

PAPER – 4: CORPORATE LAWS AND SECRETARIAL PRACTICE
UPDATES

- I. Companies Bill, 2008 and Companies Bill, 2009 (Not applicable for November, 2009 examinations)

Students are aware that the Companies Bill, 2008 and Companies Bill, 2009 which was introduced in the Lok Sabha has made extensive changes in the existing Companies Act, 1956. At present, it is in the form of a Bill only and hence it is not applicable for the November, 2009 examinations.

- II. SEBI (DIP) Guidelines, 2000, February 24, 2009 (applicable for November, 2009 examinations)

- (a) Amendments to SEBI (Disclosure and Investor Protection) Guidelines, 2000.

The full text of the amendments is given in Annexure I and the amendments are explained in brief as under:

- (i) Enhancing the validity period of observations.

- (a) The validity period of the observations issued by SEBI has been enhanced from the existing period of three months to twelve months. The benefit of extended validity period would be available in respect of all the observation letters whose validity period has not expired on December 4, 2008.
- (b) Before opening of the issue, every issuer shall be required to file an updated offer document with SEBI, highlighting all changes made in the document.
- (c) Where updation include significant changes in the offer document, such an updated Red herring prospectus/ prospectus or letter of offer shall be filed with SEBI at least one month before filing the same with Registrar of Companies or with Designated Stock Exchange as the case may be. The procedure for submitting such updated documents including what will constitute "significant changes", "additional fees" etc will be specified by SEBI shortly.

- (ii) Reduction in timelines for completion of bonus issues.

- (a) At present, in terms of the SEBI (DIP) Guidelines, a listed company is required to complete a bonus issue within a maximum period of six months from the date of approval of the issue by the board of directors of the company.
- (b) The DIP Guidelines have been amended to reduce the timeline for completion of bonus issues. Accordingly, where no shareholders' approval is required as per the Articles of Association of the issuer, the bonus issue shall be completed within fifteen days from the date of

the approval by the board of directors of the issuer in this regard. However, where shareholders' approval is required for capitalization of profits or reserves as per the Articles of Association of the issuer, the bonus issue shall be completed within sixty days from the date of the meeting of board of directors where-in bonus was announced subject to shareholders' approval.

(iii) Announcement of price band.

- (a) At present, the floor price or price band in an initial public offer through the book building process is required to be disclosed in the Red Herring Prospectus registered with the Registrar of Companies, before the issue opening date.
- (b) The amended DIP Guidelines permit the issuer making an initial public offer to announce the floor price or price band after the date of registration of the Red Herring Prospectus with the Registrar of Companies, atleast two working days before the issue opening date.
- (c) Further, where the floor price or price band is announced after the date of registration of the Red Herring Prospectus with the Registrar of Companies, every issuer making a public issue, whether initial public offer or further public offer, shall ensure wide dissemination of the floor price or price band through various means, including newspaper advertisement. While announcing the floor price or price band, the issuer shall also disclose details of the relevant financial ratios used for justification of the floor price or price band. In case of a price band, such financial ratios shall be calculated for both upper and lower end of the price band.

(iv) Amendments in provisions pertaining to Preferential Allotment.

- Preferential allotment of warrants.
 - (a) At present, the SEBI (DIP) Guidelines provide that warrants can be allotted on preferential basis, subject to the allottees paying upfront, an amount equivalent to at least 10% of the price fixed, at the time of allotment of warrants. It has now been decided to enhance the upfront amount payable from 10% to 25%.
 - (b) Certain clarifications regarding lock-in requirements of instruments allotted on preferential basis have been made in clause 13.3.1(c) and (d) of the DIP Guidelines.
- Non-applicability of certain provisions of Chapter XIII of the SEBI (DIP) Guidelines.
 - (a) It has been decided that an issuer, which has been granted relaxation by the Board in terms of regulation 29A of the SEBI (Substantial Acquisitions of Shares and Takeovers) Regulations,

1997, shall be exempted from certain provisions of Chapter XIII of DIP Guidelines, subject to the condition that in the explanatory statement to the notice for the general meeting of the shareholders, the issuer gives adequate disclosures about the details of the plan including the process proposed to be followed by it for identification of the allottees in addition to the disclosures required in other applicable laws.

- (v) Policy on relaxation from strict enforcement of rule 19(2)(b) of the Securities Contracts (Regulation) Rules, 1957 (SCRR).
 - (a) At present the SEBI (DIP) Guidelines provides for the policy regarding considering the requests for relaxation of the strict enforcement of requirements of rule 19(2)(b) of the SCRR where an unlisted company intends to list its shares issued to the shareholders of a listed company pursuant to a scheme of arrangement approved by a High Court, without making an initial public offer.
 - (b) The DIP Guidelines have now been amended to provide for the policy for considering relaxation from strict enforcement of requirements of rule 19(2)(b) of SCRR in case of proposal for listing of following securities by a listed issuer :-
 - Equity shares with differential rights as to dividend, voting or otherwise, offered through rights or bonus issue.
 - Warrants issued along with Non Convertible Debentures through Qualified Institutions Placement.

ANNEXURE I

AMENDMENTS TO SEBI (DIP) GUIDELINES, 2000

CHAPTER II

ELIGIBILITY NORMS FOR COMPANIES ISSUING SECURITIES

1. In clause 2.2.2B, in sub-clause (iv), for the words and figures “sub-clause (iv)”, the words and figures “sub-clause (iii)” shall be substituted.

CHAPTER IV

PROMOTERS' CONTRIBUTION AND LOCK-IN REQUIREMENTS

2. In clause 4.6.5:-
 - (a) the figures and punctuation “4.1.2,” and mark and figure “& 4.5.1” shall be omitted;
 - (b) for the punctuation mark “,” appearing after the figure “4.3.1” and before the figure “4.4.1”, the word “and” shall be substituted.

3. In clause 4.7.1:-
 - (a) the figures and punctuation “4.1.2,” and mark and figure “& 4.5.1” shall be omitted;
 - (b) for the punctuation mark “,” appearing after the figure “4.3.1” and before the figure “4.4.1”, the word “and” shall be substituted.
4. In clause 4.11.1:-
 - (a) the mark and figure “& 4.5” shall be omitted;
 - (b) for the punctuation mark “,” appearing after the figure “4.3” and before the figure “4.4”, the word “and” shall be substituted.

CHAPTER V

PRE – ISSUE OBLIGATIONS

5. In clause 5.7.2, for the words “one week”, appearing after the words “shareholders at least” and before the words “before the date of opening”, the words “three days” shall be substituted.

CHAPTER VIII

OTHER ISSUE REQUIREMENTS

6. In clause 8.3.5, the words “by an unlisted company” appearing at the end shall be omitted.
7. After clause 8.3.5 and before the existing clause 8.3.5.1, the following clause shall be inserted, namely:-

“8.3.5.1 Application by an unlisted company for listing of equity shares pursuant to scheme sanctioned by a High Court”
8. The existing clause “8.3.5.1” shall be renumbered as clause “8.3.5.1.1”.
9. Clause “8.3.5.2” shall be omitted.
10. Clause “8.3.5.3” shall be renumbered as clause “8.3.5.1.2”.
11. Clause “8.3.5.4” shall be renumbered as clause “8.3.5.1.3”.
12. After the renumbered clause 8.3.5.1.3, the following clauses shall be inserted, namely:-

“8.3.5.2 Application by a listed company for listing of equity shares with differential rights as to dividend, voting or otherwise.

8.3.5.2.1 A listed company may make an application to the Board for relaxation from applicability of clause (b) to sub-rule (2) of Rule 19 of the Securities Contracts (Regulation) Rules, 1957 for listing of its equity shares with differential rights as to dividend, voting or otherwise, without making an initial public offer of such equity shares, if it satisfies the following conditions:

- i. issue of such equity shares are made to all the existing shareholders as on record date by way of rights or bonus;
 - ii the issuer is in compliance with the conditions of minimum public shareholding requirement with reference to the equity shares already listed and the equity shares with differential rights proposed to be listed;
 - iii. the issuer undertakes to disclose the shareholding pattern of the equity shares with differential rights separately under clause 35 of the Equity Listing Agreement.
- 8.3.5.3 Application by a listed company for listing of warrants offered along with Non Convertible Debentures (NCDs) under Chapter XIII A.
- 8.3.5.3.1 A listed company may make an application to the Board for relaxation from applicability of clause (b) to sub-rule (2) of Rule 19 of the Securities Contracts (Regulation) Rules, 1957 for listing of its warrants, if it satisfies the following conditions:
- i. warrants are issued as combined offering of NCDs and warrants under Chapter XIII A of the SEBI (DIP) Guidelines,2000;
 - ii. the issuer is in compliance with all the provisions of Chapter XIII A, including eligibility of the issuer company, pricing guidelines, etc.;
 - iii. NCDs and warrants shall be traded in the minimum trade lot of Rs.1 lakh.
- 8.3.5.4 An application to the Board under clauses 8.3.5.1, 8.3.5.2 and 8.3.5.3 shall be made through the designated stock exchange of the listed company and the designated stock exchange may forward the application along with its recommendations, giving reasons in writing to the Board.
- 8.3.5.5 The Board may, while granting relaxation under clauses 8.3.5.1, 8.3.5.2 and 8.3.5.3, stipulate any other conditions as may be deemed necessary in the interest of investors and securities market under the facts and circumstances of the specific case."
13. In clause 8.21.1:-
- (a) for the words "3 months", appearing after the words "shall open within" and before the words "from the date of issuance of the observation letter" the words "12 months" shall be substituted;
 - (b) in proviso the word "or fast track issue" appearing at the end, shall be omitted.
14. After clause 8.21.1, the following shall be inserted:-
- "8.21.2 The issuer shall, before filing a red herring prospectus (in case of a book built issue) or prospectus(in case of a fixed price issue) with ROC or letter of offer with Designated Stock Exchange, as the case may be, file with the Board through the lead merchant banker an updated offer document highlighting all changes made in the document.

8.21.3 Where there are significant changes in the offer document, the updated offer document shall be filed with the Board, atleast one month before the date of filing of the red herring prospectus (in case of a book built issue) or prospectus (in case of a fixed price issue) with ROC or letter of offer with Designated Stock Exchange, as the case may be, as per the procedure specified by the Board in this regard."

15. Clause 8.21.2 shall be renumbered as clause "8.22".

CHAPTER X

GUIDELINES FOR ISSUE OF CONVERTIBLE DEBT INSTRUMENTS

16. In clause 10.7.1.1:-

- (a) in the opening para of the body, the words "or the NCDs", appearing after the words "portions of PCDs" and before the words "issued by a listed company" shall be omitted;
- (b) in sub-clause (c), the words "NCDs or", appearing after the words "Before roll over of any" and before the words "non-convertible portion" shall be omitted.

17. In sub-clause (b) of clause 10.9:-

- (a) for the word and comma "NCDs," occurring after the words "In case of", and before the words "redemption amount" the word "PCDs" shall be substituted;
- (b) for the mark and word "/ NCDs" appearing at the end of the sub-clause, the word "PCDs" shall be substituted.

CHAPTER XI

GUIDELINES ON BOOK BUILDING

18. In clause 11.3.1, in sub clause (viii)(a) :-

- (a) for the first proviso, the following provisos shall be substituted, namely:-

"Provided that the issuer may not disclose the floor price or price band in the red herring prospectus if the same is disclosed in case of an initial public offer, at least two working days before the opening of the bid and in case of a further public offer, at least one working day before the opening of the bid, by way of an announcement in all the newspapers in which the pre-issue advertisement was released by the issuer or the merchant banker;

Provided further that the announcement shall contain the relevant financial ratios, computed for both upper and lower end of the price band and also a statement drawing attention of the investors to the section titled "basis of issue price" in the offer document."

- (b) in the second proviso:-

- (i) for item (a), the following shall be substituted, namely:-

“a statement that the floor price or price band, as the case may be, shall be disclosed at least two working days (in case of an initial public offer) and at least one working day (in case of a further public offer) before the opening of the bid;”

- (ii) in item (b), the words “in case of a further public offer” shall be added at the end.

19. In sub-clause (viii)(b) of clause 11.3.1, for the opening statement, the following shall be substituted, namely:-

“Where the issuer decides to opt for price band instead of floor price, the lead book runner shall ensure compliance with the following conditions:”

CHAPTER XIII

GUIDELINES ON PREFERENTIAL ISSUES

20. In clause 13.1.2.3, for the words “ten percent”, appearing after the words “to atleast” and before the words “of the price”, the words “twenty five percent” shall be substituted.

21. In clause 13.3.1,

- (i) for sub-clause (c), the following clauses shall be substituted, namely:-

“(c) The instruments allotted on preferential basis and the shares allotted pursuant to exercise of options attached to warrants issued on preferential basis to the promoter/promoter group of the issuer, in addition to the instruments or shares specified in sub-clauses (a) and (b) of clause 13.3.1, shall be locked-in for a period of one year from the date of their allotment.

(c-a) The instruments allotted on preferential basis and the shares allotted pursuant to exercise of options attached to warrants issued on preferential basis to any person other than the promoter / promoter group of the issuer shall be locked-in for a period of one year from the date of their allotment.”

- (ii) in sub-clause (d), after the words “convertible instrument” wherever they appear, the words “other than warrants” shall be inserted.

- (iii) in sub clause (h), before the explanation, the following proviso shall be inserted, namely:-

“Provided that the Board may, on an application made by the issuer in respect of the preferential allotment of shares fully convertible debentures and partly convertible debentures, grant relaxation from the requirements of this sub-clause if the Board has granted relaxation to the company in terms of Regulation 29A of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.”

22. In clause 13.4.1, after the existing proviso the following proviso shall be inserted, namely:-

- “Provided that where the Board has granted relaxation to the issuer in terms of regulation 29A of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, the preferential allotment of shares, fully convertible debentures and partly convertible debentures, shall be made by it within such time as may be specified by the Board in its order granting relaxation.”
23. After clause 13.7.2, the following clause shall be inserted, namely:-
- “13.7.3 Clause 13.1.1, 13.1.2, 13.1.3, 13.1A, and 13.5.1 shall not be applicable to a preferential allotment of equity shares, fully convertible debenture and partly convertible debentures, where the Board has granted relaxation to the company in terms of Regulation 29A of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997; Provided that adequate disclosures about the plan including the process proposed to be followed for identifying the allottees, are given in the explanatory statement to notice for the general meeting of shareholders, in addition to disclosures required in terms of any other law.”

CHAPTER XV

GUIDELINES FOR BONUS ISSUES

24. For clause 15.1.7 the following shall be substituted namely:-
- “A company which announces bonus issue after the approval of board of directors and does not require shareholders' approval for capitalisation of profits or reserves for making bonus issue as per the Articles of Association, shall implement bonus issue within fifteen days from the date of approval of the issue by the board of directors of the company and shall not have the option of changing the decision.
- Provided where the company is required to seek shareholders' approval for capitalisation of profits or reserves for making bonus issue as per the Articles of Association, the bonus issue shall be implemented within two months from the date of the meeting of the board of directors wherein the decision to announce bonus was taken subject to shareholders' approval.”

Note: For further details, students may log on www.sebi.gov.in

III Amendments in Competition Act, 2002(List of Sections are not applicable for November, 2009 examinations)

(a) Competition Act, 2002 – Date of coming into force of certain Sections

The full text of amendments are given in Annexure II:

Annexure II

MINISTRY OF CORPORATE AFFAIRS
NOTIFICATION
New Delhi, 15th May 2009

S.O. 1241(E) - In exercise of the powers conferred by sub-section (3) of Section 1 of the Competition Act, 2002 (12 of 2003), the Central Government hereby appoints the 20th day of May, 2009 as the date on which Sections 3, 4, 18, 19, 21, 26, 27, 28, 32, 33, 35, 38, 39, 41, 42, 43, 45, 46, 47, 48, 54, 55 and 56 of the said Act, shall come into force.

(b) Competition (Amendment) Act, 2007 – Date of coming into force of certain Sections

The full text of amendments are given in Annexure III:

Annexure III

MINISTRY OF CORPORATE AFFAIRS
NOTIFICATION
New Delhi, 15th May 2009

S.O. 1242(E) - In exercise of the powers conferred by sub-section (2) of Section 1 of the Competition (Amendment) Act, 2007 (39 of 2007), the Central Government hereby appoints the 20th day of May, 2009 as the date on which Sections 3, 10, 13, 15, 16, 19, 20, 21, 25, 26, 28, 31, 33, 34, 35, 36, 38, 39 and 43 (53B, 53N, 53O, 53P, 53Q, 53R, 53S, 53T and 53U) of the said Act, shall come into force.

Note: For further details, students may log on www.cci.gov.in

In view of the above stated two notifications issued by the Ministry of Corporate Affairs, it is seen that most of the amended sections in the Competition Act, 2002 and further amended by the Competition (Amendment) Act, 2007 comes into force w.e.f. 15th May, 2009. Therefore these amended sections will be relevant for the May 2010 examinations.

In order to bring the clarity of the relevant applicable sections, students may study the definitional aspects covered in Sections 2 and Competition Commission of India covered in Sections 7-17 of the Competition Act, 2002 for November, 2009 examination.

IV The Companies (Appointment and Qualifications of Secretary) Amendment Rules, 2009 (Applicable for November, 2009 examinations)

The full text of amendments are given in Annexure IV:

Annexure IV

MINISTRY OF CORPORATE AFFAIRS
NOTIFICATION
New Delhi, 5th January 2009

G.S.R. 11(E) - In exercise of the powers conferred by clauses (a) and (b) of subsection (1) of Section 642 read with clause (45) of Section 2 and Section 383A of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following rules further to amend the Companies (Appointment and Qualifications of Secretary) Rules, 1988, namely : –

1. (1) These rules may be called the Companies (Appointment and Qualification of Secretary) Amendment Rules, 2009.
(2) They shall come into force from the 15th day of March, 2009.
2. In the Companies (Appointment and Qualification of Secretary) Rules, 1988, in rule 2 –
 - (i) in sub-rule (1) and in the proviso to sub-rule (4), for the words “rupees two crores” the following words shall be substituted, namely : –
“five crore rupees”;
 - (ii) in sub-rule (3), the second and third proviso shall be omitted;
 - (iii) after sub-rule (3), the following sub-rule shall be inserted, namely : –

“(3A) A company having a paid up share capital two crore rupees or more but less than five crore rupees may appoint any individual who possesses the qualification of membership of the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980 (56 of 1980), as a whole-time secretary to perform the duties of a secretary under the Companies Act, 1956:

Provided that where a company has appointed under subrule (3) or this sub-rule, a whole-time company secretary, possessing the qualification of membership of the Institute of Company Secretaries of India, such a company is not required to obtain a certificate from a secretary in wholetime practice under rule 3 of the Companies (Compliance Certificate) Rules, 2001.”

Note: For further details, students may log on www.mca.gov.in

QUESTIONS

COMPANIES ACT, 1956

Board Meetings & Proceedings-Frequency of a meeting

1. The Board of Directors of a public company met on three times in the previous year, the fourth meeting though called could not be held for want of quorum on two occasions successively. Discuss whether any provisions of the Companies Act, 1956 has been contravened?

Board Meetings & Proceedings-Signing of minutes

2. Academy computers Ltd. maintains the Minutes Book of the Board Meetings in loose-leaf system and get them bound once in three months. Can it do so? Board meetings were held on 24th March, 2008 and 15th April, 2008. Mr. Mangal, who was the Chairman of these two Board Meetings died on 1.5.2008, without signing the Minutes. How should be the Minutes be signed and by whom?

Board Meetings & Proceedings-Quorum for a meeting

3. What is the required quorum for holding a Board meeting? Examine the following cases:
 - (i) In a Board meeting, only 3 directors were present out of the total of 11 directors. None of the 3 directors was interested in any of the items of the agenda. Examine the validity of meeting.
 - (ii) In a meeting of the Board, out of the total of 11 directors, 7 directors were present of which only 2 directors were not interested in one of the transactions. How should the meeting deal with the matter?

Board Meetings & Proceedings-Notice of a meeting

4. Kartik, a director residing abroad, complains that he does not receive notices for the Board meetings regularly. Advice.

Directors-Contracts in which directors are interested

5. Star Automobiles Ltd. having a paid up share capital of Rs. 80 Lakhs proposes to enter into contract with the following parties for the supply of certain components for a period of five years with effect from 1st January, 2008:
 - (i) Active Forgings Private Limited where 'X', a director of Star Automobiles Limited, is interested as a director and member.
 - (ii) Pure Casting Limited, where 'Y', a director of Star Automobiles Limited, is interested as a member holding 25 per cent of the paid up share capital.

State briefly the legal requirements to be complied with under the Companies Act to give effect to the above proposals. Will the agreements continue to be valid after the paid up

share capital of XYZ Machineries Ltd. is increased to Rs. 4 Crores in December 2008 by further issue of shares?

Directors-Restrictions on the directors

6. The Board of Directors of Excellent Fabrics Ltd. at a meeting held on 15.1.2008 resolved to borrow a sum of Rs. 15 crores from a nationalized bank. Subsequently the said amount was received by the company. One of the Directors, who opposed the said borrowing as not in the interest of the company has raised an issue that the said borrowing is outside the powers of the Board of Directors. The company seeks your advice and the following data is given for your information:

(i) Share Capital	Rs. 5 crores
(ii) Reserves and Surplus	Rs. 5 crores
(iii) Secured Loans	Rs. 15 crores
(iv) Unsecured Loans	Rs. 5 crores

Advice the management of the company.

Directors-Validity of acts done by directors

7. Leena was appointed as director of the company in an annual general meeting. She took over the office and carried on his functions as director. Subsequently, it was found that there were some irregularities in voting and hence the appointment was declared invalid. Would the acts done by Leena, while in office as director, be binding upon the company?

Directors-Casual vacancy

8. Mr. Ajay who was appointed as a Director at the last annual general meeting resigned. The Board filled up the casual vacancy by appointing Mr. Vijay. But within a few days of his becoming director, Vijay died. The Board wishes to fill up the casual vacancy by appointing Mr. Bijoy in place of Mr. Vijay in the next Board meeting. State the legal position.

Directors-Retire by rotation

9. Mars Travels Ltd. in its first General Meeting appointed six Directors whose period of office is liable to be determined by rotation. Briefly explain the procedure and rules regarding retirement of these directors. Will it make any difference, if Mars Travels Ltd. does not carry on business for Profit?

Directors-Disqualifications

10. The Managing Director of a company is convicted of an offence involving moral turpitude. He prefers an appeal against conviction. Can he continue as Managing Director pending disposal of the appeal? Can the appellate court remove the disqualification or stay the same pending the disposal of the appeal?

Directors-Appointment by single resolution

11. East West Garments Ltd. in its annual general meeting appointed all its directors by passing one single resolution. No objection was made to the resolution. Examine the validity of appointment of directors explaining the relevant provisions of the Companies Act, 1956. Will it make any difference, if East West Garments Ltd. was a private company?

Inter Corporate Loans and Investments

12. The Board of Directors of Hindustan Clothes Ltd. has agreed in principal to grant 'loan' worth Rs. 38 lakhs to Bharat Ltd. on the basis of the following information. Advice Hindustan Clothes Ltd. about the requirements to be complied with under the Companies Act, 1956 for the proposed inter corporate loan to Bharat Ltd.

(i)	Authorized share capital	Rs.	1,00,00,000
(ii)	Issued, subscribed and paid up capital	Rs.	50,00,000
(iii)	Free reserves	Rs.	10,00,000

Inter Corporate Loans and Investments

13. A group of shareholders consisting of 25 members decides to file a petition before the Company Law Board for relief against oppression and mismanagement by the Board of Directors of M/s Fortnight Operators Ltd. The company has a total of 300 members and the group of 25 members holds one-tenth of the total paid-up share capital accounting for one-fifteenth of the issued share capital. The main grievance of the group is that due to mismanagement by the Board of directors, the company is incurring losses and the company has not declared any dividends even when profits were available in the past years for declaration of dividend. Advise the group of shareholders regarding the success of (i) getting the petition admitted and (ii) obtaining relief from the Company Law Board.

Winding-up of Companies

14. Pacific Yarn Limited has its subsidiary company Woolmark Ltd, which is formed to carry out some of the objectives of Pacific Yarn Limited. Pacific Yarn Ltd suspends one of its several businesses, by passing a resolution at the company's extraordinary general meeting, with effect from 1st January 2007. The business so suspended continues to be suspended until March 2007. On 1st April 2007, a group of shareholders of Pacific Yarn Ltd file a petition in the court for winding of the company on the ground of suspension of business by the company.

Referring to the provisions of the Companies Act, 1956, decide:

- (1) Whether the shareholders' contention shall be tenable?
- (2) What would be your answer in case Pacific Yarn Ltd suspends all its business?

- (3) Can shareholders of Woolmark Ltd. file a petition in the court for winding up of their company (Woolmark Ltd) on the ground that the holding company viz, Pacific Yarn Ltd has suspended its entire business, though Woolmark Ltd. has not suspended business?

Winding-up of Companies

15. Write short notes on:

- (i) Overriding preferential payment;
- (ii) Workmen's dues.

Miscellaneous Provisions-Sole Selling Agent

16. On 1st January, 2008 the Board of Directors of Carbon Paper Ltd. appointed Mr. Y as Sole Selling Agent of the Company for a period of five years. On 6th February, 2008 Carbon Paper Ltd. in its General Meeting disapproved the appointment of Mr. Y as Sole Selling Agent of the Company. Explain:
- (a) Is Mr. Y entitled to payment of compensation for Loss of Office?
 - (b) Are there some other circumstances when compensation for loss of office is prohibited to a Sole Selling Agent?

Miscellaneous Provisions- Foreign Company

17. Examine with reference to the provisions of the Companies Act, 1956 whether the following companies can be treated as foreign companies:
- (i) A company incorporated outside India having a share registration office at Mumbai.
 - (ii) Indian citizens incorporated a company in Singapore for the purpose of carrying on business there?

Producer Companies

18. Who can become members of the producer Company and what are their voting rights?

Producer Companies

19. What provisions a Producer Company has to follow while investing in other companies, or in formation of subsidiaries?

Foreign Exchange Management Act, 1999

20. Mr. Samuel, an Indian national desires to obtain Foreign Exchange on current account transactions for the following purposes:
- (i) Payment of commission on exports made towards equity investment in wholly owned subsidiary abroad of an Indian Company.

(ii) Remittance of hiring charges of transponder.

(iii) Remittance for use of trade mark in India.

Advise Mr. Samuel whether he can obtain Foreign Exchange and, if so, under what conditions?

(SEBI) Act, 1992

21. Briefly examine the powers vested in the Securities and Exchanges Board of India to regulate and prevent undesirable transactions in securities under the Securities Contracts (Regulation) Act, 1956, by virtue of the SEBI Act, 1992.

The Competition Act 2002

22. Write short notes on-

(i) Restriction on disclosure of information

(ii) Members, Director General, Registrar, officers and other employees, etc. of Commission to be public servants

(iii) Exclusion of jurisdiction of civil courts

Securities Contracts (Regulation) Act, 1956

23. Delhi Stock Exchange has refused to grant listing of the shares of Sunshine Floor Limited but the Exchange has not disclosed any reason therefore. The company wants to challenge the decision of the Stock Exchange in the Civil Court.

Advise the company pursuant to relevant provisions of the Securities Contracts (Regulation) Act, 1956

Interpretation of Statutes, Deeds and Documents

24. Explain the rules relating to interpretation of the terms 'subject to' and 'notwithstanding' used in the provisions of an Act. State the effect of the term 'notwithstanding anything contained in this Act' used in Section 408 of the Companies Act empowering the Central Government to prevent oppression or mismanagement.

Corporate Secretarial Practice

25. Draft a Board Resolution for Purchase of shares of other companies.

SUGGESTED ANSWERS/HINTS

1. As per section 285 of the Companies Act, 1956, a company must hold a meeting of its Board of Directors at least once in every 3 calendar months and there should be at least 4 meetings of the Board every year. But, section 288(2) of the said Act provides that where a meeting is called but could not be held for want of quorum, there is no contravention of section 285. Thus, as per the facts in the above case, there has been no contravention of any provisions of the Companies Act, 1956.
2. Ordinarily minutes cannot be kept in loose-leaf system. Section 193(1) of the Companies Act, 1956 enjoins the Minutes must be entered within 30 days of the conclusion of the relevant meeting. Ordinarily Minutes cannot be kept in loose-lead system. The Department of Company Affairs, however, has expressed that it would refrain from taking any action against a company which maintained its minutes in the loose-leaf form, provided that adequate safeguards are taken against falsification, and loose-leaves are bound in books at reasonable intervals, say six months.

In this case, since the Minutes Book leaves are bound once in three months (January to March, 2008), and as such the same is in order.

The minutes of the Board Meeting are required to be written within a period of 30 days from the date of the meeting held. [Section 193(1)]. But there cannot be any insistence that the same must be signed within a period of 30 days from the date of the Board Meeting. (Dept.'s circular No. 25/76 dated 1.9.1976). According to section 193(1A), the minutes of a Board Meeting may be signed by the Chairman of the said meeting or the Chairman of the next succeeding meeting.

In this case, Mr. Mangal, who was the Chairman of the Board Meeting held on 24.3.2008 and 15.4.2008 died on 1.5.2008 without signing the minutes.

The Chairman of the Board Meeting held after 15th April, 2008 for the first time may sign the minutes of Board Meeting, held on 15th April, 2008 in accordance with section 193(1A)(a).

According to the provisions of section 193(1) read with section 193(1A) the minutes of Board Meeting held on 24th March, 2008 should have been signed by Mr. Mangal himself as he was the Chairman of the Board Meeting held on 24th March, 2008 as well as the Chairman of the next succeeding meeting. There is no specific provision in the Companies Act, 1956 as to the person who can sign the minutes of Board Meeting held on 24th March, 2008 in this case. Hence a board meeting may be convened and the Chairman of the said meeting may sign the minutes of Board Meeting held on 24th March, 2008.

3. The provisions relating to quorum for a Board meeting are contained in section 287 of the Companies Act, 1956. Unless the articles provide for a higher quorum, the quorum shall be one third of the 'total strength' (any fraction contained in that one third shall be rounded off to one) or two directors whichever is higher [Section 287(2)]. However, proviso to section 287(2) states that where at any time the number of interested directors exceeds or is equal to two third of the 'total strength', the number of disinterested directors present at the meeting, being not less than two, shall form the quorum.

- (a) In the instant case, one third of 11 comes to 3.67; the fraction 0.67 shall be rounded off to 1. Thus, at least 4 disinterested directors must be present in the Board meeting. However, only 3 directors are present in the Board meeting.

Moreover, there is no interested director present in the meeting and so the benefit of proviso to section 287 cannot be availed. Therefore, the quorum is not present and the meeting cannot be held valid.

- (b) In the given case, the required quorum comes to 4 directors, but only 2 disinterested directors are present.

Two third of the 'total strength' comes to 8 (Being two third of 11 is 7.33; the fraction 0.33 shall be rounded off to 1). Since the number of interested directors is only 5, the proviso to section 287 is not attracted. Thus, the remaining 2 directors who are not interested do not constitute a quorum and hence the Board meeting cannot be validly convened.

In the case of a private company, interested directors are also counted in quorum. In this case, if the company is a private company, all the 7 directors shall be counted while determining quorum. Since the required quorum is only 4, the quorum is present if it is assumed that the company is a private company.

4. As per section 286 of the Companies Act, 1956, notice to a director who is out of India must be sent at his usual address in India. Section 286 does not differentiate between a director who is resident of India but is temporarily out of India and a director who is permanently resident outside India.

In a similar question, the Company Law Board has held that if notice is sent to a director who mostly stays out of India at his usual local address, the notice is inadequate (even if the articles of the company do not require the sending of notice abroad). He would not be able to attend the meeting. It would show lack of probity and fair play on the part of directors. The meeting was held to be null and void [Dr. Kamal Kumar Dutta vs Ruby General Hospital Ltd. (2000) 36 CLA 214, 231].

In the given case, there is no legal requirement of sending notice to Mr. Kartik at his foreign address; notice given to him at his usual address in India is sufficient (Section 286). However, considering the judgement given by the Company Law Board in Dr. Kamal Kumar Dutta vs Ruby General Hospital Ltd., the company should also give a copy of the notice to Mr. Kartik at his foreign address, if any.

5. (i) Under section 297 of the Companies Act, 1956 it will require a resolution of the Board of Directors to be passed at its meeting.

In the event of capital of Star Automobiles Ltd. being increased to Rs. 4 crores, previous approval of the Central Government shall also be required under section 297. Approval of the Central Government is required where the paid up share capital of the company is Rs. 1 Crore or more. But, applicability of the section is to be determined at the time of entering into the contract. If no permission under this section is required at the time of entering into the contract, subsequent permission is not necessary even though there may be a change of circumstances which would require permission to be taken for a fresh contract.

Thus, it appears that, where contracts entered into by companies when their paid up capital was less than Rs. 1 Crore, and raised upwards subsequently [as in the given case], approval of the Central Government would not be necessary until the expiry of the contract.

Also under section 299, 'X' must disclose his interest to the Board and not participate in the said meeting/deliberations.

- (ii) Section 297 does not cover cases of public limited companies. Thus, the aforesaid approvals shall not be necessary.
6. According to the provisions of Section 293(1)(d) of the Companies Act, 1956 there are restrictions on the borrowing powers to be exercised by the Board of directors. According to this section, the borrowings should not exceed the aggregate of the paid up capital and free reserves. While calculating the limit, the temporary loans obtained by the company from its bankers in the ordinary course of business will be excluded. However, from the figures available in the present case the proposed borrowing of Rs. 15 crores will exceed the limit mentioned. Thus the borrowing will be beyond the powers of the Board of directors. However the share holders have the power to ratify the act of the Board of Directors, if it is not beyond the powers of the company as laid down in the memorandum of association. In that case the shareholders can ratify as it is intra vires the company even though it may be beyond the powers of the Board of Directors.
- Thus the management of Excellent Fabrics Ltd., should take steps to convene the annual general meeting and pass a resolution by the members in the meeting as stated in Section 293(1)(d) of the Act. Then the borrowing will be valid and binding on the Company and its members.
7. According to section 290 of the Companies Act, 1956, the acts done by a director shall be valid notwithstanding that it may afterwards be discovered that his appointment was invalid by reason of any defect or disqualification in his appointment. The section will protect, the bonafide acts and not where they are done with notice that they were done wrongfully or illegally. Hence, the acts done by Leena as a director, before the irregularity

was found, are in order and interests of company as well as outsiders dealing with the company would be protected. But the acts done after the discovery of invalidity would not be protected.

8. Section 262 of the Companies Act, 1956 provides that in the case of a public company or a private company which is a subsidiary of a public company, if the office of any director appointed by the company in general meeting is vacated before the expiry of his term of office in the normal course, the resulting casual vacancy may, subject to any regulations in the Articles of the company, be filled by the Board of directors at a meeting of the Board.

It would thus be noted that the Board of directors is empowered to fill a casual vacancy only in respect of a director appointed by the company in general meeting. If a casual vacancy arises in the office of a director appointed in the casual vacancy under section 262, there is no casual vacancy within the meaning of section 262. However, the Deptt. Of Company Affairs has opined that the same may be filled by the Board of directors as a casual vacancy. Consequently Board can appoint Mr. Bijoy in place of Mr. Vijay.

9. According to section 255 of the Companies Act 1956, unless the articles provide for the retirement of all directors in every general meeting, at least 2/3rds of the total number of directors of the public limited company in question must, in the first place, be appointed, save as otherwise expressly provided in the Act by the company in general meeting; Secondly, they must be persons whose period of office is liable to be determined by rotation.

According to section 256, out of 2/3rd rotational directors only 1/3rd must retire by rotation at one general meeting.

If the number is not three or multiple of three, then the number nearest to 1/3 must retire from office.

Yes it will make a difference if Mars Travel Ltd. does not carry on business for Profit. Provisions of Section 256 do not affect those companies which do not carry on business for profit or those which by their articles prohibit the payment of dividend to their members. Such companies are not affected by Section 255 also which provides that at least 2/3rd of the directors shall retire by rotation while section 256 provides that 1/3rd of the retiring directors shall retire every year.

10. The Managing Director cannot continue as such, as he is disqualified to act as managing director, pursuant to section 267 of the Companies Act, 1956. The purpose of section 267 is to ensure that the management and affairs of the company and its control is not in the hands of a person who has been found by a competent Court to be guilty of an offence involving moral turpitude. Section 267 enacts that any person who has suffered a conviction by a Court of an offence involving moral turpitude shall not be appointed or

employed or continue in employment or appointment by any company as its managing director. Thus, the provisions are stringent. Under Criminal Procedure Code (CrPC), an appeal against the order of conviction may either be dismissed summarily or heard by an Appellate Court. However, order of conviction does not on the mere filing of an appeal disappear and it is difficult to hold that Section 267 of the Companies Act must be read to apply only to final order of conviction as such interpretation may defeat the very object and purpose for which it came to be enacted. In view of the above observation, the Appellate court will not be inclined to stay the operation of section 267 pending disposal of appeal [See Roma Narang v. Ramesh Narang (1995)SCALE 276]

11. Section 263 (1) of the Companies Act 1956 requires that the appointment of every director shall be voted on individually. Thus two or more directors cannot be appointed by a single resolution. However an exception has been carried out where under if a resolution has been first passed to the effect that all the directors shall be appointed by a single resolution without any vote being against it.

Any resolution, as per Section 263(2), in contravention of the aforesaid provisions shall be void whether or not objection was taken at the time of its being so moved.

The aforesaid provision, however apply to a public company or a private subsidiary of a public company. Hence, the appointments so made are void. However if East West Garments Ltd. was a private limited company, then the condition of provision of Section 263(1)(2) were not applicable as regards the condition of single resolution is concerned.

12. Inter corporate loans and investments are governed by the provisions of Section 372A of the Companies Act, 1956. As per this Section, a company can advance loans to other companies or invest in the securities, of other companies up to 60% of the paid-up capital and free reserves or upto 100% of free reserves, which is more. Further no loan or investment exceeding the said limits can be made by a company unless authorized by a previous special resolution passed in this regard.

First determine whether a special resolution is required for providing loans to Bharat Ltd.

This can be determined as follows:

Paid up capital of the company	(A)	Rs. 50,00,000.00
Free reserves	(B)	Rs. 10,00,000.00
Aggregate of paid up capital and free reserves	(C)	Rs. 60,00,000.00
60% of aggregate of paid up capital and free reserves	(D)	Rs. 36,00,000.00

Higher of (B) or (D) i.e. the ceiling limit for incorporate loan and investment etc. without requiring a special resolution Rs.36,00,000.00

Proposed loans to Bharat Ltd. Rs. 38,00,000.00

Since the proposed loan exceeds the ceiling limit a special resolution is required. The company shall adopt the following procedure for providing loan to Bharat Ltd.

(i) Unanimous approval of the Board shall be obtained by passing a resolution at a Board meeting.

(ii) A special resolution shall be passed in the general meeting

The notice of special resolution shall state the specific limits, particulars of the company to which loan is proposed to given, specific source of funding and other relevant details. The company shall file a copy of special resolution with the registrar within 30 days of passing the special resolution. If the company is listed company, it shall pass the resolution by postal ballot as prescribed under Section 192A.

(iii) The company shall obtain the prior approval of the Public Financial Institution, if any, from whom it has taken a term loan.

(iv) The company can provide such loan to other companies only if no default in respect of public deposits is subsisting.

(v) The prescribed particulars shall be entered in the register maintained under Section 372A(5).

13. (i) Since the group of shareholders do not number 100 or hold 1/10 of the issued share capital or 1/10 of the total number of members, they have no right to approach the Company Law Board for relief. However, the Central Government, if it is of the view that circumstances exist which make it just and equitable to do so, may authorise any member(s) to apply to the Company Law Board [Section 399(4)]. So members may approach Central Government to authorise them to approach Company Law Board inspite of deficiency in number.

(ii) As regards obtaining relief from Company Law Board, continuous losses cannot, by itself, be regarded as oppression. [Ashok Betelnut Co. (P.) Ltd. vs M.K.Chandrakanth].

Similarly, failure to declare dividends or payments of low dividends also does not amount to oppression (Thomas Vekkon vs. Kuttanand Rubber Co. Ltd.). Thus, the shareholders may not succeed in getting any relief from Company Law Board.

14. The problem relates to suspension of business by a company. Section 433 of the Companies Act, 1956 provides that if a company does not commence its business within a year from its incorporation or suspends its business for a whole year, it may be wound up by the court. The contention of the shareholders of Pacific Yarn Ltd that the company is liable to be wound up in the ground so suspension of business, is not tenable for the following reasons:

(i) (a) A company may be wound up by court if a company suspends its business for

a whole year. Here the business was suspended only on 1.1.2007. Hence on 1st April, 2007 the business has not been suspended for the whole year to attract Section 433(c)

- (b) Where a company having much business discontinues one of them, it cannot be said to have suspended business within the meaning of Section 433(c).
 - (c) Where a company ceases to do any business but is a holding company of subsidiaries engaged in the pursuit of the business, which it was previously doing, it cannot be said that the company has suspended its business (Ref; Eastern Telegraph Company Ltd).
 - (ii) Even if Pacific Yarn Ltd suspended all its business the suspension was not for a period of more than 1 year as on 1.4.2007 and hence the provisions of Section 433(c) are not applicable. Again for the reasons stated in (i) (c) above Pacific Yarn Ltd cannot be said to have suspended its business as its subsidiary is carrying on the business.
 - (iii) As Woolmark Ltd has not suspended its business, the shareholders of Woolmark Limited have no right to file winding up petition on the ground that its holding company has suspended its business. Again for reasons stated in (i)(c) above the holding company also cannot be said to have suspended its business.
15. (i) Overriding preferential payment: Under Section 529A of the Companies Act, 1956 notwithstanding anything contained in other provisions of this Act or any other law for the time being in force in the winding-up of a company – (i) workmen's dues and (ii) debts due to secured creditors to the extent such debts rank, under clause (c) of the proviso to Sub-section (1) of Section 529, *pari passu* with such dues, shall be paid in priority to all other debts. These debts payable under (i) and (ii) above shall be paid in full, unless the assets are insufficient to meet them, in which case they shall be paid in equal proportions.
- (ii) "workmen's dues" means the aggregate of the following sums due from the company to its workmen, namely:
- (a) all wages, salaries including wages payable for time or piece work and salary earned wholly or in part by way of commission of any workmen, in respect of services rendered to the company and any compensation payable to any workman under any of the provisions of the Industrial Disputes Act, 1947;
 - (b) all accrued holiday remuneration becoming payable to any workman, or in the case of his death to any other person in his right, on the termination of, the winding-up or other resolutions;
 - (c) unless the company is being wound-up voluntarily merely for the purposes of reconstruction or of amalgamation with another company or unless the company has, at the commencement of the winding-up, under such a contract with insurers as mentioned in Section 14 of the Workmen's Compensation Act,

1923, rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any workman of the company. In other words, in the absence of alternative circumstances mentioned in the beginning of this clause the provision of this clause will fall within the provision of the phrase "workmen's dues";

- (iii) all sums due to any workman from a provident fund, a gratuity fund or any other fund for the welfare of the workman maintained by the company.
16. (i) According to Section 294(2) of the Companies Act, 1956, the Board of Directors of Carbon Paper Ltd. shall not appoint a sole selling agent for any area except subject to the condition that the appointment shall cease to be valid if it is not approved by the company in the first general meeting held after the date on which the appointment is made.

It has been held that the appointment of a sole selling agent must be made by the company in its general meeting and such clause must be inserted as a mandatory condition in all appointments of sole selling agents; an appointment without such a clause being inserted is void ab-initio (Arante manufacturing Corp. vs. Bright Bills Private Ltd. 1967 Comp/ Case 759, Shelagram Jhaigharia vs. National Co. Ltd. 1965 Comp. Cas. 706) If the company in the general meeting disapproves the appointment it shall become invalid from the date of the general meeting.

In the given case, assuming that the general meeting of Carbon Paper Ltd. held on February 6, 2008 was their first general meeting after January 1, 2008 and the disapproval of the company, in this meeting will make the appointment of Mr. Y as sole selling agent invalid w.e.f. February 6, 2008.

- (ii) Section 294(A) prohibits payment of compensation to the sole selling agent for the loss of his office in the following cases in addition to the one discussed in part (2) above :
 - (a) Where the sole selling agent resigns his office as a result of reconstruction or amalgamation of the company, and is appointed as the sole selling agent of the reconstructed company or the body corporate resulting from the amalgamation.
 - (b) Where the sole selling agent resigns his office otherwise than in the circumstances envisaged in the foregoing clause (i)
 - (c) Where a sole selling agent has been found to be guilty of fraud or breach of trust in relation to, or of gross negligence in the conduct of his duty as the sole selling agent.
 - (d) Where the sole selling agent has investigated or taken part directly or indirectly in bringing about the termination of the sole selling agency.

17. "Foreign company" as per Section 591 of the Companies Act 1956, means a company incorporated outside India but having a place of business in India. Accordingly, to qualify as 'foreign company' a company must have both the following features:

- (a) it should be a company incorporated outside India; and
- (b) it should have a place of business in India.

As to what amount to having a place of business in India, Section 602 (e) provides that the expression 'place of business' includes a share transfer or share registration office.

Thus a company incorporated outside India having a share registration office at Mumbai is a foreign company.

But, the company incorporated in Singapore for the purpose of carrying on business in Singapore is not a foreign Company. Its incorporation by Indian citizen is immaterial. In order to be a foreign company it has to have a place of business in India.

18. Membership and voting rights of members (Section 581D)

A person, who has any business interest which is not in conflict with business of the producer company, shall become a member. On the other hand, a member, who acquires any business interest which is in conflict with the business of the producer company, shall cease to be a member and be removed as a member in accordance with articles of the producer company.

The articles of any producer company may provide for the conditions, subject to which a member may continue to retain his member, and the manner in which voting rights shall be exercised by the members.

These voting's rights are:

- (a) In a case where the member consists solely of individual member, the voting rights shall be based on a single vote for every member, irrespective of his shareholding or patronage of the producer company.
- (b) In a case where the member consists of producer institutions only, the voting rights of such Producer institutions shall be determined on the basis of their participation in the business of the producer company in the previous year, as may be specified by articles.

Provided that during the first year of registration of a producer company, the voting rights shall be determined on the basis of the shareholding by such Producer institutions.

- (c) In a case where the member consists of individuals and producer institutions, the voting rights shall be computed on the basis of a single vote for every member. However, a producer company may, if so authorised by its articles, restrict the voting rights to active member, in any special or general meeting.

19. Investment in other companies, formation of subsidiaries, etc. (Section 581ZL)

The producer company has to follow the following provisions under this Section.

- (1) The general reserves of any producer company shall be invested to secure the highest returns available from approved securities, fixed deposits, units, bonds issued by the Government or co-operative or scheduled bank or in such other mode as may be prescribed.
- (2) Any producer company may, for promotion of its objectives acquire the shares of another producer company.
- (3) Any producer company may subscribe to the share capital of, or enter into any agreement or other arrangement, whether by way of formation of its subsidiary company, joint venture or in any other manner with any body corporate, for the purpose of promoting the objects of the producer company by special resolution in this behalf.
- (4) Any producer company, either by itself or together with its subsidiaries, may invest, by way of subscription, purchase or otherwise, shares in any other company, other than a producer company, specified under sub-section (2), or subscription of capital under sub-section (3), for an amount not exceeding thirty per cent of the aggregate of its paid-up capital and free reserves:

Provided that a producer company may, by special resolution passed in its general meeting and with prior approval of the Central Government, invest in excess of the limits specified in this section.

- (5) All investments by a producer company may be made if such investment are consistent with the objects of the producer company.
 - (6) The Board of a producer company may, with the previous approval of member by a special resolution, dispose of any of its investments referred to in sub-sections (3) and (4).
 - (7) Every producer company shall maintain a register containing particulars of all the investments, showing the names of the companies in which shares have been acquired, number and value of shares; the date of acquisition; and the manner and price at which any of the shares have been subsequently disposed of.
 - (8) The register referred to in sub-section (7) shall be kept at the registered office of the producer company and the same shall be open to inspection by any member who may take extracts there from.
20. Under Section 5 of Foreign Exchange Management Act, 1999, certain rules have been framed for drawal of foreign exchange on current account. According to the said rules, drawal of foreign exchange for certain transactions is prohibited. In respect of certain

transactions drawal of foreign exchange is permissible with the prior approval of Central Government. In respect of some of the transaction, prior permission of Reserve Bank of India is sufficient for drawal of foreign exchange.

- (i) In respect of item No.1 i.e. Payment of Commission on exports made towards equity investment in wholly owned subsidiary abroad of an Indian company is prohibited.
- (ii) Drawal of foreign exchange for remittance of hiring charges of transponder, can be made with the prior approval of the Central Government.
- (iii) So far as remittance for use of Trade Mark in India is concerned, the necessary foreign exchange can be obtained with the prior permission of the Reserve Bank of India.

In the case of (ii) & (iii) above, approval of concerned authority is not required if the payment is made out of funds held in Resident Foreign Currency (RFC) Account or Exchange Earner's Foreign Currency (EEFC) Account of the remitter. Further foreign Exchange can be drawn only from an authorised person.

21. By virtue of the SEBI Act, certain provisions contained in the Securities Contracts (Regulation) Act, 1956 have been amended with a view of giving power to SEBI to regulate and prevent undesirable transactions in securities by regulating the business of dealing therein, by prohibiting options and by providing for certain other matters connected therewith. The functions of the Central Government under the Act have been granted to SEBI. These are:

- (a) Power to call for periodical returns or direct enquiries to be made (Section 6)
- (b) Power to approve the bye-laws of stock exchanges (section 9)
- (c) Power of SEBI to make or amend bye-laws of recognized stock exchanges (Section 10)
- (d) Licensing of dealers in securities in certain areas (section 17)
- (e) Power to compel listing of securities by public companies (Section 21), and to punish.

22. (i) Restriction on disclosure of information (Section 57)

No information relating to any enterprise, being an information which has been obtained by or on behalf of the Commission for the purposes of this Act, shall, without the previous permission in writing of the enterprise, be disclosed otherwise than in compliance with or for the purposes of this Act or any other law for the time being in force.

- (ii) Members, Director General, Registrar, officers and other employees, etc. of Commission to be public servants (Section 58)

The Chairperson and other Members and the Director General, Additional, Joint, Deputy or Assistant Directors General and Registrar and officers and other employees of the Commission shall be deemed, while acting or purporting to act in

pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

(iii) Exclusion of jurisdiction of civil courts (Section 61)

This section provides no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Commission is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

23. Under section 22A of the Securities Contracts (Regulation) Act, 1956 where a recognised Stock Exchange refuses to list the securities of any public company, the company shall be entitled to be furnished with reasons for such refusal. If aggrieved, the company may appeal to the Securities Appellate Tribunal:

- (i) within 15 days from the date on which the reasons for such refusal are furnished to it, or
- (ii) where the Stock Exchange has omitted or failed to dispose of within the time specified in section 73(1A) of the Companies Act, 1956 (i.e., before the expiry of ten weeks from the date of closing of the subscription list as per prospectus) within 15 days from the expiry of the specified time or within such further period not exceeding one month as Securities Appellate Tribunal may allow.

In terms of section 22E of the Act, Civil Court has no jurisdiction to entertain any suit in respect of this matter.

The company may be advised accordingly.

24. Interpretation of the terms 'notwithstanding' and 'subject to'

The word 'notwithstanding anything contained' characterise the non obstante clause. It is generally included to give an overriding effect to the clause over the other. If there is any inconsistency or departure between the non obstante clause and another provision, it is the non obstante clause which will prevail (K. Parasuramaiah v. Pakari Lakshman, A/R 1965 AP 220).

But the word 'subject to' conveys the idea of a provision yielding place to another provision or provisions to which it is made 'subject to'. Hence the effect of non obstante clause (i.e. notwithstanding) is the opposite of a provision which states 'subject to'.

Section 408 of the Companies Act, 1956 opens with the words 'notwithstanding anything contained in this Act. This is a non obstante clause which vests overriding powers in the Government to nominate directors to prevent mismanagement or oppression (Oriental Industrial Investment Corporation Ltd vs. Union of India (1981) 52 Com cases 487, 493 (Del)). This expression indicates that the appointment of directors under this section is not to be controlled by the maximum number or other proportion, if any, fixed by any provisions of the Act. Further, they cannot be removed by the company at general meeting under section 284 of the Companies Act.

25. Board Resolution for purchase of shares of other companies

“Resolved that pursuant to Section 372A of the Companies Act, 1956, the company do purchase 3,50,000 equity shares of Rs. 10 each to M/s MPC & Company Limited (not being under the same management as this company) and that the resolution be passed by all the directors present unanimously.

Resolved further that Mr John, a Director of the company, be and is hereby authorized to sign/ execute the necessary documents in this connection.”