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COMPENDIUM ON

CORPORATE LAWS AND COMPLIANCE

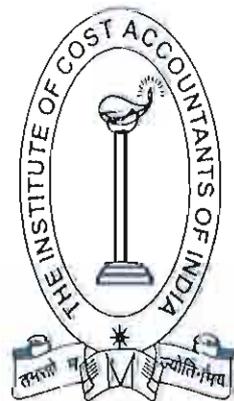
Thota Navendra Kumar CMA, MBA

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(Syllabus 2012)

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Chapter 1

THE COMPANIES ACT, 2013

1. Mr. Ram, a Director of XYZ Ltd., requested by providing an advance information for leave of absence expressing his inability to attend the next Board meeting. Advise whether notice is required to be sent to him.

Answer :

Notice of every Board meeting shall be given in writing to every director for the time being in India and to every other director at his usual address in India [Section 173(3)].

Notice is to be sent to a director even if he waives his right to receive the notice [Re, Portuguese Consolidated Copper Mines Ltd. (1889) 42 Ch D 160 (CA)]. Thus, the notice of Board meeting must be sent to Mr. Ram.

2. Amal, Vimal, Chapal and Dhabal are Directors of ABCD Ltd. Chapal and Dhabal did not attend the Board Meeting which was properly convened. At the said Board Meeting, two Additional Directors were appointed. They are the wife and brother of Amal and Vimal respectively, the Directors who attended the Board Meeting. Explain whether the Directors who attended the Board Meeting are entitled to vote on the subject-matter and whether the appointment of Additional Directors is valid.

Answer:

In view of the opinion of Madras High Court & Tribunal Letter cited below, the appointment of relatives of Amal & Vimal as Additional Directors is not valid.

The question is whether the appointment of Additional Director would come within the scope of the word "contract or arrangement", in order to consider the Director to be "interested". The Court concluded that appointment as Director does not come within the scope of the expression "contract" (because the position of a Director may be conferred on a person by any method other than "contract"), but it would amount to "arrangement". So, the attending Directors become Interested Directors. Appointment of their relatives as Additional Directors was null and void – Madras Tube Co. Ltd. Vs Harikrishna Somani 1 Comp LJ 195 (Mad).

It will be a clearly unsound Company practice if a Director, whose near relative is proposed to be appointed to the Board, were to participate in the discussions of the Board Meeting and vote on the proposal for such appointment – L.No. 8/46/(300) 64-PR dated 27-01-1965.

Note: Contrary opinion is taken by Bombay High Court

Appointment as an Additional Director of a person who is related to a Director does not violate the requirements of Sec. 188(1), because such appointment does not constitute any "contract or arrangement" of the Company with the Sitting Director. The Sitting Director is entitled to participate and vote – Shailesh Harilal Shah Vs. Matushree Textiles Ltd. 82 CC 5 (Bom).

3. The Board of Directors of GF Projects Ltd., a company whose Shares are listed on the Delhi Stock Exchange proposes to give loans to a Sister Company in excess of the limit prescribed u/s 186(2). The next AGM of the Company is due only after 6 months. Since the Board is anxious to complete the formalities quickly without waiting for the date of next AGM, advise the board about the steps to be taken to comply with the legal requirements under the Companies Act, 2013.

Answer:

Loans above the ceiling limit u/s 186(2) can be made only with the previous approval by a Special Resolution in the General meeting. So, the following steps are to be taken by the Company:

1. Postal Ballot is mandatory in case of a Listed Company for transacting a business relating to giving loans in excess of the limits prescribed u/s 186(2). As the above Company is a Listed Company, it must take steps for passing a special resolution through postal ballot in accordance with the aforesaid Rules. [Sec. 110].
2. Notice of such resolution to be sent to members should indicate specific limits, particulars of Company to which loan is to be given, specific sources of funding and such other details.
3. In addition to special resolution, prior approval of the Board of Directors is required. All Directors present at the Board meeting must vote in favour of the resolution.

4. Prior approval should be obtained from Public Financial Institution from whom loans have been taken.
5. Interest Rate to be charged by the Company shall not be less than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan.
6. Prescribed particulars must be entered in The Register maintained u/s 186(9), within specified time limits.
7. A copy of the special resolution should be filed with the ROC.

One of the members of AB Ltd. has proposed the name of Mr. Fern for appointment as a director of the company in the Annual General Meeting and given a notice under section 160(1) of the Companies Act, 2013. Mr. Fern is one of the partners of Fern & Fern, Chartered Accountants, who are the retiring auditors of the company. But the audit of the company is being looked after by another partner of the firm. Examine whether Fern & Fern can be reappointed as auditors, if Mr. Fern is appointed as director.

Answer:

The present problem relates to section 141(3) of the Companies Act, 2013.

The legal position

1. As per section 141(3), a person shall be disqualified to be appointed or reappointed as an auditor of the company if he is an officer or employee of the company.
2. As per section 2(59), a director is an officer of the company.
3. As per section 160(1), any member of a public company can give a notice proposing the appointment of any person (whether a member or not) as a director of the company.

The given case

1. Mr. Fern is a partner in the firm 'Fern & Fern', 'Fern & Fern' are the retiring auditors of the company, and they are seeking reappointment in the forthcoming annual general meeting.
2. The name of Mr. Fern has been proposed as a director by a member by giving a notice under section 160(1). Mr. Fern has been appointed as a director in the annual general meeting.

Conclusion

On appointment as a director, Mr. Fern becomes an officer of the company. Therefore, Mr. Fern and any firm in which Mr. Fern is a partner, is disqualified to be re-appointed as auditors of the company.

5. A Public Company has been declaring dividend at the rate of 10% on equity shares during the last 5 years. The company has not made adequate profits during the year ended 31st March, 2015, but it has got adequate reserves which can be utilised for maintaining the rate of dividend at 20%. Advise the Company as to how it should go about if it wants to declare dividend at the rate of 20% for the year 2014-15.

Would your answer be different if the company utilised only the profits made in the previous years and retained in the profit and loss account for the purpose of payment of dividend at the rate of 20% for the year 2014-15?

Answer:

The fundamental principle with respect to payment of dividend is that dividend is to be paid only out of profits. In other words, the dividend can be paid only out of the following sources:

- (a) Profits of current financial year
- (b) Undistributed profits of previous financial years, i.e., accumulated profits of previous years
- (c) Moneys provided by the Central Government or State Government in pursuance of guarantee given by it.

Payment of dividend out of reserves

As per Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014, dividend can be declared out of the profits transferred to the reserves subject to the following conditions:

- (a) The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the 3 years immediately preceding that year.

- (b) The total amount to be withdrawn from reserves must not exceed $1/10^{\text{th}}$ of aggregate of paid up capital & free reserves as appearing in the latest audited financial statement.
- (c) The amount so withdrawn shall be first utilised to set off the losses incurred in the financial year in which dividend is declared, and the balance amount can only be utilised for the declaration of dividend.
- (d) The balance of reserves, after such withdrawal, shall not fall below 15% of paid up share capital as appearing in the latest audited financial statement.
- (e) No company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company of the current year.

In the present case, the company intends to distribute dividend at the rate of 20%. But as per the provisions discussed in point (a) above, the rate of dividend declared cannot exceed 10%, i.e. the rated dividend declared out of reserves can be a maximum of 10%. Thus, the company cannot declare dividend @ 20% out of reserves.

Payment of dividend by utilizing credit balance of Profit and Loss Account

Carried forward profits which have not been transferred to the reserves (i.e. credit balance in the Profit and Loss Account) can be utilized for payment for dividend without any restrictions. Such utilization does not amount to declaration of dividend out of reserves.

Thus, the company may declare dividend @20% for the year 2014-15 out of the accumulated profits retained in the Profit and Loss Account without any restriction, and without fulfilling any condition contained in the Companies (Declaration and Payment of Dividend) Rules, 2014.

6. Mr. X is a director of M/s ABC Ltd. He has approached M/s Housing Finance Co. Ltd. for the purpose of obtaining a loan of ₹50 lacs to be used for construction of his residential house. The loan was sanctioned subject to the condition that M/s ABC Ltd. should provide the guarantee for repayment of loan installments by Mr. X. Advise Mr. X.

Answer:

As per section 185 of the Companies Act, 2013, no company shall, directly or indirectly give any guarantee in connection with a loan taken by a director. Section 185 does not permit a company to give guarantee even with the approval of the Central Government. However, the prohibition under section 185 shall not apply to a company, which, in the ordinary course of its business, gives guarantees for the repayment of any loan.

In the given case, guarantee cannot be given by ABC Ltd. in respect of a loan advanced to Mr. X by a housing finance company, unless ABC Ltd., in the ordinary course of its business, given guarantees for the repayment of any loan.

7. The Board of Directors of M Limited propose to donate ₹3,00,000 to a school established exclusively for the benefit of the children of employees and also donate ₹50,000 to a political party during the financial year ending 31st March 2015. The average net profit determined in accordance with the provisions of section 198 of the Companies Act, 2013 during the immediately preceding three financial years is ₹40,00,000. Examine with reference to the provisions of the Companies Act, 2013 whether the proposed donations are within the powers of the Board of Directors of the Company.

Answer:

Charitable Contribution

A contribution by a company is said to be charitable contribution if it is made without any object of availing any benefit for the company or for its employees and the object of contribution does not have any direct relation with the business of the company. In the given case contribution is to be made for the school which is exclusively for the benefit of the employees' children. Therefore, it cannot be considered as charitable contribution within the meaning of section 181. It is purely a business decision and the Board of Directors of the company is empowered to take such a decision.

Political Contribution

Limit of political contribution

As per section 182, an eligible company can make political contribution up to 7.5% of average net profit of immediately preceding three financial years, in a financial year.



In the given case, average net profit of the company during preceding three financial years is ₹40,00,000. The Board is empowered to make political contribution to the tune of ₹3,00,000 being 7.5% of the average net profit of preceding three years. Since the political contribution proposed is only ₹50,000, it is well within the powers of the Board to make this contribution.

Procedure

Every political contribution is required to be approved only in a Board meeting by way of a resolution and full disclosure of the name of political party and amount contributed shall be made in the profit and loss account.

8. ABC Limited wants to appoint PQR Private Limited as its sole selling agent for Southern India. Mr. Goodwood, director of ABC Limited is also a director in PQR Private Limited. Advise the company about the compliances required under the Companies Act.

Answer:

In this case applicability of section 188(1), 184 and 2(47) needs to be examined.

As far as section 188(1) is concerned, if the transaction value exceeds the specified transaction value then appointment requires prior approval of members by special resolution. Otherwise, the appointment shall be made in a board meeting by a resolution subject to the approval of members in the next general meeting.

In accordance with section 184, Mr. Goodwood will have to make disclosure of his interest in the Board meeting in which the proposed appointment is discussed and consequently provision of section 300 will also be applicable.

9. M/s Ahana Private Limited was incorporated in the year 2010 under the Companies Act, 1956 by 3 brothers, namely, Amit, Anil and Akhlesh. All the three were Promoter-directors named in the Articles of Association and subscribed for 100 shares each in the company through Memorandum of Association. Thereafter, from time to time, further shares were allotted in proportion of one-third to each of them and in due course, the company started earning substantial profits. Due to greed of money, the two brothers, namely, Amit and Anil, joined hands together to assume complete control of the company, leaving their brother, Akhlesh in lurch. Both the brothers got further shares allotted to themselves, thereby their joint shareholding increased from 66.67% to 90%, while the shareholding of Akhlesh got reduced from the erstwhile 33.33% to 10%. No notice of any Board Meeting was sent to Akhlesh, who was sidelined and was also removed as a Director.

Aggrieved by the decisions taken by his two brothers at his back, Akhlesh seeks your advice for taking out appropriate proceedings before the court or judicial authority of competent jurisdiction. Also suggest the nature of reliefs he may claim while filing his case.

Answer:

Issue of further shares amounts to oppression if it is proved that the idea of issuing further shares was to benefit one group to the detriment of the other [Piercy v Mill(s) & Co. (1920) 1 Ch. 77]. Further issue of shares must be made for the benefit of the company. If the directors use their fiduciary power of issuing shares for an extraneous purpose like maintenance or acquisition of control over the affairs of the company, it would amount to oppression [Needle Industries Case]. It is not open to the directors to issue and allot shares in a manner by which an existing majority of shareholders is reduced to a minority. If the issue of shares disturbs the existing majority of the shareholders and if it is not bonafide, it will amount to oppression [Re. Gluco Series (P) Ltd.].

In the given case, further shares have been allotted to Amit and Anil without simultaneous offer to other members (Akhlesh) on pro-rata basis. Such single act of issue of further shares shall have a continuous effect, and so it amounts to oppression, especially if, the Board meeting at which the further shares are allotted is held without complying with the requirements of section 173(3), and the member who was not offered further shares was also removed from directorship [Bhogirath Agarwala v Taro properties P. Ltd.]. Therefore, Akhlesh should file an application with the Company Law Board for claiming relief from oppression.

10. Some of the Indian citizens in U.K. joined to commence a business by incorporating a company in U.K. for the purpose of carrying on business there. Examine with reference to the relevant provisions of the Companies Act, 2013 whether it is a "Foreign Company".

What would be your answer in case the U.K. Company was incorporated by a company registered in India?



Answer:

As per section 2(42) of the Companies Act, 2013, 'foreign company' means any company or body corporate incorporated outside India which:

- (a) Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- (b) Conducts any business activity in India in any other manner.

Thus, for deciding as to whether a company is a foreign company or not, the criterion is to see as to whether the company has established a place of business in India or not, and whether the company conducts any business activity in India in any other manner, and not the persons who have incorporated the company.

In this case, Indian citizens have formed a company outside India. Since, the company has not established any place of business in India, and the company does not conduct any business activity in India in any other manner, the company cannot be said to be a foreign company. The fact that Indian citizens have formed a company in a foreign country is immaterial in deciding whether the company is a foreign company or not.

The answer would have remained same even if the U.K. Company had been incorporated by a company registered in India for the same reason as stated above.

11. Sunflower Ltd. decided to terminate the services of Mr. Dinesh, who was employed as Sales Manager. However, the Company feels that the Sales Manager may not vacate the Company's flat at Mumbai. What action can be taken by the Company under the Companies Act, to regain possession of the flat? Is it necessary to take such action under the Act before terminating the services of Mr. Dinesh? Will it make any difference, if the flat is not owned by the Company, but taken on lease?

Answer:

The given problem relates to sec. 452 of the Companies Act.

As per sec. 452, if any Officer or Employee of a Company:

- (a) Wrongfully obtains possession of any property (including cash) of a Company, or
- (b) Having any such property (including cash) in his possession, wrongfully withholds it or knowingly applies it to purposes other than those expressed or directed in the AoA and authorized by the Act.

On the complaint of the Company or any Creditor/Contributory/Member, he shall be punishable with fine upto ₹10,000.

The court trying the offence may also order such Officer/Employee to deliver up or refund, within a specified time, any such property wrongfully obtained or wrongfully withheld or knowingly misapplied, or in default, to suffer imprisonment for a term upto 2 years. [Sec. 630(2)].

In the given case,

1. **Right of Company:** The Company or any Creditor/Contributory/Member, can file a suit u/s 452 against the Sales Manager, if he refuses to vacate the premises provided by the Company. The Court trying the offence may also order such Officer/Employee to deliver up or refund, within a specified time, any such property wrongfully obtained or wrongfully withheld or knowingly misapplied, or in default, to suffer imprisonment for a term upto 2 years.
2. **Employees include Past Employees also:** In the above case, it is possible to initiate action even after termination of services of Mr. Dinesh.

The term "Officer or Employee" in section 452 applies to both the existing and past Officers or Employees if such Officers or Employees either: (a) wrongfully obtain possession of any property of the Company, or (b) having obtained such property during the course of employment, withhold the same after termination of employment. [Baldev Krishna Sahi Vs. Shipping Corporation of India Ltd. (SC)].

Action permissible for Leasehold Property: It is not necessary that the property in question should be owned by the company. Even if the Company exercises only a leasehold right, the provisions of Sec. 452 can be invoked. [P.V.George Vs. Jayems Engineering Co (P) Ltd.]



12. Describe the following in light of the Companies Act, 2013.

- A. Global Depository Receipts
- B. Key Managerial Personnel
- C. Sweat Equity Shares

Answer:

- A. **Global Depository Receipt** - 'Global Depository Receipt' means any instrument in the form of a depository receipt, by whatever name called, created by a foreign depository outside India and authorized by a company making an issue of such depository receipts.
- B. **Key managerial personnel** - 'Key managerial personnel', in relation to a company, means:
 - The Chief Executive Officer or the managing director or the manager;
 - The company secretary;
 - The whole-time director;
 - The Chief Financial Officer; and
 - Such other officer as may be prescribed.
- C. **Sweat Equity Shares** - 'Sweat equity shares' means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

13. The Registrar of Companies issued a certificate of Incorporation actually on 8th January, 2015. However, by mistake, the certificate was dated '5th January, 2014'. An allotment of shares was made on 7th January, 2015. Could the allotment be declared void on the ground that it was made before the company was incorporated, as per Companies Act, 2013?

Answer:

The date of incorporation of the company is 5th January, 2014, since it is the date specified in the certificate of incorporation. This date is to be considered even though the certificate of incorporation was issued at a later date (Jubilee Cotton Mills Vs Lewis).

The date of allotment of the shares by the company is 7th January, 2014. Hence the allotment of the shares is valid since it has been made by the company after its incorporation.

14. The Directors of a company registered and incorporated in the name 'Dharti Textile Ltd; desire to change the name of the company entitled 'National Textiles and Industries Ltd.'. Advise as to what procedure is required to be followed under the Companies Act, 2013?

Answer:

The steps that are to be followed by Dharti Textile Ltd. As per section 13 of Companies Act, 2013 for name change are enumerated below:

1. Confirm availability of proposed name and reserve the name.
2. Pass a Special Resolution approving the change of name (if the proposed name is available).
3. File a copy of Special Resolution with the Registrar within 30 days of passing Special Resolution
4. Issue of fresh certificate of incorporation by the Registrar (on receipt of approval of Central Government).
5. Change of name to be effective only when (fresh) certificate of incorporation is issued by the Registrar.

15. The Board of directors of M/s. Intelligent Consultants Limited, registered in Chandigarh, proposes to hold the next Board meeting in the month of May, 2014. They seek your advice in respect of the following matters:

- A. Can the Board meeting be held in Delhi, when all the directors of the company reside at Chandigarh?



- B. Whether the Board meeting can be called on a public holiday and that too after business hours as the majority of the directors of the company have gone to Delhi on vacation.
- C. Is it necessary that the notice of the Board meeting should specify the nature of business to be transacted? Advise with reference to the relevant provisions of the Companies Act, 2013.

Answer:

Unlike section 96, there is no provision which requires that a Board meeting shall be held -

- (a) only on a day that is not a public holiday;
- (b) only at the registered office of the company or at any other place within the city, town or village in which the registered office of the company is situated;
- (c) only during business hours.

The answer to the given problem is as under:

- A. Section 96 requires that an annual general meeting shall be held only at the registered office of the company or at any other place within the city, town or village in which the registered office of the company is situated. However, there is no similar provision in respect of holding of a Board Meeting. As such, a Board meeting can be held any where in India or even outside India.
- B. As per section 174, if a Board meeting could not be held for want of quorum, then, unless the articles otherwise provide, the meeting shall automatically stand adjourned to the same day, time and place in the next week, or if that day is a national holiday, then to next succeeding day, which is not a national holiday. It means that an adjourned Board meeting can be held only on a day which is not a national holiday. However, there is nothing in the Act which prohibits the holding of an original Board meeting on a national holiday. Similarly, the Act does not require that a Board meeting shall be held only during business hours. However, the articles of the company may provide otherwise.
- In the instant case, the directors intend to hold a Board meeting on a national holiday and after business hours. Unless the articles of the company provide otherwise, holding a Board meeting on a national holiday and after business hours is permissible.
- C. No form or contents of notice has been specified by the Act. Agenda of a Board meeting is not required to be sent along with the notice of a Board meeting unless the Act requires a specific notice to move a resolution at a Board meeting.

Therefore, the notice of Board meeting need not specify the nature of business to be transacted, unless the articles otherwise require.

16. The Board of Directors of Xee Ltd. has agreed in principle to grant loan worth ₹ 38 lakhs to Mee Ltd. on the basis of the following information. Advise Xee Ltd. about the requirements to be complied with under the Companies Act, 2013 for the proposed inter-corporate loan to Mee Ltd.

Sl. No.	Particulars	Amount (₹)
(i)	Authorised share capital	1,00,00,000
(ii)	Issued, subscribed and paid up capital	50,00,000
(iii)	Free reserves	10,00,000

Answer:

Inter-corporate loans, investments etc. are governed by the provisions of [section 186](#). Firstly to determine whether a special resolution is required for making fresh investments. This can be determined as follows:

Particulars	Amount (₹)
Paid up capital of the company (A)	50,00,000
Free reserves (B)	10,00,000
Aggregate of paid up capital and free reserves (C)	60,00,000
60% of aggregate of paid up capital and free reserves (D)	36,00,000
Higher of (B) or (D), i.e. the ceiling limit for inter-corporate loans, investments etc. without requiring a special resolution	36,00,000
Proposed Loan to Mee Ltd.	38,00,000

Since the proposed Loan exceeds the ceiling given under section 186(2), a special resolution is required. The company shall adopt the following procedure for making Loan to Mee Ltd.:

- (a) Unanimous approval of the Board shall be obtained by passing a resolution at a Board meeting. Prior approval is a must. BoD approval cannot be given after making the loan.
- (b) A special resolution shall be passed in the general meeting.
 - Resolution should specify the Total Amount upto which the Board of Directors are authorized to give such loan.
 - Prior/Previous Approval is a must. General Meeting approval cannot be obtained after making the loan. As an initial measure it would be sufficient compliance if such special resolution is passed within 1 year from the date of notification of Sec 186 i.e. 31.3.2015.
- (c) The company shall obtain the prior approval of the Public Financial Institution, if any, from whom it has taken a term loan.
- (d) The company can make such investments only if no default in respect of Public deposits is subsisting.
- (e) The rate of interest shall not be less than the prevailing yield of 1 year, 3 year, 5 year or 10 Government Security closest to the period of the loan.
- (f) The prescribed particulars shall be entered in the register maintained under section 186.

17. What are the consequences if a company makes inter-corporate loans and investments in contravention of the provisions of section 186 of Companies Act, 2013?

Answer:

Consequences in case of contravention of Sec 186 :

In case of company – Fine minimum ₹ 25,000, maximum ₹ 5 lakhs

In case of officer in default – imprisonment upto 2 years, and fine of minimum ₹ 25,000, maximum ₹ 1 lakh.

18. Examine the validity of appointment of Mr. Bonny, a minor, as a director of Max (Private) Limited, with reference to Companies Act, 2013.

Answer:

Section 164 disqualifies certain persons to act as a director. However, a minor is not covered by this section. Also, there is no other provision in the Companies Act which disqualifies a minor from acting as a director.

However, a person can be appointed as a director only if he has been allotted DIN. A minor is not eligible to obtain DIN. Therefore, a minor cannot become a director in any company, whether public or private.

19. Mr. Devesh was appointed as the Managing Director of Casual Industries Ltd. for a period of five years with effect from 1.4.2008 on a salary of ₹ 12 lakhs per annum with other perquisites. The Board of Directors of the company, on coming to know of certain questionable transactions, terminated the services of the Managing Director from 1.3.2011. Mr. Devesh termed his removal as illegal and claimed compensation from the company. Meanwhile the company paid a sum of ₹ 5 lakhs on ad hoc basis to Mr. Devesh pending settlement of his dues. Discuss with reference to Companies Act, 2013, whether:

- A. The company is bound to pay compensation to Mr. Devesh, and, if so, how much.
- B. The company can recover the amount of ₹ 5 lakhs paid on the ground that Mr. Devesh is not entitled to any compensation, because he is guilty of corrupt practices.

Answer:

As per section 202 of the Companies Act, 2013 -

- Compensation can be paid only to a managing director or whole time director or manager.
- The compensation payable shall not exceed the remuneration which he would have earned if he had been in office for the unexpired residue of his term or for 3 years, whichever is shorter.
- Where the director has been guilty of fraud or breach of trust or gross negligence in the conduct of the affairs of the company, he shall not be paid any compensation.



The answers to the given problem are as under:

- A. The company is not bound to pay compensation to Mr. Devesh if he has been found guilty of any fraud or breach of trust. However, it is not proper for the company to withhold the payment of compensation on the basis of allegations, unless there is a proper finding on the involvement of Mr. Devesh in corrupt practices.

The compensation payable shall not exceed ₹ 25 lakhs, i.e. at the rate of ₹ 12 lakhs per annum for unexpired period of 25 months.

- B. As per the decision in *Bell v Lever Bros* [1932] AC 161 House of Lords, the compensation of ₹ 5 lakh already paid by the company to Mr. Devesh cannot be recovered back if the company later comes to know that Mr. Devesh was guilty of serious breaches of duty and corrupt practices which would have entitled the company to end the employment of Mr. Devesh without any compensation. It was also held that the managing director was under no obligation to disclose to the company the breach of duty so as to give an opportunity to the company to remove him without paying any compensation.

20. A Public Company secures residential accommodation for the use of its managing director by entering into a license arrangement under which the company has to deposit a certain amount with the landlord to secure compliance with the terms of the license agreement. Can it be considered as a loan to a director? Discuss with reference to Companies Act, 2013.

Answer:

As per section 185 of the Companies Act, 2013, no company shall, directly or indirectly, make any loan to a director.

In the present case, the company has provided the managing director with a housing accommodation. It does not amount to a loan because of the following reasons:

- The company has not given any deposit or advance to the managing director. The amount deposited with the landlord cannot be said to be an 'indirect loan' to the managing director.
- It is a usual practice to give a security deposit to the landlord with whom a rent or lease agreement is entered into. Thus, the company has made the security deposit on account of bonafide business considerations.
- It is of no concern of the managing director as to the terms on which the company secures residential accommodation for him.

It is the company and not the director who has entered into the lease agreement. Therefore, the company can at any time use the accommodation for any other purpose and the managing director will have to vacate it, as and when desired by the company.

21. Solomon Ltd., a reputed Public Company, had advanced a certain sum of money to one of its Directors, Mr. Gold on certain terms and conditions and fixing the time limit for repayment thereof. Now, Mr. Gold has approached the company with a request to extend the time limit for repayment of the balance loan amounting to ₹12,00,000 by another 6 months. Who, as per Companies Act, 2013 is authorized to grant the extension as requested by Mr. Gold?

Answer:

As per section 180(1) (d) of the Companies Act, 2013, approval of the members by passing a special resolution is required in case a company intends to extend the time for repayment of a debt payable by a director. In the given case, the unpaid amount of the loan of ₹12,00,000 amounts to debt payable by the director, Mr. Gold. And hence extension of time for repayment of debt of ₹12,00,000 requires approval of the members in general meeting by passing a special resolution.

22. Briefly explain the meaning of the term 'investigation' and the kinds of investigations that can be ordered under the Companies Act, 2013?

Answer:

Investigation of affairs of a company means investigation of all its business affairs, profit and loss account, and assets including goodwill, contracts and transactions, investments and other property interests and control of subsidiary companies too.

The object of an investigation is to discover something which is not apparently visible to the naked eye. If the allegations are apparent from the balance sheet of the company, no investigation need be ordered. *Primo facie* evidence should lead to the conclusion that an investigation is necessary.

Kinds of investigations:

An investigation can be ordered by the Central Government under sections 210, 213 and 216 of the Companies Act, 2013. These investigations can be classified as follows:

- A. Investigations into affairs of the company (Sections 210 and 213).
- B. Investigation of ownership of the company (Section 216).

23. The managing director of a company is convicted of an offence involving moral turpitude. He prefers an appeal against conviction. Can he continue as managing director pending disposal of the appeal? Can the appellate Court remove the disqualification or stay the same pending the disposal of the appeal? Discuss in light of Companies Act, 2013.

Answer:

The grounds of vacation of office of a director are contained in section 167. However, a managing or whole time director is subject to additional grounds of vacation of office as contained in section 196.

If a whole time director or a managing director is convicted by a Court of an offence involving moral turpitude, he shall vacate his office (Section 196). Even a day's imprisonment or a mere fine of one rupee will attract this section if the offence involves moral turpitude.

Under section 163, when a director is convicted of any offence involving moral turpitude (resulting in imprisonment of 6 months or more), the order does not become effectual if an appeal is filed by the director against the order of the Court. The order becomes effectual only when the appeal, as well as the second appeal, if any, is finally disposed off. However, no such privilege has been given under section 196. As such, the order of conviction under section 196 becomes effective as soon as order is pronounced. Thus, filing of an appeal against the conviction order would not save a whole time director or managing director from vacating the office.

The operation of section 196 takes effect as soon as conviction for an offence involving moral turpitude is recorded by a Court. The order of conviction does not on the mere filing of an appeal disappear and it cannot be held that section 196 applies only to a final order of conviction. As such, the managing director cannot continue pending the appeal. Further, he shall be eligible to be again appointed as a managing director only if the appellate Court suspends the order of conviction. As such, where the appellate Court suspends merely the execution of the sentence, the managing director shall remain disqualified for appointment [Rama Narang v Ramesh Narang (1995) 83 Comp Cos 194].

The facts of the present case are similar to the facts of the case discussed above. In the light of the decision given in the above case, it appears that the managing director cannot continue pending the disposal of appeal. However, if specific order is sought for removal of disqualification, the appellate Court may suspend the order of conviction, in which case he shall be eligible to be again appointed as a managing director.

24. Explain the term 'executive directors' and non-executive directors.

Answer:

The expressions 'executive director' and 'non-executive director' have not been used in the Companies Act, 1956 or the Companies Act, 2013. Generally, these terms are used as follows:

1. Executive directors

The directors who are in the employment of the company are called as executive directors or inside directors. A whole time director and managing director are covered in this category of directors. The inside directors possess in-depth knowledge about the affairs of the company. They are generally connected with the policy formulation of the company and take active interest in the day-to-day affairs of the company. They have personal involvement with the company since their remuneration depends on the successful operations of the company.

2. Non-executive directors

Directors who are not in the employment of the company are called as non-executive directors or part time directors or outside directors. This category includes professional directors and nominee directors. These directors have generally diverse experience and backgrounds. They provide independent thinking, wider knowledge and perspective to the company. They are appointed not to work full time under a contract of service. They are not intimately connected with the company except through attending the Board meetings. They have an unbiased attitude towards the working of the company.



*Interrupt a public speaker with comments
low abuse*

27. At an annual general meeting of your company, one of the directors being badly heckled by irate shareholders had tendered his resignation orally which was accepted by the majority of members present at the meeting. Can the director continue in his office after the annual general meeting?

Answer:

The Companies Act 2013 provides for Directors Resignation under section 168. This section provides as follows :

A director may resign from his office by giving a notice in writing to the Company. Notice should be given to the company and not to any third party, say, Creditors.

Resignation of director shall take effect from later of the following date(s), i.e., whichever is later -

- (a) Date on which the notice is received by the company, or
- (b) Date, if any, specified by the director in the notice.

The board has no power to refuse the resignation of a director unless the AOA of the company contains a provision to this effect. [Re. Neokrantine Safety Explosives Co of NSW Ltd.].

As such resignation does not require acceptance, except in the following situations -

- (a) Where the AOA does not permit a director to resign at any time, or stipulates that acceptance of a resignation is a must for it to take effect.
- (b) Resignation letter explicitly states that it will take effect only upon acceptance by the company.
- (c) When the tenor of the resignation letter is such that it requires acceptance.

In these cases, the resignation will be effective only when notice is served on the company/board, and resignation is accepted.

Thus, in the given case the director who had orally tendered the resignation at an annual general meeting cannot be relieved and he has to continue in his office.

28. Mr. Bipin goes abroad for four months from 4.4.2014 and an alternate director has been appointed in his place. Advice as to sending of notice as required under section 286.

Answer:

As per section 173(3), a meeting of the Board shall be called by giving not less than 7 days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by electronic means. As can be seen, section 173(3) does not specifically state that notice to an alternate director shall be served. However, an alternate director is a director in his own right. He is not a proxy or representative of the original director. The grounds of vacation of office also apply to him as these apply to the original director, e.g., an alternate director shall vacate office if he does not attend the Board meetings during a period of 12 months as per the provisions of section 167(1)(b). As such, it is implied that notice to an alternate director is to be given. Thus, notice should be served to both, the alternate director as well as the original director. Notice to Mr. Bipin Rom, who is outside of India, shall be served at their addresses registered with the company.

29. Your company has been approached by its foreign collaborators who have three U.S. based directors on your Board with the idea that they would appoint a single individual based in India to act as an alternate for all the three U.S. based directors. Advice by indicating the feasibility of the idea, the voting rights to be enjoyed by the proposed alternate director, and the sitting fees payable to him.

Answer:

An alternate director can be appointed only if any of the directors of the company is absent for not less than 3 months from the State in which Board meetings are ordinarily held [Section 161(2)]. But, section 161(2) does not contain any specific provision either prohibiting or authorising an individual to be appointed as an alternate director for more than one director.

The appointment of one person as an alternate director for three U. K. based directors would not be in the interest of good corporate governance. Also, it would adversely affect the interests of company, since this would limit the deliberations in the Board meeting. Moreover, only one person would exercise three votes and this would probably result in giving of all the three votes either in favour of the resolution or against the resolution.

In the given case if one individual is appointed as an alternate director for the three foreign directors, he will have three votes. However, he shall be entitled to receive the sitting fees in respect of one director only.



30. In case of appointment of directors of a company, all the directors were not voted on individually, but were appointed by one resolution and no shareholder objected to it. Discuss the position under the provision of the Companies Act.

Answer:

At a general meeting, two or more persons cannot be appointed as directors by a single resolution unless a resolution that appointment shall be so made has first been agreed to by the meeting without any vote being cast against it. A resolution moved in contravention of this provision shall be void, whether or not objection was raised at the time when such resolution was passed (Section 162 of the Companies Act, 2013). In the present case, all the members passed a single resolution appointing all the directors. The resolution is void since before moving the resolution for appointment of all the directors by a single resolution, no resolution was passed to the effect that all the directors shall be appointed by a single resolution. It is immaterial that no member objected to the appointment of all the directors by a single resolution. As per section 176 of the Companies Act, 2013, the acts of these directors shall not be invalid till the defect in their appointment is noticed by the company.

Section 162 of the Companies Act, 2013 applies to all companies, whether public or private. Therefore, the answer would remain same even if the company in the present case is a private company.

31. Examine the validity of the resolution passed at the Annual General Meeting of a public company for payment of dividend at a rate higher than recommended by the board of directors.

Answer:

As per Regulation 80 contained in Table F of Schedule I to the Companies Act, 2013, the company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the Board. Following conclusions are worth noting:

- (a) The power to declare dividend rests with the members, but the members can exercise such power only if the dividend is proposed by the Board.
- (b) The rate of dividend proposed by the Board may be reduced by the members.
- (c) The rate of dividend proposed by the Board cannot be increased by the members.
- (d) Any provision in the articles, which authorises the members to declare dividend higher than the rate recommended by the Board, is void.

Therefore, in the given case, the resolution passed at the Annual General Meeting declaring dividend at a rate higher than that recommended by the Board of directors is not valid.

32. Examine whether the following companies can be considered as 'Foreign Companies' under the Companies Act, 2013:

- (A) A company which is incorporated outside India employs agents in India but has no place of business in India.
- (B) A company incorporated outside India having shareholders who are all Indian citizens.
- (C) A company incorporated in India but all the shares are held by foreigners.

Answer:

As per section 2(42) of the Companies Act, 2013, 'foreign company' means any company or body corporate incorporated outside India which:

- (a) Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- (b) Conducts any business activity in India in any other manner.

The answer to the given problem is as follows:

- (i) Employing agents in India does amount to establishment of a place of business in India. Thus, the company is a foreign company.
- (ii) A company incorporated outside India does not become a foreign company by the mere fact that all its shareholders are Indian citizens. Assuming that the company has not established any place of business in India, and the company does not conduct any business activity in India in any other manner, the company is not a foreign company.

A company incorporated in India is a 'company' within the meaning of section 2(20) of the Companies Act, 2013. It cannot become a foreign company by the mere fact that all the shares of the company are held by foreigners.



33. M/s. Sahara Fertilizers Ltd. proposes to acquire equity shares of XYZ Ltd. worth ₹19 lakhs. On the basis of the following information advise Sahara Fertilizers Ltd. about the requirements to be complied with under Companies Act, 2013 for the proposed investment in XYZ Ltd.:

Authorised Share Capital	₹ 50,00,000
Issued, subscribed and paid-up capital	₹ 25,00,000
Free Reserves	₹ 5,00,000

Answer:

Inter-corporate loans and investments are governed by the provisions of section 186. First determine whether a special resolution is required for making fresh investments. This can be determined as follows:

Particulars	₹
Paid up capital of the company (A)	25,00,000
Free reserves (B)	5,00,000
Aggregate of paid up capital and free reserves (C)	30,00,000
60% of aggregate of paid up capital and free reserves (D)	18,00,000
Higher of (B) or (D), i.e. the ceiling limit for inter-corporate loans, investments etc. without requiring a special resolution	18,00,000
Proposed investment in equity shares of XYZ Limited	19,00,000

Since the proposed investment exceeds the ceiling limit, a special resolution is required. The company shall adopt the following procedure for making investments in XYZ Ltd.:

- (a) Unanimous approval of the Board shall be obtained by passing a resolution at a Board meeting.
- (b) A special resolution shall be passed in the general meeting.
 - The notice of special resolution shall state the specific limits, particulars of the company to which loan is proposed to be given, specific source of funding and other relevant details.
 - The company shall file a copy of special resolution with the registrar within 30 days of passing the special resolution.
- (c) The company shall obtain the prior approval of the Public Financial Institution, if any, from whom it has taken a term loan.
- (d) The company can make such investments only if no default in respect of Public deposits is subsisting.
- (e) The prescribed particulars shall be entered in the register maintained under section 186.

34. 'X' was appointed as managing director for life by the articles of association of a private company incorporated on 1st June, 2014. The articles also empowered 'X' to appoint a successor. 'X' appointed, by will, 'S' to succeed him after his death. Can 'S' succeed 'X' as managing director after the death of 'X'?

Answer:

No director shall assign his office to any other person. If he does, the assignment shall be void (Section 166).

The articles of a company empowered its managing director to appoint a successor. The managing director appointed, by his will, Mr. S to succeed him as a managing director after his death. The Court observed that a director is prohibited from assigning his office. The word 'his' used in section 166 indicates that the prohibition applies only when an office held by a director is assigned to any other person. Where a director dies, the office held by him becomes vacant and therefore such office cannot be assigned to any other person. Therefore, appointment of a new person in such office does not amount to an assignment within the meaning of section 166. [Oriental Metal Pressing Pvt. Ltd. v B.K. Thakoor (1961) 31 Comp Cas 143]. The facts of the given case are identical to the facts discussed in the above case. Accordingly, it can be said that appointment of 'S' is valid and it does not amount to an assignment of office by 'X'.

35. The board meeting of MNO Ltd. was held on 10th May, 2014 at Chennai at 11 a.m. At the time of starting the board meeting the number of directors present were 7. The total number of directors were 10. The board transacted ten items in the board meeting. At 12 noon after the completion of four items in the agenda 4 directors left the meeting. Examine the validity of these transactions explaining the relevant provisions of the Companies Act, 2013.

Answer:

As per section 174(1), the quorum for a Board meeting shall be higher of-

- (a) 1/3rd of total strength (any fraction contained in that one-third shall be rounded off as one); or
- (b) 2 directors.



Total strength' means the total strength of the Board of directors of a company, as reduced by the number of directors whose places are vacant at that time.

Quorum has to be present at the time of transacting each and every business. It is not enough that a quorum was present at the commencement of the meeting. Therefore, where quorum is present at the beginning of the meeting, but some of the directors leave the meeting, so that remaining directors do not constitute quorum, any subsequent resolutions will be invalid.

In the given case, total strength is 10. Quorum for the Board meeting held on 10th May, 2014 shall be 1/3rd of 10 directors, i.e. 3.33, taken as 4 directors. Since 7 directors were present at the time of commencement of the Board meeting, the Board meeting has been validly held.

However, after transacting 4 items on agenda, 4 directors left, because of which the number of directors present has fallen below the quorum required. Since, quorum is required at the time of transacting each and every business, the remaining 6 agenda items cannot be validly discussed and voted upon. Therefore, resolutions passed in respect of these 6 agenda items are void, and have no legal effect.

36. Three persons X, Y and Z formed a scheme of developing barren land. Under the scheme, X and Y were to incorporate a company and Z, a professional, was to provide loan equivalent to the capital brought in by X and Y. The loan part was essential for giving shape to the scheme. Can Z be regarded as one of the promoters of the company?

Answer:

"Promoter" means a person – (a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92 of the 2013 Act; or (b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or (c) in accordance with whose advice, directions or instructions the Board of directors of the company is accustomed to act provided that nothing in sub clause (c) shall apply to a person who is acting in a professional capacity [Section 2(69) of the Companies Act 2013].

To be a promoter one need not necessarily be associated with the initial formation of the company, one who subsequently helps to arrange floating of its capital will equally be regarded as a promoter. A person who does not take a prominent part may also have so acted in the formation of a company as to bring himself under the term promoter.

- However, the person assisting the promoters by acting in a professional capacity do not thereby become promoters themselves. Thus, a solicitor who drafts the articles or the accountant who values assets of a business to be purchased are merely giving professional assistance to the promoter. However, where he goes further than this, for example, by introducing his clients to a person who may be interested in purchasing shares in the proposed company, he would be regarded as promoter.

In the given case, the scheme is such that it cannot be completed without the loan being provided by Z to the company and Z has already agreed to provide loan to the company on incorporation. Therefore, Z has necessarily participated in the formation of the company even though not being in professional capacity. Hence, Z can be regarded as a Promoter of the company

37. The Directors of Khalsa Electronics Ltd. allotted to themselves certain Rights Shares for which no application was made by certain shareholders as required u/s 62(1). Discuss the validity of their action specially in view of the fact that market price of shares of his company is 40% above par.

Answer:

"Right" refers to the entitlement of the existing shareholders to receive invitation of offer or subscription to the shares of a company in case of further issue of capital by the company, before being offered to others. This is called as the 'Right of pre-emption'.

If the shareholder does not inform the company of his decision within the stipulated time, he shall be deemed to have declined the offer. If the shareholder declines or is deemed to have declined or if the person in whose favour the renunciation is made declines to buy the shares, the company's directors may dispose of those shares in such manner as they may think fit.

If a member did not respond to offers made by company, it has to be necessarily held that he was not inclined to subscribe to additional shares, thereby impliedly consenting for allotment of shares to others [R. Khemka v. Deccan Enterprises (P) Ltd. 1998 16 SCL 1 (AP)]



In the given case the Directors of Khalsa Electronics Ltd. allotted to themselves certain Rights Shares for which no application was made by certain shareholders as required u/s 62(1). With the reference to the above discussion it can be said that the allotment would be valid unless it is proved that the shares were allotted to Directors on terms unfavorable to the company.

38. Can an auditor be disqualified for indebtedness in the following cases?

- (i) Where he is recovering his fees on a progressive basis even though the job is not complete.
- (ii) Where the auditor's firm has purchased goods from the auditee company and not paid for them for over six months.

Answer:

As per section 141(3), a person who is indebted to the company for an amount exceeding ₹5,00,000 shall be disqualified for appointment as an auditor.

The answer to the given problem is as under:

- (i) An auditor can receive the audit fees on a progressive basis in accordance with a resolution passed by the general meeting even though the audit is not complete. In such a case, he cannot be said to be indebted to the company and thus he does not vacate his office.
- (ii) Where an auditor purchases goods from the company on credit he will be said to be indebted to the company in respect of such credit purchases, notwithstanding the fact that such credit period is normally allowed to all the customers by the company [ICAI, Guidance Note on Independent Auditors]. Where the firm is indebted to the company, each and every partner of the firm is deemed to have been indebted. Thus, if the amount outstanding exceeds ₹5,00,000 the auditor shall vacate his office.

39. A company wants to provide financial assistance to its employees to enable them to subscribe for fully paid shares of the company. Does it amount to purchase of its own share? If, in the instant case, the company itself purchases to redeem its Preference Shares, does it amount to acquisition of its own shares?

Answer:

Section 67 disallows a public company and a private subsidiary of a public company to give loan or provide financial assistance (directly or indirectly) to any person to enable him to purchase or subscribe company's own shares or shares of its holding company. Thus, whereas companies have now been allowed to purchase their own shares, they are still not permitted to finance the purchase of their shares, directly or indirectly.

However, the aforesaid provisions regarding the prohibition to buy its own shares or give loans or provide financial assistance shall not affect the making by a company of loans to persons (other than directors or managers) bona fide in the employment of the company or its holding company to be held by themselves by way of beneficial ownership.

However, the loan made to any employee for this purpose shall not exceed his salary or wages at that time for a period of six months.

In the given case, providing financial assistance to its employees to enable them to subscribe for fully paid shares of the company will not amount to purchase of own shares.

Section 67 applies both for Preference and Equity Shares. However, redemption of Preference Shares is not in violation of Section 67.

40. After serious disagreement and difference of opinion among the shareholders of the company in the last annual general meeting, some of the directors took the steps as noted below. Discuss the validity and effect of the following:

- (i) Mr. John, the managing director sends his notice of resignation.
- (ii) Mr. Paul, an ordinary director verbally resigns and not in writing.
- (iii) Mr. David, another ordinary director, had sent his resignation, but withdrew it before the Board meeting was held for accepting his resignation.

Answer:

The Companies Act 2013 provides for Directors Resignation under section 168. This section provides as follows :

A director may resign from his office by giving a notice in writing to the Company. Notice should be given to the company and not to any third party, say, Creditors.



Resignation of director shall take effect from later of the following date(s), i.e., whichever is later --

- (a) Date on which the notice is received by the company, or
- (b) Date, if any, specified by the director in the notice.

The board has no power to refuse the resignation of a director unless the AOA of the company contains a provision to this effect. [Re. Neokrantine Safety Explosives Co of NSW Ltd.]

As such resignation does not require acceptance, except in the following situations –

- (a) Where the AOA does not permit a director to resign at any time, or stipulates that acceptance of a resignation is a must for it to take effect.
- (b) Resignation letter explicitly states that it will take effect only upon acceptance by the company.
- (c) When the tenor of the resignation letter is such that it requires acceptance.

Thus, in the given problem --

- (i) The managing director, Mr. John, cannot resign merely by giving a notice. He shall continue as managing director until his resignation is accepted.
- (ii) Mr. Paul should send written notice as required by Sec 168.
- (iii) Mr. David's resignation may be withdrawn in accordance with the terms of the agreement between the Director and the company, or in accordance with the AOA of the company.

41. M/s ABC Ltd. had power under its memorandum to sell its undertaking to another company having similar objects. The Articles of the company contained a provision by which directors were empowered to sell or otherwise deal with the property of the company. The Shareholders passed an ordinary resolution for the sale of its assets on certain terms and required the directors to carry out the sale. The Directors refused to comply with the wishes of the shareholders where upon it was contended on behalf of the shareholders that they were the principal and directors being their agents were bound to give effect to their decision. Based on the above facts, decide the following issues, having regard to the provisions of the Companies Act, 2013 and case laws.

- (i) Whether the contention of shareholders against the non-compliance of their wishes by the directors is tenable.
- (ii) Can shareholders usurp the powers which by the articles are vested in the directors by passing a resolution in the general meeting?

Answer:

The Board has the absolute power to do all things other than those that are expressly required to be done by the company in general meeting (**Section 179**).

As per section 180(1)(a), without the prior consent of the shareholders in general meeting, Board shall not sell, lease or otherwise dispose of the whole, or substantially the whole, of one or more undertakings of the company. The section has been framed negatively; it states that Board shall not exercise such power without the concurrence of the shareholders in general meeting. It does not imply that a consent or even a direction by the shareholders would make it obligatory on the Board to exercise such power.

The power to sell the assets of the company is vested in the Board of directors. If in the opinion of the Board, it is not in the best interest of the company to sell its assets, the Board is not bound to do so, notwithstanding the fact that the company in general meeting has resolved that the assets should be sold [**Polthen v Hindustan Trading Corpn. (P) Ltd. (1967) 37 Comp Cas 6 (Ker)**].

The given problem is answered as follows:

- (i) The Board is the supreme body having the management of the company. The Board has the absolute power to do all things except those that are expressly required to be done by the company in general meeting. The shareholders cannot interfere in the day to day management of the company. The shareholders cannot supersede or usurp the Board's powers, or instruct it as to how it shall exercise its powers.

Also, as per Sec. 180, the power to sell, lease or otherwise dispose of any undertaking of the company is vested with the Board, though the Board can exercise such power only with the consent of the shareholders in general meeting. Thus, it is evident that a direction by the shareholders does not make it obligatory for the Board to exercise such power.



If in the opinion of the Board, it is not in the best interest of the company to sell its assets, the Board is not bound to do so, notwithstanding the fact that the company in general meeting has resolved that the assets should be sold [Pothen v Hindustan Trading Corpn. (P) Ltd.].

Thus, the contention of the shareholders is not tenable.

- (ii) The powers of management are vested in the Board of directors; the Board alone can exercise such powers. Even a unanimous resolution of the shareholders will not enable the shareholders to exercise the powers of the Board. The shareholders cannot interfere in the day to day management of the company. Thus, the shareholders cannot usurp the powers vested in directors.

42. ABC Company Ltd. in its first general meeting appointed 6 directors whose period of office is liable to be determined by rotation. Briefly explain the procedure and rules regarding retirement of these directors.

Answer:

Not less than $\frac{2}{3}$ rd of total number of directors shall be the directors whose period of office is liable to determination by retirement by rotation (any fraction contained in that $\frac{2}{3}$ rd shall be rounded off as 1). Such directors are referred to as rotational directors. However, the articles of a company may provide for greater number of rotational directors. Articles may even provide that all the directors shall be rotational directors [Section 152(6)].

As per section 152(6), at the first annual general meeting and every subsequent annual general meeting, $\frac{1}{3}$ rd [or nearest to $\frac{1}{3}$ rd] of directors liable to retire by rotation shall retire from the office. The directors liable to retire by rotation shall be those who have been longest in the office. In case, two or more directors were appointed on the same day, the directors liable to retire shall be determined by an agreement between them. In the absence of any such agreement, their names shall be determined by lots.

In the given case, it is given that the first general meeting has appointed 6 directors whose period of office is liable to be determined by rotation. It means that all the 6 directors appointed in the first general meeting shall be the rotational directors. Therefore, 2 directors ($\frac{1}{3}$ rd of 6) shall retire at the ensuing annual general meeting. These directors shall be eligible for reappointment. A separate resolution shall be moved for reappointment of both the directors (Section 162).

43. Amar Textiles Ltd. is a company engaged in manufacture of fabrics. The Company has investments in shares of other Bodies Corporate including shares in Amar Cotton Co. Ltd. and it has also advanced loans to other Bodies Corporate. The aggregate of all the investments made and loans granted by Amar Textiles Ltd. exceeds 60% of its paid up share capital and free reserves and also exceeds 100% of its free reserves. In course of its business requirements, Amar Textiles Ltd. has obtained a term loan from Industrial Development Bank of India (a Public Financial Institution) and the same is still subsisting. Now the company wants to increase its holding from 70% to 80% of the equity share capital in Amar Cotton Co. Ltd. by purchase of additional 10% shares from other existing shareholders.

State the legal requirements to be complied with by Amar Textiles Ltd. under the provisions of the Companies Act, 2013 to give effect to the above proposal.

Will your answer be different if Amar Textiles Ltd. would have defaulted in payment of matured fixed deposits accepted by it from the public?

Answer:

As per section 186(1), any loans, investments etc. made by a holding company in its wholly owned subsidiary are outside the preview of Section 186. However, Amar Cotton Co. Ltd. is not a wholly owned subsidiary of Amar Textiles Ltd. and hence investment in Amar Cotton Co. Ltd. is not covered by the exemption under section 186 (1).

The aggregate of loans and investments already made by Amar Textiles Ltd. exceeds the two limits of 60% and 100% specified under section 186. Therefore, the company can make new inter-corporate investments only by passing a special resolution.

The proposed investment can be made as follows:

- (a) A resolution shall be passed at a Board meeting with the consent of all the directors present.
- (b) A special resolution shall be passed in the general meeting. The notice of special resolution must indicate clearly the specific limits, the particulars of the body corporate in which the investment is proposed to be made, the purpose of the investment, specific source of funding and other similar details.



- (c) Since, the aggregate investments exceed the limit of 60%, prior approval of IDBI shall be obtained.
- (d) The company shall enter the prescribed particulars of the investment in the register maintained for this purpose within 7 days of making the investment.
- (e) The company shall disclose to the members in the financial statement –
 - (i) the full particulars of the loans, investment made or guarantee given or security provided; and
 - (ii) the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient.
- (f) The company shall ensure that no default with respect to public deposits is subsisting.

If the company has defaulted in repayment of public deposits, the company cannot make any investments even if special resolution and resolution of Board is passed. The investments can be made only after the default has been made good.

44. Mr. Raj, a director of PQR Ltd., submitted his resignation from the post of director to the Board of directors on 30th June, 2014 and obtained a receipt therefore on the same day. The Board of directors of PQR Ltd. neither accepted the resignation nor did it file Form No. DIR-12 with the registrar of companies. You are required to state whether Mr. Raj ceases to be the director of PQR Ltd. and if yes, since when?

Answer:

Resignation of director shall take effect from later of the following date(s), i.e., whichever is later –

- (a) Date on which the notice is received by the company, or
- (b) Date, if any, specified by the director in the notice.

However, a managing director cannot resign by merely sending a resignation. His resignation becomes effective only when the company accepts the resignation and relieves him from the office.

It is the duty of the company to file with the registrar a statement of changes made in the particulars of directors, manager and secretary; a director is not required to submit his resignation to the registrar.

Further, filing of Form No. DIR-12 is only a consequential act; it is not an act to be complied with in order to make a resignation valid. Therefore, the resignation of a director shall be valid notwithstanding the fact that it has not been filed with the registrar by the company and the director so resigning.

As such resignation does not require acceptance, except in the following situations –

- (a) Where the AOA does not permit a director to resign at any time, or stipulates that acceptance of a resignation is a must for it to take effect.
- (b) Resignation letter explicitly states that it will take effect only upon acceptance by the company.
- (c) When the tenor of the resignation letter is such that it requires acceptance.

So, in the given case, the resignation of Mr. Raj shall take effect immediately as it was received on the same date and no other date was mentioned in the resignation letter.

45. BOD of M/s RP Ltd., in its meeting held on 29th May, 2014 declared an interim dividend payable on paid up equity share capital of the company. In the Board meeting scheduled for 10th June, 2014, the Board wants to revoke the said declaration. You are required to state with reference to the provisions of the Companies Act, 2013 whether the BOD can do so.

Answer:

As per section 2 (35) of the Companies Act, 2013, dividend includes any interim dividend. Therefore, all the provisions applicable to final dividend shall equally apply to interim dividend.

Thus, interim dividend once declared, like final dividend, becomes a debt payable by the company. Accordingly, once declared, interim dividend cannot be revoked except under the same circumstances in which the final dividend can be revoked.

The amount of interim dividend is to be compulsorily deposited in a separate bank account, within 5 days of passing the Board resolution declaring the interim dividend [Section 205(1A) of the Companies Act, 1956].



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The provisions contained in sections 205, 205A, 205C, 206, 206A of the Companies Act, 1956 and Section 127 of the Companies Act, 2013 shall, as far as may be, also apply to any interim dividend.

As per section 127 of the Companies Act 2013, dividend must be paid within 30 days of its declaration. Thus, interim dividend also be paid within 30 days of its declaration, i.e., within 30 days of date of passing the Board resolution declaring the interim dividend.

In the instant case, on declaration of interim dividend by the Board in a Board Meeting held on 29th May, 2014, the liability of the company to pay the interim dividend has become certain, and the payment of interim dividend must be made within next 30 days, viz. on or before 28th June 2014.

Therefore, revocation of interim dividend in the Board Meeting held on 10th June is not possible

46. Joe Ltd. was incorporated in London with a paid up capital of 20 million pounds. Mr. Y an Indian Citizen holds 25% of the Paid Up Capital. X Ltd., a Company registered in India holds 30% of the Paid Up Capital of Joe Ltd. Joe Ltd. has recently established a Share Transfer Office at New Delhi. The Company seeks your advice as to what formalities it should observe as a Foreign Company. State briefly the requirements relating to filing of accounts with the ROC by the Foreign Company in respect of its global business as well as Indian business.

Answer:

The following issues are relevant in this regard:

1. Indian citizens / Bodies holding 50% Share Capital in Foreign Company:

- (a) Where not less than 50% of the Paid-Up Share Capital (Equity or Preference or partly in both) of a Foreign Company is held by one or more: (a) citizens of India, and/or (b) Bodies Corporate incorporated in India, whether singly or in the aggregate, such Company shall comply with such of the provisions of the Act with regard to the business carried on by it in India, as if it were a Company incorporated in India.
- (b) In the above case, Joe Ltd. is a Company where 55% of the Paid-Up Capital is held in the above manner. Hence, it has to comply with the provisions of the Act with regard to the business carried on by it in India, as if it were a Company incorporated in India.

2. Obligations of a Foreign Company under Chapter XXII:

1. To deliver documents to the ROC, upon establishment of place of business in India, and inform changes [Sec.380]
2. To prepare Financial Statements, get it audited and deliver to ROC, along with other particulars [Sec.381]
3. To file Annual Return [Rules]
4. To display and state Name, Limited Liability and Country of Incorporation [Sec.382]
5. To comply with other requirements of the Act, e.g. Proper Books of Account, Annual Return, Inspection, etc. [Sec.384]

Note: Details of Documents to be filed at various stages

Situation	Documents to be delivered to ROC
1. Initially when they establish a place of business in India.	Form No. FC.1 and other documents, as per Sec.380 [Refer Para.....]
2. Periodically or on the happening of certain events	<ul style="list-style-type: none"> • Changes in Particulars of matters submitted to ROC, in Form No.FC.2 • Annual Accounts [Sec.381] • Annual Return in Form No.FC.4, [Rules] • List of Places of Business in Form No.FC.3 [Sec.381] • Notice of ceasing to have Places of Business [Rules] • Charges on Properties [Sec.384] • Prospectus relating to issue of Securities [Sec.387]

Accounts, Audit, Annual Return, Other Provisions of Act

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Aspect	Description
Accounts and Audit [Sec. 381]	<p>A Foreign Company shall, in every calendar year -</p> <ol style="list-style-type: none"> 1. make out a Financial Statement of its Indian business operations as per Schedule III or as near thereto as possible for each financial year, 2. get the Financial Statement audited by a practicing CA in India or a Firm or LLP of practicing CAs, (Chapter X Audit and Auditors shall apply). 3. deliver a copy of the Financial Statement to the ROC, along with the following - <ol style="list-style-type: none"> (a) Documents required to be annexed to Financial Statement as per Chapter IX Accounts of Companies [e.g. Board's Report, Auditors' Report, etc.] (b) Copies of latest Consolidated Financial Statements of the Parent Foreign Company, as submitted to the prescribed authority in the country of its incorporation under the prevailing law in that country, (c) Statement of Related Party Transactions showing specified particulars, (d) Statement of Repatriation of Profits showing specified particulars, (e) Statement of Transfer of Funds showing specified particulars, (f) Form FC-3, showing a list of all Places of Business established by the Foreign Company in India as on the date of Balance Sheet. <p>Note: Time Limit for filing is 6 months from the close of the financial year. On application by the Company, the time limit is extendable by ROC for maximum another 3 months, for any special reason.</p> <p>Exemption: With respect to Financial Statements, the Central Government can exempt any Foreign Company or class of Foreign Companies, by notification, subject to specified exceptions and modifications.</p>
Annual Return	<ol style="list-style-type: none"> 1. Every Foreign Company shall prepare and file Annual Return in Form No.FC-4, to ROC with fees. 2. Annual Return shall contain the particulars as they stood on the close of the financial year. 3. Time Limit is 60 days from the last day of its financial year. [Note: Time Limit not extendable by ROC]
Other Provisions of Act [Sec. 384]	<p>Following provisions of the Act shall apply to Foreign Companies -</p> <ol style="list-style-type: none"> 2. Sec.71 - Debentures 3. Sec.92 - Annual Return, as per Rules specified above. 4. Sec. 128 - Books of Account: Foreign Company shall keep at its principal place of business in India, the books of account referred to in Sec. 128, with respect to monies received and spent, sales and purchases made, and assets and liabilities, in the course of or in relation to its business in India. 5. Chapter VI Registration of Charges Sec.77 to 87 shall apply to charges on properties which are created or acquired by any Foreign Company. 6. Chapter XIV Inquiry, Inspection & Investigation shall apply to the Indian business of a Foreign Co. 7. Chapter XX- Provisions relating to Winding up [Note: Chapter XX yet to be notified.]

47. The promoters of a Company to be registered under the Companies Act, 2013 having its main object of carrying on the business as manufacture and stockiest of Iron and Steel, proposes that the name of the Company is to be 'Abha Steel Bank Limited'. You are required to state whether the said company with the proposed name can be registered.

Answer:

Section 7 of the Banking Regulation Act, 1949 states that:

1. **Use of words Bank, Banker or Banking:** No Company other than a Banking Company shall use as part of its name or in connection with its business any of the words "Bank", "Banker" or "Banking" and no Company shall carry on the business of banking in India unless it uses as part of its name at least one of such words.



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2. No firm, individual or group of individuals shall, for the purpose of carrying on any business use as part of its or his name any of the words "Bank", "Banking" or "Banking Company".
3. **Not Applicable:** Section 7 not applicable under the following circumstances:
 - (a) A Subsidiary of a Banking Company formed for one or more of the purposes mentioned in u/s 19(1), whose name indicates that it is a subsidiary of that Banking Company;
 - (b) Any association of Banks formed for the protection of their mutual interests and registered u/s 85 of the Companies Act.

Therefore, Company cannot have the name "ABC Steel Bank".

48. A company made a profit of ₹500 lakh during the financial year 2013-14. The Board of directors passed a resolution making a donation of ₹100 lakh to Gandhi National Memorial Fund. Discuss the validity of the decision of the directors.

Answer:

As per section 183, a company is empowered to contribute such amount as it thinks fit to:

- The National Defence Fund; or
- any other fund approved by the Central Government for the purpose of National Defence.

Gandhi National Memorial Fund is not an approved fund for the purpose of National Defence. Therefore, donation to this fund can be made only in accordance with the requirements of section 181.

As per section 181, prior consent of the shareholders in general meeting is required for making a charitable contribution if the amount contributed in a financial year exceeds:

5% of average net profits during 3 immediately preceding financial years.

In the given case, figures of net profit for only one year have been given. Therefore, it has been assumed that company made a profit of ₹500 lakhs in each of the 3 financial years immediately preceding the date of contribution, and so the average profits comes to ₹500 lakhs. Since, the contribution to Gandhi National Memorial Fund of ₹100 lakhs exceeds the limits specified in the section (i.e. ₹25 lakhs, being 5% of 500 lakhs), the contribution requires the consent of shareholders in the general meeting. Since, the Board has passed a resolution without the consent of general meeting, such resolution is not valid.

49. Sampuran, vice-president of PQR Ltd., was appointed as an additional director in January, 2014. On the office of managing director falling vacant he was appointed as managing director on existing remuneration. Whether Sampuran will cease to be managing director in the next annual general meeting?

Answer:

An additional director holds office upto the date of next annual general meeting (Section 161(1) of the Companies Act, 2013). However, he is not a 'retiring director' as defined under Explanation to section 152 (As per section 152, 'retiring director' means a director retiring by rotation). Therefore, he can be appointed as an ordinary director in the annual general meeting only if the conditions prescribed in section 160 are complied with, i.e. a notice is given of his candidature at least 14 days before the annual general meeting.

The opening words of section 2(54) of the Companies Act, 2013 defines a 'managing director' as "Managing director means a director who...". Thus, the definition suggests that a managing director has to be a director first. If a managing director ceases to be a director, he will automatically cease to be a managing director.

In the given case, Sampuran will hold office upto the date of next annual general meeting. Since, he will cease to be a director, he will also vacate the office of managing director. Further, even if the annual general meeting is not held, he will cease to be an additional director on the last day, on which the annual general meeting ought to have been held (Section 161(1) of the Companies Act, 2013).

However, if a notice is given of the candidature of Sampuran under section 160 and of the annual general meeting he is appointed as a director, he shall continue as a managing director.

50. Examine with reference to the provisions of the Companies Act, 2013 whether the following companies can be treated as foreign companies:

- (A) A company incorporated outside India having a share registration office at Mumbai.
- (B) Indian citizens incorporated a company in Singapore for purpose of carrying on business there.



Answer:

As per section 2(42) of the Companies Act, 2013, 'foreign company' means any company or body corporate incorporated outside India which:

- (a) Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- (b) Conducts any business activity in India in any other manner.

Thus, for deciding as to whether a company is a foreign company or not, the criterion is to see as to whether the company has established a place of business in India or not, and whether the company conducts any business activity in India in any other manner, and not the persons who have incorporated the company.

The answer to the given problem is as follows:

- (i) A share transfer office or share registration office constitutes a place of business (Section 386 of the Companies Act, 2013). Since, the company incorporated outside India has a share registration office at Mumbai, it is clear that the company has established a place of business in India and is therefore a foreign company.
- (ii) In this case, Indian citizens have formed a company outside India. Since, the company has not established any place of business in India, and the company does not conduct any business activity in India in any other manner, the company cannot be said to be a foreign company. The fact that Indian citizens have formed a company in a foreign country is immaterial in deciding whether the company is a foreign company or not.

51. Notice has been received from a member proposing himself for appointment as a director after the issue of notice convening the annual general meeting. As a secretary of a public company, how will you deal with the above situation?

Answer:

Section 160 recognises the right of a person, who is not a retiring director, to stand for directorship. A notice received under section 160 shall be valid, if it complies with the following requirements:

- It is given at least 14 days before the meeting.
- It is deposited at the registered office of the company.
- The notice is signed by the person eligible to give notice.
- A sum of ₹ 1 lakh or such higher amount as may be prescribed, is deposited along with the notice.

As per section 101, the notice of general meeting is to be sent to members at least 21 clear days before the meeting. However, section 160 does not require that the notice to be given to the company under section 160 must be received by the company before issue of notice of the general meeting by the company.

In the present case, the notice under section 160 has been received by the company from a member after the company has issued the notice of the annual general meeting. The notice given by the member shall be in accordance with the provisions of section 160 if it is received by the company at least 14 days before the general meeting and the notice complies with other requirements of section 160. The company shall inform its members about the candidature of the proposed director by serving individual notices or by advertising in accordance with the provisions of section 160 read with Rule 13 of the Companies (Appointment and Qualification of Directors) Rules, 2014.

52. Mr. A was appointed as the Managing Director of Z Ltd. for a period of 5 years w.e.f. 1st January, 2013. Since his work was found unsatisfactory, his services were terminated from 15th August, 2014 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. B was guilty of many corrupt practices and that he should have been removed without payment of compensation. Advise the company whether the services of the 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. A by filing a suit.

Answer:

As per section 202 of the Companies Act, 2013 -

- Compensation can be paid only to a managing director or whole time director or manager.
- The compensation payable shall not exceed the remuneration which he would have earned if he had been in office for the unexpired residue of his term or for 3 years, whichever is shorter.



- Where the director has been guilty of fraud or breach of trust or gross negligence in the conduct of the affairs of the company, he shall not be paid any compensation.

In the given case, the company removed its managing director and paid compensation to him. Afterwards, the company discovers that the managing director was guilty of corrupt practices, and that he could have been removed without paying any compensation.

The facts of the given case are exactly similar to the facts in *Bell Lever Bros* [1932] AC 161 House of Lords. In this case, Bell was employed by Lever Bros for a period of 5 years. Afterwards, the company removed him by paying compensation of £30,000. However, Lever Bros later came to know that Bell was guilty of serious breaches of duty and corrupt practices which would have entitled Lever Bros to end his employment without any compensation. Accordingly, Lever Bros brought an action against Bell for recovery of compensation on the ground that compensation was paid by mistake. It was held that compensation once paid cannot be recovered back by the company. Also, the managing director was under no obligation to disclose to the company the breach of duty so as to give an opportunity to the company to remove him without paying any compensation. Thus, the answers to the questions asked in the given problem are as follows:

- (a) If compensation has already been paid to Mr. A by Z Ltd., the compensation cannot be recovered back, as per the decision in *Bell Lever Bros*.
- (b) If the breach of duty and corrupt practices of Mr. A come to light at the time when his services are terminated, the company is not liable to pay any compensation to him.

53. Decide in the light of the provisions of the Companies Act, the validity and extent of powers of Board of Directors and the procedure to be complied with in the following matters:

Donation of ₹5 lakhs to a hospital established exclusively for the benefit of employees.

Answer :

As per section 181 of the Companies Act, 2013, prior permission of the company in general meeting shall be required, if the amount of charitable contribution exceeds 5% of average net profits during immediately preceding 3 financial years.

In the given case, donation of ₹ 1,00,000 to a school run exclusively for the benefit of employees and donation of ₹5,00,000 to a hospital established exclusively for the benefit of employees amount to welfare expenses for the employees by which the employees are likely to receive benefits, and there will be an inducement on the part of the employees to increase the effort. As such, the donation is outside the purview of charitable donations, and so the provisions of section 181 of the Companies Act, 2013 are not at all attracted. Therefore, donations of ₹1,00,000 to the school and donation of ₹5,00,000 to the hospital established exclusively for the benefit of employees are within the powers of the Board, and so the approval of the members in general meeting is not required.

54. PQR Engineering Limited proposes to invest ₹20 lakhs in the equity shares of TQM Trading Limited. The proposed investment together with the investments in securities of companies and loans to body corporates already made exceed 60 per cent of the paid-up share capital and also 100 per cent of free reserves of the company. The company has taken term loans from UBI.

Explain the procedure to be followed by PQR Engineering Limited to give effect to the proposed investment.

Answer:

Inter-corporate loans and investments are governed by the provisions of section 186. In the present case the proposed investment of ₹ 20 lakhs in the equity shares of TQM Trading Limited together with the investments in securities of companies and loans to body corporates already made exceed the ceiling limit, i.e. 60 per cent of the paid-up share capital or 100 per cent of free reserves, whichever is higher. Therefore, a special resolution is required for making the proposed investment. The company shall adopt the following procedure for making investments in TQM Trading Limited:

- (a) Unanimous approval of the Board shall be obtained by passing a resolution at a Board meeting.
- (b) A special resolution shall be passed in the general meeting.
 - The notice of special resolution shall state the specific limits, particulars of the company to which loan is proposed to be given, specific source of funding and other relevant details.
 - The company shall file a copy of special resolution with the registrar within 30 days of passing the special resolution.
- (c) The company shall obtain the prior approval of UBI, the Public Financial Institution from whom it has taken a term loan.



- (d) The company can make such investments only if no default in respect of Public deposits is subsisting.
- (e) the prescribed particulars shall be entered in the register maintained within 7 days.

55. How is the subsequent auditor appointed in case of a government company?

Answer :

The provisions relating to appointment of subsequent auditor in case of a government company are explained as follows:

1. Applicability of Section 139(5)

- (a) Government Companies
- (b) Any other company owned or controlled, directly or indirectly, by –
 - (i) the Central Government; or
 - (ii) one or more State Government; or
 - (iii) partly by the Central Government and partly by one or more State Government.

2. Appointment or reappointment of auditor

In case of aforementioned companies, CAG shall, in respect of a financial year, appoint an auditor duly qualified to be appointed as an auditor of companies under this Act, within 180 days from the commencement of the financial year.

3. Tenure

The auditor shall hold office till the conclusion of the AGM.

56. State the recommendation of Cadbury Committee relating to the Board of Directors.

Answer:

Recommendations relating to the Board of Directors are outlined below:

1. The Board should meet regularly, retain full and effective control over the company, and monitor the executive management.
2. There should be a clearly accepted division of responsibilities at the head of a company, which will ensure balance of power and authority, such that no individual has unfettered powers of decision. In companies where the Chairman is also the Chief Executive, it is essential that there should be a strong and independent element on the Board, with a recognised senior member.
3. The Board should include Non-executive Directors of sufficient caliber and number for their views to carry significant weight in its decisions.
4. The Board should have a formal schedule of matters specifically reserved to it for decisions to ensure that the direction and control of the company is firmly in its hands.
5. There should be an agreed procedure for Directors in the furtherance of their duties to take independent professional advice, if necessary, at the company's expense.
6. The directors should have access to the advice and services of the Company Secretary, who is responsible to the Board for ensuring that its procedures are followed and the applicable rules and regulations are complied with. Any question of removal of the Company Secretary should, be a matter for the Board as a whole.

57. Star Ltd. is authorized by its articles to accept the whole or any part of the amount of remaining unpaid calls from any member although no part of that amount has been called up. A shareholder deposits in advance the remaining amount due on his shares without any calls made.

Referring to the provisions of the Companies Act, 2013, state the rights and liabilities of the shareholder, which will arise on the payment of calls made in advance.

Answer:

The following rights and obligations will arise on the payments of calls made in advance :

- ✓ No voting right shall be available in respect of such call in advance until such call become presently payable.



- ✓ The shareholder becomes an unsecured creditors in respect of amount so paid by him.
- ✓ Interest on such amount can be paid only if it is authorized by Articles and that also at a rate so mentioned therein.
- ✓ Liability due from the shareholder in respect of any future call shall come to an end.
- ✓ Member who has paid such call is entitled to recover the amount in event of winding up prior to repayment of capital by company.
- ✓ The member upon all or in part of the moneys so advanced, may receive interest at such rate not exceeding, unless the company in general meeting shall otherwise direct, 12% p.a., as may be agreed upon between the Board and the member paying the sum in advance.

58. Bridge Ltd. is an infrastructure company with paid up capital and free reserve of ₹ three crores and one and half crores respectively. The Board of directors granted a loan of ₹ 1 crores to Satyom Ltd and also gave a guarantee to IFCI for giving a loan of ₹ 1.50 crores to Nelson Ltd. Bridge Ltd. has not given any other loan or guarantee to anyone. A group of shareholders of Bridge Ltd. objected to the above deals on the ground that they are violative of the provisions of the Companies Act, 1956. Applying the provisions of the said enactment relating to inter-corporate loans and investments in the given case, decide:

- (i) Whether the objection raised by the shareholders is tenable?
- (ii) Would your answer be the same in case the amount of loan granted is ₹ 1.50 crores and the guarantee given is for an amount of ₹ 2 crores?
- (iii) What would be your answer in case Bridge Ltd. is a private company not being the subsidiary of any public limited company?

Answer:

Inter-corporate loans and investments are governed by the provisions of Section 186. As per section 186(1), the provisions of section 186 do not apply to a company established with the object of providing infrastructural facilities.

The answer to the given problem is given as under :

- (i) The company Bridge Ltd. is an infrastructure company. The provisions of section 186 do not apply to an infrastructure company. Accordingly, the provisions of section 186 are not required to be complied with by Bridge Ltd. Therefore, the objection raised by the shareholders that the company has violated the provisions of section 186, is not tenable.
- (ii) The answer shall remain the same even if the amount of loan granted is ₹1.50 crores and guarantee given is ₹2 crores, since the provisions of section 186 are not attracted at all to Bridge Ltd.
- (iii) In case Bridge Ltd. were a private company, then also there would be no contravention of section 186 since section 186 does not apply to a private company.

59. The Board of Directors of a public limited company borrowed in excess of the limits as laid down by the Companies Act, 2013. The money was utilized for genuine purposes in the interests of the company. Can the company repudiate the liability being ultra vires the director?

Answer:

As per Section 180(1)(c) of the Companies Act, 2013, without the prior consent of the members in general meeting by a special resolution, the Board of directors of a company shall not borrow moneys where the borrowings [already made plus proposed] exceed the aggregate of the paid up capital of the company and its free reserves. However, temporary loans obtained from the company's bankers in the ordinary course of business shall not be considered as

If such limit is exceeded but the consent of the general meeting is not obtained, then no debt incurred by the company in excess of this limit shall be valid or effectual, unless the lender proves that -

- (i) He advanced the loan in good faith; and
- (ii) He did not have any knowledge that such limit had been exceeded.

If the borrowing by the directors is ultra vires their power, the directors may be personally liable in damages to the lender, on the ground of breach of warranty of authority. Where the borrowing is unauthorized, the company will be liable to repay. If it is shown that the money had gone in the hands of the company [Lakshmi Ratan Cotton Mills Co. Ltd. v J.K. Jute Mills Co. Ltd. (1957) 27 Comp Cas 660, AIR 1957 All 311].

In the present case, the money has been used by the company for genuine business purposes. Thus, the company cannot repudiate its liability to repay the money.



60. The auditor of the ACB Company resigned his office on 31st Nov, 2013, while the financial year of the company ends on the 31st March, 2014. Explain how the auditor will be appointed?

Answer:

A vacancy in the office of auditor, for any reason otherwise than retirement on expiry of term, is referred as Casual Vacancy, if a casual vacancy arises in the office of auditor due to death, insanity, disqualification or insolvency, etc., but not by resignation, section 139(8) empowers the Board of directors to fill the same. Till the vacancy so caused, is filled, the remaining auditor or auditors, if any, may act.

Where a casual vacancy results on account of resignation, the vacancy can be filled only in the general meeting convened within 3 months of BOD recommendation. The auditor appointed in a casual vacancy shall hold office until conclusion of the next annual general meeting held after their appointment.

61. The Smart Traders Association was maintained by a joint Hindu Family consisting of 21 major and 4 minor members. The Association is carrying the business for earning profits and they were not registered as a Company under the Companies Act, 2013 or other law. State whether Smart Traders Association is having any legal status? Will there be any change in the status of the Association if the members of the Smart Traders Association subsequently reduced to 15? Support your answer with the correct provision of law.

Answer:

Section 464 prohibits carrying on business by any association or partnership if the number of members of such association or partnership exceeds the prescribed number. The prohibition under section 464 is attracted if the following conditions are satisfied :

- The association or partnership consists of more than such number of persons as may be prescribed (provided that the number of persons which may be prescribed, shall not exceed 100). The number of members prescribed for this purpose is 50.
- The association or partnership is formed for the purpose of carrying on any business.
- The object of the association or partnership is the acquisition of gain by the association or partnership or by the individual members thereof.
- The association or partnership is not registered as a company under the Companies Act, 2013 and is not formed under any law for the time being in force.

The prohibition contained in section 464 shall not apply to –

- A Hindu undivided family carrying on any business; or
- An association or partnership, if it is formed by professionals who are governed by special Acts.

In the given case, section 464 will not apply and even if the association is not registered under the Companies Act, 2013, will be considered as a legal association. There will be no change in legal status in case of subsequently reduction in the number of members.

62. The object clause of the Memorandum of a company empowers it to carry on distillery business and any other business that is allied to it. The company wants to alter its Memorandum so as to include the cinema business in its objects clause. Advise the company.

Answer:

Section 13 of the Companies Act, 2013 permits alteration of Memorandum to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company. Thus, section 13 does not prohibit a company to diversify in areas other than those specified in the Memorandum. But the business sought to be added must be such which can conveniently or advantageously be combined with the business of the company.

The Punjab High Court in Punjab Distilling Industries Ltd. v. Registrar of Companies, [1963] 33 Comp. Cas. 811 [where an alteration to the Memorandum of Association to carry on a new business was not confirmed because it had nothing to do even remotely with the existing business and it could not be said that the new business would be conducive to and economical or efficient in doing the existing business] held that the cinema business could not be either conveniently or advantageously combined with the distillery business, and therefore change of objects. Accordingly, alteration shall not be allowed.



63. M/s Naira InfoTech Ltd. was incorporated on 01.04.2013. No General Meeting of the company has been held so far. Explain the provisions of the Companies Act, 2013 regarding the time limit for holding the first Annual General Meeting of the Company and the power of the Registrar to grant extension of time for the First Annual General Meeting.

Answer:

According to Section 196 of the Companies Act, 2013, every company shall hold its first Annual General Meeting within a period of 19 months of close of 1st financial year. If 1st AGM is so held, there is no need to hold AGM in the year of incorporation.

In given case, Naira Infotech Ltd. was incorporated on 01.04.2013, the first annual general meeting of the company should be held on or before 31.12.2014.

Even though the Registrar of Companies is empowered to grant extension of time for a period not exceeding 3 months for holding the Annual General Meeting, such a power is not available to the Registrar in the case of the first Annual General Meeting.

Consequently, company and its directors will be liable for the default if the Annual General Meeting was held after 31.12.2014.

64. Mr. Anand is an auditor and he has ventured newly into this area. He is having the following issues in his mind. You are requested to guide him in resolving his issues, stating relevant sections and laws.

- (a) He wishes to undertake audit work as well as work as employee with Firm ABC, an auditing firm.
- (b) He wishes to join Firm ABC as a partner, what would be his ceiling limit.
- (c) He wants to compute and understand which of the following companies shall be/ not be taken into consideration for calculating specified number of audits.
 - (i) Audit of a Private Company
 - (ii) Guarantee Companies not having Share Capital
 - (iii) Audit of a Non-Profit Company
 - (iv) Special Audits
 - (v) Audit of foreign companies
 - (vi) Branch Audits
 - (vii) Company Audit where he is appointed as a Joint Auditor.
- (d) He wants to know, that as a member of ICAI, is there any other restrictions on him as a matter of self regulation in matter of inclusion/exclusion of audit of Private Companies for calculating the specified number of assignments.
- (e) Would the rules be different from case (d) above had he joined a CA Firm.
- (f) He also wishes to accept an offer to become the first auditor of Xee Ltd. What are the procedures that the Board of Directors and Mr. Anand need to undertake.

Answer:

(a) **Restriction on Appointment [Sec.141(3)(g)]:** No Company or its Board of Directors shall appoint or re-appoint any person or Firm as its Auditors if -

- (a) Such person is in full time employment elsewhere, or
- (b) Such person or Firm holds the office of Auditor of the specified number of Companies or more than the specified number of Companies as on the date of appointment or reappointment as Auditor.

In the case of a Firm of Auditors, 'Specified Number of Companies' means the number of Companies specified for every Partner of the Firm who is not in full time employment elsewhere.

Hence, Mr. Anand cannot undertake the work of audit and be employed with Firm ABC at the same time.

(b) **Ceiling Limit:** The ceiling limit is 20 Company Audits per person. Further, in addition to this, Mr. Anand has to keep the following points in mind -

Situation	Ceiling Limit
(i) If he works for Firm ABC, and Firm ABC is a Partnership Firm	Ceiling Limit shall be 20 Company Audits per Partner who is not in full-time employment elsewhere.
(ii) When he is a Partner in a number of Firms including Firm ABC	Ceiling Limit shall be 20 Company Audits on his account in all the Firms together in which he is Partner or Proprietor.



(iii) Where he is a Partner of Firm ABC and also holds office in his individual capacity	Ceiling Limit shall not exceed 20 Company Audits in his individual capacity and all Firms taken together.
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(c) Computation of Ceiling Limit:

Included Audits	Excluded Audits
<p>(i) Part Audit: When an Auditor is appointed to audit even a part of a Company's accounts, the part will be considered as a unit of audit for the purpose of calculation of the ceiling.</p> <p>(ii) Joint Audit: When two or more Auditors are appointed as Auditors, each of the Joint Auditors is considered a Part Auditor for the purpose. Hence, any joint audit held by an Auditor will be included as one audit unit.</p> <p>(iii) Sec.28 Companies: Audit of Non-Profit Companies would be included for the purpose of ceiling.</p>	<p>(i) Branch Audit: Audit of a Branch of Company is not included in the computation of the ceiling.</p> <p>(ii) Audit of Corporations, which are not Companies, shall not be included for ceiling purpose.</p> <p>(iii) Audit of Foreign Companies shall not be included.</p> <p>(iv) Guarantee Companies: Company Limited by Guarantee and not having Share Capital will not be included in the ceiling.</p> <p>(v) Private Companies: Audit of Private Limited Companies will not be included for ceiling u/s 139(1)(g).</p> <p>(vi) Special Audit Investigation of Companies will not be included for ceiling purposes.</p>

Hence the following would not be included in computing the ceiling limit.

- (i) Audit of a Private Company
- (ii) Guarantee Companies not having Share Capital
- (iii) Special Audits
- (iv) Audit of foreign companies
- (v) Branch Audits

(d) Restrictions as per ICAI Notification 53/ 2001: As per the ICAI Notification, a CA in practice will be guilty of professional misconduct, if he holds at any time, the appointment of more than 30 audit assignments, including audit of Private Companies. This restriction is intended to uphold the principles of fairness and to provide equitable opportunities to all practicing members. [Note: This provision is an additional restriction under the CA Act and does not override the Companies Act.]

(e) In case of a CA Firm:

1. In case of CA Firm, the ceiling limit is 30 Audits per Partner, including audit of Private Companies.
2. Where a member is a Partner in more than one CA Firm, all the Firms in which he is a Partner will be together entitled to 30 Company audits in his account.
3. Where a Partner of a Firm also accepts audits in his individual capacity / Proprietary Firm, the total number of Company audits should not exceed 30 in his individual capacity / Proprietary Firm and all Partnership Firms taken together.
4. For this purpose, Joint Audits held will be construed as one audit unit for each of the Joint Auditors.
5. Audit of Head Office and Branches or one or more Branches of the same Company will be construed as one audit only.
6. The number of Partners of a firm on the date of acceptance of audit assignment shall be taken into account for computing the ceiling for the Firm.
7. A CA in full time employment elsewhere shall not be taken into account while computing the ceiling for the Firm.

(f) Becoming the First auditor of Xee Ltd:

In case Mr. Anand wants to be the first auditor of Xee Ltd. the following points need to be complied with.



1. **Appointment by Board:** Sec. 139(6) specifies that the Board of Directors can appoint the First Auditor(s) of a Company.
2. **Time of Appointment:** The appointment shall be made by the Directors, within 1 month from the date of registration of the Company.
3. **Tenure of Office:** The First Auditor(s) shall hold office till the conclusion of the first AGM.
4. **Failure:** If the Board fails to appoint the First Auditor(s) within 1 month of registration, the Company in General Meeting is empowered to make the appointment.
5. **Members' Power of Removal:** The Company may, at a general meeting, remove such an Auditor or all or any of them and appoint another or others in his or their place, on a nomination being made by any member of the Company. For this purpose, notice should be given to the members of the Company, not less than 14 days before the date of the meeting.
6. **Provision in Articles:** An Auditor cannot be appointed as First Auditor(s) simply because his name has been stated in the Articles of Association.
7. **Intimation:** The Company need not send any statutory intimation to the First Auditor(s), of their appointment within 7 days. Notice of appointment can be sent in the ordinary course of business within reasonable time.
8. **Acceptance:** The First Auditor(s) are themselves not required to inform the ROC about their acceptance or refusal of such an appointment.

65. Wee Ltd. has suffered a Net Loss for the year. The Directors however declared and paid an Interim Dividend at 30% based on the half-yearly performance. Comment.

Answer:

Assumed that Company had profit in the quarter immediately preceding the declaration of Interim Dividend, and the loss arose subsequent to such declaration.

If Company has a net loss at year-end but Interim Dividend paid indicates that Dividend has been paid out of post accumulated profits. If the following conditions as per Companies (Declaration and Payment of Dividend) Rules, 2014 are satisfied, such dividend is valid.

- Rate of dividend should be \leq Average rates of dividend, if any, of 3 immediately preceding years.
- Amount withdrawn – Amount to be withdrawn from accumulated profits \leq 1/10th of its paid-up capital and free reserves [amount withdrawn shall first be utilized to set off current year losses, before declaration of equity dividend]
- Reserves balance – Balance in reserves after such withdrawn \geq 15% of paid-up share capital.

If there was a loss in the quarter immediately preceding the declaration of Interim Dividend, the first condition has to be satisfied.

66. ROC has received a complaint from a group of Creditors of a Company. The complaint alleges that the Directors of the Company, in order to prevent the unearthing of their embezzlement of Company's funds, are engaged in falsification and destruction of original accounting books and records. The Complainants urged the ROC to seize the accounting books and records of the Company so that the Directors may not be able to tamper the same. You are required to state the powers, if any, of the ROC and inspector in this respect.

Answer:

Particulars	Seizure by ROC u/s 209	Seizure by Inspector u/s 220
1. Belief	ROC / Inspector has reasonable ground to believe that books and papers of Specified Persons are likely to be - (a) destroyed, (b) mutilated, (c) altered, (d) falsified, or (e) secreted.	
2. Basis of belief	Upon information in ROC's possession or otherwise.	In the course of investigation under Chapter XIV.



3. Specified Persons	(a) Company (b) Key Managerial Personnel (KMP) (c) Director (d) Auditor (e) Company Secretary in Practice, if the Company has not appointed a CS	(a) Company (b) Other Body Corporate (c) MD/Manager of such Company
4. Special Court Approval	ROC/ Inspector shall obtain order of seizure from Special Court	Not specified
5. Powers of ROC/Inspector	(a) to enter, with suitable assistance, and search the place(s) where books and papers are kept. (b) to seize books and papers as the ROC/ Inspector considers necessary.	(a) to enter, with suitable assistance, the place(s) where books and papers are kept. To seize books and papers as the Inspector considers necessary.
6. Period of retention	ROC/Inspector shall return the books and papers within 180 days of seizure.	Inspector shall retain the books and papers for such period not later than the conclusion of investigation, as he considers necessary.
7. Colling for books again	ROC/ Inspector may call for books and papers, for a further 180 days, if they are needed again.	Not applicable

Note:

1. Other provisions of Code of Criminal Procedure, 1973 relating to searches or seizures shall also apply.
2. The Company is allowed to take copies/ extracts of the seized books and papers, at its cost.
3. Before returning books & papers, the ROC/ Inspector may –
 - (a) Take copies of, or extracts from them, or
 - (b) Place identification marks on them or any part thereof, or
 - (c) Deal with the same in such other manner as he considers necessary

67. M/s Bee Ltd, a company registered in the State of West Bengal desires to shift its registered office. State the laws and the provisions to be followed if the change occurs under the following conditions:

- (i) Change from one place to another within the same city.
- (ii) Change from one city to another within the same state.
- (iii) Change of jurisdiction of ROC.
- (iv) Change of state.

Answer:

ALTERATION OF REGISTERED OFFICE CLAUSE [Section 13]	
(i) Change within the same city, town or village [Section 12(5)]	1. A resolution of the Board of Directors is required to be passed.
	2. Notice of new location must be given to the Registrar within 15 days of the Change under form INC 22.
(ii) Change from one City, town or village to another within the same ROC and same State [Section 12(5)]	1. Special resolution is required to be passed at a general meeting of the shareholders.
	2. Filing of Copy of Special Resolution with ROC within 30 days in Form No. MGT. 14
	3. Notice of New Location must be given to the Registrar within 15 days of change under form INC. 22.



68. Article of a Public company clearly stated that Mr. L will be the life time solicitor of the company. Company in its General Meeting of shareholders resolved unanimously to appoint Mr. M in place of Mr. L as the solicitor of company by altering its AOA. State with reasons, whether the company can do so? If L files a case against the company for removal as solicitor, will he succeed?

Answer:

According to Section 10 of Company Act 2013, upon registration, the Memorandum and Articles of Association bind the company and its members to the same extent as if they had been signed by the company and each member respectively. -Consequences of this shall be as follow:-

- (i) Members bound to the Company-This view was also held in the case of *Boreland's Trustee v Steel Brothers and Co. Ltd.*
- (ii) Company bound to the members- Company is also bound to its members in same manner as members are bound to it
- (iii) Company not liable to outsider-Section 10, only create a contract between a company and members, thus company may alter its AOA for any term as concerned with a contract along with an outsider

In given case Article of the Public company clearly stated that Mr. L will be the life time solicitor of company. Company in its General Meeting of shareholders resolved unanimously to appoint Mr. M in place of Mr. L as the solicitor of company by altering its AOA.

Conclusion: Based upon the provisions of Sec 10, we can conclude that the Company is entitled to remove Mr. L and he cannot succeed in bringing a suit against the company

This view was also taken in leading case of [*Eley v Positive Government Life Assurance Co. Ltd*]

69. The Secretary of a Company issued a share certificate to 'A' under the Company's seal with his own signature and the signature of a Director forged by him. 'A' Borrowed money from 'B' on the strength of this certificate. 'B' wanted to realize the security and requested the company to register him as a holder of the shares. Explain whether 'B' will succeed in getting the share registered in his name.

Answer:

Share certificate is not binding on company as it contained forged signatures. Thus no title could be transferred to A even if he is a bona fide purchaser since as per the general rule forgery is nullity (It means if any signatures are forged, it shall be taken as if no signatures are there, thus no title can be transfer to transferee). This view was also held in the case of *Rubben v Great Fingal Consolidated*. Hence B would not succeed in having the shares in his name.

70. Rajesh, who is a resident of New Delhi, sent a transfer deed, for registration of transfer of shares to the company at the address of its Registered Office in Mumbai on 13.05.2014. He did not receive the shares certificates till 14.09.2014. He lodged a criminal complaint in the Court at New Delhi. Decide, under the provisions of the Companies Act, 2013, whether the Court of New Delhi is competent to take action in the said matter.

Answer:

According to section 56(4)(c) every company shall within one month from the application for the registration of transfer of any such shares, deliver the certificates to its shareholders.

In the case of *H.V. Jaya Ram v ICICI Ltd*. It was held that cause of action for failure to deliver share certificate arises where the registered office of the company is situated and not in the jurisdiction of the Court located in the place where the complaint resides. Accordingly in the present case also, the Court in New Delhi cannot entertain the complaint against a company having its registered office in Mumbai.

71. 'A' commits forgery and thereby obtains a certificate of transfer of shares from a company and transfers the shares to 'B' for value acting in good faith. Company refuses to transfer the shares to 'B'. Whether the company can refuse? Decide the liability of 'A' and of the company towards 'B'. In the light of the above state the meaning and consequences of a forged transfer.

Answer:

Any forged transfer does not give the transferee concerned any title to the shares.

Although the innocent purchaser acting in good faith could validly and reasonably assume that the person named in the certificate is the owner of the shares. Still the illegality cannot be converted into legality.



Therefore, in this case company is right to refuse to do the transfer of the shares in the name of the transferee B.

Forged Transfer

Meaning:

- Forged Transfer means, transfer of shares made on the basis of forged transfer deed.
- The instrument of transfer is said to be forged when transferor's signatures bearing on it are forged.

Consequences of Forged Transfer:

1. **Restoration of name of:** True owner can compel the company to restore his name to the register.
2. **Claim to Dividend:** True owner can also claim any dividend which may not have been paid to him during the intervening period.
3. **Right of Bona fide Purchaser:**
 - If the company had issued a share certificate to the transferee on a forged transfer and he further sold them to another buyer who has acted in good faith, then the purchaser will have no right to be registered as shareholder.
 - However, he can claim damages from the company on the ground since he has acted on the faith of the share certificate issued by the company.
 - Company in turn can claim damages from the person who has submitted said forged transfer deed to it.

72. ABC Company refuses to register transfer of shares made by Mr. A to Mr. B. The company does not even send a notice of refusal within the prescribed time. Has the aggrieved party any rights against the company for such refusal. Advice.

Answer:

Remedies available to aggrieved party against refusal to register the transfer of shares by ABC Company:

1. In case ABC is a private company [Section 58 (3)]

Transferor or the transferee may prefer an appeal to Tribunal. The appeal should be in writing and should be filed within the prescribed time.

Meaning of Prescribe Time:

- (i) **Where the company gives a notice of refusal:** Appeal should be filed within 30 days from the date of the receipt of such notice, and
- (ii) **Where the company does not give any notice of refusal:** Appeal should be filed within 60 days from the date on which the instrument of transfer was delivered/intimation of transmission to the company.

2. In case ABC is a public company [Section 58(4)]:

Transferor or the transferee may prefer an appeal to Tribunal. The appeal should be in writing and should be filed within the prescribed time.

Meaning of Prescribe Time:

- (i) **Where the company gives a notice of refusal:** Appeal should be filed within 60 days from the date of the receipt of such notice, and
- (ii) **Where the company does not give any notice of refusal:** Appeal should be filed within 90 days from the date on which the instrument of transfer was delivered/intimation of transmission to the company.

3. Power of Tribunal:

- Tribunal may dismiss the Appeal
- The Tribunal may direct that the transfer/transmission shall be registered by the Company. The Company shall comply with such order within 10 days of the receipt of Order.



73. The Board of Directors of a company decided to pay 5% of issue price as underwriting commission to the underwriters. On the other hand the Articles of Association of the company permit only 3% commission. The Board of Directors further decides to pay the commission out of the proceeds of share capital. Are the decisions taken by the Board of Directors valid under the Companies Act, 2013?

Answer:

According to the provisions of Section 40 of the Companies Act, 2013:

- (i) The payment of commission should be authorized by the articles.
- (ii) The amount of commission should not exceed, in case of shares, 5% of the price at which the shares have been issued or the amount or rate authorized by the articles whichever is less, and in case of debentures, it should not exceed 2½%

Based upon the provisions of the above section, we can conclude that the Board of Director's decision to pay 5% is not valid, since the payment cannot exceed 3% as provided in the Articles of the company.

Secondly, decision of the Board to pay the commission out of capital is valid since underwriting commission can be paid both out of capital as well as out of profits. [Madan Lal Fakir Chand Vs Shree Changdeo Sugar Mills Ltd]

74. When can a Public Company offer the new shares (further issue of shares) to persons other than the existing shareholders of the Company? Can these shares be offered to Preference Shareholders?

Answer:

From the wordings of Section 62, of Companies Act, 2013 it is quite clear that the further issue of shares can be issued only to equity shareholders, unless a certain specific procedure as stated in law has been adopted for issue of these shares to outsiders. This specific procedure would essentially include passing a special resolution in the general meeting and obtaining more votes for the agenda than against the agenda. Therefore, in general issue of these shares cannot be offered to preference shareholders.

75. K Ltd. was in process of Incorporation. Promoters of the company signed an agreement for purchase of certain furniture for company and payment was to be made to the supplier of the furniture after incorporation of the company. The company was incorporated and the furniture was received and used by it. Shortly after incorporation, company went into liquidation and debt could not be paid. As a result supplier sued the promoters. Examine whether the promoters can be held liable under following situations:-

- (i) Where company has adopted the contract after incorporation
- (ii) Where company entered into a fresh contract after incorporation

Answer:

According to Company Act 2013, any contract which is entered into by the promoters for and on behalf of the proposed company before its incorporation shall be regarded as Pre-incorporation contract.

Provisions regarding these contracts can be discussed as follow:-

1. **The Company is not bound by the Preliminary Contract:** In case of [Re English and Colonial Produce Ltd], it was held that Company cannot be held liable for the preliminary contracts. A company is not bound by the preliminary contracts even if the company has taken the benefit of the work on its behalf under the contract.
2. **The Company cannot Enforce Preliminary Contracts:** In the case of [Natal Land Co. v Pauline Colliery Syndicate], it was held that other party is also not liable to company through pre-incorporation contract, here in this stated case
 - The owner of a piece of land agreed to lease it to a company to be formed by promoters.
 - The promoters later on formed a company.
 - Subsequently 'owner' refused to grant the lease to the company.
 - It was held that the company cannot sue 'owner' and cannot claim specific performance as it was not even in existence when the lease was signed.

Thus, preliminary contracts cannot be enforced by or against the company.



3. **Personal Liability of Promoters:** In the case of (Kelner v Baxler), it was held that promoters shall be personally liable with any such contract. This is because one cannot enter into any contract on behalf of any person who is not in existence. Therefore, for any such contract; promoters shall be personally liable for the performance.

However, liability of promoter shall come to an end where after incorporation company adopt the contract according to Sec 15 and Sec 19 of Specific Relief Act 1963.

Based upon above provision, we can conclude as follow:-

- (i) Since in the given case company has adopted the contract after incorporation, thus company shall be liable for the contract so entered.
- (ii) Situation where company enter into a fresh contract-

Where a company enter into a fresh contract after incorporation, then liability of promoters shall come to an end and company shall become liable with this contract.

This view was also taken in case of (Howard v Patent Ivory Manufacturing Co.)

76. A company was incorporated on 6th October, 2014. The certificate of incorporation of the company was issued by the Registrar on 15th October, 2014. The company on 10th October, 2014 entered into a contract which created its contractual liability. The company denies from the said liability on the ground that company is not bound by the contract entered into prior to issuing of certificate of incorporation. Decide, under the provisions of the Companies Act, 2013, whether the company can be exempted from the said contractual liability.

Answer:

Section 7 provides that a certificate of incorporation issued by the Registrar is conclusive as to all administrative acts relating to the incorporation and as to the date of incorporation.

Case of [Jubilee Cotton Mills v Lewis]

Thus based upon the above, we can conclude that even though Certificate of incorporation was issued on 15th Oct, however it contained a date as 6th Oct. Therefore company shall be considered as registered on 6th only and consequently contract so entered was a valid contract

77. The Memorandum of Association of a company was presented to the Registrar of Companies for registration and the Registrar issued the certificate of incorporation. After complying with all the legal formalities the company started a business according to the object clause, which was clearly an illegal business. The company contends that the nature of the business cannot be gone into as the certificate of incorporation is conclusive. Answer the question whether company's contention is correct or not.

Answer:

Though a certificate of incorporation is a conclusive evidence of its registration, but, it does not mean that all its objects are legal.

In *Bowman v Secular Society Ltd.*, the court held that the statute does not provide that all or any of the objects specified in the memorandum, if otherwise illegal, would be rendered legal by the certificate.

Therefore, the contention of the company that the nature of business cannot be gone into after the certificate of incorporation has been obtained is not tenable.

78. Mr. Sanchay was appointed as an Additional Director of Conservative Finance Ltd. w.e.f. 1st October 2013 in a casual vacancy by way of a circular resolution passed by the Board of Directors. The next AGM of the Company was due on 31st March 2014 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. Sanchay and his continuation as Additional Director beyond 31st March 2014. Advise the Company on the complaints made by the Shareholders.

Answer:

The given problem relates to sections 161 of the Companies Act, 2013.

The Legal Position

Additional Directors



- The Board may appoint the additional directors in pursuance of the provisions of section 161.
- The Board may, in its discretion, appoint the additional directors whenever it deems fit.
- The appointment of additional directors can be made by the Board either by passing a resolution at a Board meeting or by passing a resolution by circulation.
- An additional director holds office upto the date of next annual general meeting. A director appointed as an additional director vacates his office, at the latest, on the last day on which the annual general meeting could have been called and cannot continue in office thereafter on the ground that the meeting was not or could not be called within the time prescribed [Krishna Prasad Pitani v Colaba Land and Mills Co. (1959) 29 Comp Cas 273; Departmental Circular No. 8/3(260)/63-PR, dated 05.02.1963].

Director filling a casual vacancy

- The Board is authorised to fill a casual vacancy arising in the office of a director appointed in general meeting.
- The director filling a casual vacancy shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.
- ② A casual vacancy cannot be filled by passing a resolution by circulation.

The given case

- The Board has appointed Mr. Sonchay as an additional director in a casual vacancy.
- The appointment of additional director has been made by passing a circular resolution.
- The last date for holding the annual general meeting was 31st March, 2014. The annual general meeting has not been held till 31st March, 2014.
- The issue raised in the given problem is:
 - (a) Whether appointment of Mr. Sonchay is valid or not; and
 - (b) Whether Mr. Sonchay can continue after 31st March, 2014.

Analysis of the case

1. Section 161 does not authorises the Board to appoint an additional director to fill the casual vacancy.
 - If appointment of Mr. Sonchay is made as an additional director, then, such appointment cannot amount to filling a casual vacancy.
 - If Mr. Sonchay is appointed to fill a casual vacancy, then, he shall not be an additional director.
2. Mr. Sonchay has been appointed to fill the casual vacancy by passing a circular resolution. Since, the appointment of a director filling a casual vacancy requires passing of a resolution in a board meeting only, therefore, the appointment of Mr. Sonchay is in contravention of section 161, and is therefore, invalid.

Conclusion

- The complaint made by the shareholders is valid.
- The appointment of Mr. Sonchay is not valid since it is in contravention of sections 161.
- Mr. Sonchay cannot continue as a director after the date of annual general meeting, since his very appointment is void ab initio.

79. Mr. Shyam goes abroad for four months from 04.01.2012 and an alternate director has been appointed in his place. Therefore, advice as to sending of notice as required under section 286 of the Companies Act, 1956.

Answer:

Notice of every Board meeting shall be given in writing to every director for the time being in India and to every other director at his address registered with the company.

As can be seen, section 173(3) does not specifically state that notice to an alternate director shall be served. However, an alternate director is a director in his own right. He is not a proxy or representative of the original director. The grounds of vacation of office also apply to him as these apply to the original director, e.g., an alternate director shall vacate office if he does not attend the Board meetings. As such, it is implied that notice to



an alternate director is to be given. Thus, notice should be served to both, the alternate director as well as the original director. Notice to Mr. Shyam, who is outside of India, shall be served at his usual address in India.

80. M/s XYZ Ltd. was incorporated on 1st January, 2012. On 1st November, 2014 a political party approaches the company for a contribution of ₹10 lakhs for political purpose. Advise in respect of the following:

- (i) Is the company legally authorised to give this political contribution?
- (ii) Will it make any difference, if the company was in existence on 1st October, 2011?
- (iii) Can the company be penalised for defiance of rules in this regard?

Answer:

As per section 182, the following companies shall not make a political contribution:

- (a) A Government company.
- (b) A company which has been in existence for less than 3 financial years.

In the given case:

- (i) M/s XYZ Ltd. cannot make any political contribution because the company is not in existence for a period of 3 financial years.
- (ii) If XYZ were incorporated on 01.10.2011, it may make a political contribution as on 01.11.2012 because in such a case, it would have been in existence for 3 financial years. However, it shall comply with the following conditions:
 - (a) The amount of contribution shall not exceed 7.5% of average net profits during 3 immediately preceding financial years.
 - (b) The Board shall make a political contribution only by passing a resolution at a Board meeting.
 - (c) The company shall disclose in its profit and loss account the amount of political contribution and the name of the political party or the person to whom such amount has been contributed.
- (iii) If a company makes a political contribution in contravention of section 182, following consequences shall follow:
 - (a) The company shall be punishable with fine which may extend to 5 times the amount so contributed.
 - (b) Every officer of the company who is in default shall be punishable with imprisonment up to 6 months and with fine upto 5 times the amount contributed.

81. Mr. Naman holding 3% Shares in OPQ Ltd., became a Director of this Company on 01.05.2011. The Company prior to his appointment as Director, had commenced transactions with A Ltd. In the next Board Meeting to be held on 10.05.2014, the Board proposes to discuss about price revisions sought for by A Ltd. Briefly explain –

- (i) Whether Mr. Naman should make a disclosure of his interest in A Ltd, assuming that the Company is going to have transactions with A Ltd. on a continuous basis, if yes, when and how? When should it be renewed?
- (ii) Can he vote in the price revision resolution in the Board Meeting?
- (iii) You are informed that Mr. Naman holds 1.5% of the Share Capital of A Ltd and that his wife holds another 3% of the Share Capital of A Ltd.

Answer:

1. Disclosure of Interest: Mr. Naman should disclose his interest as required u/s 184.
 - The words 'becomes concerned or interested' occurring in the provision denotes a present state of thing.
 - In case of a person who was actually concerned or interested in the contract or arrangement, the liability for disclosure arises the moment he accepts office as Director.
 - If a Director acquired interest in a running transaction of the Company, he should disclose this fact at the next Board Meeting held after he becomes so interested.
 - Time of disclosure :



At the First Board Meeting:-

- In which he participates as a Director
- In every financial year
- After any change occurs in any disclosures already made.

2. Voting at Board Meeting:

- (a) U/s 184, an Interested Director shall not vote on the resolution in respect of the contract in which he is interested.
- (b) However, provisions of Sec. 184 are not applicable if the interest of the Director consists less than 2% of the Paid-Up Capital in the other Company.
- (c) In the given case, Mr. Naman holds 1.5% of the Share Capital of A Ltd, and his wife holds another 3% in the Share Capital of A Ltd, and therefore it cannot be said that he is interested only to the extent of less than 2% of the Paid-Up Share Capital of A Ltd.
- (d) Hence, Mr. Naman should not participate and vote in the Board Meeting to be held on 10.05.2014, in the matter pertaining to A Ltd.

82. Following is the latest audited Balance Sheet of ABC Ltd.

Capital and liabilities	₹	Assets	₹
Equity Share Capital (10000 shares of 100 each)	10,00,000	Goodwill	1,00,000
Less: Calls unpaid	10,000	Land and Buildings	10,50,000
	9,90,000	Plant and machinery	20,25,000
Preference Share Capital	1,50,000	Equity shares in A Ltd.	1,25,000
Securities Premium A/c	1,50,000	Preference shares in B Ltd.	50,000
Capital Redemption Reserve	2,25,000	Debentures in C Ltd.	1,00,000
General Reserve	5,00,000	Shares in P Ltd.	2,25,000
Profit & Loss A/c	2,20,000	Capital in Z & Co.	1,00,000
Sinking Fund Reserve	1,10,000	Current Assets	55,000
Dividend Equalisation Reserve	60,000		
Loan from TFC	10,00,000		
Deposits from S Ltd.	2,00,000		
Current Liabilities	1,25,000		
Provision for Taxation	1,00,000		
	38,30,000		38,30,000

The following is the additional relevant information:

1. Of the equity shares capital, 3,000 shares have been issued as rights shares and 2,000 shares as bonus shares.
2. B Ltd. is subsidiary of ABC Ltd. with 90% shareholding, whereas A Ltd. is wholly owned subsidiary of ABC Ltd.
3. Z & Co. is a partnership firm. The directors seek advice as to whether the following additional investments can be made by a decision taken in a Board Meeting:

(i) Loan to A Ltd.	₹10,00,000
(ii) Debentures in B Ltd.	₹ 2,25,000
(iii) Purchase of shares of Shree Ltd. in the open market state reasons	₹ 95,000

Answer:

Step 1: Calculation of paid up capital and free reserves:

Paid Up Capital: Equity Share Capital	10,00,000
Less: Calls Unpaid	10,000
	9,90,000
Preference Share Capital	1,50,000
Total	11,40,000

NOTE: Preference Share Capital is to be included for calculating paid up capital.



Free Reserves: Securities Premium	1,50,000
General Reserve	5,00,000
Profit & Loss Account	2,20,000
Dividend Equalisation Reserve	60,000
Total	9,30,000

NOTE: Capital Redemption Reserve and Sinking Profit Reserve are not available for distribution as dividend and therefore shall not be considered for computing free reserves.

Step 2: Calculation of the limits:

- (A) 60% of Paid up Capital and free reserves
 = 60% of (11,40,000 + 9,30,000)
 = 60% of (20,70,000)
 = 12,42,000
- (B) 100% of Free Reserves as computed above ₹9,30,000
- (A) or (B) whichever is higher ₹12,42,000

Step 3: Computation of Value of transactions as per Balance Sheet:

Preference Shares in B Ltd.	50,000
Debentures In C Ltd.	1,00,000
Shares in P Ltd.	2,25,000
	3,75,000

NOTE:

1. Equity Shares in A Ltd. is not considered as acquisition of shares by a holding company in its wholly owned subsidiary is exempted from the provisions of 186. The shares are not to be considered while computing Limits.
2. As Z & Co., is a partnership firm the capital therein is not considered.

Step 4: Computation of Proposed Investments:

Debentures in B Ltd.	2,25,000
Purchase of shares in Shree Ltd.	95,000
	3,20,000

- The aggregate of the investments already made ₹ (3,75,000) together with the proposed investments of ₹(3,20,000) amounts to ₹6,95,000.
- This is well within the ceiling limit of ₹12,42,000 computed in step 2 above.
- Therefore there is no requirement as to previous approval by way of special resolution.
- The Board of directors should approve the proposed transactions at a meeting of the board by passing a resolution agreed to by all the directors present at the meeting.
- Previous approval of M/s. TIIC a PFI is not required as:
 - (a) There is no default towards TIIC and
 - (b) The aggregate of the value of the transactions (₹6,95,000) does not exceed 60% paid up capital and free reserves i.e. ₹12,42,000.



Chapter 2

LAWS AND PROCEDURES FOR CORPORATE RESTRUCTURING

Green Shoe option

Refer Current PTPS, RTP, MTP
and
E-News Letters for this Chapter



Chapter 3

SEBI LAWS AND REGULATIONS

Refer Current PTPS, RTP, MTP
and
E-News Letters for this Chapter



Chapter 4

THE COMPETITION ACT, 2002 AND ITS ROLE IN CORPORATE GOVERNANCE

What shall be the composition of Competition Commission of India?

Answer:

The composition of Competition Commission of India may be explained as follows:

1. Chairperson and Members

The Commission shall consist of a Chairperson and not less than two and not more than 6 other Members to be appointed by the Central Government:

2. Qualifications and experience of the Chairperson and Members

The Chairperson and every other Member shall be a person of ability, integrity and standing and who has special knowledge of, and such professional experience of not less than 15 years in international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs or competition matters, including competition law and policy, which in the opinion of the Central Government, may be useful to the Commission.

3. Terms of employment

The Chairperson and other Members shall be whole-time Members.

Mr. MKS was a member of the Competition Commission of India. He ceased to be such member on 31st May, 2013. Thereafter, he was offered the post of Executive Director with appropriate remuneration and perquisites in the following organizations to join his duties on and from 1st September, 2013:

- (i) HIL Ltd, a private sector public limited company, whose case was disposed off by the Competition Commission under the provisions of the Competition Act, 2002 in the month of March, 2013.
- (ii) Life Insurance Corporation of India.

Answer:

As per Section 12, the Chairperson and other members shall not, for a period of two years, accept any employment connected with the management or administration of any enterprise which has been a party to any proceeding before the Commission under this Act. However, the said restriction shall not apply where the Chairperson or any member is offered an employment in a corporation established by or under any Central, State or Provincial Act.

In the present case, HIL Ltd. is an enterprise which has been a party to any proceeding before the Commission. Therefore, Mr. MKS cannot join HIL Ltd. upto 31st May, 2015 (i.e., upto 2 years of cessation of his office of member). However, LIC is a corporation established by a Central Act, and so the restriction on employment of Chairman or a member shall not apply where appointment is made in LIC. Therefore, Mr. MKS can join LIC.

The association of Truck Operators of India by agreement insisted that members of the association shall not deal with non-members in transportation of goods. The association claims that this agreement is entered for the welfare of trade and not for any other purpose. Would this agreement be under the purview of the Act? Will the answer be different if the association attempts to control the provisioning of services rendered by its members?

Answer:

Horizontal Anti-Competitive Agreements [Sec. 3(3)]:

Any agreement entered into between Enterprises or Association of Enterprises, or Person or Association of Persons, or between any Person and Enterprise or practice carried on, or decision taken by, any Association of Enterprises or Association of Persons, including Cartels, engaged in identical or similar trade of goods or provision of services which:

- (a) directly or indirectly determines purchase or sale prices,
- (b) limits or controls production, supply, markets, technical development, investment or provision of services,



- (c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way,
- (d) directly or indirectly results in bid rigging or collusive bidding, shall be presumed to have an appreciable adverse effect on competition.

Note:

- **Exception:** An agreement entered into by way of Joint Ventures and which increases the efficiency in production, supply, distribution, storage, acquisition, or control of goods or provision of services, shall not be presumed anti-competitive.
- **"Bid Rigging"** means any agreement, between enterprises or persons engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process of bidding.

Therefore, in the given case,

Agreement is horizontal, non-competitive, hence void and control or provisioning of services is also void, sec. 3(3)(b).

4. Examine with reference to the relevant provisions of the Competition Act, 2002 whether a person purchasing goods not for personal use, but for resale can be considered as a 'consumer'.

Answer:

The given problem relates to section 2(f) of the Competition Act, 2002.

As per section 2(f), 'Consumer' means any person who -

- (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, whether such purchase of goods is for resale or for any commercial purpose or for personal use;
- (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first-mentioned person whether such hiring or availing of services is for any commercial purpose or for personal use.

Thus, a person who purchases goods for resale or for any commercial purpose (and not for personal use) is also a 'consumer'.

5. Shri Basu was appointed as a Member of the CCI by Central Government. He has a professional experience in international business for a period of 11 years, which is not a proper qualification for appointment of a person as Member. Pointing out this defect in the constitution of CCI, Mr. Sen, against whom CCI gave a decision, wants to invalidate the proceedings of CCI. Examine whether Mr. Sen will succeed.

Answer:

As per section 15 of the Competition Act, 2002, no act or proceeding of the CCI shall be invalid merely by reason of

- (i) Any vacancy in the CCI, or ✓
- (ii) Any defect in the constitution of the CCI, or ✓
- (iii) Any defect in the appointment of a person acting as a Chairperson or as a Member, or
- (iv) Any irregularity in the procedure of the CCI not affecting the merits of the case.

In the given case, Mr. Basu should have got at least 15 years experience in the field of international business. However, the defect in the appointment of Shri Basu acting as a Member, shall not invalidate the proceedings of CCI. Hence, Mr., Sen will not be able to succeed in his claim.



6. The Central Government, without referring the matter to the Supreme Court of India for inquiry, removed a member of the Competition Commission of India, on the ground that he has become physically or mentally incapable of acting as a member. Decide under the provisions of Competition Act, 2002 whether the removal of the member is valid.

Answer:

The order of removal made by Central Government is valid and lawful on the following grounds:

- (i) Since CG has ordered removal under the ground, that he has become physically or mentally incapable of acting as a member.
- (ii) Since removal under such ground does not require CG to refer the matter to the Supreme Court for inquiry.

7. Mr. A was a member of the Competition Commission of India. On the basis of information that he had acquired such financial interest as was likely to affect prejudicially his functions as a member of the Commission, the Central Government appointed an officer to hold an inquiry. On the basis of report of the said officer the Central Government issued an order of removal of Mr. A. Decide whether the action of the Central Government is in order under the provisions of the Competition Act, 2002?

Answer:

CG has the power to remove Mr. A:

Since Sec. 11 empowers CG to remove the Chairperson or any member of the Commission on various grounds specified u/s 11 including the ground "where the Chairperson or the member has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member or Chairperson."

Procedure for removal of Mr. A:

- (i) CG shall make a reference to the Supreme Court.
- (ii) The Supreme Court shall order holding of an enquiry. The enquiry shall be held in accordance with the procedure prescribed by the Supreme Court.
- (iii) The Supreme Court may make an order for removal of Mr. A.

8. Mr. Zen 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 appointment of a person as member. Pointing out this defect in the Constitution of Commission, Mr. Yen, 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. Yen will succeed.

Answer:

The given problem relates to section 15 of the Competition Act, 2002. As per section 15, no act or proceeding of the Commission shall be invalid merely by reason of:

- (a) any vacancy in the Commission; or ✓
- (b) any defect in the constitution of the Commission; or ✓
- (c) any defect in the appointment of a person acting as a Chairperson or as a Member; or ✓
- (d) any irregularity in the procedure of the Commission not affecting the merits of the case. ✓

Applying the provisions of section 15, the mere fact that one of the members of the Commission was not qualified for appointment, does not affect the merits of the case. It is a mere defect in the constitution of the Commission. Therefore, the contention of Mr. Yen that the proceedings of the Commission are not valid, is incorrect.

9. A Ltd. and B Ltd. both dealing in Chemicals and Fertilizers have entered into an agreement to jointly promote the sale of their products. A complaint has been received by the CCI stating that the agreement between the two is Anti-Competitive and against the interest of other in the trade. Examine what are the factors the CCI will take into account to determine whether the agreement in question will have any appreciable adverse effect on competition in the market.



Answer:

For determining whether a Combination would have the effect of or is likely to have an appreciable adverse effect on competition in the relevant market, the CCI shall have due regard to all or any of the following factors:

1. Actual and potential level of competition through imports in the market.
2. Extent of barriers to entry into the market.
3. Level of combination in the market.
4. Degree of countervailing power in the market,
5. Likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins,
6. Extent of effective competition likely to sustain in a market,
7. Extent to which substitutes are available or are likely to be available in the market,
8. Market share, in the relevant market, of the persons or enterprise in a combination individually and as a combination,
9. Likelihood that the combination would result in the removal of a vigorous and effective competitor(s) in the market,
10. Nature and extent of vertical integration in the market,
11. Possibility of a failing business,
12. Nature and extent of innovation,
13. Relative advantage, by way of the contribution to the economic development, by any combination having or likely to have appreciable adverse effect on competition,
14. Whether the benefits of the combination outweigh the adverse impact of the combination, if any.



Chapter 5

LAWS RELATED TO BANKING SECTOR

1. Union Bank of India, a National Bank, acquired on 1st January 2002 a Building, fully occupied by various tenants, from Mr. Rahul, the owner of the Building in discharging of a Term Loan advanced to Mr. Rahul, who had mortgaged the said building as security with the said Bank and failed to repay the Loan. The said Bank wants to keep the Building permanently with it and earn the rent from tenants. You are required to state with reference to the provisions of the Banking Regulation Act, 1949 whether the said Bank can do so.

Answer:

As per section 9, no banking company shall hold any immovable property howsoever acquired, except such as is required for its own use, for any period exceeding 7 years from the acquisition thereof or any extension of such period as in this section provided, and such property shall be disposed of within such period or extended period, as the case may be.

As per Proviso to Section 9, the Reserve Bank may in any particular case extend the aforesaid period of 7 years by such period not exceeding 5 years where it is satisfied that such extension would be in the interests of the depositors of the banking company.

In the given case, Union Bank proposes to keep the building for earning rent from tenants, and not for its own use. In view of the provisions of section 9, Union Bank of India cannot keep the building permanently with it for the purpose of earning rent from tenants. It shall have to dispose of the Building within 7 years from the date of its acquisition, i.e. on or before 31st December, 2009.

However, if the approval of the Reserve Bank is obtained, it may continue to hold the Building till such extended period as is sanctioned by the Reserve Bank. The Reserve Bank shall not permit the Union Bank to hold the property beyond 31st December, 2014.

2. RBI receives a complaint that an authorized person has submitted incorrect statements and information to the RBI in respect of receipt and utilization of Foreign Exchange. Explain the powers of the RBI with regard to inspection of records of the above authorized person. Also state the duties of the authorized person.

Answer:

RBI's powers of Inspection [Sec. 12]: RBI may, at any time, cause an inspection to be made, by any of its officer specially authorized in writing in this behalf, of the business of any Authorised Person as may appear to it to be necessary or expedient for the purpose of:

- (a) verifying the correctness of any statement, information or particulars furnished to the RBI,
- (b) obtaining any information or particulars which such Authorised Person has failed to furnish on being called upon to do so,
- (c) securing compliance with the provisions of this Act or Rules/Regulations/Direction/Order made thereunder.

Duties of Authorised Person:

- (a) To produce to any Officer/Inspector, such books, accounts and other documents as may be specified, under the Act/Regulations.
- (b) To furnish any information/statement/particulars required by RBI/Authorised Officers under the Act/Regulations.

3. Star bank wants to acquire the financial assets of Moon Ltd. Is the bank or financial institution bound to give notice of acquisition of financial asset to the obligor? State the provisions in this regard with reference to SARFAESI Act, 2002.

Answer:

The provisions relating to giving of notice of acquisition of financial asset by the bank or financial institution are explained below:

(i) **Notice of acquisition of financial asset to obligor [(Section 6(1))]:**

The bank or financial institution may, if it considers appropriate, give a notice of acquisition of financial assets by any securitisation company or reconstruction company, to the concerned obligor and any other concerned person and to the concerned registering authority (including Registrar of Companies) in whose jurisdiction the mortgage, charge, hypothecation, assignment or other interest created on the financial assets had been registered.



(ii) Duty of obligor to make payments to the securitisation or reconstruction company [Section 6(2)]

Where a notice of acquisition of financial asset under sub-section (1) is given by a bank or financial institution, the obligor, on receipt of such notice, shall make payment to the concerned securitisation company or reconstruction company, as the case may be, and payment made to such company in discharge of any of the obligations in relation to the financial asset specified in the notice shall be a full discharge to the obligor making the payment from all liability in respect of such payment.

(iii) Money received by lender to be held in trust [Section 6(3)]

Where no notice of acquisition of financial asset under sub-section (1) is given by any bank or financial institution, any money or other properties subsequently received by the bank or financial institution, shall constitute monies or properties held in trust for the benefit of and on behalf of the securitisation company or reconstruction company, as the case may be and such bank or financial institution shall hold such payment or property which shall forthwith be made over or delivered to such securitisation company or reconstruction company, as the case may be, or its agent duly authorised in this behalf.

Hence the above procedures are required to be followed by Star Bank before acquisition of the assets of Moon Ltd.

4. Super Limited, a banking company maintained the record of all transactions for a period of 5 years from the date of cessation of the transactions between the clients and the company. Decide whether the Company has fulfilled its obligation under the provisions of the Prevention of Money Laundering Act, 2002.

Answer:

As per section 12, the records of prescribed transactions shall be maintained for a period of 10 years from the date of such transaction (viz. the transaction between the clients and the banking company).

In the given case, Super Limited has maintained the records of transactions only for a period of 5 years from the date of cessation of the transactions. Thus, Super Limited has failed to maintain the records for the period of 10 years as prescribed under section 12. Therefore, Super Limited has defaulted in compliance of section 12.

5. What are Special Courts? What are the powers of Special Courts with respect to offence of money laundering? Discuss with reference to Prevention of Money Laundering Act, 2002.

Answer:

The provisions relating to Special Courts are contained in section 43 of the Act, as explained below:

A. Power of CG to designate Special Court(s) [Section 43(1)]:

The Central Government, in consultation with the Chief Justice of the High Court, shall, for trial of offence punishable under section 4 by notification designate one or more Courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification.

In this sub-section, 'High Court' means the High Court of the State in which a Sessions Court designated as Special Court was functioning immediately before such designation.

B. Power of Special Court to try any other offence [Section 43(2)]:

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

State the kind of approval required for the following transactions under the Foreign Exchange Management Act, 1999:

- (A) T wants to draw US \$20,000 to make donation to a charitable trust situated in South Korea.
- (B) Q requires US \$ 5,000 to make payment related to 'call back services' of telephone.

Answer:

Any person may sell or draw foreign exchange to or from an authorised person if such sale or drawal is a current account transaction. However, the Central Government may in public interest and in consultation with the RBI, impose such reasonable restrictions for current account transactions as may be prescribed (Section 5). The Central Government has framed Foreign Exchange Management (Current Account Transactions) Rules, 2000. The Rules



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

- (A) As per Rule 5 read with Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000, prior approval of Reserve Bank of India is required for drawl of foreign exchange, exceeding US\$ 5,000 per financial year for donations.

Therefore, Mr. T can obtain \$ 20,000 for making donation to a charitable trust situated in South Korea with the permission of Reserve Bank of India. However, prior approval of the Reserve Bank of India shall not be required if drawl of additional US Dollar 15,000 is made out of funds held in Resident Foreign Currency (RFC) Account.

- (B) Rule 3 read with Schedule I of Foreign Exchange Management (Current Account Transactions) Rules, 2000 prohibits drawl of foreign exchange for payments related to call back services of telephones. Therefore, payment of US \$ 5,000 for 'call back services' of telephone is prohibited.

7. State whether a banking company is required to file with the registrar its accounts and balance Sheet.

Answer:

As per section 32, where a banking company in any year furnishes its accounts and balance-sheet in accordance with the provisions of section 31, it shall at the same time send to the registrar 3 copies of such accounts and balance-sheet and of the auditor's report, and where such copies are so sent, it shall not be necessary to file with the registrar, in the case of a public company, copies of the accounts and balance-sheet and of the auditor's report, and, in the case of a private company, copies of the balance-sheet and of the auditor's report as required by sub-section (1) of section 220 of the Companies Act, 1956; and the copies so sent shall be chargeable with the same fee and shall be dealt with in all respects as if they were filed in accordance with that section.

8. Mr. Sandip is an Indian Citizen. He has been residing in India since his birth. He left India on 25th February, 2011 for pursuing business management in America for 2 years. He comes back on 24th February, 2013. What is his residential status for the financial years 2010-11, 2011-12, 2012-13 and 2013-14?

Answer:

The given problem can be answered as follows:

- (a) Financial year 2000-01. Mr. Sandip resided in India for the whole year in the preceding financial year, i.e., 1999-2000. His leaving India for pursuing business management for 2 years would not exclude him from the definition of 'Person resident in India' because he is not going outside India for any of the following purposes:
- (i) for or on taking up employment outside India, or
 - (ii) for carrying on outside India a business or vocation outside India, or
 - (iii) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period. Therefore, Mr. Sandip is a person resident in India for the financial year 2000-01.
- (b) Financial year 2001-02. He resided in India for more than 182 days in the preceding financial year, i.e., 2000-01. Therefore, he is a 'Person resident in India' for the financial year 2001-02. It is immaterial that he is outside India for the whole financial year 2001-02.
- (c) Financial year 2002-03. Mr. Sandip did not reside in India at all in the preceding financial year, i.e., 2001-02. Therefore, he shall be a 'Person resident outside India' for the financial year 2002-03.
- (d) Financial year 2003-04. Mr. Sandip resided for less than 183 days in the preceding financial year, i.e., 2002-03. Therefore, he shall be a 'Person resident outside India' for the financial year 2003-04.

9. A French manufacturing company desirous of setting up its branch office at Pune, seeks your advice on the object for which the company may be allowed to set up the desired branch office. Advise the company about the procedure as required under the Foreign Exchange Management Act, 1999 to be followed in this regard.

Answer:

As per section 6, the Reserve Bank may, by regulations, prohibit, restrict, or regulate establishment in India of a branch, office or other place of business by a person resident outside India, for carrying on any activity relating to such branch, office or other place of business. In exercise of such power, the Reserve Bank of India has framed Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000.



The provisions of Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000 are explained below:

1. RBI may permit a company engaged in manufacturing and trading activities abroad to set up Branch Office in India with the following objectives:
 - (a) To represent the parent company or other foreign companies in various matters in India, e.g., acting as buying or selling agents in India.
 - (b) To conduct research work in the area in which the parent company is engaged.
 - (c) To undertake export and import trading activities.
 - (d) To promote possible technical and financial collaborations between the Indian companies and overseas companies.
 - (e) Rendering professional or consultancy services.
 - (f) Rendering services in information technology and development of software in India.
 - (g) Rendering technical support to the products supplied by the partner or group companies.
2. Approval of the RBI is required for establishment in India of branch or office or other place of business by a person resident outside India.
3. A person resident outside India desiring to establish a branch or liaison office in India shall apply to the RBI in Form No. FNC 1.
4. A foreign company may open Branch Office in India if all the following conditions are satisfied:
 - (a) The office can act as a channel of communication between the Head Office abroad and parties in India. It is not allowed to undertake any business activity in India and cannot earn any income in India.
 - (b) Expenses of the Branch Office are to be met entirely through inward remittances of foreign exchange from the Head Office abroad.
 - (c) Permission to set up Branch Office is initially granted for a period of 3 years and this period may be extended from time to time by the Regional Office in whose jurisdiction the Branch Office is set up.
 - (d) The Branch Office shall file with the concerned Regional Office an Annual Activity Certificate issued by a Chartered Accountant.
1. No approval of the RBI is necessary for a banking company if such company has obtained necessary approvals under the provisions of the Banking Regulation Act, 1949.
2. No approval of the RBI is necessary for establishment of a branch or unit in Special Economic Zones to undertake manufacturing and service activities, if the following conditions are satisfied:
 - (a) Such units are functioning in those sectors in which 100% Foreign Direct Investment (FDI) is permitted.
 - (b) Such units comply with Part IX of the Companies Act, 1956 (Sections 592 to 602).
 - (c) Such units function on a stand-alone basis, i.e., such unit will be isolated and restricted to the Special Economic Zone alone and no business activity or transaction will be allowed outside the Special Economic Zones in India.
 - (d) In the event of winding up of business and for remittance of winding up proceeds, the branch shall approach an authorised dealer.

10. Tomato Ltd., a vehicles manufacturing company in India has received an order from a transport company in Italy for supply of 100 Trucks on lease. You are required to state, how the said Tomato Ltd. can accept such an order.

Answer:

Taking any goods out of India to a place outside India amounts to 'export' [Section 2(1)]. As per Regulation 14 of Foreign Exchange Management (Export of Goods and Services) Regulations, 2000, export of goods on lease or hire or under any arrangement or in any other manner other than sale or disposal of such goods requires approval of the Reserve Bank of India.

In the given case, Tomato Ltd. proposes to supply on lease 100 trucks to Italy. Lease of trucks to Italy involves taking goods to Italy (i.e., outside India), and so lease of trucks to Italy is 'export' within the meaning of section 2(1). Since lease of truck does not amount to sale or disposal of goods, exporting goods by way of lease requires the permission of Reserve Bank of India.



11. Gayatri, a resident in India is likely to inherit an immovable property in USA from her father, who is a resident outside India. Advise Gayatri about the restrictions, if any, in this regard. Will your answer be different if she is likely to inherit foreign securities?

Answer:

Holding etc. of Currency, Security and Property [Sec. 6(4) & 6(5)]:

- (a) A person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India, if such currency, security or property was:
- Acquired, held or owned by such person when he was resident outside India, or
 - Inherited from a person who was resident outside India.
- (b) A person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India, if such currency, security or property was:
- Acquired, held or owned by such person when he was resident in India, or
 - Inherited from a person who was resident in India.

Note: However, Current Income on such assets like rent, dividend, interest etc. have to be repatriated to India within the prescribed time limit as specified in Regulation 5(i) of FEM (Realisation, Repatriation and Surrender of Foreign Exchange), 2000.

There are no restrictions with regard to inheritance of either immovable property situated outside India or of foreign security, from a person resident outside India. Further, such inheritance does not require approval of RBI. Hence, Gayatri can hold the immovable property/foreign security, after such inheritance.

12. Mr. Rakesh of Nagpur wants to travel to Nepal and for this purpose proposes to draw foreign exchange. Specify-

- (A) Can Mr. Rakesh draw any foreign exchange for his journey?
 (B) What are the purposes for which foreign exchange drawal is not allowed for current account transactions?

Answer:

- (i) Rule 3 of Foreign Exchange Management (Current Account Transactions) Rules, 2000 prohibits drawal of foreign exchange (by any person) for the purpose of travel to Nepal and/or Bhutan. Therefore, Mr. Ramesh cannot draw any foreign exchange for journey to Nepal.
- (ii) Rule 3 read with Schedule I prohibits drawal of foreign exchange (by any person) for the following purposes:
1. Remittance out of lottery winnings.
 2. Remittance of income from racing/riding, etc., or any other hobby.
 3. Remittance for purchase of lottery tickets, banned/prescribed magazines, football pools, sweepstakes, etc.
 4. Payment of commission on exports made towards equity investment in Joint Ventures/Wholly Owned Subsidiaries abroad of Indian companies.
 5. Remittance of dividend by any company to which the requirement of dividend balancing is applicable.
 6. Payment of commission on exports under Rupees State Credit Route.
 7. Payment related to 'Call Back Services' of telephones.
 8. Remittance of interest income on funds held in Non-resident Special Rupee Scheme Account.
 9. Payment for travel to Nepal and/or Bhutan.
 10. Any transaction with a person resident in Nepal or Bhutan.

13. State the powers of the reserve bank to give directions to the Banking Companies.

Answer:

Section 35A empowers the Reserve Bank to give directions to the Banking Companies, as explained below:

1. Purpose of giving directions (Section 35A(1))

Where the Reserve Bank is satisfied that -

- (a) in the public interest; or
- (aa) in the interest of banking policy; or
- (b) to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company; or
- (c) to secure the proper management of any banking company generally,



it is necessary to issue directions to banking companies generally or to any banking company in particular, it may, from time to time, issue such directions as it deems fit, and the banking companies or the banking company, as the case may be, shall be bound to comply with such directions.

2. **Modification or cancellation of directions already given [Section 35A(2)]**

The Reserve Bank may, on representation made to it or on its own motion, modify or cancel any direction issued under sub-section (1), and in so modifying or cancelling any direction may impose such conditions as it thinks fit, subject to which the modification or cancellation shall have effect.

14. Wealth Bank of India, a Nationalised Bank, acquired a building from Mr. Shyam on 1st Dec, 2008 in discharging a term loan advanced to him, who had mortgaged the said building as security and failed to repay the loan. The building was given on rent to various companies by Mr. Shyam. Now, the bank wants to keep the building as it is and earn the rent. With the reference to the provisions of the Banking Regulation Act, 1949, state, whether the bank can do so.

Answer:

As per section 9, no banking company shall hold any immovable property howsoever acquired, except such as is required for its own use, for any period exceeding 7 years from the acquisition thereof or any extension of such period as in this section provided, and such property shall be disposed of within such period or extended period, as the case may be.

As per Proviso to Section 9, the Reserve Bank may in any particular case extend the aforesaid period of 7 years by such period not exceeding 5 years where it is satisfied that such extension would be in the interests of the depositors of the banking company.

In the given case, Wealth Bank proposes to keep the building for earning rent from tenants, and not for its own use. In view of the provisions of section 9, Wealth Bank of India cannot keep the building permanently with it for the purpose of earning rent from tenants. It shall have to dispose of the building within 7 years from the date of its acquisitions, i.e., on or before 31st December 2015.

However, if the approval of the Reserve Bank is obtained, it may continue to hold the building till such extended period as is sanctioned by the Reserve Bank. The Reserve Bank shall not permit the Wealth Bank to hold the property beyond 31st December, 2020.

15. State whether there is any restriction under the Foreign Exchange Management Act, 1999 in respect of drawal of foreign exchange for payments due on account of amortization of loans in the ordinary course of business.

Answer:

As per section 6 of the Foreign Exchange Management Act, 1999, the Reserve Bank of India (RBI) shall not impose any restriction on the drawal of foreign exchange for — (i) payments due on account of amortisation of loans, or (ii) for depreciation of direct investments in the ordinary course of business. Hence the transaction is permissible under the Foreign Exchange Management Act.

16. Mr. Lal 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?

Answer:

A person accused of an offence punishable for a term of imprisonment of more than three years under the Part A of the Schedule to the Prevention of Money Laundering Act shall not 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 guilty of such offence, and
 - He is not likely to commit any offence while on bail.

However the following persons may be released on bail, if the Special Court so directs —

- (i) Person who is under 16 years of age, or
- (ii) A woman, or
- (iii) Person who is sick or infirm.



17. Young Bank is a newly formed bank. The constitution of its Board of Directors is mostly graduates and undergraduates. Is the constitution as per The Banking Regulations Act, 1949? Discuss. Also the Bank wants to reconstitute its board and retire some of its directors. What are the provisions as per law?

Answer:

BOARD OF DIRECTORS TO INCLUDE PERSONS WITH PROFESSIONAL OR OTHER EXPERIENCE (Sec. 10A), as per Banking Regulation Act, 1949:

51% or more directors to be specialized in certain specified areas [Sec. 10A (2)] i.e.

- Not less than 51% of the total number of members of the Board of Directors of a banking company shall consist of persons, who shall have special knowledge or practical experience
- in respect of one or more of the following matters, namely:
 - agriculture and rural economy,
 - co-operation,
 - small-scale industry,
 - accountancy,
 - banking,
 - economics,
 - finance,
 - law,
 - any other matter the special knowledge of, and practical experience, which would, in the opinion of RBI, be useful to the banking company.

Minimum 2 directors to be specialised in certain specified areas [Proviso to Sec. 10A (2)]

- It shall also be ensured that out of the aforesaid number of Directors, not less than 2 shall be persons having special knowledge or practical experience in respect of agriculture and rural economy, co-operation or small-scale industry.

Reconstitution of Board if requirements not fulfilled [Sec. 10A (3)]

- If, in respect of any banking company, the requirements, as laid down in sub-section (2), are not fulfilled at any time, the Board of Directors of such banking company shall re-constitute such Board so as to ensure that the said requirements are fulfilled.

Retirement of directors by lots to ensure reconstitution [Sec. 10A (4)]

- If, for the purpose of re-constituting the Board under sub-section (3), it is necessary to retire any Director or Directors, the Board may, by lots drawn in such manner as may be prescribed, decide which Director or Directors shall cease to hold office and such decision shall be binding on every Director of the Board.

18. ABC Banking Company Limited has advanced a sum of ₹25.00 lacs to Mr. Reliable, a director of the company, to meet his personal liabilities but due to some adverse conditions, Mr. Reliable is not in a position to repay the loan. The Board of directors of the company is considering to remit a sum of ₹10.00 lacs. The Board of Directors seeks your advice.

Answer:

Section 20A of the Banking Regulation Act, 1949 provides that except with the prior approval of RBI, a banking company shall not remit in whole or in part any debt due to it by:

- (a) Any of its Directors, or
- (b) Any firm or company in which any of its Directors is interested as Director, Partner, Managing Agent or Guarantor, or
- (c) Any individual, if any of its Directors, is his Partner or Guarantor.

Sub-section (2) further provides that any remission of debt in contravention of the aforesaid shall be void and of no effect.

19. Printed Computer is a Singapore based company having several business units all over the world. It has a unit for manufacturing computer printers with its headquarters in Pune. It has a branch in Dubai which is controlled by the headquarters in Pune. What would be the residential status under FEMA, 1999 of printer units in Pune and that of Dubai branch?



Answer:

Section 2(u) defines a 'person'. As per this definition, the following shall be covered in the definition of a 'person':

- (a) A company.
- (b) Any agency, office or branch owned by a 'person'.

Section 2(v) defines a 'person resident in India'. As per this definition, the following shall be covered in the definition of a 'person resident in India':

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

In the given case, Printed Computers (Singapore), its headquarters in Pune as well as Dubai Branch is a 'person'. Therefore, residential status under FEMA shall be determined for each of them separately.

- Printed Computers (Singapore) does not fall under any of the clauses of the definition of a 'person resident in India'. Therefore, Printed Computers (Singapore) is a person resident outside India.
- The Pune Headquarters of Printed Computers is a 'person resident in India' since it falls under the clause 'an office, branch or agency in India owned or controlled by a person resident outside India'.
- The Dubai branch of Printed Computers (Singapore), though not owned, is controlled by the Pune headquarters. The Dubai branch is a 'person resident in India' since it falls under the clause 'an office, branch or agency outside India owned or controlled by a person resident in India'.

20. The Central Govt. acquired a Banking Company. The scheme of acquisition, apart from other matters, provided for the quantum of compensation payable to the shareholders of the acquired Bank. Some Shareholders are not satisfied with the amount of compensation fixed under the scheme of acquisition,

Is there any remedy available to the shareholders under the provisions of the Banking Regulation Act, 1949?

Answer:

Compensation to Shareholders of the Acquired Bank [Sec. 36AG]:

1. **Recipient:** The Central Govt. / Transferee Bank shall give the compensation determined in the prescribed manner, to:
 - (a) Registered Shareholder of the acquired Bank, or
 - (b) Where the acquired Bank is a Banking Company incorporated outside India, the acquired Bank
2. **Reference to Tribunal:**
 - (a) **Request:** If the amount of compensation offered is not acceptable to any person to whom the compensation is payable, the aggrieved person may request the Central Govt. in writing to have the matter referred to the Tribunal. Such a request shall be made before the date notified by the Central Govt.
 - (b) **Eligible Persons:** The Central Govt. shall have the matter referred to the Tribunal for decision, if it receives requests from:
 - Not less than 1/4th in number of the Shareholders holding not less than 1/4th in value of the Paid up Share Capital of the acquired Bank, or
 - Where the acquired Bank is a Banking Company incorporated outside India, from the acquired Bank.
3. **Finality of compensation:** If before the notified date, the Central Govt. does not receive requests as required, the amount of compensation offered, and where a reference has been made to the Tribunal, the amount determined by it, shall be the compensation payable and shall be final and binding on all parties concerned.



Chapter 6

LAWS RELATED TO INSURANCE SECTOR

↓ Life
 ↓ reserves
 ↓ every year
 ↓ Loss P&L
 ↓ pho

↓ 3% of
 ↓ Gross
 ↓ receipt

1. "Life Policy cannot be questioned after the expiry of 2 years from the date on which it was effected". Explain with reference to Section 45 of the act.

Answer:

Inaccurate or false particulars: An insurer shall not call in question a Life Insurance Policy after the expiry of 2 years from the date on which it was effected on the ground that – (a) a statement made in the proposal for insurance, or (b) in any report of a Medical Officer, or Referee, or Friend of the insured, or in any other document leading to the issue of the policy, was inaccurate or false. [Sec. 45]

Exception: The above provision does not apply if the Insurer shows that such statement was on-

- (a) A material matter or suppressed facts which it was material to disclose and
- (b) That it was fraudulently made by the policy-holder and
- (c) 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.

Only if all the 3 conditions are satisfied conjointly the insurer can repudiate after 2 years – LIC Vs. G.M.Chennabasamma.

LIC challenged a policy after 2 years after its issue. It was in evidence that the assured fraudulently suppressed facts. It was held that the LIC was not liable – Mithoolal Vs. LIC (SC 1962).

Held that "If a period of 2 years has expired from the date on which the policy of life insurance was effected, that policy cannot be called in question by an insurer on the ground that a statement made in the proposal for insurance or on any report of a medical officer or referee, or a friend of the insured, or in any other document leading to the assure of the policy, was inaccurate or false." – LIC Vs. Janaki Ammal (Mad HC 1968).

Note:

- (a) Policies issued in India shall be subject to law in force in India.
- (b) The insurer can notify the Policyholder of the options available to him in case of non-payment of premiums.
- (c) The Life Policy Holders have the right to seek for Medical Reports procured by the Insurer.

2. Explain briefly the powers of the Central Government to issue directions to the IRDA, as per IRDA Act 1999.

Answer:

The provisions of section 18 of IRDA Act, 1999 may be explained as follows:

1. Nature of directions and their binding effect [Section 18(1)]

Without prejudice to the foregoing provisions of this Act, the Authority shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy, other than those relating to technical and administrative matters, as the Central Government may give in writing to it from time to time:

Opportunity to Authority before giving directions [Proviso to Section 18(1)]. The Authority shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

2. 'Question of policy or no' to be decided by the Central Government [Section 18(2)]

The decision of the Central Government, whether a question is one of policy or not, shall be final.

3. Whether appointment of Controller of Insurance is Compulsory? Explain.

Answer:

The provisions relating to appointment of Controller of Insurance is explained as below:

1. Appointment on supersession of IRDA [Section 2B(1)]

If at any time, the Authority is superseded under sub-section (1) of section 19 of the Insurance Regulatory and Development Authority Act, 1999, the Central Government may, by notification in the Official Gazette, appoint a person to be the Controller of Insurance till such time the Authority is reconstituted under section 19(3) of the said Act.



2. Factors to be considered at the time of appointment of Controller of Insurance [Section 28(2)]
 In making any appointment of Controller of Insurance, the Central Government shall have due regard to the following considerations, namely, whether the person, to be appointed has had experience in industrial, commercial or insurance matters and whether such person has actuarial qualification.

4. What shall be the composition of the Insurance Regulatory and Development Authority?

Answer:

The composition of the Authority may be explained as follows:

1. Chairperson and Members [Section 4(1)] ✓

The Authority shall consist of the following members, namely:

- (a) a Chairperson;
 (b) not more than 5 whole time members;
 (c) not more than 4 part-time members,

} Total 10

to be appointed by the Central Government from amongst persons of ability, integrity and standing who have knowledge or experience in life insurance, general insurance, actuarial science, finance, economics, law, accountancy, administration or any other discipline which would, in the opinion of the Central Government, be useful to the Authority.

2. Requirement as to specialised areas [Section 4(2)]

The Central Government shall, while appointing the Chairperson and the whole-time members, ensure that at least one person each is a person having knowledge or experience in life insurance, general insurance or actuarial science, respectively.

5. Explain the Provisions relating to transfer of assets and liabilities of Interim Insurance Regulatory Authority.

Answer:

The provisions relating to transfer of assets and liabilities of Interim Insurance Regulatory Authority, as contained in section 13, are as follows:

On the appointed day, -

- (a) all the assets and liabilities of the Interim Insurance Regulatory Authority shall stand transferred to, and vested in, the Authority.

Explanation:- The assets of the Interim Insurance Regulatory Authority shall be deemed to include all rights and powers, and all properties, whether movable or immovable, including, in particular, cash balances, deposits and all other interests and rights in, or arising out of, such properties as may be in the possession of the Interim Insurance Regulatory Authority and all books of account and other documents relating to the same; and liabilities shall be deemed to include all debts, liabilities and obligations of whatever kind;

- (b) without prejudice to the provisions of clause (a), all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the Interim Insurance Regulatory Authority immediately before that day, for or in connection with the purpose of the said Regulatory Authority, shall be deemed to have been incurred, entered into or engaged to be done by, with or for, the Authority;
- (c) all sums of money due to the Interim Insurance Regulatory Authority immediately before that day shall be deemed to be due to the Authority; and
- (d) all suits and other legal proceedings instituted or which could have been instituted by or against the Interim Insurance Regulatory Authority immediately before that day may be continued or may be instituted by or against the Authority.

6. Section 14(2) of the Insurance Regulatory and Development Authority Act, 1999 specifies the powers and functions of the Insurance Regulatory and Development Authority. List out those powers and functions of the Authority.

Answer:

The powers and functions of the Insurance Regulatory and Development Authority shall include,—

- (i) issue to the applicant a certificate of registration, renew, modify, withdraw, suspend or cancel such registration;



- (ii) protection of the interests of the policy-holders in matters concerning assigning of policy, nomination by policy-holders, insurable interest, settlement of insurance claim, surrender value of policy and other terms and conditions of contracts of insurance;
- (iii) specifying requisite qualifications, code of conduct and practical training for intermediery or insurance intermediaries and agents;
- (iv) specifying the code of conduct for surveyors and loss assessors;
- (v) promoting efficiency in the conduct of insurance business;
- (vi) levying fees and other charges for carrying out the purposes of this Act;
- (vii) calling for information from, undertaking inspection of, conducting inquiries and investigations including audit of the insurers, intermediaries, insurance intermediaries and other organisations connected with the insurance business;
- (viii) specifying the form and manner in which books of account shall be maintained and statement of accounts shall be rendered by insurers and other insurance intermediaries;
- (ix) regulating investment of funds by insurance companies;
- (x) regulating maintenance of margin of solvency;
- (xi) adjudication of disputes between insurers and intermediaries of insurance intermediaries;
- (xii) supervising the functioning of the Tariff Advisory Committee
- (xiii) specifying the percentage of life insurance business and general insurance business to be undertaken by the insurer in the rural or social sector; and
- (xiv) exercising such other powers as may be prescribed.

7. What are the powers of the Central Govt. under IRDA Act, 1999? Can Central Govt. supersede the IRDA?

Answer:

1. Power of Central Government to issue directions [Section 18]

- (1) Without prejudice to the foregoing provisions of this Act, the Authority shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy, other than those relating to technical and administrative matters, as the Central Government may give in writing to it from time to time:

Provided that the Authority shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

- (2) The decision of the Central Government, whether a question is one of policy or not, shall be final.

2. Power of Central Government to supersede Authority [Section 19]

- (1) if, at any time, the Central Government is of the opinion:

- (a) that, on account of circumstances beyond the control of the Authority, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or
- (b) that the Authority has persistently defaulted in complying with any direction given by the Central Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Authority or the administration of the Authority has suffered; or
- (c) that circumstances exist which render it necessary in the public interest so to do, the Central Government may, by notification and for reasons to be specified therein, supersede the Authority for such period, not exceeding six months, as may be specified in the notification and appoint a person to be the Controller of Insurance under section 2-B of the Insurance Act, 1938 (4 of 1938), if not already done:

Provided that before issuing any such notification, the Central Government shall give a reasonable opportunity to the Authority to make representations against the proposed supersession and shall consider the representations, if any, of the Authority.

- (2) Upon the publication of a notification under sub-section (1) superseding the Authority:

- (a) the Chairperson and other members shall, as from the date of supersession, vacate their offices as such;



- (b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Authority shall, until the Authority is reconstituted under sub-section (3), be exercised and discharged by the Controller of Insurance; and
- (c) all properties owned or controlled by the Authority shall, until the Authority is reconstituted under sub-section (3), vest in the Central Government.
- (3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government shall reconstitute the Authority by a fresh appointment of its Chairperson and other members and in such case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed disqualified for re-appointment.
- (4) The Central Government cause a copy of the notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

3. Power to make rules [Section 24]

- (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:
 - (a) the salary and allowances payable to, and other terms and conditions of service of, the members other than part-time members under sub-section (1) of section 7;
 - (b) the allowances to be paid to the part-time members under sub-section (2) of section 7;
 - (c) such other powers that may be exercised by the Authority under clause (a) of sub-section (2) of section 14;
 - (d) the form of annual statement of accounts to be maintained by the Authority under sub-section (1) of section 17;
 - (e) the form and the manner in which and the time within which returns and statements and particulars are to be furnished to the Central Government under sub-section (1) of section 20;
 - (f) the matters under sub-section (5) of section 25 on which the Insurance Advisory Committee shall advise the Authority;
 - (g) any other matter which is required to be, or may be, prescribed, or in respect of which provision is to be or may be made by rules.

4. Power to remove difficulties [Section 29]

- (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:
Provided that no order shall be made under this section after the expiry of two years from the appointed day.
- (2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Note:

(a) Rules and regulations to be laid before Parliament [Section 27]

Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of 30 days which may be comprised in one session or in 2 or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

(b) Application of other laws not barred [Section 28]

The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.



Chapter 7

LAWS RELATED TO POWER SECTOR

1. What are the qualifications to be appointed as members of Central Commission as per The Indian Electricity Act, 2003? Also state the functions of the Central Commission.

Answer:

Qualification for appointment of Members of Central Commission [Section 77]:

1. The Chairperson and the Members of the Central Commission shall be persons having adequate knowledge of, or experience in, or shown capacity in, dealing with, problems relating to engineering, law, economics, commerce, finance or, management and shall be appointed in the following manner, namely:
- (a) one person having qualifications and experience in the field of engineering with specialisation in generation, transmission or distribution of electricity;
 - (b) one person having qualifications and experience in the field of finance;
 - (c) two persons having qualifications and experience in the field of economics, commerce, law or management;

Provided that not more than one Member shall be appointed under the same category under clause (c).

2. Notwithstanding anything contained in sub-section (1), the Central Government may appoint any person as the Chairperson from amongst persons who is, or has been, a Judge of the Supreme Court or the Chief Justice of a High Court;

Provided that no appointment under this sub-section shall be made except after consultation with the Chief Justice of India → SC

3. The Chairperson or any other Member of the Central Commission shall not hold any other office.
4. The Chairperson shall be the Chief Executive of the Central Commission.

Functions of Central Commission [Section 79]:

1. The Central Commission shall discharge the following functions, namely:
- (a) to regulate the tariff of generating companies owned or controlled by the Central Government;
 - (b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;
 - (c) to regulate the inter-State transmission of electricity;
 - (d) to determine tariff for inter-State transmission of electricity;
 - (e) to issue licenses to persons to function as transmission licensee and electricity trader with respect to their inter-State operations;
 - (f) to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;
 - (g) to levy fees for the purposes of this Act;
 - (h) to specify Grid Code having regard to Grid Standards;

- (i) to specify and enforce the standards with respect to quality, continuity and reliability of service by licensees;
 - (j) to fix the trading margin in the inter-State trading of electricity, if considered, necessary;
 - (k) to discharge such other functions as may be assigned under this Act.
2. The Central Commission shall advise the Central Government on all or any of the following matters, namely:
 - (a) formulation of National electricity Policy and tariff policy;
 - (b) promotion of competition, efficiency and economy in activities of the electricity industry;
 - (c) promotion of investment in electricity industry;
 - (d) any other matter referred to the Central Commission by that Government.
 3. The Central Commission shall ensure transparency while exercising its powers and discharging its functions.
 4. In discharge of its functions, the Central Commission shall be guided by the National Electricity Policy, National Electricity Plan and Tariff Policy published under section 3.

Money Laundering Definition
 who so ever directly (or) indirectly
 * attempts to indulge or
 * knowingly assists or
 * knowingly is a party or
 is actually involved
 in any process (or) activity connected
 with the proceeds of crime and
 projecting it as untainted property
 shall be guilty of offence of money
 Laundering.

Proceeds of Crime
 It means any property derived (or) obtained
 directly (or) indirectly by any person as a
 result of criminal activity relating to a
 Scheduled offence (or) the value of any such
 property

Punishment for money Laundering
 Imprisonment which shall not be less than
 3 years but which may extend to 7 years
 and shall also liable to fine which may
 extend to ₹ 5 Lakh.

Penalty under FEMA
 (i) upto 3 times the sum involved in the contravention
 ii) upto 2,00,000 → If Amt is not quantifiable
 iii) upto 5000 per day — where contravention
 is continuing.

Chapter 8

CORPORATE GOVERNANCE

1. What is Corporate Governance? What is the need for Corporate Governance in India?

Answer:

Corporate governance is;

- ✓ The system by which companies are directed and controlled - The Cadbury Report, 1992.
- ✎ The process of supervision and control intended to ensure that the company's management acts in accordance with the interests of shareholders - Parkinson, 1994.
- Corporate Governance is the acceptance by management of the inalienable rights of shareholders as the true owners of the corporation and of their own role as trustees on behalf of the shareholders. It is about commitment to values, about ethical business conduct and about making a distinction between personal and corporate funds in the management of a company - Report of N.R.Narayana Murthy Committee on Corporate Governance constituted by SEBI (2003).

Need for Corporate Governance:

Corporate Governance is integral to the existence of the company. It is needed to create a corporate culture of transparency, accountability and disclosure.

- **Corporate Performance:** Improved governance structures and processes help ensure quality decision-making, encourage effective succession planning for senior management and enhance the long-term prosperity of companies, independent of the type of company and its sources of finance.
- **Enhanced Investor Trust:** Investors consider Corporate Governance as important as financial performance when evaluating companies for investment.
- **Combating Corruption:** Companies that are transparent, and have sound system that provide full disclosure of accounting and auditing procedures, allow transparency in all business transactions, provide environment where corruption will certainly fade out.
- **Better Access to Global Market:** Good Corporate Governance systems attracts investment from global investors, which subsequently leads to greater efficiencies in the financial sector.
- **Enhancing Enterprise Valuation:** Improved management accountability and operational transparency fulfill investors' expectations and confidence on management and corporations, and return, increase the value of corporations.
- **Accountability:** Investor relations' is essential part of good Corporate Governance. Investors have directly/indirectly entrusted management of the company for creating enhanced value for their investment.
- **Easy Finance from Institutions:** Evidence indicates that well-governed companies receive higher market valuations.
- **Reduced Risk of Corporate Crisis and Scandals:** Effective Corporate Governance ensures efficient risk mitigation system in place.

2. Mention the core elements of CSR Policy as per the CSR Voluntary Guidelines 2009.

Answer:

The CSR Policy should normally cover following core elements:

1. Care for all Stakeholders

The companies should respect the interests of, and be responsive towards all stakeholders, including shareholders, employees, customers, suppliers, project affected people, society at large etc. and create value for all of them. They should develop mechanism to actively engage with all stakeholders, inform them of inherent risks and mitigate them where they occur.

2. Ethical functioning

Their governance systems should be underpinned by Ethics, Transparency and Accountability. They should not engage in business practices that are abusive, unfair, corrupt or anti-competitive.

3. Respect for Workers' Rights and Welfare

Companies should provide a workplace environment that is safe, hygienic and humane and which upholds the dignity of employees. They should provide all employees with access to training and development of necessary skills for career advancement, on an equal and non-discriminatory basis. They should uphold the freedom of association and the effective recognition of the right to collective bargaining of labour, have an effective grievance redressal system, should not employ child or forced labour and provide and maintain equality of opportunities without any discrimination on any grounds in recruitment and during employment.

4. Respect for Human Rights

Companies should respect human rights for all and avoid complicity with human rights abuses by them or by third party.

5. Respect for Environment

Companies should take measures to check and prevent pollution; recycle, manage and reduce waste, should manage natural resources in a sustainable manner and ensure optimal use of resources like land and water, should proactively respond to the challenges of climate change by adapting cleaner production methods, promoting efficient use of energy and environment friendly technologies.

6. Activities for Social and Inclusive Development

Depending upon their core competency and business interest, companies should undertake activities for economic and social development of communities and geographical areas, particularly in the vicinity of their operations. These could include: education, skill building for livelihood of people, health, cultural and social welfare etc., particularly targeting at disadvantaged sections of society.

3. Write short notes on:

- (i) Corporate Governance in USA
- (ii) Corporate Governance in Japan

Answer:

(i) CORPORATE GOVERNANCE IN USA

Corporate governance in the U.S. has changed dramatically since 1980. As a number of business and finance scholars have pointed out, the corporate governance structures in place before the 1980s gave the managers of large public U.S. corporations little reason to make shareholder interests their primary focus. Before 1980, corporate managements tended to think of themselves as representing not the shareholders, but rather "the corporation." In this view, the goal of the firm was not to maximize shareholder wealth, but to ensure the growth (or at least the stability) of the enterprise by "balancing" the claims of all important corporate "stakeholders"--employees, suppliers, and local communities, as well as shareholders.

The external governance mechanisms available to dissatisfied shareholders were seldom used. Raiders and hostile takeovers were relatively uncommon. Proxy fights were rare and didn't have much chance of succeeding. And corporate boards tended to be cozy with and dominated by management, making board oversight weak.

Corporate Governance developments in USA:

- 1977 – The Foreign Corrupt Practices Act
- 1979 – US Securities Exchange Commission
- 1985 – Treadway Commission
- 1992 – COSO issued Internal Control – Integrated Framework
- 2002 – Sarbanes – Oxley Act
- The Dodd-Frank Wall Street Reform and Consumer Protection Act, 2010
- Updates to its U.S. Corporate Governance Policy (the "2013 Updates")



(ii) CORPORATE GOVERNANCE IN JAPAN

Japan's economy developed very rapidly during the second half of the twentieth century. Particularly during the period 1985-89, there was a 'bubble economy', characterized by a sharp increase in share prices and the value of land: the early 1990s saw the bubble burst as share prices fell and land was devalued, as well as shareholders and landowners finding themselves losing vast fortunes, banks found that they had severe problems too. The Japanese government wished to restore confidence in the Japanese economy and in the stock market, and to attract foreign direct investment to help regenerate growth in companies. Improved corporate governance was seen as a very necessary step in this process.

Japan's Corporate Governance System is often likened to that of Germany because banks can play an influential role in companies in both countries. However, there are fundamental differences between the systems, driven partly by culture and partly by the Japanese shareholding structure with the influence of the keiretsu (broadly, associations of companies). Charkham (1994) sums up three main concepts that affect Japanese attitudes towards Corporate Governance: obligation, family, and consensus.

The Japan Corporate Governance Committee published its revised Corporate Governance Code in 2001. The code had six chapters, which contained a total of 14 principles.

Summary of key characteristics influencing Japanese Corporate Governance

Feature	Key characteristic
Main business form	Public limited company
Predominant ownership structure	Keiretsu; but institutional investor ownership is increasing
Legal system	Civil Law
Board structure	Dual
Important aspect	Influence of keiretsu

In 2004, the Tokyo Stock Exchange issued the *Principles of Corporate Governance for Listed Companies*. Charkham (2005) discusses the various changes that have taken place in the context of Corporate Governance in Japan and states:

The important part the banks played has greatly diminished. In its place there are now better structured boards, more effective company auditors, and occasionally more active shareholders, an increase of interest, and, where appropriate, action on their part, might restore the balance that the banks' withdrawal from the scene has impaired.

In 2008, the Asian Corporate Governance Association (ACGA) published its 'White Paper on Corporate Governance in Japan'. It states, while a number of leading companies in Japan have made strides in corporate governance in recent years, we submit that the system of governance in most listed companies is not meeting the needs of stakeholders or the nation at large in three ways:

- By not providing for adequate supervision of corporate strategy;
- By protecting management from the discipline of the market, thus rendering the development of a healthy and efficient market in corporate control all but impossible;
- By failing to provide the returns that are vitally necessary to protect Japan's social safety net- its pension system.

It then advocates six areas for improvement: shareholders acting as owners; utilizing capital efficiently; independent supervision of management; pre-emption rights; poison pills and takeover defences; shareholder meetings and voting.

4. The concept of Memorandum of Understanding (MoU) has been designed to provide flexibility and autonomy to CPSEs such that it facilitates them in pursuing the objectives and purposes, for which the enterprises have been set up."

In the light of the above statement, explain the concept of MoU in India.

Answer:

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 strengthened, through regular reviews, to become a management tool that helps in performance evaluation as well as performance enhancement of CPSEs in the country.



The concept of Memorandum of Understanding (MoU) has been designed to provide flexibility and autonomy to Central Public Sector Enterprises (CPSEs) such that it facilitates them in pursuing the objectives and purposes, for which the enterprises have been set up. Accountability has to be understood in a wider sense by associating it with answerability for the performance of the tasks and the achievement of targets negotiated mutually between the Government and the CPSE. The rationale for MoU could be derived from principal/agent theory. The principal (administrative ministry on behalf of real owners - the people) can only observe outcomes and cannot measure accurately the efforts expended by the agent (CPSE managers). Also the Principal can only, to a limited extent, distinguish the effects of influences from other factors, which affect the performance. Therefore extensive intervention by administrators, who might not be too knowledgeable about the nature of problems confronting the enterprises, not only impacts productivity and profitability but also makes it impossible to fix accountability for non-achievement of targets.

A negotiated incentive contract (MoU), hence, is viewed as a device to reveal information and motivate managers to exert effort. Notwithstanding the spectacular performance of CPSEs in several areas, there has been a sense of disillusionment with some aspects of CPSE performance such as low profitability and lack of competitiveness. The extensive regulation of CPSEs by government had stifled the initiative and growth of public sector. The Economic Administration Reforms Commission (Chairman: L. K. Jha) had dwelt on issue of autonomy and accountability. The Commission had recommended a careful re-consideration of extant concepts and instrumentalities relating to the accountability of public enterprises with a view to ensuring (a) that they do not erode the autonomy of public enterprises and thus hampers the very objectives and purposes for which these enterprises have been set up and given corporate shape and for which they are to be accountable; and (b) accountability has to be secured in the wider sense of answerability for the performance of tasks and achievements of results. The adoption of MoU system in India could be seen as an attempt to operationalize this very vital recommendation.

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 (Mondal, 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:

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

5. 'Corporate Governance is about promoting fairness; Is it truly beneficial?

Answer:

Corporate Governance deals with promoting corporate fairness, transparency and accountability. It is concerned with structures and processes for decision-making, accountability, control and behavior at the top level of the organizations. It influences how the objectives of an organization are set and achieved, how risk is monitored and assessed and how performance is optimized. It is truly beneficial and it has the following benefits:

1. Improved Financial Performance: Socially responsible business practices are linked to positive financial performance.
2. Operating Cost Reduction: CSR initiatives can help to reduce operating costs.
3. Brand Image and Reputation: CSR helps a company to increase its brand image and reputation among the public, which in turn increase its ability to attract investors and trading partners. Proactive CSR Practices would lead to a favourable public image resulting in various positive outcomes like consumer and retailer loyalty, easier acceptance of new products and services, market access and preferential allocation of investment funds.



4. Increased Sales & Customer Loyalty: Businesses must first satisfy customer's key buying criteria, i.e., price, quality, safety and convenience.
5. Productivity and Quality: Improved working conditions, reduced environmental impacts or increased employee involvement in decision-making, leads to (a) increased productivity, and (b) reduced errors.
6. Ability to attract and retain employees: Companies perceived to have strong CSR commitments find it easier to recruit and retain employees, resulting in reduction in turnover and associated recruitment and training costs.

6. Write a short note on Memorandum of Understanding and Public Sector Enterprises.

Answer:

Memorandum of Understanding and Public Sector Enterprises:

After Independence, Public Sector Enterprises (PSEs) were set up in India with an objective to promote rapid economic development through the creation and expansion of infrastructure by the government. With different phases of development, the role of PSEs has changed and their operations have extended to a wide range of activities in manufacturing, engineering, steel, heavy machinery, machine tools, fertilizers, drugs, textiles, pharmaceuticals, petro-chemicals, extraction and refining of crude oil and services such as telecommunication, trading, tourism, warehousing, etc. as well as a range of consultancy services. While there have been many PSEs that have performed very well in competition with private sector enterprises, there are also many PSEs that have performed very poorly. In an economic environment that has changed considerably in the last two decades, the role of PSEs has changed and they have been increasingly guided to reduce their dependence on the Government. They have been listed on the stock exchange and few of them have been privatized. The Government has provided PSEs the necessary flexibility and autonomy to operate effectively in a competitive environment. However, there are a few issues with the operation and management of PSEs which still persist and need to be attended to. There is a need to develop a mechanism on how government can get an efficient Indian presence in the sectors, where the private sector investments are not forthcoming especially in strategic areas where developing capabilities is essential if India has to play its rightful role among the nations of the world.

7. Discuss the difficulties faced in Governance by state owned businesses.

Answer:

Difficulties Encountered in Governance in state owned businesses

Routine governance regulations become applicable for public sector companies formed under the Companies Act, 1956 and come under the purview of SEBI regulations the moment they mobilize funds from the public. The typical organizational structure of PSUs makes it difficult for the implementation of corporate governance practices as applicable to other publicly-listed private enterprises. The typical difficulties faced are:

The board of directors will comprise essentially bureaucrats drawn from various ministries which are interested in the PSU. In addition, there may be nominee directors from banks or financial institutions who have loan or equity exposures to the unit. The effect will be to have a board much beyond the required size, rendering decision-making a difficult process.

The chief executive or managing director (or chairman and managing director) and other functional directors are likely to be bureaucrats and not necessarily professionals with the required expertise. This can affect the efficient running of the enterprise.

Difficult to attract expert professionals as independent directors. The laws and regulations may necessitate a percentage of independent components on the board; but many professionals may not be enthused as there are serious limitations on the impact they can make.

Due to their very nature, there are difficulties in implementing better governance practices. Many public sector corporations are managed and governed according to the whims and fancies of politicians and bureaucrats. Many of them view PSUs as a means to their ends. A lot of them have turned sick due to overdoses of political interference, even when their areas of operations offered enormous opportunities for advancement and growth. And when the economy was opened up, many of them lacked the competitiveness to fight it out with their counterparts from the private sector.



8. What are the requirements to strengthen corporate Governance?

Answer:

Requirements to strengthen corporate governance

The following are some of the requirements meant for strengthening corporate governance:

1. Enforcement of rights by minority shareholders: Shareholders activism have to be encouraged so as to enhance the shareholders' value in the long run.
2. Quality of audit: There is an imperative need on the part of the Government to strengthen the quality of audit so as to make the Auditor accountable for the disclosure of information in the annual reports and to monitor the working of Audit Firms.
3. Ensuring the independence of directors: An appropriate and acceptable system has to be designed to ensure the independence of directors to discharge their duties as per the requirements of the law.
4. Awareness for adoption of corporate governance practices: Efforts have to be made for propagation of corporate governance norms amongst entrepreneurs for better compliance.
5. Amendment to bankruptcy laws: There is a need to amend bankruptcy laws for prompt implementation of provisions.
6. Accountability of the board to stakeholders: The Board of Directors as well as the CEOs and CFOs are made accountable for the discharge of their duties with the proper use of their rights within the powers.
7. Upgrading the efficacy of systems: Adequate care has to be exercised to ensure the quality and effectiveness of the legal, administrative and regulatory framework.
8. Report on corporate governance: To make a statutory compliance for the listed companies to compulsorily obtain a report on Corporate Governance Rating (CGR) from a Credit Rating Agency in India.

9. What are the important legislations that govern corporate governance in India?

Answer:

The following are some of the important legislations that govern corporate governance:

The Companies Act, 1956

The Companies Act, 1956 is the principal legislation that governs the companies. Its objectives are:

- Standard of business integrity
- Conduct in the promotion and management of companies
- Disclosure of all reasonable information relating to the affairs of the company
- Effective participation
- Shareholders and their protection of interest
- Performance and management
- Governance

The Competition Act, 2002

The objectives of the Competition Act, 2002 include:

- Prohibition of anti-competitive agreements
- Prohibition of abuse of dominant position
- Regulation of combination.

The Securities and Exchange Board of India (SEBI) Act, 1992

SEBI has been instituted by the Securities and Exchange Board of India Act, 1992 with the following objectives:

- Protect the interests of investors or securities
- Promote the development of the securities market



- Regulate the securities market
- Investors' education
- Regulation of intermediaries
- Protect investors against unfair and fraudulent trade practices
- Provide a grievance redressal mechanism

The Foreign Exchange Management Act (FEMA), 1999

The Foreign Exchange Management Act, 1999 came into effect on June 1, 2000 and it replaced the Foreign Exchange Regulation Act (FERA), 1973. While the objective of FERA was to conserve the foreign exchange resources, FEMA facilitated external trade and payments and promoted orderly maintenance of the foreign exchange market in India. The highlights of the new Act are given below:

1. FEMA is more transparent in its application. It has laid down the areas where specific permission of the Reserve Bank/Government of India is required. A person can, thus, remit funds, acquire assets, and incur liability in accordance with the specific provisions laid down in the Act or the notifications issued by the Reserve Bank/Government of India under the Act without seeking approval of Reserve Bank/ Government of India.
2. Application of FEMA may be seen broadly from two angles: (i) capital account transactions and (ii) current account transactions, capital account transactions will be regulated by the Reserve Bank and they relate to movement of capital, e.g. transactions in property and investments, and lending and borrowing money. Current account transactions are those which do not fall in the capital account category. They which are permitted freely subject to a few restrictions as given below:
 - (a) RBI permission would be required when they exceed a certain ceiling.
 - (b) Need permission of Government of India appropriate authority irrespective of the amount.
 - (c) There are seven types of current account transactions which are prohibited and no transaction can, therefore, be undertaken relating to them. These include transactions relating to lotteries, football pools, and banned magazines.

Significant features: The Foreign Exchange Management Act and Rules give full freedom to a person resident in India who was earlier resident outside India to hold or own or transfer any foreign security, shares or immovable property situated outside India and acquired when he/she was resident there. Similar freedom is also given to a resident who inherits such security or immovable property from a person resident outside India. The exchange drawn can also be used for purposes other than for which it is drawn provided drawal of exchange is otherwise permitted for such purpose. Certain prescribed limits have been substantially enhanced. For instance, residents now going abroad for business purposes or for participating in conferences/seminars will not need Reserve Bank's permission to avail foreign exchange up to US\$ 25,000 per trip irrespective of the period of stay; basic travel quota has been increased from the existing US\$ 3000 to US\$ 5000 per calendar year.

The Foreign Contribution (Regulation) Act, 1976

The foreign contribution (Regulation) Act, 1976 has been brought in to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain persons or associations. The purpose of the regulation is to ensure that parliamentary institutions, political associations, academic and other voluntary organisations as well as individuals working in the important areas of national life function in a manner consistent with the values of the Sovereign Democratic Republic. The Act extends to the whole of India, in addition to the:

- (a) citizens outside India, and
- (b) associates, branches or subsidiaries outside India, of companies or bodies corporate, registered or incorporated in India.

The Consumer Protection Act, 1986

Consumer is a stakeholder of a company who deals with the company's product or services. It is the responsibility of the government to protect their interest and rights. The basic objectives of the consumer protection Act, 1986 are:

- The right to be protected against marketing of goods and services which are hazardous to life and property
- The right to be informed about the quality, quantity, purity, standard, and price of goods or services
- Protect the consumer against unfair trade practices
- Consumer education
- Consumer redressal



The Environment (Protection) Act, 1986

Environmental degradation has become a very serious issue in recent years. The need for covering all aspects of the environment resulted in the enactment of the Environment (Protection) Act, 1986. This need has been internationally recognised and a decision to protect and improve environment was taken at the United Nations Conference on Human Environment at Stockholm in June 1972. The mankind has been exploiting, using and abusing earth for centuries. Rapid industrialisation and population explosion are the key factors for environmental degradation. If the environmental pollution is not checked or controlled, the quality of life will deteriorate and earth would become uninhabitable. Environmental legislation intends to control the environmental degradation to improve quality of life and health of the inhabitants.

10. List out the key features of the Kumar Mangalam Birla Committee's Report on Corporate Governance.

Answer:

The Kumar Mangalam Birla Committee Report

- Strengthening of disclosure norms for initial public offer
- Providing information in Director's report for utilisation of funds
- Declaration of quarterly results
- Mandatory appointment of Compliance Officer
- Disclosure of material and price-sensitive information
- Disclosure of material events
- Copy of abridged balance sheet to all shareholders
- Guidelines for preferential allotment
- Regulation for fair and transparent framework for takeovers and substantial acquisition
- Audit committee
- Frequency of meetings and quorum
- Independent, and Nominee Directors in the Board

11. Describe the role of stock exchange in Corporate Governance.

Answer:

Stock exchanges have established themselves as promoters of corporate governance recommendations for listed companies. Demutualisation and the subsequent self-listing of exchanges have spurred debate on the role of exchanges. The conversion of exchanges to listed companies is thought to have intensified competition. And, the sharper competition has forced the question of whether there is a risk of a regulatory "race to the bottom".

Also exchanges are uneasy about the prospect of having to continue performing their traditional regulatory and other corporate governance enhancing functions amid a shrinking revenue base. Therefore extension of role and wider responsibility are always welcome.

Following points show relevance of role of Stock Exchanges' in the Corporate Governance:

1. Stock exchanges in the region developing rapidly; new exchanges being established
2. Stock exchanges remain government owned entities
3. CG codes proliferating, some no longer voluntary
4. Regulatory or enforcement powers of exchanges limited
5. Room for strengthening of listing rules
6. Disclosure of listed companies requires further attention
7. No evidence of race to the bottom, need to align with industry peers

THE TRADITIONAL ROLE OF EXCHANGES IN CORPORATE GOVERNANCE

Historically, the main direct contribution of exchanges to corporate governance has been listing and disclosure standards and monitoring compliance. The regulatory function of stock exchanges was in the past mostly limited to issuing rules and clarifying aspects of existing frameworks. The standard-setting role of stock exchanges was essentially exercised through the issuance of listing, ongoing disclosure, maintenance and de-listing requirements. On the enforcement side, stock exchanges have shared their regulatory function with capital market supervisory agencies. In addition to overseeing their own rules, stock exchanges were assigned the role of monitoring the compliance with legislation and subsidiary securities regulation. Since the promulgation of the SEBI, stock exchanges have often enlarged their regulatory role to embrace a wider palette of corporate governance concerns. They have contributed to the development of corporate governance recommendations and encouraged their application to listed companies. The objective of the following part of the article is to summarize these key channels for exchanges' contributions to good corporate governance in listed companies.

THE EVOLVING ROLE OF EXCHANGES IN RESPECT OF CORPORATE GOVERNANCE

1. Exchanges act as a source of corporate governance related regulation

Exchanges provide complementary rationales for establishing themselves as a source of corporate governance-related regulations. In essence, by raising transparency and discouraging illegal or irregular practices, exchanges act as regulatory authorities. The regulatory function of exchanges is exercised in the context of an existing legal framework. Exchanges' ability to introduce and enforce regulations is obviously circumscribed by the authority of the relevant market regulators. To the extent that the relevant laws or securities regulation already address corporate governance of listed companies, the role of exchange regulation can therefore only be complementary. For instance, rules on prospectus issuance follow largely from SEBI Prospectus Directive which may have further limited the scope of standards setting by exchanges. Even in jurisdictions where exchanges are empowered to issue regulations, they may be subject to an approval by another regulatory authority, e.g., in the India, proposed changes to exchange rules must be filed with the SEBI.

2. Exchanges played a central role in the effective implementation of national corporate governance codes

"Corporate Governance is concerned with holding the balance between economic and social goals and between individual and communal goals. The corporate governance framework is there to encourage the efficient use of resources and equally to require accountability for the stewardship of those resources. The aim is to align as nearly as possible the interests of individuals, corporations and society." One of the first among such endeavors was the CII Code for Desirable Corporate Governance developed by a committee chaired by Rahul Bojaj. The committee was formed in 1996 and submitted its code in April 1998. Later SEBI constituted two committees to look into the issue of corporate governance – the first chaired by Kumar Mangaloom Birla that submitted its report in early 2000 and the second by Narayana Murthy three years later. The SEBI committee recommendations have had the maximum impact on changing the corporate governance situation in India. The Narayana Murthy committee worked on further refining the rules. The Exchange has brought about unparalleled transparency, speed & efficiency, safety and market integrity. It has set up facilities that serve as a model for the securities industry in terms of systems, practices and procedures.

3. Compliance requirements

Listed companies have to comply with rules and regulations of concerned stock exchange and work under the vigilance (i.e. supervision) of stock exchange authorities. Clause 49 of the listing agreement with stock exchanges provides the code of corporate governance prescribed by SEBI for listed Indian companies. With the introduction of clause 49, compliance with its requirements is mandatory for such companies. Exchanges have played a pioneering role in the development of the Indian securities market.

4. Awareness raising efforts have also played a role

Some exchanges have been actively involved in increasing the awareness around the value of good corporate governance. For instance, The National Stock Exchange (NSE) a leading stock exchange covering various cities and towns across the country has established & organized training sessions and other educational projects in order to increase the awareness of securities market & good governance practices and the Code of Best Practice for Listed Companies. Such programmes not only serve the general public but also require corporates to maintain good governance in light of investor awareness. In the same way an equally important accomplishment of BSE Limited is its nationwide investor awareness campaign - "Safe Investing in the Stock Market" under which awareness campaigns and dissemination of information through print and electronic medium is undertaken across the country. BSE Limited also actively promotes the securities market awareness campaign of the Securities and Exchange Board of India.



12. Why Corporate Governance is required in Banks?

Answer:

If we examine the need for improving corporate governance in banks, two reasons stand out: (i) Banks exist because they are willing to take on and manage risks. Besides, with the rapid pace of financial innovation and globalisation, the face of banking business is undergoing a sea-change. Banking business is becoming more complex and diversified. Risk taking and management in a less regulated competitive market will have to be done in such a way that investors' confidence is not eroded, (ii) Even in a regulated set-up, as it was in India prior to 1991, some big banks in the public sector and a few in the private sector had incurred substantial losses. This, along with the massive failures of non-banking financial Companies (NBFCs), had adversely impacted investors' confidence.

Moreover, protecting the interests of depositors becomes a matter of paramount importance to banks. In other corporates, this is not and need not be so for two reasons: (i) The depositors collectively entrust a very large sum of their hard-earned money to the care of banks. It is found that in India, the depositor's contribution was well over 15.5 times the shareholders' stake in banks as early as in March 2001. This is bound to be much more now. (ii) The depositors are very large in number and are scattered and have little say in the administration of banks. In other corporates, big lenders do exercise the right to direct the management. In any case, the lenders' stake in them might not exceed 2 or 3 times the owners' stake.

Banks deal in people's funds and should, therefore, act as trustees of the depositors. Regulators the world over have recognised the vulnerability of depositors to the whims of managerial misadventures in banks and, therefore, have been regulating banks more lightly than other corporates.

To sum up, the objective of governance in banks should first be protection of depositors' interests and then be to "optimise" the shareholders' interests. All other considerations would fall in place once these two are achieved.

As part of its ongoing efforts to address supervisory issues, the Basel Committee on Banking Supervision (BCBS) has been active in drawing from the collective supervisory experience of its members and other supervisors in issuing supervisory guidance to foster safe and sound banking practices. The committee was set up to reinforce the importance for banks of the OECD principles, to draw attention to corporate governance issues addressed by previous committees, and to present some new topics related to corporate governance for banks and their supervisors to consider.

Banking supervision cannot function effectively if sound corporate governance is not in place and, consequently, banking supervisors have a strong interest in ensuring that there is effective corporate governance at every banking organisation. Supervisory experience underscores the necessity of having the appropriate levels of accountability and checks and balances within each bank. Put plainly, sound corporate governance makes the work of supervisors infinitely easier. Sound corporate governance can contribute to a collaborative working relationship between bank management and bank supervisors.

13. What are the difficulties encountered in governance in state owned business ?

Answer:

While routine governance regulations become applicable for public sector companies formed under the Companies Act, 1956 and come under the purview of SEBI regulations the moment they mobilize funds from the public, the typical organizational structure of PSUs makes it difficult for the implementation of corporate governance practices as applicable to other publicly-listed private enterprises. The typical difficulties faced are:

- The board of directors will comprise essentially of bureaucrats drawn from various ministries which are interested in the PSU. In addition, there may be nominee directors from banks or financial institutions who have loan or equity exposures to the unit. The effect will be to have a board much beyond the required size, rendering decision-making a difficult process.
- The chief executive or managing director (or chairman and managing director) and other functional directors are likely to be bureaucrats and not necessarily professionals with the required expertise. This can affect the efficient running of the enterprise.
- Difficult to attract expert professionals as independent directors. The laws and regulations may necessitate a percentage of independent component on the board; but many professionals may not be enthused as there are serious limitations on the impact they can make.
- Due to their very nature, there are difficulties in implementing better governance practices. Many public sector corporations are managed and governed according to the whims and fancies of politicians and bureaucrats. Many of them view PSUs as a means to their ends. A lot of them have turned sick due to overdoses of political



interference, even when their areas of operations offered enormous opportunities for advancement and growth. And when the economy was opened up, many of them lacked the competitiveness to fight it out with their counterparts from the private sector.

14. Write short note on Corporate Citizenship.

Answer :

A new terminology that has been gaining grounds in the business community today is Corporate Citizenship. So what is corporate citizenship and is this fundamentally different from corporate social responsibility? Corporate citizenship is defined by the Boston College Centre for Corporate Citizenship, as the business strategy that shapes the values underpinning a company's mission and the choices made each day by its executives, managers and employees as they engage with society.

According to this definition, the four key principles that define the essence of corporate citizenship are: (i) Minimise harm (ii) Maximise benefit (iii) Be accountable and responsive to key stakeholders (iv) Support strong financial results.

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

15. Discuss the OECD Guidelines for Corporate Governance of State-owned Enterprises.

Answer :

According to OECD, a major challenge is to find a balance between the state's responsibility for actively exercising its ownership functions, such as, the nomination and election of the board, while at the same time refraining from imposing undue political interference in the management of the company. Another important challenge is to ensure that there is a level playing field in markets where private sector companies can compete with the state-owned enterprises, and that governments do not distort competition in the way they use their regulatory or supervisory powers.

According to OECD, the guidelines suggest that the state should exercise its ownership functions through a centralized ownership entity, or effectively co-ordinated entities, which should act independently and in accordance with a publicly disclosed ownership policy. The guidelines also suggest the strict separation of the state's ownership and regulatory functions.

The major recommendations in OECD guidelines are as discussed below:

Ensuring an effective legal and regulatory framework for state-owned enterprises

- There should be a clear separation between the state's ownership function and other state functions that may influence the conditions for state-owned enterprises, particularly with regard to market regulation.
- SOEs should not be exempt from the application of general laws and regulations. Stakeholders including competitors, should have access to efficient redress.
- SOEs should face competitive conditions regarding access to finance. Their relations with state-owned banks, state-owned financial institutions, and other state-owned companies, should be based on purely commercial grounds.

State acting as an owner

The state should act as an informed and active owner, and establish a clear and consistent ownership policy, ensuring that governance of state-owned enterprises is carried out in a transparent and accountable manner with the necessary degree of professionalism and effectiveness.

- The government should develop and issue an ownership policy that defines the overall objectives of state ownership, the state's role in corporate governance of SOEs, and how it will implement its ownership policy.
- The government should not be involved in the day-to-day management of SOEs and allow them full operational autonomy to achieve their defined objectives.
- The state should let SOE boards exercise their responsibilities and respect their independence.



- The state should exercise its ownership rights according to the legal structure of each company. Keeping this in mind, it should ensure that remuneration schemes for SOE board members foster the long-term interest of the company, and can attract and motivate qualified professionals.

Equitable treatment of shareholders

The SOEs should recognize the rights of all shareholders and in accordance with the OECD principles of corporate governance, ensure their equitable treatment and equal access to corporate information.

- SOEs should observe a high degree of transparency towards all shareholders.
- The co-ordinating or ownership entity and SOEs should ensure that all shareholders are treated equally.
- The participation of minority shareholders in shareholder meetings should be facilitated in order to allow them to take part in fundamental corporate decisions, such as board election.

Relations with stakeholders

The state ownership policy should fully recognize the state-owned enterprises' responsibilities towards stakeholders and report their relations with them.

- Listed on large SOEs, as well as SOEs pursuing important public policy objectives, should report on stakeholder relations.

Transparency and disclosure

State-owned enterprises should observe high standards of transparency in accordance with the OECD Principles of Corporate Governance.

- SOEs should develop efficient internal audit procedures and establish an internal audit function that is monitored by and reports directly to the board and to the audit committee or the equivalent company organ.
- SOEs, especially large ones, should be subject to an annual independent external audit based on international standards. The existence of specific state control procedures does not substitute for an independent external audit.

Responsibilities of the boards of state-owned enterprises

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

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

16. "The development of Corporate Governance in the UK was initially the findings of a trilogy of codes." Explain the same in brief.

Answer:

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 (Cabaroll 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'.

17. "Family ownership of firms is the prevalent form of ownership in many countries around the globe."

In view of the above statement, explain the concept and need of Ownership structures.

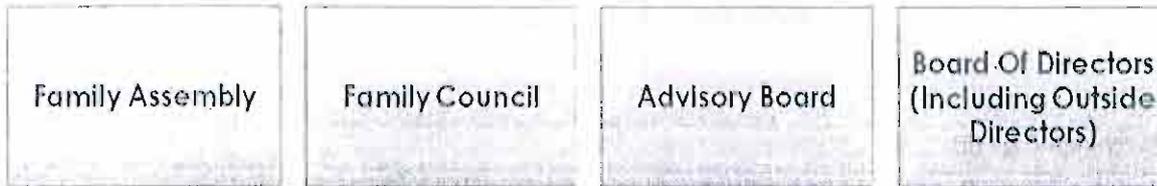
Answer:

In many countries, family-owned firms are prevalent. Corporate governance is of relevance to family-owned firms, which can encompass a number of business forms including private and publicly quoted companies, for a number of reasons. Family-owned firms may face difficulties in initially finding appropriate independent non-executive directors but the benefits that such directors can bring is worth the time and financial investment that the family-owned firm will need to make.

One advantage of a family-owned firm is that there should be less chance of the type of agency problems. This is because ownership and control rather than being split are still one and the same, and so the problems of information asymmetry and opportunistic behaviour should (in theory, at least) be lessened. As a result of this overlap of ownership and control, one would hope for higher levels of trust and hence less monitoring of

management activity should be necessary. However, problems may still occur and especially in terms of potential for minority shareholder oppression, which may be more acute in family-owned firms.

In family business group firms, the concern is that managers may act for the controlling family, but not for shareholders in general. These agency issues are: the use of pyramidal groups to separate ownership from control, the entrenchment of controlling families, and non-arm's-length transactions (aka 'tunneling') between related companies that are detrimental to public investors.



Possible stages in a family firm's governance

The advantages of a formal governance structure are several. First of all, there is a 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: their business experience, or a particular knowledge or functional specialism of relevance to the firm, which will enable them to 'add value' and contribute to the strategic development of the family firm. Another advantage of family-owned firms may be their ability to be less driven by the short-term demands of the market. Of course, they still ultimately need to be able to make a profit but they may have more flexibility as to when and how they do so.

Cadbury (2000) sums up the three requisites for family firms to manage successfully the impacts of growth; 'They need to be able to recruit and retain the very best people for the business, they need to be able to develop a culture of trust and transparency, and they need to define logical and efficient organisational structures'. A good governance system will help family firms to achieve these requisites.

18. State the benefits on Sustainability Reporting Corporate Governance.

Answer:

Benefits of Sustainability Reporting

1. increasing transparency and accountability within the company
2. increase in reputation and brand value of the company
3. going a competitive advantage
4. legitimizing of corporate activities, products and services which create environmental and social impacts.

19. State the features of Corporate Governance.

Answer:

Corporate Governance has the following features-

1. **Constitution of committee:** It covers constitution and functioning of various committee such as audit committee, remuneration committee, shareholders grievance committee, compliance committee.
2. **Structuring of boards:** It covers aspects relating to the composition of boards, representation of insiders and outsiders on the board, role of nonexecutive and independent directors.



3. Board systems and procedures: It covers aspects such as convening of board meetings, frequency and attendance of board meetings, fulfilling the information requirements of the board for decision making.
4. Shareholders' democracy: Shareholders' participation in meetings, fulfilling shareholders' rights and disclosure of information required by the stakeholders.
5. Value orientation: Corporate governance encompasses ethics, values and morals of a corporation and its directors.
6. Monitoring of strategic decisions: It involves monitoring and overseeing strategic decisions in a socio-economic and cultural contexts.

20. What are the functions of the board of good Corporate Governance?

Answer:

Functions of the Board

- (a) To decide the organizational structure of the company's management and to make appointments of capable qualified and experienced individuals to fill any key position.
- (b) To design strategic planning, information and control systems appropriate to the organizational structure.
- (c) To formulate long-term objectives and strategies for the betterment of the company.
- (d) To ensure the adoption of corporate governance norms formulated and directed by the Ministry of Corporate Affairs and Central Government from time to time.
- (e) To function as a well-organized and motivated team so as to review performance of the companies.
- (f) To act honestly, diligently and with a reasonable amount of care, as they are the trustees of companies.
- (g) To define the specific policies with regard to finance, human resources, marketing and the like, that are to be followed in implementing the company's strategies.
- (h) To take prudent decisions on such matters that the Articles of Association may assign to the board.
- (i) Preparation of strategic plan, operating plan and budget.
- (j) Monitoring major capital expenses.
- (k) Defining and reviewing the board functions periodically.
- (l) Setting the values, mission and vision of the company and chalking out the procedures to realize them.
- (m) Provision of adequate resources to achieve the set objectives.
- (n) Mentoring, monitoring and evaluating the agreed objectives.
- (o) Ensuring compliances and disclosures.
- (p) Monitoring and managing potential conflicts of interests of management, board members and shareholders including misuse of corporate assets and abuse in related party transactions.
- (q) Ensuring the integrity of company's accounting and financial reporting systems.
- (r) Monitoring the effectiveness of corporate governance practices.

21. Define Corporate Governance. Write the core objectives of Corporate Governance.

Answer:

Corporate Governance: There is no single, accepted definition of Corporate Governance. There are substantial differences in definition according to which country we are considering. Corporate governance is about promoting corporate fairness, transparency and Accountability. The term governance relates to a process of decision making and implementing the decisions in the interest of all stakeholders. It basically relates to enhancement of corporate performance and ensures proper accountability for management in the interest of all stakeholders.

The core objectives of Corporate Governance:

1. Transparency — According to this objective, every step shall be taken to ensure that timely and accurate information is imparted to all concerned.



2. Participation — Steps shall be taken to provide adequate information to shareholders and to ensure their participation in policy matters.
3. Legal Adherence — All legal policies and rules shall be duly complied.
4. Effectiveness — Entire management shall contribute and try to use fairness and honesty with stakeholders so that Effective governance can be attained.

22. Discuss the difficulties faced in Governance by state owned businesses.

Answer:

Difficulties Encountered In Governance In state owned businesses

Routine governance regulations become applicable for public sector companies formed under the Companies Act, 1956 and come under the purview of SEBI regulations the moment they mobilize funds from the public. The typical organizational structure of PSUs makes it difficult for the implementation of corporate governance practices as applicable to other publicly-listed private enterprises. The typical difficulties faced are:

- The board of directors will comprise essentially bureaucrats drawn from various ministries which are interested in the PSU. In addition, there may be nominee directors from banks or financial institutions who have loan or equity exposures to the unit. The effect will be to have a board much beyond the required size, rendering decision-making a difficult process.
- The chief executive or managing director (or chairman and managing director) and other functional directors are likely to be bureaucrats and not necessarily professionals with the required expertise. This can affect the efficient running of the enterprise.
- Difficult to attract expert professionals as independent directors. The laws and regulations may necessitate a percentage of independent components on the board; but many professionals may not be enthused as there are serious limitations on the impact they can make.
- Due to their very nature, there are difficulties in implementing better governance practices. Many public sector corporations are managed and governed according to the whims and fancies of politicians and bureaucrats. Many of them view PSUs as a means to their ends. A lot of them have turned sick due to overdoses of political interference, even when their areas of operations offered enormous opportunities for advancement and growth. And when the economy was opened up, many of them lacked the competitiveness to fight it out with their counterparts from the private sector.

23. Write a short note on Memorandum of Understanding and Public Sector Enterprises.

Answer:

Memorandum of Understanding and Public Sector Enterprises:

After Independence, Public Sector Enterprises (PSEs) were set up in India with an objective to promote rapid economic development through the creation and expansion of infrastructure by the government. With different phases of development, the role of PSEs has changed and their operations have extended to a wide range of activities in manufacturing, engineering, steel, heavy machinery, machine tools, fertilizers, drugs, textiles, pharmaceuticals, petro-chemicals, extraction and refining of crude oil and services such as telecommunication, trading, tourism, warehousing, etc. as well as a range of consultancy services. While there have been many PSEs that have performed very well in competition with private sector enterprises, there are also many PSEs that have performed very poorly. In an economic environment that has changed considerably in the last two decades, the role of PSEs has changed and they have been increasingly guided to reduce their dependence on the Government. They have been listed on the stock exchange and few of them have been privatized. The Government has provided PSEs the necessary flexibility and autonomy to operate effectively in a competitive environment. However, there are a few issues with the operation and management of PSEs which still persist and need to be attended to. There is a need to develop a mechanism on how government can get an efficient Indian presence in the sectors where the private sector investments are not forthcoming especially in strategic areas where developing capabilities is essential if India has to play its rightful role among the nations of the world.



24. Discuss the relevance of OECD Guidelines for Corporate Governance of State-owned enterprises.

Answer:

The relevance of OECD Guidelines for Corporate Governance of State-owned enterprises:

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

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

The major recommendations in OECD guidelines are as discussed below:

- Ensuring an effective legal and regulatory framework for state-owned enterprises
- There should be a clear separation between the state's ownership function and other state functions that may influence the conditions for state-owned enterprises, particularly with regard to market regulation.
- State-owned Enterprises should not be exempt from the application of general laws and regulations. Stakeholders including competitors should have access to efficient redress and an even-handed ruling when they believe that their rights have been violated.
- State-owned Enterprises should face competitive conditions regarding access to finance. Their relations with state-owned banks, state-owned financial institutions, and other state-owned companies, should be based on purely commercial grounds.

25. "The German Corporate Governance system is based around a dual board system". Elucidate the statement.

Answer:

The committee on corporate governance in Germany was chaired by Dr. Gerhard Cromme and is usually referred to as the Cromme Report or Cromme Code. The code harmonizes a wide variety of laws and regulations and contains recommendations and also suggestions for complying with international best practice on Corporate Governance. The Cromme Code was published in 2002 and was amended in 2005.

The German Corporate Governance system is based around a dual board system, and essentially, the dual board system comprises a management board (Vorstand) and a supervisory board (Aufsichtsrat).

The management board is responsible for managing the enterprise. Its members are jointly accountable for the management of the enterprise and the chairman of the management board co-ordinates the work of the management board. On the other hand, the supervisory board appoints, supervises, and advises the members of the management board and is directly involved in decisions of fundamental importance to the enterprise. The chairman of the supervisory board co-ordinates the work of the supervisory board. The members of the supervisory board are elected by the shareholders in general meetings. The co-determination principle provides for compulsory employee representation. So, for firms or companies which have more than five hundred or two thousand employees in Germany, employees are also represented in the supervisory board which then comprises one-third employee representative or one-half employee representative respectively. The representatives elected by the shareholders and representatives of the employees are equally obliged to act in the enterprise's best interests.

The idea of employee representation on boards is not always seen as a good thing because the employee representatives on the supervisory board may hold back decisions being made that are in the best interests of the company as a whole but not necessarily in the best interests of the employees as a group. An example, would be where a company wishes to rationalize its operations and close a factory but the practicalities of trying to get such



a decision approved by employee representatives on the supervisory board, and the repercussions of such a decision on labour relations, prove too great for the strategy to be made a reality.

26. Briefly discuss the various issues regarding the MoU System in Indian CPSEs.

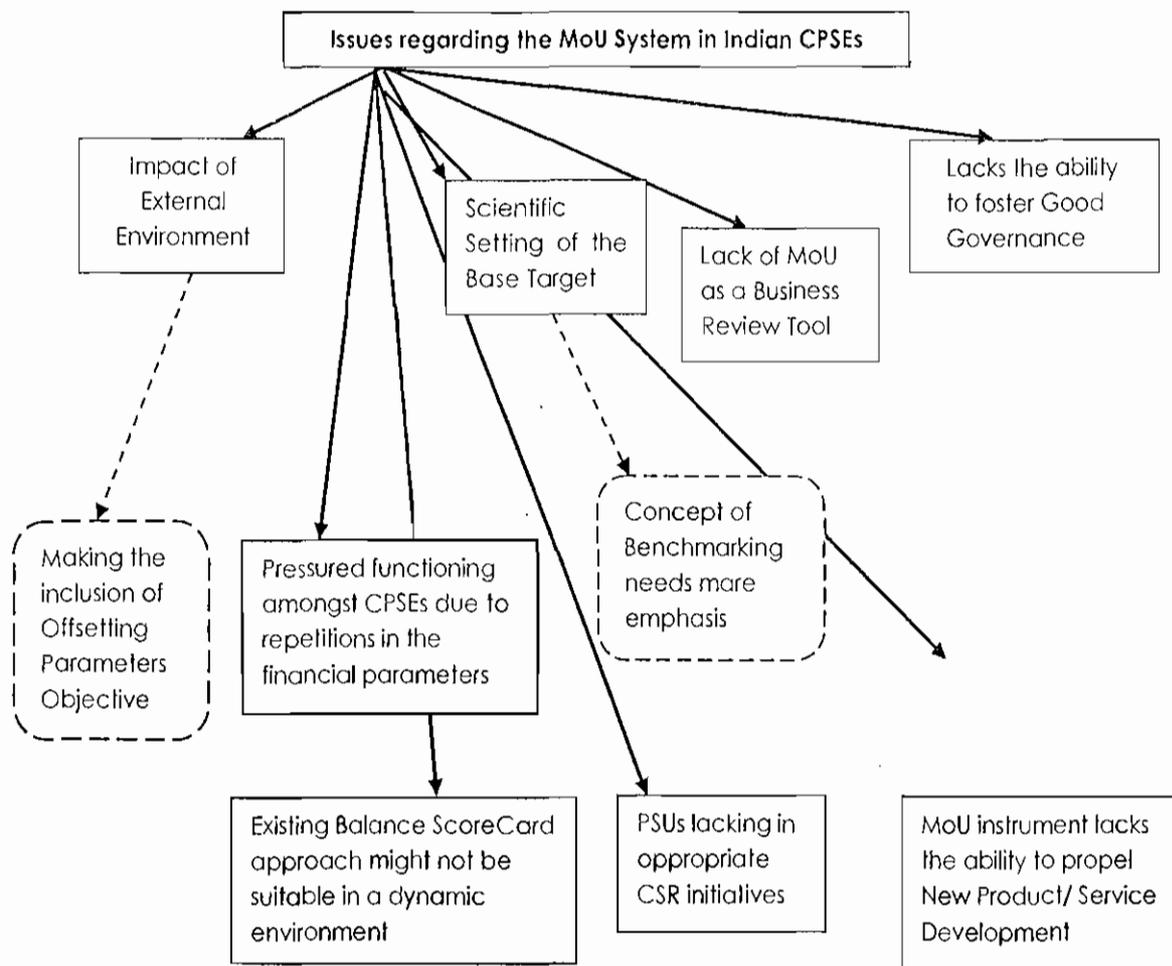
Answer:

The Memorandum of Understanding (MoU) is a negotiated document between the Government, acting as the owner of Central Public Sector Enterprise (CPSE) and the Corporate Management of the CPSE. It contains the intentions, obligations and mutual responsibilities, of the Government and the CPSE and is directed towards strengthening CPSE management by results and objectives rather than management by controls and procedures.

The beginnings of the introduction of the MoU system in India can be traced to the recommendation of the Arjun Sengupta Committee on Public Enterprises in 1984. The first set of Memorandum of Undertaking (MoU) was signed by four Central Public Sector Enterprises for the year 1987-88. Over a period of time, an increasing number of CPSEs was brought within the MoU system. Further impetus to extend the MoU system was provided by the Industrial Policy Resolution of 1991 which observed that CPSEs will be provided a much greater degree of management autonomy through the system of Memorandum of Undertaking.

Broadly speaking, the obligations undertaken by CPSEs under the MoU are reflected by three types of parameters i.e., (a) financial (b) physical and (c) dynamic.

The Figure below clearly brings out the several challenges which the MoU system in India, currently faces.



- Dark Lines Connect Broad Themes (Issues)



- Dotted lines connect Sub-Themes (Issues)

Despite the overwhelming success of the MOU system, there is a need to strengthen the exercise further to make it more value added. Some of the suggestions in this regard are as follows:

- CPSEs may detract themselves from soft targeting. This could be seen from the fact that your MOU goals set by most of the CPSEs are achieved in the third quarter of a financial year itself.
- The internal systems need to be revamped to contribute to MOU effectiveness. This may mean making the internal budgeting, pricing, materials control, MIS, performance appraisal, recruitment systems to be brought in line with the goals set in MOU.
- There is a need to percolate MOU system down the line.
- The wage negotiations should go beyond the managerial cadre in the same split and form as in the case of the process followed relating to executives.
- Balance scorecard concept should be stressed further to yield a composite MOU index.
- The basic targets need to be fixed very carefully and questioning the very logic of taking the previous year's accomplishments as good.

27. "The typical organizational structure of PSUs makes it difficult for the implementation of corporate governance practices as applicable to other publicly-listed private enterprises."

In view of the above, list the difficulties encountered in governance.

Answer:

While routine governance regulations become applicable for public sector companies formed under the Companies Act, 1956 and come under the purview of SEBI regulations the moment they mobilize funds from the public, the typical organizational structure of PSUs makes it difficult for the implementation of corporate governance practices as applicable to other publicly-listed private enterprises. The typical difficulties faced are:

- The board of directors will comprise essentially of bureaucrats drawn from various ministries which are interested in the PSU. In addition, there may be nominee directors from banks or financial institutions who have loan or equity exposures to the unit. The effect will be to have a board much beyond the required size, rendering decision-making a difficult process.
- The chief executive or managing director (or chairman and managing director) and other functional directors are likely to be bureaucrats and not necessarily professionals with the required expertise. This can affect the efficient running of the enterprise.
- Difficult to attract expert professionals as independent directors. The laws and regulations may necessitate a percentage of independent component on the board; but many professionals may not be enthused as there are serious limitations on the impact they can make.
- Due to their very nature, there are difficulties in implementing better governance practices. Many public sector corporations are managed and governed according to the whims and fancies of politicians and bureaucrats. Many of them view PSUs as a means to their ends. A lot of them have turned sick due to overdoses of political interference, even when their areas of operations offered enormous opportunities for advancement and growth. And when the economy was opened up, many of them lacked the competitiveness to fight it out with their counterparts from the private sector.

28. Write short notes on:

- (i) Corporate Governance In Germany
- (ii) Risk and uncertainty in Whole Life Cycle Costing

Answer:

- (i) Corporate Governance In Germany:

The German corporate governance system could be termed an 'insider' system. The German Corporate Governance system is based around a dual board system, and essentially, the dual board system comprises a management board (Vorstand) and a supervisory board (Aufsichtsrat). The management board is responsible for managing the enterprise. Its members are jointly accountable for the management of the enterprise and the



chairman of the management board co-ordinates the work of the management board. On the other hand, the supervisory board appoints, supervises, and advises the members of the management board and is directly involved in decisions of fundamental importance to the enterprise. The chairman of the supervisory board co-ordinates the work of the supervisory board. The members of the Supervisory board are elected by the shareholders in general meetings. The co-determination principle provides for compulsory employee representation. So, for firms or companies which have more than five hundred or two thousand employees in Germany, employees are also represented in the supervisory board which then comprises one-third employee representative or one-half employee representative respectively. The representatives elected by the shareholders and representatives of the employees are equally obliged to act in the enterprise's best interests.

The committee on corporate governance in Germany was chaired by Dr. Gerhard Cromme and is usually referred to as the Cromme Report or Cromme Code. The code harmonizes a wide variety of laws and regulations and contains recommendations and also suggestions for complying with international best practice on Corporate Governance.

The Cromme Code was published in 2002 and is split into a number of sections, starting with a section on shareholders and the general meeting. The Cromme Code also reflects some of the latest developments in technology. The Cromme Code was amended in 2005.

Table: Key characteristics influencing German corporate governance

Feature	Key Characteristic
Main Business form	Public or private companies limited by shares
Predominant ownership structure	Financial and non- financial companies
Legal System	Civil law
Board Structure	Dual
Important aspect	Compulsory employee representation on supervisory board.

(ii) Risk and uncertainty In Whole Life Cycle Costing:

'Whole life-cycle costing (WLCC) is a dynamic and ongoing process which enables the stochastic assessment of the performance of constructed facilities from feasibility to disposal. WLCC decisions are complex and usually comprise an array of significant factors affecting the ultimate cost decisions. WLCC decisions generally have multiple objectives and alternatives, long-term impacts, multiple constituencies in the procurement of construction projects, generally involve multiple disciplines and numerous decision makers, and always involve various degrees of risk and uncertainty. Project cost, design and operational decision parameters are often established very early in the life of a given building project. Often, these parameters are chosen based on owner's and project team's personal experiences or on an ad hoc static economic analysis of the anticipated project costs. While these approaches are common, they do not provide a robust framework for dealing with the risks and decisions that are taken in the evaluation process. Nor do they allow for a systematic evaluation of all the parameters that are considered important in the examination of the WLCC aspects of a project. The existing methods also do not adequately quantify the true economic impacts of many quantitative and qualitative parameters.

Decisions about building-related investments typically involve a great deal of uncertainty about their costs and potential savings. Performing a WLCCA greatly increases the likelihood of choosing a project that saves money in the long run. Yet, there may still be some uncertainty associated with the WLCC results. WLCCAs are usually performed early in the design process when only estimates of costs and savings are available, rather than certain dollar amounts. Uncertainty in input values means that actual outcomes may differ from estimated outcomes.

There are techniques for estimating the cost of choosing the "wrong" project alternative. Deterministic techniques, such as sensitivity analysis or breakeven analysis, are easily done without requiring additional resources or information. They produce a single-point estimate of how uncertain input data affect the analysis outcome. Probabilistic techniques, on the other hand, quantify risk exposure by deriving probabilities of achieving different values of economic worth from probability distributions for input values that are uncertain. However, they have greater informational and technical requirements than do deterministic techniques. Whether one or the other technique is chosen depends on factors such as the size of the project, its importance, and the resources available. Since sensitivity analysis and break-even analysis are two approaches that are simple to perform, they should be part of every WLCCA.



Chapter 9

SOCIAL, ENVIRONMENTAL AND ECONOMIC RESPONSIBILITIES OF BUSINESS

"Corporate Social Responsibility is to be considered as an investment and not as a charity" – Elaborate the statement.

Answer:

- 1) The originally defined concept of CSR needs to be interpreted and dimensionalised in the broader conceptual framework of how the corporate embed their corporate values as a new strategic asset, to build a basis for trust and cooperation within the wider stakeholder community.
- 2) Though there have been evidences that record a paradigm shift from charity to a long-term strategy, yet the concept still is believed to be strongly linked to philanthropy. There is a need to bring about an attitudinal change in people about the concept.
- 3) By having more coherent and ethically driven discourses on CSR, it has to be understood that CSR is about how corporates place their business ethics and behaviors to balance business growth and commercial success with a positive change in the stakeholder community.
- 4) Several corporates today have specific departments to operationalise CSR. There are either foundations or trusts or a separate department within an organisation that looks into implementation of practices.
- 5) Being treated as a separate entity, there is always a flexibility and independence to carry out the tasks.
- 6) But often these entities work in isolation without creating a synergy with the other departments of the corporate. There is a need to understand that CSR is not only a pure management directive but it is something that is central to the company and has to be embedded in the core values and principles of the corporate.
- 7) Whatever corporates do within the purview of CSR has to be related to core business. It has to utilise things of which corporates are good; it has to be something that takes advantage of the core skills and competencies of the companies. It has to be a mandate of the entire organisation and its scope does not simply begin and end with one department in the organisation.
- 8) Charity means the act of donating money, goods, time or effort to support a charitable cause in regard to a defined objective. Charity can be equated with benevolence and charity for the poor and needy. It can be any selfless giving towards any kind of social need that is not served, underserved, or perceived as unserved or underserved. Charity can be by any individual or by a corporate.
- 9) Corporate Social Responsibility is about how a company aligns their values to social causes by including and collaborating with their investors, suppliers, employees, regulators and the society as a whole. The investment in CSR may be on people centric issues and/or planet issues. A CSR initiative of a corporate is not a selfless act of giving; companies derive long-term benefits from the CSR initiatives and it is this enlightened self interest which is driving the CSR initiatives in companies.

2) What is Whole Life-Cycle Costing Risk Management? Why does it fails to embrace WLCC?

Answer:

Whole life-cycle costing (WLCC) is rapidly becoming the standard method for the long-term cost appraisal of buildings and civil infrastructure projects. With clients now demanding buildings that demonstrate value for money over the long term, WLCC has become an essential tool for those involved in the design, construction, operation and risk analysis of construction projects.

WLCC risk management is one of the important issues facing building assets executives today. As spending on building assets rises, asset owners become increasingly worried about WLCC optimisation throughout the life span of facilities; consequently, they become highly vulnerable to the risk of operational costs. Usually, when decision



makers are faced with an investment choice under uncertain conditions, their main concern is to avoid projects whose actual economic outcome might be less favourable than what is acceptable, resulting in the risk of missing out on potential investment opportunities.

Thus, the objective of WLCC risk management should be to assist decision makers in evaluating whole life alternatives so that investment success is maximised. Usually traditional methods are used to optimise this process. However, traditional approaches to risk management have failed miserably because of their demand for mysterious statistical data that the end user does not have (Koller 1999). The key to successful WLCC risk-process and risk modelling is to build a WLCC framework that requires from the user nothing more than they presently can provide. This can be a challenge that can be addressed through the use of a variety of techniques. That is why it is important to use a combination of risk management techniques (depending on the stage of assessment) for risk assessment in WLCC, ranging from simple deterministic approaches to uncertainty assessment (e.g. sensitivity and break even analysis methods which are easy to use and understand and require no additional methods of computation beyond the ones used in LCC analysis), to very sophisticated methods based on probabilities, artificial intelligence (AI) and a hybrid of both techniques.

The reasons why it fails to embrace WLCC are:

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

3) 'The institution of business exists only if it fulfills the society's expectations'. Comment.

Answer:

According to Gandhiji, "a businessman has to act only as a trustee of the society for whatever he has gained from the society. Everything finally belongs to the society." Society bestows upon businesses the authority to own and use land and natural resources. In return, society has the right to expect that business organisations will enhance the general interests of consumers, employees and community.

Also, if a business organisation does not use its powers in a socially acceptable manner, that power will be lost in the long run. This is called as 'Iron Law of Responsibility'. Thus, the statement "The institution of business exists only if it fulfills the society's expectations" is correct.

4. 'Business ethics helps to promote public reputation'. Comment.

Answer:

It is in the long term interest of a business organisation to observe business ethics. Observing business ethics serves as a strategic branding tool in differentiating from competitors. It helps an entity to build trust with all its stakeholders. It also results in positive press coverage, thus enhancing its reputation with the public, customers and within the business community. Thus, the statement "Business ethics helps to promote public reputation" is correct.

5. Write a short note on SA 8,000.

Answer:

- SA 8000 is a comprehensive, global, verifiable performance standard for auditing and certifying compliance with corporate responsibility.
- The heart of the standard is the belief that all workplaces should be managed in such a manner that basic human rights are supported and that management is prepared to accept accountability for this.



- SA 8000 is an international standard for improving working conditions. This standard is based on the principles of international human rights norms as described in International Labour Organisation Conventions, the UN Convention on the Rights of the Child and the Universal Declaration of Human Rights.
- The requirements of this standard apply regardless of geographic location, industry sector, or company size.

6. Explain the importance of 'Ethics' for a finance and accounting professional.

Answer:

The importance of 'Ethics' for a finance and accounting professional may be discussed as two-fold:

1. Public Responsibility:

Finance and Accounts is perhaps the only business function which accepts responsibility to act in public interest. Finance and accounting professional's responsibility is not restricted to satisfy the needs of any particular individual or organization. While acting in public interest, it becomes imperative that the finance and accounting professional adheres to certain basic ethics in order to achieve his objectives.

2. To restore Public Confidence:

Various accounting scandals witnessed during the past few years have put a serious question mark on the role of the finance and accounting professional in providing the right information for decision making both within and outside their respective organizations.

As these finance and accounting professionals are in public practice, they should take reasonable steps to identify circumstances that could pose the conflict of interest and thus leading to follow unethical behavior.

X If you are an accounting professional in a large multinational corporation, what steps would you undertake to create an ethical accounting environment?

Answer:

The factors that are to be considered for creating an ethical accounting environment are:

1. Employee Awareness:

- Make the employees aware of their legal and ethical responsibilities.
- Train and motivate employees towards ethical behaviour.
- Encourage employees to report cases of violations, frauds, manipulations, misappropriations, etc.

2. Reporting of Frauds:

For reporting violations, manipulations, misappropriations, etc., -

- without any fear of being reprimanded or fired,
- provide facilities to employees.

3. Whistle Blowers:

- A whistle blower is an employee /person who reports frauds, mismanagement or creating good accounting environment in a business enterprise. Fair treatment and appreciation of Whistle Blowers is necessary to check fraud.



8. Explain the need for social Responsibility.

Answer:

Need for Social Responsibility

Today, businessmen are aware that society is the biggest force which controls the entire business operations, right from acquisition of land to final produce. They now feel that they cannot operate in societal isolation. Profit still being the major determinant for business houses, it is extremely difficult to strike a balance between the conflicting needs of business this earning profit and society's need to take care of its many constituents. The success of a business depends on the growth of the society because the goods and services of business are ultimately consumed by the society. So, an organisation must initiate steps which will ultimately lead to economic upliftment of the people. Although at the initial stage of investment for such welfare measures it may appear to be a losing proposition, in the long run, it will have a twin positive effect—the image of the organisation will be enhanced and there will be an economic resurgence of the people through adoption of such welfare measures which will create a new set of consumers for their products.

Another contribution which society expects from the business community is qualitative improvement of the product. This necessitates huge investment in research and development, which government alone cannot afford. Accordingly, business organisations should come out with liberal contribution for setting up research laboratories for product quality improvement. In addition, business houses should shun unethical practices such as price rigging of the product through hoarding and creating scarcity, quality deterioration due to adulteration, and resorting to advertisements which lead to formation of biased attitude. As business is now considered to be a part of social order, it itself will determine its ethical standards through cross-current interactions.

9. Evaluate the concept of Social Responsibility of Business.

Answer:

Evolution of the Concept of Social Responsibility of Business

The evolution of the concept of social responsibility of business is the result of different stages of struggle. Business began merely as an institution for the purpose of making money. Man was considered successful so long as he made money and kept himself out of jail. He felt no particular obligation and acknowledged no responsibility to the public. As an owner of his business, he thought that he had a perfect right to do what he pleased with the money he earned. Social norms and attitudes had very little influence on the practice of management. Even in USA, business ventures like those of John D. Rockefeller, G.F. Swift, J.P. Morgan are noted for their flagrant disregard of society, the individual worker, and competitive business firms.

But by 1920s, the position changed and the word 'service' became the slogan of innumerable business clubs and associations. At the same time, business leaders as a whole were becoming increasingly conscious of the fact that the public was an integral part of the general business scheme. The sense of service, thus, qualified and modified the greed for profit. Economic orders came to recognise social order as their very foundation. It is now increasingly recognised that what is not for the public good is not for the good of business.

The second element that helped the evolution process was the purchasing power of the public. The demand of the public meant nothing unless backed by purchasing power. Industry had come to understand that one of its proper functions was to manufacture and distribute purchasing power, besides manufacturing and distributing merchandise. The most important effect of this change in the attitude was a new business policy which demanded a persistent tendency towards higher wages and lower prices. Thus, the new social responsibilities of business came to be recognised.

Yet, one more element in this evolution process has been the rise of new relationship between the public and business. The era of purely private business for private profits has gone. Business has a duty to report to the public whose money it is constantly seeking, in order to conduct the business itself. According to Nicholas N. Eberstadt (1973):



Today's corporate social responsibility movement is a historical swing to re-create social contract of power with responsibility, and as such...the most important reform of our time.

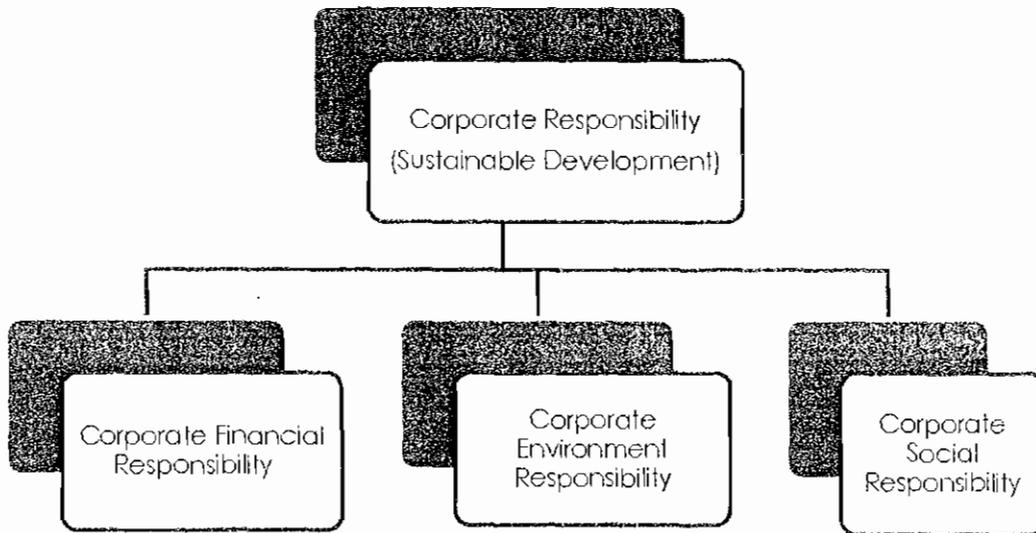
To Keith Davis (1973), "Social responsibility has become the hallmark of mature, global civilization.

10. What is the relationship between CSR and sustainability ?

Answer:

Relation between CSR & Sustainable Development

CSR is an integral part of sustainable development. Exactly where it fits in is vigorously debated, mainly because the concept of sustainable development also has many different interpretations. This diagram, illuminates CSR's relationship with sustainable development.



The basic idea to incorporate the sustainability aspect into business management should be grounded in the ethical belief of give and take to maintain a successful company in the long-term. As the company is embedded in a complex system of interdependences in- and outside the firm, this maintaining character should be fulfilled due to the company's commitment in protecting the environment or reducing its ecological footprint and due to the general acceptance of its corporate behaviour by society in- and outside of the firm.

It is recommended that CSR is to be used as social strand of the SD-concept which is mainly built on a sound stakeholder approach. CSR focus especially on the corporate engagement realizing its responsibilities as a member of society and meeting the expectations of all stakeholders.

The concept of SD on a corporate level is stated as Corporate Sustainability which is based on the three pillars economic, ecological and social issues, therefore, the social dimension is named CSR. The corporate orientation on sustainability is specially affected by external influences due to the specific sustainability orientation on a macro-level:

Legal/Institutional: laws, human rights, etc.

Technological: new technologies

Market: suppliers, competitors, customers, trends

Societal: NGO's, society

Cultural: attitudes, behavior

Environmental: nature, availability of resources



14. What is Corporate Citizenship? Is this fundamentally different from Corporate Social Responsibility?

Answer:

A new terminology that has been gaining grounds in the business community today is Corporate Citizenship. Corporate citizenship is defined by the Boston College Centre for Corporate Citizenship, as the business strategy that shapes the values underpinning a company's mission and the choices made each day by its executives, managers and employees as they engage with society.

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

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

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

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

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

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

15. Write short notes on:

- (i) Whole Life Cycle Costing
- (ii) Golden Parachute Proposals

Answer:

(i) Whole Life Cycle Costing (WLCC):

Towards the late 1990s, the concepts of 'whole life costing' (WLC) and 'whole life-cycle costing' (WLCC) emerged. The terms whole life costing and whole life-cycle costing are interchangeable. WLCC is a new term that appears to have been adopted by many building economists involved in the preparation of forecasts for the long-term cost assessments of capital projects.

'Whole life-cycle costing (WLCC) is a dynamic and ongoing process which enables the stochastic assessment of the performance of constructed facilities from feasibility to disposal. The WLCC assessment process takes into account the characteristics of the constructed facility, reusability, sustainability, maintainability and obsolescence as well as the capital, maintenance, operational, finance, residual and disposal costs. The result of this stochastic assessment forms the basis for a series of economic and noneconomic performance indicators relating to the various stakeholders' interests and objectives throughout the life-cycle of a project.'



Currently, the application of WLCC in the construction industry is still hindered significantly by the lack of standard methods and the excuse of lack of sound data upon which to arrive at accurate decisions. As a result, the output from WLCC models is looked on as unreliable.

Combined with WLCC, risk assessment should form a major element in the strategic decision making process during project procurement and also in value analysis, especially in today's highly uncertain business environment. WLCC decisions are complex and usually comprise an array of significant factors affecting the ultimate cost decisions. WLCC decisions generally have multiple objectives and alternatives, long-term impacts, multiple constituencies in the procurement of construction projects, generally involve multiple disciplines and numerous decision makers, and always involve various degrees of risk and uncertainty. Project cost, design and operational decision parameters are often established very early in the life of a given building project. The existing methods do not adequately quantify the true economic impacts of many quantitative and qualitative parameters.

Golden Parachute Proposals:

The Securities and Exchange Commission's (the "SEC") new disclosure and advisory vote requirements for compensation based on or relating to merger and similar transactions, often referred to as golden parachute arrangements, become effective for proxy statements and other acquisition related filings initially filed on or after April 25, 2011 for Corporate Governance in USA. The SEC adopted the rules to implement Section 951 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").

The Dodd-Frank Act requires companies to hold separate shareholder votes on potential "golden parachute" payments when they seek approval for mergers, sales and certain other transactions. In determining the recommendation with respect to a golden parachute proposal, the 2013 Updates include the consideration of any existing change-in-control arrangements maintained with named executive officers, rather than focusing only on the new or extended arrangements. The list of features considered problematic has been refined. Recent amendments that incorporate problematic features will tend to carry more weight in the overall analysis. However, close scrutiny will also be given if multiple legacy problematic features are present.

What are the pros and cons in adopting Corporate Social Responsibility?

Answer:

Pros & Cons of adopting Corporate Social Responsibility:

Corporate social responsibility refers to a method of running a company that seeks to address not only profitability, but also the environmental and social consequences of the business. While most corporate social responsibility concerns are directed at very large businesses, even small and medium-sized businesses that employ a large number of local residents or participate in environmentally problematic industries can face pressure to adopt corporate social responsibility.

Costs

Cost represents one of the biggest arguments against adopting corporate social responsibility as a policy. Programs to reduce environmental impact often require expensive changes in equipment or ongoing costs without any clear way to recoup those losses. The decision to maintain domestic production facilities or call centers or to buy from domestic producers rather than outsource or move production overseas can drive up costs for a business. Additionally, there is no clear evidence that adhering to a policy of corporate social responsibility generates a significant increase in sales or profit.

return money spent

Improved Company Reputation

Embracing a policy of corporate social responsibility, paired with genuine action, can serve to build or improve the reputation of a business. If a company's behavior creates a negative backlash that leads to lost profitability -- over environmental issues, for example -- corporate social responsibility becomes a method to repair reputation damage and restore profitability. In other cases, adopting such a policy works as part of a business' essential brand, and consumers often demonstrate more loyalty to brands that can demonstrate a commitment to environmental concerns.



Shareholder Resistance

Some investors do look to acquire stock in socially responsible corporations, but, on the whole, investors purchase stock on the expectations of turning a profit. While some companies, such as Toyota and GE, have profited from corporate social responsibility, companies that adopt such policies often prove as likely to lose money. Given the spotty track record of corporate social responsibility in demonstrating profit increase, investors may resist attempts by executives to move a company in that direction.

Better Customer Relations

One of the hallmarks of corporate social responsibility is staying involved in the communities where the business operates. This community involvement goes a long way toward building trust between customers and the business. If a business builds trust with its customers, they tend to give the business the benefit of the doubt if something goes wrong, rather than assuming malicious intent or raw negligence. Customers also tend to stick with businesses they trust, rather than actively seeking out new companies, which helps keep a business profitable over the long haul.

14. What are the myths relating to Corporate Social Responsibility?

Answer:

CSR is costly. Most of the corporates, more so the small and medium-sized businesses, feel that CSR is something which can be done by only companies which have achieved considerable size such as TATA, Birla or of the types of Infosys and Wipro.

- CSR is for CEOs. Most people still equate CSR with philanthropy, something which only the chairman/CEO should indulge in. There is a reason for this myth. Traditionally, the people who were seen in the functions organised by charities and supported by the corporates were the Chairmen/CEOs. This, coupled with the fact that CSR was just donations or philanthropy and the decision to support a particular charity was taken by the CEO or his wife made the myth stronger.
- CSR is public relations (PR). Since a large number of CSR programmes are associated with sponsorships, topical supports resulting in some kind of functions where the corporates get visibility, many times they are seen as a PR exercise.

15. State the benefits of Corporate Social Responsibility (CSR).

Answer:

The benefits of Corporate Social Responsibility (CSR):

1. The Law of Responsibility: Society gives business its license to exist and this can be amended or revoked at any time if it fails to live up to expectations.
2. Enhanced Brand Image and Reputation: Customers are drawn to brands and companies with good reputations.
3. Checks Government regulation/ Controls: Regulation and control are costly to business, both in terms of energy and money. Any failure of businessmen to assume social responsibilities invites government to intervene and regulate or control their activities.
4. Reduced Operating Costs: Some CSR initiatives can reduce operating costs dramatically. For example, many recycling initiatives cut waste-disposal costs and generate income by selling recycled materials.
5. Improved Financial Performance: Companies which are socially responsible carry a good image in eyes of customers as well as business arena which ultimately end up in improving the financial performance of companies.



6. Describe the core elements which should be covered by Corporate Social Responsibility (CSR) as per the Corporate Social Responsibility Voluntary Guidelines, 2009.

Answer:

Each business entity should formulate a Corporate Social Responsibility (CSR) policy to guide its strategic planning and provide a roadmap for its CSR initiatives, which should be an integral part of overall business policy and aligned with its business goals. The policy should be framed with the participation of various level executives and should be approved by the Board.

The CSR Policy should normally cover following core elements:

1. Care for all Stakeholders: The companies should respect the interests of, and be responsive towards all stakeholders, including shareholders, employees, customers, suppliers, project affected people, society at large etc. and create value for all of them. They should develop mechanism to actively engage with all stakeholders, inform them of inherent risks and mitigate them where they occur.
2. Ethical functioning: The governance systems of companies should be underpinned by Ethics, Transparency and Accountability. They should not engage in business practices that are abusive, unfair, corrupt or anti-competitive.
3. Respect for Workers' Rights and Welfare: Companies should provide a workplace environment that is safe, hygienic and which upholds the dignity of employees. They should provide all employees with access to training and development of necessary skills for career advancement, on an equal and non-discriminatory basis. They should uphold the freedom of association and the effective recognition of the right to collective bargaining of labour, have an effective grievance redressal system, should not employ child or forced labour and provide and maintain equality of opportunities without any discrimination on any grounds in recruitment and during employment.
4. Respect for Human Rights: Companies should respect human rights for all and avoid complicity with human rights abuses by them or by third party.
5. Respect for Environment: Companies should take measures to check and prevent pollution; recycle, manage and reduce waste, should manage natural resources in a sustainable manner and ensure optimal use of resources like land and water, should proactively respond to the challenges of climate change by adopting cleaner production methods, promoting efficient use of energy and environment friendly technologies.
6. Activities for Social and Inclusive Development: Depending upon their core competency and business interest, companies should undertake activities for economic and social development of communities and geographical areas, particularly in the vicinity of their operations. These could include: education, skill building for livelihood of people, health, cultural and social welfare etc., particularly targeting at disadvantaged sections of society.

17. List the steps which must be applied to every aspects of the Whole Life-cycle Costing (WLCC).

Answer:

The following steps must be applied to every aspect of the Whole Life-cycle Costing (WLCC) with the help of Operational Research (OR) methods which consist of a number of well-defined scientific steps:

- (1) Formulation of the problem, establishing the objectives and any constraints that may apply;
- (2) Building a model that represents the system under analysis;
- (3) Using the model in order to obtain a solution to the problem;
- (4) Comparing a solution obtained by means of the model with that in current use;
- (5) Evaluating the results and monitoring the performance of the system through changing conditions.



18. Corporate Social Responsibility is distinct from corporate philanthropy.

Answer:

Philanthropy means the act of donating money, goods, time or effort to support a charitable cause in regard to a defined objective. Philanthropy can be equated with benevolence and charity for the poor and needy. Philanthropy can be by an individual or by a corporate.

Corporate Social Responsibility (CSR) on the other hand is about how a company aligns their values to social causes by including and collaborating with their investors, suppliers, employees, regulators and the society as a whole. A CSR initiative of a corporate is not a selfless act of giving; companies derive long-term benefits from the CSR initiatives and it is this enlightened self interest which drives the CSR initiatives in companies.

19. Describe the factors responsible for increasing attention towards Corporate Social Responsibility by the Corporates.

Answer:

The following are the few factors and influences which have led to increasing attention being devoted to Corporate Social Responsibility (CSR) by the Corporates:

- (i) Globalization – coupled with focus on cross-border trade, multinational enterprises and global supply chains — is increasingly raising CSR concerns related to human resource management practices, environmental protection, and health and safety, among other things.
- (ii) Advances in communications technology, such as the Internet, cellular phones and personal digital assistants, are making it easier to track corporate activities and disseminate information about them. Non-governmental organizations now regularly draw attention through their websites to business practices they view as problematic.
- (iii) Consumers and investors are showing increasing interest in supporting responsible business practices and are demanding more information on how companies are addressing risks and opportunities related to social and environmental issues.
- (iv) Citizens in many countries are making it clear that corporations should meet standards of social and environmental care, no matter where they operate.
- (v) Businesses are recognizing that adopting an effective approach to CSR can reduce risk of business disruptions, open up new opportunities, and enhance brand and company reputation.

20. Analyze CSR as a Corporate Brand

Answer:

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.

Businesses 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.

Corporate 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.

21. State the reason for failure of construction Industry to embrace Whole Life Cycle Costing

Answer:

Reason for failure of construction Industry to embrace WLCC

Currently, the application of Whole Life Cycle Costing (WLCC) in the construction industry is still hindered significantly by the lack of standard method and the excuse of lack of sound data upon which to arrive at accurate decisions. As a result, the output from WLCC models is looked on as unreliable. A Government report issued by the Building Research Establishment on Whole Life Costing identified several factors that presently act as barriers to applying WLCC:

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

These barriers might be directly related to the absence of adequate knowledge of WLCC processes and mechanisms. There may also be a lack of willingness from stakeholders to set up appropriate mechanisms to solve these problems. If, for example, all building occupiers were required to submit annual running cost profiles, the risk associated with WLCC techniques could be significantly reduced (Bird 1987). In fact, White (1991) argues the case for 'performance profiles' and in particular, highlights again the requirements for a universal construction data information system. One could argue that a plethora of WLCC models does exist but the common denominator in practical application and development is lack of appropriate information or know-how to use and develop models with existing information.

It seems to be worth noting how both the academic and practical 'schools of thought' in the industry need to get their own houses in order if significant steps are to be taken in the wider applications of WLCC. Newton (1991) in his work in cost modelling procedures highlights the need for a methodological and organised framework for such research activities. The sheer complexity of many models lends little to practical application and in many cases, if not the majority, the lack of available good quality data prohibits further development. In terms of the practitioners, they need to be willing to encourage clients and building occupiers into adopting a more holistic approach to running cost control so that procedures can be put in place to aid all those requiring WLCC cost profiles.

22. Describe the core elements to be covered under CSR Policy

Answer:

The core elements to be covered under CSR Policy

The core elements to be covered under CSR Policy is as follows:

1. Care for all Stakeholders - The companies should respect the interests of, and be responsive towards all stakeholders, including shareholders, employees, customers, suppliers, project affected people, society at large etc. and create value for all of them. They should develop mechanism to actively engage with all stakeholders, inform them of inherent risks and mitigate them where they occur.



2. Ethical functioning - Their governance systems should be underpinned by Ethics, Transparency and Accountability. They should not engage in business practices that are abusive, unfair, corrupt or anti-competitive.
3. Respect for Workers' Rights and Welfare - Companies should provide a workplace environment that is safe, hygienic and humane and which upholds the dignity of employees. They should provide all employees with access to training and development of necessary skills for career advancement, on an equal and non-discriminatory basis. They should uphold the freedom of association and the effective recognition of the right to collective bargaining of labour, have an effective grievance redressal system, should not employ child or forced labour and provide and maintain equality of opportunities without any discrimination on any grounds in recruitment and during employment.
4. Respect for Human Rights - Companies should respect human rights for all and avoid complicity with human rights abuses by them or by third party.
5. Respect for Environment - Companies should take measures to check and prevent pollution; recycle, manage and reduce waste, should manage natural resources in a sustainable manner and ensure optimal use of resources like land and water, should proactively respond to the challenges of climate change by adopting cleaner production methods, promoting efficient use of energy and environment friendly technologies.
6. Activities for Social and Inclusive Development - Depending upon their core competency and business interest, companies should undertake activities for economic and social development of communities and geographical areas, particularly in the vicinity of their operations. These could include; education, skill building for livelihood of people, health, cultural and social welfare etc., particularly targeting of disadvantaged sections of society.

23. Discuss the various reasons for Corporate Social Responsibility (CSR).

Answer:

The rationale for CSR has been articulated in a number of ways. In essence, it is about building sustainable businesses, which need healthy economies, markets and communities. The major reasons for CSR can be outlined as:

1. Globalisation

- a) As a consequence of cross-border trade, multinational enterprises and global supply chains, there is an increased awareness on CSR concerns related to human resource management practices, environmental protection, and health and safety, among other things. Reporting on the CSR activities by corporates is therefore increasingly becoming mandatory.
- b) In an increasingly fast-paced global economy, CSR initiatives enable corporates to engage in more meaningful and regular stakeholder dialogue and thus be in a better position to anticipate and respond to regulatory, economic, social and environmental changes that may occur.
- c) There is a drive to create a sustainable global economy where markets, labour and communities are able to function well together and companies have better access to capital and new markets.
- d) Financial investors are increasingly incorporating social and environmental criteria when making decisions about where to place their money, and are looking to maximise the social impact of the investment at local or regional levels.

2. International Legal Instruments and Guidelines

In the recent past, certain indicators and guidelines such as the SA 8000, a social performance standard based on International Labour Organization Conventions have been developed. International agencies such as United Nations and the Organization for Economic Co-operation and Development have developed compacts, declarations, guidelines, principles and other instruments that set the tone for social norms for organisations, though these are advisory for organisations and not mandatory.



One of the United Nations Millennium Development Goals calls for increased contribution of assistance from country states to help alleviate poverty and hunger, and states in turn are advising corporates to be more aware of their impact on society. In order to catalyze actions in support of the MDGs, initiatives such as Global Compact are being put in place to instrumentalise CSR across all countries.

As the world's largest, global corporate citizenship initiative by the UN, the Global Compact, a voluntary initiative is concerned with building the social legitimacy of business.

The Global Compact is a framework for businesses that are committed to aligning their business operations and strategies with ten universally accepted principles that postulate that companies should embrace, support and enact, a set of core values in the areas of human rights, labour standards, the environment, and anti-corruption.

3. Changing Public Expectations of Business

Globally companies are expected to do more than merely provide jobs and contribute to the economy through taxes and employment. Consumers and society in general expect more from the companies whose products they buy. This is coherent with believing the idea that whatever profit is generated is because of society, and hence mandates contributing a part of business to the less privileged.

Further, separately in the light of recent corporate scandals, which reduced public trust of corporations, and reduced public confidence in the ability of regulatory bodies and organisations to control corporate excess. This has led to an increasing expectation that companies will be more open, more accountable and be prepared to report publicly on their performance in social and environmental arenas.

4. Corporate Brand

- 1) 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.
- 2) Businesses are recognising that adapting an effective approach to CSR can open up new opportunities, and increasingly contribute to the corporates' ability to attract passionate and committed workforces.
- 3) 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.
- 4) 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.
- 5) 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.
- 6) 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.

24. According to "Altered Images: The 2001 State of Corporate Responsibility in India Poll" a survey conducted by Tata Energy Research Institute (TERI), the evolution of CSR in India has followed a chronological evolution of 4 thinking approaches. Explain the same.

Answer:

According to "Altered Images: the 2001 State of Corporate Responsibility in India Poll", a survey conducted by Tata Energy Research Institute (TERI), the evolution of CSR in India has followed a chronological evolution of 4 thinking approaches:



Ethical Model (1930 –1950): One significant aspect of this model is the promotion of "trusteeship," that was revived and reinterpreted by Gandhiji. Under this notion the businesses were motivated to manage their business entity as a trust held in the interest of the community. The idea prompted many family run businesses to contribute towards socioeconomic development. The efforts of Tata group directed towards the well being of the society are also worth mentioning in this model.

Statist Model (1950 –1970s): Under the aegis of Jawahar Lal Nehru, this model came into being in the post independence era. The era was driven by a mixed and socialist kind of economy. The important feature of this model was that the state ownership and legal requirements decided the corporate responsibilities.

Liberal Model (19 70s –1990s): The model was encapsulated by Milton Friedman. As per this model, corporate responsibility is confined to its economic bottom line. This implies that it is sufficient for business to obey the law and generate wealth, which through taxation and private charitable choices can be directed to social ends.

Stakeholder Model (1990s – Present): The model came into existence during 1990s as a consequence of realisation that with growing economic profits, businesses also have certain societal roles to fulfill. The model expects companies to perform according to "triple bottom line" approach. The businesses are also focusing on accountability and transparency through several mechanisms.

