

PAPER – 4 : CORPORATE LAWS AND SECRETARIAL PRACTICE

COMPANIES ACT, 1956

1. With reference to the relevant provisions of the Companies Act, 1956, advise the company on the matters relating to sending of notices of Board meetings:
 - (a) Mr. A, a director states that he will not be able to attend next Board meeting.
 - (b) A Director goes abroad for 5 months and an alternate director has been appointed in his place.
 - (c) Mr. C, is a director residing abroad representing the foreign collaborator and articles of association of the company provides for sending notice to such directors.
2. The Board of Directors of a public company wants to donate out of its profits to charitable purposes which are not directly related to the business of the company. Advise, whether the company can do so? Would your answer be different, if the said company is working at a loss?
3. The director of a public company desire to authorize the managing director to invest from time to time surplus funds in the purchase of shares of other companies. State with reasons whether delegation of such power to the managing director is valid?
4. A shareholder/creditor of a Public Limited Company wants to file a petition praying for relief against oppression as well as for winding up of the company. Advise whether such a composite or simultaneous petition is maintainable?
5. ABC Ltd has made an offer to acquire all the equity shares of XYZ Ltd at a certain price. Members of the company who hold 90% of the shares of XYZ Ltd have accepted the offer. The remaining shares are held by 2 persons who do not agree to the deal. Explain the procedure to finalize the deal. State the steps to be taken to acquire the shares of dissenting shareholders? Also, state whether ABC Ltd can acquire all the shares in XYZ Ltd?
6. In the context of provisions of the Companies Act, 1956 and case laws if any, answer the following:
 - (a) Amalgamation of a foreign company with an Indian company.
 - (b) Is the scheme of amalgamation requires approval by preference shareholder?
 - (c) When will Court order dissolution of the transferor company?
7. The Articles of Association of M/s ABC Ltd provides for five directors and all of them are in position. How many directors are liable to retire at the ensuing Annual General Meeting? Will it make any difference, if Mr. A, a whole-time director is not liable to retire by rotation?
8. Analyse and advise on the following situation:

“A director was continuously absent at 5 meetings of the Board. The other directors claim that it is a breach of trust and violation of the relevant provisions of the Companies Act, 1956”.
9. A Public company is contemplating a proposal for the appointment of its directors by the principle of proportional representation. Advise suitably the company the methods it may adopt for the purpose.
10. A group of shareholders are approaching you for an advise in relation to the fact that the affairs of the company are being conducted in a manner oppressive to the shareholders. Advise them as to the relevant provision of the Companies Act, 1956 under which their complaint would fall into? What would be your advice, if they complain that the affairs are prejudicial to the interest of the company?
11. There are 9 directors and 2 offices of the directors have fallen vacant in a company. What would be the quorum for the meeting of the Board? In a case, where there are 15 directors in a company and of which 13 are happen to be interested directors, what would be the quorum?

12. Mr. Interest is a director of a company in which the public are substantially interested accepts the offer of employment as Chief Executive – Technical in the same company on a monthly remuneration of Rs.55,000. Is there any restriction under the provisions of the Companies Act, 1956 in Mr. Interest accepting the offer of employment? Would your answer be different, if his monthly remuneration is Rs.10, 000? In case his son is appointed to the same post, does it attract any provision of the Act?
13. Draft a board resolution for appointment of a sole-selling agent who is having substantial interest in the company?
14. In case a director of a public company has taken a loan from the company without the approval of the Central Government, (i) is it possible to avoid prosecution by applying to the central government for approval or by refunding the loan? (ii) whether the offence is compoundable before or after institution of prosecution and the authority who can compound the offence?
15. XY Ltd., wants to sell its products to the following customers:
 - (a) A Partnership firm in which two of the directors of the company are partners;
 - (b) A Private Company in which one of the directors of the company is a members;
 - (c) A Public Company in which one of the directors of the company is a director.

Advise the company drawing reference to the restrictions if any contained in the Companies Act, 1956 on entering into these agreements.

SCRA, 1956

16. A recognized stock exchange in India is contemplating the proposal for corporatisation of the exchange. State the procedure for the same.
17. With reference to Securities Contracts (Regulation) Act, 1956, explain the following:
 - Spot delivery contract.
 - Title to dividends.

COMPETITION ACT, 2002

18. What factors the Competition Commission of India (CCI) would normally take with account while determining whether an merger or amalgamation is likely to have an appreciable adverse effect on the competition in the relevant market?
19. With reference to Competition Act, 2002, how would you determine a
 - Relevant Market.
 - Relevant Geographic Market.
 - Relevant Product Market.

FEMA, 1999

20. (a) An exporter after having made appropriate declaration of the value of goods exported, reports that there will be delay in the realisation of the proceeds of the exports. State whether it is a violation if any of the provisions of the FEMA, 1999?
- (b) An MNC Company based at Tokyo is having several units all over the world. It has one unit based at New Delhi and its branch is located at Colombo. What is the residential status of unit at New Delhi and that of its branch at Colombo as per the FEMA,1999?
21. The following are various types of capital account transactions of which specify, the nature of transaction as whether it is permissible or where restrictions cannot be imposed or transactions are altogether prohibited:
 - (a) For amortisation of loan
 - (b) A person resident outside India for making investments in chit fund
 - (c) Investment by a person resident in India in foreign securities

- (d) Maintenance of foreign currency accounts in India and outside India by a person resident in India
- (e) Trading in Transferable Development Rights (TDR's) by a person resident outside India.

SEBI ACT, 1992

22. What Penalty is leviable under the provisions of the SEBI Act, 1992 in respect of:
 - (a) An insider alleged for dealing with unpublished price sensitive information.
 - (b) An intermediary's failure to redress investor grievance
23. What are the SEBI (DIP) Guidelines on initial public offers through stock exchange on-line system. (E-IPO)?

INTERPRETATION OF STATUTES

24. What is the significance of usage of words 'may' and 'shall' in a statutory provision of an enactment?

SUGGESTED ANSWERS HINTS

1. According to Section 286 of the Companies Act, 1956, notice of every board meeting shall be given in writing to every director for the time being in India, and at his usual address in India to every other director.
 - (i) Notice should be given even if Mr. A expressed his inability to attend the next board meeting. Otherwise, Section 286(1) will be violated. [In re: Portuguese Consolidated Copper Mines Ltd. (1889) 42, Ch.D 160(CA). It is also worthwhile to mention in this connection that in Parmeshwari Prasad Gupta vs. Union of India, AIR 1973 SC 2389, the Supreme Court held that if the director who has not been given notice attends the subsequent meeting and confirms the proceedings of the previous meeting, it amounts to ratification and validates the resolutions passed at the previous meeting.
 - (ii) Although there is no legal precedent in this regard, it would be a prudent practice (under Section 286) that notice should be served to both, the alternate director as well as the original director Mr. B who is outside of India at his usual address in India.
 - (iii) In the case of a company having foreign collaboration, Articles generally provide that notice of Board Meeting should be sent by Air Mail. But a question crops up whether such provision is valid, as Section 286(1) requires service of such notice to a director to be sent as his usual address in India. However, it must be admitted that the question is not free from doubt and in the instant case as, Articles provide that notice must be sent to Directors residing abroad, notice should be sent to Mr. C.
2. Under Section 293(1)(e) of the Companies Act, 1956 the Board of Directors of a public company can contribute or donate to charitable and other funds not directly related to the business of the company or the welfare of its employees any amount the aggregate of which will not, in any financial year exceed Rs.50,000 or 5% of its average net profits during the three financial years preceding whichever is greater. If this power of the company is not ultra vires the memorandum of the company, then only the Board can act in pursuance of the above-mentioned resolution of the company and in so acting, it can authorise the Managing Director to exercise the power on behalf of the Board.

It may be noted that the power of the Board to donate to general charities is not conditional to the existence of any profits. In such case, they may contribute up to the limit given in Section 293(1)(e), even though the company may be working at a loss.
3. The Section 292 (1)(d) of the Companies Act, 1956 empowers the Board of Directors to delegate to any committee of directors, the Managing Director, the Manager or any other Principal Officer of the Company, the power to invest the funds of the company. However, Inter-corporate investments as governed by Section 372A provides that no investment shall be made by the

Board of an investing company unless it is sanctioned by a resolution passed at the meeting of the Board with the consent of all the directors present at the meeting except those not entitled to vote thereon. Section 372A overrides the provisions of Section 292 in so far as investments of share is concerned. Therefore, the delegation of such a power is invalid.

4. The Supreme Court in *World-wide Agencies (P) Ltd., vs. Mrs. M.T. Desor*, (1990) 67 CC, 607(SC) the Supreme Court held that a composite petition under Sections 397, 398 and 433(f) of the Companies Act, 1956 is maintainable. It observed that a discretion is conferred on the court and it is only when the court is satisfied that the facts justified the making of the winding up order on the ground that it is just and equitable that the company should be wound up, but if the court is further of the opinion that it would be a remedy worst than the decess, then the court can examine whether alternative relief under Section 397 can be granted.
5. Applying the provisions of section 395 of the Companies Act, 1956, ABC Ltd., can acquire all the shares of XYZ Ltd. including those held by 2 persons. It can acquire the shares held by 2 persons if no application is made to the court for avoiding the sale of their shares or if the court refused it accordingly.
6. (a) In *Bombay Gas Company (P) Ltd., vs. Central Government* (1997) (CC) 89, the Bombay High Court held that Section 394(4)(b) provides for amalgamation of a foreign company with the Indian company. The transferee company, however, cannot be a foreign company.
 (b) The expression member is not only holders of equity shares but also preference shareholders who had to be taken into account and value of their shares be included.
 (c) The scheme may provide for the dissolution without winding up of any transferor company [Section 394(i)].
7. As per Section 256 of the Companies Act, 1956, at every subsequent annual general meeting, $\frac{1}{3}^{\text{rd}}$ of directors were liable to retire by rotation. In this case, all the five directors are holding in position which means they are liable to retire by rotation. In other words, $\frac{1}{3}^{\text{rd}}$ of five directors i.e. two directors are to retire at the Annual General Meeting.

Out of five directors, if one director is a whole time director, then he is not liable to retire by rotation and would be excluded. In other words, $\frac{1}{3}^{\text{rd}}$ of 4 i.e., $1.\overline{3} \times 3 = 1$ director would retire at every Annual General Meeting

8. Although a director need not attend each Board meeting unless the articles provide otherwise, yet his continuous non-attendance say two attendances followed by two non-attendances, again followed by one attendance and so forth just by way of a guard against infringement of provision of Section 283(1)(g) of the Companies Act, 1956 may render him guilty of breach of trust which may be committed by other directors [*Charitable Corporation vs. Sultana* 2 Atk. 400]. For example, the other director or directors could take the advantage of the aforesaid non-attendance by the director and dissipate the company's assets through wasteful and other improper expenses. The absenting director would be responsible for the loss caused to the company, if his presence could otherwise stop their wrongful acts resulting in the said dissipation of assets.

It is true that Section 285 does not prescribe any penalty for non-compliance with the requirements of the Section. Nevertheless, Section 622A may be invoked to deal with such a situation.

9. Appointment by proportional representation: The articles of a public company or a private company which is subsidiary of a public company may adopt the principle of proportional representation for appointing not less than $\frac{2}{3}^{\text{rd}}$ if the total number of the directors, whether by a single transferable vote or by a system of cumulative voting or otherwise. In such a case, appointments will be so made once in every three years and interim casual vacancies will be filled in conformity with the provisions of Sections 262 and 265. Cumulative voting denotes that if there are five candidates or distributes his five votes. He can cast all the five votes in favour of one candidate or distribute his five votes among different candidates. This system of voting ensures that the Board will have fair representation of the minority interest.

10. Under Section 397, the existence of conditions justifying the making of winding up order on the ground that it is just and equitable that the company should be wound up, is a condition precedent to the interference by the Company Law Board. On the other hand, under Section 398, the C.L.B. would interfere on its being satisfied that by reason of any material changes in the management or control of the company, it is likely that the affairs of the company will be conducted in a manner prejudicial to the interest of the company. The two positions are distinct. Whereas in the first case, the C.L.B. acts to prevent injustice being done to a member or members in his or their individual capacity, in the second case the C.L.B. acts in order to prevent injury being inflicted to the interest of the company as a whole.

Thus on an application made in the foregoing circumstances, the Company Law Board will interfere only if it is of the opinion:

- (1) When it is made under Section 397: (a) that the company's affairs are being conducted in a manner oppressive to any member or members [Section 397(2)] or in a manner prejudicial to public interest; and (b) that to wind up the company would unfairly prejudice such member or members but that otherwise the facts would justify the making of a winding up order on "just and equitable" ground.
- (2) When it is made under Section 398:
 - (a) that affairs of the company are being conducted in a manner prejudicial to the interests of the company [Section 398(1)(a)]; or
 - (b) that a material change has taken place in the management or control of the company and as a consequence the affairs of the company may be conducted in a manner prejudicial to the public interest or in a manner prejudicial to the interests of the company [Section 398(1)(b)].

The Company Law Board may make such order it thinks fit with a view to bringing to an end, or preventing the matters complained or apprehended, as the case may be.

11. A quorum is the prescribed minimum number of qualified persons authorised to transact the business at a meeting. In relation to a Board meeting quorum implies fully qualified and disinterested directors who must be present at the meeting so as to enable the Board of which they are the constituents to legally transact the business thereat. Can the articles of a company fix such a quorum? No, in view of Section 287 which has fixed the quorum of the Board meeting. Accordingly such a quorum is one third of the total strength of Board (any fraction contained in the said one third being rounded off as one) or two directors whichever is higher. The total strength is to be derived after deducting the number of directors whose offices are vacant. Therefore, the Quorum = $\frac{1}{3}$ (of the total strength vacancies). Where total number of directors are 9 and 2 offices of the directors have fallen vacant, we find: $\frac{1}{3}$ of $(9-2) = \frac{1}{3}$ of 7 = $2\frac{1}{3}$ directors. If the fraction of 3^{rd} were to be rounded off as one then 3, i.e. 2+1 directors would constitute the quorum for the Board meetings. If at any time the number of the remaining directors exceeds or is equal to two thirds of the total strength, the number of the remaining directors who are non-interested but present at the meeting, not being less than two shall constitute the quorum. For example, there are in all 15 directors and the Board meeting commences with all the 15 directors. During the currency of the meeting, an item comes up for discussion in respect of which 13 happen to be "interested" directors. In this case, in spite of the excess of the interested directors being more than two-thirds, the prescribed minimum number of non-interested directors constituting the quorum, namely, 2 present at the meeting are to transact the particular item of business.
12. Ordinarily, the shareholders in general meeting elect a director, and once so elected, he enjoys well-defined rights and powers under the Act. An employee is appointed by the company under a contract of service is a servant of the company and the company can always direct his actions and interfere with his work. In *Lee Behrens & Co. (Re)* [1932] 2 com cas. 588 it was observed that directors are elected representatives of the shareholders engaged in directing the affairs of the company on its behalf. However, there is nothing in law to prevent a director from accepting employment under the company under a special contract, which he may enter into with the

company. (R.R. Kothandaraman vs. Commr. of I.Tax (1957). Section 314 provide for a director holding an office or place of profit under a company.

Except with the consent of the company accorded by a special resolution no director shall hold any office or place of profit and no partner or relative of his, no firm in which he or his relative is a partner, no private company of which he is a director or member and no director or manager of such a private company shall hold any office or place of profit carrying a monthly remuneration of Rs. 10,000 or more. The special resolution may be passed before or a general meeting of the company held for the first time after the holding of such an office or profit. If it is done without the knowledge of the director, the consent of the company may be obtained either in the general meeting held for the first time after the holding of such an office or within 3 months from the date of appointment whichever is later.

If a partner or a relative of a director or manager, a firm in which such director or manager or relative of either is a partner or a private company of which such a director or manager or relative of either is director or member can not hold any office or place of profit which carries a total monthly remuneration of Rs.20,000 or more except with the prior consent of the company by special resolution and the approval of the Central Government.

Thus, in the instance case, Mr. Interest can accept the offer of employment as Chief Executive-Technical Operations. If his son is appointed to the said post, it requires the consent of the company.

13. “Resolved that pursuant to the provisions of Sections 294 and 294AA and all other provisions, if any, of the Companies Act, 1956, and subject to the approval of the Central Government, the company hereby approves the appointments of the following as sole selling agents of the company for a period not exceeding five years commencing from the dates of appointment and for the products and the areas respectively set out against each in the table appended below on the terms and conditions recorded in the relative draft agreement submitted to this meeting and initialed by the Chairman hereof for purposes of identification, and that the Board of Directors be and is hereby authorised to effect such modifications in the terms and conditions of the said draft agreement as may be approved by the Central Government and agreed to by the Board the said sole selling agents.”

Name of the Agent	Areas	Period	Products
Commission			

14. (i) According to Section 295 of the Companies Act, no public company shall make any loan to any of its directors either directly or indirectly without obtaining the previous approval of the Central Government. As the Act envisages prior approval, Central Government will not entertain any application from the company seeking approval for a loan already given to its director.
- The company has, therefore, contravened the provisions of Section 295(1) and for this offence every person who is knowingly a party to this contravention including the person to whom the loan is made shall be punishable either with fine which may extend to Rs. 50,000 or with simple imprisonment for a term which may extend to six months [Section 255(4)]. Where any such loan has been repaid in full, no punishment by way of imprisonment shall be imposed and where the loan has been repaid in part, the maximum punishment, which may be imposed by way of imprisonment, shall be proportionately reduced. So, by refunding the loan in full, it is possible to avoid punishment in the form of imprisonment, but it is not possible to a avoid prosecution and punishment in the form of fine.
- (ii) All offences other than an offence which is punishable under the Companies Act with imprisonment only or with imprisonment and also with fine are compoundable under Section 621A. As the offence under Section 295 is punishable with fine or imprisonment, it is compoundable but with the permission of the Court [Section 621A(2)]. The offence may be

compounded either before or after the institution of prosecution. If the offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, either by the Registrar or by any shareholder or by any person authorised by the Central Government. Where the composition of any offence is made after the institution of any prosecution, such composition shall be brought to the notice of the court by the Registrar in writing and on such notice of the composition of the offence being given, the company or its officer in relation to whom the offence is so compounded shall be discharged [Section 621A(4)].

The offence may be compounded by the Regional Director where the maximum amount of fine, which may impose for such offence, does not exceed Rs. 50,000 and in other cases by the company Law Board. In this case, Regional Director may compound the offence, as the maximum fine is only Rs. 50,000. On receipt of applications from the persons liable for penalty under Section 295(4) along with the comments of the Registrar, the Regional Director may specify the amount not exceeding the maximum fine which shall be paid to the Central Government for compounding of the offence.

15. (a) According to Section 297, except with the consent of the Board of Directors of a
- & (b) company, firm in which the director or directors of the company is/are partners or a private company of which such director or directors is or are a member or members shall not enter into any contract with the company for the sale, purchase or supply of any goods, materials or services. Therefore, the public company in the instant two cases should obtain the consent of its Board of Directors. This consent shall have to be taken by a resolution passed at the Board meeting and not otherwise. The resolution according the consent must be passed before the contract to sell the product is entered into or within 5 months of the date on which it was entered into; otherwise consent shall not be deemed to have been given. If the consent is not accorded, anything done in pursuance of the contract shall be voidable at the option of the Board. Care should be taken to ensure that the interested directors do not vote on the motions and their presence is not counted for the purpose of quorum for the meeting. Also it is to be seen that such directors have disclosed their interests in the contract pursuant to Section 299 of the Companies Act unless any of them is enjoying the exemption under sub-section (6) of the above section.

The consent contemplated above is not a general consent but consent referable to each particular or specific contract or contracts. Consent requires knowledge of the necessary facts and material, which lead to the consent and cannot be given in general or abstract manner (*Watchand Nagar Industries Ltd. vs. Ratanchand*, A.I.R. Bom. 256). Therefore, the Board of the public company should take appropriate steps in this regard.

- (c) The point of the case in question relates to disclosure of interest by directors. According to Section 299(6), nothing in Section 299 shall apply to any contracts entered into or to be entered between two companies where one of the directors of the one company or two or more of them together holds or hold not more than 2% of the paid up share capital in the other company. This point is not clear from the facts in the problem. This is a contract to be entered into between two companies. And if the director of the first company holds 2% or less of the paid-up share capital in the second public company, the provisions of Section 299 will not apply to this case.

If, however, the said director holds more than the aforesaid 2% then the Board of Directors should see that the director, pursuant to Section 299, discloses his interest or concern at the meeting of the Board. This disclosure has to be made at the Board meeting at which the contract is considered. If the interest is acquired subsequent to the meeting then it is to be disclosed at the immediately next meeting.

The Board of the first-mentioned public company should ascertain whether the interest of director aforesaid consists solely (i) in his being a director of such company and the holder of not more shares of such number and value therein as is requisite to qualify him for

appointment as a director thereof, he having been nominated as such director by the company or (ii) in his being a member holding not more than 2% of its paid-up share capital. Also, there is no restriction on voting, etc. by an interested director if a notification had been issued by the Central Government under Section 300(3) exempting the company from the purview of Section 300. If, on such assertion, the interest is not found to be so consisting as aforesaid, the Board of the company should see that interested director does not participate in the discussion or vote on the contract and that his presence is excluded from the computation of quorum.

16. Procedure for corporatisation and demutualisation.(Section 4B SCRA, 1956)

It provides (1) All recognised stock exchanges referred to in section 4A shall, within such time as may be specified by the Securities and Exchange Board of India, submit a scheme for corporatisation and demutualisation for its approval:

Provided that the Securities and Exchange Board of India may, by notification in the Official Gazette, specify name of the recognised stock exchange, which had already been corporatised and demutualised, and such stock exchange, shall not be required to submit the scheme under this section.

(2) On receipt of the scheme referred to in sub-section (1), the Securities and Exchange Board of India may, after making such enquiry as may be necessary in this behalf and obtaining such further information, if any, as it may require and if it is satisfied that it would be in the interest of the trade and also in the public interest, approve the scheme with or without modification.

(3) No scheme under sub-section (2) shall be approved by the Securities and Exchange Board of India if the issue of shares for a lawful consideration or provision of trading rights in lieu of membership card of the members of a recognised stock exchange or payment of dividends to members have been proposed out of any reserves or assets of that stock exchange.

(4) Where the scheme is approved under sub-section (2), the scheme so approved shall be published immediately by –

- (a) the Securities and Exchange Board of India in the Official Gazette;
 - (b) the recognised stock exchange in such two daily newspapers circulating in India, as may be specified by the Securities and Exchange Board of India, and upon such publication, notwithstanding anything to the contrary contained in this Act or any other law for the time being in force or any agreement, award, judgment, decree or other instrument for the time being in force, the scheme shall have effect and be binding on all persons and authorities including all members, creditors, depositors and employees of the recognised stock exchange and on all persons having any contract, right, power, obligation or liability with, against, over, to, or in connection with, the recognised stock exchange or its members.
- (5) Where the Securities and Exchange Board of India is satisfied that it would not be in the interest of the trade and also in the public interest to approve the scheme under sub-section (2), it may, by an order, reject the scheme and such order of rejection shall be published by it in the Official Gazette:

Provided that the Securities and Exchange Board of India shall give a reasonable opportunity of being heard to all the persons concerned and the recognised stock exchange concerned before passing an order rejecting the scheme.

- (6) The Securities and Exchange Board of India may, while approving the scheme under sub-section (2), by an order in writing, restrict-
- (a) the voting rights of the shareholders who are also stock brokers of the recognised stock exchange;
 - (b) the right of shareholders or a stock broker of the recognised stock exchange to appoint the representatives on the governing board of the stock exchange;

- (c) the maximum number of representatives of the stock brokers of the recognised stock exchange to be appointed on the governing board of the recognised stock exchange, which shall not exceed one-fourth of the total strength of the governing board.
- (7) The order made under sub-section (6) shall be published in the Official Gazette and on the publication thereof, the order shall, notwithstanding anything to the contrary contained in the Companies Act, 1956, or any other law for the time being in force, have full effect.
- (8) Every recognised stock exchange, in respect of which the scheme for corporatisation or demutualisation has been approved under sub-section (2), shall, either by fresh issue of equity shares to the public or in any other manner as may be specified by the regulations made by the Securities and Exchange Board of India, ensure that at least fifty-one per cent. of its equity share capital is held, within twelve months from the date of publication of the order under sub-section (7), by the public other than shareholders having trading rights:

Provided that the Securities and Exchange Board of India may, on sufficient cause being shown to it and in the public interest, extend the said period by another twelve months.'

- 17. (a) "spot delivery contract" means a contract which provides for—
 - (i) actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;
 - (ii) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository;
- (b) Title to Dividends (Section 27 SCRA, 1956)
 - (1) It shall be lawful for the holder of any security whose name appears on the books of the company issuing the said security to receive and retain any dividend declared by the company in respect thereof for any year, notwithstanding that the said security has already been transferred by him for consideration, unless the transferee who claims the dividend from the transferor has lodged the security and all other documents relating to the transfer which may be required by the company with the company for being registered in his name within fifteen days of the date on which the dividend became due.

Explanation.—The period specified in this section shall be extended—

 - (i) in case of death of the transferee, by the actual period taken by his legal representative to establish his claim to the dividend;
 - (ii) in case of loss of the transferee, by the actual period taken for the replacement thereof; and
 - (iii) in case of delay in the lodging of any security and other documents relating to the transfer due to causes connected with the post, by the actual period of the delay.
 - (2) Nothing contained in sub-section (1) shall affect—
 - (a) the right of a company to pay any dividend which has become due to any person whose name is for the time being registered in the books of the company as the holder of the security in respect of which the dividend has become due; or
 - (b) the right of the transferee of any security to enforce against the transferor or any other person his rights, if any, in relation to the transfer in any case where the company has refused to register the transfer of the security in the name of the transferee.
- 18. For the purposes of determining whether a combination would have the effect of or is likely to have an appreciable adverse effect on competition in the relevant market, Section 20,

Competition Act, 2002, the Commission shall have due regard to all or any of the following factors, namely:—

- (a) actual and potential level of competition through imports in the market;
- (b) extent of barriers to entry into the market;
- (c) level of combination in the market;
- (d) degree of countervailing power in the market;
- (e) likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins;
- (f) extent of effective competition likely to sustain in a market;
- (g) extent to which substitutes are available or are likely to be available in the market;
- (h) market share, in the relevant market, of the persons or enterprise in a combination, individually and as a combination;
- (i) likelihood that the combination would result in the removal of a vigorous and effective competitor or competitors in the market;
- (j) nature and extent of vertical integration in the market;
- (k) possibility of a failing business;
- (l) nature and extent of innovation;
- (m) relative advantage, by way of the contribution to the economic development, by any combination having or likely to have appreciable adverse effect on competition;
- (n) whether the benefits of the combination outweigh the adverse impact of the combination, if any.

19. Relevant Market [Section 2(r)] Competition Act, 2002

"Relevant Market" means the market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets;

It includes all reasonable substitutable goods or services of all competitors. The determination of the relevant market is a crucial aspect. In wider sense relevant market means that the Government or a private have greater difficulty in demonstrating expected anti-competitive affect from a challenged merger.

Relevant Geographic Market [Section 2(s)]

"Relevant Geographic Market" means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas;

The Relevant Geographic Market is not a broad in sense. It could be drawn as narrowly as one metropolitan area or as broad as the nation as a whole. It is the geographic area in which a sole supplier of the product could profitably increase its price without causing outside suppliers to sell in that particular area.

Relevant Product Market [Section 2(t)]

"Relevant Product Market" means a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use;

It is an area in which the sellers of particular product or service providers operate. This type of market may be local, national, or international. It involves identification of geographical areas within which competition take place.

20. (a) Every exporter of services shall furnish to the Reserve Bank or to such other authorities a declaration in such form and in such manner as may be specified, containing the true and correct material particulars in relation to payment for such services.

Section 7 read with Section 8 of FEMA, 1999 imposes on an exporter to make appropriate declaration of the value of the goods being exported and he is also required to repatriate the foreign exchange due to India in respect of such export to India in the manner and within the time as may be prescribed. Under Section 8, the exporter is under an obligation to realise and repatriate to India such foreign exchange. However, if there is a delay in the receipt of export proceeds, it will not be a violation which shall be punishable. Section 8 applies to a resident who shall take all the reasonable steps. Therefore, the word 'all reasonable steps' would depend upon facts and circumstances of each case.

- (b) The MNC being based at Tokyo would be a person resident outside India. [Section 2(w)]. Section 2(u) defines 'person'. Under clause (viii) thereof person would include any agency, office or branch owned or controlled by such 'person'. The term such 'person' appears to refer to a person who is included in clauses (i) to (vi). Accordingly robotic unit in New Delhi, being a branch of a company, would be a 'person'.

Section 2(v) defines 'person resident in India'. Under clause (iii) thereof 'person resident in India' would include an office, branch or agency in India owned or controlled by a person resident outside India. Robotic unit in New Delhi is owned or controlled by a person 'resident outside India'. Hence, it would be 'person resident in India'.

However, Colombo branch, though not 'owned' is controlled by robotic unit in New Delhi which is a person resident in India. Hence, prima facie, it may be possible to hold a view that the Colombo branch is 'person resident in India'.

21. Capital account transaction is basically split into the following categories:

- (a) transaction, which are permissible in respect of persons resident in India and outside India.
- (b) transaction on which restrictions cannot be imposed; and
- (c) transactions, which are prohibited.

Amortization of loan is a transaction with no restriction:

A person resident outside India for making investment in chit fund is a prohibited transaction

Investment by a person resident in India in foreign securities is a permissible transaction.

Maintenance of foreign currency accounts in India and outside India by a person resident in India is a transaction which is permitted.

Trading in Transferable Development Rights (TDR) is a prohibited transaction.

22. (a) Penalty for insider trading (Section 15G SEBI Act, 1992) : If any insider who:

- (i) either on his own behalf or on behalf of any other person, deals in securities of corporate on any stock exchange on the basis of any unpublished price sensitive information; or
- (ii) communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or
- (iii) counsels, or procures for, any other person to deal in any securities of any body corporate on the basis of unpublished price sensitive information, shall be liable to a penalty twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.

- (b) Penalty for failure to redress investors' grievances (Section 15C SEBI Act, 1992): If any listed company or any person who is registered as an intermediary, after having been called upon by the Board in writing, to redress the grievances of investors, fails to redress such grievances within the time specified by the Board, such company or intermediary shall be

liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

23. SEBI (DIP) Guidelines for E-IPO

11A.1 A company proposing to issue capital to public through the on-line system of the stock exchange for offer of securities shall comply with the requirements as contained in this Chapter in addition to other requirements for public issues as given in these Guidelines, wherever applicable.

11A.2 Agreement with the Stock exchange

11A.2.1 The company shall enter into an agreement with the Stock Exchange(s) which have the requisite system of on-line offer of securities.

²[***]

11A.2.2 The agreement mentioned in the above clause shall specify inter alia, the rights, duties, responsibilities and obligations of the company and stock exchange(s) inter se. The agreement may also provide for a dispute resolution mechanism between the company and the stock exchange.

11A.3 Appointment of Brokers

11A.3.1 The stock exchange, shall appoint brokers of the exchange, who are registered with SEBI, for the purpose of accepting applications and placing orders with the company.

11A.3.2 For the purposes of this Chapter, the brokers, so appointed accepting applications and application monies, shall be considered as 'collection centres'.

11A.3.3 The broker/s so appointed, shall collect the money from his/their client for every order placed by him/them and in case the client fails to pay for shares allocated as per the Guidelines, the broker shall pay such amount.

11A.3.4 The company/lead manager shall ensure that the brokers having terminals are appointed in compliance with the requirement of mandatory collection centres, as specified in clause 5.9 of Chapter V of the Guidelines.

11A.3.5 The company/lead manager shall ensure that the brokers so appointed are financially capable of honouring their commitments arising out of defaults of their clients, if any.

11A.3.6 The company shall pay to the broker/s a commission/fee for the services rendered by him/them. The exchange shall ensure that the broker does not levy a service fee on his client in lieu of his services.

11A.4 Appointment of Registrar to the Issue

11A.4.1 The company shall appoint a Registrar to the Issue having electronic connectivity with the Stock Exchange/s through which the securities are offered under the system.

11A.5 Listing

⁴[11A.5.1 The company may apply for listing of its securities on an exchange other than the exchange through which it offers its securities to public through the on-line system.]

11A.6 Responsibility of the Lead Manager

11A.6.1 The Lead Manager shall be responsible for co-ordination of all the activities amongst various intermediaries connected in the issue/system.

11A.6.2 The names of brokers appointed for the issue alongwith the names of the other intermediaries namely Lead Managers to the issue and Registrars to the Issue shall be disclosed in the prospectus and application form.

² Omitted by SEBI/CFD/DIL/DIP/Circular No. 11, dated 14.8.2003, w.e.f. 14.8.2003.

¹ Substituted by SEBI/CFD/DIL/DIP/Circular No. 11, dated 14.8.2003, w.e.f. 14.8.2003.

24. 'May', 'must' and 'shall': Before discussing this aspect, it would be worth our while to note the terms 'mandatory' and 'directory'. Practically speaking, the distinction between a provision which is 'mandatory' and one which is 'directory' is that when it is mandatory, it must be strictly observed; when it is 'directory' it would be sufficient that it is substantially complied with. However, we have to look to the substance and not merely the form: an enactment in mandatory form might substantially be directory and, conversely, a statute in directory form may in substance be mandatory. Hence, it is the substance that counts and must take precedence over mere form. If a provision gives a power coupled with a duty, it is mandatory: whether it is or is not so would depend on such consideration as:

- the nature of the thing empowered to be done,
- the object for which it is done, and
- the person for whose benefit the power is to be exercised. Adverting to the topic under discussion:

'May', it is well settled that enabling words are construed as compulsory, wherever the object of the power is to give effect to a legal right: the use of the word 'may' in a statutory provision would not by itself show that the provision is directory in nature. In some cases the legislature may use the word 'may' as a matter of pure conventional courtesy and yet intend a mandatory force. Therefore, in order to interpret the legal import of the word 'may' we have to consider various factors, e.g., the object and the scheme of the Act, the context or background against which the words have been used, the purpose and advantages of the Act sought to be achieved by use if this word and the like.

Where the word 'may' involves a discretion coupled with an obligation or where it confers a positive benefit to the general class of subjects, or where a remedy would be advanced and a mischief suppressed, or where giving the word a directory significance would defeat the very object of the Act then word 'may' should be interpreted to convey a mandatory force. Thus where a discretion is conferred upon a public authority coupled with an obligation, the word 'may' should be construed to mean a command. Similarly when a order of the Government or a statute confers a power on an authority in the discharge of a public duty, and though such power appears to be merely permissive, it is imperative that the authority should exercise that power in the discharge of its duties: there the word 'may' assumes mandatory force.

The word 'may' is often read as 'shall' or 'must' when there is something in the nature of the thing to be done, which makes it the duty of the person on whom the power is conferred to exercise the power. No general rule can be laid down for deciding whether any particular provision in a statute is mandatory, meaning thereby that non-observance thereof involves the consequences of invalidity, or only directory, i.e. a discretion, non-observance of which does not entail the consequence of invalidity, whatever other consequences may occur. But in each case the Court has to decide the legislature's intent. Did the legislature intend in making the statutory provision that non observance of this would entail invalidity or did it not? To decide this, we have to consider not only the actual words used, but the scheme of the statute, the intended benefit to the public or what is enjoined by the provisions and the material danger to the public by the contravention of the scheme. The use of the expression 'shall' or 'may' is not decisive. Having regard to the context, the expression 'may' has varying significance. In one context, it may be purely permissive, while in another context it may confer a power and make it obligatory upon the person invested with the power to exercise it as laid down. Therefore, while undoubtedly the word 'may' generally does not mean 'must' or 'shall' yet the same word 'may' is capable of meaning 'must' or 'shall' in the light of the context in which it occurs.

Coming to the word shall: the use of the word shall would not of itself make a provision of the act mandatory. It has to be construed with reference to the context in which it is used. Thus, as against the Government the word 'shall' when used in statutes is to be construed as 'may' unless a contrary intention is manifest. Hence, a provision in a criminal statute that the offender shall be punished as prescribed in the statute is not necessarily to be taken as against the Government to direct prosecution under that provision rather than under some other applicable statute.

Therefore, generally speaking when a statute uses the word 'shall' prima facie it is mandatory but it is sometimes not so interpreted if the context or intention of the legislature otherwise demands. Thus, under certain circumstances the expression 'shall' is construed as 'may'. Yet, it has to be emphasized that the term 'shall' in its ordinary significance, is mandatory and the Court shall ordinarily give that interpretation to the term, unless such an interpretation leads to some absurd or inconvenient consequence or be at variance with the intent of the legislature to be collected from other parts of the Act. For ascertaining the real intention of the legislature, the Court may consider amongst other things:

- the nature and design of the statute,
- the consequence which would flow from construing it one way or the other,
- the impact of other provisions by resorting to which the necessity of complying with the provision in question can be voided,
- whether or not the statute provides may penalty if the provision in question is not complied with,
- if the provision in question is not complied with, whether the consequences would be trivial or serious, and
- most important of all, whether the object of the legislation will be defeated or furthered.

Where a specific penalty is provided in statute itself for non compliance with the particular provision of the Act, no discretion is left to the Court to determine whether such provision is directory or mandatory – it has to be taken as mandatory.

PRE – EXAMINATION NOTES

Competition (Amendment) Act 2007

1. The Competition Act was enacted in 2002 keeping in view the economic development that resulted in opening up of the Indian economy, removal of controls and consequent economic liberalization which required that the Indian economy be enabled to allow competition in the market from within the country and outside. The Competition Act, 2002 provided for the establishment of a Competition Commission, to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets in India, and for matter connected therewith or incidental thereto.
2. The Competition Commission of India was established on the 14th October, 2003 but could not be made functional due to filing of a writ petition before the Hon'ble Supreme Court. While disposing of the writ petition on the 20th January, 2005, the Hon'ble Supreme held that if an expert body is to be created by the Union government, it might be appropriate for the Government to consider the creation of two separate bodies, one with expertise for advisory and regulatory functions and the other for adjudicatory functions based on the doctrine of separation of powers recognized by the Constitution. Keeping in view the judgment of the Hon'ble Supreme Court, the Competition (Amendment) Bill, 2006 was introduced in Lok Sabha on the 9th March, 2006 and the same was referred for examination and report to the Parliamentary Standing Committee. Taking into account the recommendations of the Committee, the Competition (Amendment) Act, 2007 was introduced.
3. The Competition (Amendment) Act, 2007, inter alia, provides for the following:-
 - (i) the Commission shall be an expert body which would function as a market regulator for preventing and regulating anti-competitive practices in the country in accordance with the Act and it would also have advisory and advocacy functions in its role as a regulator;
 - (ii) for mandatory notice of merger or combination by a person or enterprise to the Commission within thirty days and to empower the Commission for imposing a penalty of up to one

percent. Of the total turnover or the assets, whichever is higher, on a person or enterprise which fails to give notice of merger or combination to the Commission;

- (iii) for establishment of the Competition Appellate Tribunal, which shall be a three member quasi judicial body headed by a person who is or has been a judge of the Supreme Court or the Chief Justice of a High Court to hear and dispose of appeals against any direction issued or decision made or order passed by the Commission;
 - (iv) for adjudication by the Competition Appellate Tribunal of claims on compensation and passing of orders for the recovery of compensation from any enterprise for any loss or damage suffered as a result of any contravention of the provisions of the act;
 - (v) for implementation of the orders of the Competition Appellate Tribunal as a decree of a civil court;
 - (vi) for filling of appeal against the orders of the Competition Appellate Tribunal to the Supreme Court;
 - (vii) for imposition of a penalty by the Commission for contravention of its orders and in certain cases of continued contravention of its orders and in certain cases of continued contravention a penalty which may extend to rupees twenty-five crores or imprisonment which may extended to three years or with both as the Chief Metropolitan Magistrate, Delhi may deem fit, may be imposed.
4. The Act also aims at continuation of the Monopolies and Restrictive Trade practices Commission (MRTPC) till two years after constitution of Competition Commission, for trying pending cases under the Monopolies and Restrictive Trade Practices Act, 1969 after which it would stand dissolved. The Bill also provides that MRTPC would not entertain any new cases after the Competition Commission is duly constituted. Cases still remaining pending after this two years period would be transferred to Competition Appellate Tribunal or the National Commission under the Consumer Protection Act, 1986 depending on the nature of cases.
 5. Student may note that in exercise of powers conferred by sub-section (2) of section 1 of the Competition (Amendment) Act, 2007 (39 of 2007), the Central Government hereby appoints 12th day of October, 2007 as the date on which section 1 of the said Act shall come into force.
 6. Student may further note that in exercise of the powers conferred by the proviso to sub-section (2) of section 1 of the Competition (Amendment) Act, 2007 (39 of 2007), the Central Government hereby appoints 12th day of October, 2007 as the date on which the following sections of the said Act shall come into force, namely:-
 - (a) Section 2;
 - (b) Section 6;
 - (c) Section 7;
 - (d) Section 8;
 - (e) Section 9;
 - (f) Section 11;
 - (g) Section 12;
 - (h) Section 17;
 - (i) Section 18;
 - (j) Section 27;
 - (k) Section 29;
 - (l) Section 30;
 - (m) Section 32;
 - (n) Section 40;
 - (o) Section 41;

- (p) Section 42;
 - (q) Section 43; except sections 53B, 53C, 53D, 53E, 53F, 53G, 53H, 53I, 53J, 53K, 53L, 53M, 53N, 53O, 53P, 53Q, 53R, 53T, 53U;
 - (r) Section 44;
 - (s) Section 45;
 - (t) Section 46;
 - (u) Section 47;
 - (v) Section 48; and
 - (w) Section 49.
7. For the full text on the Competition (Amendment) Act, 2007, Students may visit www.competition-commission-india.nic.in

SECURITIES CONTRACTS (REGULATION) AMENDMENT ACT, 2007

THE GAZETTE OF INDIA

EXTRAORDINARY

[PART II-Sec 1]

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 29th May, 2007/Jyaishta 8, 1929 (Saka)

The following Act of Parliament received the assent of the President on the 28th May, 2007, and is hereby published for general information:-

THE SECURITIES CONTRACTS (REGULATION) AMENDMENT ACT, 2007

No. 27 OF 2007

[28th May, 2007.]

An Act further to amend the Securities Contracts (Regulation) Act, 1956.

BE it enacted by Parliament in the Fifty-eighth Year of the Republic of India as follows:-

Short title

1. This Act may be called the Securities Contracts (Regulation) Amendment Act, 2007.

Amendment of section 2.

2. In section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) (hereinafter referred to as the principal Act), in clause (h), after sub-clause (id), the following sub-clause shall be inserted, namely:-

"(ie) any certificate or instrument (by whatever name called), issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case maybe;"

Insertion of new section 17A.

3. After section 17 of the principal Act, the following section shall be inserted, namely:-

"Public issue and listing of securities referred to in sub-clause (ie) of clause (h) of section 2.

17 A. (1) Without prejudice to the provisions contained in this Act or any other law for the time being in force, no securities of the nature referred to in sub-clause (ie) of clause (h) of section 2 shall be offered to the public or listed on any recognised stock .exchange unless the issuer fulfils such eligibility criteria and

complies with such other requirements as may be specified by regulations made by the Securities and Exchange Board of India.

(2) Every issuer referred to in sub-clause (ie) of clause (h) of section 2 intending to offer the certificates or instruments referred therein to the public shall make an application, before issuing the offer document to the public, to one or more recognised stock exchanges for permission for such certificates or instruments to be listed on the stock exchange or each such stock exchange.

(3) Where the permission applied for under sub-section (2) for listing has not been granted or refused by the recognised stock exchanges or any of them, the issuer shall forthwith repay all moneys, if any, received from applicants in pursuance of the offer document, and if any such money is not repaid within eight days after the issuer becomes liable to repay it, the issuer and every director or trustee thereof, as the case may be, who is in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at the rate of fifteen per cent. per annum.

Explanation.- In reckoning the eighth day after another day, any intervening day which is a public holiday under the Negotiable Instruments Act, 1881, (26 of 1881) shall be disregarded, and if the eighth day (as so reckoned) is itself such a public holiday, there shall for the said purposes be substituted the first day thereafter which is not a holiday.

(4) All the provisions of this Act relating to listing of securities of a public company on a recognised stock exchange shall, mutatis mutandis, apply to the listing of the securities of the nature referred to in sub-clause (ie) of clause (h) of section 2 by the issuer, being a special purpose distinct entity."

Amendment of section 23.

4. In section 23 of the principal Act, in sub-section (1), in clause (c), for the word and figures "section 17", the words, figures and letter "section 17 or section 17A" shall be substituted.

Amendment of section 31.

5. In section 31 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:-

"(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

(a) the manner, in which at least fifty-one per cent. of equity share capital of a recognised stock exchange is held within twelve months from the date of publication of the order under sub-section (7) of section 4B by the public other than the shareholders having trading rights under subsection (8) of that section;

(b) the eligibility criteria and other requirements under section 17 A."

Amendments to SEBI (Disclosure and Investor Protection) Guidelines, 2000 – July 10, 2007

CHAPTER III

PRICING BY COMPANIES ISSUING SECURITIES

1. After sub-clause (i) of clause 3.7.1, the following proviso to sub-clause (i) and Explanation to the proviso shall be inserted, namely: "Provided that nothing contained in sub-clause (i) shall apply to initial public offer made by any government company, statutory authority or corporation or any special purpose vehicle set up by any of them, which is engaged in infrastructure sector.

Explanation:

For the purposes of this proviso, the term "Infrastructure sector" shall include the following facilities/services:

(i) Transportation (including inter modal transportation), including the following:

- (a) Roads, national highways, state highways, major district roads, other district roads and village roads, including toll roads, bridges, highways, road transport providers and other road-related services;
- (b) Rail system, rail transport providers, metro rail roads and other railway related services;
- (c) Ports (including minor ports and harbours), inland waterways, coastal shipping including shipping lines and other port related services;
- (d) Aviation, including airports, heliports, airlines and other airport related services;
- (e) Logistics services;
- (ii) Agriculture, including the following:
 - (a) Infrastructure related to storage facilities;
 - (b) Construction relating to projects involving agro-processing and supply of inputs to agriculture;
 - (d) Construction for preservation and storage of processed agroproducts, perishable goods such as fruits, vegetables and flowers including testing facilities for quality;
- (iii) Water management, including the following:
 - (a) Water supply or distribution;
 - (b) Irrigation;
 - (c) Water treatment, etc.
- (iv) Telecommunication, including the following:
 - (a) Basic or cellular, including radio paging;
 - (b) Domestic satellite service (i.e., satellite owned and operated by an Indian company for providing telecommunication service);
 - (c) Network of trunking, broadband network and internet services;
- (v) Industrial, Commercial and Social development and maintenance, including the following:
 - (a) Real estate development, including an industrial park or special economic zone;
 - (b) Tourism, including hotels, convention centres and entertainment centres;
 - (c) Public markets and buildings, trade fair, convention, exhibition, cultural centres, sports and recreation infrastructure, public gardens and parks;
 - (d) Construction of educational institutions and hospitals;
 - (e) Other urban development, including solid waste management systems, sanitation and sewerage systems, etc.;
- (vi) Power, including the following:
 - (a) Generation of power through thermal, hydro, nuclear, fossil fuel, wind and other renewable sources;
 - (b) Transmission ,distribution or trading of power by laying a network of new transmission or distribution lines;
- (vii) Petroleum and natural gas, including the following:
 - (a) Exploration and production;
 - (b) Import terminals;
 - (c) Liquefaction and re-gasification;
 - (d) Storage terminals;
 - (e) Transmission networks and distribution networks including city gas infrastructure;

(viii) Housing, including the following:

- (a) Urban and rural housing including public / mass housing, slum rehabilitation etc;
- (b) Other allied activities such as drainage, lighting, laying of roads, sanitation facilities etc.;

(ix) Other miscellaneous facilities/services, including the following:

- (a) Mining and related activities;
- (b) Technology related infrastructure;
- (c) Manufacturing of components and materials or any other utilities or facilities required by the infrastructure sector like energy saving devices and metering devices, etc;
- (d) Environment related infrastructure;
- (e) Disaster management services;
- (f) Preservation of monuments and icons;
- (g) Emergency services (including medical, police, fire, and rescue);

(x) Such other facility/service which, in the opinion of the Board, constitutes infrastructure sector."

CHAPTER IV

PROMOTERS' CONTRIBUTION AND LOCK-IN REQUIREMENTS

PART I – PROMOTERS' CONTRIBUTION

2. After 2nd proviso to clause 4.6.2, the following proviso and Explanation thereto shall be inserted, namely:-

"Provided further that nothing contained in clause 4.6.2 shall apply to an unlisted government company, statutory authority or corporation or any special purpose vehicle set up by any of them, which is engaged in infrastructure sector.

Explanation:

For the purposes of 3rd proviso above, the term "Infrastructure sector" shall have the same meaning as assigned to it in Explanation to proviso to sub-clause (i) of clause 3.7.1."

PART II – LOCK-IN REQUIREMENTS

3. After sub-clause (ii) of clause 4.14.2, the following proviso to sub-clause (ii) and Explanation to the proviso shall be inserted, namely:

"Provided that the minimum holding requirement of pre-issue capital shall not apply to an offer for sale of equity shares of an unlisted government company, statutory authority or corporation or any special purpose vehicle set up by any of them, which is engaged in infrastructure sector.

Explanation:

For the purposes of this proviso, the term "Infrastructure sector" shall have the same meaning as assigned to it in Explanation to proviso to sub-clause (i) of clause 3.7.1."

CHAPTER VIII

OTHER ISSUE REQUIREMENTS

4. For clause 8.3.3, the following clause and Explanation thereto shall be substituted, namely:-

"8.3.3 Clauses 8.3.1 and 8.3.2 shall not apply to -

- a) an infrastructure company, satisfying the requirements specified in sub-clause (iii) of clause 2.4.1, inviting subscription from public; and
- b) a government company, statutory authority or corporation or any special purpose vehicle set up by any of them, which is engaged in infrastructure sector.

Explanation:

For the purpose of sub-clause (b) above, the term “Infrastructure sector” shall have the same meaning as assigned to it in Explanation to proviso to sub-clause (i) of clause 3.7.1.”

Amendments to SEBI (Disclosure and Investor Protection) Guidelines, 2000 - December 03, 2007

CHAPTER II

ELIGIBILITY NORMS FOR COMPANIES ISSUING SECURITIES

1. In clause 2.5.1A, for sub-clause (i), the following sub-clause shall be substituted, namely:-

“(i) credit rating is obtained from at least one credit rating agency registered with the Board and disclosed in the offer document;”

2. For clause 2.5.2, the following clause shall be substituted, namely:-

“2.5.2 Where credit ratings are obtained from more than one credit rating agencies, all the ratings, including the unaccepted ratings, shall be disclosed in the offer document.”

CHAPTER VIII

OTHER ISSUE REQUIREMENTS

3. In clause 8.2.1, for sub-clause (a), the following sub-clause shall be substituted, namely:-

“(a) a credit rating is obtained from at least one credit rating agency registered with the Board for the NCDS.

CHAPTER X

GUIDELINES FOR ISSUE OF DEBT INSTRUMENTS

4. For clause 10.1.1, the following clause shall be substituted, namely:-

“10.1.1 No company shall make a public issue or rights issue of debt instruments (whether convertible or not), unless credit rating is obtained from at least one credit rating agency registered with the Board and disclosed in the offer document.” Page 4 of 4 5. For clause 10.1.3, the following clause shall be substituted, namely:-

“10.1.3 Where ratings are obtained from more than one credit rating agencies, all the ratings, including the unaccepted ratings, shall be disclosed in the offer document.”

6. Clause 10.6.5 and proviso thereto shall be omitted.

7. In clause 10.7.1.1, sub-clause (c), the following sub-clause shall be substituted, namely:-

“(c) Before roll over of any NCDs or non-convertible portion of the PCDs, at least one rating shall be obtained from a credit rating agency registered with the Board within a period of six months prior to the due date of redemption and communicated to the debenture holders before the roll over.”

8. Clause 10.8.1 shall be omitted.

9. Clause 10.8.2 shall be omitted.
