

Answer 8(vi)

It is a manufacturing process. In the case of *Shri Laxmi Dass Premji Ghee Merchant v. R. Inspector of Factories Gantur* (1960) 1 LLJ, where ghee brought from various customers was sampled chemically, analysed and packed in tins for transportation to the Head Office of the concern for sale in the market, the court held that manufacturing process was going in the premises.

Answer 8(vii)

The employer is liable to pay compensation.

In the given problem, the worker lost his mental balance as a result of an injury by accident and committed suicide. Suicide is the effect of injury sustained by him and is not while working for personal benefit or acting outside the scope of his employment. Consequently the employer will be held liable. To succeed in claim, it must be proved that the injury arose out of and in the course of employment because compensation is permitted only for those injuries which are sustained in the course of employment and arise out of employment. If that is not proved, no compensation can be claimed by the workman's dependents.

SECURITIES LAWS AND COMPLIANCES

Time allowed : 3 hours

Maximum marks : 100

PART A

(Answer Question No. 1 which is **COMPULSORY**
and any three of the rest from this part)

Question 1

- (a) State, with reasons in brief, whether the following statements are true or false :
- (i) 'Derivatives' are contracts which do not derive their value from any assets.
 - (ii) Trustees are required to disclose the basis of calculation of repurchase price and NAV of various schemes of mutual fund.
 - (iii) Participatory notes are derivative instruments.
 - (iv) 'Underwriter' means a person who engages in the business of selling of an issue of securities of a body corporate.
 - (v) The collective investment management company is not permitted to launch any scheme for the purpose of investing in securities. (2 marks each)
- (b) Choose the most appropriate answer from the given options in respect of the following :
- (i) A company cannot buy-back the securities from —
 - (a) Free reserves
 - (b) Securities premium account
 - (c) Borrowed money
 - (d) Proceeds of fresh issue.
 - (ii) Duration of future contract on NSE is —
 - (a) One month
 - (b) Two months
 - (c) Three months
 - (d) Six months.
 - (iii) Certificate of deposits are issued in the form of —
 - (a) Bill of exchange
 - (b) Usance bill of exchange
 - (c) Usance promissory notes
 - (d) Term deposit.
 - (iv) Venture capital funds are regulated by —
 - (a) RBI
 - (b) SEBI
 - (c) Stock exchange
 - (d) Ministry of Corporate Affairs.

(v) *FCCBs are unsecured and carry interest at —*

(a) *Variable rate*

(b) *Fixed rate*

(c) *Floating rate*

(d) *Not determined.*

(1 mark each)

Answer 1(a)(i)

False

Derivatives are contracts which derive values from the value of one or more of other assets, called underlying assets.

Answer 1(a)(ii)

True

The AMC shall disclose the basis of calculating the repurchase price and NAV of the various schemes of the fund in the scheme particulars and disclose the same to the investors at such intervals as may be specified by the trustees and SEBI.

Answer 1(a)(iii)

True

Participatory notes are derivative instruments which are issued by FIIs to foreign investors.

Answer 1(a)(iv)

False

‘Underwriter’ means a person who engages in the business of underwriting of an issue of securities of a body corporate.

Answer 1(a)(v)

True

The Collective Investment Management Company should not launch any scheme for the purpose of investing in securities.

Answer 1(b)(i)

(c) Borrowed money

Answer 1(b)(ii)

(c) Three months

Answer 1(b)(iii)

(c) Usance promissory notes.

Answer 1(b)(iv)

(b) SEBI

Answer 1(b)(v)

- (b) Fixed rate

Question 2

- (a) Distinguish between any two of the following :

(i) 'French auction' and 'Dutch auction'.

(ii) 'Cut off yield' and 'cut off price'.

(iii) 'Initial margin' and 'maintenance margin'. (4 marks each)

- (b) "Certain securities are not available to a company for buy-back." Explain.

(4 marks)

- (c) Expand the following :

(i) FCCB

(ii) CIS

(iii) SPN. (1 mark each)

Answer 2(a)(i)**'French auction' and 'Dutch auction'**

There are two types of auction for treasury bills. In French Auction, also known as Multiple Price Based Auction, all bids equal to or above the cut-off price are accepted. However, the bidder has to obtain the treasury bills at the price quoted by him. This method is followed in the case of 364 days treasury bills and is valid only for competitive bidders.

In Dutch auction, also known as Uniform Price Based Auction, all the bids equal to or above the cut-off price are accepted at the cut-off level. However, unlike the Multiple Price based method, the bidder obtains the treasury bills at the cut-off price and not the price quoted by him. This method is applicable in the case of 91 day treasury bills only. The system of Dutch auction has been done away with by the RBI w.e.f. 08.12.2002 for the 91 day treasury T.Bill.

Answer 2(a)(ii)**'Cut off yield' and 'Cut off Price'**

Cut off yield is the rate at which bids are accepted. Bids at yields higher than the cut-off yield are rejected and those lower than the cut-off are accepted. The cut-off yield is set as the coupon rate for the security. Bidders who have bid at lower than the cut-off yield pay a premium on the security, since the auction is a multiple price auction.

Cut off price is the minimum price accepted for the security. Bids at prices lower than the cut-off are rejected and at higher than the cut-off are accepted. Coupon rate for the security remains unchanged. Bidders who have bid at higher than the cut-off price pay a premium on the security, thereby getting a lower yield. Price based auctions lead to finer price discovery than yield based auctions.

Answer 2(a)(iii)**‘Initial Margin’ and ‘Maintenance Margin’**

“Initial margin” in this context means the minimum amount, calculated as a percentage of the transaction value, to be placed by the client, with the broker, before the actual purchase. The broker may advance the balance amount to meet full settlement obligations.

“Maintenance margin” means the minimum amount, calculated as a percentage of market value of the securities, calculated with respect to last trading day’s closing price, to be maintained by client with the broker.

Answer 2(b)

Regulation 19(5) of SEBI (Buy Back of Securities) Regulations, 1998 provides that the following Securities are not available to a company for buy-back:

- (i) Securities in lock-in period: Securities in lock-in period as per SEBI (DIP) guidelines are not available for buyback until the lock-in period expires.
- (ii) Non-transferable Securities: Securities which are under lien or are pledged or restricted by Court.
- (iii) Disputed Securities kept in abeyance: Securities which are under dispute and have kept in abeyance under section 206A or in respect of which transfer or transmission has not been effected.

Answer 2(c)(i)

FCCB - Foreign Currency Convertible Bonds

Answer 2(c)(ii)

CIS - Collective Investment Scheme

Answer 2(c)(iii)

SPN - Secured Premium Note

Question 3

(a) Write short notes on any four of the following :

- (i) Dual option warrants
- (ii) Securities Appellate Tribunal
- (iii) Escrow account
- (iv) Hybrid instrument
- (v) Exchange traded fund. (2 marks each)

(b) Explain the procedure for grant of registration certificate to venture capital fund by SEBI and effect of refusal to grant the certificate. (4 marks)

(c) Explain the term ‘demat’. State the benefits of demat securities. (3 marks)

Answer 3(a)(i)**Dual Option Warrants**

Dual option warrants are designed to provide the buyer with good potential of capital appreciation and limited downside risk. Dual option warrants may be used to sell equity shares in different markets. For example, equity shares or debentures may be issued with two warrants - one warrant giving right to the purchaser to be allotted one equity share at the end of a certain period and another warrant with a debt or preference share option.

Answer 3(a)(ii)**Securities Appellate Tribunal**

The Central Government may, by notification establish an appellate tribunal known as Securities Appellate Tribunal (SAT) to exercise the jurisdiction, powers and authority conferred on such tribunal under the SEBI Act, 1992. The Central Government has set up a Tribunal at Mumbai. Any person aggrieved by the order of the SEBI may refer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter. The SAT is not bound by the Code of Civil Procedure, 1908 but is guided by the principle of natural justice and has the powers to regulate its own proceedings.

Answer 3(a)(iii)**Escrow Account**

Escrow Account means an account in which money is held until a specified duty is performed. Escrow account is opened by the issuing company in case of public issue of securities, buy back of securities, take over etc. A sum prescribed under the Regulations/ Guidelines is transferred to the Escrow Account unless the said formalities regarding the event are over. The Escrow Account may consist of cash deposited with a schedule commercial bank, bank guarantee in favour of merchant banker, deposit of acceptable securities with appropriate margin with the merchant banker.

Answer 3(a)(iv)**Hybrid instrument**

Hybrid instrument is an instrument which is created by combining the features of equity and debt e.g. Convertible preference shares, Cumulative convertible preference shares, non convertible debentures with equity warrants, partly convertible debentures, partly convertible debentures with Khokha (buy-back arrangement), Optionally convertible debenture, warrants convertible into debentures or shares, secured premium notes with warrants etc.

Answer 3(a)(v)**Exchange Traded Fund**

Exchange Traded Fund (ETF) represent a basket of securities that are traded on an exchange. It is similar to index mutual fund but is traded more like a stock. It is a rapidly growing class of financial product and is typically organized as unit trust. ETF can be bought and sold throughout the trading day, allowing for intraday trading - which is rare

with mutual funds. Unlike mutual funds, ETF do not trade necessarily at the net asset value of its underlying holding, meaning an ETF could potentially trade above or below the value of the underlying portfolio.

Answer 3(b)

Procedure for grant of certificate to Venture Capital Fund

SEBI after getting satisfied that the applicant is eligible for the grant of certificate should send intimation to the applicant and after the receipt of intimation, the applicant should pay the registration fee as specified. SEBI on receipt of the registration fee grants a certificate of registration. The venture capital fund should abide by the provisions of the Act. It should not carry on any other activity other than that of a venture capital fund and should forthwith inform SEBI in writing. Otherwise the decision of SEBI to reject the application should be communicated to the applicant within 30 days.

Effect of refusal to grant certificate

Any applicant whose application has been rejected cannot carry on any activity as a venture capital fund. Thus any company or trust or a body corporate whose application for grant of certificate has been rejected by SEBI should on and from the date of the receipt of the communication cease to carry on any activity as a venture capital fund.

Answer 3(c)

Demat

‘Demat’ refers to dematerialisation which is a process by which the physical share certificates of an investor are taken back by the Company and an equivalent number of securities are credited to the investors account in electronic form at the request of the investor.

Benefits of Demat Securities

- Elimination of bad deliveries
- Elimination of all risks associated with physical certificates
- Immediate transfer and registration of securities
- Faster disbursement of non cash corporate benefits like rights, bonus, etc.
- Reduction in handling of huge volumes of paper

Question 4

- (a) *What action lies against SEBI registered intermediaries in case of default/violation under the SEBI Act, 1992 ?* (4 marks)
- (b) *Briefly discuss the guidelines for issue of commercial paper.* (4 marks)
- (c) *“Corporate Governance is the application of best management practices.”*
Comment. (4 marks)
- (d) *Explain the following credit rating symbols —*
 - (i) ER1A
 - (ii) ER1C
 - (iii) M1. (1 mark each)

Answer 4(a)

Chapter VIA of SEBI Act, 1992, contains Section 15A to 15J which deals with penalties which can be imposed under the Act for various failures, defaults, non-disclosure and other offences.

Section 15B and 15C lays specific action in case of default /violation by intermediaries under the SEBI Act, 1992.

SEBI (Intermediaries) Regulations, 2008 provide for the imposition of any of the following penalties as the case may be,

(i) Minor Penalties-

- (a) Censure
- (b) Prohibiting the intermediary to take up any new assignment or mandate or launch a new scheme for a period up to six months.
- (c) Debarring a partner or a whole time director of the intermediary from carrying out the activities as intermediary in the intermediary firm or company and other capital market related institutions for a period up to six months.
- (d) Suspension of certificates of registration for a period up to three months.
- (e) Debarring a branch or an officer of the intermediary from carrying out the activities for a period upto six months.

(ii) Major Penalties-

- (a) Cancellation of certificates of registration.
- (b) Suspension of certificate of registration for a period exceeding three months,
- (c) Taking of action under sub-clause b, c or e of Clause (i) for a period exceeding six months.

Answer 4(b)

The Guidelines provide eligibility criteria as to net worth, working capital limit for issue of commercial paper. The requirements are as under:

1. *Rating Requirement*- All eligible participants shall obtain the credit rating for issuance of Commercial Paper from the Credit Rating Agencies registered with SEBI.
2. *Maturity*- CP can be issued for maturities between a minimum period of 7 days and a maximum up to one year from the date of the issue.
3. *Denominations*- CP can be issued in denominations of Rs.5 lakh or multiples thereof. Amount invested by a single investor should not be less than Rs.5 lakh (face value).
4. *Limits and the Amount of Issue of CP*- CP can be issued as a “stand alone” product.
5. *Issuing and Paying Agent (IPA)*- Every issuer must appoint an IPA for issuance of CP. Only a scheduled bank can act as an IPA.

6. *Mode of Issuance* - CP can be issued either in the form of a promissory note or in a dematerialized form.
7. *Preference for Dematerialization* - Banks, FIs and PDs are required to make fresh investments and hold CP only in dematerialized form.

Answer 4(c)

The ICSI has defined 'Corporate Governance' to mean that it is the application of best management practices, compliance of law in the letter and spirit and adherence to ethical standards for effective management and distribution of wealth and discharge of social responsibility for sustainable development of all shareholders.

Adoption of best corporate governance practices distinguishes a company from ordinary companies, which are content merely in complying with prescribed legal requirements. The companies adopting "best corporate governance practices" stand out from others. The adoption of such best practices is purely voluntary and depends on the financial and other capabilities of the company apart from the commitment of the company to values and ethical business.

Answer 4(d)(i)

ER1A — Excellent Earnings Prospects; Low Risk (ICRA Equity Grade).

Answer 4(d)(ii)

ER1C — Excellent Earnings prospects; High Risk(ICRA Equity Grade).

Answer 4(d)(iii)

M1 – Indicates very low sensitivity to changing interest rates and other market conditions (ICRA Debt Fund Rating).

Question 5

(a) *Explain the following terms related to capital market :*

- (i) *Incubators*
- (ii) *Angel investors*
- (iii) *Private equity players.*

(2 marks each)

(b) *Ajay purchases 8.4% Government of India Bond, 2018 of face value of Rs.20 lakh @ Rs.102.50 for every unit of security having face value of Rs.100. The settlement is due on 13th October, 2009. What is the amount to be paid by Ajay? (Assuming that interest is payable on 13th May and 13th November every year.)*

(5 marks)

(c) *Discuss the regulatory framework governing primary market intermediaries.*

(4 marks)

Answer 5(a)(i)**Incubators**

An incubator is a hardcore technocrat who works with an entrepreneur to develop a business idea, and prepares a Company for subsequent rounds of growth & funding. E-Ventures, Infinity are examples of incubators in India.

Answer 5(a)(ii)**Angel Investors**

An angel is an experienced industry-bred individual with high net worth. Typically, an angel investor would invest only in his chosen field of technology, take active participation in day-to-day running of the Company, invest small sums and does not insist on detailed business plans sanction.

Answer 5(a)(iii)**Private Equity Players**

They are established investment bankers. They typically invest into proven/ established businesses. They have “financial partners” approach and invest between USD 5-100 million.

Answer 5(b)

Coupon rate — 8.4%

Year of maturity — 2018

Face value of Rs. 20 lacs @ Rs.102.50

Therefore, the principal amount payable is Rs.20 lacs x 102.50

= Rs. 20,50,000

Interest for the period from 13-5-08 to 13-10-08

No of days	May	18
	June	30
	July	30
	Aug.	30
	Sep.	30
	Oct.	12
		<u>150</u>

$$\text{Interest payable} = \frac{20,00,000 \times 8.40 \times 150}{360 \times 100} = \text{Rs. } 70,000$$

$$\begin{aligned} \text{Total amount to payable by Mr. X} &= \text{Rs. } 20,50,000 + \text{Rs. } 70,000 \\ &= \text{Rs. } 21,20,000 \end{aligned}$$

Note : For Government dated securities, the day count is taken as 360 days for a year and 30 days for every completed month.

Answer 5(c)

Primary market intermediary is the intermediary connected to the issue of securities by the issuer company in the primary market. Various market intermediaries are involved in the primary markets are Merchant Bankers/Lead managers, Registrars and Share Transfer Agents, Underwriters and Bankers to Issue.

These market intermediaries operate under regulatory framework of SEBI Act, 1992, Securities Contracts (Regulation) Act, 1956, Securities Contracts (Rules), 1957. As per Section 11 of SEBI Act, 1992 it is the duty of SEBI to register and regulate the intermediaries in primary and secondary market. SEBI has also issued regulations in respect of each intermediary to ensure proper services to be rendered by them to the investors and the capital market e.g. SEBI (Underwrites) Regulations, SEBI (Banker to an Issue) Regulations, SEBI (Prohibition of Insider Trading) Regulations, 1992, etc. SEBI has also issued SEBI (Intermediaries) Regulations 2008, to put in place a comprehensive framework which will apply to the intermediaries. The new regulation provides for all intermediaries to register and regulate the permanent registration, multiple registration form, fit and proper person criteria, suspension and cancellation of certificate of registration.

PART B

(Answer ANY TWO questions from this part.)

Question 6

- (a) *What is Indian Depository Receipt (IDR) ? What are eligibility criteria for issue of IDRs ?* (5 marks)
- (b) *What is 'price stabilization fund' ?* (5 marks)
- (c) *Write a note on 'due diligence' in the process of public issue of securities.* (5 marks)
- (d) *State the powers and functions of the 'Ombudsman' under the SEBI (Ombudsman) Regulations, 2003.* (5 marks)

Answer 6(a)

Indian Depository Receipts

"Indian Depository Receipt" (IDR) means any instrument in the form of a depository receipt created by Domestic Depository in India against the underlying equity shares of issuing company.

Eligibility for issue of IDRs

Companies (Issue of Indian Depository Receipts) Rules, 2004 provides that an issuing company shall not issue IDRs unless it satisfies the following conditions, namely-

- (a) Its pre-issue paid-up capital and free reserves are at least US \$50 million and it has a minimum average market capitalization (during the last 3 years) in its parent country of at least US \$ 100 million.
- (b) It has a continuous trading record or history on a stock exchange in its parent country for at least three immediately preceding years.
- (c) It has a track record of distributable profits in terms of Section 205 of the Companies Act, 1956, for at least three out of immediately preceding five years.
- (d) It fulfills such eligibility criteria as may be laid down by SEBI from time to time in this behalf.
- (e) Its Pre issue debt equity ratio is not more than 2:1.

SEBI (DIP) Guidelines, 2000 provides eligibility criteria for issue of IDR- the issuer company should be listed in its home country; has not been prohibited to issue securities by any Regulatory Body and has a good track record with respect to compliance with securities market regulations.

Answer 6(b)

The fund created to cause stabilization of the share price of an entity specially after the public issue of securities is known as price stabilization fund. The aim of the fund is to project the share price from falling below the issue price. For the purpose of operating a price stabilization mechanism post listing the issuer company appoints a stabilization agents (SA). The prime responsibility of SA shall be to stabilize post listing price of shares. To this end, SA shall determine the timing of buying the shares, the quantity to be bought, the price at which the shares are to be bought etc. stabilization mechanism shall be available for the period disclosed by the company in the prospectus which shall not exceed 30 days from the date when trading permission was given by the exchanges.

Answer 6(c)

Due Diligence

Due Diligence includes all the activities that are associated with evaluating a proposal. It includes carrying out reference checks on the proposal related aspects. In relation to public issue of securities, due diligence is carried out by a merchant banker. The Lead Merchant Banker is responsible for verification of the contents of a prospectus or the letter of offer in respect of an issue of securities and reasonableness of the views expressed therein and to submit to SEBI at least 2 weeks prior to the opening of issue for subscription, a due diligence certificate in the prescribed form.

In process of due diligence, the Merchant Banker examines various documents including those relating to litigation like commercial disputes, patent disputes, disputes with collaborators etc. and also discuss with the company its directors and other officers and other agencies on matters including objects of the issue, projected profitability, price justification etc. before giving the Due Diligence Certificate.

Answer 6(d)

The Ombudsman has the following powers and functions:

- (a) to receive complaints specified under SEBI (Ombudsman) Regulation against any intermediary or a listed company or both;
- (b) to consider such complaints and facilitate resolution thereof by amicable settlement;
- (c) to approve a friendly or amicable settlement of the dispute between the parties;
- (d) to adjudicate such complaints in the event of failure of settlement thereof by friendly or amicable settlement.

The Ombudsman is required to draw up an annual budget for his office in consultation with the Board and shall incur expenditure within and in accordance with the provisions

of the approved budget and submit an annual report to the SEBI within three months of the close of each financial year containing general review of activities of his office. The ombudsman is also under obligation to furnish from time to time such information to SEBI as may be required by the SEBI.

Question 7

- (a) *What do you understand by 'offering circular' for Euro-issue ? Mention any five aspects which should be covered in the offering circular.* (5 marks)
- (b) *What are the disclosures in the Directors' Report as per the SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999 ?* (5 marks)
- (c) *Explain the procedure of bidding in book building issue.* (5 marks)
- (d) *Discuss the approvals required from various authorities in issuance of GDRs and FCCBs.* (5 marks)

Answer 7(a)

Offering Circular is a document issued by the issuer company through which the prospective investors can access vital information regarding the company in order to form their investment strategies. It is to be prepared very carefully giving true and complete information regarding the financial strength of the company, its past performance, past and envisaged research and business promotion activities, track record of promoters and the company, ability to trade the securities on Euro capital market.

The Offering Circular for Euro-issue offering should typically cover the following contents:

- (i) Background of the company and its promoters including date of incorporation and objects, past performance, production, sales and distribution network, future plans, etc.
- (ii) Capital structure of the company- existing, proposed and consolidated.
- (iii) Deployment of issue proceeds.
- (iv) Financial data indicating track record of consistent profitability of the company.
- (v) Group investments and their performance including subsidiaries, joint venture in India and abroad.
- (vi) Investment considerations.
- (vii) Description of shares.
- (viii) Terms and conditions of global depository receipt and any other instrument issued along with it.
- (ix) Economic and regulatory policies of the Government of India.
- (x) Details of Indian securities market indicating stock exchange, listing requirements, foreign investments in Indian securities,
- (xi) Market price of securities.
- (xii) Dividend and capitalization.

- (xiii) Securities regulations and exchange control.
- (xiv) Tax aspects indicating analysis of tax consequences under Indian law of acquisition, membership and sale of shares, treatment of capital gains tax, etc.
- (xv) Status of approvals required to be obtained from Government of India.
- (xvi) Summary of significant differences in Indian GAAP, UK GAAP and US GAAP and expert's opinion.
- (xvii) Report of statutory auditor.
- (xviii) Subscription and sale.
- (xix) Transfer restrictions in respect of instruments.
- (xx) Legal matters etc.
- (xxi) Other general information not forming part of any of the above

NOTE : Students may mention any five points mentioned above.

Answer 7(b)

Directors' report shall contain the following disclosures about ESOP Scheme:

- (i) The total number of shares covered by the ESOP as approved by the shareholders;
- (ii) The pricing formula;
- (iii) Options granted, options vested, options exercised, options forfeited, extinguishment or modification of options, money realized by exercise of options, total number of options in force, employee-wise details of options granted to senior managerial personnel and to any other employee who receive a grant in any one year of options amounting to 5% or more of options granted during that year;
- (iv) Fully diluted earning per share (EPS) computed in accordance with International Accounting Standards.

The Director's Report related to ESOPs should contain the following disclosures:

- (a) the details of the number of shares issued in the scheme;
- (b) the price at which such shares are issued;
- (c) employee-wise details of the shares issued to: senior managerial personnel; any other employee who is issued shares in any one year amounting to 5% or more shares issued during that year; identified employees who were issued shares during any one year equal to or exceeding 1% of the issued capital of the company at the time of issuance.
- (d) diluted Earning Per Share (EPS) pursuant to issuance of shares under the scheme; and
- (e) consideration received against the issuance of shares.

Answer 7(c)

Bidding Procedure

- (i) Individual as well as qualified institutional buyers shall place their bids only through the 'brokers' who shall have the right to vet the bids. The applicant shall

enclose the proof of DP ID and Client ID along with the application, while making bid.

- (ii) During the period the issue is open to the public for bidding, the applicants may approach the brokers of the stock exchange/s through which the securities are offered under on-line system, to place an order for bidding to the securities.
- (iii) Every broker shall accept orders from all clients/investors who place orders through him. The investors shall have the right to revise their bids provided that Qualified Institutional Buyers shall not be allowed to withdraw their bids after the closure of the bidding.
- (iv) There shall be a standard bidding form to ensure uniformity in bidding and accuracy.
- (v) At the end of each day of the bidding period the demand shall be shown graphically on the terminals for information of the syndicate members as well as the investors. The identities of the Qualified Institutional Buyers making the bidding, would however not be made public.

Answer 7(d)

The following approvals are required for issue of Global Depository Receipts (GDRs) and Foreign Currency Convertible Bonds (FCCBs)

- (1) A meeting of Board of Directors is required to be held for approving the proposal to raise money from Euro Capital market, through board resolution indicating therein specific purposes for which funds are required, quantum of the issue, country in which issue is to be launched, time of the issue etc.
- (2) A special resolution under Section 81(1A) of the Companies Act, 1956 is required to be passed at a duly convened general meeting of the shareholders of the company.
- (3) Approval from Ministry of Finance is required for FCCB issues exceeding stipulated limit
- (4) The issuer company has to obtain approvals from Reserve Bank of India under circumstances specified under the guidelines issued by the concerned authorities from time to time.
- (5) The issuing company has to make a request to the domestic stock exchange for in-principle consent for listing of underlying shares which shall be lying in the custody of domestic custodian.
- (6) The company is required to obtain in principle consent of Financial Institutions on the broad terms of the proposed issue.

Question 8

- (a) *“SEBI expects the investors to make investments with their eyes and ears open.” Comment.* (5 marks)
- (b) *Discuss the end use of external commercial borrowings under approval route.* (5 marks)

(c) *Discuss the various formalities to be complied with for the issue of bonus shares under the SEBI (Disclosure and Investor Protection) Guidelines, 2000.*

(10 marks)

Answer 8(a)

Protection of the investor has been the main concern of SEBI. SEBI has issued various Guidelines, Circulars, Instructions relating to issue of capital. Disclosure of full and fair details of all aspects of securities issued has been made the corner stone of Capital Mobilization by Corporates. The various Guidelines emphasise the need to give full disclosure of facts in the issue documents, advertisements, prospectus etc. SEBI has issued a number of Regulations on different intermediaries, which are binding on them. However, SEBI expects the investors to make investments with their eyes and ears open and expects investors to go through the disclosures contained in the various documents issued by the company and make an informed decision before investing. For this purpose investors have to educate themselves on the fundamental aspects of choosing the securities, understanding the past record and future prospects of the companies plans. SEBI has also issued Investor Education Guide, which contains briefly the Risk of Corporate Investments, Investors Rights and Responsibilities, basics of Trading in Securities, Transfer and Transmission of Securities, Depository and Dematerialisation of Share Certificates and Grievance redressal mechanism available.

Answer 8(b)

Utilization of ECB Proceeds

ECB proceeds can be utilized for overseas direct investment in Joint Ventures (JV)/ Wholly Owned Subsidiaries (WOS) subject to the existing guidelines on Indian Direct Investment in JV/WOS abroad.

Utilisation of ECB proceeds is permitted in the first stage acquisition of shares in the disinvestments process and also in the mandatory second stage offer to the public under the Government's disinvestments programme of PSU shares.

However, utilization of ECB proceeds is not permitted for on-lending or investment in capital market by corporates.

Utilisation of ECB proceeds is also not permitted in real estate. The term 'real estate' excludes development of integrated township.

End-uses of ECB for working capital, general corporate purpose and repayment of existing Rupee loans are also not permitted.

Answer 8(c)

The Requirements to be complied with while making a Bonus Issue are given hereunder:

1. *Rights of FCD/PCD holders*

The proposed bonus issue should not dilute the value or rights of the fully or partly convertible debentures.

2. *Out of Free Reserves*

The bonus issue is to be made out of free reserves built out of the genuine profits or securities premium collected in cash only.

3. *Revaluation Reserves*

The reserves created by revaluation of fixed assets should not be capitalised.

4. *Bonus Issue not to be in lieu of Dividend*

Bonus issue should not be made in lieu of dividend.

5. *Fully Paid Shares*

If there are any partly paid-up shares, these shares should be made fully paid-up before the bonus issue is made.

6. *No Default in respect of Fixed Deposits/Debentures*

The company should not have defaulted in the payment of any interest or principal in respect of its fixed deposits and interest on debentures or on redemption of debentures.

7. *Statutory Dues of the Employees*

The company should not have defaulted in the payment of its statutory dues to the employees such as contribution to provident fund, gratuity, bonus, minimum wages, workmen's compensation, retrenchment compensation, payments to contract labour, etc.

8. *Implementation of Proposal within Six Months*

The bonus issue should be made within a period of six months from the date of approval of the Board of directors. The company cannot reverse the decision once it has been taken by the Board of directors.

9. *Provision in Articles of Association*

The Articles of Association of the Company should provide for capitalisation of reserves and if not a General Body Meeting of the company is to be held and a special resolution making provisions in the Articles of Association for capitalisation should be passed.

10. *Authorised Capital*

If consequent upon the issue of bonus shares, the subscribed and paid-up capital of the company exceed the authorised share capital, a General Meeting of the company should be held to pass necessary resolution for increasing the authorised capital.

11. *Compliance Certificate*

A certificate duly signed by the issuer company and counter signed by statutory auditor or by Company Secretary in practice to the effect that the provisions for issue of bonus shares under the SEBI (DIP) Guidelines, 2000 have been complied with shall be forwarded to the SEBI.
