make a declaration to the Central Government in the prescribed form regarding no conflict of interest or lack of independence in respect of his or their appointment.

Provided also that the chairperson and members, who are in full-time employments with National Financial Reporting Authority shall not be associated with any audit firm (including related consultancy firms) during the course of their appointment and two years after ceasing to hold such appointment.

- (iii) Acquisition and Transfer of Property in India by a Non-Resident Indian or an Overseas Citizen of India:-

An NRI or an OCI may –

- i. acquire immovable property in India other than agricultural land/farm house/plantation property.

Provided that the consideration, if any, for transfer, shall be made out of (i) funds received in India through banking channels by way of inward remittance from any place outside India or (ii) funds held in any non resident account maintained in accordance with the provisions of the Act, rules or regulations framed thereunder.

Provided further that no payment for any transfer of immovable property shall be made either by traveler's cheque or by foreign currency notes or by any other mode other than those specifically permitted under this clause.

- (b) acquire any immovable property in India other than agricultural land/ farm house/ plantation property by way of gift from a person resident in India or from an NRI or from an OCI, who in any case is a relative as defined in section 2(77) of the Companies Act, 2013;
- (c) acquire any immovable property in India by way of inheritance from a person resident outside India who had acquired such property (a) in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or the provisions of these Regulations or (b) from a person resident in India;
- (d) transfer any immovable property in India to a person resident in India;
- (e) transfer any immovable property other than agricultural land/farm house/ plantation property to an NRI or an OCI.

(iv) Benefits of CSR programme

As the business environment gets increasingly complex and stakeholders become vocal about their expectations, good CSR practices can only bring in greater benefits, some of which are as follows:

- (a) Communities provide the licence to operate:** Apart from internal drivers such as values and ethos, some of the key stakeholders that influence corporate behaviour include governments (through laws and regulations), investors and customers. In India, a fourth and increasingly important stakeholder -is the community and many companies have started realising that the 'licence to operate' is no longer given by governments alone, but communities that are impacted by a-company's business operations. Thus, a robust CSR programme that meets the aspirations of these, communities not only provides them with the licence to operate, but also to maintain the licence, thereby precluding the 'trust deficit'.
- (b) Attracting and retaining employees:** Several human resource studies have linked a company's ability to attract, retain and motivate employees with their CSR commitments. Interventions that encourage and enable employees to participate are shown to increase employee' morale and a sense of belonging to the company.
- (c) Communities as suppliers:** There are certain innovative CSR initiatives emerging wherein companies have invested in enhancing community livelihood by incorporating them into their supply chain. This has benefitted communities and increased their income levels, while providing these companies with an additional and secure supply chain.

(d) Enhancing corporate reputation: The traditional benefit of generating goodwill, creating a positive image and branding benefits continue to exist for companies that operate effective CSR programmes. This allows companies to position themselves as responsible corporate citizens.

(v) Rights and Duties authorized representative of financial creditors.

(1) **Right to participate and Vote on behalf of FC:** The authorised representative (AR) under section 21(6) & 21(6A) or section 24(5) shall have the right to participate and vote in meetings of the committee of creditors on behalf of the financial creditor (FC) he represents in accordance with the prior voting instructions of such creditors obtained through physical or electronic means.

(2) **Duty of AR to circulate agenda & minutes to FC:** It shall be the duty of the authorised representative to circulate the agenda and minutes of the meeting of the committee of creditors to the financial creditor he represents.

(3) **AR to act on instruction of FC:** The authorised representative shall not act against the interest of the financial creditor he represents and shall always act in accordance with their prior instructions:

Provided that if the authorised representative represents several financial creditors, then he shall cast his vote in respect of each financial creditor in accordance with instructions received from each financial creditor, to the extent of his voting share:

Provided further that if any financial creditor does not give prior instructions through physical or electronic means, the authorised representative shall abstain from voting on behalf of such creditor.

(4) **To ensure recording of instruction by IRP/RP:** The authorised representative shall file with the committee of creditors any instructions received by way of physical or electronic means, from the financial creditor he represents, for voting in accordance therewith, to ensure that the appropriate voting instructions of the financial creditor he represents is correctly recorded by the interim resolution professional or resolution professional, as the case may be.