ANALYSIS OF NOV 2011 EXAMINATIONS

CA FINAL

CORPORATE AND ALLIED LAWS

Shree Guru Kripa's Institute of Management
www.shrigurukripa.com

Faculty: S Sundar Raman, ACA
E–Mail: padhuka@shrigurukripa.com

CHAPTER WISE ANALYSIS

PADHUKA'S CORPORATE AND ALLIED LAWS FOR CA FINAL

Chapter	Area	Marks	Remarks
(A) Companies Act			
Accounts	Authentication of Financial Statements	5 Marks	Similar to M 09 and Practical Qn. in 1.17
	Delegation of power w.r.t maintenance of books	8 Marks	Same as M 09 / M 10; Practical Qn. in Pg.1.3
Audit	Appointment of Auditor	8 Marks	
Dividends	Investor Education and Protection Fund	5 Marks	
Directors	Appointment of MD	5 Marks	Similar to Practical Qn. in Pg.3.57
	Interested Director – Sec.299	8 Marks	Same as M 09; Practical Qn. in Pg.4.81
	Sole Selling Agent	8 Marks	Same as M 10; Practical Qn. in Pg.4.43
	Small Shareholder's Director	8 Marks	Same as N 05; Practical Qn. in Pg.3.27
	Sub–Total (Directors)	**29 Marks**	
Investigation	ROC to power to seize the records	8 Marks	Same as M 04 / RTP; Practical Qn. in Pg.2.3
Oppression and Mismanagement	Oppression of Family Promoter cum Director and remedy u/s 397	8 Marks	Same as N 06; Practical Qn. in Pg.6.10
Producer Companies	Directors, Capital and Voting Rights	8 Marks	Same as RTP; Practical Qn. in Pg.6.10
TOTAL COMPANIES ACT		**79 Marks**	
(B) Allied Laws			
Securities Contract Regulation	Corporatization and Demutualization	5 Marks	–
SEBI Guidelines	Book Building and Differential Pricing	8 Marks	Available in FTR (Important Questions)
Banking Law	RBI's Power to inspect and appoint directors	8 Marks	–
Competition Act	Appointment of Chairman – Age Criteria	4 Marks	Same as M 09; Practical Qn. in Pg.12.7
Interpretation of Statute	Preamble and Proviso	4 Marks	
FEMA	Appeal before SD – T/L for filing	4 Marks	
PML, 2002	Reporting requirements u/s 12	4 Marks	
SARFAESI Act	Securitization Procedure u/s 13	4 Marks	
TOTAL ALLIED LAWS		**41 Marks**	
GRAND TOTAL (including Choice)		**120 Marks**	

From the above –

Particulars	Marks
Past Exam Questions (Same / Similar) **Only considering the Scenario based Questions**	70 Marks
Others – Available directly in the book	50 Marks
Total (Including the Marks)	**120 Marks**

Guru Kripa's Guideline Answers for November 2011 FINAL Exam Questions
CORPORATE AND ALLIED LAWS

Question No. 1 is Compulsory. Attempt any 5 Questions from the remaining 6 Questions (Any 4 from Question No.7 alone)

Q.No.	Questions	Reference / Marks	
1 (a)	**The Board of Directors of Vishwakarma Electronics Limited consists of Mr. Ghanshyam, Mr. Hyder (Directors) and Mr. Indersen (Managing Director). The Company has also employed a Full Time Secretary. The Profit and Loss Account and Balance Sheet of the Company were signed by Mr. Ghanshyam and Mr. Hyder. Examine whether the authentication of Financial Statements of the Company was in accordance with the provision of the Companies Act, 1956?**	**Pg.1.16, Q.17 (Sec. 215)** **Similar to M 09 and Practical Qn. in 1.17** **Hint:** Financial Statements should be authenticated by – (a) Company Secretary; and **Directors:** (b) Mr.Indersen (Managing Director) (c) Mr. Ghanshyam, Mr. Hyder (any one or both)	5
1 (b)	**A complaint was received by the Central Government from some Shareholders of a Public Company that a person had been appointed as the Managing Director of the Company without seeking the approval of the Central Government when such approval was required. State as to what action can be taken by the Central Government. Also examine the validity of the acts of the MD, if the complaint is found true.**	**Pg.3.56, Q.7** **Similar to Practical Qn. in Pg.3.57** **Hint:** **Issue 1:** CG can refer to Tribunal. Tribunal shall issue a SCN. Appoint shall be deemed to have come to an end. Penalty can be imposed on Director Rs.1,00,000 and Company – Rs.50,000. **Issue 2:** All acts made upto the date of order shall be valid.	5
1 (c)	**SEBI, for the purpose of Corporatization and Demutualization of a Recognized Stock Exchange issued an order that at least 51% of its Equity Share Capital shall be held, within 12 Months, by the public other than Share Holders having trading rights. Decide whether the said order of the SEBI is valid including the time limit of 12 months as stated in the order.**	**Pg.13.5, Q.6 – Point 8 (Sec.4B)** **Hint:** The order passed by SEBI w.r.t 51% shareholding by Public other than Shareholders having trading rights is valid. Such compliance shall be made by the Stock Exchange within 12 months from the date of publication of order. However, SEBI can extend the said period by another 12 months upon showing sufficient cause.	5
1 (d)	**M/s. USA Industries Limited has constituted "Investor Education and Protection Fund" as required under the Companies Act, 1956 but so far no amounts have been deposited into the said account. Explain with reference to the above said enactment, the amounts payable to the credit of the said account and the period within which the amounts shall be paid.**	**Pg.1.56, Q.67 – Point 4 (Sec.205C)** **Hint:** "Investor Education and Protection Fund" are established only by Central Government. The Company shall only transfer the unclaimed dividend, unclaimed deposits, etc. from the special bank account to the IEP Fund established by CG. There are totally 7 items of credit. (Point 4)	5
2 (a)	**A group of Creditors of a Company lodged a complaint with the Registrar of Companies alleging that the Directors of the Company are engaged in falsification and destruction of account books and records of the Company and urged the Registrar to seize the account books and records of the Company. Discuss whether the Registrar can exercise such powers.**	**Pg.2.3, Q.2 (Sec.234A)** **Same as M 04 / RTP; Practical Qn. in Pg.2.3** **Hint:** ROC has power to seize the documents after making application to the First Class Magistrate / Presidency Magistrate having Jurisdiction.	8
2 (b)	**A Public Limited Company created a Mortgage over its Property in respect of a Loan given by the brother of one of the Directors of the Company. This fact was known to all the Directors of the Company but the interested Director neither disclosed his interest nor abstained from voting when the loan transaction was approved at the Board Meeting. Decide the validity of the said transaction.**	**Pg.4.79 Q.35** **Same as M 09; Practical Qn. in Pg.4.81** **Hint:** **Issue 1: Disclosure required? –** If the whole board of directors is already aware of the facts relating to an interest of a Director, a formal disclosure is not necessary. **(Sivasailam Case)** **Issue 2: Voting Effect?** Mere voting by an Interested Director will not render the Contract Void or Voidable unless with the absence of that vote, there would have been no quorum. The mere fact that voting under such situation is an offence	8

		punishable with fine u/s 299 & 300 does not, ipso facto, render the contract void or voidable. **Conclusion:** In this case, there is not allegation of earning secret profits. The contract of mortgage is fair and in the interest of the Company. Hence it is Valid.	
3 (a)	**Mr. White is working as Chief Accountant in M/s. White Metal Limited. The Board of Directors of the said Company propose to charge him with the duty of ensuring with the provisions of the Companies Act, 1956 so that books of account can be properly maintained and Balance Sheet and Profit and Loss Account can be prepared as per the provisions of Law.** **Draft a "Board Resolution" for the said purpose. Also point out the consequences in case of default, when such a resolution is passed.**	**Pg.1.3; Q.4** **Same as M 09 / M 10; Practical Qn. in Pg.1.3** **Hint:** **Board Resolution:** Refer Qn.4. **Consequences:** Imprisonment upto 6 months and / or fine upto Rs.10,000. (Refer Qn.3, Pg. 1.2)	8
3 (b)	**What do you understand by "Book–Building"? State the conditions whereunder an Issuer may offer specified securities at different prices.**	**Book Building Process:** Pg. 15.17; Q.25.; Diagrammatic View – FTR.4 **Differential Pricing:** Pg. 15.15; Q.22.	8
4 (a)	**On 24th Jan 2010, the Board of Directors of M/s. Black Limited appointed Mr. Z as the Company's Sole Selling Agent for a period of 5 years. At the first general meeting of the Company, held after the Board Meeting, on 29th Sep 2010, the above appointment was disapproved. Referring to the provisions of the Companies Act, 1956 –** • **State the date from which the above appointment comes to an end.** • **What would be your answer in case a clause in the above appointment that "the appointment must be made by the Company in General Meeting" was not inserted as a condition?**	**Pg.1.3; Q.4** **Same as M 10; Practical Qn. in Pg.4.43** **Hint:** If the conditions not attached the agreement is **Void–ab–initio** from the very beginning i.e 24.01.2010. If the condition is included but the same was disapproved in the first General Meeting the appointment comes to an end from the date of meeting i.e **29.09.2010**	8
4 (b)	**Various complaints have been made against the activities of a Co–Operative Banking Company to the effect that if unchecked, the Shareholders, Depositors and others will suffer heavily and the complaints requested for the appointment of Directors by RBI. Discuss whether the RBI has any powers to inspect the records of the Co–Operative Bank to ascertain the truth or otherwise in the complaints and to appoint Directors in the Co–operative Bank under the Banking Regulation Act, 1949.**	**RBI's Power to Inspect (Sec.35):** Refer Pg.16.9; Qn.24 **RBI's Power to appoint Directors (Sec.36AB):** Refer Pg.16.12; Qn.28 (Point 3)	8
5 (a)	**M/s Zebra Private Limited was incorporated in the year 2010 by 3 brothers, namely A, B and C. All the 3 were Promoter Directors named in the Articles of Association and subscribed for 100 shares each in the Company through Memorandum of Association. Thereafter, from time to time, further shares were allotted in proportion of one-third to each of them and in due course the Company started earning substantial profits. Due to greed of money, the 2 brothers, namely A and B joined hands together and assumed complete control of the Company leaving their brother C in lurch. Both the brothers got further shares allotted to themselves, thereby their joint shareholding increase from 66% to 90%, while the shareholding of C got reduced from the erstwhile 33% to 10%. No notice of any Board Meeting was sent to C, who was sidelined and also removed as a Director.** **Aggrieved by the decisions taken by his 2 brothers at his**	**Pg.6.6; Q.6** **Same as N 06; Practical Qn. in Pg.6.10** **Hint:** "C" can make an application u/s 397 to the Tribunal on the grounds of Oppression. Though Sec.397 deals only with oppression in the rights of Members, it has been held by Tribunal in a number of cases that in a Family Company, removal of Promoter–Director is **also** an act of oppression. Hence, the Tribunal may pass an order for **re–appointing** "C" as a Director. **Relief:** "C" may seek the following relief from Tribunal – • That the alleged allotment of further shares be declared null and void, and set aside, • That the alleged removal of the Petitioner, i.e. "C", be declared null and void, and set aside,	8

	back, C seeks your advice for taking out appropriate proceedings before the Court or Judicial authority of competent jurisdiction. Also suggest the nature of reliefs he may claim while filing his case.	• That the Board of Directors of the Company be re–constituted with the Petitioner (i.e. "C") and his two brothers, and another "Independent Director" as the Chairman of the Board to be appointed by the Tribunal with casting vote.	
5 (b)	**An Inter–State Co–Operative society was incorporated on 1st May 2011 as a Producer Company under the provisions of the Companies Act, 1956. Advise the Company in respect of the following proposals –** **(i) The Company decides to have 18 Directors on its Board after Incorporation.** **(ii) Transferability of Shares and** **(iii) Share Capital and Voting Rights.**	**Hint:** **Issue 1: No. of Directors** – Refer Pg. 8.9; Q.15 Since the ISCS was converted into a Producer Company on 01.05.2011, it can have 18 Directors on its Board upto 01.05.2012. Beyond this date, the Producer Company has to bring its number of Directors to 15. The proposal to have 18 Directors is valid only for a period of 1 year from 01.05.2011. **[Same as RTP; Practical Qn. in Pg.6.10]** **Issue 2: Transferability of Shares** – Refer Pg. 8.8; Q.14 **Issue 3: Share Capital –** Refer 8.3; Q.4 (Point 5) **Issue 4: Voting Rights** – Refer Pg. 8.8; Q.12 **(Similar M 06, N 10)**	8
6 (a)	**State in the light of the provisions of the Companies Act, 1956, as to how the auditor will be appointed in the following cases –** **(i) A Company in which a nationalized bank is holding 30% of the subscribed capital.** **(ii) A Government Company us/ 617** **(iii) A Company in which office of Auditor has become vacant on account of resignation by the auditor.**	**Hint:** **Issue 1:** Requires passing of Special Resolution in AGM **– Refer Pg. 1.31; Q.36** **Issue 2:** Appointment shall be made by C & AG **– Refer Pg. 1.33; Q.37** **Issue 3:** Appointment shall be made by the Company in General Meeting **– Refer Pg. 1.30; Q.34**	8
6 (b)	**M/s. Neemuch Pharma Limited is a Company listed with Malhargarh Stock Exchange. Some Small Shareholders of the said Company want to appoint Mr. Avadhesh as a Director as their representative on the Board of Directors of the said Company. Mr. Avadhesh is holding 1000 Equity Shares of ₹ 10 each in the said Company. State the provisions of the Companies Act, 1956 in relation to the proposal to appoint Mr. Avadhesh as a SSD.**	**Pg.3.26; Q.27** **Same as N 05; Practical Qn. in Pg.3.27** **Hint:** Proposal should be submitted by atleast $1/10^{th}$ of the total Small Shareholders in the Company. Notice shall be signed by atleast 100 small shareholders.	8
7 (a)	**The Central Government on the recommendation of selection committee appoints Mr. Ramesh aged 56 years as Member of the Competition Commission of India to be effective from 1st January, 2010. State with reference to the provisions of Competition Act, 2002 the term for which he will be appointed and whether he can be reappointed as such and also if he resigns after 2 years whether the vacancy can be filled up by the Chairman of the Commission.**	**Pg.12.6; Q.9** **Same as M 09; Practical Qn. in Pg.12.7** **Hint:** **Issue 1:** Terms – 5 Years **Issue 2:** Can be reappointed only for 4 years (i.e. till he attains the age of 65 years) **Issue 3:** Vacancy due to resignation shall be filled as per Section 9. (i.e by making fresh appointment by CG based on recommendation made by Selection Committee)	4
7 (b)	**Explain the importance of "Preamble" and "Proviso" being internal aids to interpretation.**	**Preamble:** Pg.18.12 Q.15 (Point 3) **Proviso:** Pg.18.12 Q.15 (Point 8)	4
7 (c)	**A Person aggrieved by an order made by the Special Director (Appeals) desires to file an appeal against the said order to the Appellate Tribunal but the period of limitation of 45 days as prescribed in Section 19(2) of the FEMA, 1999 has expired. Advice.**	**Pg.11.63; Q.38 (Sec 17)** **Hint:** SD can entertain late application if he is satisfied that there was sufficient cause for not filing it within 45 days.	4
7 (d)	**The Banking Companies, Financial Institutions and Intermediaries of Securities Market are under some obligations under the PML Act, 2002, State, in brief, these obligations.**	**Pg.16.36; Q.10/ Q.11 (Sec.12, Rule3)** **Hint:** Maintain and Furnish Cash Transaction Report, Suspicious Transaction Report. Records should be maintained for 10 years.	4
7 (e)	**Explain briefly the procedure relating to enforcement of security interest under SARFAESI Act, 2002.**	**Hint: Pg.16.21; Q.9 (Sec 13)** **Diagrammatic View at Pg. 16.21**	4