Gurukripa's Latest Updates – Applicable for Nov 2014 Exams
CA Final CORPORATE AND ALLIED LAW

As per ICAI Announcement the following are the provisions of Companies Act, 2013 which **will be applicable for CA Final Nov 2014 Exams –**

- Notified Sections which came into effect from 12th Sep 2013
- Chapter IX and X of the Companies Act, 2013 which came into effect w.e.f. 01.04.2014 [Sec.128 to Sec.148 (both inclusive)].

This Additional Material comprises the following items, for Students appearing in the **November 2014 CA Final Exams –**

Gurukripa's Guideline Answers to May 2014 Exam Questions
CA Final CORPORATE AND ALLIED LAW

Question No.1 is compulsory **(4 × 5 = 20 Marks).**
Answer **any five** questions from the **remaining six** questions **(16 × 5 = 80 Marks).** [Answer any 4 out of 5 in Q.7]

Note: Answers / Reference to Questions pertaining to Notified Sections of the Companies Act, 2013 (applicable for Nov.2014 Exams) are given based on Companies Act, 2013

Q.No.	Questions	Reference / Marks
1(a) (5 M)	**Suspecting of bungling the financial resources of the Company, the Shareholders of Dubious Industries Ltd led by Mr. X, at the AGM of the Company held on 30–09–20XX resolved to appoint M/s Sharma & Sharma, the Statutory Auditors of the Company to carry out Special Audit. The Management of the Company refused to co–operate with the Statutory Auditors in carrying out the Special Audit. Examine whether the management is justified in their refusal. Advise Mr.X with reference to the relevant provisions of the Companies Act.**	**Sec.233A Special Audit – No corresponding provision in COA 2013** **Hint:** Special Auditor u/s 233A can be appointed only by Central Govt. CG can appoint (i) a CA (in practice or not) or (ii) Company Auditor himself. Hence Mr.X can only write a letter to the Secretary to the Ministry of Corporate Affairs to appoint a Special Auditor. The appointment made by the Company in AGM is not valid. [**Refer Page 1.42, Q.No. 47]** **Note:** However, there is no section for Special Audit under the Companies Act, 2013. The remedy for the Shareholders is to invoke the provisions relating to Investigation or the provisions relating to Oppression and Mismanagement.
1(b) (5 M)	**CBA Ltd wants to declare dividend for the current financial year ending, though it will not earn any profit for the year due to heavy losses. The Company has been declaring dividend for the last 5 years. To maintain its reputation, the Company wants to declare dividend this year too out of accumulated past profits. Explain how the Company can achieve the objective to declare Dividend.**	**Refer Page 1.49, Q.No. 60** **COA 1956 (As applicable for Nov 2014 Exams):** The Company can declare Dividend out of accumulated profits, if the following conditions are satisfied:- 1. **Rate of Dividend shall not exceed the** Average Rate of Dividend declared by the company for the immediately preceding 5 Years or 10% of Paid Up Capital whichever is Less 2. **Amount withdrawn** from Accumulated profits < $1/10^{th}$ of Paid up capital and Free Reserves. 3. **Reserves Balance a**fter such withdrawal shall be greater than or equal to 15% of Paid Up Capital.
1(c) (4 M)	**Mr. AMR was appointed as Sole Selling Agent of M/s ZYX Ltd with effect from 1^{st} January, 20XX for a period of 5 Years. Mr. AMR earned his remuneration for the past 3 years as follows:-** **Year 20X1 – 5,00,000** **Year 20X2 – 6,00,000** **Year 20X3 – 7,00,000** **From 1^{st} January, 20XX, the Sole Selling Agency agreement was terminated by ZYX Ltd. Calculate the amount of compensation payable by the Company to Mr. AMR under the provisions of Companies Act.**	**Refer Page 4.46, Q.No.14** **COA 1956 (As applicable for Nov 2014 Exams):** Maximum Compensation payable by the Company is the remuneration he would have earned if he had been in office for (i) 3 years, or (ii) the unexpired residue, whichever is **less**. **Step 1:** Average Remuneration of preceding 3 years = (`5,00,000 +` 6,00,000 +` 7,00,000) ÷ 3 = ` 6,00,000 **Step 2:** Maximum Compensation Payable = Average remuneration × Unexpired period of tenure = ` 6,00,000 × 2 years = ₹ **12,00,000** **Note:** There is no section for Sole Selling Agency / Compensation for premature termination under the Companies Act, 2013.
1(d) (6 M)	**A group of complainants have alleged that Mr. Z, a Member of the SEBI, has pecuniary interest in some of the cases that came up before the Board and that he misused his position and therefore, he should be removed from his office. The complainants seek your advice. Advice.**	**Refer Page 14.3 & 14.4, Q.No.5** **Hint:** The Central Government shall remove a Member from office if in the opinion of CG, the Member has abused his position as to render continuation in office detrimental to public interest. Before removal, reasonable opportunity of being heard shall be provided. **(Sec.6)**

Q.No.	Questions	Reference / Marks
2(a) **(8 M)**	**Sweet Tea Ltd wants to sell its Tea by entering into contract with the following Parties:** **(1) Tea Bros, a Partnership Firm in which a Director of Sweet Tea Ltd is a Partner.** **(2) R & T Pvt Ltd in which one of the Director of Sweet Tea Ltd is a Member.** **(3) Strong Tea Ltd in which one of the Directors of Sweet Tea Ltd is a Director holding 3% of the Paid Up Capital of Strong Tea Ltd.** **Advise the steps that should be taken by Sweet Tea Ltd, taking into account the relevant provisions of the Companies Act, for entering into contracts in which the Directors are interested.**	**Refer Page 4.73, Q.No.27** **Hint:** Contracts u/s 297 require the following compliance:- (a) **If Paid Up Capital < ₹ 1 Crore:** Consent of Board of Directors (b) **If Paid Up Capital ≥ ₹ 1 Crore or more:** Consent of Board of Directors and prior approval of Central Govt. **Issue 1:** A concern in which Director of the Company is a Partner is covered – Sec.297 is applicable. **Issue 2:** A concern in which Director of the Company is a Member is covered – Sec.297 is applicable. **Issue 3:** Transaction between two Public Companies not covered u/s 297 – Approval Not required. However, since the Holding is more than 2% of Paid Up Capital, the Director shall disclose his interest u/s 299.
2(b) **(8 M)**	**(i) Mr. OK is a Director of VRS Ltd. He intends to construct a Residential Building for his own use. The cost of construction is estimated at ` 1.35 Crores, which Mr. OK proposes to finance partly, from his own sources to the tune of ` 60 Lakhs and the balance of ` 75 Lakhs from a Housing Loan to be obtained from a Housing Finance Company. For the purpose of obtaining the loan, he has approached the Housing Finance Company which has in principle agreed to grant the loan, but has put a condition. The condition is that the Company VRS Ltd should provide the guarantee for repayment of the loan and interest as per the terms of the proposed agreement for granting the loan to Mr. OK. You are required to advise Mr. OK on the matter with reference to the Companies Act.** **(ii) Draft a Board Resolution of VRS Ltd for providing guarantee for ₹ 75 Lakhs in respect of a loan to be obtained by Mr. OK, a Director thereof, from a Housing Finance Company for construction of Residential House for his own use.**	**Refer Practical Qn in Page No.4.51** **Issue 1:** **For Nov 2014 Exams:** Sec.185 of COA 2013 prohibits Loan or Guarantee to a Director. However, Loan or Guarantee to Managing and Whole Time Director shall be allowed, if the Loan or Guarantee is a part of the conditions of service extended by the Company to all its employees; or pursuant to any scheme approved by the Members by a Special Resolution. (**Note:** No prior approval from CG is required u/s 185 of COA 2013 unlike Sec.295 of COA 1956) The guarantee to be given by VRS Ltd to the Housing Finance Company on behalf of Director Mr. OK shall be allowed only when the Director is a Managing or Whole Time Director subject to compliance with Sec.372A of COA 1956 (corresponding Sec. 186 of COA is not applicable for Nov 2014 Exams) **Issue 2:** Board Resolution – Refer Page No.4.51
3.(a) **(8 M)**	**ABC Private Ltd was incorporated on 15–09–20XX in the State of Maharashtra by a group of Professional Engineers without any knowledge about the maintenance of the books of account. The Company has appointed you as the Chief Account Officer at New Delhi where the books of account will be maintained. Advise the management with respect to the following under the Companies Act:-** **(i) The nature of books to be maintained.** **(ii) The period for which the accounts have to be preserved, and** **(iii) The steps to be taken if the books of accounts are to be kept in New Delhi.**	**Refer Page No.1.1, Q.No. 1 and 2** **Hint: Sec. 128 of COA 2013** **(as applicable for Nov 2014 CA Final Exams)** (a) Every Company shall prepare and keep at its Registered Office, books of accounts and other relevant books and papers and Financial Statements for every financial year which gives true and fair view of the state of affairs of the Company, including that of its Branch Office(s). Such books shall be kept on accrual basis and according to the double entry system of accounting. Books may be maintained in electronic form also. (b) Books of Accounts along with the relevant vouchers shall be preserved in good order, for not less than 8 years immediately preceding the current year. (c) Books and other papers may be kept at such other place in India as the Board may decide. If such a decision is taken, the Company shall within 7 days thereof file with Registrar a notice in writing giving the full address of the place.

Q.No.	Questions	Reference / Marks
3.(b) (8 M)	**The Balance Sheet of Royal Ltd as at 31–03–20XX disclosed the following details:-** **(i) Authorized Share Capital `400 Crores** **(ii) Paid up Share Capital ` 150 Crores** **(iii) Reserves and Surplus ` 750 Crores** **The Company has issued a Fully Convertible Debentures of ` 100 Crores which are due for conversion in the current year. The Company proposes, after the conversion of Debentures to issue Bonus Share in the ratio of 1:1. Explain briefly the requirements of the Companies Act and the SEBI Guidelines to be followed by the Company in this regard.**	**Refer Page No.15.46, Q.No 56** **Hint:** **Step 1: Eligible Equity =** Equity Capital + Fully Convertible Debentures = `150 Crs + `100 Crs = ` 250 Crs **Step 2: Bonus Value =** Eligible Equity X Bonus Ratio = ` 250 Crs x 1 /1 = ` 250 Crs **Step 3: Funding of Bonus = The required Bonus Value of** ` 250 Crs shall be fully funded out of Reserves and Surplus. **Step 4:** Equity Share capital after Bonus Issue = Step 1 + Step 2 = `500 Crs **Step 5:** Increase in Authorized Share Capital = Step 4 – Present Authorized Capital = `500 Crs – `400 Crs = `100 Crs. **Other Conditions:** Shares shall be fully paid up/ Permission in AOA; No default w.r.t repayment of principal/interest; No default w.r.t statutory payments to employees; Board shall recommend and Company in General Meeting shall approve; No bonus in-lieu of dividend.
4.(a) (8 M)	**Mr. RK, a Director of Excellent Ltd, has applied for a loan of ` 70 Lakhs for the purpose of financing the education of his son to the Company. The Company has applied to the Central Government for approval to grant the loan. While the matter is under consideration of the Central Government, the Company has lent a sum of ` 50 Lakhs to Mr. RK. Finally, the Central Government has rejected the Company's request for the grant of loan and Mr. RK has refunded the amount of ` 50 Lakhs to the Company. The above said facts have been pointed out by the Auditors of the Company in their Audit Report and based on that report the Registrar of Companies has issued a show cause notice to the Company and its Directors. Examine whether the Company has contravened any of the provisions of the Companies Act.**	**Refer Page No. 4.49, Q.No. 14** **Hints: Sec.185 of COA 2013** **(as applicable for Nov 2014 Examinations)** Sec.185 of COA 2013 prohibits Loan or Guarantee to a director. However, Loan or Guarantee to Managing and Whole Time Director shall be allowed if the loan or guarantee is a part of the conditions of service extended by the Company to all its employees; or pursuant to any scheme approved by the Members by a Special Resolution. (**Note:** No prior approval from CG is required u/s 185 of COA 2013 unlike Sec.295 of COA 1956) In case of contravention of Sec. 185 of COA 2013 – (a) the Company shall be punishable with fine not less than ` 5 Lakhs which may extend upto ` 25 Lakhs; (b) the Director to whom the Loan or Guarantee is provided shall be punishable with imprisonment which may extend upto 6 months, or with fine not less than ` 5 Lakhs which may extend up to ` 25 Lakhs, or with both.
4.(b) (8 M)	**A Group of Minority Shareholders of SP Financiers Ltd has made a complaint to the Central Government that the persons in charge of the management of the Company have been guilty of fraud and negligence causing huge losses to the Company and to the detriment of minority Shareholders. Examine the powers of the Central Government to redress the grievances of the Minority Shareholders.**	**Refer Page No.6.13, Q.No.11** **Hint:** CG can appoint certain number of persons as Directors u/s 408 to safeguard the interest of the Company, based on the order to be passed by the Tribunal. **Note:** No corresponding provision exists under COA 2013 for Sec.408 of COA 1956. However, Sec.408 is applicable for Nov 2014 Examinations
5.(a) (8 M)	**Superb Ltd went for a Public Issue of Equity Share (₹10 Crs) of ₹10 each. The Shares were subscribed to an extent of 95% of the total issue. The Shares of the Company were accepted for listing by Bombay Stock Exchange but subsequently the permission was cancelled on certain grounds. On an appeal to the Central Government by the Company, the decision of the Stock Exchange was held to be valid. As a result, the application money had become refundable to the Allottees. The Company had no prospects of doing any business and there**	**Refer Page No. 7.10, Practical Question** **[Jugalkishore Banarsidas Vs.** **South India Saw Mills P. Ltd]** **Hint:** There is a commercial insolvency in the given case. Hence, the Creditors can make a petition u/s 433(e), i.e Company is unable to pay its debts. Shareholders' contention is not sustainable. However, the Court has discretion in dealing with the winding-up petition, i.e. it may allow the petition or may dismiss the same.

Q.No.	Questions	Reference / Marks
	was a complete deadlock among the Directors. Looking at the circumstances, certain Creditors filed a petition in the Court for winding up of the Company on the ground that the Company had become commercially insolvent. The Shareholders of the Company object to the petition of the Creditors. Decide giving reasons: **(i) Whether the objections of the Shareholders will sustain and the Court can dismiss the petition of Creditors for winding up of the Company?** **(ii) State the provisions of the Companies Act in this regard.**	
5.(b) (8 M)	**Due to financial irregularities, the affairs of MNP Bank Limited have gone from bad to worse and this fact has come to the notice of the RBI as well as Central Government. Examining the provisions of the Banking Regulation Act, 1949 and answer the following:** **(i) Power of RBI to inspect the Bank.** **(ii) Powers of Central Government to give directions in this matter.**	**Issue 1 – Power of RBI to Inspect -** Refer P.No.16.9, Q.No.24, Sec.35 **Issue 2 – Power of CG – Refer P.No.16.10, Q.No.24, Point 5 =** Power to prohibit Banking Company from accepting fresh deposits and Power to direct for winding up u/s 38.
6.(a) (4 M)	**(i) In the case of Producer Company, the Auditor is required to report on additional matters apart from the provisions contained in Section 143 of the Companies Act, 2013. State the additional matters on which the Auditor has to report in the case of a Producer Company.**	**Refer Page No. 8.14, Q.No. 29, Point 2**
6.(a) (4 M)	**(ii) State the documents that are required to be delivered by a Foreign Company at the time of establishment of a place of business in India. State to whom the said documents are to be delivered.**	**Issue 1 – Documents to be delivered – Refer Page No. 9.2, Q.No.4** **Issue 2 – To whom to be delivered – Refer Page No. 9.2, Q.No.2**
6.(b) (8 M)	**Mutual Distrust Private Limited has two Shareholders namely A and B holding 51% and 49% respectively. Both are working as Directors. Due to differences between them, A decides to hold a Board Meeting on 30th April 2014, but the same could not be held due to non–cooperation from B and lack of quorum. Advice A about the steps that can be taken under the Companies Act to resolve the matter.**	**Refer Page No. 6.9, Practical Question, Deadlock in Management** **Hint:** Both the parties have equal managerial powers and almost equal voting rights. This is a case of deadlock in management. Upon application to Tribunal, he may pass an order to purchase the shares of one party by the other. If both fails, the Tribunal may order the Company to be would up under just and equitable grounds.
7.(a) (4 M)	**Attempt any four:** **Mr. V, a person of Indian origin and resident of USA desires to acquire two immovable properties in India comprising.** **(i) a Residential Flat in Mumbai and** **(ii) a Farm House on the outskirts of Mumbai.** **Explain the steps he has to take in this matter having regard to the provisions of FEMA, 1999.**	**Refer Page No. 11.19 / Q No. 15** **Hints:** **Issue 1.** It is an admissible Capital Account Transaction. Mr. V, being a Person Resident Outside India can acquire Residential Flat in Mumbai subject to FEMA (Acquisition and Transfer of Immovable Property in India), 2000. **Issue 2.** Investment in Farm House by a Person Resident Outside India is prohibited under FEMA (Capital Account Transaction) Regulations, 2000.
7.(b) (4 M)	**MNO Tyres Ltd is in the business of manufacture of automotive tyres for the past one year. To increase its market share, the Company has decided to reduce the prices of tyres. The cost structure of the Passenger Car Tyre is as under:**	**Refer Page No. 12.17, Q.No.24, Point 4** **Hint:** There shall be an abuse of dominant position u/s 4 by an enterprise if it imposes unfair or discriminatory price in purchase / sale (including Predatory Price) of Goods or Service.

Q.No.	Questions	Reference / Marks
	(i) Cost of Production ₹ 5,000 per tyre **(ii) Selling Price ₹ 6,000 per tyre** **The Company started selling Tyres at ₹ 5,200 per tyre and the other tyre manufacturers made a complaint to the Competition Commission of India stating that MNO Tyres Limited is guilty of predatory pricing having the effect of reducing the competition or eliminating the competition. Advice MNO Tyres Ltd as to the meaning of predatory pricing and whether the Company can be said to have indulged in the said practice having regard to the provisions of the competition Act, 2002.**	Predatory Price means sale of goods or provision of services at a price below cost of production of goods or provision of service. In the given case, the Company is selling the tyre at ` 5,200 which is greater than the total cost of production. Hence it is **not** a predatory price.
7.(c) **(4 M)**	**The Board of Directors of SUV Limited, a Banking Company incorporated in India, for the accounting period ended 31-03-2013 transferred 15% of its net profit to its Reserve Fund. Certain Shareholders of the Company object to the above act of the Board on the ground that it is violative of the provisions of the Banking Regulation Act, 1949. Decide whether the contention of the Shareholders is tenable under the Banking Regulation Act, 1949**	**Refer: Page No. 16.6, Q.No.14, Sec. 17** **Hint:** Minimum amount to be transferred to the Reserve Fund is 20% of profits before declaration dividend. Hence, the objection made by the Shareholders is valid. However, the CG may grant exception from Sec. 17 compliance if the Bank has adequate Paid Up Capital and Free Reserves towards its Demand and Time Liabilities and the aggregate of Reserve Fund and Securities Premium is not less than Paid up Capital of the Banking Company.
7.(d) **(4 M)**	**Explain the meaning of the terms "Non-Performing Asset" and "Asset Reconstruction" used in the SARFAESI Act, 2002.**	**Refer Page No. 16.17, Q.No. 1**
7.(e) **(4 M)**	**Explain the meaning of the term "Money Laundering". Z, a known smuggler, was caught in transfer of funds illegally exporting narcotic drugs from India to some countries in Africa. State the maximum punishment that can be awarded to him under Prevention of Money Laundering Act, 2002.**	**Issue 1 – Meaning – Refer Page No.16.27, Q.No. 2** **Issue 2 – Punishment – Refer Page No.16.32 – Sec.4** **Hint:** Rigorous Imprisonment: Min. 3 years, Max. 7 years [10 years max in case of the proceeds of crime relates to offence under Narcotic Drugs and Psychotropic Substances Act, 1985] and Fine.