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Answer Paper	
Corporate & Economic Laws	Duration: 180
Details: Full Test – 1	Marks: 100

## Instructions:

- All the questions are compulsory
- Properly mention test number and page number on your answer sheet, Try to upload sheets in arranged manner.
- In case of multiple choice questions, mention option number only Working notes are compulsory wherever required in support of your solution
- Do not copy any solution from any material. Attempt as much as you know to fairly judge your performance.

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## Division A: Multiple Choice Questions

### A 1- Answers to case study based MCQs:-

#### Integrated Case Scenario 1

1. (b) The valuation of the shares should not be less than what has been specified by the Security and Exchange Board of India.
2. (b) Amalgamation of listed company into an unlisted company, does not by itself, convert the transferor company into a listed company.
3. (b) To file a statement in a prescribed form, with the registrar, certified by Chartered Accountant/ Cost Accountant/ Company Secretary, that the scheme is compiled as per the tribunal directions.
4. (b) Only Mr. Manjit is eligible is for compensation by the company.
5. (c) II & IV

(2\*5 = 10 Marks)

#### Integrated Case Scenario 2

1. (c) Import of machinery is a 'Current Account Transaction' since a short term credit facility in the ordinary course of business was availed by EFBL.
2. (a) Mr. Jay Doshi is permitted to bring into India from Bhutan, Reserve Bank of India notes amounting to Rs. 75,000 in denomination of Rs. 100.
3. (a) Ms. Geetika Devi is a PROI for FY 2019-20 and a PRI for the FY 2020-21.
4. (b) EFBL is permitted to spend USD 7,500 for advertisement in foreign print media relating to the stated purpose without seeking any approval

5. (c) EFBL is permitted to donate USD 200,000 but only with the prior approval of the Reserve Bank of India.

**(2\*5 = 10 Marks)**

**A 2- Answers to general MCQs:-**

1. (a) Vision Ltd. shall file return to the Registrar of Company in India, within 30 days of the appointment of Mr. Y

2. (c) 60

3. (a) The Tribunal can Suo moto refer any matter pertaining to such proceedings to the Mediation and Conciliation Panel.

4. (c)  $1; 1/10^{\text{th}}$ ;  $1/10^{\text{th}}$

5. (d) Mr. Sharma can be called upon by the Registrar through a written notice served on him without any time period limit.

6. (b) No, the Code provides powers to the IRP to access all information from various parties

7. (d) No it cannot be admitted by the court, as the jurisdiction of court is ousted because of existence of a valid arbitration agreement.

8. (b) Yes, money laundering transaction done via credit card and online payments comes under the Prevention of Money Laundering Act

9. (b) The vacancy shall be filled by the Board at a meeting of the Board within a period of six months from the date of such vacancy.

10. (b) The notice should have been served latest by 15th January, 2019.

**(1\*10 = 10 Marks)**

## Division B: Answers to descriptive questions

### ANS-1 (A)

As per section 196(3) of the Companies Act, 2013, no company shall appoint or continue the employment of any person as managing director, whole-time director or manager who is below the age of twenty-one years or has attained the age of seventy years, unless that appointment of a person who has attained the age of seventy years may be made by passing a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person.

Where no such special resolution is passed but votes cast in favour of the motion exceed the votes, if any, cast against the motion and the Central Government is satisfied, on an application made by the Board, that such appointment is most beneficial to the company, the appointment of the person who has attained the age of seventy years may be made.

Therefore, appointment of Mr. Chander in the shining Ltd. being of 75 years, is valid in compliance to above legal provisions.

(i) As per section II of Part II of Schedule V to the Companies Act 2013- "effective capital" means the aggregate of the paid-up share capital (excluding share application money or advances against shares); amount, if any, for the time being standing to the credit of share premium account; reserves and surplus (excluding revaluation reserve); long-term loans and deposits repayable after one year (excluding working capital loans, overdrafts, interest due on loans unless funded, bank guarantee, etc., and other short-term arrangements) as reduced by the aggregate of any investments (except in case of investment by an investment company whose principal business is acquisition of shares, stock, debentures or other securities), accumulated losses and preliminary expenses not written off.

According to the particulars given:

Particulars	Amounts
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	(in Crores)
Paid up share capital (Excluding share application money) (215-15)	INRs 200
General Reserve (Excluding Revaluation Reserve) (170-20)	INRs 150
Long term loans	INRs 200
Less: Investments (40) and Accumulated losses (10)	(INRs 50)
Effective Capital	INRs 500

(ii) As per Section II of Part II of Schedule V to the Companies Act 2013, in case of no or inadequate profits, if effective capital of company is INR 250 crore or more then, yearly remuneration per person payable shall not exceed by INR 120 lakh plus 0.01% of the effective capital in excess of INR 250 crore. The maximum remuneration that may be paid to each managerial person will be  $[120 \text{ lakh} + (0.01\% \times 250 \text{ cr})] = 122.5 \text{ lakh}$ .

Provided that the remuneration in excess of above limits may be paid if the resolution passed by the shareholders is a special resolution.

(6 Marks)

**(B)** According to section 167(1)(h) of the Companies Act, 2013, the office of a director shall become vacant in case he, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company. If a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications specified in sub-section (1), he shall be punishable with fine which shall not be less than Rs. 1,00,000 but which may extend to Rs. 5,00,000. [Section 167(2)]

As per section 168 a director may resign from his office by giving a notice in writing to the company. The Board shall on receipt of such notice take note of the same and intimate Registrar. Board shall place the fact of such resignation in the report of Director in the immediate following General Meeting by the Company. Besides, Director also forward his resignation to registrar within 30 days of his resignation. The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later. As per the given facts, the legal position of Mr. Ram in the given situation will be as follows:

(i) Holding of directorship of Mr. Ram in X Ltd. is invalid in the light of section 167 (1) (h) of the Companies Act, 2013. As per the facts, Mr. Ram was appointed as director in X Ltd. due to holding of office in its holding company, ABC Ltd. According to the above provisions, office of director in X Ltd. shall become vacant due to cease of its holding of his office or employment in ABC Ltd. So holding of directorship in X Ltd. by Mr. Ram is invalid and he is liable to vacate.

Even if, Mr. Ram functions as a director knowing that the office of director held by him has become vacant on account of the above provision, he shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than Rs. 1,00,000 but which may extend to Rs. 5,00,000, or with both. [Section 167(2)]

(ii) According to Section 168 of the Companies Act, 2013, Resignation shall effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later, i.e., 15.02.2018. So joining of HXL Ltd. during the notice period i.e. on 13.02.2018, is not valid.

As per section 172 of the Companies Act, 2013, if a company contravenes in compliance to the said provision, the company and every officer of the company who is in default shall be liable to a penalty of Rs. 50,000, and in case of continuing failure, with a further penalty of Rs. 500/ day during which Such failure continues, subject to a maximum of Rs. 3,00,000 in case of a company and Rs. 1,00,000 in case of an officer who is in default.

**(4 Marks)**



**(C) Number of Directorships:** As per section 165(1) of the Companies Act, 2013, no person shall hold office as director, including any alternate directorship, in more than 20 companies at the same time. Out of the limit of 20, the maximum number of public companies in which a person can be appointed as a director shall not exceed 10. [Proviso to section 165(1)] Private companies that is either holding or subsidiary company of a public company shall be included in reckoning the limit of public companies in which a person can be appointed as a director.

In the instant case, Ms. Rose was appointed as a Women director on 1<sup>st</sup> March, 2017 in Brown Limited. She was already holding directorship in twelve companies including ten public companies. She is whole time Cost Accountant in practice. As Ms. Rose was already a director in ten public companies, her appointment in Brown Limited is not valid as it will lead to her directorship in 11 public companies.

In this case, either she can choose between the companies in which she wishes to continue to hold the office of director or resign her office as director in the other remaining companies & fall within the limits

In the instant case, Ms. Jasmine holds directorship in eight public companies including managing directorship in two companies and directorship in six companies. In addition, she also holds alternate directorship in three companies and independent directorship in three subsidiary companies of Brown Limited. Ms. Jasmine was already holding directorship in eight public companies and alternate directorship in three companies (assuming these companies as private) and independent directorship in three subsidiary companies of Brown Limited. Directorship in three subsidiary companies of Brown Limited will be considered as directorship in three more public companies.

Hence, total holding of directorship by Ms. Jasmine in public companies amounts to 11 (8+3) which is invalid. In this case, either she can choose between the companies in which she wishes to continue to hold the office of director or resign her office as director in the other remaining companies.

Assumption: As nothing is mentioned that whether three companies in which Ms. Jasmine is holding alternate directorship are private or public, we are assuming that these companies are private in nature. Even if the student writes the answer based on assumption that Ms. Jasmine is holding alternate directorship of a public company, will not change.

**(4 Marks)**

**ANS-2 (A)**

**Statement that Company is in Liquidation [Section 344 of the Companies Act, 2013]**

**(1) Statement of winding up:** Where a Company is being wound up, whether by

- the Tribunal or
- voluntarily,

Every invoice, order for goods or business letter issued-

- by or on behalf of the Company or
- by a Company Liquidator of the Company, or
- by a receiver or
- by the manager of the property of the Company,

Being a document on or in which the name of the Company appears, shall contain a statement that the Company is being wound up.

(2) If a company contravenes the above provisions, the company and every officer of the Company, the Company Liquidator and any receiver or manager, who willfully authorizes or permits the non-compliance, shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees.

In the instant case, the Auditor would have advised accordingly.

**(4 Marks)**



**(B) Investigation into affairs of Company (Section 210 of the Companies Act, 2013)**

Section 210 of the Companies Act, 2013 provides for Investigation into affairs of a Company. According to this Section:

Investigation in the opinion of Central Government:

Where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a Company,-

- (a) On the receipt of a report of the Registrar or Inspector under Section 208;
- (b) On intimation of a Special Resolution passed by a Company that the affairs of the Company ought to be investigated; or
- (c) In public interest,

It may order an investigation into the affairs of the Company. (Sub-section (1))

In the instant case, the shareholders' application will not be accepted under Section 210 of the Companies Act, 2013 because Central Government may order an investigation into affairs of the Company only on the intimation of a special resolution passed by a Company that the affairs of the Company ought to be investigated and then may appoint the Inspectors.

Here, 450 members holding 16% of the paid up value of the shares of the Company have made an application to the Central Government to appoint an Inspector to carry out investigation but it is not sufficient as the Company has not passed the special resolution.

It is immaterial that later on 100 members holding 7% of the paid up capital had withdrawn from the application. The application is still invalid due to non-passing of Special Resolution.

**(4 Marks)**

**(C)** According to the Schedule III of the FEM (current account transactions) Rules, 2000, following shall be the limit for the remittance of Foreign Exchange in the given situations: Foreign exchange may be released for studies abroad & medical treatment up to a limit of US \$ 2,50,000 total without any permission from the RBI.

However, it can withdraw beyond that if it is so required by a country of emigration/medical institute/university respectively.

Therefore, Mr. T. Raghava can draw foreign exchange exceeding USD 2,50,000 if it is so required by a country of emigration/medical institute/university respectively.

**(3 Marks)**

**(D) ECB facility for Startups:**

AD Category-I banks are permitted to allow Startups to raise ECB under the automatic route as per the following framework:

(i) Eligibility: An entity recognized as a Startup by the Central Government as on date of raising ECB.

(ii) Maturity: Minimum average maturity period will be 3 years.

(iii) Recognized lender: Lender/investor shall be a resident of a FATF compliant country. However, foreign branches/subsidiaries of Indian banks and overseas entity in which Indian entity has made overseas direct investment as per the extant Overseas Direct Investment Policy will not be considered as recognized lenders under this framework.

(iv) Forms: The borrowing can be in form of loans or non-convertible, optionally convertible or partially convertible preference shares.

(v) Currency: The borrowing should be denominated in any freely convertible currency or in Indian Rupees (INR) or a combination thereof. In case of borrowing in INR, the non-resident lender, should mobilize INR through Swaps/outright sale undertaken through an AD Category-I bank in India.

(vi) Amount: The borrowing per Startup will be limited to USD 3 million or equivalent per financial year either in INR or any convertible foreign currency or a combination of both.

**(3 Marks)**

**ANS-3 (A)**

**Fraudulent Application for Removal of Name [Section 251]**

Where it is found that an application for removal of Name by a company has been made with the-

- Object of evading the liabilities of the company, or
- With the intention to deceive the creditors, or
- To defraud any other persons, the persons in charge of the management or the company shall, notwithstanding that the company has been notified as dissolved-

(a) Be jointly and severally liable to any person or persons who had incurred loss or damage as a result of the company being notified as dissolved; and

(b) Be punishable for fraud in the manner as provided in section 447.

Recommendation for prosecution: The Registrar may also recommend prosecution of the persons responsible for the filing of an application.

Appeal to Tribunal: Any person aggrieved by an order of the Registrar, notifying a company as dissolved under section 248, may file an appeal to the Tribunal within a period of three years

from the date of the order of the Registrar and if the Tribunal is of the opinion that the removal of the name of the company from the register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the company in the register of companies.

Provided that before passing any order under this section, the Tribunal shall give a reasonable opportunity of making representations and of being heard to the Registrar to, the company and all the persons concerned.

**(4 Marks)**

**(B) Whether Kids Toys Limited is deemed to be a Foreign Company?**

According to Section 2(42) of the Companies Act, 2013, a "foreign company means any company or a body corporate incorporated outside India which has a place of business in India whether by itself or through an agent physically or through electronic mode and conducts any business activity in India in any other manner.

Accordingly, Kids Toys Limited, a Japanese Company has established a place of business in India (branch office in Mumbai) and also carries on the business in India. Hence, this Company shall be deemed to be a Foreign Company.

**Whether the Company requires to comply with the provisions of the Companies Act, 2013 as if it is an Indian Company?**

**LEGAL POSITION:**

As per Section 379 (2) of the Companies Act, 2013 (the Act) where not less than 50% of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company is held by:

(i) One or more citizens of India; or

(ii) By one or more companies or bodies corporate incorporated in India; or

(iii) By one or more citizens of India and one or more companies or bodies corporate incorporated in India,

(iv) whether singly or in the aggregate, such Company shall comply with the provisions of Chapter XXII (dealing with the legal provisions for 'Companies incorporated outside India') and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a Company incorporated in India.

Accordingly, preference share capital held by Jiyalal and equity share capital held by Ramlal, both being Indian citizens, besides equity share capital held by Smart Toys Limited, an Indian Company, in Kids Toys Limited (Company incorporated in Japan) are 10%, 20% and 20% respectively. In aggregate, Jiyalal, Ramlal and Smart Toys Limited are holding 50% of the paid-up share capital of a foreign Company.

## CONCLUSION

Thus, Kids Toys Limited, shall comply with the provisions of Chapter XXII and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India.

**(4 Marks)**

**(C)** As per Section 5(5) of the Prevention of Money Laundering Act, 2002, the Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.

As per Section 8(4) of the Prevention of Money Laundering Act, 2002, where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-

section (3), the Director or any other officer authorized by him in this behalf shall forthwith take the possession of the property attached under section 5 or frozen under sub-section (1A) of section 17, in such manner as may be prescribed. Accordingly, the Director is to file a petition with the Adjudicating Authority within 30 days of attachment. After order of attachment is confirmed, the Director takes possession of the attached property.

**(3 Marks)**

**(D)** According to Section 38 of the Prevention of Money Laundering Act, 2002, if the Members of a Bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairman who shall either hear the point or points himself or refer the case for hearing on such point or points by third Member of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of the Members of the Appellate Tribunal who have heard the case, including those who first heard it. In the given question, the decision regarding attachment of Rajan's property was taken by a majority decision (total 3 members: two original members+ the third member to whom the matter was referred). The contention of Rajan that since the original bench was divided in its opinion, the matter ought to be decided by the Chairman, is invalid.

**(3 Marks)**

**ANS-4 (A)**

(i) Term of Office: As per Section 5 of the SEBI Act, 1992 and the Rules framed thereunder, the Chairman may hold office for a period of 5 years subject to the maximum age limit of 65 years and can be re-appointed by the Central Government.

In the instant case, the appointment of Mr. A as the Chairman to the Board of SEBI by Union Government is not valid as Mr. A is of 65 years.



(ii) Vacancies, etc., not to invalidate proceedings of the Board (Section 8 of the SEBI Act, 1992]  
the following reasons shall not invalidate any act or proceeding of the Board:

- any defect in the constitution of the Board
- in the appointment of any person or member of the Board
- any irregularity in the procedure of the Board not affecting the merits of the case

As per the above provision, the passing of the resolution altering the byelaws of the Stock Exchange by SEBI is valid, even though, the appointment of one of the directors of the Board is invalid.

Accordingly, in the instant case, the contention of stock exchange regarding refusal to accept the alteration on the ground that the appointment of one of the directors in Board was defective is not right.

**(4 Marks)**

**(B)** Regulation 17(1) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015)

(i) According to said Regulation, company should have optimum combination of executive and non-executive directors, with not less than 50% of directors comprising of non-executive directors. Hence, in Grow Well Limited, there should be not less than 6 non- executive directors.

(ii) According to said Regulation, where the chairperson of the board of directors is a non-executive director, at least one-third of the board of directors of Grow Well Limited shall comprise of independent directors i.e. minimum 4.

(iii) Where the listed entity does not have a regular non-executive chairperson, at least half of the board of directors (i.e., 50%) shall comprise of independent directors i.e. minimum 6.

(iv) Where the regular non-executive chairperson is a promoter of the listed entity or is related to any promoter or person occupying management positions at the level of board of director or at one level below the board of directors, at least half of the board of directors of the listed entity shall consist of independent directors i.e. minimum 6.

**(4 Marks)**

**(C)** (i) According to Section 7 of the Foreign Contribution (Regulation) Act, 2010, No person who-

- (a) Is registered and granted a certificate or has obtained prior permission under this Act; and
- (b) receives any foreign contribution, shall transfer such foreign contribution to any other person.

In the instant case, the association cannot transfer to "Home for Aged Society" and to "Welfare Club" under the Act.

(ii) According to proviso to Section 8 of the FCRA, 2010 any foreign contribution shall not be used for speculative business.

Speculative activities have been defined in Rule 4 of FCRR, 2011 as under:

- (a) any activity or investment that has an element of risk of appreciation or depreciation of the original investment, linked to market forces, including investment in mutual funds or in shares;
- (b) participation in any scheme that promises high returns like investment in chits or land or similar assets not directly linked to the declared aims and objectives of the organization or association.

In the instant case, the association cannot invest portion of the donation in Chits promising high returns.

**(3 Marks)**

**(D)** As per the requirements of a valid arbitration agreement, parties to the arbitration agreement must agree that the determination of their substantive rights by a neutral third person acting as the arbitral tribunal would be final and binding upon them.

Since in the given case, the arbitration agreement formed by the XYZ Pvt. Ltd. contained a clause that any questions, claim right, matter, thing, whatsoever, in any way arising out of or relating to the contract designs, drawings, specifications estimates, instructions, or orders, or those conditions or failure to execute the same whether arising during the progress of the work, or after the completion, termination or abandonment thereof, the dispute shall, firstly, be referred to the Chief Engineer, Mr. Builder. He will have jurisdiction over the work specified in the contract. He shall within a period of ninety days from the date of dispute brought into notice, give written notice of his decision to the Contractor. Chief Engineer's decision shall be final and binding on both the parties

Here Chief Engineer is not a neutral party and has a Control over the work specified in the contract, so this is not a valid arbitration agreement.

**(3 Marks)**

**ANS-5 (A)**

According to section 301 of the Companies Act, 2013, at any time either before or after passing a winding up order, if the Tribunal is satisfied that

- a contributory or
- a person having property, accounts or papers of the company in his possession

is about to leave India or otherwise to abscond, or is about to remove or conceal any of his property, for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, the Tribunal may cause-

(a) The contributory to be detained until such time as the Tribunal may order; and

(b) His books and papers and movable property to be seized and safely kept until such time as the Tribunal may order.

In the instant case, by taking into account the above provisions:

(i) The Tribunal's order for detention of contributory for next 6 months disallowing him to leave India is valid.

(ii) It is correct from Tribunal's part to arrest and seize books of accounts from the person planning to abscond to avoid examination of books of accounts in respect of the affairs of the company.

**(4 Marks)**

**(B)** In the given instance, an appointment of Mr. Fair was made by a group of depositors of M/s. Bright Limited(listed company), as their representative to bring a class action suit against the management of the Company.

The given problem will be dealt with Section 432 read with the 245(10) of the Companies Act, 2013. Section 432 states that a party to any proceeding or appeal before the Tribunal or Appellate Tribunal as the case may be, may appear in person or authorize one or more Chartered Accountant or Company Secretaries or Cost Accountants or legal practitioners or any other person to present his case before the Tribunal or Appellate Tribunal as the case may be. Whereas, Section 245(10) of the Companies Act, 2013, provides that an application may be filed or any other action may be taken under this section by any person, group of persons or any association of persons representing the persons affected by any act or omission, specified in section 245(1) subject to the compliances of this section.

In view of the above, the appointment of Mr. Fair is valid and an application of Mr. Fair who is a representative of depositors, will be admitted by the Hon'ble Tribunal, provided, the

requirement of minimum number of members filing the application under Section 245(3)(i) is fulfilled.

**(4 Marks)**

**(C) Appeal from Orders of Tribunal [Section 421 of the Companies Act, 2013]**

(1) Appeal to Appellate Tribunal: Any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal (AT).

(2) When order made by consent of parties: No appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties.

(3) Period for filing of appeal: Every appeal against order of Tribunal, shall be filed within a period of 45 days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved.

(4) Extension of period: However, the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding 45, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

Thus,

(i) In the instant case, the appeal was filed on 6th June, 2018 before the NCLAT, and Company prayed for condonation of delay. As per the provisions of the Act, the appeal should have been filed with NCLAT by 19th May, 2018 (.e. 45 days from 4th April, 2018). Though the appeal could have been admitted on the grounds that the order of NCLT was passed without the consent of the parties. But the appeal was not tendered within the prescribed time. Further, the delay of condonation cannot be given as the strike started in the company from 22nd May, 2018 i.e. after 45 days of receiving the order of the NCLT and thus, the appellant was not prevented by

sufficient cause from filing the appeal within the prescribed period. Hence the proposed appeal by Solan Minerals Limited will not be admitted by the NCLAT

(ii) The maximum period allowed for condonation is 45 days if the AT is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

**(6 Marks)**

**ANS-6 (A)**

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

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

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

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

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



Penalty: According to Section 178(8), in case of contravention of provisions of Section 177, Company shall be liable to a penalty of Rs. 5,00,000 and Every defaulting officer of the company shall be liable to a penalty of Rs. 1,00,000.

**OR**

**Borrowing by the Company (Section 180 of the Companies Act, 2013)**

As per Section 180(1)(c) of the Companies Act, 2013, the Board of Directors of a company, without obtaining the approval of shareholders in a general meeting through a special resolution, can borrow the funds including funds already borrowed up to an amount which does not exceed the aggregate of paid up capital of the company, free reserves and securities premium. Such borrowing shall not include temporary loans obtained from the company's bankers in ordinary course of business.

Free reserves do not include the reserves set apart for specific purpose.

According to the above provisions, the Board of Directors of Prince Company Limited can borrow, without obtaining approval of the shareholders in a general meeting, upto an amount calculated as follows:

Particulars	Rs.
Paid up Share Capital	40 Crore
General Reserve (being free reserve)	20 Crore
Debenture Redemption Reserve (This reserve is not to be considered since it is kept apart for specific purpose of debenture redemption)	-
Securities Premium	2 Crore
Aggregate of paid up capital, free reserve and securities premium	62 Crore

Total borrowing power of the Board of Directors of the company, i.e, 100% of the aggregate of paid up capital free reserves and securities premium	62 Crore
Less. Amount already borrowed as Long term loan	10 Crore
Amount up to which the Board of Directors can further borrow without the approval of shareholders in a general meeting	52 Crore

In the present case, the directors of Prince Company Limited by a resolution passed at its meeting decide to borrow an additional sum of Rs. 90 Crore from the company bankers. Thus, the borrowing will be beyond the powers of the Board of directors.

Thus, the management of Prince Company Limited., should take steps to convene the general meeting and pass a special resolution by the members in the meeting as stated in Section 180(1) (Cc) of the Companies Act, 2013. Then, the borrowing will be valid and binding on the company and its members.

Note: In case of private companies section 180 shall not apply

**(4 Marks)**

**(B)** In accordance with the provisions of the Companies Act, 2013 as contained under section 149, appointment of Women director and Resident Director is regulated by the said provisions. Accordingly:

Women Director At least one woman director shall be on the Board of such class or classes or companies as may be prescribed. [Second proviso to section 149(1)]. The Companies (Appointment and Qualification of Directors) Rules, 2014 provides that the following classes of companies shall appoint at least one woman director:

(i) Every listed company

(ii) Every other public company having:

(a) Paid up share capital of Rs. 100 crore or more; or

(b) Turnover of Rs. 300 crore or more.

Further, any intermittent vacancy of a woman director shall be filled up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy whichever is later. Resident Director: Every company shall have at least one director who has stayed in India for a total period of not less than 182 days in the financial year.  
[Section 149(3)]

Thus, according to the above provisions:

In the first case, since the Royal Limited Company is a listed company, it is required to comply with the above and should appoint the women Director and the Resident Director accordingly.

In the second case, since, the Royal Limited Company is a non listed company (less than limits), it is not mandatory to have a woman director on the Board. In the third case, since, the paid-up share capital of the company is Rs. 50 crore and the turnover of the company is Rs. 200 crore and the company is non listed company, it is not mandatory to have a women director on the Board.

**(4 Marks)**

**(C) Recovery of fine or penalty (Section 69 of the Prevention of Money Laundering Act, 2013]**

Where any fine or penalty imposed on any person under section 13 or section 63 is not paid within six months from the day of imposition of fine or penalty, the Director or any other officer of the Adjudicating Authority authorized by him in this behalf may proceed to recover the amount from the said person in the same manner as prescribed in Schedule II of the Income-tax Act, 1961 for the recovery of arrears and he or any officer authorized by him in this behalf shall

have all the powers of the Tax Recovery Officer mentioned in the said Schedule for the said purpose.

**(3 Marks)**

**(D)** As per Section 5(7) of the Insolvency and Bankruptcy Code, 2016, financial creditor means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.

Whereas the term Financial debt defined under Section 5(8) means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes any amount raised pursuant to the Issue of bonds, notes, debentures, loan stock or any similar instrument.

As per the facts, Mr. Raman, was an investor and a debenture holder of 'Optionally Convertible Debenture Bond (OPDB)' issued by the Asset Ltd. With the debenture payable, as on the maturity date with interest, it was disbursed against consideration for the time value of the money. Thus, it can be said that debentures on maturity will come under that purview of Section 5(8)(c). Since Mr. Raman is a person to whom a financial debt is owed, he will come within the definition of financial creditor. Being a debenture-holder and shareholder of the company he, being a creditor is entitled to claim debt amount. Therefore, as per section 7, Mr. Raman is entitled to file an application to initiate CIRP against the M/s Asset Ltd.

**(3 Marks)**