# Part A

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| 1- | Yes, s588G of the Corporations Act increases the fiduciary’s duty to prevent insolvent trading of a company. The Act was developed to define the responsibilities of the company’s Directors, who deal with all financial matters of the organization. The Directors of the company are the one, who are aware of all financial matters, and dealings of the organization, and thus by restricting them to prevent insolvent trading of the company, government has presented a unique solution to prevent corruption. The Directors has to take care of all company’s debts and need to pay all dues on time. In case the company is facing any financial challenge, the Directors are responsible to take actions timely. They must take accounting and legal advice timely, and must find an appropriate way to deal with the challenges faced to pay its debts when fall due. Director’s such efforts reduces the risks faced by the company, and help it to deal with its all financial matters. Otherwise the Act provides right to the organizations to punish the Directors, in terms of either penalties or being banned. Thus, the Act declares Directors or Fiduciary responsible for all financial actions, and allow company to imply penalties over the responsible person (Directors) in order to meet the financial burdens faced as a result of insolvent trading of the company (KNOBLANCHE, 2018). |
| 2 | As discussion in the above question, the s588G Corporate Act imposes all responsibilities on the fiduciary of the company. This Act guides the Directors different ways to deal with company’s finance related challenges, and restricts them to be honest in case of all matters. The Directors of the company are the key finance players, and thus they must play their role with honest and must devote their days and nights to bring the company at successful and financially strong position. In case, they cannot do their responsibilities with honestly and devotion, they have no right to stay as Director of the company and must face penalty for their irresponsive attitude towards their duties. However, the Directors are not always responsible for all financial challenges, and so they may require a second chance to work for the betterment or restructuring of the company. By considering such facts, the government of the Australia presented Safe Harbour Amendment in Corporate Law, through which the government of Australia has struck a better balance between encouraging the honest directors and the protection of company’s credits. According to this amendment, the Directors must not be punished or banned in case of insolvent trading of the company, instead there must be proper investigation and in case the Director is not found guilty, he must be provided a second chance to restructure the financial system of the company and to prove their capabilities as a fiduciary person (KNOBLANCHE, 2018). |
| 3 | The Safe Harbour amendment of s588G protects the Directors of the company and addresses a concern the Directors of the company must show a positive behavior towards company’s financial progress and must not take any decision for the sake of personal benefits. This means that the protection is for the Directors who are honest to their jobs only. The Directors are the key role players, who have access to all confidential data of the company. Now, it depends on them how they use that information, either for the sake of better future of the company or for the sake of their personal interest. Thus, the Corporation Law was established to make Directors responsible to prevent the insolvent trading of the company, which will make them more responsible and honest towards their job. The same is the case with business judgment rule s180, which was established to restrict the Directors of the company to remain positive and honest with their jobs. It guides the Directors to remain honest and loyal to their job when making any sort of decision for the company, and must not think about their personal interest no matter how many financial challenges are they facing. Their one wrong decision may derive the company to the worst condiction, and so they must play their responsible role at an authoritarian level. In this way, both regulations are same and are concerned about the honesty of the Directors and restricts them for thinking about their personal interests. |
| 4 | The Corporation Act increases Director’s responsibilities towards financial situation of the company and thus there are some restrictions associated with the Act. The Directors of the company are the one, responsible to pay debts on time. While managing the debts of the company, they must maintain complete record of what was paid, how it was paid, who invested in the company, and how that investment is going to be returned. The complete maintenance of the record also helps the Directors in case of any investigation or audit. Thus, the regulation restrict the Directors to maintain evidentiary data, including manuals, annual reports, and financial record books. Also, in case the company is facing any financial challenge, the Directors are responsible to take actions timely. They must take accounting and legal advice timely, and must find an appropriate way to deal with the challenges faced to pay its debts when fall due. Thus, the record management may help the directors to consult to the advisors in an efficient way and to elaborate how the company has been facing financial challenges, and what mitigation strategies had he been adopted. Director’s such efforts reduces the risks faced by the company, and help it to deal with its all financial matters. Otherwise the Act provides right to the organizations to punish the Directors, in terms of either penalties or being banned. Thus, the Act declares Directors or Fiduciary responsible for all financial actions, and allow company to imply penalties over the responsible person (Directors) in order to meet the financial burdens faced as a result of insolvent trading of the company (Harris, 2017). |
| 5 | Yes, the changed to Division 3 will leave a positive impact on the Directors, as well as voluntary insolvencies in Australia. According to this Division, the Directors of the company are responsible for the insolvent trading in Company, and thus they must take effective actions timely (Government, 2019). This makes the Directors responsible and honest to their jobs, and thus they remain focused regarding finance related dealings and information regarding the financial matters. Furthermore, the change Act was very important to encourage Director’s positive intentions towards company’s financial progress, otherwise previously Directors of the companies were responsible for all sort of financial losses and they had to pay penalty up to $200,000 to help the company in its recovery. Also, according to the Act, the Directors had to be banned to perform their duties for a number of years as a result of which they were discouraged to stay in the course. Thus, the division 3 change make the Directors more responsible towards all financial actions, and allow company to imply penalties over the responsible person (Directors) in order to meet the financial burdens faced as a result of insolvent trading of the company. |

# Part B

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| 1- | Yes, Mr Daly was working as a Director in the company, where he not only misguided the investors but also misused the company’s assets for the sake of personal interests. In an Interview, it was revealed that Mr. Daly was dealing with the investors, who were interested to invest their thousands of dollars. He took money from them, and a few part of money was invested in company’s funds, whereas a significant part was sent to Daly’s unregistered funds. Thus, in the investigation, the Daly was charged for misleading clients, violating Corporation Act, and misappropriation of funds. According to the Corporation Act, it is the responsibility of the Director of the Company to keep the company protected from all sort of financial risks, and for this purpose the person must ensure that all debts are paid on time and for that he has access to all assets of the company. Though, the company was not facing any financial crises, and all debts were paid on time, but it was company’s funds, which were transferred to the Daly’s unregistered funds. Thus, Mr. Daly not only violated the regulation but also used company’s funds in an unethical and misappropriate way. For his this action, he must not only be answerable but should be charged with high penalty and must be banned for next few years. In this way, he and his co-Directors will learn a lesson, and won’t every try to misguide the clients or to misuse the company’s money. Despite of his great capabilities and skills, he conducted a crime and violated Corporation Act, and so he must be dealt with strong hands. |
| 2 | Yes, it was not only Peter Daly, but also his fellow Directors participated in breaching their responsibilities. Though both presented excuses for their financial misconduct but that wasn’t sufficient to justify their crime. According to Peter Daly, he was going through a lot of financial crises, and so he borrowed the money from the company, and was going to return after getting established. On the other hand, the fellow director had to attend an expensive wedding, for which he had no enough money and so he used millions of dollars of the company over that wedding. Though both Daly and Fellow director were aware of their unethical attempt but they thought no one will ever come to know about what is happening in the company. Somehow, the company could never found them guilty if the investor wouldn’t have told the company regarding the invested amount. However, both; Daly and Fellow Director violated the Corporation Act, as a result of which they brought the company in a risky position. It was a challenging situation for the company, where the directors had used company’s funds in an unethical ways. For this action, they must not only be answerable but should be charged with high penalty and must be banned for next few years. Also, the company should learn a lesson that scheduled audits and investigation may be fruitful to evaluate how the things are going in the company, and how the directors are actually dealing with the clients. Though, Directors play a crucial and important role, but trusting them blindly can bring several challenges to the firm. Same happened in the case of Daly and his fellow Director, on whom the CEO had trusted blindly and so they had access to all assets of the company, and so they took advantage of this access and used company’s funds for the sake of their personal interest. |
| 3 | The company was trading while insolvent because it was not facing any financial crises, and all debts were paid on time, but it was company’s funds, which were transferred to the Daly’s unregistered funds and were used by fellow Director on an expensive wedding and so the money was misused which could harm the company’s financial condition in future The investors had no idea of what had happened in the company and they were not aware of the tricks played by Daly. Mr. Daly misguided the investors and used some of the funds to keep the company trading going, while invested other invested amount in his unregistered funds. According to the Corporate Law, the Director must perform his duty with honesty and must not take any decision for the sake of his personal interest. Knowing this, Daly and his fellow director were bound to remain honest and loyal to the company, instead they used the amount confidently and justified their act by stating their needs and intentions not to harm the company. Mr. Daly was aware that he is violating the Corporation Law, and so he did not want the investors to discover what is going on in the company. He was also aware that with such trick he can have more investors’ amount and can enjoy better profit on his unregistered funds. He was keen, and so he continued using the amount for paying company’s financial debts too. Due to his keen act, the company was not facing any financial loss, but was not showing the great progress, as it supposed to show with great investors. Though, Mr. Daly tried to defend him by claiming that his efforts brought the company in a strong position, where it can meet all its financial requirements, but still his great efforts cannot allow him to breach his duties. Thus, he must be entertained with lesson learned punishment so that all next Directors won’t even thing to do such action in future. (Nzinga, 2019). |
| 4 | Despite of Daly’s fraud, the company was trading because still the funds were available in the company. They borrowed the money from the client’s investments and thought to pay back after a short time. In this way, they did not actually harmed the company’s financial progress, but violated the Corporation Law. However, when analyzing the situation from other perspective, Mr. Daly got indulged in increasing his unregistered funds, and to think about his personal interest, which is not allowed according to Corporation Act. Also, , business judgment rule s180 is established to restrict the Directors for thinking positive for the Company and to take decision for the sake of Company’s future without considering their personal interests. Thus, the investigation revealed that Daly stored funds to his unregistered company and his fellow director used millions of dollars on weeding, which was not part of company’s activity. Thus, both were found guilty but as the company was trading while it was insolvent so the directors can be defended. Now, according to Corporation Law, the guilty individuals must be punished and must be banned to continue as Directors for next few years. Also, there must be penalty over them, as per which they must cover all financial loss of the company. |
| 5 | In this case, the safe harbor amendment of the Corporation Act s588G won’t protect the directors because it restricts the Directors to remain honest with their profession and not to take any decision for the sake of their personal interest. In case of Mr. Daly and his fellow directors, they have violated the Act by taking things for their personal interest, and thus they cannot be protect under the Corporation Act and Safe Harbour. In fact, they cannot be defended in any mean as they have used company’s millions of dollars for their personal interests, i.e. Mr. Daly used the money for his unregistered funds and the fellow director used the money for a wedding party. Their irresponsible attitude lead the company towards insolvent condition and so they are answerable for all their actions, and are guilty for their conduct. |

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