

GUIDELINE ANSWERS

EXECUTIVE PROGRAMME

DECEMBER 2008

MODULE II



**THE INSTITUTE OF
Company Secretaries of India**

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

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The Guideline Answers contain the information based on the Laws/Rules applicable at the time of preparation. However, students are expected to be well versed with the amendments in the Laws/Rules made upto **six** months prior to the date of examination.

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EXECUTIVE PROGRAMME

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COMPANY LAW

Time allowed : 3 hours

Maximum marks : 100

NOTE : 1. Answer **SIX** questions including Question No. 1 which is **COMPULSORY**.

2. All references to sections relate to the Companies Act, 1956 unless stated otherwise.

Question 1

Comment on any four of the following :

- (i) *Common seal of a company will have to be affixed on all the letters and documents of the company.*
- (ii) *Private companies can commence business immediately after receipt of 'certificate of incorporation'.*
- (iii) *Bonus issue may be viewed as a 'rights issue' except that money is paid by the company on behalf of the investing shareholders from its reserves.*
- (iv) *A resolution was passed by the shareholders in an annual general meeting approving final dividend @ 20% for the financial year 2007-08 and one month later the Board of directors decided to pay further dividend @ 5% for the financial year 2007-08.*
- (v) *All the shareholders of a company are members and all the members of a company are shareholders.* (5 marks each)

Answer 1(i)

This statement is not correct. Common seal need not be affixed on the letters, Annual Report etc. Resolution of Board is required for affixing common seal of the company on deeds and contracts. Common seal is affixed only in presence of two directors and company secretary or such other person as the Board may appoint for the purpose in accordance with the articles of association. They will put their signatures on the documents. The documents are:

- Power of Attorney of the company
- Share certificate, Debenture/Bond Certificate.
- Share warrant
- Any other deed as may be required by the articles.

The common seal will have to be kept under safe custody.

Answer 1(ii)

A private company can commence business immediately after its incorporation. Certificate of commencement is not required for a private company.

A private company or a company having no share capital may commence business and exercise its various powers immediately after it is incorporated. Once it has received its Certificate of Incorporation, nothing further is required.

Answer 1(iii)

Section 81 of the Companies Act, 1956 provides for **issue of right shares** to the existing shareholders in proportion to the capital paid-up on their shares at the time of issue. The shareholders may accept the offer or renounce it fully or partly. Price of each share in rights issue, number of shares offered etc. is mentioned in the application form. The application duly filled in along with cheque/Bank draft will have to be submitted, as directed, on or before the last date.

Bonus shares are allotted by the company to the existing shareholders in proportion to the number of shares they have been holding. The existing shareholders are neither required to make any application nor have to pay anything. Accumulated profits of the company transferred to reserve are converted into capital and the company divides the capital amongst the existing shareholders in the form of bonus share.

Answer 1(iv)

It has been considered by the Company Law Board (CLB) that whether a company is prohibited from declaring a further dividend at a general meeting of a company other than the annual general meeting after a dividend had already been declared at an annual general meeting. CLB is of the opinion that it is beyond the powers of a company to declare a further dividend after the declaration of dividend at the annual general meeting. In this connection attention is invited of all concerned, to the decision of the Calcutta High Court in the matter of *Biswa Nath Pd. Khaitan v. New Central Jute Mills Ltd.* [1961] 31 Comp. Cas. 125. Thus, a company which could not declare a dividend at an annual general meeting may do so at a subsequent general meeting. On the other hand, where a company has declared a dividend at a general meeting neither the company nor its directors can declare a further dividend for the same year. (As per Circular No. 22 [7/9/74-CL-II], dated 25-9-1975 issued by the Department of Company Affairs).

Answer 1(v)

Normally, all the shareholders are members and all the members are shareholders. However, members are those whose names have been entered in the Register of Members of the company. Hence, situation may arise when a shareholder may not be member viz.:

- (a) A person is holding a share warrant.
- (b) A person has bought shares but his name is not been entered in the register of members.
- (c) Heir/legal representative of the deceased till the shares are transmitted in his/her name.

Similarly, in certain situations a member may not be a shareholder, for instance-

- (d) Person has transferred/sold shares but his name has been appearing in the Register.
- (e) Name of a person has been included in the Register by mistake.

Question 2

- (a) Choose the most appropriate answer from the given options in respect of the following :
- (i) The number of debentureholders in a private company should not exceed—
 - (a) Fifty
 - (b) Twenty
 - (c) One hundred
 - (d) No such limit.
 - (ii) Which of the following is not an advantage/privilege enjoyed by a private company over a public company —
 - (a) Business can be commenced immediately on incorporation
 - (b) No need to have more than two directors
 - (c) The number of members is limited to fifty
 - (d) There is no restriction on remuneration payable to directors.
 - (iii) In a government company, the government shareholding must not be less than —
 - (a) 25% of the paid-up share capital
 - (b) 50% of the paid-up share capital
 - (c) 51% of the paid-up share capital
 - (d) 100% of the paid-up share capital.
 - (iv) Which of the following is not a characteristic of a statutory corporation in India —
 - (a) It is owned by the State
 - (b) Its employees are civil servants and are governed by government regulations in respect of conditions of service
 - (c) It is created by a special law of the Parliament or State legislature
 - (d) It is a body corporate and therefore it can sue and be sued.
 - (v) Under section 146, every registered company should have a registered office —
 - (a) From the date on which it begins to carry on business
 - (b) From the date on which it obtains certificate of incorporation
 - (c) From the 30th day after the date of its incorporation
 - (d) From the date on which it begins to carry on business or from the 30th day after the date of its incorporation, whichever is earlier.
 - (vi) The quantum of registration fees payable by companies to be incorporated in India depends on —
 - (a) The issued capital of the company
 - (b) The nominal capital of the company

- (c) *The paid-up capital of the company*
 - (d) *The called-up capital of the company.*
 - (vii) *When bonus shares are allotted to members, they are required to pay —*
 - (a) *The market price of the shares*
 - (b) *The book value of the shares*
 - (c) *The face value of the shares*
 - (d) *None of the above.*
 - (viii) *Forfeited shares can be re-issued by a company by way of passing —*
 - (a) *An ordinary resolution at the general meeting*
 - (b) *A special resolution at the general meeting*
 - (c) *A Board resolution*
 - (d) *None of the above.*
- (1 mark each)
- (b) *Re-write the following sentences after filling-up the blank spaces with appropriate word(s)/figure(s) :*
- (i) _____ *acts as the official signature of a company.*
 - (ii) *A private company, which is subsidiary of a company not being a private company, is a _____ company.*
 - (iii) _____ *is an Act enacted to prevent the improper use of certain emblems and names for professional and commercial purposes in India.*
 - (iv) *The issue of ESOPs or ESOS shall be subject to approval of shareholders through a _____ resolution.*
 - (v) *When a company makes buy-back of shares or securities, the buy-back operations shall be completed within _____ from the date of filing of draft letter of offer.*
 - (vi) *Working capital of a company may be defined as the excess of current and liquid assets over _____.*
 - (vii) *The register and index of debentureholders of a company should be preserved for _____ till after the redemption of the debentures.*
 - (viii) *The directors appointed under the principle of proportional representation shall hold office for a period of _____.*
- (1 mark each)

Answer 2(a)

- (i) (d) No such limit
- (ii) (c) The number of members is limited to fifty
- (iii) (c) 51% of the paid-up share capital
- (iv) (b) Its employees are civil servants and are governed by government regulations in respect of conditions of service

- (v) (d) From the date on which it begins to carry on business or from the 30th day after the date of its incorporation, whichever is earlier
- (vi) (b) The nominal capital of the company
- (vii) (d) None of the above
- (viii) (c) A Board resolution

Answer 2(b)

- (i) **Common seal** acts as the official signature of a company.
- (ii) A private company, which is subsidiary of a company not being a private company, is a **public** company.
- (iii) **The Emblems and Names (Prevention of Improper Use) Act, 1950** is an Act enacted to prevent the improper use of certain emblems and names for professional and commercial purposes in India.
- (iv) The issue of ESOPs or ESOS shall be subject to approval of shareholders through a **special** resolution.
- (v) When a company makes buy-back of shares or securities, the buy-back operations shall be completed within **12 months** from the date of filing of draft letter of offer.
- (vi) Working capital of a company may be defined as the excess of current and liquid assets over **current liabilities**.
- (vii) The register and index of debentureholders of a company should be preserved for **15 years** till after the redemption of the debentures.
- (viii) The directors appointed under the principle of proportional representation shall hold office for a period of **three years**.

Question 3

- (a) *What is 'capital profit' ? Can dividend be declared out of capital profit ? If so, under what circumstances ?* (6 marks)
- (b) *Under section 205, depreciation will have to be provided for working out distributable profit. Though, the present value of land of a company, dealing with land, is much less than the book value, the difference between the book value and market value was not amortised before declaring dividend. Discuss.* (4 marks)
- (c) *Can the dividend be declared out of previous years' profits transferred to reserve? Discuss.* (6 marks)

Answer 3(a)

The term 'capital profits' may be defined to mean those profits which arise otherwise than in the normal course of the business and earned out of capital transactions. The usual sources of capital profits are:

- (1) Profits on sale of fixed assets.
- (2) Profits on revaluation of fixed assets.

- (3) Premium on issue of shares/debentures/bonds.
- (4) Profits on reissue of forfeited shares.
- (5) Capital redemption reserve account.
- (6) Profit prior to incorporation i.e. profits which accrues to a company till the date of incorporation.

The Companies Act does not mention specifically whether capital profits i.e. profits which arise where a company sells part of its fixed assets at a price higher than the original cost of such asset, can be distributed as dividend.

However, in the two important cases of *Lubbock v. British Bank of South America* (1892) 2 Ch. 198 and *Foster v. The New Trinidad Co. Ltd.* (1901) 1 Ch. 208, the courts have held that capital profits cannot be considered as available for distribution as dividend unless:

- (a) the articles of association authorise such a distribution; and
- (b) the surplus is realised and remains after a valuation of the whole of the assets and liabilities.

Answer 3(b)

A loss of capital need not be made good before declaring or payment of dividend out of capital profits [*Botton v. Natal Land & Colonisation Co. Ltd.* (1892) 124 Ch.]

In this case, the plaintiff sought to restrain the payment of dividend by a company dealing with land on the ground that the book value of the land was much higher than the true value and must be written down before profit can be distributed. Held that a loss of capital need not be made good before declaring a payment of dividend out of current profits.

Answer 3(c)

In case of absence or inadequacy of profits, dividend can be declared under Section 205A(3) of the Companies Act out of the accumulated profits earned by the company in the previous years and transferred by it to reserves. Such declaration should be in accordance with the rules prescribed in this regard by the Government. If such a declaration does not conform to the rules, the declaration of dividend will require the previous approval of the Central Government. In exercise of its powers under this subsection, the Central Government has framed rules known as Companies (Declaration of Dividend Out of Reserves) Rules, 1975.

Under these rules dividend can be declared from amounts drawn from reserves (i.e. free reserves only and not from any specific reserves) in case of absence or inadequacy of profits subject to the following conditions:

- (a) the rate of dividend declared shall not exceed the average of the rates of dividend declared by it during the immediately preceding last five years or 10% of the paid-up capital, whichever is less;
- (b) the amount to be drawn shall not exceed 10% of its paid-up capital and free reserves and the amount so drawn should be first utilised to set off the

losses incurred in the financial years before any dividend in respect of preference and equity shares is declared; and

- (c) the balance of reserves after such drawal shall not fall below 15% of the paid-up share capital.

Question 4

- (a) *What are the provisions regarding disclosure in the directors' report of the events of great importance to the business developed after closure of accounts of the company ?* (4 marks)
- (b) *Enumerate the differences between 'statutory books' and 'statistical books' of a company.* (4 marks)
- (c) *What is the procedure regarding authentication of annual accounts of a private company when only one director is available in India ?* (4 marks)
- (d) *Is it mandatory for all the directors to obtain DIN ? Discuss.* (4 marks)

Answer 4(a)

The annual report will have to include indication of company's likely future developments and of any important events occurring after balance sheet date.

Guidelines in this connection have been published by the Institute of Chartered Accountants of India. According to the guidelines, significant events occurring after the balance sheet date and the date on which the financial statements are approved, both favourable and unfavourable, which have significant effects on the financial result may require adjustment to asset and liabilities or may require disclosure. Those significant events which occur during that period i.e. balance sheet date and their approval date, which do not have material effect on the financial results as on balance sheet date may be disclosed through Directors' Report or Chairman's statement/speech.

Two types of events have been identified –

- (i) those that provide further evidence of conditions that existed at the balance sheet date, and
- (ii) those that are indicative of conditions that arose subsequent to the balance sheet date.

Answer 4(b)

Statutory Books

In addition to the books of account, the Companies Act, 1956, specifically requires certain other books to be kept by a company for maintaining a record of its different activities in order to safeguard the interests of the shareholders and creditors. These books are known as Statutory Books. Some of such books are laid down as below:

1. Register of investments in securities made by the company but not held by it in its own name [Section 49(7)].
2. Register of fixed deposits.
3. Register of Securities bought back [Section 77A(9)].

4. Register of charges [Section 143(1)].
5. Register of Members [Section 150(1)].
6. Index of Members where the number is more than fifty unless the Register of Members itself affords an index [Section 151(1)].
7. Register of Debentureholders [Section 152(1)].
8. Index of Debentureholders where the number is more than fifty unless the Register of Debentureholders itself affords an index [Section 152(2)].
9. Register and Index of Beneficial Owners [Section 152A].
10. Foreign Registers of Members and Debentures holders and their duplicates [Sections 157(1) and 158(4)].

Statistical Books

In addition to the books of account and statutory books mentioned earlier, a company usually maintains a number of statistical books in order to keep complete records of the numerous details connected with the business operations. The keeping of such books has become a necessity although there is no legal compulsion for the same. The following is the list of some of such important books:

1. Share Application and Allotment Book
2. Share Call Book
3. Share Certificate Book
4. Share Transfer Book
5. Debenture Interest Book
6. Director's Attendance Book
7. Agenda Book
8. Dividend Mandate Register
9. Share Warrants Register
10. Register of certified transfers

Answer 4(c)

According to section 215 of the Companies Act, 1956, the balance sheet and the profit and loss account shall be signed on behalf of the Board by (a) the manager or secretary if any and by (b) two directors one of whom shall be a managing director where there is one. If there is no managing director, then by (a) the manager or secretary, if any and (b) any two directors shall sign the same. If only one director or managing director is, for the time being in India, he can sign the balance sheet and the profit and loss account. However, in such a case he is required to file with the Registrar of Companies, along with the balance sheet and the profit and loss account, a signed statement explaining the reason as to why compliance with the provisions of Sub-section (1) of Section 215 was not possible.

Answer 4(d)

Sections 266A to 266G of the Companies Act, 1956 contain the provisions for DIN. As such, all the existing directors and individuals intending to become directors have to

obtain DIN within the prescribed time frame and in the manner as prescribed. Central Govt. has prescribed Director Identification Number Rules, 2006, governing Director Identification Number.

DIN is allotted by the Central Government within one month from the receipt of application for allotment of DIN.

No one can obtain more than one DIN.

DIN number will have to be quoted while furnishing any return, information etc. relate to the Director or contain information/reference of any director.

Intimation of DIN will have to be given to the Registrar or any other officer or other specified authority within a week of obtaining the number.

Question 5

(a) *State, with reasons in brief, whether the following statements are correct or incorrect:*

- (i) *The property of a company is not the property of the individual members.*
- (ii) *The separate personality of a company is a statutory privilege and it must be used for legitimate business purposes only.*
- (iii) *Every company shall have the words 'Limited', if the company is registered with a limited liability.*
- (iv) *The members of an unlimited company are liable directly to the creditors of the company.* (2 marks each)

(b) *Write short notes on the following :*

- (i) *The golden rule or golden legacy; and*
- (ii) *Corporation sole.* (4 marks each)

Answer 5 (a)

- (i) **Correct.** A company being a legal person and entirely distinct from its members, is capable of owning, enjoying and disposing of property in its own name. The company is the legal person in which all its property is vested, and by which it is controlled, managed and disposed of. Their Lordships of the Madras High Court in *R.F. Perumal v. H. John Deavin*, A.I.R. 1960 Mad. 43 held that "no member can claim himself to be the owner of the company's property during its existence or in its winding-up".
- (ii) **Correct.** As separate personality of the company is a statutory privilege, it must be used for legitimate business purposes only. Where a fraudulent and dishonest use is made of the legal entity, the individuals concerned will not be allowed to take shelter behind the corporate personality. The Court will breakthrough the corporate shell and applies the principle of what is known as "lifting of or piercing through the corporate veil".
- (iii) **Correct.** Every company shall have the words 'Limited', if the company is registered with a limited liability. Moreover, if a company is registered with a limited liability, the words 'Private Limited' must be added at the end of its name

by a private limited company. On the other hand, the words 'limited' must be added at the end of its name by a public limited company. However, section 25 company is an exception in this regard.

- (iv) **Incorrect.** The members of an unlimited company are not liable directly to the creditors of the company, as in the case of partners of a firm. The liability of the members is only towards the company and in the event of its being wound up only the Liquidator can ask the members to contribute to the assets of the company which will be used in the discharge of the debts of the company.

Answer 5(b)(i)

The Golden Rule or Golden Legacy

It is the duty of those who issue the prospectus to be truthful in all respects. This Golden Rule was enunciated by Kinderseley, V.C. in *New Brunswick, etc., Co. v. Muggeridge*, (1860) 3 LT 651, and has come to be known as the "golden legacy". "Those who issue a prospectus hold out to the public great advantages which will accrue to the persons who will take shares in the proposed undertaking. Public is invited to take shares on the faith of the representation contained in the prospectus. The public is at the mercy of company promoters. Everything must, therefore, be stated with strict and scrupulous accuracy. Nothing should be stated as a fact which is not so and no fact should be omitted, the existence of which might in any degree affect the nature or quality of the privileges and advantages which the prospectus holds out as inducement to take shares. In short, the true nature of the company's venture should be 'disclosed'. If concealment of any material fact has prevented an adequate appreciation of what was stated, it would amount to misrepresentation. Thus, even if every specific statement is literally true, the prospectus may be false if by reason of the suppression of other material facts, it conveys a false impression".

Answer 5(b)(ii)

Corporation Sole

A corporation sole is a single individual constituted as a corporation in respect of some office held by him or function performed by him. The Crown or a Bishop under the English law is an example of this type of corporation. It may be noted that though a corporation sole is excluded from the definition for the purposes of the Companies Act, it continues to be a legal person capable of holding property and becoming a member of a company.

The classic examples for 'corporation sole' in India are the President of India and the Governors of the Indian States. Under Article 299 of the Constitution of India, all contracts for and on behalf of the Governments in India are required to be in the name of the President of India [in case of Government of India] and the Governors of the States [in case of State Governments].

Question 6

- (a) *Jolly is one of the preference shareholders of Jack & Jill Ltd., a company registered under the Companies Act, 1956. The annual general meeting of the said company is scheduled to be held on 8th January, 2009. In this context, Jolly wants to*

exercise his voting rights at the scheduled general meeting. Can he do so ? If so, state whether he can vote on every resolution placed before the meeting.

(8 marks)

(b) What is 'class meeting' ? What are the purposes, provisions and procedure for holding class meeting ?

(8 marks)

Answer 6(a)

Under section 87(2) of Companies Act, 1956 a preference shareholder has the right to vote only on a resolution which directly affects the rights attached to his preference shares.

For this purpose, any resolution for winding up of the company or for the repayment or reduction of its share capital shall be 'deemed' directly to affect the rights attached to preference shares.

However, a preference shareholder shall be entitled to vote on every resolution placed before the company at any meeting, if the dividend has remained unpaid for specified period, viz.,

- (i) in the case of cumulative preference shares, in respect of an aggregate period of not less than two years preceding the date of the commencement of the meeting; and
- (ii) in the case of non-cumulative preference shares, either in respect of a period of not less than two years ending with the expiry of the financial year immediately preceding the commencement of the meeting or in respect of an aggregate period of not less than three years, comprised in the six years ending with the expiry of the financial year aforesaid.

Therefore, Jolly can exercise his voting rights at any general meeting only on matters as discussed above.

Answer 6(b)

Class meetings are those meetings which are held by holders of a particular class of shares, e. g. preference shares. Need for such meetings arise when it is proposed to vary the rights of a particular class of shares. Thus, for effecting such changes, it is necessary that a separate meeting of the holders of that class of shares is held and the proposed variation is approved at the meeting. For example, for deciding not to pay the arrears of dividends on cumulative preference shares, for which it is necessary to call a meeting of such shareholders and pass the resolution as prescribed by Section 106 of the Act.

According to section 106 of the Companies Act, 1956, where the share capital of a company is divided into different classes of shares, the rights attached to the shares of any class may be varied with the consent in writing of the holders of not less than three-fourths of the issued shares of that class or with the sanction of a special resolution passed at a separate meeting of the holders of the issued shares of that class—

- (a) if provision with respect to such variation is contained in the memorandum or articles of the company, or

- (b) in the absence of any such provision in the memorandum or articles, if such variation is not prohibited by the terms of issue of the shares of that class.

Procedure for Class Meetings

Regulation 3 of the Table A of Schedule I of the Act provides as under:

- (1) If, at any time, the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, subject to the provisions of Sections 106 and 107, and whether or not the company is being wound up, be varied with the consent in writing of the holders of three-fourths of the issued shares of that class or with the sanction of special resolution passed at the separate meeting of the holders of the shares of that class.
- (2) To every such separate meeting, the provisions of these regulations relating to general meeting shall mutatis-mutandis apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class in question.

The articles of companies will have to be suitably modified or incorporated depending on the needs of each case on the above lines.

The other procedures/provisions relating to service of notice, persons to whom notice should be given, chairman, voting, proxy, minutes, poll etc. are similar to those provided in case of general meetings.

Question 7

(a) *Discuss the following :*

- (i) *Front office represents the interface of the corporate and public users with the MCA-21 system.*
- (ii) *For MCA-21, four types of users which are identified as users of digital signature.*
- (iii) *SMART governance.* (3 marks each)

(b) *What relief are available to the minority shareholders against wrongful conduct of the majority ?* (7 marks)

Answer 7(a)(i)

Front office represents the interface of the corporate and public users with the MCA21 system. This comprises of Virtual Front Office and Registrar's Front Office.

Virtual Front Office (VFO) – VFO merely represents a computer facility for filing of digitally signed e-forms by accessing the MCA portal through internet.

Registrar's Front Office (RFO) – When a company or user does not have the computer facilities required for e-filing, it can avail of these facilities at the designated facilitation centres, known as Registrar's Front Office (RFO) or Physical Front Office (PFO).

Answer 7(a)(ii)

For MCA-21, the following four types of users are identified as users of Digital Signatures and are required to obtain digital signature certificate:

1. MCA (Government) Employees.
2. Professionals (Company Secretaries, Chartered Accountants, Cost Accountants and Lawyers) who interact with MCA and companies in the context of Companies Act, 1956.
3. Authorized signatories of the company including Managing Director, Directors, Manager or Secretary.
4. Representatives of Banks and Financial Institutions.

Answer 7(a)(iii)**SMART Governance**

E-governance or Electronic governance is the application of information technology to the Government functioning in order to bring about simple, moral, accountable, responsive and transparent (SMART) Governance. The system aims at moving from paper based to nearly paperless environment. It is based on the Government's vision of National e-governance in the country.

Answer 7(b)

The management of companies is based on majority rule. Board of Directors exercise their powers vested on them by the Articles of Association of the company, Companies Act and powers given to them by the shareholders in general meetings and passed by a simple majority or by a Special Resolution, Majority rule prevails. However, the rule of majority's supremacy does not hold good in all situation.

The company law provides for adequate protection for the minority shareholders when their rights are oppressed/abused by the majority. However, the Court will not usually intervene at the instance of shareholders. The basic principles of non-interference with the internal management of the company has been laid down in *Foss vs. Harbottle*. The supremacy of the majority, does not prevail in all situations, as over a period of time, certain exceptions have developed. For instance –

Under common law

- ultra vires acts.
- fraud on minority.
- wrong doers in control.
- breach of duties etc.
- resolution requiring special majority passed with simple majority.
- Individual membership rights invaded by the majority of shareholders.

Remedies under the Companies Act –

- (i) variation of class rights

- (ii) in the scheme of reconstruction and amalgamation, the minority shareholders are given protection
- (iii) in cases of oppression and mismanagement, the provisions under section 397 and 398 come to the rescue of the minority shareholders
- (iv) aggrieved shareholder can make winding up petition
- (v) at the instance of shareholders Central Government can order for investigation.

Question 8

- (a) *What do you understand by the term 'illegal association' ? What are the rights and liabilities of a member of illegal association ?* (8 marks)
- (b) *An association of 15 members (not being HUF) started banking business without being registered. After one year, six members retired. Thereafter, three members instituted a suit for partition of assets of the association. Discuss the fate of such a suit.* (8 marks)

Answer 8(a)

Meaning of Illegal Association

By virtue of Section 11 of the Companies Act, no company, association or partnership consisting of more than 20 persons (10 in the case of banking business) can be formed for the purpose of carrying on any business for gain, unless it is registered as a company under the Companies Act, or is formed in pursuance of some other Indian Law, or is a Joint Hindu Family carrying on business for gain. If it is formed without complying with the above provisions, it is called an illegal association.

Section 11 of the Act does not apply to the case of a single joint family carrying on any business whatever may be the number of its members. But if two or more joint hindu family firms carry on business together and the combined number of members exceed 20, then their association will become illegal. In computing the number, minor members of joint families are to be ignored. If by reason of minor members of such joint families on attaining majority, the number of persons exceeds the statutory limit, it will ipso facto become an illegal association. In this case the question arises as to whether the penal provision of this section may be applied to that illegal association. The liberal view under such circumstances seems to be exemption from the penal provision since illegality supervenes at a subsequent stage. [*Niraban v. Lalit*, I.L.R. (1938) 2 Cal. 368]. But by strict interpretation of the provisions of the said section one may hold such illegal association liable.

Rights and liabilities of a member of illegal association

The members of an illegal association are individually liable in respect of all acts or contracts made on behalf of the association; they cannot either individually or collectively, bring an action to enforce any contract so made, or to recover any debt due to the association [*Wilkinson v. Levison* (1925) 42 T.L.R. 97].

Under Sub-sections (4) and (5) of Section 11, every member of an illegal association is:

- (i) personally liable for all liabilities incurred in carrying on the business of, or by, the illegal association, and

- (ii) punishable with fine up to Rs. 10,000.

Answer 8(b)

Under Section 11 of the Companies Act, an association consisting of more than 10 persons carrying on banking business (not being a Hindu Undivided family business) should be registered. If it is not registered, it would be an illegal association, and the effect would be that it has no legal existence. Law does not recognize such an association. An illegal association cannot become a legal association even if later on the number of members falls below the required numbers, e.g. 10 in this case.

It was held in the case of *MST Kumarswami Chettiar v. MSM Chinnathambi Chettiar*, 1950, that an association contravening section 11 of the Companies Act is an illegal association and while it cannot sue on a contract made by it, its members will be individually liable on such contract. There can be no cause of action on the basis of an illegal association.

Thus, in the present question, the association will remain illegal notwithstanding the fact that its number has fallen below 10. Therefore the suit will not be tenable.

ECONOMIC AND LABOUR LAWS

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

With reference to the relevant legal enactments, write short notes on any five of the following :

- (i) Delayed payments to micro and macro enterprises*
 - (ii) Star Export Houses*
 - (iii) Salient features of the Special Economic Zones Act, 2005*
 - (iv) Legal metrology*
 - (v) Well-known trade mark*
 - (vi) Competition policy*
 - (vii) COB licence.*
- (3 marks each)*

Answer 1(i)

Delayed Payments to Micro and Macro Enterprises

Section 15 of the Micro, Small and Medium Enterprises Development Act, 2006 provides that where any supplier, supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day. However, in no case the period agreed upon between the supplier and the buyer in writing should exceed forty-five days from the day of acceptance or the day of deemed acceptance.

Section 16 provides that in case the buyer fails to make payment of the amount to the supplier, the buyer, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, should pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.

In the case of dispute regarding payment of any amount section 18 entitles any of the parties to the dispute to make a reference to the Micro and Small Enterprises Facilitation Council.

Answer to Question No. 1(ii)

Star Export Houses

The Foreign Trade Policy provides that Merchant as well as Manufacturer Exporters, Service Providers, Export Oriented Units (EOUs) and Units located in Special Economic Zones (SEZs), Agri Export Zone (AEZ's), Electronic Hardware Technology Parks (EHTPs),

Software Technology Parks (STPs) and Bio Technology Parks (BTPs) shall be eligible for applying for status as Star Export Houses.

The Foreign Trade Policy categorizes the applicant depending on total FOB (FOR – for deemed exports) export performance during the current plus the previous three years.

A Star Export House is eligible for the following facilities:

- (i) Licence/certificate/permissions etc. and Customs clearances for both imports and exports on self-declaration basis;
- (ii) Fixation of Input-Output norms on priority within 60 days;
- (iii) Exemption from compulsory negotiation of documents through banks except the remittance, which is to be received through banking channels;
- (iv) 100% retention of foreign exchange in EEFC account;
- (v) 360 days normal repatriation period.
- (vi) Exemption from furnishing of Bank Guarantee in Schemes under the Policy.
- (vii) Two star export houses and above permitted export warehouses as per the Guidelines specified by Department of Revenue.

Answer 1(iii)

Salient Features of the Special Economic Zone Act, 2005

The Salient Features of the Special Economic Zone Act are as under -

- (i) matters relating to establishment of Special Economic Zone and for setting up of units therein, including requirements, obligations and entitlements;
- (ii) matters relating to requirements for setting up of off-shore banking units and units in International Financial Service Center in Special Economic Zone, including fiscal regime governing the operation of such units;
- (iii) the fiscal regime for developers of Special Economic Zones and units set up therein;
- (iv) single window clearance mechanism at the Zone level;
- (v) establishment of an Authority for each Special Economic Zone set up by the Central Government to impart greater administrative autonomy; and
- (vi) designation of special courts and single enforcement agency to ensure speedy trial and investigation of notified offences committed in Special Economic Zones.

Answer 1(iv)

Legal Metrology

Legal Metrology is the name by which the law relating to weights and measures is known in international parlance. Legal Metrology is very vital for scientific, technological and industrial progress of any country. The establishment of national standards of weights and measures and their proper enforcement, aim at ensuring accuracy of measurements

and measuring instruments and thus legal metrology strengthens the national economy in a broader sense besides being a potential instrument of consumer protection.

The scope of legal metrology according to international practice extends to three broad fields of human activities, namely, commercial transactions, industrial measurements and measurements needed to ensure public health and human safety. The coverage of legal metrology varies from country to country. In some, almost all practical measurements are brought under the purview of legal metrology, whereas in other countries legal metrology finds restricted application in a few quantities like mass, length and volume used in trade and commerce. In most of the countries, however, legal metrology encompasses measurements which have a bearing on the protection of individuals from the financial and environmental points of view.

Legal metrology can be defined as that part of metrology which deals with units of measurement, methods of measurement and measuring instruments in so far as they concern statutory, technical and legal requirements which have the ultimate object of assuring public guarantee from the point of view of security and of appropriate accuracy of measurements.

Answer 1(v)

Well-Known Trade Mark

In terms of Section 2(1)(zg) of the Trademarks Act, 1999, a well known trade mark in relation to any goods or services means a mark which has become so to the substantial segment of the public which uses such goods or services such that the use of such mark in relation to other goods or services would be likely to be taken as indicating a connection in the course of trade or rendering of services between those goods or services and a person using the mark in relation to the first-mentioned goods or services.

Answer 1(vi)

Competition Policy

The basic purpose of Competition Policy is to preserve and promote competition as a means of ensuring efficient allocation of resources in an economy. Competition policy typically has two elements: one is a set of policies that enhance competition in local and national markets. The second element is legislation designed to prevent anti-competitive business practices with minimal Government intervention, i.e., a competition law. Competition law by itself cannot produce or ensure competition in the market unless this is facilitated by appropriate Government policies. On the other hand, Government policies without a law to enforce such policies and prevent competition malpractices would also be incomplete.

Competition policies cover a much broader set of instruments than competition law, and typically include all policies aimed at increasing the intensity of competition or rivalry in local and national markets by lowering entry barriers and opportunities for harmful coordination, to ensure that markets work effectively and serve the interests of all citizens. Competition law is only a subset of a nation's competition policies. Competition policies typically include pro-competition approaches to trade, investment, sectoral regulation, and consumer protection.

Answer 1(vii)**Carry on Business (COB) Licence**

A COB licence is required when a small scale unit exceeds the prescribed small scale limit of investment in plant and machinery by way of natural growth and continues to manufacture small scale reserved items(s). Also, if exemption from Industrial licensing granted for any item is withdrawn, the industrial undertakings manufacturing such item(s) require COB licence.

The application for COB licence should be submitted in prescribed form to the SIA, Department of industrial Policy and Promotion, along with a crossed demand draft of prescribed amount drawn in favour of the Pay & Accounts Officers, Department of industrial Development, Ministry of Industry, payable at the State Bank of India, Nirman Bhawan, New Delhi.

Question 2

State, giving reasons in brief, whether the following statements are true or false. Attempt any five :

- (i) *The Competition Act, 2002 prohibits dominance as well as the abuse of dominant position.*
- (ii) *In all legal proceedings relating to trade marks, registered under the Trade Marks Act, 1999, the original registration and all subsequent assignments and transmissions thereof shall be conclusive proof of its validity.*
- (iii) *Money laundering is a national phenomenon and stern measures are of critical importance at the national level.*
- (iv) *The Public Liability Insurance Act, 1991 was enacted for the purpose of providing immediate relief to the workers affected by accidents occurring while handling the hazardous substances.*
- (v) *Duty Free Replenishment Certificate (DFRC) is issued to a merchant exporter or manufacturer exporter for the imports used in the manufacture of goods without payment of any basic customs duty whatsoever.*
- (vi) *The erroneous description of manufacturing company in an advertisement amounts to misleading representation and hence an unfair trade practice.*

(3 marks each)

Answer 2(i)**False***Reasons*

The Competition Act, 2002 expressly prohibits any enterprise or group from abusing its dominant position, i. e. , a position of strength, enjoyed by an enterprise or group, in the relevant market, in India, which enables it to—

- (i) operate independently of competitive forces prevailing in the relevant market; or
- (ii) affect its competitors or consumers or the relevant market in its favour”.

Section 4(2)(a) states that there shall be abuse of dominance position, if an enterprise or group-directly or indirectly imposes unfair or discriminatory;

- (i) condition in purchase or sale of goods or services; or
- (ii) price in purchase or sale (including predatory price) of goods or service.

In terms of section 4(2)(b) abuse of dominant position by an enterprise or group include limiting or restricting

- (i) production of goods or provision of services or market therefor; or
- (ii) technical or scientific development relating to goods or services to the prejudice of consumers.

Similarly Section 4 (2) (c), (d) and (e) specify three other forms of abuses namely, if any person indulges in practice or practices resulting in denial of market access in any manner; or makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts and also, if any person uses dominant position in one relevant market to enter into, or protect, other relevant market.

Answer 2(ii)

True

Reasons

Section 31 of the Trademarks Act, 1999 stipulates that in all legal proceedings relating to trade mark registered under the Act, the original registration and all subsequent assignments and transmission thereof shall be prima facie evidence of its validity. However, as per Section 34 the proprietor or a registered user of a registered trademark is not entitled to interfere with or restrain the use by any person of a trademark identical with or nearly resembling it in relation to goods or services in relation to which that person or a predecessor in his title has continuously used that trade mark from a prior date.

Answer 2(iii)

False

Reasons

Money laundering is an international phenomenon and therefore transnational co-operation is of critical importance in the fight against this menace. A number of initiatives have been taken to deal with the problem at international level. In this context, the United Nations or the Bank for International Settlements, took some initiatives in 1980s to address the problem of money laundering. However, with the creation of the Financial Action Task Force (FATF) in 1989, regional groupings, such as the European Union, Council of Europe, and organisation of American States also established anti- money laundering standards for their member countries.

The major international agreements addressing money laundering include the United Nations Convention against Illicit Trafficking in Drugs and Psychotropic Substances

(the Vienna Convention) and Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime. The role of financial institutions in preventing and detecting money laundering has also been the subject of pronouncements by the Basle Committee on Banking Regulation Supervisory Practices, the European Union and the International Organization of Securities Commissions.

Answer 2(iv)

False

Reasons

The Public Liability Insurance Act, 1991, was enacted for the purpose of providing immediate relief to the persons affected by accidents occurring while handling any hazardous substance and for other incidental and connected matters.

The growth of hazardous industries, processes and operations in India has been accompanied by growing risks of accidents, not only to the workmen of such undertakings, but also members of the public in the vicinity. Whereas the workers are generally protected under the Workmen's Compensation Act and the Employees State Insurance Act, members of the public who may be victims are not assured of any relief except through long-drawn legal processes. Considering that majority of the affected people belong to weaker sections of the society, and very limited resources available with them to go through legal proceedings, this Act provides for Mandatory Public Liability Insurance to be taken by companies for installations handling any hazardous substance notified under the Environment Protection Act.

Answer 2(v)

True

Reasons

Duty Free Replenishment Certificate is issued to a merchant-exporter or manufacturer-exporter for the import of inputs used in the manufacture of goods without payment of basic customs duty. DFRC is issued on minimum value addition of 25% except for items in gems and jewellery sector for which prescribed value addition is applicable.

In fact, DFRC is issued only in respect of products covered under the Standard Input Output Norms as notified by DGFT.

DFRC is issued for import of inputs as per SION as indicated in the shipping bills. The validity of such authorisation is 24 months. DFRC and/or the material(s) imported against it are freely transferable. However, DFRC with actual user condition or the material(s) imported against it is non-transferable.

Answer 2(vi)

False

Reasons

The question as to what amounts to misleading advertisement was considered by the Supreme Court (in the first case decided by it relating to unfair trade practice) in

Lakhanpal National Ltd. v. MRTP Commission and Another (1989) 2 Comp. L.J. 159 (SC). The precise question was whether erroneous description of manufacturing company in an advertisement amounted to misleading representation under Section 36A(1).

Explaining the meaning of the term 'unfair trade practice' the Supreme Court observed that the definition of this term in Section 36A is not inclusive or flexible but specific and limited in its contents. The object is to bring honesty and truth in the relationship between the manufacturer and the consumer. When a problem arose as to whether a particular act could be condemned as an unfair trade practice or not, the key to the solution is to examine whether it contains a false statement and is misleading and further what is the effect of such representation made by the manufacturer on the common man.

The Supreme Court pointed out that Mitsushita Ltd., is not a popular name in India while its product 'National' and 'Panasonic' is indeed popular. An advertisement mentioning merely Mitsushita Ltd. would, therefore, fail to convey anything to an ordinary buyer unless he is also told that it is the same company which manufactured products known to him by the names National and Panasonic. Therefore, the erroneous description of the manufacturing company in the advertisements do not attract the provisions of Section 36A of the MRTP Act. The Supreme Court, however, pointed out that it would be more proper for the company to give the full facts by referring to Mitsushita Ltd., by its correct name and further stating that its products is known by the name National and Panasonic.

Question 3

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

- (i) 'Relevant geographic market' and 'relevant product market'.
 - (ii) 'Small scale industrial undertaking' and 'ancillary industrial undertaking',
 - (iii) 'Current account transactions' and 'capital account transactions'.
- (5 marks each)

(b) *Re-write the following sentences after filling-up the blank spaces with appropriate word(s)/figure(s) :*

- (i) Release of foreign exchange facilities for emigration exceeding US\$ _____ or amount prescribed by the country of emigration requires prior approval of RBI.
 - (ii) No permission from the Central Government is required to receive foreign contribution from a relative not exceeding value of Rs. _____ per year subject to its intimation to the Central Government.
 - (iii) An Indian citizen resident outside India may acquire any immovable property in India other than _____.
 - (iv) Remittance of foreign exchange exceeding US\$ _____ per project for any consultancy services procured from abroad requires prior approval of RBI.
 - (v) The minimum time for applying for technological upgradation of the existing capital goods imported under the Export Promotion Capital Goods (EPCG) Scheme is _____ from the date of issuance of the authorisation.
- (1 mark each)

Answer 3(a)(i)**Relevant Geographic Market**

As per Section 2(s) of the Competition Act, 2002 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 conditions prevailing in neighbouring areas.

Relevant Product Market

As per Section 2(t) of the Competition Act, 2002 Relevant Product Market means a market comprising of all those products or services which are regarded as interchangeable or substitutable by the consumer, by reasons of characteristics of products or services, their prices and intended use.

The terms 'relevant market', 'relevant geographical market' and 'relevant product market' have relevance in determination of the agreements being anti competitive, in evaluating combinations and dominance of an enterprise or group.

Answer 3(a)(ii)**Small Scale Industrial Undertaking**

An industrial undertaking in which the investment in fixed assets in plant and machinery, whether held on ownership terms or on lease or on hire purchase, does not exceed rupees one crore.

Ancillary Industrial Undertaking

An industrial undertaking which is engaged or is proposed to be engaged in the manufacturing or production of parts, components, sub-assemblies, tooling or intermediates, or the rendering of services, and undertaking supplies or proposes to supply or renders not more than fifty per cent of its production or services, as the case may be, to one or more other industrial undertakings and whose investment in fixed assets in plant and machinery, whether held on ownership terms or on lease or on hire purchase, does not exceed rupees one crore.

No small scale or ancillary industrial undertaking can be subsidiary of, or owned or controlled by any other industrial undertaking. According to Section 11B of Industries (Development and Regulation) Act, 1951, the Central Government has been empowered to specify by notification the requirements which shall be complied with by an industrial undertaking to enable it to be regarded as an ancillary or a small scale industrial undertaking.

Answer 3(a)(iii)**Capital Account Transaction**

'Capital account transaction' has been defined under Section 2(e) of the Foreign Exchange Management Act, 1999 to mean any transaction which alters the assets or liabilities including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of person resident outside India and includes the transactions specified in Sub-section (3) of Section 6 of the Act.

Section 6 of the Foreign Exchange Management Act, 1999 allows capital account transactions subject however to certain conditions. Reserve Bank of India has been empowered to specify, in consultation with the Central Government, any class or classes of capital account transactions permissible and the limit upto which foreign exchange shall be admissible for such transactions.

Current Account Transaction

The term current account transaction has been defined under Section 2(j) of the Foreign Exchange Management Act, 1999 to mean a transaction other than a capital account transaction and includes payments due in connection with foreign trade, other current business, services and short term banking and credit facilities in the ordinary course of business; payments due as interest on loan and as net income from investments; remittances for living expenses of parents, spouse and children residing abroad and expenses in connection with foreign travel, education and medical care of parents, spouse and children.

Under the Foreign Exchange Management Act freedom has been granted for selling and drawing of foreign exchange to or from an authorized person for undertaking current account transactions. However, the Central Government has been vested with powers in consultation with Reserve Bank to impose reasonable restrictions on current account transactions. The Central Government has framed Foreign Exchange Management (Current Account Transactions) Rules, 2000 dealing with various aspects of current account transactions.

Section 5 of the Act allows any person to sell or draw foreign exchange to or from an authorised person if such sale or drawal is a current account transaction as defined under Section 2(j) of the Act. However, the Central Government may, in the public interest and in consultation with the Reserve Bank impose reasonable restrictions for current account transactions.

Answer 3(b)

- (i) 5000
- (ii) 8000
- (iii) Agricultural/plantation/farm house.
- (iv) one million
- (v) 5 years.

Question 4

- (a) *With reference to the relevant provisions of the Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder, advise on the following:*
 - (i) *Indotech Ltd. desires to make payments of commission on exports made towards equity investment in its joint venture company abroad.*
 - (ii) *Rupa intends to take an insurance policy in her name from an insurance company abroad involving payment of premium amounting to US\$20,000.*

- (iii) *A non-resident shareholder has applied for the issue of additional shares over and above his entitlement of rights shares in an Indian company.*
- (iv) *Girish intends to transfer his shareholding in rupee equivalent to US\$20,000 as gift to his son who is a resident outside India.*
- (v) *Microtech Ltd., a software exporter company, desires to receive 25% of the value of its exports in the form of shares in an overseas software company without entering into joint venture agreement.*
- (b) *Mention the provisions of the Foreign Contribution (Regulation) Act, 1976 in respect of exemptions from accepting foreign contributions. (5 marks)*
- (c) *Explain the provisions of the Trade Marks Act, 1999 regarding infringement of registered trade marks. (5 marks)*

Answer 4(a)(i)

As per Rule 3 read with Schedule I of Foreign Exchange Management (Current Account Transaction) Rules, 2000 making payments of commission on export made towards equity investment in its joint venture company abroad is prohibited.

Hence in view of the aforesaid legal provision, Indotech Ltd. can not make payments of commission on export made towards equity investment in its joint venture company abroad.

Answer 4(a)(ii)

Schedule I of the Foreign Exchange Management (Capital Account Transaction) Regulation 2000 allows a person resident in India for taking out of insurance policy from an insurance company outside India.

Hence in view of the aforesaid legal provision, Rupa can take insurance policy in her name from an insurance company abroad involving payment of premium exceeding US\$ 20,000.

Answer 4(a)(iii)

FEMA allows Indian companies to freely issue rights shares to existing non-resident shareholders, subject to adherence to sectoral cap, if any. However, such issue of rights shares have to be in accordance with other laws/statutes like the Companies Act, 1956, SEBI (Disclosure and Investor Protection) Guidelines (in case of listed companies) etc.

The price of shares offered on rights basis by the Indian company to non-resident shareholders should not be lower than the price at which such shares are offered to resident shareholders.

Hence in view of the aforesaid legal provision, a non – resident shareholder could apply for the additional shares over and above his entitlement of right shares of Indian company.

Answer 4(a)(iv)

Girish required prior approval of Reserve Bank of India for transferring his shareholding

in rupee equivalent to US\$ 20, 000 as gift to his son who is a resident outside India. Provided that -

- The gift does not exceed 5 per cent of the paid-up capital of the Indian company.
- The applicable sectoral cap limit in the Indian company is not breached.
- The transferor (donor) and the transferee (donee) are close relatives as defined in Section 6 of the Companies Act, 1956, as amended from time to time.
- The value of security to be transferred together with any security already transferred by the transferor, as gift, to any person residing outside India does not exceed the rupee equivalent of USD 25,000 during a calendar year.
- Such other conditions as stipulated by Reserve Bank in public interest from time to time.

Answer 4(a)(v)

Foreign Exchange Management Act allows Indian software exporters to receive 25 per cent of the value of their exports to an overseas software startup company in the form of shares without entering into Joint Venture Agreements, with prior approval of the Reserve Bank of India.

Hence in view of the aforesaid legal position, Microtech Ltd. can receive shares in an overseas software company without entering into joint venture agreements, with prior approval of the Reserve Bank of India.

Answer 4(b)

Section 8 of the Foreign Contributions (Regulation) Act, 1976 contains exemptions to the prohibition on the acceptance of foreign contribution by any person specified in Section 4. Accordingly, Section 8 allows the acceptance of foreign contribution by the persons, subject however to Section 10 of the Act and where such contribution is accepted by him

- (a) by way of salary, wages or other remuneration due to him or to any group of persons working under him, from any foreign source or by way of payment in the ordinary course of business transacted in India by such foreign source; or
- (b) by way of payment, in the course of international trade or commerce, or in the ordinary course of business transacted by him outside India; or
- (c) as an agent of a foreign source in relation to any transaction made by such foreign source with Government; or
- (d) by way of a gift or presentation made to him as a member of any Indian delegation, provided that such gift or present was accepted in accordance with the regulations made by the Central Government with regard to the acceptance or retention of such gift or presentation; or
- (e) from his relative when such foreign contribution has been received with the previous permission of the Central Government. However no such permission is required if the amount of foreign contribution received by him from his relative does not exceed in value, eight thousand rupees per annum and an intimation is given by him to the Central Government as to the amount received, the source

from which and the manner in which it was received and the purpose for which and the manner in which it was utilised by him;

- (f) by way of remittance received, in the ordinary course of business, through any official channel, post office, or any authorised dealer in foreign exchange under the Foreign Exchange Regulation Act, 1973 (46 of 1973).

Answer 4(c)

Section 29 of the Trademarks Act, 1999 dealing with infringement of trade marks, explicitly enumerates the grounds which constitute infringement of a trademark. This section lays down that when a registered trade mark is used by a person who is not entitled to use such a trade mark under the law, it constitutes infringement. This section clearly states that a registered trade mark is infringed, if —

- (a) the mark is identical and is used in respect of similar goods or services; or
- (b) the mark is similar to the registered trade mark and there is an identity or similarity of the goods or services covered by the trade mark; or
- (c) the trade mark is identical and is used in relation to identical goods or services;

and that such use is likely to cause confusion on the part of the public or is likely to be taken to have an association with the registered trade mark. Additionally in respect of cases falling in category (c) above, there will be a legal presumption of likelihood of confusion on the part of the public.

A person has been prohibited from adopting someone else's trade mark, as his trade name or name of his business concern or part of the name of his business concern dealing with goods or services in respect of which trade mark is registered.

A person shall be deemed to have used a registered trade mark in circumstances which include affixing the mark to goods or packaging, offering or exposing the goods for sale or supply of services, importing or exporting the goods, the use of the mark as trade name or trade mark on business paper or in advertising. A person shall be deemed to have infringed a trade mark if he applies such registered trade mark knowing that application of such mark is not authorised by the proprietor or licensee. Advertising of a trade mark to take unfair advantage of, or against the reputation of the trade mark also constitutes an infringement under Section 29(8) of the Act. Where the distinctive element of a registered trade mark consists of words, the spoken use of such words as well as visual representation for promoting the sale of goods or promotion of service would constitute infringement under section 29 (9) of the Act.

Question 5

- (a) *Mention any five inventions which are not patentable under the Patents Act, 1970. (5 marks)*
- (b) *State the provisions of the Environment (Protection) Act, 1986 relating to the offences by companies. (5 marks)*
- (c) *Sangeetha filed a complaint against a bank where her ornaments kept in the*

bank's locker were found missing and sought compensation through the Consumers Disputes Redressal Forum against the deficiency in service by the bank. The bank submitted a certificate recorded by the custodian of the bank on the day Sangeetha had operated the locker which stated that all lockers operated during the day had been checked and found properly locked. Will Sangeetha succeed in her claim ?
(5 marks)

Answer 5(a)

The following are not inventions within the meaning of Section 3 of the Patent Act, 1970:

- (a) an invention which is frivolous or which claims anything obviously contrary to well established natural laws;
- (b) an invention the primary or intended use or commercial exploitation of which could be contrary to public order or morality or which causes serious prejudice to human, animal or plant life or health or to the environment;
- (c) the mere discovery of a scientific principle or the formulation of an abstract theory or discovery of any living thing or non-living substances occurring in nature;
- (d) the mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any property or mere new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant.

Explanation to this clause clarifies that salts, esters, polymorphs, metabolites, pure form, particle size, isomers, mixtures of isomers, complexes, combinations and other derivatives of known substance shall be considered to be the same substance, unless they differ significantly in properties with regard to efficacy.

- (e) a substance obtained by a mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance.
- (f) the mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way;
- (g) a method of agriculture or horticulture;
- (h) any process for the medicinal, surgical, curative, prophylactic diagnostic, therapeutic or other treatment of human beings or any process for a similar treatment of animals to render them free of disease or to increase their economic value or that of their products;
- (i) plants and animals in whole or any part thereof other than micro-organisms but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals;
- (j) a computer programme per se other than its technical application to industry or a combination with hardware;
- (k) a literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions;

- (l) a mere scheme or rule or method of performing mental act or method of playing game;
- (m) a presentation of information;
- (n) topography of integrated circuits;
- (o) an invention which in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components.

Answer 5(b)

Section 16 of the Environment (Protection) Act, 1986 deals with offences by the companies and provides that where any offence has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, and the company itself, shall be deemed to be guilty of the offence and shall be liable to be proceeded against. When an offence has been committed by a company, and it is proved that the offence was committed with the consent or connivance of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officers shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Answer 5(c)

Sangeetha will succeed in her claim. The facts of the case are similar to that of *Punjab National Bank v. K.B. Shetty* (First Appeal No. 7 of 1991 decided on 6th August, 1991) In this case, the ornaments kept in the banks locker were found lost though the certificate recorded by the custodian of the bank on the day the customer operated the locker stated that all lockers operated during the day have been checked and found properly locked. The National Commission, held that the bank guilty of negligence and therefore, liable to make good the loss.

PART B

(Answer ANY TWO questions from this part.)

Question 6

Write notes on any four of the following :

- (i) 'Employment injury' under the Employees' State Insurance Act, 1948.
- (ii) 'Prohibition of employment of contract labour' under the Contract Labour (Regulation and Abolition) Act, 1970.
- (iii) 'Philosophy' behind the enactment of the Minimum Wages Act, 1948.
- (iv) 'Manufacturing process' under the Factories Act, 1948.
- (v) Matters within the jurisdiction of industrial tribunals constituted under the Industrial Disputes Act, 1947.
- (vi) Tests for determination of 'industry' under the Industrial Disputes Act, 1947.

(5 marks each)

Answer 6(i)**Employment Injury**

Employment injury under Section 2(8) of the E.S.I. Act, 1948 means “a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India”.

It is well settled that an employment injury need not necessarily be confined to any injury sustained by a person within the premises or the concern where a person works. Whether in a particular case the theory of notional extension of employment would take in the time and place of accident so as to bring it within an employment injury, will have to depend on the assessment of several factors. There should be a nexus between the circumstances of the accident and the employment. On facts no case could be an authority for another case, since there would necessarily be some differences between the two cases. Therefore, each case has to be decided on its own facts. It is sufficient if it is proved, that the injury to the employee was caused by an accident arising out of and in the course of employment no matter when and where it occurred. There is not even a geographical limitation. The accident may occur within or outside the territorial limits of India. However, there should be a nexus or casual connection between the accident and employment. The place or time of accident should not be totally unrelated to the employment (*Regional Director, E.S.I. Corpn. v. L. Ranga Rao*, 1982 I-L.L.J. 29).

Where an employee who is on his way to factory meets with an accident, one K M from the place of employment, the Court held that the injury cannot be said to be caused by accident arising out of and in the course of his employment. Mere road accident on a public road while employee was on his way to place of employment cannot be said to have its origin in his employment in the factory (*Regional Director ESI v. Francis de Coasta*, 1997 LLJ I 34 SC).

Answer 6(ii)**Prohibition of Employment of Contract Labour**

Prohibition of employment of contract labour has been stipulated under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970. This is the most significant provision in the Act. It empowers the appropriate Government to prohibit employment of contract labour in any process, operation or other work in any establishment by issuing a notification in the Official Gazette. However, before doing so it shall consult the Central Board or the State Board as the case may be.

Considerations to be taken into account : Before issuing any notification under Section 10 in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors such as:

- (a) whether the process, operation or other work incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;
- (b) whether it is of perennial nature, that is to say, it is of sufficient duration having

regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;

- (c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;
- (d) whether it is sufficient to employ considerable number of whole time workmen.

The Explanation appended to the Section states that if a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final.

Answer 6(iii)

Philosophy behind the enactment of the Minimum Wages Act, 1948

The Minimum Wages Act of 1948 is a landmark in the history of labour legislation in the country. The philosophy of the Minimum Wages Act and its significance in the context of conditions in India, has been explained by the Supreme Court in *Unichoyi v. State of Kerala* (A.I.R. 1962 SC 12), as follows:

“What the Minimum Wages Act purports to achieve is to prevent exploitation of labour and for that purpose empowers the appropriate Government to take steps to prescribe minimum rates of wages in the scheduled industries. In an underdeveloped country which faces the problem of unemployment on a very large scale, it is not unlikely that labour may offer to work even on starvation wages. The policy of the Act is to prevent the employment of such sweated labour in the interest of general public and so in prescribing the minimum rates, the capacity of the employer need not to be considered. What is being prescribed is minimum wage rates which a welfare State assumes every employer must pay before he employs labour”.

Answer 6(iv)

Manufacturing Process

Section 2(k) of the Factories Act, 1948 defines 'manufacturing process'. It means any process for :

- (i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise, treating or adopting any article or substance with a view to its use, sale, transport, delivery or disposal; or
- (ii) pumping oil, water or sewage or any other substance; or
- (iii) generating, transforming, transmitting power; or
- (iv) composing types for printing, printing by letter-press, lithography, photogravure or other similar process, or book-binding; or
- (v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or
- (vi) preserving or storing any article in cold storage.

The definition is quite important and it has been the subject of judicial interpretation in large number of cases. The Madras High Court in the case of *In re. Seshadrinatha Sarma* 1966 (2) LLJ 235, held that to constitute a manufacture there should not be essentially

some kind of transformation of substance and the article need not become commercially as another and different article from that at which it begins its existence so long as there has been an indisputable transformation of substance by the use of machinery and transformed substance in commercially marketable.

The Division Bench of A.P. High Court held that to determine where certain premises is a factory, it is necessary that it should carry on manufacturing process and it does not require that the process should end in a substance being manufactured (*Alkali Metals (P) Ltd. v. ESI Corpn.*, 1976 Lab.I.C.186). In another case it was observed that manufacturing process merely refers to particular business carried on and does not necessarily refer to the production of some article. The works of laundry and carpet beating were held to involve manufacturing process. A process employed for purpose of pumping water is manufacturing process. Each of the words in the definition has got independent meaning which itself constitutes manufacturing process.

Answer 6(v)

Matters within the jurisdiction of Industrial Tribunals

As per Section 7A of the Industrial Disputes Act, 1947 the appropriate Government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule and for performing such other functions as may be assigned to them under this Act

The Third Schedule of the Industrial Disputes Act, 1947 deals with matters within the jurisdiction of Industrial Tribunals. These are as follows:-

1. Wages, including the period and mode of payment;
2. Compensatory and other allowances;
3. Hours of work and rest intervals;
4. Leave with wages and holidays;
5. Bonus, profit sharing, provident fund and gratuity;
6. Shift working otherwise than in accordance with standing orders;
7. Classification by grades;
8. Rules of discipline;
9. Rationalization;
10. Retrenchment of workmen and closure of establishment; and
11. Any other matter that may be prescribed.

Answer 6(vi)

Industry

As per Section 2(j) of the Industrial Disputes Act, 1947 industry means “any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft, or industrial occupation or avocation of workmen”.

The Supreme Court carried out an in-depth study of the definition of the term industry in a comprehensive manner in the case of *Bangalore Water Supply and Sewerage Board v. A Rajappa*, AIR 1978 SC 548 after considering various previous judicial decisions on the subject and in the process, it rejected some of them, while evolving a new concept of the term industry.

Tests for determination of industry

After discussing the definition from various angles in the above case, the Supreme Court laid down the following tests to determine whether an activity is covered by the definition of industry or not. It is also referred to as the triple test.

- I. (a) Where there is (i) systematic activity, (ii) organised by co-operation between employer and employee, (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g., making, on a large scale, prasada or food) prima facie, there is an industry in that enterprise.
- (b) Absence of profit motive or gainful objective is irrelevant wherever the undertaking is whether in the public, joint, private or other sector.
- (c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.
- (d) If the organisation is a trade or business, it does not cease to be one because of philanthropy animating the undertaking.
- II. Although Section 2(i) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to over-stretch itself. Undertaking must suffer a contextual and associational shrinkage, so also, service, calling and the like. This yields the inference that all organised activity possessing the triple elements in (i) although not trade or business, may still be industry, provided the nature of the activity, viz., the employer - employee basis, bears resemblance to what we find in trade or business. This takes into the fold of industry, undertaking, callings and services, adventures analogous to the carrying on of trade or business. All features, other than the methodology of carrying on the activity, viz., in organising the co-operation between employer and employee, may be dissimilar. It does not matter, if on the employment terms, there is analogy.
- III. Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial disputes between employer and workmen, the range of this statutory ideology must inform the reach of the statutory definition, nothing less, nothing more.

Hence, the Supreme Court observed that professions, clubs, educational institutions, co-operatives, research institutes, charitable projects and other kindred adventures, if they fulfil the triple tests listed in (I), cannot be exempted from the scope of Section 2(j). A restricted category of professions, clubs, co-operatives and gurukulas and little research labs, may qualify for exemption if,

in simple ventures, substantially and going by the dominant nature criterion, substantively, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit.

Question 7

- (a) *Distinguish between any two of the following :*
- (i) *'Principal employer' and 'immediate employer' under the Employees' State Insurance Act, 1948.*
 - (ii) *'Individual dispute' and 'industrial dispute' under the Industrial Disputes Act, 1947.*
 - (iii) *'Partial disablement' and 'total disablement' under the Workmen's Compensation Act, 1923.* (5 marks each)
- (b) *Re-write the following sentences after filling-up the blank spaces with appropriate word(s)/figures :*
- (i) *Minimum wages are to be fixed on the basis of standard normal working hours namely _____ hours a week.*
 - (ii) *Every employee shall be entitled to be paid by his employer in an accounting year, bonus, provided he has worked in the establishment for not less than _____ working days in that year.*
 - (iii) *_____ means the temporary closing of a place of employment or suspension of work or the refusal by an employer to continue to employ any number of persons employed by him.*
 - (iv) *_____ means the termination by the employer of the services of a workman for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action.*
 - (v) *The Trade Unions Act, 1926 provides for the _____ of an unfair labour practice either by the employer or the trade unions or workmen.* (1 mark each)
- (c) *Choose the most appropriate answer from the given options in respect of the following :*
- (i) *To make an employer liable under the Workmen's Compensations Act, 1923, it is necessary that the injury is caused by an accident which must arise —*
 - (a) *Out of employment*
 - (b) *In the course of employment*
 - (c) *Out of employment and in the course of employment*
 - (d) *By any other reason.*
 - (ii) *An insured person under the Employees' State Insurance Act, 1948 is entitled to receive certain benefits. But the insured person is —*
 - (a) *Not entitled to receive more than one benefit for the same period*

- (b) *Entitled to receive more than one benefit for the same period on compassionate grounds*
 - (c) *Entitled to receive one benefit partly in cash and receive the other benefit in kind for the same period*
 - (d) *Entitled to receive more than one benefit on proof of authorities concerned.*
- (iii) *Under the Payment of Gratuity Act, 1972 where the services of an employee have been terminated for any act which constitutes an offence involving moral turpitude provided that such offence is committed by him in the course of his employment, the gratuity payable to the employee may be —*
 - (a) *Wholly or partially forfeited*
 - (b) *Only partially forfeited*
 - (c) *Wholly forfeited*
 - (d) *Forfeited in instalments.*
- (iv) *Under the Contract Labour (Regulation and Abolition) Act, 1970, the principal employer of an establishment can employ contract labour if —*
 - (a) *The principal employer has not obtained the certificate of registration*
 - (b) *The work is of urgent nature*
 - (c) *The work is not of perennial nature*
 - (d) *The work provides instant employment to a considerable number of unemployed persons.*
- (v) *A premises including precincts thereof is a 'factory' within the meaning of the Factories Act, 1948 wherein a manufacturing process is being carried on with the aid of power and where the number of workers working is —*
 - (a) *10 or more workers*
 - (b) *20 or more workers*
 - (c) *15 or more workers*
 - (d) *50 or more workers.*

(1 mark each)

Answer 7(a)(i)

Immediate employer & principal employer under E.S.I. Act, 1948

According to Section 2(13) of the E.S.I. Act, 1948 “immediate employer”, in relation to employees employed by or through him, means a person who has undertaken the execution on the premises of a factory or an establishment to which this Act applies or under the supervision of principal employer or his agent, of the whole or any part of any work which is ordinarily part of the work of the factory or establishment of the principal employer or is preliminary to the work carried on, in or incidental to the purpose of any such factory or establishment, and includes a person by whom the services of an employee who has entered into a contract of service with him are temporarily lent or let on hire to the principal employer and includes a contractor.

“Principal Employer” as per Section 2(17) of the Act means the following:

- (i) in a factory, owner or occupier of the factory and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier and where a person has been named as the manager of the factory under the Factories Act, 1948, the person so named;
- (ii) in any establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf or where no authority is so appointed the head of the Department.
- (iii) in any other establishment, any person responsible for the supervision and control of the establishment.

Answer 7(a)(ii)

Individual dispute and industrial dispute

Industrial dispute under Section 2(k) of the Industrial Disputes Act, 1947 means “any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.”

Till the provisions of Section 2-A (*dismissal, etc., of an individual workman to be deemed to be an industrial dispute*) were inserted in the Industrial Disputes Act, 1947, it has been held by the Supreme Court that an individual dispute *per se* is not an industrial dispute. But it can develop into an industrial dispute when it is taken up by the union or substantial number of workmen (*Central Province Transport Service v. Raghunath Gopal Patwardhan*, AIR 1957 S.C. 104). This ruling was confirmed later on in the case of *Newspaper Ltd. v. Industrial Tribunal*.

In the case of *Workmen of Dimakuchi Tea Estate v. Dimakuchi Tea Estate* (1958) I. L.L.J. 500, the Supreme Court held that it is not that dispute relating to ‘any person can become an industrial dispute. There should be community of interest. A dispute may initially be an individual dispute, but the workmen may make that dispute as their own, they may espouse it on the ground that they have a community of interest and are directly and substantially interested in the employment, non-employment, or conditions of work of the concerned workmen. All workmen need not to join the dispute. Any dispute which affects workmen as a class is an industrial dispute, even though, it might have been raised by a minority group.

The only condition for an individual dispute turning into an industrial dispute, as laid down in the case of *Dimakuchi Tea Estate* is the necessity of a community of interest and not whether the concerned workman was or was not a member of the union at the time of his dismissal.

Answer 7(a)(iii)

Partial disablement and total disablement

Disablement means loss of capacity to work or to move. The Workmen’s Compensation Act, 1923 does not define the word ‘disablement’, but defines partial disablement under Section 2(1)(g). Partial disablement may be temporary or permanent.

"Partial disablement" means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement, and, where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time. [Section 2(1)(g)]

The distinction between these two types of disablement depends on the fact as to whether an injury results in reduction of earning capacity in all the employments in which the workman was capable of undertaking or only in that particular employment in which he was engaged at the time of injury. The type of disablement suffered can be determined only from the facts of a case. But it is provided by the Act that injuries specified in Part II of Schedule I shall be deemed to result in permanent partial disablement. These injuries are known as scheduled injuries.

Total disablement : Total disablement can also be classified as temporary total disablement and permanent total disablement.

"Total disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement provided that permanent total disablement shall be deemed to result from every injury specified in Part I of Schedule I or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to one hundred per cent or more. [Section 2(1)(l)]

Answer 7(b)

- (i) 48 Hours
- (ii) 30 Days
- (iii) Lay-off
- (iv) Retrenchment
- (v) *Prohibition (Read Industrial Disputes Act, 1947)*

Answer 7(c)(i)

- (c) Out of employment and in the course of employment

Answer 7(c)(ii)

- (a) Not entitled to receive more than one benefit for the same period

Answer 7(c)(iii)

- (a) Wholly or partially forfeited

Answer 7(c)(iv)

- (c) The work is not of perennial nature

Answer 7(c)(v)

- (a) 10 or more workers.

Question 8

Attempt any five of the following stating relevant legal provisions and case law, if any :

- (i) A contractor made short payment of wages to a worker employed by him as contract labour. The worker sought the amount due from the principal employer. Will he succeed ?*
- (ii) The services of workmen engaged on casual basis for doing a particular urgent work were terminated after the completion of the said work. Workmen sought compensation as the termination amounted to retrenchment. Will they succeed?*
- (iii) Workmen of an electricity generation station claimed that their unit is covered under the definition of 'factory' considering the process of transforming and transmission of electricity generated at the power station as a 'manufacturing process'. Will their claim succeed ?*
- (iv) An employee contended that subsistence allowance given during the period of his suspension should be included in his total wages for the purpose of calculation of bonus entitlement. Will he succeed ?*
- (v) The company declined to pay gratuity to a deceased employee's wife stating that the employee had worked for two years only whereas eligibility for receiving gratuity accrues only if he served for a period of five completed years of continuous service. Will she succeed ?*
- (vi) An establishment discontinued deduction towards contribution to provident fund from its employees' salary and stopped remitting contribution of its share of provident fund when the number of its employees on rolls fell to fifteen. Do the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 cease to be applicable to the establishment under such circumstances?*
- (vii) A workman, who was a carpenter, had to get his left arm amputated from elbow in an injury caused in the course of employment. The company paid compensation towards partial permanent disablement. The workman demanded compensation claiming it to be total disablement. Will the workman succeed ?*
(4 marks each)

Answer 8(i)

The worker will succeed. Section 21 (1) of the Contract Labour (Regulation & Abolition) Act, 1970 provides that a contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.

Under Section 21(4) of the Act, it has been provided that if the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover

the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

Answer 8(ii)

The workmen will not succeed. The Calcutta High court in *Tapan Kumar v. the General Manager Calcutta Telephones*, (1980) Lab.I.C.508) has held that where the workmen were engaged on casual basis for doing only a particular urgent work, the termination of their service after the particular work is over, is not a retrenchment.

Answer 8(iii)

The workmen will not succeed. The Supreme Court in *Workmen of Delhi Electric Supply Undertaking v. Management of D.E.S.U.*, AIR 1973 S.C. 365 has held that the process undertaken in zonal and sub-stations and electricity generating stations, transforming and transmitting electricity generated at the power station does not fall within the definition of manufacturing process and could not be said to be factories.

Answer 8(iv)

The employee will not succeed. It has been held in the case of *Motor Industries Co.Ltd. v. Popat Muralidhar Patil & Ors*, (1997) 1 CLR 169 Bom. that bonus is not payable on subsistence allowance firstly because the employee does not actually work during that period and secondly because the subsistence allowance cannot be considered as salary or wage.

Answer 8(v)

The wife of the deceased will succeed. According to Section 4(1) of the Payment of Gratuity Act, 1972, gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years:

- (a) on his superannuation, or
- (b) on his retirement or resignation, or
- (c) on his death or disablement due to accident or disease.

It is further provided under the proviso that the completion of continuous service of five years is not necessary where the termination of the employment of any employee is due to death or disablement.

Answer 8(vi)

No. According to Section 1(5) of the EPF Act, 1952 once an establishment falls within the purview of the Act, it shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below twenty.

Answer 8(vii)

The workman will succeed. It is a total disablement as per the Supreme Court decision in *Pratap Narain Singh Deo v. Srinivas Sabata* (1976) 1 L.L.J.235.

In this case, a workman who was a carpenter had amputated his left arm from elbow in an injury. It was held by the Supreme Court that it is a total disablement as the carpenter cannot carry his work with one hand and not a partial permanent disablement.

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) Sweat equity shares are allotted to employees of a company as gift for their performance.
 - (ii) Continuing disclosure by listed companies under the SEBI Takeover Code affects the market price of company's shares.
 - (iii) In case of rolling settlement, the delivery of funds and securities is settled on T+2 basis.
 - (iv) The Central Government cannot privately place the government securities with the Reserve Bank of India.
 - (v) Listing of securities with stock exchanges is a matter of great importance.
(2 marks each)
- (b) Choose the most appropriate answer from the given options in respect of the following :
- (i) The responsibility for regulating the securities market is not shared by the —
 - (a) SEBI
 - (b) Reserve Bank of India
 - (c) Stock Exchanges
 - (d) Ministry of Corporate Affairs.
 - (ii) The mechanism for employees to report to the management certain events like, unethical behaviour, suspected fraud or violation of the company's code of conduct is known as —
 - (a) Whistle blower policy
 - (b) Surveillance action
 - (c) Market abuse
 - (d) Snap investigation.
 - (iii) The money market instrument which is issued in the form of a promissory note is called —
 - (a) Commercial bill
 - (b) Commercial paper
 - (c) Treasury bill
 - (d) Unit issued by a 'money market mutual fund' (MMMF).

- (iv) *Before 1992, the authority which used to regulate and deal with the stock market was the —*
- (a) *Reserve Bank of India*
 - (b) *Controller of Capital Issues*
 - (c) *Registrar of Companies*
 - (d) *SEBI.*
- (v) *Stock brokers and sub-brokers are required to be registered with the —*
- (a) *SEBI*
 - (b) *Stock exchanges*
 - (c) *Registrar of Companies*
 - (d) *Both (a) and (b).*
- (1 mark each)*

Answer 1(a)(i)

True : Under Section 79A of The Companies Act 1956, sweat equity share is a instrument permitted to be issued by specified Indian Companies. Sweat equity shares are allotted to all employees of Companies or Directors as may be decided by Board of Directors of that particular issuer Company as a reward for the best services rendered; at a nominal price or a lower discounted price or at free of cost to further encourage them to put their best efforts for providing know how in the nature of intellectual property rights.

Answer 1(a)(ii)

False : In fact Continuing disclosures standards has enabled companies for quicker dissemination of information to investors. It provides the investors reasonable access to the information to judge the performance of the Company.

Answer 1(a)(iii)

True : In case of rolling settlements the delivery of funds and securities is settled on T+2 basis. Transactions are settled on the 2nd day of the day of Transaction. So if transaction takes place on Monday then the settlement will be done on Wednesday.

Answer 1(a)(iv)

False : The Central Government may also privately place government securities with RBI. This is usually done when the ways and means of advance is near the sanctioned limit and market conditions are not conducive to an issue.

Answer 1(a)(v)

True : Listing of securities with stock exchange is a matter of great importance for companies and investors, because this provides the liquidity to the securities in the market, improves its public image, helps in commanding better support such as loans and investment from Banks/Financial Institutions and compels the company management to disclose important information to the investors enabling them to make crucial decisions.

Answer 1(b)

- (i) (d) Ministry of Corporate Affairs
- (ii) (a) Whistle blower policy
- (iii) (b) Commercial Paper
- (iv) (b) Controller of Capital Issues
- (v) (a) SEBI

Question 2

(a) Write short notes on the following :

- (i) Securities lending
- (ii) Fungibility
- (iii) Custodian of securities.

(3 marks each)

(b) Expand the following abbreviations :

- (i) OMO
- (ii) FSO
- (iii) STR.

(1 mark each)

(c) What are the securities which are not available for buy-back ? (3 marks)

Answer 2(a)(i)**Securities Lending**

Securities lending are regulated by SEBI. Under this scheme a person with idle shares can lend them to another who does not have the shares to fulfill his obligation under a trade finalized by him. There will be no direct contracts between the borrower and lender of securities.

Answer 2(a)(ii)**Fungibility**

The Depositories Act, 1996 envisages that all securities held in depository shall be fungible i.e., all certificates of the same security shall become interchangeable in the sense that investor loses the right to obtain the exact certificate he surrenders at the time of entry into depository. It is like withdrawing money from the bank without bothering about the distinctive numbers of the currencies.

Answer 2(a)(iii)**Custodian of Securities**

Custodian of securities means any person who carries on or proposes to carry on the business of providing custodial services. The term “custodial services” in relation to securities means safekeeping of securities of a client and providing services incidental thereto, and includes –

- (i) maintaining accounts of securities of a client;

- (ii) collecting the benefits of rights accruing to the client in respect of securities;
- (iii) keeping the client informed of the actions taken or to be taken by the issuer of securities, having a bearing on the benefits or rights accruing to the client; and
- (iv) maintaining and reconciling records of the services referred to in points (i) to (iii).

Answer 2(b)

- (i) OMO - Open Market Operations
- (ii) FSO – Foreign Structured Obligations
- (iii) STR – Suspicious Transaction Reporting

Answer 2(c)

The following Securities are not available for buy-back :

- (i) *Securities in lock-in period* : Securities in lock-in period as per SEBI 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.

Question 3

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

- (i) *‘Primary market’ and ‘secondary market’.*
- (ii) *‘Close ended schemes’ and ‘open ended schemes’.*
- (iii) *‘Disaster bonds’ and ‘dual convertible bonds’.* (3 marks each)

(b) *“Capital market intermediaries are a vital link between the SEBI and investors in a public issue.” Comment.* (5 marks)

(c) *Explain the following grading scales for healthcare institutions given by CRISIL:*

- (i) *Grade A*
- (ii) *Grade B*
- (iii) *Grade C*
- (iv) *Grade D.* (1 mark each)

Answer 3(a)(i)**‘Primary Market’ and ‘Secondary Market’**

The primary market provides the channel for mobilizing resources. Secondary market deals in securities which were already issued in primary market or which securities have already raised resources from the primary market earlier.

In primary market the issue of securities may be through an IPO, Further issue of Capital, Right issue, offer to public, Bonus issue, offer of securities under reservation, firm allotment basis to foreign collaborators, partners, mutual funds, merchant bankers, employees etc. The Secondary market deals with such securities which have already listed on stock Exchanges of any category subject to lock in conditions. The primary market creates and offers merchandise for secondary market, which secondary market ensures relative safety in trading as the instruments are traded through stock exchange mechanism.

Answer 3(a)(ii)

‘Close Ended Schemes’ and ‘Open Ended Schemes’

<i>Close Ended Schemes</i>	<i>Open Ended Schemes</i>
1. Fixed Corpus : No new units can be offered beyond the limit	Variable corpus due to on going purchase and redemption
2. Listed on stock exchange for buying and selling or dealings	No listing on exchange transactions done directly with the fund
3. Two values are available viz. : NAV and the market trading price	Only NAV is available as one price
4. Mostly liquid	Highly liquid

Answer 3(a)(iii)

‘Disaster Bonds’ and ‘Dual Convertible Bonds’

Disaster Bonds are issued by companies and Institutions to share the risk and expand the capital to link investors return with the size of insurer losses. The bigger the losses the smaller the return and vice-versa. The coupon rate and the principal of the bonds are decided by the occurrence of the casualty of disaster and by the possibility of borrowers defaults.

A dual convertible bond is convertible into either equity shares or fixed interest rate debentures/preference shares at the option of the lender. Depending on the prospectus of the project during the conversion period, the lender may exercise either of the options. The fixed interest rate debenture may have certain additional features including higher rate of interest distinct from the original debt instrument.

Answer 3(b)

Capital market intermediaries are a vital link between the regulator, issuers and investor. Any aberrations in the capital market has presumably direct bearing on the intermediaries their governance process and practices which in turn affect the confidence of market. It is therefore, necessary to ensure good governance practices of the intermediaries and also to have constant monitoring and surveillance on the acts of intermediaries. SEBI has issued regulations in respect of each intermediary to ensure proper services to be rendered by them to the investors and the capital market. As per Section 11 of SEBI Act. It is the duty of SEBI to register and regulate the Intermediaries in primary and secondary market. SEBI has also issued Regulation, 2008, to put in place a comprehensive framework which will apply to the intermediaries. The new

regulation provided for all intermediaries to register and regulate, the permanent registration, multiple activities registration form, fit and proper person criteria, suspension and cancellation of certificate of registration.

Answer 3(c)

- (i) **Grade - A** – Reflects very good quality of delivered patient care. A healthcare institutions graded in this category has highest standards in Indian health care.
- (ii) **Grade - B** – Reflects good quality of delivered patient care and have facilities lower to grade A
- (iii) **Grade - C** – Reflects average Quality of delivered patient care and improvement in specific areas would be required for such hospital.
- (iv) **Grade - D** – Reflects poor quality of delivered patient care. Infrastructure of hospital is poor quality and below average standard.

Question 4

- (a) *What are the obligations of a capital market intermediary under the Prevention of Money Laundering Act, 2002 ?* (5 marks)
- (b) *List out any four clauses of listing agreement.* (5 marks)
- (c) *“Depository system is a boon to capital market and investors, both.” Elucidate the statement and bring out the advantages of the dematerialisation of securities.* (5 marks)

Answer 4(a)

Obligations of Intermediaries under Prevention of Money Laundering Act, 2002

Under section 12 of Prevention of Money Laundering Act, 2002, there are certain obligations casted on an intermediary to :

- (i) Maintain a second of all transactions, the nature and value of which may be prescribed whether such transactions comprise of a single transaction or a series of transactions integrally connected to each other and where such series of transactions take place within a month.
- (ii) Furnish information of transaction to the Director within such time as may be prescribed.
- (iii) Verify and maintain records of the identity of all its clients in such a manner as may be prescribed.

All intermediaries are required to ensure that a proper policy framework as per the Guidelines on anti-money laundering measures is put into place. The intermediaries are also required to designate an officer as ‘Principal Officer’ who would be responsible for ensuring compliance of the provisions of the Prevention of Money Laundering Act, 2002.

Answer 4(b)

Clauses of Listing Agreement

- (i) *Clause – 13.* Notification of any attachment or prohibiting orders against transfer of securities

- (ii) *Clause – 16.* Book closure or Record date – At least once in a year the books should be closed. Gap between two book closures and or record dates would be at least 30 days.
- (iii) *Clause – 19.* Convening of Board Meeting for decision on Dividend, Bonus, Rights, convertible debentures, buy-back of securities.
- (iv) *Clause – 31.* Further issue of securities and other documents to be forwarded – To forward the Stock Exchange 6 copies of Annual Reports, notices, resolutions and circulars relating to new issue of capital, including notices under sections 391 or 394 read with section 391 of the Companies Act, 1956. Copies of all proceedings of EGMs/AGMs along with notices and explanatory statements etc.
- (v) *Clause – 32.* Preparation of cash flow statement in accordance with AS-3 of ICAI & related party transactions.
- (vi) *Clause – 35.* Shareholding pattern containing details of promoters' holdings and non-promoter holdings.
- (vii) *Clause – 41.* Preparation and submission of quarterly financial statements.
- (viii) *Clause – 49.* Corporate Governance & its compliances
- (ix) *Clause – 50.* Adoption of Accounting Standards as per norms stipulated by ICAI.
- (x) *Clause – 51. EDIFAR* - to be filed/uploaded on Stock Exchanges/SEBI websites.

NOTE : IMPORTANT CLAUSES HAVE BEEN MENTIONED IN THE ANSWER. STUDENTS ARE REQUIRED TO ANSWER ANY FOUR.

Answer 4(c)

Depository system is a boon to capital market and investors both. Depositories gave a new dimension and a new scope for conducting transactions in capital market-primary as well as secondary, in a more efficient and effective manner, in a paperless form on an electronic book entry basis. It provided electronic solution to the aforementioned problems of bad deliveries and long settlement cycles.

The main benefits of a depository is to minimize the paper work involved with the owner, trading and transfer of securities. In the depository system, the ownership and transfer of securities takes place by means of electronic book entries. At the outset, this system rids the capital market of the dangers related to handling of paper through dematerialization which results in advantages :

- (i) Elimination of bad deliveries
- (ii) Elimination of all risks associated with physical certificates.
- (iii) Immediate transfer and registration of securities.
- (iv) Faster disbursement of non-cash corporate benefits like rights, bonus, etc.
- (v) Reduction in brokerage by many brokers for trading in dematerialized securities.

- (vi) Reduction in handling of huge volumes of paper and periodic status reports to investors;
- (vii) Elimination of problems related to change of address of investor transmission etc.

Question 5

- (a) Define 'NAV' and 'offer price'. If Rahul invests Rs.10,000 in a scheme that charges 2% front end load at an NAV of Rs.10 per unit, what shall be the public offer price? (5 marks)
- (b) What are the pre-requisites for 'option trading'? Explain the issues connected with option trading. (5 marks)
- (c) Explain the concept of 'collective investment scheme'. State briefly the obligations of trustees. (5 marks)

Answer 5(a)

Net Asset Value

Net asset value is the value of the assets of each unit of the scheme. Thus if the NAV is the more than the face value of Rs.10/- , there is an appreciation for the investment. If the NAV is less than the face value, it indicates depreciation of the investment. NAV also includes dividends, interest accruals and reduction of liabilities and expenses apart from market value of investments.

Offer Price : Offer Price is the price obtain by dividing Net Asset Value of the scheme by 1 - front and load.

$$\text{Public Offer Price} = \text{Net Asset Value} \div (1 - \text{Front end load})$$

Solution :

$$\text{Public Offer Price} = \text{Net Asset Value} \div (1 - \text{Front end load})$$

$$\text{i.e. } \frac{\text{Rs.10}}{(1 - 0.02)} = \text{Rs.10.20}$$

Answer 5(b)

The most important pre-requisite for option trading is proper infrastructure and writers of options. Institutional infrastructure has to be developed. This will require writers of options, who are speculators willing to take risk for high rewards. The successful functioning of option trading require following pre-requisite.

- standardization of the terms of contract
- careful selection of underlying securities
- appointment of second market maker
- setting up efficient option clearing house
- creation of a central market

There are legislative measures in the USA and European countries to check abuses of option trading without undermining its usefulness. In India sentiment call away the market and the volume could go up to the unsustainable level. As such checks and balances have to be provided to bring the market back to normal.

Answer 5(c)

Collective investment scheme means any scheme or arrangement made or offered by any company under which the contributions or payments made by the investors by whatever name called are pooled and utilized solely for the purposes of the scheme or arrangement.

The obligations of trustee include ensuring that the Collective Investment Management Company has :

- (i) the necessary office infrastructure;
- (ii) appointed all key personnel including managers for the schemes and submitted their bio-data which shall contain the educational qualifications and past experience in the areas relevant for fulfilling the objectives of the schemes;
- (iii) taken adequate steps to ensure that the interest of investors of one scheme are not compromised with the object of promoting the interest of investors of any other scheme.
- (iv) maintained minimum net worth on a continuous basis and has informed SEBI immediately of any shortfall;
- (v) been diligent in empanelling the marketing agents and in monitoring their activities.

The trustees are accountable for and are the custodian of the funds and property of the respective schemes and should hold the same in trust for the benefit of the unit holders in accordance with these regulations and the provisions of trust deed.

The trustee should review on a quarterly basis every year all activities carried out by the Collective Investment Management Company. The trustee should also report to SEBI any breach of these regulations and has had, or is likely to have a materially adverse effect on the interests of unit holders as soon as they become aware of the breach.

PART B

(Answer ANY TWO questions from this part)

Question 6

- (a) What is 'initial public offering' (IPO) grading ? Explain the procedure for IPO grading. (5 marks)
- (b) What is 'green shoe option' ? Explain its significance. (5 marks)
- (c) List out the various approvals required for issuance of 'Global Depository Receipts' (GDRs) and the documentation required therefor. (5 marks)
- (d) Explain the procedure adopted for approval of 'basis of allotment' by the stock exchanges. (5 marks)

Answer 6(a)

IPO (Initial Public Offering) grading is a service aimed at facilitating the assessment of Equity issues offered to public. The grade assigned to any individual issue represents a relative assessment of the fundamental of that issue in relation to the universe of other listed equity securities. In India such grading is assigned on a five point scale with a higher score indicating stronger fundamental. Credit rating agencies registered with SEBI carry out IPO grading. The grading does not have any ongoing validity. The company first appoints grading agencies and mandates it for grading exercise. The agency will follow the process outlined below :

- seek information for grading from the company
- visit company operation for discussions
- prepare analytical assessment report
- present analysis to committee comprising top official of company & grading agency
- communicate the grade to the company with assessment report

Answer 6(b)

Green Shoe Option means an option of allocating shares in excess of the shares included in the public issue and operating a post-listing price stabilizing mechanism in accordance with SEBI (DIP) Guidelines 2000.

A company making a public offer of equity shares and desirous of availing this option, should in the resolution of the general meeting authorizing the public issue, seek authorization also for the possibility of allotment of further shares to the 'Stabilizing Agent' (SA) at the end of the stabilization period.

The Significance of Green Shoe Option is that it helps in stabilizing post listing price of the shares.

The company should appoint one of the merchant bankers or book runners, amongst the issue management team, as SA, who will be responsible for the price stabilization process, if required. The SA shall enter into an agreement with the issuer company, prior to filing of offer document with SEBI, clearly stating all the terms and conditions relating to this option including fees charged/expenses to be incurred by SA for this purpose.

Answer 6(c)**Various approvals required for issuance of Global Depository Receipts**

- (i) Approval of the Board of Directors
- (ii) Approval of shareholders.
- (iii) Two stage approval of Ministry of Finance—In principle and Final
- (iv) Approval of Ministry of Corporate Affairs
- (v) Approval of Reserve Bank of India.
- (vi) In principle consent of Stock Exchange for listing of underlying shares.
- (vii) In principle consent of Financial Institutions.

Documentation required for issuance of Global Depository Receipts :

- (i) Subscription Agreement
- (ii) Depository Agreement
- (iii) Custodian Agreement
- (iv) Agency Agreement\
- (v) Trust Deed.

Answer 6(d)

In case of public issue of Securities, the Executive Director/Managing Director of the designated Stock Exchange along with post issue lead merchant banker and the Registrar to the issue is responsible to ensure that the basis of allotment is finalized in a fair and proper manner in accordance with guidelines. Chapter XI of SEBI guidelines shall be applicable for book building portion of a book built public issue.

To finalise basis of allotment in case of issues oversubscribed by 'n' number of times, the system of lots is applicable where a public representative of designated stock exchange indicate lot number of successful applicants; which shall be issued by ED/MD of such Exchange as correct in addition to lead merchant banker, Registrar to the issue and the company's authorized Representative. Once allotment is approved, the company should take all necessary formalities for listing including publication of basis of allotment as per listing agreement and comply further formalities within 7 days of finalization of basis of allotment including refund orders and credit of shares to investors account etc.

Question 7

- (a) Explain any three of the following terms relating to debt market in India :
 - (i) Benchmarked instruments
 - (ii) Inflation linked bonds
 - (iii) Pass through certificates
 - (iv) Floating interest rate. (2 marks each)
- (b) What is meant by the following in a public issue :
 - (i) Subscription list
 - (ii) Issue opening date
 - (iii) Mandatory collection centre ? (3 marks each)
- (c) What is the 'investor education and protection fund' (IEPF) ? Briefly explain its activities as stipulated under the IEPF Rules. (5 marks)

Answer 7(a)(i)

Benchmarked Instruments

These are certain debt instruments wherein the fixed income earned is based on a benchmark. For instance the floating interest rate funds are benchmarked to either the LIBOR or MIBOR.

Answer 7(a)(ii)**Inflation Linked Bond**

A bond is considered indexed for inflation if the payment on the instrument is indexed by reference to the change in the value of a general price index over the term of the instrument.

Answer 7(a)(iii)**Pass Through Certificates**

When mortgages are pooled together and undivided interest in the pool are sold, pass through securities certificates are created.

Answer 7(a)(iv)**Floating Interest Rate**

Floating interest rate simply means that the rate of interest is variable. The interest rate payable for the next period is set with reference to a benchmark market rate agreed upon by both the lender and borrower.

Answer 7(b)(i)

Subscription List : It must be kept open for minimum period of 3 working days and not more than 10 working days and the operation of subscription list be disclosed in the prospectus. In case of infrastructures companies it should be kept open for 21 days and for Rights at least 30 days but not more than 60 days. In case of designated financial institutions, subscription list for public issues shall be kept open for a minimum 3 working days and maximum 21 working days which should be disclosed in the offer documents.

Answer 7(b)(ii)

Issue opening date : It means that the issue must open within 3 months from the date of issuance of the observation letter by SEBI, if any, or within 3 months from 22nd day from the date of filing of draft offer document with SEBI, if no observation letter is issued. For a fast track issue or self prospectus this requirement is not applicable.

Answer 7(b)(iii)

Mandatory collection centre : SEBI (DIP) Guidelines, 2000 require a minimum number of collection centers for an issue of capital to be at four metropolitan center Viz. Mumbai, Delhi, Kolkata & Chennai. However, the issuer company is free to appoint as many collection centers as it may deem fit in addition to minimum requirement.

Answer 7(c)

Investor Education and Protection Fund (IEPF) has been established under Section 205C of The Companies Act, 1956. The IEPF stipulate the activities related to investor education awareness and protection for which the financial sanction can be provided under IEPF.

Activities stipulated under IEPF Rules :

- Education Programme through media

- Organizing seminars and symposia
- Proposals for registration of Voluntary Associations or Institution or other organizations engaged in Investor Education and Protection activities
- Proposals for projects for Investors' Education and Protection including research activities and proposals for financing such projects
- Coordinating with institutions engaged in Investor Education, awareness and protection activities.

Question 8

- (a) *What do you understand by 'fast track issues' ? Explain in brief the provisions related to fast track issues.* (6 marks)
- (b) *Write short notes on the following :*
- (i) *Foreign currency convertible bonds (FCCBs)*
 - (ii) *Overseas depository bank*
 - (iii) *Prohibition of certain dealings in securities under the SEBI Regulations.* (3 marks each)
- (c) *What are the requirements for making investment in Indian Depository Receipts (IDRs) ?* (5 marks)

Answer 8(a)

SEBI has decided to enable listed companies satisfying certain specified requirement to make fast track issue. Such companies are not required to file draft offer document with SEBI and stock exchange. Accordingly, the provisions relating to filing of offer documents are not applicable to public issue of securities by a listed issuer company or a rights issue of securities by a listed issuer company where the aggregate value of such securities including premium if any exceed Rs.50 lacs if the condition are satisfied.

Accordingly the provisions relating to filing of offer document are not applicable to public issue of securities by a listed issuer company or a rights issue of securities by a listed issuer company, where the aggregate value of such securities, including premium, if any, exceeds Rs. 50 lacs, if the following conditions are satisfied :

- (i) The shares of the company have been listed on any stock exchange having nationwide terminals for a period of at least three years immediately preceding the reference date.
- (ii) The average market capitalization of public shareholding' of the company is at least Rs.10,000 crores for a period of one year.
- (iii) The annualized trading turnover of the shares of the company during six calendar months immediately preceding the month of the reference date has been at least two per cent of the weighted average number of shares listed during the said six months period.
- (iv) The company has redressed at least 95% of the total shareholder/investor grievances or complaints.
- (v) The company has complied with the listing agreement for a period of at least three years immediately preceding the reference date.

- (vi) The impact of auditors' qualifications if any on the audited accounts of the company in respect of the financial years for which such accounts are disclosed in the offer document does not exceed 5% of the net profit/loss after tax of the company for the respective years.
- (vii) No prosecution proceedings or show cause notices issued by the Board.
- (viii) The entire shareholding of the promoter group is held in dematerialized form as on the reference date.

Answer 8(b)(i)

Foreign Currency Convertible Bonds (FCCBs) means bonds issued in accordance with the FCCB and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and subscribed by a non resident in foreign currency and convertible into ordinary shares of the issuing company in any manner, either in whole or in part on the basis of any equity related warrants attached to debt instruments.

Answer 8(b)(ii)

Overseas Depository Bank : It means a bank authorized by the issuing company to issue global depository receipts against issue of Foreign Currency Convertible Bonds or ordinary shares of the issuing company.

Answer 8(b)(iii)

Regulation 3 of SEBI (Prohibition of Fraudulent and Unfair Trade practices relating to Securities Markets) Regulations prohibits certain dealings in securities and provides that no person shall directly or indirectly :

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made thereunder;
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder.

Answer 8(c)**Requirements for making investment in Indian Depository receipts (IDRs)**

An issuing company cannot raise funds in India by issuing IDRs unless it has obtained prior permission from SEBI at least 90 days prior to the opening date of the issue in the notified manner along with a non-refundable fee of US \$ 10,000.

The issuing company is required to obtain the necessary approvals or exemption

from the appropriate authorities from the country of its incorporation and also has to appoint an overseas custodian bank, a domestic depository and a merchant banker for the purpose of issue of IDRs.

The issuing company has to file through a merchant banker or the domestic depository a due diligence report with the Registrar and also with SEBI.

The issuing company, seeking permission should obtain in-principle listing permission from one or more stock exchanges having nation wide trading terminals in India.
