

# **RAGHAV ACADEMY**

Dedicated to CMA

**CMA** **FINAL** **GR-III**

# **ALLIED LAWS**

**INCLUDING CG CSR**

BY

**CA RAGHAV GOEL**

**Dedicated to MyFather**

**Late ShriJagMohanGoel**

**His eternal soul  
is always withme.**



ALL ENERGY IS WITHIN.

ALL POWER IS INSIDE.

TAKE IT OUT.

DON'T LET OTHERS WRITE YOUR DESTINY.

COME AND CREATE THE DIFFERENCE.

BE YOURSELF.

BEHAVE YOURSELF. **CA RaghavGoel**

*Lehron se Darkar nauka par nahin hoti,  
koshish karne walon ki haar nahin hoti*

*Nanhi cheenti jab daana lekar chalti hai,  
chadhti deewaron par, sau bar phisalti hai.  
Man ka vishwas ragon mein saahas bharta hai,  
chadkar girna, girkar chadhna na akharta hai.  
Akhir uski mehnat bekar nahin hoti,  
koshish karne walon ki haar nahin hoti.*

*Dubkiyan sindhu mein gotakhor lagata hai,  
ja ja kar khali haath lautkar aata hai  
Milte nahi sahay hi moti gehre paani mein,  
badhta dugna utsah isi hairani mein.  
Muthi uski khali har bar nahin hoti,  
koshish karne walon ki haar nahi hoti.*

*Asafila ek chunauti hai, ise sweekar karo,  
kya kami reh gayi, dekho aur sudhar karo.*

*Jab tak na safal ho, neend chain ko tyago tum,  
Sangharsh ka maidan chhodkar mat bhago tum.  
Kuch kiye bina hi jai jaikar nahin hoti,  
koshish karne walon ki haar nahin hoti.*

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**SEBI Laws and Regulations**

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**SCANNER QUESTON:-**

**Q1. 2017- June** [8] Write short notes on the following:

(c) Lock-in of Specified Securities held by promoters.

(e) Grant of recognition to Stock Exchanges - Conditions, Section 4(2) SCRA, 1956.

**(4 marks each)**

**Answer:**

(c) Lock-in of specified securities held by promoters.

In a public issue, the equity shares and convertible debentures held by promoters are locked-in for the period stipulated below:

(a) minimum promoters' contribution is locked-in for a period of 3 years from the date of commencement of commercial production or date of allotment in the public issue, whichever is later.

(b) promoters' holding in excess of minimum promoters' contribution is locked-in for a period of 1 year. However, excess promoters' contribution in a further public offer are not subject to lock-in.

(e) Grant of recognition to Stock Exchange:

The conditions which the Central Government may prescribe **under clause (a) of sub-section (1)** for the grant of recognition to the stock exchanges may include, among other matters, conditions relating to,:

(i) the qualifications for membership of the stock exchanges;

(ii) the manner in which contracts shall be entered into and enforced as between members;

(iii) the representation of the Central Government on each of the stock exchange by such number of persons not exceeding three as the Central Government may nominate in this behalf; and

(iv) the maintenance of accounts of members and their audit by . Chartered Accountants whenever such audit is required by the Central Government.

**Q2. 2017 - Dec [8]** Write short note on the following:

**(4 marks)**

(c) Benefits of Listing

**Answer:**

The following benefits are available when securities are listed by a company in the stock exchange:

- (a) public image of the company is enhanced.
- (b) the liquidity of the security is ensured making it easy to buy and sell the securities in the stock exchange.
- (c) tax concessions are made available both to the investors and the companies.
- (d) listing procedure compels company management to disclose important information to the investors enabling them to make crucial decisions with regard to holding or disposing of such securities.
- (e) shares of listed companies command better credibility as they could be offered as security for loans from Banks and FIS.

**Q3. 2018- June [8]** Write short note on the following:

**(4 marks)**

(a) Types of listing

**Answer:**

The various types of listing of shares under SEBI Act, 1992 can be classified as follows :

- 1. Initial listing:** Here, the shares of the company are listed for the first time on a stock exchange.
- 2. Listing for Public Issue:** When a company which has listed its shares on a stock exchange comes out with a public issue.
- 3. Listing for Rights Issue:** When the company which has already listed its shares. In the stock exchange issues securities to the existing shareholders on rights basis.
- 4. Listing of Bonus Shares:** When a listed company in a stock exchange is capitalizing its profit by issuing bonus shares to the existing shareholders.
- 5. Listing for Merger or Amalgamation:** When the amalgamated company issues new shares to the shareholders of amalgamating company, such shares are listed.

**Q4. 2018 - Dec [8]** Write short note on the following:

**(4 marks)**

(ii) Differential Pricing

**Answer:**

Differential Pricing:

An issuer may offer equity shares and convertible securities at different prices, subject to the following condition :

- (a) The retail individual** investors/shareholders or employees entitled for reservation making an application for equity shares and convertible securities of value not more than 2 lakh, may be offered equity shares and convertible securities at a price lower than the price at which net offer is made to other categories of applicants provided that such difference is not more than 10% of the price at which equity shares and convertible securities are offered to other categories of applicants.
- (b) In case of a book built issue,** the price of the equity shares and convertible securities offered to an anchor investor cannot be lower than the price offered to other applicants.
- (c) In case of a composite issue,** the price of the equity shares and convertible securities offered in the public issue may be different from the price offered in rights issue and justification for such price differences should

be given in the offer document.

(d) **In case the issuer** opts for the alternate method of book building, the issuer may offer specifies securities to its employees at a price lower than the floor price, However, the difference between the floor price and the price at which equity shares and convertible securities are offered to employees should not be more than 10%, of the floorprice.

**Q5. 2019 - June [8]** Write short note on the following:

(i) List the quarterly compliances for a listed entity under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

(4marks)

**Q6. 2013 - Dec [5]** (b) Explain briefly what type of defaults by the stock brokers come within the purview of Section 15F of SEBI Act, 1992.

(3marks)

**Answer:**

Section	Nature of Violation	Penalty
15F	Fails to issue contract notes	Not less than ` 1 lakh
	Fails to deliver any security or fail to make payment	Not less than ` 1 lakh and may extend to ` 1 lakh per day for continuous failure subject to a maximum of ` 1 crore.
	Charges in excess of the brokerage specified.	Not less than ` 1 lakh and may extend five times of the brokerage.

**Q6. 2014 June [1] {C}** (d) The Vewar Rural Financial Corporation, Udaipur, established under a special statute issued 7 year bonds to public directly and not through any stock exchange. Decide whether the said Act of the Vewar Rural Financial Corporation is in violation of the provisions of the Securities Contracts (Regulation) Act, 1956.

(2marks)

**Answer:**

Since the Vewar Rural Financial Corporation is a corporation established under a special statute enacted by competent legislature the provisions of Sec. 28 of securities contracts (Regulation) Act, 1958 shall not apply to it. Therefore, Vewar Rural Financial Corporation can issue 7 year Bonds to the public directly without requiring any permission of any stock exchange.

**Q7. 2014 - June [2]** (c) What provisions have been made under Section 15G of the SEBI Act, 1992 in connection with penalty for insider trading?

(3marks)

**Answer:**

Penalty for insider trading [Section 15G]

If any insider who:

- either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price sensitive information; or
- communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in the ordinary course for business or under any law; or
- counsels or procures for, any other person to deal in any securities of any body corporate on the basis of unpublished price sensitive information, shall be liable to a penalty of ` 25 crores or 3 times the amount of profits made out of insider trading, whichever is higher the words "which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits whichever is higher"



shall be substituted.

**Q.8 2014 - Dec [1] {C}** (e) The shares of MNC LTD. were listed on a recognized stock exchange. The stock exchange delists the shares of the company. Referring to the provisions of the Securities Contracts (Regulation) Act, 1956, advise the company on the remedies available to the company against the order of the stock exchange. (3 marks)

**Answer:**

**Section 21A of the Securities Contracts (Regulation) Act, 1956** describes the provisions regarding delisting of securities by a recognized stock exchange. • A recognized stock exchange may delist the securities, after recording the reasons therefore, from any recognized stock exchange on any of the ground or grounds as may be prescribed under this Act. Provided that the securities of a company shall not be delisted unless the company concerned has been given a reasonable opportunity of being heard.

• A listed company or an aggrieved investor may file an appeal before the Securities Appellate Tribunal against the decision of the recognized stock exchange delisting the securities within fifteen days from the date of the decision of the recognized stock exchange delisting the securities and the provisions of **Section 22B to 22E** of this Act shall apply, as far as may be, to such appeals; Provided that the Securities Appellate Tribunal may, if it is satisfied that the company was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding one month. MNC Ltd. may be advised accordingly.

**Q.9 2015 - June [1]** Answer the question:

(d) Dehradun Stock Exchange wants to get itself recognize. What information will have to be provided with the application for recognition under Securities Contracts'(Regulation) Act, 1956? (3 marks)

**Answer:**

Application for recognition must be accompanied by 4 copies of Articles/ Bye-Laws and Rules and Regulations which must contain specific details on:

1. Constitution, powers of management and manner of transacting business by the Governing Body of the StockExchange.
2. Powers and duties of the office bearers of StockExchange.
3. Various classes of Members, qualification of membership and the exclusion, suspension, expulsion and re-admission of members.
4. The procedure for registration of Partnerships as members to stock exchange and rules of nomination of authorized representatives.

Membership provisions, composition of Board and Powers of Governing Board etc. are defined in the Articles of the Exchange. Rules governing Listing, Trading and Settlement, Penalties and Prohibitions, Disciplinary provisions and Defaults are defined in Bye-Laws of the Exchange.

**Q.10 2015 - June [2] (e) (iii) (a) Mumbai Stock Exchange wants to establish additional trading floor. Advise. (2marks)**

**(b) Complaints of unethical practices have been received against members of a recognized stock exchange by the Government. Examine whether the Government has any power to suspend the business of such a recognized stock exchange. (2marks)**

**Answer:**

(a) Additional trading floor [Section 13A]

A stock exchange may establish additional trading floor with the prior approval of the Securities and Exchange Board of India in accordance with the terms and conditions stipulated by the said Board.

**Explanation:** For the purposes of this section, "additional trading floor" means a trading ring or trading

facility offered by a recognised stock exchange outside its area of operation to enable the investors to buy and sell securities through such trading floor under the regulatory framework of that stock exchange.

(b) Power to suspend business of recognised stock exchanges [Section 12]

If in the opinion of the Central Government an emergency has arisen and for the purpose of meeting the emergency the Central Government considers it expedient so to do, it may, by notification in the Official Gazette, for reasons to be set out therein, direct a recognised stock exchange to suspend such of its business for such period not exceeding seven days and subject to such conditions as may be specified in the notification and if, in the opinion of the Central Government, the interest of the trade or the public interest requires that the period should be extended, may, by like notification extend the said period from time to time: **Provided that** where the period of suspension is to be extended beyond the first period, no notification extending the period of suspension shall be issued unless the governing body of the recognised stock exchange has been given an opportunity of being heard in the matter.

**Q.11 2015 - Dec [1] (d)** Referring to the provisions of the Securities Contracts (Regulation) Act, 1956 state how a recognised stock exchange may delist the securities and how an appeal may be filed by an aggrieved investor against the decision of stock exchange for delisting of securities. **(4marks)**

**Answer:**

According to Section 21A of the Securities Contracts (Regulation) Act, 1956 the delisting of securities may take place in the following manner:

**(1)** A recognized stock exchange may delist the securities, after recording the reasons therefore, from any recognized stock exchange on any of the ground or grounds as may be prescribed under this Act:

Provided that the securities of a company shall not be delisted unless the company concerned has been given a reasonable opportunity of being heard.

**(2)** A listed company or an aggrieved investor may file an appeal before the Securities Appellate Tribunal against the decision of the recognized stock exchange delisting the securities within fifteen days from the date of the decision of the recognized stock exchange delisting the securities and the provisions of Section 22B to 22E of this Act, shall apply, as far as may be, to such appeals.

Provided that the Securities Appellate Tribunal may, if it is satisfied that the company was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding one month.

**Q.12 2016 - June [3] (a)** Explain the power of Securities and Exchange Board to regulate issue and transfer of securities under Companies Act, 2013. **(6marks)**

**Answer:**

Power of Securities and Exchange Board to Regulate Issue and Transfer of Securities, etc. [Section 24]

(1) The provisions contained in Chapter III, Chapter IV and in Section 127 shall,:

(a) In so far as they relate to:

(i) issue and transfer of securities; and

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

(b) In any other case, be administered by the Central Government. **Explanation:** For the removal of doubts, it is hereby declared that all powers relating to all other matters relating to prospectus, return of allotment, redemption of preference shares and any other matter specifically provided in this Act, shall be exercised by the Central Government, the Tribunal or the Registrar, as the case may be.

(2) The Securities and Exchange Board shall, in respect of matters specified in sub-section (1) and the matters delegated to it under proviso to sub-section (1) of Section 458, exercise the powers conferred upon it under sub-sections (1), (2A), (3) and (4) of Sections 11, 11A, 11B and 11D of the Securities and Exchange Board of

India Act, 1992.

**Q.13 2011 - Dec [1] {C} (d)** Minu Ltd. wants to make an initial offer of its securities. Advise the company on the following issues under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018:

(i) Extent of promoters contribution;

(ii) Lock in period of securities held by promoters.

(2 + 3 = 5 marks)

**Answer:**

(i) **Extent of promoters contribution:** As per SEBI (ICDR) Regulations, 2018, the promoters of the issuer shall contribute in the case of an initial public offer, not less than twenty per cent of the post issue capital:

Provided that in case the post issue shareholding of the promoters is less than twenty per cent, alternative investment funds may contribute for the purpose of meeting the shortfall in minimum contribution as specified for promoters, subject to a maximum of ten per cent of the post issue capital.

(ii) Lock-in period of specified securities held by promoters: As per

SEBI (ICDR) Regulations, 2018, in an initial public offer, the specified securities held by promoters shall be locked-in for the period as stipulated hereunder:

(a) minimum promoters' contribution including contribution made by alternative investment funds shall be locked-in for a period of three years from the date of commencement of commercial production or date of allotment in the public issue, whichever is later;

(b) promoters' holding in excess of minimum promoters' contribution shall be locked-in for a period of one year:

The expression "date of commencement of commercial production" means the last date of the month in which commercial production in a manufacturing company is expected to commence as stated in the offer document.

**Q.14 2016 - Dec [3] (a) (i)** State the main features of the qualified and

Independent Audit Committee set up under SEBI (LODR) Regulation, 2015.

(6 marks)

**Answer:**

The main features of a qualified and independent audit committee to be set up under SEBI (LODR) Regulation, 2015 are as follows:

1. The audit committee shall have minimum three directors as members. Two-thirds of the members of audit committee shall be independent directors.

2. All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.

3. The Chairman of the Audit Committee shall be an independent director.

4. The Chairman of the Audit Committee shall be present at Annual General Meeting to answer shareholder queries.

5. The Audit Committee may invite such of the executives, as it considers appropriate (and particularly the head of the finance function) to be present at the meetings of the committee, but on occasions it may also meet without the presence of any executives of the company. The finance director, head of internal audit and a representative of the statutory auditor may be present as invitees for the meetings of the audit committee.

6. The Company Secretary shall act as the secretary to the committee.

**Q.15 2016 - Dec [4] (b) (ii)** Mr. Gordon who is registered as an intermediary fails to enter into an agreement with his client and hence penalized by SEBI under section 15B of SEBI Act 1992. Advise Mr. Gordon as to what remedies are available to him against the order of SEBI.

(5 marks)

**Answer:**

**Remedies against SEBI order:** Section 15B of the Securities and Exchange Board of India Act, 1992 lays down that if any person, who is registered as an intermediary and is required under this Act or any rules or regulations made there under, to enter into an agreement with his client fails to enter into such agreement, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less. Mr. Gordon has been penalized under the above mentioned provision. **Two remedies are available to Mr. Gordon in this matter:**

**(i) Appeal to the Securities Appellate Tribunal:**

Section 15T of the SEBI Act, 1992 provides that any person aggrieved by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act or the rules or regulations made there under may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.

Such appeal shall be filed within a period of 45 days from the date on which a copy of the order made by the Board is received and it shall be in such form and be accompanied by such fee as may be prescribed. However, the Tribunal may entertain an appeal after satisfied that there was sufficient cause for not filing it within the said period. The Tribunal may, after giving the parties an opportunity of being heard, pass such orders as it thinks fit, confirming, modifying or setting aside the order appealed against.

**(ii) Appeal to the Supreme Court:**

Section 15Z of the SEBI Act, 1992 provides that any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within 60 days from the date of communication of the decision or order to him on any question or fact or law arising out of such order. The Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding 60 days.

**Q.17 2017 - June [2]** (a) Explain briefly the purpose of establishing SEBI.

**(6marks)**

**Answer:**

The purpose of the SEBI Act is to provide for the establishment of a Board called Securities and Exchange Board of India (SEBI). The Preamble to the Act provides for the establishment of a Board to:

- (i) Protect the interests of investors in securities,
- (ii) Promote the development of the securities market,
- (iii) To regulate the securities market, and
- (iv) For matters connected therewith or incidental thereto.

The Securities and Exchange Board of India was set up to achieve the following objectives:

- (i) To promote fair dealings by the issuers of securities and ensure a market place where they can raise funds at a relatively low cost.
- (ii) To provide, a degree of protection to the investors and safeguard their rights and interests so that there is a steady flow of savings into the market.
- (iii) To regulate and develop a code of conduct and fair practices by intermediaries like brokers, merchant bankers, etc., with a view to making them competitive and professional.

**Q.18 2018- June [5]** (a) List out the main features of a qualified and independent audit committee to be set up under SEBI (listing obligations and disclosure Requirements) Regulation, 2015.

**(5marks)**

**Answer:**

Regulation 18 under Chapter IV (Obligations of Listed Entity which has Listed its Specified Securities) of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015

is as under:

Every listed entity shall constitute a qualified and independent audit committee in accordance with the terms of reference, subject to the following:

- (a) The audit committee shall have minimum three directors as members.
- (b) Two-thirds of the members of audit committee shall be independent directors.
- (c) All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.
- (d) The chairperson of the audit committee shall be an independent director and he shall be present at Annual General Meeting to answer shareholder queries.
- (e) The Company Secretary shall act as the secretary to the audit committee.
- (f) The audit committee at its discretion shall invite the finance director or head of the finance function, head of internal audit and a representative of the statutory auditor and any other such executives to be present at the meetings of the committee:

**Provided that** occasionally the audit committee may meet without the presence of any executives of the listed entity.

The listed entity shall conduct the meetings of the audit committee in the following manner:

- (a) The audit committee shall meet at least four times in a year and not more than one hundred and twenty days shall elapse between two meetings.
- (b) The quorum for audit committee meeting shall either be two members or one third of the members of the audit committee, whichever is greater, with at least two independent directors.
- (c) The audit committee shall have powers to investigate any activity within its terms of reference, seek information from any employee, obtain outside legal or other professional advice and secure attendance of outsiders with relevant expertise, if it considers necessary.

**Q.19 2018 - June [6] (c) (ii)** State the qualification for appointment as Presiding Officer or member of securities Appellant Tribunal (Section 15M). **(3marks)**

**Answer:**

**Qualification for appointment as presiding officer or member of Securities Appellant Tribunal (Section 15M):** A person, shall not be qualified for appointment as the Presiding Officer or a Judicial Member or a Technical Member of the Securities Appellate Tribunal, unless he — (a) is, or has been, a Judge of the Supreme Court or a Chief Justice of a High Court or a Judge of High Court for at least seven years, in the case of the Presiding Officer; and (b) is, or has been, a Judge of High Court for at least five years, in the case of a Judicial Member; or (c) in the case of a Technical Member— (i) is, or has been, a Secretary or an Additional Secretary in the Ministry or Department of the Central Government or any equivalent post in the Central Government or a State Government; or (ii) is a person of proven ability, integrity and standing having special knowledge and professional experience, of not less than fifteen years, in financial sector including securities market or pension funds or commodity derivatives or insurance.

**Q.20 2018 - Dec [6] (a)** State briefly the power of SEBI to levy monetary fines and penalties under SEBI Act, 1992. **(4marks)**

**Answer:**

Power of SEBI to levy monetary fines and penalties under SEBI Act, 1992: SEBI Act, 1992 empowers SEBI to levy monetary fines and penalties on any person incurring a default under the Act in the following cases :

- (i) Failure to furnish any document, information, books, other documents, return or report called for by the Board;
- (ii) Failure to maintain books of account and records ;
- (iii) Failure by an intermediary to enter into an agreement with his client, redress the grievances of investors;



- (iv) Failure by a person sponsoring or carrying on any collective investment scheme, including mutual funds, without obtaining certificate of registration;
- (v) Failure by a stock broker to issue contract notes in the form and manner specified by the stock exchange, failure to deliver any security or failure to make payment of the amount due to the investor, charging of excess brokerage;
- (vi) Any person dealing, communicating, counseling on the basis of some price sensitive information;
- (vii) Failure by a person to disclose the aggregate of his shareholding in a body corporate before he acquires any shares of that body corporate and failure to make a public announcement to acquire shares at a minimum price in case of takeovers.

SEBI also has the power to suspend or cancel the certificate of registration of a stock-broker, sub-broker, share transfer agent, banker to an issue, trustee of a trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market, this includes depository, depository participant, custodian of securities, foreign institutional investor and credit rating agency also.

**Q.21 2018 - Dec [6] (c) (iii)** The Securities and Exchange Board of India issued an order against a stock broker to redress the grievances of the investors within the stipulated time. The stock broker failed to do so, which is an offence under the provisions of the Securities Contracts (Regulation) Act, 1956. Decide whether this offence can be compounded after institution of proceedings against the stockbroker. **(2marks)**

**Answer:**

The offence can be compounded after institution of proceedings against the stock broker as it is clearly stated under Section 23N.

**Q.22 2015 - Dec [2] (d) (iii)** On the complaint of Mr. X, SEBI after enquiry finds that Mr. Y a Chief Executive Officer of the company, on the basis of unpublished price sensitive information, has indulged in the trading of the securities of that company. Explain, on the basis of the said finding, what action SEBI can take against Mr. Y under the Securities and Exchange Board of India Act, 1992. **(4marks)**

**Answer:**

Please refer 2014 - June [2] (c) on page no. 265

**Q.23 2016 - June [2] (a)** Industrial Finance Corporation of India, established under the Industrial Finance Corporation Act, 1948 having its registered office at Mumbai issued 8% redeemable bonds redeemable after 7 years. These bonds were issued directly to the members of the public and not through mechanism of stock exchanges. You are required to state with reference to the provisions of Securities Contracts (Regulation) Act, 1956, whether such direct issue of bonds by the Industrial Finance Corporation of India is not violating the provisions of the said Act. **(4marks)**

**Answer:**

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

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

As stated in the question Industrial Finance Corporation of India is a corporation set up under the Industrial Finance Corporation Act, 1948. i.e. under a special statute enacted by the Parliament. Therefore, this Corporation does not need any permission from a Stock Exchange to issue any Bond or other securities.

Accordingly, it has not violated the provisions of the Securities Contracts (Regulation) Act, 1956. The nature and tenure of the Bonds are immaterial.

**Q.24 2019 - June [3] (c) (i)** DEF Limited is a listed company. The Board of Directors of the company at (heir meeting held on 1<sup>st</sup> November, 2018 approved the proposal to issue bonus shares in the ratio of 1 :1. Such bonus issue is authorized by its Articles of Association for issue of bonus shares :and capitalization of reserves. The company implemented the bonus issue on 15<sup>th</sup> November, 2018. Whether the company has contravened the provisions of Securities Exchange Board of India(Issue of Capital **and** Disclosure Requirements)Regulation2009? **(4marks)**

**Q.25 2019 - June [7] (a) (ii)** XYZ Ltd. issued prospectus for the subscription of its shares for ` 500 crores. The issue was over subscribed by 10 times. The company issued shares to all the applicants on pro-rata basis. Later SEBI inspected the prospectus and found some misleading statement about the management of the Company in it. SEBI imposed a penalty of ` 1 Crore and banned its two executive directors for dealing in securities market for three years. Identify the function and its type performed by SEBI in above case. **(2 marks)**

## THE COMPETITION ACT, 2002

### SCANNER QUESTION

**Q1. 2015 - Dec [8]** Write short note on the following:

(a) Objectives of the Competition Act, 2002

**(4 marks)**

**Answer:**

Keeping in view of the economic development of the country, the Competition Act, 2002 was laid down to provide for an establishment of a Commission seeks to achieve the following objectives:

- (a) to prevent practices having adverse effect on competition.
- (b) to promote and sustain competition in markets.
- (c) to protect the interests of consumers.
- (d) to ensure freedom of trade carried on by other participants in markets in India and for matters connected therewith or incidental thereto.

The objectives of the Act are sought to be achieved through the instrumentality of the Competition Commission of India (CCI) which has been established by the Central Government with effect from 14<sup>th</sup> October, 2003.

**Q2. 2008 - Dec [8]** (b) Briefly discuss the provisions of the Competition Act, 2002 relating to

(i) Power of Central Government to exempt.

(ii) Restriction on disclosure of information.

**(2+2 = 4 marks)**

**Answer:**

**(i) Competition Act, 2002: Power to exempt:** The Central Government may, by notification, exempt from the application of the Competition, Act, 2002, or any provisions thereof, and for such period as it may specify in such notification:

- (a) Any class of enterprises if such exemption is necessary in the interest of security of the State or public interest;
- (b) Any practice or agreement arising out of and in accordance with any obligation assumed by India under any treaty, agreement or convention with any other country or countries;
- (c) Any enterprise which performs a sovereign function on behalf of the Central Government or a State Government;

Provided that in case an enterprise is engaged in any activity including the activity relating to the sovereign functions of the Government, the Central Government may grant exemption only in respect of activity relating to the sovereign functions.

**(ii) Competition, Act, 2002: Restriction on disclosure of information:** No information relating to any enterprise, being an information which has been obtained by or on behalf of the Commission for the purpose



of the Competition Act, shall, without the previous permission in writing of the enterprise, be disclosed otherwise than in compliance with or for the purpose of the Act or any other law for the time being force.

**Q3. 2010 - June [6]** (c) Where the Central Government is of the opinion that a member of the Competition Commission has acquired such financial interest that would affect prejudicially his functions as member of the Commission, can such a member be removed? Explain with reference to the relevant provisions of the Competition Act, 2002. (4marks)

**Answer:**

The Central Government can remove such member only after getting approval of the supreme Court for such removal. Provisions of **Section -11 (2) of the Competition Act, 2002** empower the Central Government to remove, by an order, a member of the Competition Commission of India from his office if such member has acquired such financial interest which is likely to affect prejudicially his functions as a Member of the Competition Commission.

However, Provisions of **Section-11(3)** of the said Act put some restrictions on such powers of the Central Government.

According to this section, in case as stated in the question, the Central Government wants to remove a member of the Competition Commission from his office,, it has to make a reference to the Supreme Court. The Supreme Court shall hold an enquiry in accordance with the procedure formulated by it and report that the member in question ought to be removed from his office.

Thus, the Central Government can remove a member of Competition Commission from his office by following the above procedure.

**Q4. 2011 - June [6]** (b) Mr. ANUP KUMAR was a member of the Competition Commission of India. He ceased to be such member on 31<sup>st</sup> March, 2011. 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 1<sup>st</sup> June, 2011:

- (i) ASHLEEN 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 February, 2011.
- (ii) Life Insurance Corporation of India.

You are required to state with relevant provisions of the Competition Act, 2002, the option available to Mr. Anup Kumar in respect of accepting the above offers. (2 + 2 + 2 = 6marks)

**Answer:**

The Chairperson and other Members shall not, for a period of two years from the date on which they cease to hold office, accept any employment in or connected with the management or administration of, any enterprise which has been a party to a proceeding before the commission under this Act (**Section 12 of the Competition Act, 2002**).

Provided that nothing contained in this Section shall apply to any employment under the Central Government or a State Government, or local authority or in any statutory authority or any Corporation established by or under any Central, State or Provincial Act or Government Company as defined in **Section - 2(45) of the Companies Act, 2013**.

Based on the above provisions of the **Competition Act, 2002**, Mr. Anup Kumar will not be able to accept the offer of ASHLEEN LTD. for one year from the date of the cessation as a member of the Competition Commission since the said company was a party to the proceedings before the Commission.

However, since Life Insurance Corporation of India is a Corporation established under the Central Act, the above restriction does not apply and Mr. Anup Kumar can accept the offer to join as the Executive Director of the said Corporation with effect from 1<sup>st</sup> June, 2011.

**Q5. 2012 - Dec [6]** (a) MOONSHINE LTD. and its subsidiary VINTEX LTD. are the only manufacturers of magnesite in India. Both of them plan to appoint DM LTD. as the sole distributor for its products in India. DM LTD. is to be given the power to determine the quantum to be supplied to users in a particular State in India. The two companies seek your advice in the context of the provisions of the Competition Act, 2002 relating to such distribution agreement. Advise them suitably. **(5 marks)**

**Answer:**

Following provisions of the **Competition Act, 2002** should be brought to the notice of the two companies:

1. Exclusive distribution agreement: This is an agreement between seller and purchaser in which the seller puts the condition on the purchaser that the purchaser cannot buy or acquire in any manner the goods supplied to him by seller, from any other source. Seller and only seller would supply such goods to the purchaser. This type of agreement is against the spirit of the **Competition Act, 2002** which states that any agreement is null and void if it in any way causes or likely to cause adverse effect on the competition in India.
2. Any agreement relating to production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or likely to cause an appreciable adverse effect on competition in India, shall be treated as null and void. Such agreements include (i) tie-in agreement; (ii) exclusive distribution agreement; (iii) exclusive supply agreement; (iv) refusal to deal; (v) resale price control.
3. Both the companies are advised to take care of the above mentioned provisions of the **Competition Act, 2002**. The main point is that the agreement should not cause or likely to cause any adverse effect on competition in India.

**Q6. 2014 - June [4]** (a) State briefly the composition of Competition Commission of India. Examine whether the chairperson of the competition commission shall be only a person, who has been or is qualified to be a Judge of a High Court. **(3 marks)**

**Answer:**

Composition of Commission (Section 8)

- (1) The Commission shall consist of a Chairperson and not less than two and not more than six other Members to be appointed by the Central Government.
- (2) 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 fifteen 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) The Chairperson and other Members shall be whole time Members.
- (4) The Chairperson and members shall not be of more than sixty five years of age.
- (5) The Chairperson and members shall hold office for a period of five years. They shall be eligible for re-appointment.

**2014 - Dec [5]** (d) Explain 'Competition Advocacy' under the Competition Act, 2002.

**(3 marks)**

**Answer:**

Competition Advocacy [Section 49]

- (1) The Central Government may, in formulating a policy on competition (including review of laws related to competition), or any other matter and a State Government may, in formulating a policy on competition or on any other matter, as the case may be, make a reference to the Commission for its opinion on possible effect of such policy on competition.
- (2) The Commission on receipt of such a reference, shall within sixty days of making such reference, give its opinion to the Central Government or the State Government as the case may be, which may thereafter take further action as it deems fit.

(3) The opinion given by the Commission under sub-section (1) shall not be binding upon the Central Government or the State Government as the case may be in formulating such policy.

(4) The Commission shall take suitable measures:

- (i) for the promotion of competition advocacy,
- (ii) creating awareness about competition issues; and
- (iii) imparting training about competition issues.

**2015 - Dec [2]** (B) (i) XYZ Ltd. made an initial public offer of certain number of equity shares. Examine whether these shares can be considered as 'Goods' under the Competition Act, 2002 before allotment.

**(3 marks)**

**Answer:**

Section 2 (i) of the Competition Act, 2002 defines 'goods' as follows:

'Goods' means goods as defined in the Sale of Goods Act, 1930 and includes:

- (a) products manufactured, processed or mined;
- (b) debentures, stock and shares after allotment;
- (c) in relation to goods supplied, distributed or controlled in India, goods imported into India.

Hence, debentures and shares can be considered as 'goods' within the meaning of Section 2(i) of the Competition Act, 2002 only after allotment and not before allotment.

**Q7. 2016 - June [1]** {C} Answer the following :

(c) An arrangement has been made among the cotton producers that the cotton produced by them will not be sold to mills below a certain price. The arrangement is in writing but it is not intended to be enforced by legal proceeding. Examine whether the said arrangement can be considered as an agreement within the meaning of Section 2(b) of the Competition Act, 2002.

**(5 marks)**

**Answer:**

"Agreement" includes any arrangement or understanding or action in concert,-

- (i) whether or not, such arrangement, understanding or action is formal or in writing; or
- (ii) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings;

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

**Q8. 2017 - June [5]** (b) (i) What do you mean by anti-competitive agreements, viz tie-in arrangement and resale price maintenance?

**(5 marks)**

**Answer:**

**Section 3(1)** of the Competition Act provides that no enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition. **Section 3(2)** further declares that any anti-competitive agreement within the meaning of

sub-Section 3(1) shall be void. Under the law, the whole agreement is construed as void if it contains anti-competitive clauses having appreciable adverse effect on competition.

A tie-in arrangement is an agreement between a seller and a buyer under which the seller agrees to sell a product or service to the buyer only on the condition that the buyer also purchases a different product from the seller or the buyer agrees not to purchase the tied product from any other seller. Tie-in arrangements can be

used to tie together not only different products but also services, leases, franchises, licenses to intellectual property, or combinations of any of those things.

Resale price maintenance means an agreement between a manufacturer and a wholesaler or retailer not to sell a product below a specified price.

**Q9. 2018 - June [5]** (b) Upon an enquiry made by the Competition Commission of India it was found that Huge Limited is enjoying dominant position in the market and there is every possibility that the company may abuse its dominant position. In order to overcome such a possible situation, the Competition Commission of India wants to order for division of Huge Limited. Referring to the provisions of the Competition Act, 2002, describe the matters which may be provided in the said order. **(5 marks)**

**Answer:**

According to **Section 28 of the Competition Act, 2002**, the Commission, may, notwithstanding anything contained in any other law for the time being in force, by order in writing, direct division of an enterprise enjoying dominant position to ensure that such enterprise does not abuse its dominant position. **The order may provide for all or any of the following matters, namely:**

- (i) the transfer or vesting of property, rights, liabilities or obligations;
- (ii) the adjustment of contracts either by discharge or reduction of any liability or obligation or otherwise;
- (iii) the creation, allotment, surrender or cancellation of any shares, stocks or securities;
- (iv) the formation or winding up of an enterprise or the amendment of the memorandum of association or articles of association or any other instruments regulating the business of any enterprise;
- (v) the extent to which, and the circumstances in which, provisions of the order affecting an enterprise may be altered by the enterprise and the registration thereof;
- (vi) any other matter which may be necessary to give effect to the division of the enterprise.
- (vii) The payment of compensation to any person who suffered any loss due to dominant position of such enterprise.

**Q10. 2018 - Dec [6]** (c) (iv) Whether a person purchasing goods not for personal use, but for resale can be considered as a 'consumer' under the Competition Act, 2002. **(2 marks)**

**Answer:**

It is not necessary that a person must purchase the goods for personal use in order to be considered as a "consumer" under Competition Act 2002. Even a person purchasing goods for re-sale or for any commercial purpose will also be considered as a "consumer" within the meaning of the Section 2(f) of Competition Act, 2002.

**Q11. 2009 - June [7]** (b) Vasudha Foot wear Ltd. is of the view that XYZ Co. Ltd., is abusing its dominant position in the footwear industry. It wishes to lodge a complaint against xyz Co. Ltd., before the Competition Commission. Briefly elucidate the factors which the commission will consider to ascertain whether XYZ Co. Ltd., is enjoying a dominant position in the footwear industry.' **(6 marks)**

**Answer:**

Dominant position of an enterprise: The Competition Commission while inquiring whether the enterprise XYZ Company enjoys a dominant position or not under Section 4 of the Competition Act, 2002 will take the following factors into account:

- (a) market share of the enterprise;
- (b) size and resource of the enterprise;
- (c) size and importance of the competitors;
- (d) economic power of the enterprise including commercial advantages over competitors.
- (e) Vertical integration of the enterprises or sale or service network of such enterprises.

- (f) Dependence of consumers on the enterprises.
- (g) Monopoly or dominant position whether acquired as result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise.
- (h) Entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or services for consumers.
- (i) Countervailing buying power.
- (j) Market structure and size of market.
- (k) Social obligations and size of market.
- (l) Relative advantage, by way of contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition.
- (m) Any other factor which the commission may consider relevant for the inquiry.

**Q12. 2010 - Dec [7]** (a) Weak Tweek India Ltd. made an initial public offer of 2 lakh equity shares. Can these shares be considered as 'Goods' under the Competition Act 2002 before allotment? **(3marks)**

**Answer:**

Shares before allotment are not goods because there are no shares and no shareholders before allotment.

As per **Section 2 of the Competition Act, 2002**, 'goods' means goods as defined in the **Sale of Goods Act, 1930** and includes:

1. products manufactured, processed or mined
2. debentures, stocks and shares after allotment; and
3. goods imported in India.

Thus it has been specifically mentioned that shares before allotment are not goods. Shares can be treated as goods only after allotment.

**Q13. 2011- Dec [7]** (c) An understanding has been reached among the manufacturers of cotton to control the price of cotton, but the understanding is not in writing and it is also not intended to be enforced by legal proceedings. Examine whether the above understanding can be considered as an 'agreement' within the meaning of Section 2(b) of the Competition Act, 2002. **(3marks)**

**Answer:**

**Competition Act, 2002 states in its Section 2** that all agreements may not be in writing and it is also not necessary that such agreement must always be enforceable by law. **In the present case**, the understanding among the manufacturers of cotton to control the prices of cotton, stands at par with the definition of agreement in **Section 2 of the Competition Act, 2002**.

**Q14. 2012 - June [6]** (c) The Competition Commission has served notice on VIPUL PAINTS LTD. to look into alleged contravention of certain provisions. The company wants to object to the same on the ground that the same was consequent to a complaint made by the State Government, which is not in order. Advise the company suitably. **(4marks)**

**Answer:**

If provisions of Section 3(1) or 4(1) of the Competition Act, 2002 are not followed, the Competition commission can initiate an enquiry into the matter on its own (*suo moto* means on its own, without any request) or on receipt of any complaint from public. It can start enquiry on contravention of **Section 3(1) or 4(1) of the Competition Act, 2002** if:

1. It has received any complaint from any person, consumer, consumer association or trade association etc. Required fees should be paid with the complaint.



2. The Central Govt, or any State Govt, has asked for such enquiry.

**In the present case**, Vipul Paints should not object to the notice of Competition commission on the grounds that the complaint was made by State Govt. All State Governments have power to make complaint to the Commission.

**Q15. 2013 - June [7]** (b) Hon'ble Justice Mr. H. JALAN, a retired High Court Judge, attained the age 61 years on 31<sup>st</sup> December, 2011. The Central Government appointed him as the Chairperson of the Competition Commission of India with effect from 1<sup>st</sup> January, 2012. You are required to state with reference to the provisions of the Competition Act, 2002, the term for which he may be appointed as Chairperson of the Competition Commission of India.

Whether he can be reappointed as such and till when he can remain as Chairperson of the Competition Commission of India? **(4marks)**

**Answer:**

According to **Section 10(1) of the Competition Act, 2002**, the Chairperson and every other Member shall hold office as such for a term of five years from the date on which he enters upon his office and shall be eligible for reappointment. Provided that no Chairperson or other Member shall hold office as such after he has attained-

- (a) In the case of the Chairperson, the age of sixty-five years;
- (b) In the case of any other Member, the age of sixty-five years.

Based on the above provisions of the **Competition Act, 2002**, it can be concluded that Hon'ble retired Justice Mr. H. JALAN can be appointed as the Chairperson of the Competition Commission of India by the Central government initially for a period of five years and he can also be reappointed after his initial term of five years is over. But since he shall be attaining the age of 65 years as on 31<sup>st</sup> December, 2017, he will have to step down from the post on his attaining the age of 65 years.

**Q16. 2013 - Dec [2]** (a) Mr. Ajit was a member of The Competition Commission of India. He retired on 31<sup>st</sup> March, 2012. He was offered the post of Chairperson in Supriya Ltd. with appropriate remuneration and perquisites. Discuss whether he can accept the job. What will be the position if Mr. Ajit joins Gail Ltd., a Government company with effect from 1<sup>st</sup> April, 2013? **(4marks)**

**Answer:**

Section 12 of the Competition Act, 2002 states that a member of competition commission shall not accept any appointment in any enterprise after vacating the office of member for a period of two years from the date of vacation of his office as member of the Commission. This restriction is not applicable if the appointment is in Government Company or in any agency established under any Central or State Act. Accordingly MR. AJIT cannot join SUPRIYA LTD. However, there is no restriction for him to join GAIL on 1<sup>st</sup> April 2013 as it is a Government Company.

**Q17. 2015 - June [2]** (d) (iv) Anu Ltd. and Kirti Ltd. dealing in petro-chemicals made an agreement to jointly produce, supply and distribution of their products. Competition Commission of India (CCI) has received a complaint that agreement is anti-competitive and against the interests of persons dealing in the trade. What factors CCI will take into account to determine whether this agreement has any appreciable adverse effect on competition in the market. Examine. **(3 marks)**

**Answer:**

Factors determining appreciable adverse effect on competition:

The Competition Commission of India (CCI), while determining whether an agreement is anti-competitive under Section 19(3) of the Competition Act, **2002**, will take into account the following factors.

- (a) creation of barriers to new entrants in the market

- (b) driving existing competitors out of the market
- (c) foreclosure of competition by hindering entry into the market.
- (d) accrual of benefits to consumers.
- (e) improvements in production or distribution of goods or provision of services or
- (f) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

**Q18. 2016 - Dec [3] (a) (ii)** Bombay Textiles Limited and Gujarat Textiles Limited marketing their products in India propose to be amalgamated. The enterprise created as a result of the said amalgamation will have assets of value of ` 300 crore and turnover of ` 1,000 crore. Examine whether the proposed amalgamation attracts the provisions of the Competition Act, 2002. (2 marks)

**Answer:**

Section 5 deals with combination of enterprises and persons. The amalgamation of enterprises shall be a combination of such enterprises if the enterprise created as a result of the amalgamation, as the case may be, have either in India, the assets of the value of more than ,500 crores or turnover more than ` 4,500 crores.

**Therefore, in the above case** the proposed amalgamation of Bombay Textiles Limited and Gujarat Textiles Limited will not attract the provisions of the Competition Act, 2002 as they have assets of value of ` 300 crore and turnover of ` **1,000** crore which are less than specified under the provisions.

**Q19. 2019 - June [6] (b) (i)** Mr. Zupi was appointed as a Member of the Competition Commission of India by Central Government. He has a professional experience in international business for a period of **12** years, which is not a proper qualification for appointment of a person as member. Pointing out this defect in the Constitution of Commission, Mr. P.K. against whom the commission gave a decision, wants to invalidate the proceedings of the commission. Examine with reference to the provisions of the Competition Act, 2002 whether Mr. P.K. will succeed. **(3 marks)**

## FOREIGN EXCHANGE MANAGEMENT ACT, 1999

### SCNNER QUESTIONS

**Q. 2018 - Dec [8]** Write short note on the following:

(iv) Current account transaction (Section 2j)

(4 marks)

Answer:

Current account transaction- Section 2(j)

‘Current account transaction’ means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes:

- (1) Payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business.
- (2) Payments due as interest on loans and as net income from investments.
- (3) Remittances for living expenses of parents, spouse and children residing abroad and
- (4) Expenses in connection with foreign travel, education and medical care of parents, spouse and children.

**Q. 2019 - June [8]** Write short note on the following:

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

(4 marks)

**Q. 2014 - Dec [3]** (a) MANTOP LTD. is a London based Company having several business units all over the world. It has a unit for manufacturing laptop, with its headquarters in Pune. It has a branch at Seoul, South Korea which is controlled by the Headquarters in Pune.

What would be the residential status under the Foreign Exchange Management Act, 1999 of laptop units in Pune and that of Seoul branch? (4 marks)

Answer:

**Section 2(u) of the Foreign Exchange Management Act (FEMA) 1999**, defines a 'person'. As per this definition, the following shall be covered in the definition of a 'person'.

- (i) A company;
- (ii) 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':

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

**In the given case, Mantop Ltd. (London)** its headquarters in Pune as well as Seoul Branch is a 'person'. Therefore, residential status under FEMA shall be determined for each of them separately.

- *Mantop Ltd. (London)* does not fall under any of the clauses of the definition of a 'person resident in India'. Therefore, *Mantop Ltd. (London)* is a person resident outside India.
- The Pune headquarters of *Mantop Ltd. (London)* 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 Seoul Branch of *Mantop Ltd. (London)*, though not owned, is controlled by the Pune headquarters. The



Seoul 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.

**Q. 2017 - June [4]** (b) (ii) State the kind of approval required for the following transactions under the Foreign Exchange Management Act, 1999:

(I) L, a famous playback singer of India wants to perform a musical night in Paris for Indians residing there. Foreign exchange to the extent of US D 20,000 is required for this purpose.

(II) M requires US D 5,000 to make payment related to 'call back services' of telephone. **(3 marks)**

Answer:

(I) Foreign exchange drawals for cultural tours require prior permission/approval of the Government of India irrespective of amount of foreign exchange required. Therefore, **in the given case L**, the singer is required to seek permission of the Government of India.

(II) Drawal of foreign exchange for payment related to 'call back services' of telephones is prohibited. Therefore, 'M' cannot draw foreign exchange.

**Q. 2018 - June [6]** (b) Ms. Ashima, daughter of Mr. Mittal (an exporter), is residing in Australia since long. She wants to buy a flat in Australia. Since she is unmarried, she wants to make her father Mr. Mittal a joint holder **in** that flat, for which entire proceeds are to be paid by her.

(i) State the provisions of FEMA governing such type of transaction.

(ii) On Applying the relevant provisions, can Mr. Mittal join his daughter in acquiring such a flat in Australia? **(4 marks)**

Answer:

(i) The Provisions governing the acquisition and transfer of immovable property outside India.

(1) A person resident in India may acquire immovable property outside India:

(a) By way of gift or inheritance from a person referred to in sub-section (4) of Section 6 of the FEMA or referred to in clause (b) of regulation 4 acquired by a person resident in India on or before 8<sup>th</sup> July, 1947 and continued to be held by him with the permission of Reserve Bank.

(b) By way of purchase out of foreign exchange held in Resident Foreign Currency (RFC) account maintained in accordance with the foreign exchange management (Foreign Currency accounts by a person resident in India) Regulations 2015,

(c) Jointly with a relative who is a person resident outside India, provided there is no outflow of funds from India.

(2) A person resident in India may acquire immovable property outside India, by way of Inheritance or gift from a person resident in India who has acquired such property in accordance with the foreign exchange provision in force at the time of such acquisition.

(3) A Company incorporated in India having overseas offices, may acquire Immovable property outside India for its business and for residential purposes of its staff, in accordance with the direction issued by the Reserve Bank of India from time to time.

(ii) In the light of above discussions in 1 (c), it is quite clear that Mr. Mittal, a resident in India, can join his daughter who is a resident outside India, in acquiring a flat in Australia.

**Q. 2013 - Dec [5]** (a) Mrs. Kavita, an Indian National desires to obtain foreign exchange for the following purpose:

(i) Remittance of US Dollar 30000 for payment for goods purchased from a party situated in Japan.

(ii) Remittance of US Dollar 50000 out of winnings on a lottery ticket. Advise her if she can get the foreign exchange and under what condition? (4 marks)

Answer:

As per **Section 5 of the Foreign Exchange Management Act, 1999**, certain rules have been made for drawal of foreign exchange for current account transactions.

(i) Remittance to JAPAN, such remittance is prohibited and the same is Included in first schedule to the Foreign Exchange Management Rules 2000. Hence, Mrs. Kavita cannot withdraw Foreign Exchange for this purpose.

(ii) Remittance out of lottery winnings, such remittance is prohibited and the same is included in first schedule to the Foreign Exchange Management Rules 2000. Mrs. Kavita cannot withdraw the foreign exchange for this purpose.

**Q. 2015 - June [2]** (a) (ii) Mr. B has won a big lottery and wants to remit US Dollar 25,000 out of the winnings to his son who is in USA.

Advise whether such remittance is possible under the Foreign Exchange Management Act, 1999. **(2 marks)**

Answer:

Rule 3 read with Schedule I for rules on current account transactions under the Foreign Exchange Management Act, 1999 provides that remittance of income from:

Lottery winnings or Racing/riding etc. or any other hobby are transactions for which drawal of foreign exchange is prohibited. Thus, Mr. B cannot remit US Dollar 25000 out of his winning, to his son in USA.

**Q. 2015 - Dec [1]** (E) Mr. Sekh, resided for a period of 150 days in India during the Financial Year 2013-2014 and thereafter went abroad. He came back to India on 1<sup>st</sup> April, 2014 as an employee of a business organization. What would be his residential status during the Financial Year 2014-2015 under Foreign Exchange Management Act, 1999. **(2 marks)**

Answer:

According to the provisions of Section 2(v) of the Foreign Exchange **Management Act, 1999**, a person in order to qualify for the purpose of being treated as a "Person Resident in India" in any financial year, must reside in India for a period of more than 182 days during the preceding financial year.

**In the given case**, Mr. Sekh has resided in India for a period of only 150 days, i.e. less than 182 days, during the financial year 2013-2014. Hence he cannot be considered as a "Person Resident in India" during the financial year 2014-2015 irrespective of the purpose or duration of his stay.

**2016 - June [1] {C}** Answer the following :

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

Answer:

In accordance with the provisions of the **Foreign Exchange Management Act, 1999** as contained in **Section 11(3)**, where any authorized person contravenes any direction given by the Reserve Bank of India under the said Act or fails to file any return as directed by the Reserve Bank of India, the

Reserve Bank of India may, after giving reasonable opportunity of **being** heard, impose on Authorised Person a penalty which may extend to **ten** thousand rupees and in the case of continuing contraventions **with an** additional penalty which may extend to two thousand rupees for **every day** during which such contravention continues.

Since as per the facts given in the question, the Authorized person, **namely**, Forex Dealers Ltd., has failed to file the return as directed by the **Reserve** Bank of India, according to the above provisions it has exposed itself to a penalty which may extend to **10,000** and in the case of continuing contraventions in the nature of failure

to file the return, with an additional penalty which may extend to ` 2,000 for every day during which **such** contravention continues.

**Q. 2016 - Dec [4]** (a) (i) Ms. LOMIA a resident outside India, is likely **to inherit** from her father some immovable property in India. Are there any **restrictions** under the provisions of the Foreign Exchange Management Act, **1999** in acquiring or holding such property?

State, whether Ms. Lomia can sell the property and repatriate outside **India** the sale proceeds. **(2 marks)**

Answer:

A? per Sec. 6(5) of FEMA, 1999, a person resident outside India may **hold**, own transfer or invest in India 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.

**In the present case;** Ms. Lomia may acquire or hold immovable **property** following the provisions laid down under Sec. **6** (5) as her father was **resident** in India. Ms. Lomia can even sell the property and repatriate outside **India** the sale proceeds of such immovable property.

## LAW RELATED TO BANKING SECTOR

## PRACTICE QUESTIONS

**Q. 2013 - Dec [2]** (c) State the rules for disposal of non-banking assets under The Banking Regulation Act, 1949. (4marks)

Answer:

Disposal of non-banking assets [Section 9]

According to Banking Regulation Act, a banking company cannot hold any non banking assets for a period of more than seven years from the date of the acquisition of such assets. Such period of seven years can be increased as per the provisions of the Act. All such non banking assets should be disposed off within a period of seven years or as extended. Notwithstanding anything contained in **Section 6**, no banking company shall hold any immovable property howsoever acquired, except such as is required for its own use, for any period exceeding seven years from the acquisition thereof or from the commencement of the Banking Regulation Act, whichever is later or any extension of such period as in this section provided, and such properly shall be disposed of within such period or extended period, as the case maybe.

Exceptions are:

- (i) The banking company may, within the period of seven years as aforesaid deal or trade in any such property for the purpose of facilitating the disposal thereof.
- (ii) The Reserve Bank may in any particular case extend the aforesaid period of seven years by such period not exceeding five years where it is satisfied that such extension would be in the interests of the depositors of the banking company.

**Q. 2014 - June [2]** (a) In what way does the Reserve Bank of India regulate the **determination** of the loans and advances which can be made by a banking **company** under the Banking Regulation Act, 1949? (4 marks)

Answer:

Power of RBI to regulate determination of loans and advances by banking companies:

By virtue of provisions of Banking Regulations Act, 1949 as contained in Section 21 the RBI is empowered to issue directives to a banking company to determine the policy in relation to loans and advances. Such direction may relate to:

- (1) Purpose for which loan may or may not be made.
- (2) Margin stipulation.
- (3) Maximum amount of advances to any company, firm individual or association of persons (at present 15% for individual borrower without infrastructure project, if infrastructure project go by additional 10%, 40% for group borrower and for infrastructure project Of group borrower it may be up to 50% of bank's capital and reserve (presently tier-I & tier-II capital from capital adequacy point of view.)
- (4) Maximum amount of guarantee liability on behalf of any individual firm/company.
- (5) The rate of interest and other terms and conditions on which such advances are made or guarantee given.

It may further be mentioned that in accordance with the provisions of Section 21 A, rate of interest charged by banking company on the basis of loan contract between the bank and debtor is not to be subject to scrutiny by the court.

**Q. 2014 - Dec [1]** {C} (d) Mr. Anuj is a director in State Bank of India. On the ground of his misconduct to the interest of the depositors, the Reserve Bank of India terminates his service.

Decide whether the Reserve Bank of India can do so under the Banking Regulation Act, 1949. (3 marks)

Answer:

Under Section 36AA of the Banking Regulation Act, 1949, RBI can terminate any Chairman, Director, Chief Executive, other officials or any employee of the bank where it considers desirable to do so particularly when

RBI is of the opinion that conduct of such persons is detrimental to the interest of the depositors or for securing proper management of the banking company. Before such termination concerned person should be

**Q. 2015 - June [1 ] Answer the question:**

**(e) Explain the power of Reserve Bank of India to appoint Additional Director as per Banking Regulation Act, 1949.**

**(3marks)**

given opportunity to be heard of such terminated officials can make appeal to the Central Govt, within 30 days from the date of communication of such termination order. The decision of the Central Govt, cannot be called into question. In case an order is issued pursuant to this section the concerned person shall cease to hold his office for a period of not exceeding 5 years as may be specified in the order. Contravention of the above provision shall be punishable with a fine, which may extend to. ` 250 per day.

Answer:

Power of Reserve Bank to Appoint Additional Directors [Section 36AB]

(1) If the Reserve Bank is of opinion that in the interest of banking policy or in the public interest or in the interest of the banking company or its depositors it is necessary so to do, it may, from time to time by order in writing, appoint, with effect from such date as may be specified in the order, one or more persons to hold office as additional directors of the banking company:

Proviso omitted by **Act 1 of 1984, Section 31** W.E.F. 15-2-1984.

(2) Any person appointed as additional director in pursuance of this section:

(a) shall hold office during the pleasure of the Reserve Bank and subject thereto for a period not exceeding three years or Such further periods not exceeding three years at a time as the Reserve Bank may specify;

(b) shall not incur any obligation or liability by reason only of his being a director or for any thing done or omitted to be done in good faith in the execution of the duties of his office or in relation thereto; and

(c) shall not be required to hold qualification shares in the banking company.

(3) For the purpose of reckoning any proportion of the total number of directors of the banking company, any additional director appointed under this section shall not be taken into account.

**Q. 2015 - June [2] (a) (iii)** UCO Bank, a Nationalized Bank, acquired on January 1, 2007 a building, fully occupied by various tenants, from Mr. Atanu, the owner of the building in discharging of a term loan advanced to Mr. Atanu 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?

**(4marks)**

Answer:

As per **Section 9 of The Banking Regulation Act, 1949** 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 above case, UCO 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, UCO Bank 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 31<sup>st</sup> December, 2014.

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 UCO Bank to hold the property beyond 31<sup>st</sup> December, 2019.

**Q. 2016 - June [1] {C}** Answer the following :

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

Answer:

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

Preparation of Accounts and Balance Sheet:

According to **Section 29 of the Banking Regulation Act, 1949**, every Banking Company incorporated in India, in respect of all business transacted by it and through its branches in India, shall prepare a balance sheet and Profit & Loss account as on the last working day of the Accounting year (which is April to March i.e. 31<sup>st</sup> March) in the Form "A" and "B" given in the third schedule of the Act.

Signing of Accounts and Balance Sheet:

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

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

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

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

**Q. 2016 - Dec [4] (b) (i)** Explain the powers of Reserve Bank of India to control advances by Banking Company under the Banking Regulation Act, 1949. **(5 marks)**

Answer:

Power of Reserve Bank to Control advances by banking companies [Section 21]

(i) Where the Reserve Bank is satisfied that it is necessary or expedient in the public interest or in the interests of depositors or banking policy so to do, it may determine the policy in relation to advances to be followed by banking companies generally or by any banking company in particular, and when the policy has been so determined, all banking companies or the banking company concerned, as the case may be, shall be bound to follow the policy as so determined.

(ii) Without prejudice to the generality of the power vested in the Reserve Bank under sub-section (1) the Reserve Bank may give directions to banking companies, either generally or to any banking company or group of banking companies in particular, as to:

(a) the purposes for which advances may or may not be made,

(b) the margins to be maintained in respect of secured advances,

(c) the maximum amount of advances or other financial accommodation which, having regard to the paid-up capital,

\* reserves and deposits of a banking company and other relevant considerations, may be made by that banking company to any one company, firm, association of persons or individual,

(d) the maximum amount up to which, having regard to the considerations referred to in clause (c), guarantees may be given by a banking company on behalf of any one company, firm, association of persons or individual, and

(e) the rate of interest and other terms and conditions on which advances or other financial accommodation



may be made or guarantees may be given.

(iii) Every banking company shall be bound to comply with any directions given to it under this section.

**Q. 2017- June [3] (b) (ii)** What are the restrictions on the Banking Companies for granting of loan & advances against the security of its own shares. (6marks)

Answer:

**Section 20** lays down the restrictions on banking companies from entering into any commitment from granting any loan to any of its director or to any firm in which a director is interested or to any individual or whom a director stands as a guarantor. Further the banking companies are prohibited from granting loans or advances on the security of its own shares.

**Under Section 21**, the RBI has been empowered, to determine the policy to be followed by the banks in relation to advances.

Thus, RBI gives directions to banking companies on the following matters:

- (a) The purposes for which an advance may or may not be granted.
- (b) The margins to be, maintained in case of secured advances.
- (c) The rate of interest charged on advances, other financial accommodation and commission on guarantees.
- (d) The maximum amount of advance or other financial accommodation that a bank may make to or guarantee that it may issue for, a single party, having regard to the paid-up capital, reserves and deposits of the concerned bank.

**Q. 2017 - Dec [3] (b)** Various complaints have been made against the activities of a Co-operative Banking company to the effect that, if unchecked, the shareholders, depositors and others will suffer heavily and the complainants requested for the appointment of directors by Reserve Bank of India. Discuss whether the Reserve Bank has any powers to inspect the records of the Cooperative Bank to ascertain the truth or otherwise in the complaints and to appoint directors in the Co-operative Bank under the Banking Regulation Act, 1949. (5marks)

Answer:

As per Section 12 the RBI has following powers regarding inspection:

**(1)** The Reserve Bank may, at any time, cause an inspection to be made, by any officer of the Reserve Bank specially authorised in writing by the Reserve Bank 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 Reserve Bank;
- (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 of any rules, regulations, directions or orders made thereunder.

**(2)** It shall be the duty of every authorised person, and where such person is a company or a firm, every director, partner or other officer of such company or firm, as the case may be, to produce to any officer making an inspection under sub-section (1), such books, accounts and other documents in his custody or power and to furnish any statement or information relating to the affairs of such person, company or firm as the said officer may require within such time and in such manner as the said officer may direct.

**Q. 2015 - Dec [2] (B) (ii)** The Board of Directors of MKR Ltd., a banking company incorporated in India, for the accounting year ended 31-03-2015 transferred 15% of its net profit to its Reserve Fund. Certain shareholders of the company object to the above act of the Board of Directors on the ground that it is violative of the provisions, of the Banking Regulation Act, 1949. Examine the provision of Banking Act and decide:

- (a) Whether contention of the Shareholders is tenable.

(b) Would your answer be still the same in case the Board of Directors transfer 30% of the company's net profits to Reserve Fund. (5marks)

Answer:

In accordance with the provisions of the Banking Regulation Act, 1949 as contained in **Section 17**, every banking company incorporated in India must create a reserve fund and transfer a sum equivalent to not less than **20%** of its net profits each year (as disclosed in the Profit and Loss Account prepared under Section 29 and before any dividend is declared).

However, Central Government is empowered to exempt any banking company from this requirement on the recommendation of the RBI. Such exemption will be allowed only:

1. When the amount in the reserve fund and the share premium account are equal to the paid-up share capital of the banking company.
2. When the Central Govt., feels that its paid-up share capital and reserves are adequate to safeguard the interest of the depositors.

If the banking company appropriates any sum from the Reserve Fund or the Share Premium Account, it must be reported to RBI within 21 days from the date of such appropriation explaining the circumstances leading to such appropriation.

Therefore, applying the above provisions:

(a) Contention of shareholders shall be tenable since the 15% of transfer of profits to Reserve Fund is lower than statutory limits, as provided in the Act.

(b) In the second case the contention of shareholders shall not be tenable, since 30% is more than the minimum statutory limit of 20% of the net profits.

**Q. 2018 - Dec [6]** (b) The Board of Directors of M/s. S.K. Limited, a banking company incorporated in India, for the accounting year ended 31<sup>st</sup> March, 2018, has transferred 10% of its net profit during the year to the Reserve Fund Account. A few shareholders of the company have objected the above act of the Board on the ground that it is violative of the provisions of the Banking Regulation Act, 1949. The Board of Directors of the company in their defense have stated that the company has received an order dated 30<sup>th</sup> April, 2018 from the Central Government exempting the company from the provisions of sub section (1) of section 17 of the Act. It is further informed that on the date of the Central Government's order i.e. 30.04.2018 the paid up capital of the company was ` 200 crores and the amount standing in the Reserve Fund Account and Share Premium Account was ` 100 crores and ` 75 crores respectively.

Decide whether the order of the Central Government exempting the company is justified as per the provisions of the Banking Regulation Act, 1949. (4marks)

Answer:

Reserve Fund:

According to Section 17 of the Banking Regulation Act, 1949, every Banking Company incorporated in India must create a Reserve Fund and transfer a sum equal to not less than **20%** of its net profits.

Although, the Central Government is empowered to exempt from this requirement on the recommendation of the RBI. Such exemption will be allowed only:

When the amounts in the reserve fund and the share premium account are not less than the paid-up capital of the banking company.

When the Central Govt, feel that its paid-up capital and reserves are adequate to safe guard the interest of the depositors.

If a banking company appropriates any sum from the Reserve fund or the share premium account, it must be reported to RBI within 21 days explaining the circumstances leading to such appropriation.

**In the given case**, the total amount in the reserve fund and the share premium account is ` 175 crores which is



less than the paid-up capital of the banking company i.e. ` 200 crore.

In view of the above the transfer of 10% of its net profits to reserve fund is violative of the provisions of the Banking Regulation Act, 1949.

Moreover, the order of the Central Government exempting the company is not justified as per the provisions of the Banking Regulation Act, 1949.

## LAWS RELATED TO INSURANCE SECTOR

## PRACTICE QUESTIONS

**Q. 2017 - June [8]** Write short note on the following:

(b) Actuarial Valuation/Report (Section 13)

(4 marks)

Answer:

Actuarial Valuation/Report (Section 13):

At least once a year, every insurer carrying on life insurance business shall cause an investigation of the life insurance business carried on by him including a valuation of his liabilities in respect thereto and shall cause an abstract of the report of such actuary to be made in accordance with the regulations. The Authority may, having regard to the circumstances of any particular insurer, allow him to have the investigation made as at a date not later than two years from the date as at which the previous investigation was made. If the investigation is made annually by any insurer, the statement need not be appended every year but shall be appended at least once in every three years.

**Q. 2018 - Dec [8]** Write short note on the following:

(iii) Record of Policies and Claims (Section 14)

(4 marks)

Answer:

Record of Policies and claims (Section 14)

Every insurer, in respect of all business transacted by him, shall maintain :

(a) A record of policies, in which shall be entered, in respect of every policy issued by the insurer, the name and address of the policyholder, the date when the policy was effected and a record of any transfer, assignment or nomination of which the insurer has notice.

(b) A record of claims, every claim made together with the date of the claim, the name and address of the claimant and the date on which the claim was discharged, or, in the case of a claim which is rejected, the date of rejection and the ground thereof.

(c) A record of policies and claims may be maintained in any such form, including electronic form, as may be specified by the regulations made under this Act.

(d) Every insurer shall, in respect of all business transacted by him, endeavour to issue policies above a specified threshold in terms of sum assured and premium in electronic form, in the manner and form to be specified by the regulations made under this Act.

**Q. 2013 - Dec [4]** (c) State the minimum limits for annuities and other benefits secured by policies of life insurance under The Insurance Act, 1938.

(4 marks)

Answer:

Minimum limits for annuities and other benefits secured by policies of life Insurance [Section 4]

(1) No insurer, not being a Co-operative Life Insurance Society to which Part IV of this Act applies, shall pay or undertake to pay on any policy of life insurance issued after the commencement of the Insurance

**(Amendment) Act, 1946 (6 of 1946)**, an annuity of less than one

hundred rupees or a gross sum of less than one thousand rupees, exclusive of any profit or bonus provided that this shall not prevent an insurer from converting any policy into a paid-up policy of any value or payment of surrender value of any amount.

(2) Nothing contained in this section shall apply to any policy of the description known as a group policy, where the number of persons covered by the policy is not less than fifty or such smaller number as may be approved by the Authority and a standard form of the policy has been certified in writing by the Authority to be a policy of such description or to any policy undertaking to pay a gross sum of more than five hundred rupees or an annuity of more than fifty rupee, issued:

(a) by an insurer to any person in his permanent employed respect of the life of that person, or

(b) under any scheme, approved by the authority and complying with such conditions, if any, as he may think fit to impose, whereby premiums due from persons employed under any employer are collected by or under the supervision of the employer, or to any policy issued by a Mutual Insurance Company to which Part IV applies and which the authority may by order in writing exempt from the provisions of this section, for so long as the company complies with such conditions, if any, as may be prescribed.

**Q. 2014 - Dec [2]** (c) MODERN INSURANCE LTD. has issued a policy on 25<sup>th</sup> March, 2014 for Fire Risk favouring one of the leading Corporate House in the country without the actual receipt of premium and it was reflected as premium receivable as at 31<sup>st</sup> March, 2014. The company maintained that it is a usual practice in respect of big customers and the money was collected on 5<sup>th</sup> April, 2014. There was a fire accident in the premises of the insured on 31<sup>st</sup> March, 2014 and a claim was lodged for the same. The Insurance Company also made a provision for claim. Please respond. **(3 marks)**

Answer:

- No risk can be assumed by the insurer unless the premium is received.

According to Section 64VB of the Insurance Act, 1938, no insurer should assume any risk in India in respect of any insurance business on which premium is ordinarily payable in India unless and until the premium payable is received or is guaranteed to be paid by such person in such manner and within such time, as may be prescribed, or unless and until deposit of such amount, as may be prescribed, is made in advance in the prescribed manner.

- The premium receipt of insurance companies carrying on general insurance business normally arise out of three sources, viz., premium received from direct business, premium received from reinsurance business and the share of co-insurance-premium.
- In view of the above, the insurance company is not liable to pay the claim and hence no provision for claim is required.

**Q. 2016 - June [3]** (c) A Life Insurance Policy in favour of Raj Kumar came into force on 1<sup>st</sup> February, 2012. In January, 2015, the insurer came to know that there was a misstatement in the proposal for insurance regarding the age of the nominee. Decide, under the provisions of the Insurance Act, 1938, whether the said Insurance policy can be called in question? **(5 marks)**

Answer:

Policy not to be called in question on ground of mis-statement after two years:

- According to Section 45 of the Insurance Act, 1938, no policy of life insurance is effected after the expiry of two years from the date on which it was effected be called in question by an insurer on the ground that statement made in the proposal or in any report of a medical officer, or referee, or friend of the insured, or in any other documents leading to the issue of the policy, was inaccurate or false, unless the insurer shows that such statement was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the

policy-holder and that the policy-holder knew at the time of making it that the statement was false or that it suppressed facts which it was material

to disclose.

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

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

**Q. 2017 - June [6]** (b) (ii) State the “Insurable Interest” - based on the Insurance Act, 1938.

**(6marks)**

Answer:

To constitute insurable interest, it must be an interest such that the risk would by its proximate effect cause damage to the assured, that is to say, cause him to lose a benefit or incur a liability. The validity of an insurance contract, in India, is dependent on the existence of an insurable interest in the subject matter. The person seeking an insurance policy must establish some kind of interest in the life or property to be insured, in the absence of which, the insurance policy would amount to a wager and consequently void in nature.

The test for determining if there is an insurable interest is whether the insured will in case of damage to the life or property being insured, suffer pecuniary loss [*New India Insurance Company Ltd. v. G.N. Sainani, (1997) 6SCC383*]. A person having a limited interest can also insure such interest. Insurable interest varies depending on the nature of the insurance. The controversy as to the existence of an insurable interest between spouses was settled by the court, which held that such an interest could exist as neither was likely to indulge in any 'mischievous game'. The same analogy may be extended to parents and children. Further, the courts have also held

that such an insurable interest would exist for a creditor (in a debtor) and for an employee (in an employer) to the extent of the debt incurred and the remuneration due, respectively.

**Q. 2017 - Dec [7]** (b) With reference to the provisions of Insurance Act, 1938 as amended by Insurance Regulatory and Development Authority Act, 1999, state the norms in respect of paid up equity capital for carrying out the business of an insurer. Also state the items that are excluded in determining the amount of paid up equity capital of an insurer under the said Acts.

**(4marks)**

Answer:

No insurer [not being an insurer as defined in sub-clause (d) of clause (9) of section 2] carrying on the business of life insurance, general insurance, health insurance or re-insurance in India or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall be registered unless he has minimum paid up capital as prescribed below:

Life insurance or general insurance - 100 Crore Health insurance (exclusively) - ` 100 Crore

Re-insurer (exclusively) - 200 Crore (besides re-insurer shall not be registered unless he has net owned funds of not less than ` 5,000 Crore) Provided that the insurer, may enhance the paid-up equity capital, as provided in this section in accordance with the provisions of the Companies Act, 2013, the Securities and Exchange Board of India Act, 1992 and the rules, regulations or directions issued thereunder or any other law for the time being in force:

Provided further that in determining the paid-up equity capital, any preliminary expenses incurred in the formation and registration of any insurer as may be specified by the regulations made under this Act, shall be excluded.

No insurer, as defined in sub-clause (d) of clause (9) of Section 2, shall be registered unless he has net owned funds of not less than rupees five thousand Crore.

**Q. 2017 - June [7] (a) (i)** Which principle of insurance is related to the following statements?

(I) The cause for loss must be related to the purpose of insurance.

(II) The insured should not be allowed to make any profit by selling damaged or in the case of lost property being recovered. (1+1 = 2 marks)

**Q. 2015 - June [2] (c) (ii)** ABC Limited, an Indian insurance company carrying on general insurance business, is facing liquidity problems and, therefore, it has decided to maintain deposits under section 7 of the Insurance Act, 1938 at one percent of total gross premium written in India. The company thinks that it is sufficient, as the company has a Paid-up Capital of ₹ 150 Crores. What would be your suggestion to the company for compliance of Insurance Act and rules and regulations made thereunder? (3 marks)

Answer:

- **Section 7 of the Insurance Act, 1938** requires every insurer, carrying a general insurance business, to deposit and keep deposited with RBI in its one of the Offices in India a sum equivalent to three percent of total gross premium written in India in any financial year.
- The maximum limit of deposit under this section is Rupees ten crores.
- The deposit is to be for and on behalf of the Government of India.
- The deposit can be made either by way of cash and/or investment in approved securities. If securities are deposited, their estimated market value on the date of deposit is to be seen.

The amount of deposit required in the case of reinsurance business is ₹ twenty crores.

**In the given case,** Since ABC Limited has decided to maintain deposits at one percent of the total gross premium written in India, is a violation of the Section 7 of the Insurance Act, 1938. The contention of the company that it has a paid up capital of ₹ 150 crores would not make any difference.

**Q. 2015 - Dec [2] (B) (iii)** M, wants to nominate Mr. S, his 10 years old son, as a nominee for his life insurance policy. Advise him under the provisions of the Insurance Act, 1938. (3 marks)

Answer:

**Section 39 of the Insurance Act, 1938** deals with the nomination by policy holder. According to which, the holder of a policy of life insurance on his own life may, when effecting the policy or at any time before the policy matures for payment, nominate, the person or persons to whom the money secured by the policy shall be paid in the event of his death.

Provided that, where any nominee is a minor, it shall be lawful for the policy holder to appoint any person in the manner laid down by the insurer, to receive the money secured by the policy in the event of his death during the minority of the nominee.

The given problem is based on above provision i.e. minor as a nominee. Here, Mr. M wants to nominate S his minor son as a nominee for his life insurance policy. He can do so after fulfilling the requirement of the above provision.

**Q. 2016 - Dec [3] (b) (i)** X a newly established insurance company started the business of health insurance. It decided to get itself registered with the paid up equity capital of ₹ 99 crore excluding the preliminary expenses incurred during formation and registration. Examine in the light of the Insurance Act, 1938, whether X can be registered and can conduct the insurance business. (5 marks)

Answer:

**Requirements as to Capital:** As per the Insurance Laws (Amendment) Act, 2015, Section 6 of the Insurance Act, 1938, has been amended. According to which the requirements as to capital for registration of the insurer has been modified. No insurer (not being an insurer as defined in sub-clause (d) of clause (9) of Section 2) carrying on the business of life insurance, general insurance, health insurance or reinsurance in India or after

the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall be registered unless he has minimum paid up equity capital as prescribed below:

Type of Insurance Business	Minimum Paid-up equity capital required (with a provision for further enhancement & Paid-up equity excludes preliminary expenses incurred during formation and registration)
Life insurance or general insurance	` 100 crore
Health insurance (exclusively)	` 100 crore
Re-insurance (exclusively)	` 200 crore (besides re-insurer shall not be registered unless he has net owned funds of not less than ` 5,000 crore)

**In the present case,** X an insurance company is an insurer carrying business of health insurance. For registration as per the above provision, minimum-paid-up equity capital required for conduct of business of health insurance is ` 100 crore. Since paid up equity capital of X insurance company is less than **100** crore, so it cannot be registered for carrying of the insurance business.

**Q. 2018 - June [5]** (c) (ii) Mr. Arnab, one of the Directors of Aim Insurance Company Limited had taken some life insurance policies from the company. He, now, wants to avail a temporary loan from the company. The company refused to grant such loan on the ground that there is a prohibition in this regard. Mr. Arnab, approached you, now, about the matter. Advise him with reference to the Insurance Laws Amendment Act, 2015 as well as Section 185 of the Companies Act, 2013, whether such loan can be obtained by him.

(3 marks)

**Answer:**

**Section 29 of the Insurance Act, 1938** as amended by the Insurance Laws (Amendment) Act, 2015 provides for the Prohibition of loans. According to this section, no Insurer shall grant loans or temporary advances either on hypothecation of property or on personal security or otherwise, except loans

on life insurance policies Issued by him within their surrender value, to any director, manager, actuary, auditor or officer of the insurer, If a company or to any other company or firm in which any such director, manager, actuary or officer holds the position of a director, manager, actuary, officer or partner. The **Provisions of Section 185 of the Companies Act, 2013** shall not apply to a loan granted to a director of an insurer being a company, if the loan is one granted on the security of a policy on which the insurer bears the - risk and the policy was Issued to the director on his own life, and the loan is within the surrender value of the policy.

Accordingly such loan can be obtained by the Mr. Arnab, Director of Aim Insurance Company Limited.

**Q. 2019 - June [6]** (b) (ii) M/s Samrat is a company engaged in providing services of supplying goods all over the world through aircrafts. The aircrafts of the said company is registered and insured in India with the reputed insurance company. Company found that the insurance policy of one of aircraft which is in Europe had expired. Company said to his officer to get new insurance policy of that aircraft in Europe. State the validity of such an act of registration of aircraft in Europe. (3marks)



## CORPORATE GOVERNANCE

## SCNNER QUESTIONS

**Q. 2017 - Dec [8]** Write short note on the following:

(d) Objectives of MOU System

(4 marks)

Answer:

The specific objectives of the MOU system are to:

- (a) Improve the performance of CPSEs through increased management autonomy.
- (b) Remove the haziness in goals and objectives.
- (c) Evaluate management performance through objective criteria; and
- (d) Provide incentives for better future performance.

**Q. 2018 - June [8]** Write short note on the following:

(c) Disadvantages of the family Businesses over non-family Businesses

(4 marks)

Answer:

Disadvantages of the Family Businesses over Non-Family Businesses

- (a) **Staff recruitment:** External talent can be reluctant to join the family businesses as they would not enjoy the same freedom that the other businesses offer.
- (b) **Raising funds for growth:** Access to capital is required to grow and evolve. However, it is difficult to raise the required funds for the family businesses than non-family businesses.
- (c) **Family conflicts:** Conflict among the family members is the major setback for the family businesses.
- (d) **Ownership vs. Management:** Separating the ownership from the management and reaching a consensus on the roles of family members in the business are two important issues for the family businesses to address.

**Q. 2019 - June [8]** Write short notes on the following:

(ii) Constitution of the National Financial Reporting Authority.

(4 marks)

**Q. 2013 - Dec [7]** (a) What is meant by the corporate governance as per renowned exponents in this field? How far do you agree with their views (agree/strongly agree/disagree etc.)? (5 marks)

(b) As per the revised corporate governance code published in Japan in

2001, discuss the mission and role of (i) Board of Directors and

(ii) Committees established within the board. (5 marks)

(c) What are the possible stages in family firm's governance? (5 marks)

Answer:

(a) Corporate Governance

Corporate governance is:

- The process of supervision and control intended to ensure that the company's management acts in accordance with the interests of shareholders (Parkinson, 1994). - Strongly agree
- The governance role is not concerned with the running of the business of the company per se, but with giving overall direction to the enterprise, with overseeing and controlling the executive actions of management and with satisfying legitimate expectations of accountability and regulation by interests beyond the corporate boundaries (Tricker, 1984). - Agree

The governance of an enterprise is the sum of those activities that make up the internal regulation of the business in compliance with the obligations placed on the firm by legislation, ownership trusteeship of assets, their management and their deployment (Cannon, 1994). - Agree

- The relationship between shareholders and their companies and the way in which shareholders act to encourage best practice (e.g., by voting at AMs and by regular meetings with companies' senior management). Increasingly, this includes shareholder ^ activism' which involves a campaign by a shareholder or a group of shareholders to achieve change in companies (the Corporate Governance Handbook, 1996).- Someagreement

- The structures, process, cultures and systems that engender the successful operation of the Organization (Keasey and Wright, 1993).- Someagreement

- The system by which companies are directed and controlled (The Cadbury Report, 1992).- Slightagreement.

(b) Mission and role of the board of directors as per the revised corporate governance code published in Japan in 2001:

- This first chapter contained five principles relating to: the position and purpose of the board of directors; the function and powers of the board of directors; the organization of the board of directors; outside directors and their independence; the role of the leader of the board of directors.

- The board should be comprised of outside directors (someone who has never been a full-time director, executive, or employee of the company)- preferably a majority- and inside directors (executives or employees of the company).

- Independent directors are outside directors who can make their decisions independently.

- The board of directors' role is seen as one of management supervision including approving important strategic decisions, nominating candidates for director positions, appointment and- removal of the CEO, and general oversight of accounting and auditing, the board of- directors may also be required to approve certain decisions made by the CEO.

Mission and role of the committee established within the board of directors

- The board is recommended to establish various committees including an audit committee, compensation committee and nominating committee.

- Each committee established should comprise of at least three directors, and an outside director should be appointed as chair person of each committee.

- The majority of directors on the audit committee should be of independent directors, whilst the majority of directors on the other two committees should be of outside directors, of whom at least one should be an independent director.

- The roles of the various committees are broadly defined and cover the usual areas that one would expect for each of these committees.

(c) Possible stages in a family firm's governance

According to Cadbury there are three requisites for family firms viz.

(i) They need to be able to recruit and retain the very best people for the business,

(ii) they need to be able to develop a culture of trust and transparency, and

(iii) they need to define logical and efficient organisational structures. A good governance system will help family firms to achieve these requisites.

Bammens and Voordeckers (2009), in a study of family firms in Belgium, find that 'contrary to traditional agency wisdom, family firm boards devote substantial attention to controlling the management team those family firms that employ trust and control in a complementary manner will be most effective'.

In the context of succession planning, Bennedsen (2006), in a study of family firms in Denmark, reports that their empirical results demonstrate that professional, non-family CEOs provide extremely valuable services to the organizations they head. On the other hand, they report that family CEO under performance is particularly large in fast growing industries, industries with a highly skilled labour force and relatively large firms.

Space to write important points for revision—



**Q. 2014- June [7]** (b) Enumerate the principles of corporate Governance as evolved by OECD?

(e) “The development of corporate Governance in the U.K. was initially the findings of a trilogy of codes”. Discuss in brief. **(5 marks each)**

Answer:

(b) The Organisation for Economic Co-operation and Development (OECD) was one of the earliest non-government organisations to work on and spell out principles and practices that should govern corporates in their goal to attain long term shareholder value. They include the following elements:

<b>(i) The Rights of Shareholders</b>	The rights of shareholders include a set of rights to secure ownership of their shares, the right to full disclosure of information, voting rights, participation in decisions on sale or modification for corporate assets, mergers and new share issue. The guidelines go on to specify a host of other issues connected to the basic concern of protecting the value of the corporation.
<b>(ii) Equitable Treatment of Shareholders</b>	The OECD is concerned with protecting minority shareholders' rights by setting up systems that keep insiders, including managers and directors, from taking advantage of their roles. Insider trading, for example, is explicitly prohibited and directors should disclose any material interest regarding transactions.
<b>(iii) The Role of Stakeholders in Corporate Governance</b>	The OECD recognizes that there are other stakeholders in companies in addition to shareholders and workers, for example, are important stakeholders in the way in which companies perform and make decisions. The OECD guidelines lay out several general provisions for protecting stakeholder's interests.
<b>(iv) Disclosure and Transparency</b>	The OECD lays down a number of provisions for the disclosure and communication of key facts about the company ranging from financial details to governance structures including the board of directors and their remuneration. The guidelines also specify that independent auditors in accordance with high quality standards should perform annual audits.
<b>(v) The Responsibilities of the Board</b>	The OECD guidelines provide a great deal of details about the functions of the board in protecting the company and its shareholders. These include concerns about corporate strategy, risk executive compensation and performance as well as accounting and reporting systems.

(e) 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). The recommendations of these reports, which helped in development of corporate governance in U.K. are explained as under:

#### 1. Cadbury Report(1992)

**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.

#### 2. Greenbury Report(1995)

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 nonexecutive 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 reward 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.

### 3. Hampel Report(1998)

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 'boxticking'.

**Q. 2014 - Dec [1] (C) (f) (i) The German Corporate Governance system is based around a dual board system'. Elucidate this statement. (3 marks)**

#### Answer:

- 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.

**Q. 2014 - Dec [7] (b) (i) State OECD guidelines for corporate Governance of State owned Enterprises. (6 marks)**

#### Answer:

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 is 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'.

Space to write important points for revision

Q. 2015 - June [3] Answer the question:

(c) (ii) What is the need for Corporate Governance in India?

(5 marks)

**Answer:**

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.

<b>1. Corporate Performance</b>	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
<b>2. Enhanced Investor Trust</b>	Investors consider Corporate Governance as important as financial performance when evaluating companies for investment.
<b>3. Combating Corruption</b>	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.
<b>4. Better Access to Global Market</b>	Good Corporate Governance systems attracts investment from global investors, which subsequently leads to greater efficiencies in the financial sector.
<b>5. Enhancing Enterprise Valuation</b>	Improved management accountability and operational -transparency fulfill investors* expectations and confidence on management and corporations, and return, increase the value of corporations.
<b>6. Accountability</b>	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.
<b>7. Easy Finance from Institutions</b>	Evidence indicates that well-governed companies receive higher market valuations.
<b>8. Deduced Risk of Corporate Crisis and Scandals</b>	Effective Corporate Governance ensures efficient risk mitigation system in place.

Q. 2015 - Dec [3] (A) (ii) "Corporate Governance is about promoting fairness". Is it truly beneficial?— Discuss.

(4marks)

**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.

<b>1. Improve Financial Performance</b>	Socially responsible business practices are linked to positive financial performance.
<b>2. Operating Cost Reduction</b>	CSR initiative can help to reduce operating costs.
<b>3. Brand Image and Reputation</b>	CSR helps a company to increase its brand image and reputation among the public, which in turn increase its ability to attract investigators 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.
<b>4. Increased Sales and Customer Loyalty</b>	Business must first satisfy customer's key buying criteria i.e. price, quality, safety and convenience.
<b>5. Productivity and Quality</b>	Improved working conditions, reduced environmental impacts or increased employee involvement in decision-making, leads to (a) increased productivity and (b) reduced errors.
<b>6. Ability to Attract and Retain Employees</b>	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.

**Q. 2015 - Dec [3] (C) (ii) What are the difficulties encountered in Governance in the State owned Business? (5 marks)**

Answer:

**Difficulties Encountered in Governance:** While routine governance regulations become applicable for public sector companies formed under the Companies Act, 2013 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 of their counterparts from the private sector.

**Q. 2015 - June [7] (a) 'The development of Corporate Governance in the UK was initially the findings of a Trilogy of Codes'. Explain the same in brief. (6 marks)**

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

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

**Answer:**

(a) Please refer 2014 - June [7] (b) on page no.360

(b) Hedging and Pledging:

Current ISS policy provides for the recommendation of a negative vote for directors, whether individually or as part of a committee or the entire board, due to material failures of risk oversight at the company.

The 2013 updates expand the examples of a failure of "risk oversight" to include, among other things, the hedging of company stock and the significant pledging of company stock as collateral for a loan.

These practices are seen as severing the alignment of interests between the officers and directors and the shareholders.

Hedging of company stock at any level and in any form poses enough of a problem to warrant a negative vote recommendation.

For companies in which officers or directors have pledged company stock as collateral, ISS considers the following factors in determining vote recommendations for the election of directors:

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

(c) 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 may be 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.

**Q. 2016 - June [8]** (a) Explain the introduction of Memorandum of Understanding (MOU) system in India.

**(6 marks)**

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<sup>^</sup> to become a management tool that helps in performance evaluation as well as performance enhancement of CPSEs in the country.

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

Hence, the MoU system aims at offering autonomy to CPSEs and is designed such that it can aid in the assessment of the extent to which mutually agreed objectives (Mandal, 2012) are achieved.

This section of the report traces the evolution of the MoU system through various committee reports and highlights the major observations, along with the actions taken thereafter.



This would act as an indicator of the developments that have happened in the Mol) system in India and, through the study of extant literature, would also highlight the areas of concern raised after each study.

The various committees formed over the years are though:

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

**Q. 2016 - Dec [7]** (b) The Financial Reporting Council (FRC) is responsible for high standards of Corporate Governance.

Explain this statement along with the aims of FRC.

**(8 marks)**

Answer:

The Financial Reporting Council (FRC) has six operating bodies: The Accounting Standards Board (ASB), the Auditing Practices Board (APB) the Board for Actuarial Standards (BAS), the Professional oversight Board, the Financial Reporting Review Panel (FRRP) and the Accountancy and Actuarial Discipline Board (AADB).

The importance placed on corporate governance is evidenced by the fact that, in March 2004, the FRC set up a new committee to lead its work on corporate governance.

Overall, the FRC is responsible for promoting high standards of corporate governance. It aims to do so by:

- maintaining an effective Combined Code on Corporate Governance and promoting its widespread application;
- ensuring that related guidance, such as that on internal control, is current and relevant;
- influencing EU and Global Corporate Governance Developments;
- helping to promote boardroom professionalism and diversity;
- encouraging constructive interaction between company boards and institutional shareholders.

The FRC has carried out several consultative reviews of the Combined Code which led to the amended Combined Code in 2006, and subsequently in 2008. The latest review took place in 2008. The frequency of the reviews are both an indicator of the FRC's responsibility for corporate governance of UK companies which involves leading public debate in the areas and its response to the global financial crisis which has, in turn, affected confidence in aspects of corporate governance.

The FRC website mentions the independent review of the governance of banks and other financial institutions carried out by Sir David Walker. The Walker Review published its draft recommendations in July 2009, some of the recommendations could be taken forward through amendments to the Combined Code. The FRC is considering the extent to which the Walker Review recommendations may be applicable for some or all listed companies in other sectors.

**Q. 2016 - Dec [8]** (b) What are the responsibilities of the Board of State Owned Enterprises?

**(4marks)**

(c) What are the possible stages in a family firm's governance?

**(4marks)**

Answer:

**(b) Responsibilities of the Boards of State-Owned Enterprises**

The boards of the 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.

(i) 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 shareholder equally.



(ii) 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.

(iii) 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.

(iv) SOE boards should carry out an annual evaluation to appraise their performance.

(c) Possible stages in a family firm's governance

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.

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 organizational structures.

A good governance system will help family firms to achieve these requisites. Bammens and Voordeckers (2009), in a study of family firms in Belgium find that contrary to traditional agency wisdom, family firm boards devote substantial attention to controlling the management team, those family firms that employ trust and control in a complementary manner will be most effective.

In the context of succession planning, *Bennedsen et al* (2006), in a study of family firms in Denmark, report that their empirical results demonstrate that professional, non-family CEOs provide extremely valuable services to the organization they head.

On the other hand, they report that family CEO under performance is particularly large in fast growing industries, industries with a highly skilled labour force and relatively large firms.

**Q. 2017 - June [2] (b) (ii) Corporate governance is about Stakeholder's satisfaction. Comment. (4marks)**

Answer:

Corporate governance is about stakeholders' satisfaction:

The term "Corporate Governance" is not easy to define. The term governance relates to a process of decision making and implementing the decision in the interest of all stakeholders, it basically relates to enhancement of corporate performance and ensure proper accountability for management in the interest of all stakeholders. It is a system through which an organization is guided and directed. On the basis of this definition, the core of objectives of Corporate Governance are focus, predictability, transparency, participation, accountability, efficiency and effectiveness and satisfaction of stakeholders.

**Q. 2017 - June [7] (a) (i) Whether XBRL is mandatory in all the Companies. If not, state the Companies where XBRL is mandatory.**

**(ii) What are the advantages of XBRL?**

**(2+6 = 8marks)**

Answer:

**(i)** The mandate to do XBRL filing applies to the following companies:

1. All public listed companies in India and their Indian Subsidiaries.
2. All companies having a paid up capital of INR 5 crores and above.
3. All companies having a turnover of INR 100 crores and above.

**(ii)** XBRL offers major benefits at all stages of business reporting and analysis. The benefits are seen in automation, cost saving, faster, more reliable and more accurate handling of data, improved analysis and in better quality of information and decision making. XBRL enables producers and consumers of financial data to switch resources away from costly manual processes, typically involving time consuming comparison, assembly and re-entry of data. They are able to concentrate effort on analysis, aided by software which can validate and process XBRL information. XBRL is a flexible language, which is intended to support all current

aspects of reporting in different countries and industries. Its extensible nature means that it can be adjusted to meet particular business requirements, even at the individual organization level.

All types of organizations can use XBRL to save costs and improve efficiency in handling business and financial information. Because XBRL is extensible and flexible, it can be adapted to a wide variety of different requirements. All participants in the financial information supply chain can benefit, whether they are preparers, transmitters or users of business data.

XBRL is set to become the standard way of recording, storing and transmitting business financial information. It is capable of use throughout the world, whatever the language of the country concerned, for a wide variety of business purposes. It will deliver major cost savings and gains in efficiency, improving processes in companies, governments and other organisations.

**Q. 2018 - Dec [7] (a)** Explain the main provisions of clause 49 of the listing agreement with the Stock Exchanges regarding Corporate Governance. (4 marks)

Answer:

**(a)** Clause 49, as currently in effect, includes the following key requirements:

**(a) Board :** Independence Boards of directors of listed companies must have a minimum number of independent directors. Where the chairman is an executive or a promoter or related to a promoter or a senior official, then at least one half the board should comprise independent directors; in other cases, independent directors should constitute at least one third of the board size.

**(b) Audit Committees:** Listed Companies must have audit committees of the board with a minimum of three directors, two thirds of whom must be independent; in addition, the roles and responsibilities of the audit committee are specified in detail.

**(c) Disclosure:** Listed companies must periodically\* make various disclosures regarding financial and other matters to ensure transparency.

**(d) CEO/CFO Certification of Internal Controls :** The CEO and CFO of listed companies must:

(i) Certify that the financial statements are fair, and

(ii) Accept responsibility for internal controls

**(e) Annual Reports :** Annual reports of listed companies must carry status reports about compliance with corporate governance norms.

**Q. 2019 - June [7] (b)** Explain how the provisions of the Companies Act, 2013 relating to Audit Committee will help in achieving some of the objectives of Corporate Governance. (5 marks)

**Q. 2009 - Dec [1] {C}** (a) In United Kingdom, the Combined Code on Corporate Governance of 2008 is the result of studies made from time to time by various committees to prevent the recurrence of scandals and financial collapses experienced in 1980s and early 1990s, when Cadbury Committee was first set-up in 1992 which gave a new dimension to the Corporate Governance.

List out the three important recommendations made by Cadbury Committee and outline at least five major landmarks in the historical development since the setting-up of the Cadbury Committee for improvement in the Corporate Governance. (10 marks)/[CSPP]

Answer:

Historical developments in the UK for the improvement in corporate governance since the setting of Cadbury Committee are as under:

<b>(i) The Cadbury Report 1992</b>	Due to several scandals and financial collapses in the UK in the late 1980s and early 1990s, London Stock Exchange setup the Cadbury Committee in may 1991 to raise the standard of corporate governance in future. This committee in its report known as Cadbury Report, recommended mainly: <ul style="list-style-type: none"> <li>• Separating the role of CEO and Chairman of the Board</li> <li>• Balanced composition of Board of Directors with executive and non executive directors</li> <li>• Selection process for non executive directors.</li> </ul>
<b>(ii) The Greenbury Report 1995</b>	The Confederation of British Industry set up a group under the Chairmanship of Sir Richard Greenbury to examine the remuneration of the directors. It recommended the formation of Remuneration committee composed of non executive directors. Its recommendations were incorporated in the Listing Rules of The London Stock Exchange.
<b>(iii) The Hampel Report 1998</b>	The Hampel Committee was set up to review the implementation of Cadbury and Greenbury Reports and to see that their purposes were being achieved. The Recommendations of the committee coupled with further consultations by the London Stock Exchange resulted in a combined code on Corporate Governance, the original combined code 1998.
<b>(iv) The Turnbull Report</b>	A working group under the Chairmanship of Nigel Turnbull recommended the internal Control Guidance for Directors which were included in the combined code.
<b>(v) Higgs Report</b>	The combined code was reviewed in July 2007 by Derek Higgs about the role and effectiveness of non - executive directors.
<b>(vi) Smith Report</b>	A group under The Chairmanship of Sir Robert Smith was set up to develop guidance for Audit Committee in the combined code.
<b>(vii) The Tyson Report</b>	The Tyson Report was recommended on the recruitment and development of non - executive directors.
<b>(viii) The combined code on Corporate Governance as revised in 2003</b>	The basis of recommendations of all the reports the combined code was revised in 2003.
<b>(ix) The combined code on Corporate Governance 2006</b>	The combined code on Corporate Governance was again revised in 2006.
<b>(x) The combined code on Corporate Governance 2008</b>	The combined code on Corporate Governance 2008 sets out standards of good practice in relation with shareholders. All companies incorporated in the UK and listed on the London Stock Exchange are required to report in their annual reports and accounts about the implementation of the combined code on Corporate Governance.

**Q. 2019 - June [6]** (a) (i) ABC Ltd., is a company which has a net worth of INR ` 200 crores, it manufactures rubber parts for automobiles. The sales of the company are affected due to low demand of its products. The previous year's financial state: (? in crore)

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

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

## SOCIAL, ENVIRONMENTAL AND ECONOMIC RESPONSIBILITIES OF BUSINESS

### SCNNER QUESTIONS

**Q. 2018 - June [8]** Write short notes on the following:

(b) Guidance on implementation of principles and Core Elements. (National Voluntary Guidelines, 2011)

(e) Activities not to be considered as CSR Activities ( 4 x 2 = 8marks)

**Answer:**

**(b)** Successful implementation of the Principles and Core elements that this Guideline provides require that all of them need to be integrated and embedded in the core business processes of an enterprise. This requires, specifically that the following actions are taken: **Leadership**-The Chairman/CEO/Owner- Manager should play a proactive role in convincing the Board/Top Management and staff within the business that adopting these principles is crucial for success. The board and senior management need to ensure that the principles are fully understood across the organization and comprehensively executed. **Integration** - These principles and core elements must be embedded in the Business policies and strategies emanating from the core business purpose of the organization. For this to happen, these must align with each business's internal values and/or must provide clear business benefits.

**Engagement** :- Building strong relationships and engaging with stakeholders on a consistent, continuous basis is crucial.

**Reporting:**

Implementation process includes disclosure by companies of their impact on society and environment to their stakeholders.

**(e)** As per Companies Act, 2013 following activities are not considered for the purpose of CSR:

(i) Activities undertaken in normal course of business.

(ii) Activity undertaken outside India.

(iii) CSR projects or programs or activities that benefit only the employees of the company and their families shall not be considered as CSR activities.

(iv) Contribution of any amount directly or indirectly to any political party under Section 182 of the Act, shall not be considered as CSR activity.

(v) Activity not covered within Schedule VII of the 2013 Act.

(vi) One-off events such as marathons/ awards/ charitable contribution/ advertisement/ sponsorships of TV programmes etc. would not be qualified as part of CSR expenditure.

(vii) Expenses incurred by companies for the fulfillment of any Act/ Statute of regulations (such as Labour Laws, Land Acquisition Act etc.) would not count as CSR expenditure under the Companies Act.

**Q. 2019 - June [8]** Write short notes on the following:

(iv) Benefits of CSR Programme

**(4 marks)**

**Q. 2013 - Dec [7]** (d) What are the core elements of the CSR policy as per the CSR voluntary guide lines 2009?

**(5marks)**

(e) What do you mean by 'whole life cycle costing'? Explain the role of risk assessment in whole lifecosting.

**(5marks)**

**Answer:**

**(d) JCSR Policy covers following core elements**

1. Care for all stakeholders:

The company shall (a) respect the interest of and be responsive towards all stake-holders including shareholders, employees, customers, suppliers, project affected people, society at large & others (b) create value for all of them. The company should develop mechanism to actively engage with all stakeholders, inform them of inherent risk and mitigate the risks when they occur.

2. Ethical functioning:

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

3. Respect for workers' right and welfare:

Company:

(a) should provide a work place environment that is safe, hygienic and humane and which upholds the dignity of employees.

(b) should provide all employees with access to training and development of skills for career advancement on an equal and non-discriminatory basis.

(c) should uphold the freedom of association and the effective recognition of the right to collective bargaining, have an effective grievance redressed systems, should not employ child or forced labour. The company should provide and maintain equality of opportunities without any discrimination on any grounds of caste, creed, colour and religion, in recruitment and during employment.

4. Respect for human rights

5. Respect for environment

6. Activities for social and economic development should take social and economic development of communities and geographical area - these could include education, skill building, health, cultural and social welfare.

**(e) Whole Life Cycle Costing-** In practice, we refer to WLCC as the total operating costs of the building, including energy/utilities costs and facilities management elements that relate to the building, such as maintenance and cleaning. WLCC refers to replacement building components within the building such as windows, fan, coil units etc. Over and above these are facilities management costs, such as security and catering.

Role of whole life cycle costing

- The time span of WLCC is whole life of the project or product. Such a big time element is full and fraught with many alternatives, uncertainties and objectives.

- Because of such big length of time, the WLCC decisions are complex, have multiple objectives and alternatives, multiple decision makers involving multiple disciplines.

- 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 (means for the purpose) static economic analysis of the anticipated project costs. While these



approaches are common they do not provide a robust framework for dealing with the risk.

- Although it is very difficult but the Capital costs and future costs must be quantified, analysed and presented as part of the strategic decision making process.
- In today's business environment cost analysis and value analysis techniques are used to quantify the economic implications of investment in building facilities in general.
- These techniques employ life cycle and comparative cost procedures to determine either the lowest initial cost alternative or the highest investment return alternative while these techniques do provide a basis for making project cost decision, they most often do not account for many of the parameters which may affect the actual project value of cost.
- The existing methods also do not use formal decision making processes and risk assessment methods in performing cost benefit analysis.

**Q. 2014 - June [7]** (a) Discuss various reasons for Corporate Social Responsibility (CSR)?

(d) CSR is an integral part of sustainable development. Explain.

**(f) What are the pros and cons of adopting Corporate Social Responsibility? (5 marks each)**

**Answer:**

**(a)** The rationale for CSR has been articulated in a number of ways. In essence, it is about building sustainable business, which needs healthy economies, markets and communities. The major reasons for CSR can be outlined as:

<b>(i) Globalisation</b>	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>(ii) International legal instruments and guidelines</b>	In the recent past, certain indicators and guidelines such as the SA 8,000, a social performance standard based on International Labour Organisation Conventions have been developed. International agencies such as United Nations and the Organisation 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.
<b>(iii) Changing public expectations of business</b>	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.
<b>(iv) Corporate Brand</b>	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 recognizing 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.

(d) . 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.

- 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 behavior by society in and outside of the firm.
- It is recommended that CSR is to be used as social strand of the Sustainable Development 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.
- CSR advocates moving away from a 'shareholder alone' focus to a 'multi-stakeholder' focus. Sustainable Development is 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs'.
- A business organisation which employs eco-friendly business practices is, no doubt, socially responsible as it takes into account the interest of its stakeholders, viz. the environment and the society at large.
- As a corollary, a business organisation which is socially responsible would, no doubt, employ eco-friendly business practices.
- Only a business organisation which is conscious of its duty towards the environment, would employ eco-friendly business practices and adopt the principles of sustainable development.
- Thus, it is correct to say that "Corporate Social Responsibility is closely linked with the principles of sustainable development".

#### (f) Corporate Social Responsibility:

The various pros and cons of CSR are as follows:

There is no any definite definition or description of CSR. From the very heading it can be deduced that the CSR may consist of any principle, policy, program, plan or procedure which reminds the corporate of its social responsibility. The CSR stresses the fact that a corporate has its accountability and responsibility towards the society and the environment in which it operates to exist, sustain, develop and grow.

There are many factors which are in favour of and against the CSR, some of these factors are described below:

1. Cost the unfavorable factor: CSR programs require big cost for their implementation and maintenance without any clear way to recover such cost. Moreover there is no clear evidence that incurring of such costs over social and environmental issues will bring out enhancement in business income as well as profit.
2. Improvement in reputation of the corporate: Any corporate which displays its concern, accountability and responsibility towards social, ecological and environmental issues, creates a favorable image in the eyes of people at large. Improvement in reputation and image of the corporate will naturally lead to improvement of acceptability of its products and services which in turn leads to enhancement in its profitability. Customers generally show more loyalty towards a brand which demonstrates a commitment towards the society.
3. Better customer relations: One basic benefit of the CSR is involvement of corporate with the communities where the corporate operates. This in the long run helps to build a trust between the people and the business. This trust gives a boost and momentum to the business to grow and expand. People are inclined to stick to the business they trust even if something goes wrong with the business.

**Q. 2014 - Dec [1] {C} (f) (ii) Why does construction industry fail to embrace WLCC?****(2 marks)****Answer:**

Currently, the application of 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. Several factors that presently act as barriers to applying WLCC:

- The lack of universal methods and standard formats for calculating whole lifecosts.
- 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.

**Q. 2014 - Dec [7] (a) (i) State the factors influencing Corporate Social Responsibility (C.S.R.).****(5 marks)**

(ii) Why whole life risk monitoring is essential for ensuring effective implementation of risk control measures?

**(5 marks)****(b) (ii) Explain corporate citizenship as a new way to market CSR.****(4 marks)****(c) (i) "Corporate Social Responsibility is not Charity". Discuss.****(6 marks)****(ii) Explain the role of subjectivity in WLCC.****(4 marks)****Answer:****(a) (i) Factors Influencing CSR**

Many factors and influences, including the following, have led to increasing attention being devoted to CSR:

- 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.
- Governments and intergovernmental bodies, such as the United Nations, the Organisation for Economic Co-operation and Development and the International Labour Organization have developed compacts, declarations, guidelines, principles and other instruments that outline social norms for acceptable conduct.
- 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.
- 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.
- Numerous serious and high-profile breaches of corporate ethics have contributed to elevated public mistrust of corporations and highlighted the need for improved corporate governance, transparency, accountability and ethical standards.
- Citizens in many countries are making it clear that corporations should meet standards of social and environmental care, no matter where they operate.
- There is increasing awareness of the limits of government legislative and regulatory initiatives to effectively capture all the issues that corporate social responsibility addresses.
- 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.

**(ii) Whole life risk monitoring and feedback**

- The issue of risk monitoring is essential for ensuring effective implementation of risk control measures. Active risk monitoring ensures that effective response measures to manage the risks are appropriately implemented.
- Since we are dealing with the life-cycle of projects, the initial decision conditions may change overtime, which could lead to the change of risks.
- Hence, a feedback and continuous assessment of risk through the entire life span of the project is very important in the process of whole life-cycle costing.
- This process should include tracking the effectiveness of the / planned risk responses, reviewing any changes in priority of response management, monitoring the state of the risks, updating the whole life-cycle analysis accordingly and reviewing the economic performance indicators to check whether the investment decision is still valid or otherwise.
- In this way risk monitoring not only evaluates the performance of risk response strategies but also serves as a continuing feedback or audit mechanism.

**(b) (ii) Corporate Citizenship: A new way to market CSR?**

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:

- Minimise harm
- Maximise benefit
- Be accountable and responsive to key stakeholders
- 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.

**Conclusion**

- 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.
- A successfully implemented CSR strategy calls for aligning these initiatives with, business objectives and corporate values thereby integrating corporate responsibility across the business functions and enhancing business reputation.

**(c) (i) Corporate Social Responsibility is not charity**

- 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.
- Several corporates today have specific departments to operationalise CSR. There are either foundations or trusts or a separate department within an organisation that look into implementation of practices.

- Being treated as a separate entity, there is always a flexibility and independence to carry out the tasks.
- 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.
- Whatever corporates do within the purview of CSR has to be related to core business.
- It has to utilise things at 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.
- While conceptualisation and implementation seem firmly underway, evaluation is still taking a backseat.
- There is a need to incorporate an evaluation plan, which along with presenting a scope of improvement in terms of fund utilisation and methodology adopted for the project, measures the short and long term impact of the practices.

#### (ii) Subjectivity in WLCC

- The issue of subjectivity and vagueness is also a very important facet of WLCC.
- Subjectiveness, vagueness and ambiguity (used interchangeably) are different from randomness.
- Randomness deals with uncertainty (in terms of probability)
- concerning the occurrence or non-occurrence of an event.
- Subjectivity, on the other hand, has to do with the imprecision and inexactness of events and judgements, including probability judgements.
- Many WLCC decision problems involve variables and relationships that are difficult, if not impossible, to measure precisely.
- For example, probability judgements about issues like inflation, operation costs, etc. are not always precise in WLCC and often cost analysts use subjective expressions to express their probability judgements.
- This applies to probability judgements as well as the costs and benefits in many WLCC decision problems.
- The requirement for high levels of precision may cause WLCC models to lose part of their relevance to the real world by ignoring some of the relevant decision attributes because these variables are incapable of precise measurement or because their inclusion may increase the complexity of the models.
- Hence, the key to successful WLCC and risk assessment is to build models that require little information - no more than the users can provide.

**Q. 2015 - June [1]** Answer the question:

(g) Discuss briefly the Corporate Citizenship.

(2 marks)

**Answer:**

Corporate Citizenship

A corporate is born and brought up in a society. Being legal person it is appropriate to assume that it is a citizen.

Corporate citizenship means and requires that the corporate should act, behave and perform like a good citizen and contribute their best to their stakeholders. They should keep away from the profit maximisation theory and should understand that they can exist for a long time only if they are committed to the nation, society and the public at large.

Space to write important points for revision



**2015 - June [3]** Answer the question:

(a) (i) What are the CORE elements of the Corporate Social Responsibility (CSR) policy as per the CSR Voluntary Guidelines, 2009?

(5 marks)

(ii) 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.

(5marks)

(b) (i) Risk assessment form a major element in whole life costing. Discuss.

(5marks)

(ii) Discuss corporate brand as CSR initiative to enable corporate to build a stronger brand.

(5marks)

(C) (i) Discuss the issue of subjectivity in Whole Life Cycle Costing (WLCC).

(5 marks)

**Answer:**

(i) Please refer 2013 - Dec [7] (d) on page no.381.

(ii) **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.

<b>Statist Model (1950 : 1970s)</b>	Under the aegis of Jawahar Lai 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.
<b>Liberal Model (1970s : 1990s)</b>	The <b>model</b> 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.
<b>Stakeholder Model (1990s : Present)</b>	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.

(b) (i) Risk assessment in Whole lifecosting:

- 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 (the complexity level is usually determined by the scale, funding and financial environment surrounding the scheme, amongst other factors), 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.
- Capital costs and future costs must be quantified, analysed and presented as part of the strategic decision making process in today's business environment.
- Cost analysis and value analysis techniques are used to quantify and assess the economic implications of investment in building facilities in general.
- These techniques have typically concentrated on utilising life-cycle and comparative cost procedures to determine either the lowest initial cost alternative or the highest investment return alternative.
- While these techniques do provide a basis for making project cost decisions, they most often do not account for many of the parameters which may affect the actual project value or cost (Plenty *et al.* 1999).
- The existing methods also do not use format decision making processes and risk assessment methods in performing cost benefit analysis.

#### (ii) 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.
- Corporates in India are also realising that their reputation is intrinsically connected with how well they consider the effects of their activities on those with whom they interact.
- Wherever the corporates fail to involve parties, affected by their activities, it may put at risk their ability to create wealth for themselves and society.
- Therefore, in terms of business, CSR is essentially a strategic approach for firms to anticipate and address issues associated with their interactions with others and through those interactions, to succeed in their business endeavors.
- The idea that CSR is important to profitability and can prevent . the loss of customers, shareholders, and even employees is gaining increasing acceptance.
- Further, CSR can help to boost the employee morale in the organisation and create a positive brand-centric corporate culture in the organisation.
- By developing and implementing CSR initiatives, corporates feel contented and proud, and this pride trickles down to their employees.

(c) (i) Please refer 2014 - Dec [7] (c) (ii) on page no.388

**Q. 2015 - Dec [3] (A) (i)** “Corporate Social Responsibility is to be considered as an investment and not as a charity”— Elaboratethe statement. **(6marks)**

**Answer:**

Please refer 2014 - Dec [7] (c) (i) on page no. 388

**Q. 2015 - Dec [3] (B) (i)** State the reasons for failure of construction industry to embrace whole life cycle costing(WLCC). **(5marks)**

**(ii)** State the factors responsible for increasing attention towards Corporate Social. Responsibility by the corporates. **(5marks)**

**Answer:**

**(i)** Why Construction Industry fails to embraceWLCC

Currently, the application of 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 Cycle Costing identified several factors that presently act as barriers to applying WLCC:

- The lack of universal methods and standard formats for calculating whole life Cyclecosts.
- The difficulty in integration of operating and maintenance strategies at the designphase.
- The scale of the data collection exercise, datainconsistency.
- The requirement for an independently maintained database on performance and cost of buildingcomponents.

**(ii)** Please refer 2014 - Dec [7] (c) (ii) on page no. 388

**Q. 2015 - Dec [3] (C) (i)** What is the relationship between Corporate Social Responsibility and Sustainable Development? **(5marks)**

**Answer:**

Relation between Corporate Social Responsibility (CSR) and Sustainable Development (SD):

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.

Corporate Responsibility (Sustainable Development)

Corporate Rnandal Responsibility	Corporate Environmental Corporate Social Responsibility Responsibility
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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 thefirm.

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 is 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, behaviour **Environmental:** nature, availability of resources

**Q. 2016 - June [1] {C}** Answer the following :

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

(5 marks)

**Answer:**

Please refer 2015 - June [3] (b) (ii) on page no. 393

**Q. 2016 - June [8] (b)** What are the implementation guidance of the Corporate Social Responsibility (CSR) policy as per the CSR voluntary Guidelines 2009? (5marks)

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

**Answer:**

**(b) Implementation Guidance**

1. The CSR policy of the business entity should provide for an implementation strategy which should include identification of projects/ activities, setting measurable physical targets with time frame, organizational mechanism and responsibilities, time schedules and monitoring. Companies may partner with local authorities, business associations and civil society/non government organizations.
2. Companies should allocate specific amount in their budgets for CSR activities. This amount may be related to profits after tax, cost of planned CSR activities or any other suitable parameter.
3. To share experiences and network with other organizations the company should engage with well established and recognized programmes/platforms which encourage responsible business practices and CSR activities. This would help companies to improve on their CSR strategies and effectively project the image of being socially responsible.
4. The companies should disseminate information on CSR policy, activities and progress in a structured manner to all their stakeholders and the public at large through their website, annual reports, and other communication media.

**(c) Capital costs**

- Returns on invested capital costs are essential in making decisions on investment scenarios.
- This requires a combination of knowledge about the investment in question, skill for analysis and elicitation of decisions from the existing information, experience and judgement.
- The capital cost for acquiring a facility will not be known with certainty until the facility is developed and handed over for operation.

Hence, the information required for carrying out whole life-cycle cost and economic viability analysis relies on the availability of previously documented cases and speculative assumptions.

The capital cost objectives that need to be assessed include:

<b>Land acquisition cost</b>	The location and land viability may have a direct effect on the whole life cost and life expectancy of a facility.
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<b>Pre-design costs</b>	The amounts of time in quality of information generated (development of the brief and facility specification) at this stage have great consequences on the quality and operation of a facility. The investors have a good opportunity to optimise the whole life cost of a facility through the selection of component and functional flexibility. Ideally, the issues relating to obsolescence should
	be investigated, accounted for as costs at this stage.
<b>Design costs</b>	The quality of design in terms of error, detailing and build ability will have a direct effect on the cost of production and operation. A high quality building might also require higher costs in use in order to maintain its high aesthetic quality in use (Ashworth & Hogg2000).
<b>Development and production costs</b>	The quality of workmanship is directly related to the level of maintenance. It is important to ensure that quality control is in place to ensure sound construction practices are used. <ul style="list-style-type: none"> <li>• Fees.</li> <li>• Risk costs.</li> <li>• Financial costs, tax, interest, etc.</li> </ul>

**Q. 2016 - Dec [1] {C} (e) What is Corporate Social Responsibility? Why is it needed in Indian Business environment? (5marks)**

**Answer:**

Corporate Social Responsibility is the continuing commitment by businesses to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large.

Need for social responsibility:

- (i) Eradicating extreme hunger and poverty
- (ii) Promotion of education
- (iii) Promoting gender equality and empowering women
- (iv) Reducing child mortality and improving maternal health
- (v) Ensuring environmental sustainability
- (vi) Social business projects
- (vii) Employment enhancing vocational skills
- (viii) Combating human immunodeficiency virus, malaria and other diseases
- (ix) Contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central or State Govt, for socio-economic development and relief fund / funds for the welfare of the scheduled castes, the scheduled tribes, other backward classes, minorities and women, and
- (x) Such other matters as may be prescribed.

**Q. 2016 - Dec [7] (a) The Companies Act, 2013 has introduced several provisions which would change the way Indian Corporate do business and one such provision is spending on Corporate Social Responsibility (CSR) activities which has assumed considerable importance.**

Discuss the provisions governing CSR as provided in the Companies Act, 2013 and the Rules made thereunder. (8marks)

**Answer:**

1. CSR applies to the following classes of companies during any financial year:

- (i) Companies having Net Worth of rupees five hundred crore or more;
  - (ii) Companies having turnover of rupees one thousand crore or more,
  - (iii) Companies having Net Profit of rupees five crore or more.
2. The companies specified above shall constitute a Corporate Social Responsibility Committee (CSR Committee) of the Board.
  3. The CSR Committee shall consist, of three or more Directors, out of which at least one Director shall be an Independent Director.
  4. After taking into account the recommendations of the CSR Committee, the Board shall approve the CSR Policy for the company.
  5. The contents of the Policy shall be disclosed in the Board's report.
  6. It shall also be placed on the Company's website, if any, in a manner to be prescribed by the Central Government.
  7. The Board shall ensure that the activities as are included in the CSR Policy (from the activities as specified in Schedule VII) are undertaken by the Company.

The following additional features of the Section are relevant.

1. While spending the amount earmarked for CSR activities, the company shall give preference to the local area and areas around it where it operates.
2. If the Company fails to spend the amount, the Board shall specify the reasons for not spending the amount in the Board's Report.
3. The eligible companies are required to spend in every financial year at least two percent of the Average Net Profits of the Company made during the three immediately preceding financial years in pursuance of its CSR policy. (Sec.135)

**Q. 2016 - Dec [8]** (a) Define Corporate Citizenship. Explain the relation between Corporate Citizenship and Corporate Social Responsibility. **(8marks)**

**Answer:**

A new terminology that has been gaining grounds in the business community today is Corporate Citizenship. Corporate Citizenship is defined by Boston College Center 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 concepts, 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 organizations, their basic message and purpose is the same.

**Q. 2017 - Dec [6]** (a) Business should support inclusive growth and equitable development. Explain briefly as per National Voluntary Guidelines 2011 in this regard. **(7marks)**

**Answer:**

The Guidelines emphasize that businesses have to endeavour to become responsible actors in society, so that their every action leads to sustainable growth and economic development.

These Guidelines have been developed through an extensive consultative- process by a Guidelines Drafting Committee (GDC) comprising competent and experienced professionals representing different stakeholder groups. The Guidelines are designed to be used by all businesses irrespective of size, sector or location and therefore touch on the fundamental aspects the 'spirit' of an enterprise. The Guidelines are applicable to all such entities and are intended to be adopted by them comprehensively, as they raise the bar in a manner that makes their value creating operations sustainable.

The Guidelines have been articulated in the form of nine (9) Principles with the Core Elements to actualize each of the principles. A reading of each Principle, with its attendant Core Elements, should provide a very clear basis for putting that Principle into practice and as a part of it inclusive growth and equitable development are important as:

The principle recognizes the challenges of social and economic development faced by India and builds upon the development agenda that has been articulated in the government policies and priorities.

The principle recognizes the value of the energy and enterprise of businesses and encourages them to innovate and contribute to the overall development of the country, especially to that of the disadvantaged, vulnerable and marginalised sections of society.

The principle also emphasizes the need for collaboration amongst businesses, government agencies and civil society in furthering this development agenda. The principle reiterates that business prosperity and inclusive growth and equitable development are interdependent.

**Core Elements**

- (a) Businesses should understand their impact on social and economic development and respond through appropriate action to minimize the negative impacts.
- (b) Businesses should innovate and invest in products, technologies and processes that promote the well being of society.
- (c) Businesses should make efforts to complement and support the development priorities at local and national levels, and assure appropriate resettlement and rehabilitation of communities who have been displaced owing to their business operations.
- (d) Businesses operating in regions that are underdeveloped should be especially sensitive to local concerns.



**Q. 2018 - June [7]** (c) (i) Explain the concept of Corporate Social Responsibility and its meaning to different people. **(6marks)**

**Answer:**

**Corporate Social Responsibility (CSR):** It is a concept that organizations, have an obligation to consider the interests of customers, employees, shareholders, communities, and ecological considerations in all aspects of their operations. This obligation is seen to extend beyond their statutory obligation to comply with legislation. CSR is closely linked with the principles of Sustainable Development, which argues that enterprises should make decisions based not only on financial factors such as profits or dividends, **but** also based on the immediate and long- term social and environmental consequences of their activities, especially taking into consideration **the** needs of future generations. It is an integrated combination of policies, programs, education, and practices which extend throughout a corporation's operations and into the communities in which they operate, about **how** companies voluntarily manage the business processes to produce an overall positive impact on society.

CSR can mean different things to different people:

- for an employee it can mean fair wages, no discrimination, acceptable working conditions etc.
- for a shareholder it can mean making responsible and transparent decisions regarding the use of capital.
- for suppliers it can mean receiving payment on time.
- for customers it can mean delivery on time, etc.
- for local communities and authorities it can mean taking measures to protect the environment from pollution.
- for non-governmental organisations and pressure groups it can mean disclosing business practices and performance on issues ranging from energy conservation and global warming to human rights and animal rights, from protection of the rainforests and endangered species to child and forced labour, etc.

For a company, however, it can simply be seen as responding to the needs and concerns of people who can influence the success of the company and/or whom the company can impact through its business activities, processes and products.

**Q. 2018 - Dec [7]** (b) Discuss the National Voluntary Guidelines on “Business should respect the interests of and be responsive towards all stakeholders, especially those who are disadvantaged, vulnerable and marginalized.” **(4marks)**

**Answer:**

The principle recognizes that businesses have a responsibility to think and act beyond the interests of its shareholders to include all their stakeholders. The principle, while appreciating that all stakeholders are not equally influential or aware, encourages businesses to proactively engage with and respond to those that are disadvantaged, vulnerable and marginalized. **Main Elements:**

- (a) Businesses should systematically identify their stakeholders, understand their concerns, define purpose and scope of engagement and commit to engaging with them.
- (b) Businesses should acknowledge, assume responsibility and be transparent about the impact of their policies, decisions, product & services and associated operations on the stakeholders.
- (c) Businesses should give special attention to stakeholders in areas that are underdeveloped.
- (d) Businesses should resolve differences with stakeholders in a just, fair and equitable manner.

**Q. 2019 - June [5]** (a) Discuss the National Voluntary Guidelines on “Business, when engaged in influencing public and regulatory policy, should do so in a responsible manner”. **(4 marks)**

**Q. 2017 - Dec [6 ]** (c) XYZ Ltd. is a listed company having turnover of `1,200 crores during the financial year 2015-16. The CSR committee of the Board formulated and recommended a CSR project which was approved by the Board. Company finalised the project under its CSR initiatives which require funds @5% of average net profit of the company for last three financial years. Will such excess expense be counted in subsequent financial years as a part of CSR expenditure? Advise. **(4marks)**

**Answer:**

In terms of Section 135(5), the board of every company, to which Section 135 is applicable, shall ensure that the company spends, in every financial year, at least **2 %** of the average net profits of the company made during the three preceding year.

There is no provision of spreading over the expenditure incurred in a particular year over the next few years. The words used here is at least. Therefore, any Expenditure over 2% could be considered as voluntary higher spend. However, in case; a company does not want to spend the 2% in the subsequent year on account of it having spent a higher amount in the previous year, the Board's report may state so.

Space to write important points for revision

Repeatedly Asked Questions		
No.	Question	Frequency
1	What are the CORE elements of the Corporate Social Responsibility (CSR) policy as per the CSR Voluntary Guidelines, 2009? 13-Dec [7] (d), 15-June [3] (a) (i)	2 Times
2	Discuss the issue of subjectivity in Whole Life Cycle Costing (WLCC). 14 - Dec [7] (c) (ii), 15 - June [3] (c) (i)	2 Times