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TEST SERIES
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SUGGESTED SOLUTION

CS PROFESSIONAL JUNE '19 EXAM

SUBJECT - Insolvency AND Ethics,

Governance & Sustainability

Test Code - CSP 3006

BRANCH - () (Date :)

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ANSWER : 1

(A)

Different functions of insolvency professional

Every Insolvency Professional has following functions to perform :

- To take **reasonable care and diligence** while performing his duties.
 - To **comply with all requirements** and terms and conditions specified in the bye – laws of the Insolvency professional agency of which he is a member.
 - To allow the **insolvency professional agency to inspect his records**.
 - To **submit a copy of the records** of every proceedings before the adjudicating authority to the board as well as to the Insolvency professional agency of which he is a member.
 - To **perform his function** in such manner and subject to such conditions as may be prescribed.
 - Others :
- Verifying the claims of the creditors
 - Constituting creditors committee
 - Running the debtor’s business during the moratorium period and
 - Helping the creditors in reaching a consensus for a revival plan
 - In liquidation, the insolvency professional acts as a liquidator and bankruptcy trustee.

(5 Marks)

(B) Status of Liquidator :

The liquidator in a winding up by the court or under the supervision of the court, is an officer of the court, and as such is required to exercise a high degree of honesty and fairness towards the creditors and the members of the company. He is also the agent of the company and incurs no personal liability when he enters into any contracts as a liquidator.

In a voluntary winding up, the liquidator is more rightly described as the agent of the company. He is not an officer of the court. As a paid agent of the company he has statutory duties towards the creditors and contributories including the administration of the assets of the company.

Both in a compulsory winding up and voluntary winding up, a liquidator as an agent of the company, must exercise a high degree of care and diligence in discharging his statutory duties. He may be liable in damage to a creditor or contributory for injury caused to him as a result of his breach of statutory duties.

A liquidator is not a trustee. The property of the company is not vested in him. But he is in a fiduciary position in relation to any property of the company and is in the position of a trustee, or what is sometimes stated, he is a “statutory trustee”. Accordingly, if he pays an invalid claim, even without willful default, he is liable to misfeasance proceedings. He is not a trustee for individual creditors or contributories.

(5 Marks)

ANSWER : 2

(A) Notification to foreign creditors of a proceeding (Article 14)

Article 14 of the Model Law provides that whenever under laws of the enacting State relating to insolvency, a notification is to be given to creditors, such notification shall also be given to the known creditors that do not have addresses in the State. The court may order

that appropriate steps be taken with a view to notifying any creditor whose address is not yet known. The main purpose of notifying foreign creditors is to inform them of the commencement of the insolvency proceeding and of the time limit to file their claims. Such notification shall be made to the foreign creditors individually, unless the court considers that, under the circumstances, some other form of notification would be more appropriate. No letters rogatory or other, similar formality is required.

When a notification of commencement of a proceeding is to be given to foreign creditors, the notification shall :

- (a) **Indicate a reasonable time period for filing claims and specify the place for their filing :**
- (b) **Indicate whether secured creditors need to file their secured claims; and**
- (c) **Contain any other information required to be included in such a notification to creditors pursuant to the law of this State and the orders of the court.**

(5 Marks)

(B)

There was multiplicity of laws and enactments like Sick Industrial Companies (Special Provisions) Act, 1986, Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (since renamed as 'Recovery of Debt and Bankruptcy Act as per section 249 of Insolvency and Bankruptcy Code, 2016), Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 and Companies Act, 2013 in cases of companies or corporate persons and for individuals and partnership firms there were Presidency Towns Insolvency Act, 1909 (applicable to presidency towns – Bombay, Calcutta and Madras) and Provincial Insolvency Act, 1920 (rest of India). Plethora of legislations and enactments imposed pressure on Courts, Tribunals and other adjudicating authorities such as BFIR, AAFIR. There were no timelines of dispose of litigations resulting in mountainous pendency, if every time limit was fixed, they were twisted to further complicate legislations.

Moreover, there is a conspicuous departure from the earlier SICA, State Relief Undertaking enactments, liquidations under Company Law that were Debtor oriented whereas IBS Code provides Creditor oriented management during insolvency process. Under the Code, Board of Directors is suspended from the date of admission of petition till Liquidation and Resolution Professional does day – to – day management subjected to Committee of Creditors.

(5 Marks)

ANSWER : 3

(A)

Secretarial Standard seeks to prescribe a set of principles for the recording of Minutes of the Meetings of :

- (a) the Board or Committees of the Board.
- (b) Members
- (c) debenture holders,
- (d) creditors,
- (e) others as may be required under the Act, and matters related thereto.

The expression “minutes” means a brief summary of the proceedings of a meeting. Minutes should contain a fair and correct summary of the proceedings of the meeting and should normally convey why, how and what conclusions were arrived at in relation to each business transacted at the meeting. It need not be an exact transcript of the proceedings.

Every company is required to keep Minutes of all meetings. Minutes kept in accordance with the provisions of the Act evidence the proceedings recorded therein. Minutes help in understanding the deliberations and decisions taken at the Meeting. The Company Secretary or authorized official of the company should record the proceedings of the meetings.

(5 Marks)

(B) The charter of the Nomination and Remuneration Committee of Delta Limited may contain information under the following heads :

- Purpose and Objective
- Constitution and Organization
- Responsibilities
 - Compensation policies including performance related pay and stock options plans and other beneficial plans
 - Nomination of Directors
 - Performance Evaluation and Leadership Development
 - Coordinating with committees of the Board for good corporate governance
 - Advisors at forums of the organization
 - Any other responsibilities
 - Meetings and Report – Details regarding meetings to be conducted, quorum, reporting at adequate forums and other disclosures.
 - Compensation of Committee Members.

(5 Marks)

Answer : 4

(A)

The areas in which a company can force ethical issues includes :

Ethics in Finance

The ethical issues in finance that companies and employees are confronted with include :

- In accounting – window dressing, misleading financial analysis.
- Insider trading, securities fraud leading to manipulation of the financial markets.
- Bribery, kickbacks, over billing of expenses and facilitation payments.
- Fake reimbursements.

Ethics in Human Resources :

The ethical issues faced by HRM include :

- Discrimination issues
- Sexual harassment
- Affirmative Action
- Issues affecting the privacy of the employee : workplace surveillance, drug testing, etc.
- Issues relating to the fairness of the employment contract
- Occupational safety and health issues.

Ethics in Marketing :

The ethical issues confronted in this area include :

- Pricing : Price fixing, price discrimination and price skimming
- Anti – competitive practices
- Misleading advertisements
- Decision making

- Surrogate advertising
- Black markets and grey markets.

Ethics in Production :

The ethical issues confronted in this area include :

- Defective, addictive and inherently dangerous products.
- Ethical problems arising out of new technologies, for example, genetically modified food.
- Product testing ethics.

(5 marks)

(B)

Principles of accountable corporate governance :

These core principles of accountable corporate governance are :

- (i) **Transparency** : Operating, financial, and governance information about the companies must be readily transparent to permit accurate market comparisons.
- (ii) **One – share /One – vote** : All investors must be treated equitably and upon the principle of one – share / one vote
- (iii) **Sustainability** : Companies and external managers are expected to optimize operating performance, profitability and investment returns in a risk – aware manner and with a responsible conduct.
- (iv) **Political Stability** : Progress toward the development of basic democratic institutions and principles, including such things as; a strong and impartial legal system; and respect and enforcement of property and shareowner rights.
- (v) **Code of Best Practices** : Code of Best Practices should be followed to promote transparency of information, prevention of harmful labor practices, investor protection and corporate social responsibility.
- (vi) **Director Accountability** : Directors should be accountable to shareowners, and management accountable to directors.
- (vii) **Long – term Vision** : Corporate directors and management should have a long – term strategic vision that, at its core, emphasizes sustained shareowner value and effective management of both risk and opportunities in the oversight of financial, physical and human capital.
- (viii) **Proxy Materials** : Proxy materials should be written in a manner designed to provide shareowners with the information necessary to make informed voting decisions.
- (ix) **Access to Director Nominations** : Shareowners should have effective access to the director nomination process.

(5 Marks)

Answer : 5

(A)

Stakeholder engagement is the process by which an **organization involves people who may be affected by the decisions it makes or can influence the implementation of its decisions.** It is an alliance – building tool.

Stakeholder engagement leads to **increased transparency, responsiveness, compliance, organizational learning, quality management, accountability and sustainability.** Stakeholder engagement is a central feature of sustainability performance. Stakeholder engagement is undertaken for numerous reasons which include :

- **Improved corporate responsibility** and financial performance across the globe.
- To **avoid conflict** through negotiation, mediation and collaborative learning.
- **Development of a shared vision** to direct future business decisions and operations.
- To **innovate through collaboration.**

(5 Marks)

(B)

Functions of the Insolvency professional agencies are :

1. To **grant membership** to persons who fulfill all requirements set out in its byelaws on payment of Membership fee.
2. **Lay down standard of professional conduct** for its members;
3. **Monitor the performance** of its members;
4. **Safeguard the rights, privileges and interests** of insolvency professionals who are its members;
5. **Suspend or cancel the membership** of insolvency professionals who are its members on the grounds set out in its by – laws;
6. **Redress the grievances of consumers** against insolvency professionals who are its members ; and
7. **Publish information** about its functions, list of its members, performance of its members and such other information as may be specified by regulations.

(5 Marks)