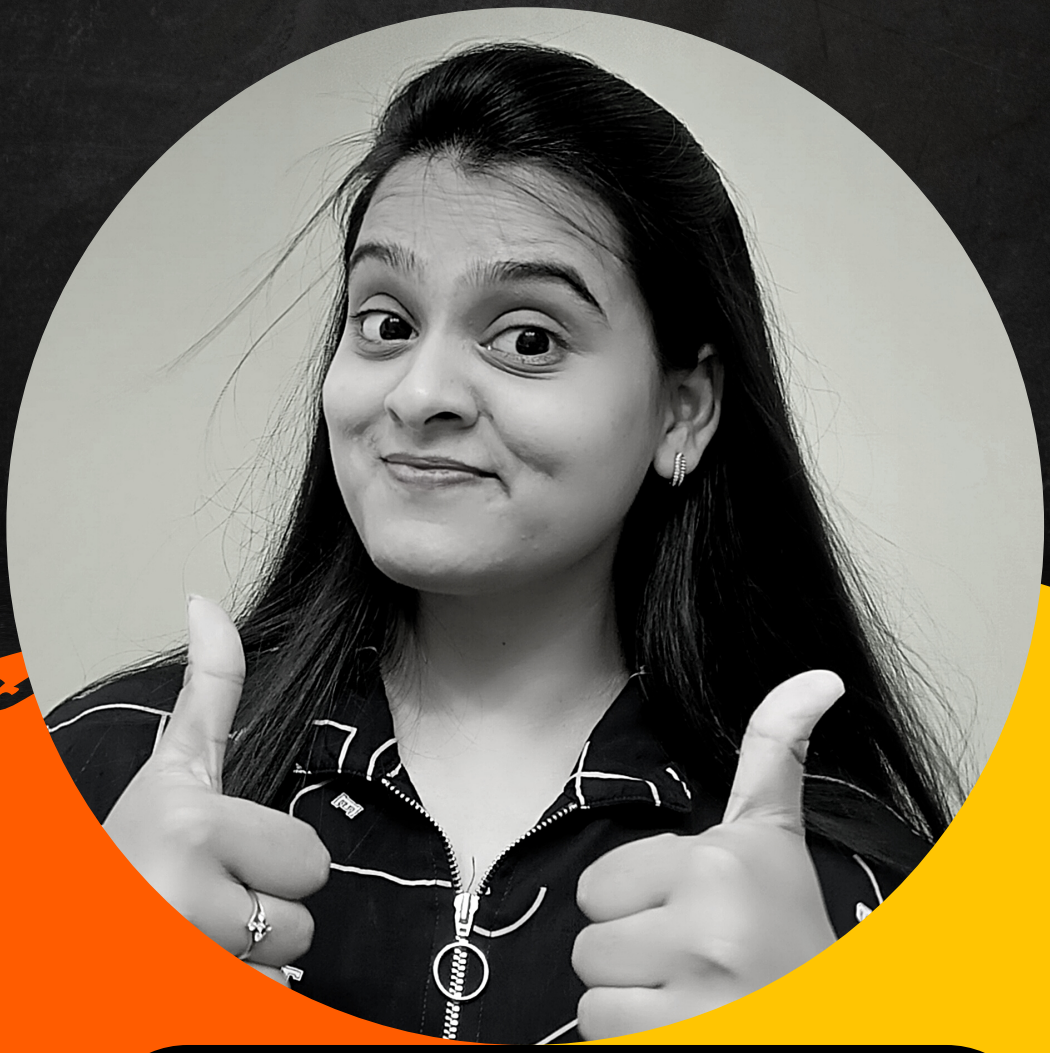
# CMA FINAL LAW - DEC 2022

# SUPER 50 QUESTIONS



CA SHIVANGI AGRAWAL

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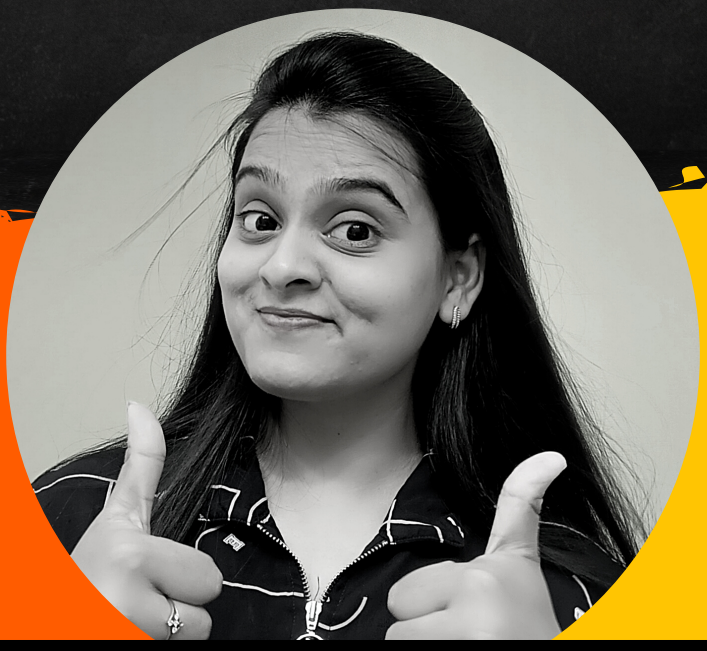

**CA SHIVANGI AGRAWAL**

# SUPER 50 QUESTIONS

| S.No | Question | Answer |
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| 1 | What are the different models of E-Governance ? | The different modes of e governance are:<br>**Government to Citizen (G2C)**<br>The goal of government to customer/citizen (G2C) e-governance is to offer a variety of ICT services to citizens in an efficient and economical manner and to strengthen the relationship between government and citizens using technology. There are several methods of government-to-customer e-governance. Two-way communication allows citizens to instant message directly with public administrators and cast remote electronic votes (electronic voting) and instant opinion poll. Transactions such as payment of services, such as city utilities, can be completed online or over the phone.<br>**Government to Employees (G2E)**<br>E-Governance to Employee partnership (G2E) is one of four main primary interactions in the delivery model of E-Governance. It is the relationship between online tools, sources, and articles that help employees maintain communication with the government and their own companies. E-Governance relationship with Employees allows new learning technology in one simple place as the computer. Documents can now be stored and shared with other colleagues online. **Government to Government (G2G)**<br>It is an electronic sharing of data and/or information system between government agencies, departments or organizations. The goal of G2G is to support e-government initiatives by improving communication, data access and data sharing.<br>**Government to Business(G2B)**<br>It is an online non-commercial interaction between local and central government and the commercial business sector with the purpose of providing businesses information and advice on e-business 'best practices'. G2B is also refers to the conduction through the Internet between government agencies and trading companies. Public issue and share transfer records is mandatory to be kept in electronic form. |
| 2 | What is Listing of Securities? Explain the Legal Provisions regarding listing. | As per Section 40 of the Companies Act, 2013, every company intending to offer shares or debentures to the public for subscription by the issue of a prospectus is required to make an application to one or more recognized stock exchanges before such issue for permission for the securities intending to be so offered to be dealt with in the stock exchange(s).<br>As per Section 40 of the Companies Act, 2013, prospectus |

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| | | should state the names of the stock exchanges where application for listing has been made and any allotment of securities made on the basis of such prospectus should be void if permission of listing is not granted by the stock exchange(s) before the expiry of 10 weeks from the closure of the issue.<br>As per Section 4 of the Securities Contracts (Regulation) Act, 1956, every recognized stock exchange has the powers to make bye-laws for the listing of securities on the stock exchange, inclusion of any security for the purpose of dealings and suspension or withdrawal of securities and the prohibition of trading in any specified security, subject to SEBI approval.<br>Every company while submitting its application for listing with the stock exchange(s) should produce a number of documents as enclosures to satisfy the requirements of the concerned stock exchange. It should also give a number of under takings as a condition precedent before listing as a sought by the concerned stock exchange. Finally, when the stock exchange(s) agree(s) to list the securities, the company shall execute a listing agreement with the stock exchange(s). The listing agreements of different stock exchanges have clauses ranging from 50 to 60.<br>When a company signs a listing agreement with a stock exchange, it means it has entered a legally binding contract with that exchange and it has to ensure compliance of each and every term and condition in the listing agreement. For failure to ensure such compliance the stock exchange can take an action against the company after giving an opportunity of being heard.<br>Listing of securities on Indian Stock Exchanges, thus, is essentially governed by the provisions in the Companies Act, 2013, the Securities Contracts (Regulation) Act, 1956, the Securities Contracts (Regulations) Rules, 1957, Rules, Bye-laws, regulations of concerned stock exchange, the listing agreement entered into by the issuer and stock exchange and circulars / guidelines issued by the Central Government and SEBI. |
| **3** | What are the required qualifications of the President, judicial member and technical Member of Tribunal (Section 409) under Companies Act, 2013 ? | Section 409 of the Act contains the provisions as to Qualification of President and Members of Tribunal.<br>According to this Section the qualifications of the President and members of Tribunal are as follows: A:- Qualification for the President: He shall be a person who is or has been a Judge of a High Court for five years.<br>B:- Qualification for the Judicial member: A person shall not be qualified for appointment as a Judicial Member unless he is or has been: |

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| | | 1) a judge of a High Court, or<br>2) a District Judge for at least five years, or<br>3) an advocate of a court for at least ten years.<br>C:- Qualification for Technical member: A person shall not be qualified for appointment as a Technical Member unless he:<br>1) has, for at least fifteen years been a member of the Indian Corporate Law Service or Indian Legal Service and has been holding the rank of Secretary and Additional Secretary to the Government of India, or<br>2) is, or has been, in practice as a Chartered Accountant for at least fifteen years, or<br>3) is, or has been, in practice as a Cost Accountant for at least fifteen years, or<br>4) is, or has been, in practice as a Company Secretary for at least fifteen years, or<br>5) is a person of proven ability, integrity and standing having special knowledge and experience, of not less than fifteen years, in, industrial finance, industrial management, industrial reconstruction, investment & accountancy, or<br>6) 6) is, or has been, for at least five years, a presiding officer of a Labour Court, Tribunal or National Tribunal constituted under the Industrial Disputes Act, 1947. |
| **4** | Conditions for further public offer (Regulation 103) | (a) An issuer may make a further public offer (an offer of equity shares and convertible securities) if it satisfies the following conditions:<br>• if it has changed its name within the last one year, at least 50% of the revenue for the preceding one full year has been earned by it from the activity indicated by the new name.<br>(b) If the issuer does not satisfy the above conditions, it may make a further public offer if it satisfies the following conditions:<br>• the issue is made through the book building process and the issuer undertakes to allot at least 75% of the net offer to public to qualified institutional buyers and to refund full subscription monies if it fails to make allotment to the qualified institutional buyers. |
| **5** | Elaborate the procedure of Winding up of Banking Companies | Sections 38 to 44 of the Act lay down the provisions for winding up of a banking company. The RBI may apply for the winding up of a banking company if.<br>a) It fails to comply with the requirements as to minimum Paid-up capital and reserves as laid down in Section 11, or<br>b) Is disentitled to carry on the banking business for want of license under Section 22, or |

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| | | c) It has been prohibited from receiving fresh deposits by the Central Government or the Reserve Bank, or<br>d) It has failed to comply with any requirement of the Act, and continues to do so even after the Reserve Bank calls upon it to do so, or<br>e) The Reserve Bank thinks that a compromise or arrangement sanctioned by the court cannot be worked satisfactorily, or<br>f) The Reserve Bank thinks that according to the returns furnished by the company it is unable to pay its debts or its continuance is prejudicial to the interests of the depositors. The banking company cannot be voluntarily wound up unless the Reserve Bank certifies that it is able to pay its debts in full . |
| **6** | Perpetual Limited is an asset reconstruction company (ARC) under the SARFAESI Act,2002. During the financial year 2020-2021. Mr Param, one of the directors of the company in urgent need of money transferred 10% of his shareholding to Mr Shariff (Another director of the company), which increased Mr Shariff's shareholding to 20%. Perpetual Ltd also appointed Mr Vikram as CEO for managing the overall operations and resources of the company. However, for the said purposes, Perpetual limited did not take approval of the Reserve Bank of India. RBI cancelled the certificate of Registration granted to Perpetual Limited. Perpetual Ltd. contended that the decision of the RBI is inappropriate as transfer of shareholding and appointment of CEO is not a substantial change in management. Discuss the validity of decisions of the RBI in the light of the applicable law | As per Section 3(6) of the SARFAESI ACT 2002. Every asset reconstruction company, shall obtain prior approval of the Reserve Bank for any substantial change in its management including appointment of any director on the board of directors of the asset reconstruction company or managing director or chief executive officer thereof or change of location of its registered office or change in its name.<br><br>Provided that the decision of the Reserve Bank whether the change in management of a securitisation company or a reconstruction company is a substantial change in its management or not shall be final.<br><br>Explanation—For the purposes of this section, the expression"substantial change in management" means the change in the management by way of transfer of shares or change affecting the sponsorship in the company by way of transfer or shares or amalgamation or transfer of the business of the company.<br><br>In the above question, there has been change in shareholding of directors which falls under the "substantial change in management"including appointment of CEO and the decision of the Reserve Bank as to whether the change in management of the asset reconstruction company is a substantial change in management or not, shall be final. Therefore, the decision of the Reserve Bank shall be final and will be held valid |
| **7** | Bharti Limited, a company listed on Bharat Stock Exchange | As per Section 21A of the Securities Contracts (Regulation) Act, 1956 read with Rule 21 of the Securities Contract |

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| | Limited(A recognised Stock Exchange to India)had been incurring losses continuously during the preceding 3 years, but its net worth has not become negative till date.The Stock Exchange decided to delist the securities of the company after giving an opportunity of being heard to the company. Mr. Binay, (the investor) who holds equity shares up to 10% of the total equity share capital of the company, has suffered heavy losses due to delisting of securities by the Stock Exchange.You have been hired by Mr. Binay to consult him regarding the security laws.Examine the given situation and mention the various grounds of delisting under SCRA and the remedies available to Mr. Binay in the light of the securities contract (Regulation)Act,1956[SCRA]. | (Regulation) 1957, a recognised stock exchange may delist the securities, after recording the reasons therefor from any recognised stock exchange on any of the ground or grounds as may be prescribed under this Act.<br><br>Provided that the securities of a company shall not be delisted unless the company concerned has been given a reasonable opportunity of being heard. Alisted company or an aggrieved investor may file an appeal before the Securities Appellate Tribunal against the decision of the recognised stock exchange delisting the securities within fifteen days from the date of the decision of the recognised stock exchange delisting the securities,<br><br>Following are the grounds namely<br>(a) the company has incurred losses during the preceding three consecutive years and it has negative net worth.<br>(b) trading in the securities of the company has remained suspended for a period of more than six months.<br>(c) the securities of the company have remained infrequently traded during the preceding three years,<br>(d) the company or any of its promoters or any of its director has been convicted for failure to comply with any of the provisions of the Act or the Securities and Exchange Board of India Act,1992 or the Depositories Act.1996 or rules, regulations, agreements made thereunder.as the case may be and awarded a penalty of not less than rupees one crore or imprisonment of not less than three years.<br>(e) the addresses of the company or any of its promoter or any of its directors, are not known or false addresses have been furnished or the company has changed its registered office in contravention of the provisions of the Companies Act, or<br>(f) shareholding of the company held by the public has come below the minimum level applicable to the company as per the listing agreement under the Act and the company has failed to raise public holding to the required level within the time specified by the recognised stock exchange. In the above question, the net worth of the company has not become negative. Therefore,either the company or Mr, Binay may file an appeal before the Securities Appellate Tribunal against the decision of the recognised stock exchange within 15 days from the date of the decision. |
| **8** | What is an overseas direct investment? Differentiate between automatic route and approval route to direct | Direct investment outside India /overseas direct investment means investments, either under the Automatic Route or the Approval Route by way of I. contribution to the capital or subscription to the Memorandum of a foreign entity or II. |

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| | investment. | purchase of existing shares of a foreign entity either by market purchase or private placement or through stock exchange, signifying a long-term interest in the foreign entity.(JV or WOS).<br><br>Difference between Automatic Route and Approval Route for direct investment Automatic route for direct investment or financial commitment outside India:<br>An Indian Party has been permitted to make investment/undertake financial commitment in overseas Joint Ventures (JV)/ Wholly Owned Subsidiaries (WOS), as per the ceiling prescribed by the Reserve Bank. With effect from july 03, 2014, it has been decided that any financial commitment (FC) exceeding USD 1 (one) billion (for its equivalent) in a financial year would require prior approval of the Reserve Bank even when the total FC of the Indian Party is within the eligible limit under the automatic route [i.e. , within 400% of the net worth (Paid up capital + Free Reserves) as per the last audited balance sheet].<br><br>Approval route for direct investment or financial commitment outside India:<br>(i) Prior approval of the Reserve Bank would be required in all other cases of direct investment (or financial commitment) abroad.<br>(ii) Reserve Bank would, inter alia, take into account the following factors while considering such applications:<br>a) Prima facie viability of the JV/WOS outside India,<br>b) Contribution to external trade and other benefits which will accrue to India through such investment (or financial commitment),<br>c) Financial position and business track record of the Indian Party and the foreign entity, and<br>d) Expertise and experience of the Indian Party in the same or related line of activity as of the JV/WOS outside India.<br><br>Therefore, under the approval route (proposals not covered by the conditions under the automatic route) prior approval of the Reserve Bank would be required. For which a specific application in Form ODI with the documents prescribed therein is required to be made through the Authorised Dealer Category- 1 Banks |
| **9** | State on the nature of liability caused on an offence committed under the prevention of Money | Money Laundering basically is knowingly dealing with proceeds of crime directly or indirectly. The Act provides both for civil and criminal liability. Criminal liability under the Prevention of Money Laundering Act Crime which results in |

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| | Laundering Act, 2002. | tainted money is a separate offence under various laws as specified in Schedule to Prevention of Money Laundering Act. These offences are punishable under those Acts. The punishment is to the person/s who is/are involved in actually committing that offence. The offence as specified in Section 4 of the Prevention of Money Laundering Act is a separate offence. The punishment under section 4 of Prevention of Money Laundering Act is not only to those who are actually involved in dealing with tainted money but also on those who are knowingly involved, directly or indirectly, in dealing with proceeds of crime. This is a criminal offence, which will be tried by special courts designated for this purpose under Section 2 (Z) of the Prevention of Money Laundering Act. The trail will be both for charges under the specific Act which is a crime and also offence of money laundering under Prevention of Money Laundering Act. However it is not „joint trial"<br><br>**Civil Liability i.e. confiscation of tainted property**<br>In addition to criminal liability, the property involved in money laundering can be attached and frozen by Central Government and later confiscated. |
| **10** | Discuss the classes of companies that are outside the purview of CARO Companies (Auditor's Report) Order, 2020 | The following classes of companies are outside the purview of the CARO 2020.<br>a) Banking company as defined under Section 5 (c) of the Banking Regulation Act, 1949.<br>b) Insurance company as defined under the Insurance Act 1938.<br>c) Company licensed to operate under Section 8 of the Companies Act 2013 (companies registered with charitable object).<br>d) A one person company (OPC) as defined under clause (62) of Section 2 of Companies Act 2013 (OPC means a company which has only one person as a member).<br>e) A small company under Section 2 (85) of the Companies Act, 2013.<br><br>As per sec 2(85) of Companies Act 2013 small company means a company, other than a public company:<br>• Paid up share capital of which does not exceed Rs. 50 lacs or such higher amount as may be prescribed which shall not be more than Rs 10 crore, and<br>• Turnover of which as per its last profit and loss account does not exceed Rs 2 crore or such higher amount as may be prescribed which shall not be more than Rs 100 crore. |

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| | | The following company shall not qualify as a small company:<br>• A holding company or a subsidiary company.<br>• A company registered under Section 8 of the Act.<br>• A company or body corporate governed by any special act.<br><br>f) The auditor of following type of Private Companies are not required to comment on the matter prescribed under CARO 2020:<br>• A private company which is not holding or subsidiary company of a public company, and<br>• A private company having a paid up capital and reserve and surplus not more than Rs. 1 crore as on the balance sheet date, and<br>• A private company which does not have total borrowing exceeding Rs 1 crore from any bank and financial institution at any point of time during the financial year, and<br>• A private company which does not have total revenue exceeding Rs 10 crore during the financial year |
| **11** | Discuss the applicability of Insolvency and Bankruptcy Code, 2016 | The provisions of Insolvency and Bankruptcy Code, 2016 applies to the following, in relation to their insolvency, liquidation, voluntary liquidation or bankruptcy, as the case may be (Section 2 of Insolvency and Bankruptcy Code, 2016).<br>a) Companies incorporated under Companies Act<br>b) Companies governed under special Act (so far as of Insolvency and Bankruptcy Code, 2016 is consistent with those special Acts i.e. provisions of Special Act will prevail over of Insolvency and Bankruptcy Code, 2016)<br>c) Limited Liability Partnership (LLP)<br>d) Other body corporates as may be notified by Central Government<br>e) Partnership firms and individuals.<br>f) Personal guarantors to corporate debtors:<br>g) Partnership firms and proprietorship firms; and<br>h) Individuals, other than persons referred to in clause (e). |
| **12** | Explain the OECD principles of Corporate Governance. | An Indian company issuing shares / convertible debentures under FDI Scheme to a person resident outside India shall receive the amount of consideration required to be paid for such shares/ convertible debentures by:<br>(a) inward remittance through normal banking channels by the Indian company against issue of Depository Receipt and FCCB. |

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| | | (b) debit to NRE / FCNR account of a person concerned maintained with an AD Category–I bank.<br>(c) conversion of royalty/lump sum/technical know-how fee due for payment or conversion of ECB, shall be treated as consideration for issue of shares.<br>(d) conversion of import payables / pre incorporation expenses / share swap can be treated as consideration for issue of shares with the approval of FIPB.<br>(e) debit to non-interest bearing Escrow account in Indian Rupees in India which is opened with the approval from AD Category–I bank and is maintained with the AD Category–I bank on behalf of residents and non-residents towards payment of share purchase consideration.<br>If the shares or convertible debentures are not issued within 180 days from the date of receipt of the inward remittance or date of debit to NRE / FCNR (B)/Escrow account, the amount shall be refunded. Further, Reserve Bank may on an application made to it and for sufficient reasons permit an Indian Company to refund / allot shares for the amount of consideration received towards issue of security if such amount is outstanding beyond the period of 180 days from the date of receipt |
| **13** | Explain the following:<br>Enforcement Directorate (ED) | The Directorate of Enforcement was established in the year 1956 with its Headquarters at New Delhi. It is responsible for enforcement of the Foreign Exchange Management Act, 1999 (FEMA) and certain provisions under the Prevention of Money Laundering Act. Work relating to investigation and prosecution of cases under the PML has been entrusted to the Enforcement Directorate.<br>The Directorate is under the administrative control of the Department of Revenue for operational purposes. The policy aspects of the FEMA, its legislation and its amendments are within the purview of the Department of Economic Affairs. Policy issues pertaining to the PML Act, however, are the responsibility of the Department of Revenue. Before FEMA became effective (1 June, 2000), the Directorate enforced regulations under the Foreign Exchange Regulation Act, 1973. |
| **14** | Guidance on Implementation of Principles and Core Elements | Successful implementation of the Principles and Core elements 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:<br>(a) 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 |

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| | | management need to ensure that the principles are fully understood across the organization and comprehensively executed.<br>(b) 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.<br>(c) Engagement: Building strong relationships and engaging with stakeholders on a consistent, continuous basis is crucial.<br>(d) Reporting: Implementation process includes disclosure by companies of their impact on society an environment to their stakeholders |
| **15** | What consequences can be there if dividend declared is not distributed? | Section 124 of the Act, provides for unpaid dividend amount.<br>(i) Where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within thirty days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years.<br>(ii) He shall also be liable for a fine which shall not be less than Rs. 1,000 rupees for every day during which such default continues.<br>(iii) The company shall also be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.<br>(iv) However, the following are the exceptions under which no offence shall be deemed to have been committed:<br>• where the dividend could not be paid by reason of the operation of any law.<br>• where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has been communicated to him.<br>• where there is a dispute regarding the right to receive the dividend.<br>• where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder, or<br>• where, for any other reason, the failure to pay the dividend or to post the warrant within the period under this section was not due to any default on the part of the company. |
| **16** | Can a person other than a director offer for directorship in | Right of persons other than retiring directors to stand for directorship (Section 160) According to this section: |

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| | a company? | (1) A person who is not a retiring director in terms of section 152 shall, subject to the provisions of this Act, be eligible for appointment to the office of a director at any general meeting, if he, or some member intending to propose him as a director, has, not less than 14 days before the meeting, left at the registered office of the company, a notice in writing under his hand signifying his candidature as a director or, as the case may be, the intention of such member to propose him as a candidate for that office.<br>(2) Such notice must come along with the deposit of Rs. 1,00,000 or such higher amount as may be prescribed. Such deposit shall be refunded to such person or, as the case may be, to the member, if the person proposed get selected as a director or gets more than 25% of the total valid votes cast either on show of hands or on poll on such resolution. Requirement of deposit shall not apply if the appointment of director is recommended by nomination and remuneration committee/board.<br>(3) The company shall inform its members of the candidature of a person for the office of director (as discussed above) in such manner as may be prescribed. Notice of candidature of a person for directorship: Rule 13 of the Companies (Appointment and Qualification of Directors) Rules, 2014 lays down the following points for giving notice of candidature of a person for directorship as under:<br>a) The company shall, at least 7days before the general meeting, inform its members of the candidature of a person for the office of a director or the intention of a member to propose such person as a candidate for that office.<br>b) by serving individual notices, on the members through electronic mode to such members who have provided their email addresses to the company for communication purposes, and in writing to all other members, and<br>c) by placing notice of such candidature or intention on the website of the company, if any. 4) However, it shall not be necessary for the company to serve individual notices upon the members as aforesaid, if the company advertises such candidature or intention, not less than 7days before the meeting at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and circulating in that district, and at least once in English language in an English newspaper circulating in that district. |

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| | | d) Section 160 of the Companies Act, 2013, shall not apply to: (a) A Government company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments. (b) A subsidiary of a Government company, referred to in (a) above, in which the entire paid up share capital is held by the Government company. (c) A Private company (d) Companies whose articles provide for election of directors by ballot. (f) Appointment of additional director, alternate director and nominee director (Section 161) |
| **17** | Discuss the provisions relating to appointment of additional director, alternate director and nominee director. | Appointment of additional director, alternate director and nominee director (Section 161) (1) Additional Director [Section 161 (1)]<br><br>Section 161(1) of the Companies Act, 2013 provides for appointment of additional director. According to this section: a) The articles of a company may confer on its Board of Directors the power to appoint any person as an additional director at any time. b) A person, who fails to get appointed as a director in a general meeting, cannot be appointed as an additional director. c) Additional director shall hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier. (2) Alternate Director [Section 161 (2)]<br><br>Section 161(2) of the Companies Act, 2013 provides for appointment of Alternate director. According to this section: a) The Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person to act as an alternate director in place of another director (original director) during his absence for a period of not less than 3 months from India. b) A person who is holding any alternate directorship for any other director in the company cannot be considered for appointment as above. c) No person shall be appointed as an alternate director for an independent director unless he is qualified to be appointed as an independent director under the provisions of this Act. d) An alternate director shall not hold office for a period longer than that permissible to the original director in whose place he has been appointed and shall vacate the office if and when the original director returns to India. e) If the term of office of the original director is determined before he so returns to |

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| | | India, any provision for the automatic re-appointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate director. (3) Nominee Director [Section 161 (3)]. Sometimes the Govt./Financial Institutions/Banks may hold substantial equity in the company and may nominate persons to be appointed director in the company. However, these persons are to be appointed either in Board meeting or Annual General Meeting. |
| **18** | Discuss about Merger of small companies, holding and subsidiary companies. | Accordingly Sub-Section (1) of Section 233 states that notwithstanding the provisions of Section 230 and Section 232, a scheme of merger or amalgamation may be entered into between two or more small companies or between a holding company and its wholly-owned subsidiary company or such other class or classes of companies as may be prescribed, subject to the following, namely:<br>(a) a notice of the proposed scheme inviting objections or suggestions, if any, from the Registrar and Official Liquidators where registered office of the respective companies are situated or persons affected by the scheme within thirty days is issued by the transferor company or companies and the transferee company;<br>(b) the objections and suggestions received are considered by the companies in their respective general meetings and the scheme is approved by the respective members or class of members at a general meeting holding at least ninety per cent. of the total number of shares;<br>(c) each of the companies involved in the merger files a declaration of solvency, in the prescribed form, with the Registrar of the place where the registered office of the company is situated; and<br>(d) the scheme is approved by majority representing nine-tenths in value of the creditors or class of creditors of respective companies indicated in a meeting convened by the company by giving a notice of twentyone days along with the scheme to its creditors for the purpose or otherwise approved in writing. |
| **19** | Who are the entities who can make petition for winding up? | An application for the winding up of a company has to be made by way of petition to the Tribunal. A petition may be presented under Section 272 by any of the following entities:<br>(a) the company, or<br>(b) any creditor or creditors, including any contingent or prospective creditor or creditors.<br>(c) any contributory or contributories.<br>(d) all or any of the parties specified above in clauses (a), (b), (c) together |

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| | | (e) the Registrar<br>(f) any person authorized by the Central Government in that behalf.<br>(g) by the Central Government or State Government in case falling under clause (c) of Section 271(1) i.e., Company acing against the interest of the sovereignty and integrity of India. |
| **20** | When a foreign company is treated as Indian company? | Under section 379 of the Companies Act, 2013, where not less than 50% of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company is held by:<br>(1) one or more citizens of India, or<br>(2) by one or more companies or bodies corporate incorporated in India, or<br>(3) by one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with the provisions of Chapter XXII and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India. |
| **21** | Discuss about the acts taking place outside India but having an effect on competition in India? | The Commission shall, notwithstanding that: (a) an agreement referred to in Section 3 has been entered into outside India. or (b) any party to such agreement is outside India. or (c) any enterprise abusing the dominant position is outside India. or (d) a combination has taken place outside India. or (e) any party to combination is outside India. or (f) any other matter or practice or action arising out of such agreement or dominant position or combination is outside India, have power to inquire in accordance with the provisions contained in Sections 19, 20, 26, 29 and 30 of the Act into such agreement or abuse of dominant position or combination if such agreement or dominant position or combination has, or is likely to have, an appreciable adverse effect on competition in the relevant market in India and pass such orders as it may deem fit in accordance with the provisions of this Act. |
| **22** | State the provision regarding Possession and Retention of Foreign Exchange by a person resident in India. | The Reserve Bank of India has specified the following persons with the limits for possession and retention of foreign currency by a person resident in India:<br>(a) Authorised Persons in accordance with the limits advised by the Reserve Bank.<br>(b) Any person may possess foreign coins without no restriction.<br>(c) Any person resident in India is permitted to retain in aggregate foreign currency not exceeding USD 2,000 or its equivalent in the form of currency notes/bank notes or travellers cheques acquired by him. |

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| | | (d) A person resident in India but not permanently resident therein is permitted without limit, if the foreign currency was acquired when he was resident outside India and was brought into India and declared to the Customs Authorities. |
| **23** | What are the prohibited sectors for FDI in India? | FDI is prohibited in:<br>(1) Lottery Business including Government / private lottery, online lotteries, etc.<br>(2) Gambling and betting including casinos etc.<br>(3) Chit funds.<br>(4) Nidhi company.<br>(5) Trading in Transferable Development Rights (TD`).<br>(6) Housing and Real Estate Business or Construction of Farm Houses 'Real estate business' shall not include development of townships, construction of residential / commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014.<br>(7) Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes.<br>8) Activities/ sectors not open to private sector investment e.g., a) Atomic Energy and b) Railway operations (other than permitted activities). |
| **24** | Discuss the Power of Reserve Bank to appoint Chairman of the Board of Directors appointed on a whole-time basis or a Managing Director of a banking company. | As per section 10BB where the office, of the Chairman of the board of Directors appointed on a whole-time basis or a Managing Director of a banking company is vacant, the Reserve Bank may, if it is of opinion that the continuation of such vacancy is likely to adversely affect the interests of the banking company, appoint a person eligible to be so appointed, to be the Chairman of the board of Directors appointed on a whole-time basis or a Managing Director of the banking company and where the person so appointed is not a Director of such banking company, he shall, so long as he holds the office of the Chairman of the board of Directors appointed on a whole-time basis or a Managing Director, be deemed to be Director of the banking company. The Chairman of the Board of Directors of a Banking Company shall hold office for a period of five years. |
| **25** | What are the various processes to recover money under the SARFESI Act? | The SARFAESI Act sanctions three processes to recover Non-Performing Assets as follows:<br>1. Securitization<br>2. Asset reconstruction<br>3. Security Enforcement without court's intervention<br><br>The Act employs three significant tools for asset management of financial institutions - asset securitization, asset reconstruction and powers for security interest |

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| | | enforcement, which are discussed below.<br><br>**Securitization**: It refers to the process of drawing and converting of loans and other financial assets into marketable securities worth selling to the investors. In other words, it involves repackaging of less liquid assets into saleable securities. The securitization company takes over the mortgaged assets of the borrower and is entitled to adopt the following steps:<br>• Getting hold of financial assets from bank<br>• Creating funds from eligible institutional buyers by din-t of issuing security receipts to acquire the financial assets<br>• Fund raising in any legal way<br>• Financial asset acquisition along with taking over the mortgaged assets (such as building, land etc)<br><br>**Asset Reconstruction**: It refers to conversion of non-performing assets into performing assets. There are multiple steps to reconstruct asset. The point to be noted in this context is reconstruction must be done in accordance with the SARFAESI Act and RBI regulations.<br><br>**Security Interest Enforcement**: As per the Act, the financial institutions are entitled to issue notice to the defaulting loan takers as well as guarantors, asking them to clear the sum in arrears within 60 days from the date of issuing the notice under Insolvency and bankruptcy board of India. If the defaulter fails to act in accordance with the notice, the bank is entitled to enforce security interest. |
| **26** | Explain the principle of insurable interest. | The principle of insurable interest states that the person getting insured must have insurable interest in the object of insurance. A person has an insurable interest when the physical existence of the insured object gives him some gain but its non-existence will give him a loss. In simple words, the insured person must suffer some financial loss by the damage of the insured object. There should direct relation between the person and the asset which is insured by him.<br><br>For example: The owner of a taxicab has insurable interest in the taxicab because he is getting income from it. But, if he sells it, he will not have an insurable interest left in that taxicab. From this example, we can conclude that, ownership plays a very crucial role in evaluating insurable interest. Every person has an insurable interest in his own life. A merchant has insurable interest in his business of trading. Similarly, a creditor has insurable interest in his |

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| | | debtor. |
| **27** | The Board of ABC Ltd. Is comprised of 7 directors in total, consisting of one Chairman and Managing Director, two executive directors, three independent directors and one nominee director. Mr. N M Nilekani is the appointed as the Chairman and Managing director of the company, Mr. Subrata Parekh as Director (Finance), Mr. Arunava Bandyopadhyay as Director (Commercial), Mr. Ankit Patni, Mr. S.K. Burnwal, Mr. Vipul Jain as Independent directors of the company and Mr. Vinayak Chaturvedi as Nominee director of SBI. Constitute the Audit Committee, Nomination and Remuneration Committee and Corporate Social Responsibility committee with the above mentioned directors as per the provisions of the Companies Act, 2013 and complying the SEBI (LODR), 2015. | As per section 177 of the Companies Act, 2013 the Audit Committee shall consist of a minimum of three directors with independent directors forming a majority. So complying with the provisions of the Companies Act, 2013 the committee should be constituted as follows:<br>1. Mr. Vipul Jain : Chairman<br>2. Mr. Vinayak Chaturvedi : Member<br>3. Mr. Ankit Patni : Member (functional directors should not be members but can be invitees)<br><br>As per section 178 of the Companies Act, 2013 the Nomination and Remuneration Committee shall consist of three or more non-executive directors out of which not less than one half shall be independent directors. So complying with the provisions of the Companies Act, 2013 the committee should be constituted as follows:<br>1. Mr. Vinayak Chaturvedi : Chairman<br>2. Mr. Vipul Jain : Member<br>3. Mr. Ankit Patni: Member<br><br>As per section 135 of the Companies Act, 2013 the Corporate Social Responsibility Committee shall consist of three or more directors out of which one shall be an independent director. So complying with the provisions of the Companies Act, 2013 the committee should be constituted as follows:<br>1. Mr. Arunava Bandyopadhyay : Chairman<br>2. Mr. Vinayak Chaturvedi : Member<br>3. Mr. Ankit Patni : Member<br>4. Mr. Subrata Parekh as Director (Finance), |
| **28** | State the National Voluntary Guidelines, 2011 on Social, Environmental and Economic Responsibilities of Business. | National Voluntary Guidelines 2011 on Social, Environmental and Economic Responsibilities of Business: 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 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) |

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| | | 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.<br><br>**Principle 1**: Businesses should conduct and govern themselves with Ethics, Transparency and Accountability The principle recognizes that ethical conduct in all its functions and processes is the cornerstone of responsible business. The principle acknowledges that business decisions and actions, including those required to operationalize the principles in these Guidelines should be amenable to disclosure and be visible to relevant stakeholders. The principle emphasizes that businesses should inform all relevant stakeholders of the operating risks and address and redress the issues raised. The principle recognizes that the behaviour, decision making styles and actions of the leadership of the business establishes a culture of integrity and ethics throughout the enterprise.<br><br>**Principle 2**: Businesses should provide goods and services that are safe and contribute to sustainability throughout their life cycle. The principle emphasizes that in order to function effectively and profitably, businesses should work to improve the quality of life of people. The principle recognizes that all stages of the product life cycle, right from design to final disposal of the goods and services after use, have an impact on society and the environment. Responsible businesses, therefore, should engineer value in their goods and services by keeping in mind these impacts.<br><br>**Principle 3**: Businesses should promote the well being of all employees The principle encompasses all policies and practices relating to the dignity and wellbeing of employees engaged within a business or in its value chain. The principle extends to all categories of employees engaged in activities contributing to the business, within or outside of its boundaries and covers work performed by individuals, including sub-contracted and home based work.<br><br>**Principle 4:** Businesses should respect the interests of and be responsive towards all stakeholders, especially those who are disadvantaged, vulnerable and marginalized 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 |

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| | | or aware, encourages businesses to proactively engage with and respond to those that are disadvantaged, vulnerable and marginalized.<br><br>**Principle 5:** Businesses should respect and promote human rights The principle recognizes that human rights are the codification and agreement of what it means to treat others with dignity and respect. Over the decades, these have evolved under the headings of civil, political, economic, cultural and social rights. This holistic and widely agreed nature of human rights offers a practical and legitimate framework for business leaders seeking to manage risks, seize business opportunities and compete in a responsible fashion. The principle imbibes its spirit from the Constitution of India, which through its provisions of Fundamental Rights and Directive Principles of State Policy, enshrines the achievement of human rights for all its citizens. In addition, the principle is in consonance with the Universal Declaration of Human Rights, in the formation of which, India played an active role.<br><br>**Principle 6:** Business should respect, protect and make efforts to restore the environment The principle recognizes that environmental responsibility is a prerequisite for sustainable economic growth and for the well being of society. The principle emphasizes that environmental issues are interconnected at the local, regional and global levels which makes it imperative for businesses to address issues such as global warming, biodiversity conservation and climate change in a comprehensive and systematic manner.<br><br>**Principle 7**: Businesses, when engaged in influencing public and regulatory policy, should do so in a responsible manner The principle recognizes that businesses operate within the specified legislative and policy frameworks prescribed by the Government, which guide their growth and also provide for certain desirable restrictions and boundaries. The principle acknowledges that in a democratic set-up, such legal frameworks are developed in a collaborative manner with participation of all the stakeholders, including businesses. The principle, in that context, recognizes the right of businesses to engage with the Government for redressal of a grievance or for influencing public policy and public opinion. The principle emphasizes that policy advocacy must expand public good rather than diminish it or make it available to a select few. |

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| | | **Principle 8:** Businesses should support inclusive growth and equitable development 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.<br><br>**Principle 9**: Businesses should engage with and provide value to their customers and consumers in a responsible manner This principle is based on the fact that the basic aim of a business entity is to provide goods and services to its customers in a manner that creates value for both. The principle acknowledges that no business entity can exist or survive in the absence of its customers. The principle recognizes that customers have the freedom of choice in the selection and usage of goods and services and that the enterprises will strive to make available goods that are safe, competitively priced, easy to use and safe to dispose off, for the benefit of their customers. The principle also recognizes that businesses have an obligation to mitigating the long term adverse impacts that excessive consumption may have on the overall wellbeing of individuals, society and our planet. |
| **29** | Discuss the role, functions and authority of CSR Committee | The constitution of a CSR committee as per the specifications provided under Section 135 of the Companies Act, 2013 which requires a CSR committee to be constituted by the board of directors. Committee shall formulate and approve a CSR Policy of the company, plan of the CSR activities including, decisions regarding the expenditure, the type of activities to be undertaken, monitoring and reporting mechanism. This is an excellent starting point for any company new to CSR. In case a company already practices CSR, this committee should be set up at the earliest so that it can guide the alignment of the company's activities with the requirements of the Act. It may please be noted that CSR committee is recomendary in nature and do not have any deciding power, unless delegated by the Board. In many companies this Committee is delegated upto a certain |

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| | | amount to be spent on C without reference to Board of Directors.<br><br>The committee shall examine the existing CSR Policy. If not existing, a policy to be made with Board approval. They should meet from time to time and discuss plan of action. The areas where CSR activity can be taken up is mentioned in schedule VII of the Act. The committee shall ensure that minimum amount as per the Act is budgeted and spent during the year. The statement of budget and expenditure shall be a part of Board report, signed by the Chairman of CSR committee. The Policy is supposed to be hosted on the website of the company and transparent manner. |
| **30** | What is a resolution plan? Who is supposed to make the plan? Who has to approve? | A Resolution plan resolution plan is a proposal that aims to provide a resolution to the problem of the corporate debtor's insolvency and its consequent inability to pay off debts.<br><br>It needs to be approved by 66% of the committee of creditors and comply with some mandatory requirements prescribed in the IBC. Once approved, the Resolution Professional will send the plan to the National Company Law Tribunal after certifying that the plan meets those requirements. If the NCLT is also satisfied that the plan meets the requirements, it will pass an order approving the plan.<br><br>Other than the mandatory requirements, the IBC does not restrict the form and manner of a resolution plan. A plan could therefore, involve the purchase of the equity or assets of the corporate debtor, the infusion of additional debt, the de-merger of debtor's businesses, financial haircuts, taken by creditors, or the extinguishment of some liabilities. Needless to say, since the plan must be first approved by the COC — a body that comprises all the financial creditors of the corporate debtor, the proposals regarding debts owed to financial creditors will be an important consideration in whether it is approved.<br><br>The RP does not have any discretion regarding which plans to present to the COC – he or she is statutorily bound to present all plans that meet the mandatory requirements. In practice, the COC typically authorises the RP to prescribe eligibility and evaluation criteria for resolution applicants so as to ensure that only serious applicants submit plans.<br><br>The RP is not expressly prohibited from submitting a |

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| | | resolution plan, but given that the RP also has the statutory duty to verify whether a plan meets the mandatory requirements, it could lead to a conflict of interest for the RP. |
| **31** | There are four directors in Shine Paper Limited. Mr. Madhav, being the director in station, has been authorized to draw and endorse cheque or other negotiable instruments on account of the company and also to direct registration of transfer of shares and signing the share certificates etc. Evaluate whether he will be treated as Managing Director of the company. | Section 2(54) of the Companies Act, 2013 defines a "Managing Director" as a director who is entrusted with substantial powers of management of the affairs of the company by:<br>a) virtue of articles of a company, or<br>b) an agreement with the company, or<br>c) a resolution passed in its general meeting, or by its Board of Directors, and includes a director occupying the position of the managing director, by whatever name called.<br>Explanation to Section 2 (54) clarifies that substantial powers of the management shall not be deemed to include the power to do such administrative acts of a routine nature when so authorised by the Board such as:<br>i) the power to affix the common seal of the company to any document or<br>ii) to draw and endorse any cheque on the account of the company in any bank<br>iii) to draw and endorse any negotiable instrument or<br>iv) to sign any certificate of share or<br>v) to direct registration of transfer of any share.<br><br>In the instant case, Mr. Madhav, a director in Shine Paper Limited has been, authorized to draw and endorse cheque or other negotiable instruments on account of the company and also to direct registration of transfer of shares and signing the share certificates etc. Hence, according to explanation to section 2(54), Mr. Madhav will not be treated as managing director of the company as he is authorized to do administrative acts of a routine nature. |
| **32** | Mr. John is a director of MNC Ltd., which had accepted deposits from public. The financial position of MNC Ltd. took a southward turn and became bad to worse and ultimately, it failed to repay the deposits which fell due for payment on 10thApril, 2018 and such repayment has not been made till 5th May, 2019. Another company JKL Ltd. wants to appoint the said Mr. John as its director at its annual general | Section 164 (2) (b) of the Companies Act, 2013 states that where a person is or has been a director of a company which has failed to repay its deposit on due date and such failure continues for one year or more, then such person shall not be eligible to be appointed as a director of any other company for a period of five years from the date on which such company, in which he is a director, failed to repay its deposits.<br>In the instant case, MNC Ltd., has failed to repay its deposit on due dates and the default continues for more than one year. Hence, Mr. John will not be eligible to be appointed as a director of JKL Ltd. |

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| | meeting to be held on 6thMay, 2019. You are required to state with reference to the provisions of the Companies Act, 2013 whether Mr. John can be appointed as a director of JKL Ltd. | |
| **33** | A group of creditors of XYZ Limited makes a complaint to the Registrar of Companies, Gujarat alleging that the management of the company is indulging in destruction and falsification of the accounting records of the company. The complainants request the Registrar to take immediate steps to seize the records of the company so that the management may not be allowed to tamper with the records. The complaint was received at 11 A.M. on 06th June, 2018 and the registrar has attempted to enter the premise of company but has been denied by the company, due to not having order from special court. Is the contention of company being valid in terms of Companies Act, 2013? | Section 209, of the Companies Act, 2013 states that, if the Registrar has reasonable ground to believe that the books and papers of<br>• A company or<br>• relating to the key managerial personnel or<br>• any director or<br>• auditor or<br>• company secretary in practice if the company has not appointed a company secretary are likely to be destroyed, mutilated, altered, falsified or secreted he may, after obtaining an order from the special court for the seizure of such books and papers,<br><br>(a) enter with such assistance as may be required and search the place where such books or papers are kept; and<br>(b) seize such books and papers as he considers necessary after allowing the company to take copies or extracts there from.<br>According the above provisions the registrar may enter, search and seize the books only after obtaining an order from the Special Court.<br>In the given scenario, the registrar has failed to obtain permission from the special court so, he is not authorized to enter the premises of the company and seize the books of accounts of XYZ Limited. Hence, the contention of the XYZ Limited is valid in law. |
| **34** | PBX Pvt. Ltd. is a company in which there are 6 shareholders. Mr. Bala, who is a director and also the legal representative of a deceased shareholder holding less than one tenth of the share capital of the company made a petition to the tribunal for relief against oppression and mismanagement. Examine under the provisions of the Companies Act, 2013 whether the petition made by Mr. Bala is valid and maintainable. | According to section 244 of the Companies Act, 2013, in the case of a Company having share capital, the following member(s) have the right to apply to the Tribunal under section 241:<br>(a) Not less than 100 members of the Company or not less than one-tenth of the total number of members, whichever is less; or<br>(b) Any member or members holding not less than one-tenth of the issued share capital of the Company provided the applicant(s) have paid all the calls and other sums due on the shares.<br>Legal heir of the deceased shareholder with minority status is entitled to file the petition.<br>In the given case, there are six shareholders. As per the |

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| | | condition (a) above, 10% of 6 i.e. 1 (round off 0.6) satisfies the condition. Therefore, in the light of the provisions of the Act, a single member (even the legal representative of a deceased shareholder) can present a petition to the Tribunal, regardless of the fact that he holds less than one-tenth of the Company's share capital.<br><br>Thus, the petition made by Mr. Bala is valid and maintainable. |
| **35** | Explain the right of a citizen to obtain foreign exchange under "current account transaction". | Current account transaction means any transaction which is not a capital account transaction and includes:-<br>a) Trade payments and short term banking and credit facilities in the ordinary course of business;<br>b) Payment of interest and income from investment;<br>c) Remittance of living expenses of parents, spouse and children residing abroad on their foreign travel for medical facilities and education of children;<br>Any citizen can draw foreign exchange from authorised person, subject to any restriction imposed by RBI. |
| **36** | Explain the two routes an Indian company may adopt to receive Foreign Direct Investment (FDI). | a) Automatic Route: - FDI is allowed under the automatic route without prior approval either of the Government or the Reserve Bank of India in all activities / sectors as specified in the consolidated FDI Policy, issued by the Government of India from time to time.<br>b) Government Route: - FDI in activities not covered under the automatic route requires prior approval of the Government which is considered by the Ministry of Finance, and is to be routed through relevant administrative ministry.<br>The Indian company having received FDI either under the Automatic route or the Government route is required to comply with provisions of the FDI policy including reporting the FDI to the Reserve Bank of India |
| **37** | What percentage of profits shall the Banking companies incorporated in India are obligated to transfer to the reserve fund ? | Under Section 17, Banking companies incorporated in India are obligated to transfer to the reserve fund a sum equivalent to not less than 20 percentage of the profit each year, unless the amount in such fund together with the amount in the share premium account is more than or equal to its paid-up capital. |
| **38** | List the different types of penalties under the Companies Act 2013. | There are five types of penalties that have been contemplated under the Companies Act 2013. They are:<br>Fine only<br>Imprisonment or fine<br>Imprisonment or fine or with both<br>Imprisonment and fine and<br>Imprisonment only |
| **39** | Coolest Nidhi Limited proposes to reappoint Mr. C, a director | According to Rule - 17 of the Nidhi Rules, 2014, the Director of a Nidhi shall hold office for a term up to ten consecutive |

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| | who has completed a term of 10 consecutive years as a Director of the Nidhi.<br>State your views the validity of the above proposals with reference to Nidhi Rules, 2014 formulated under Companies Act, 2013. | years on the Board of Nidhi and he shall be eligible for re-appointment only after the expiration of two years of ceasing to be a Director.<br>Hence, in the instant case Coolest Nidhi Limited cannot reappoint Mr. A as a director for a period of two years after completion of ten consecutive years. |
| **40** | XYZ LTD. secures residential accomodation for the use of its Managing Director by entering into a license arrangement under which the company has to deposit a certain amount with the Landlord to secure compliance with the terms of the license agreement. Can it be considered as a loan to a Director? Discuss with reference to the Companies Act, 2013. | According to section 185, No company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person.<br><br>However, The above restriction does not apply in certain circumstances:<br>the giving of any loan to a managing or whole-time director:<br>(1) as a part of the conditions of service extended by the company to all its employees; or<br>(2) pursuant to any scheme approved by the members by a special resolution; or<br><br>Hence in the given case according to above stated provisions, It does not amount to a loan. |
| **41** | Managing Director of PQR Ltd. himself wants to appoint Shri Ganpati, a practicing Chartered Accountant, as first auditor of the company. Comment on the proposed action of the Managing Director. | Section 139(6) of the Companies Act, 2013 lays down that "the first auditor or auditors of a company shall be appointed by the Board of directors within 30 days from the date of registration of the company". In the instant case, the appointment of Shri Ganapati, a practicing Chartered Accountant as first auditors by the Managing Director of PQR Ltd by himself is in violation of Section 139(6) of the Companies Act, 2013, which requires the Board of Directors to appoint the first auditor of the company.<br><br>In view of the above, the Managing Director of PQR Ltd cannot appoint the first auditor of the company himself. |
| **42** | Mr. 'R' holds directorship in 10 Public Companies and 11 Private Companies as on 31.05.2019. One of the above Private Company is a dormant Company. Apart from the dormant Company, on 30.06.2019 a Private Company (in which Mr. R is holding directorship) has become a | According to Section 165 of the Companies Act, 2013,no person shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time. Whereas that the maximum number of public companies in which a person can be appointed as a director shall not exceed ten.<br>For reckoning the limit of public companies in which a person can be appointed as director, directorship in private companies that are either holding or subsidiary company of a public company shall be included. |

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| | subsidiary of a Public Company. In the light of the provisions of the Companies Act, 2013 examine and decide:<br>(i) The validity of holding directorship of Mr.'R' with reference to number of directorship as on 31.05.2019 and as on 30.06.2019.<br>(ii) Whether a Company has power to specify any lesser number of Companies in which a director of the Company may act as a director? | For reckoning the limit of directorships of twenty companies, the directorship in a dormant company shall not be included.<br>In the instant case, holding of directorship of Mr. R as on 31.05.2019 is valid as he is holding directorship in 10 public companies and in 11 private companies out of which one company is dormant company. So, maximum directorship he is holding in 20 companies.<br>Holding of directorship of Mr. R as on 30.06.2019 is not valid, as on 30.06.2019 a private company (in which Mr. R is holding directorship) has become a subsidiary of a public company. Accordingly, it means that this private company shall deemed to be included in the limit of public companies and thereby increasing the number of public companies in which he is holding directorship to11and making it in valid.<br><br>According to section 165(2), Subject to the provisions of sub-section (1), the members of a company may, by special resolution, specify any lesser number of companies in which a director of the company may act as directors. |
| **43** | Provide various grounds on which the investigation is assigned to Serious Fraud Investigation Office? | As per section 212 of the Companies Act, 2013, the Central Government may assign the investigation into affairs of a company to the Serious Frauds Investigation Office on the basis of an opinion formed from the following:<br>(a) After the inspection of books of account or papers or inquiry the Registrar shall submit a written report to the Central Government. The report may recommend the need for further investigation along with reasons in support. The Central Government on receipt of such report can order an investigation under Serious Frauds Investigation Office.<br>(b) The company may pass a special resolution and can request Central Government to investigate into the affairs of the company.<br>(c) The Central Government can order investigation under Serious Frauds Investigation Office, in public interest.<br>(d) The departments Central Government and State Governments can request for investigation under Serious Frauds Investigation Office. |
| **44** | Explain the Principle of Causa Proxima | (a Latin phrase), or in simple English words, the Principle of Proximate (i.e. Nearest) Cause, means when a loss is caused by more than one causes, the proximate or the nearest or the closest cause should be taken into consideration to decide the liability of the insurer. The principle states that to find out whether the insurer is liable for the loss or not, the proximate (closest) and not the remote (farthest) must be looked into. |

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| | | For example: A cargo ship's base was punctured due to rats and so sea water entered and cargo was damaged. Here there are two causes for the damage of the cargo ship - (i) The cargo ship getting punctured because of rats, and (ii) The sea water entering ship through puncture. The risk of sea water is insured but the first cause is not. The nearest cause of damage is sea water which is insured and therefore the insurer must pay the compensation.<br>However, in case of life insurance, the principle of Causa Proxima does not apply. Whatever may be the reason of death (whether a natural death or an unnatural death) the insurer is liable to pay the amount of insurance. |
| **45** | Explain Indian Depository Receipts | A foreign company can access Indian securities market for raising funds through issue of Indian Depository Receipts (IDRs). An IDR is an instrument denominated in Indian Rupees in the form of a depository receipt created by a Domestic Depository (custodian of securities registered with the Securities and Exchange Board of India) against the underlying equity of issuing company to enable foreign companies to raise funds from the Indian securities markets. An issuing company making an issue of IDR is required to satisfy the following:<br>(a) it should be listed in its home country.<br>(b) it should not be prohibited to issue securities by any regulatory body.<br>(c) it should have a track record of compliance with securities market regulations in its home country. |
| **46** | Explain about Insolvency Resolution Process Costs | Insolvency resolution process costs means –<br>(a) the amount of any interim finance and the costs incurred in raising such finance<br>(b) the fees payable to any person acting as a resolution professional<br>(c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern<br>(d) any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and<br>(e) any other costs as may be specified by the Board - Section 5(13) of Insolvency and Bankruptcy Code, 2016.<br>Interim finance means any financial debt raised by the resolution professional during the insolvency resolution process period - Section 5(15) of Insolvency and Bankruptcy Code, 2016. |
| **47** | Advise the Board of directors of a public company about their powers in respect of the following proposals explaining | The power to invest surplus funds of the company in the shares of some companies is proposed to be delegated to the managing director of the company. Such delegation is not permissible in view of provisions of section 186 of the |

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| | the relevant provisions of the Companies Act, 2013: "Delegating to the managing director of the company the power to invest surplus funds of the company in the shares of some companies. " | Companies Act, 2013. |
| **48** | What is Operational Debt under the Insolvency and Bankruptcy Code, 2016? | Operational debt means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority. |
| **49** | Is it important for banking companies to maintain books of Accounts? | Section 29 of Banking Regulation Act provides for the preparation of Balance Sheet and Profit & Loss Account as on the last working day of the year in respect of all business transacted by a banking company incorporated in India and in respect of all business transacted through its branches in India by a banking company incorporated outside India. It is prepared in the forms set out in the Third Schedule. The Central Government after giving not less than three months notice of its intention so to do by a notification in the offic |
| **50** | Can a Director resign from a Company? | A director may resign from his office by giving a notice in writing to the company<br>The Board shall on receipt of such notice take note of the same.<br>The company shall within 30 days from the date of receipt of notice of resignation from a director, intimate the Registrar in Form DIR-12 and post the information on its website, if any.<br>The company shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company. (e) Such director shall also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within 30days from the date of resignation in Form DIR- 11 along with the prescribed fee. |

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