

FINAL EXAMINATION

December 2018

P-13(CLC)

Syllabus 2016

Corporate Laws & Compliance

Time Allowed: 3 Hours

Full Marks: 100

The figures in the margin on the right side indicate full marks.

Answer Question No. 1 which is compulsory carrying 20 marks and answer any five questions from Question No. 2 to Question No. 8.

1. Answer *all* questions mentioned below. Mark the correct answer (only indicate A or B or C or D) and give justification.

(a) Multiple Choice Questions:

2×10=20

- (i) At a general meeting of a company a matter was to be passed by a special resolution. Out of forty members of the company, twenty voted in favour of the resolution, five voted against it and five votes were cancelled. The remaining ten members abstained from voting. The chairman declared resolution as
- (A) Passed
 - (B) Invalid
 - (C) Cancelled
 - (D) Accepted
- (ii) Payment of Commission on exports made towards equity investment in wholly owned subsidiary abroad of an Indian Company is
- (A) Permissible
 - (B) Prohibited
 - (C) Forwarded
 - (D) Restricted

Please Turn Over

- (iii) All Board members and senior management personnel should affirm compliance with the Code on annual basis. The annual report of the Company shall contain a declaration to this effect signed by the
- (A) Auditor
 - (B) Director
 - (C) Managing Director
 - (D) CEO
- (iv) The quality of something which enables one to understand the truth easily. In this context of Corporate Governance, it implies an accurate, adequate and timely disclosure of relevant information about the operating results etc., of the Corporate enterprise to the stakeholders. This principle is known as
- (A) Transparency
 - (B) Accountability
 - (C) Independence
 - (D) Clarity
- (v) SEBI has to be responsive to the needs of the three groups which constitute the Market. Which of the following does not constitute the Market?
- (A) The issuers of securities
 - (B) The investors
 - (C) The brokers
 - (D) The market intermediaries
- (vi) Which of the following listing provides arbitrage opportunities to the investors, whereby they can make profit based on the difference in the prices prevailing in the said exchanges?
- (A) Multiple listing
 - (B) Initial listing
 - (C) Listing for right issue
 - (D) Listing for public issue

- (vii) Which of the following is not the objective of Competition Act, 2002?
- (A) To prevent practices having adverse effect on competition
 - (B) To prevent competition in market
 - (C) To protect the interest of the consumers
 - (D) To ensure freedom of trade carried on by the other participants in marketing India and for matter connected there with or incidental thereto.
- (viii) An association of producers, sellers or distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of or trade in goods or provision of services is known as
- (A) Acquisition
 - (B) Agreement
 - (C) Cartel
 - (D) Pool
- (ix) An authorised dealer, money changer, offshore banking or any other persons for the time being authorised to deal in foreign exchange or foreign securities is known as
- (A) Authorised banker
 - (B) Authorised dealer
 - (C) Authorised person
 - (D) Authorised money changer
- (x) The process of money laundering generally involves three stages. Which is the second stage?
- (A) Placement
 - (B) Layering
 - (C) Integration
 - (D) Contribution

2. (a) (i) The common seal is a seal used by Corporation as the symbol of its incorporation and also a statutory requirement for a company. Comment.
- (ii) M/s Kaberi Mutual Benefits Nidhi Ltd. is incorporated as a Nidhi Company under the Companies Act, 2013. The Board of Directors of the company have decided to appoint Mr. Raja (a minor) as a member of the company. Referring to the applicable provisions of the Companies Act, 2013 read with rules thereunder, advise them.
- (iii) Is it obligatory for a Producer Company to have internal audit of its accounts for financial year 2016-17?
- (iv) A Company incorporated outside India having shareholders who are all Indian citizens. Examine and state whether the above company can be considered as 'Foreign Company' under the Companies Act, 2013. 2+2+2+2=8
- (b) BET Ltd. incurred loss in business up to current quarter of financial year 2017-18. The company has declared dividend at the rate of 11%, 16% and 18% respectively in the immediate preceding three years. In spite of the loss, the Board of Directors of the company have decided to declare interim dividend @ 15% for the current financial year. Examine the decision of BET Ltd. stating the provisions of declaration of interim dividend under the Companies Act, 2013. 4
- (c) The Board of Directors of Best Consultants Limited, registered in Kolkata, proposes to hold the next board meeting in the month of May, 2017. They seek your advice in respect of the following matters:
- (i) Can the board meeting be held in Chennai, when all the directors of the company reside at Kolkata?
- (ii) Is it necessary that the notice of the board meeting should specify the nature of business to be transacted?
- Advice with reference to the relevant provisions of the Companies Act, 2013. 2+2=4
3. (a) (i) Mr. Balu is a CEO in a public company. State whether the limits on managerial remuneration under section 197 of the Companies Act, 2013 and schedule V apply to Mr. Balu.
- (ii) Mr. X is a Whole Time Director (WTD) in a Super Ltd. He is also Whole Time Director (WTD) in its subsidiary company. Discuss the validity of Mr. X as WTD in its subsidiary company. 2+2=4
- (b) Mr. Faithful is an auditor of Daga Ltd. While auditing the accounts of the Daga Ltd. for 2016-17, he finds manipulation of funds around ₹ 2 crore committed by the officers of the company against the Daga Ltd. Examine in the light of the Companies Act, 2013 the way frauds are required to be reported by Mr. Faithful and the duty of the Daga Ltd. in relation to reporting of such frauds.

(c) Comment with reference to the provisions of the Companies Act, 2013 in respect of the following:—

- (i) Mr. P who is not qualified to be appointed as an independent director is appointed by the Board of Directors of XYZ Company Limited, for an independent director, as an alternate director.
- (ii) On the request of bank providing financial assistance, the Board of Directors of PQR Limited decides to appoint on its Board Mr. Peter, as nominee director. Articles of Association of the Company do not confer upon the Board of Director any such power. Further, there is no agreement between the company and the bank for any such nomination. 2+3=5

4. (a) ABC Ltd. and DEF Ltd. are wholly owned by Government of West Bengal. As a policy matter, the Government issued administrative orders for merging DEF Ltd. with ABC Ltd. in the public interest. State the authority with whom the application for merger is required to be filed under the provisions of the Companies Act, 2013. 4

(b) Excel Limited is a listed company with a turnover of ₹ 60 crores in Financial Year 2016-17. The Company appoints Ms. R as the Women Director on 1st March, 2017. Ms. R is already a director in twelve companies including ten Public Companies. State briefly whether the appointment of Ms. R in Excel Ltd. is valid as per provision of the Companies Act, 2013. 4

(c) An Audit Committee of a Public Limited Company constituted under section 177 of the Companies Act, 2013 submitted its report of its recommendation to the Board. The Board, however, did not accept the recommendations. In the light of the situation, analyze whether:

(i) The Board is empowered not to accept the recommendations of the Audit Committee.

(ii) If so, what alternative course of action, would be Board resort to? 3+1=4

(d) State briefly the power of Tribunal in case Auditor acted in a Fraudulent Manner. 4

5. (a) A group of members of XYZ Limited has filed a petition before the Tribunal alleging various acts of oppression and mismanagement by the majority shareholders of the company. The Petitioner group holds 12% of the issued share capital of the company. During the pendency of the petition, some of the petitioner group holding about 5% of the issued share capital of the company wish to disassociate themselves from the petition and they along with the other majority shareholders have submitted before the Tribunal that the petition may be dismissed on the ground of non-maintainability.

Examine their contention having regard to the provisions of the Companies Act, 2013. 4

(b) An officer of a company was allotted one room for two years in a guest house owned by the Company at some other city where he used to stay while on tour. It came to notice of the company that he had not vacated the said room after the expiry of two years and is holding the unauthorized possession of that room and has been permitting to stay outsiders in the said room, at a rent of ₹ 500 per day. The record shows that he had permitted the outsider for 45 days and collected ₹ 22,500 and retained the said amount with him. As per the letter of allotment, there was no such clause which can be invoked against him for making any recovery on account of such wrongful occupation.

Analyse in the given situation, whether manager of the company can seek recovery from the officer of the company under any of the provisions of his employment or the Companies Act. 5

- (c) (i) State briefly the factors to be considered by the Court while deciding the amount of fine or imprisonment under section 446 A of the Companies Act, 2013.
- (ii) Asha Ltd., has made default in filing financial statements and annual returns for a continuous period of 4 financial years ending on 31st March, 2017. The Registrar of Companies having jurisdiction approached the Central Government to accord sanction to present a petition to Tribunal (NCLT) for the winding up of the company on the above ground under section 272 of the Companies Act, 2013.

Examine the validity of the RoC move, explaining the relevant provisions of the Companies Act, 2013.

4+3=7

6. (a) State briefly the power of SEBI to levy monetary fines and penalties under SEBI Act, 1992. 4
- (b) The Board of Directors of M/s S.K. Limited, a banking company incorporated in India, for the accounting year ended 31st 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 30th 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 Governments 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.

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- (c) (i) All offences under the Companies Act, 2013 are non-cognizable. Comment.
- (ii) What are the powers of the Central Government under the Companies Act, 2013 regarding to Appeal against acquittal?
- (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 stock broker.

- (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+2+2+2=8

7. (a) Explain the main provisions of clause 49 of the listing agreement with the Stock Exchanges regarding Corporate Governance. 4
- (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." 4
- (c) (i) M/s Toy Metal Limited had availed credit facilities from Bapi Bank Ltd. The company made repayment of loan to some extent and not entirely and accordingly, the bank took recourse under the provisions of section 13(2) of the SARFAESI Act, 2002. Consequently, possession of the mortgaged property was taken up and was duly advertised by the Bank. The company also filed an application under section 17(1) of SARFAESI Act, 2002 before the debts recovery tribunal which was dismissed by the impugned order. Being aggrieved the company approached the Court.
- Examine in the light of the SARFAESI Act, 2002 whether the company will succeed in the petition filed before the Court.
- (ii) "Money Laundering does not mean just siphoning of fund." Comment.
- (iii) The Insolvency and Bankruptcy Code, 2016 is not applicable to corporates in finance sector. Explain. 4+2+2=8

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

4×4=16

- (i) Persons who are not entitled to initiate insolvency resolution process
 - (ii) Differential Pricing
 - (iii) Record of Policies and Claims (Section 14)
 - (iv) Current account transaction (Section 2j)
 - (v) Inquiry by the Registrar [(Section 206(4))]
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