

GUIDELINE ANSWERS

INTERMEDIATE EXAMINATION

JUNE 2007

GROUP II



The Institute of
Company Secretaries of India

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

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These answers have been written by competent persons and the Institute hopes that the **GUIDELINE ANSWERS** will assist the students in preparing for the Institute's examinations. It is, however, to be noted that the answers are to be treated as model answers and not as exhaustive and the Institute is not in any way responsible for the correctness or otherwise of the answers compiled and published herein.

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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(i)

NOTE : Guideline Answers of the last Six Sessions have been updated with a view to keep the students abreast of new developments. While updating the answers the changes and references to be consulted have been given hereinbelow :

INTERMEDIATE EXAMINATION

UPDATING SLIP

COMPANY LAW

GROUP – II – PAPER 5

<i>Examination Session</i>	<i>Question No.</i>	<i>Updating required in the answer</i>
June 2004 to Dec. 2006	—	(i) Companies (Central Government's) General Rules and Forms, 1956 have been amended vide Companies (Central Government's) General Rules and Forms (Amendment) Rules, 2006 dated 10.02.2006. Through this amendment, existing forms have been substituted by new e-forms. (ii) Sections 610B to E relating to filing of applications, documents etc electronically have been inserted by the Companies (Amendment) Act, 2006. All the answers pertaining to filling and filing of forms with the Central Government/ Registrar of Companies may be updated accordingly. (iii) Sections 226A to G relating to Director Identification Number have been inserted by the Companies (Amendment) Act, 2006. All the answers pertaining to appointment, resignation, retirement etc. of the Directors may be updated accordingly.

(ii)

UPDATING SLIP

COMPANY SECRETARIAL PRACTICE

GROUP – II – PAPER 6

<i>Examination Session</i>	<i>Question No.</i>	<i>Updating required in the answer</i>
June 2004 to Dec. 2006	—	(i) Companies (Central Government's) General Rules and Forms, 1956 have been amended vide Companies (Central Government's) General Rules and Forms (Amendment) Rules, 2006 dated 10.02.2006. Through this amendment, existing forms have been substituted by new e-forms. (ii) Sections 610B to E relating to filing of applications, documents etc electronically have been inserted by the Companies (Amendment) Act, 2006. All the answers pertaining to filling and filing of forms with the Central Government/ Registrar of Companies may be updated accordingly. (iii) Sections 226A to G relating to Director Identification Number have been inserted by the Companies (Amendment) Act, 2006. All the answers pertaining to appointment, resignation, retirement etc. of the Directors may be updated accordingly.

INTERMEDIATE EXAMINATION

JUNE 2007

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) "A promoter is not a trustee or agent for the company, but he stands in a fiduciary position towards it."
- (ii) "Members of a limited company may nevertheless have unlimited liability."
- (iii) "A company does not have unlimited powers to alter its articles of association."
- (iv) "The directors have uncontrolled and unfettered powers to refuse registration of transfer of shares."
- (v) "Every company must have a whole-time Secretary."
- (vi) "A company can accept deposits without issuing advertisement."

(5 marks each)

Answer 1(i)

A promoter is neither an agent of, nor a trustee for, the company because it is not in existence. But he occupies a fiduciary position in relation to the company and therefore requires full disclosure of the relevant facts, including any profit made as held by Lord Cairns in *Erlanger v. New Sombrero Phosphate Co.* (39 LT 269).

They have in their hands the creation and moulding of the company. They have the power of defining how and when and in what shape and under whose supervision it shall come into existence and begin to act as a trading corporation [As per Lord Cairns in *Erlanger v. New Sombrero Phosphate Co.*, (1873) 3 App. Case 1218-1236]. In a series of similar cases under the English Law it has been held that the promoters, being in a fiduciary position, may not make, either directly or indirectly, any profit at the expense of the company and that if he does make a profit in disregard of this rule, the company can compel him to account for it. The promoters can be compelled to surrender the secret profits [*Emma Silver Mining Co. v. Grant*, (1879) 11 Ch. D. and *Erlanger v. New Sombrero Phosphate Co.*, (1878) 3 A.C. 1218-1236 (supra)].

There are two fiduciary duties of a promoter, namely:

1. A promoter cannot make either directly or indirectly, any profit at the expense of the company he promotes, without the knowledge and consent of the company and that if he does so, in disregard of this rule, the company can compel him to account for it. [*Emma Silver Mining Co. v. Grant*, (1879) 11 Ch. D. and *Erlanger v. New Sombrero Phosphate Co.* (1878) 3 AC. 1218-1236 (supra)]. A promoter is not forbidden to make profit but to make secret profit.

2. A promoter is not allowed to derive a profit from the sale of his own property to the company unless all material facts are disclosed.

It is not the profit made by the promoters which the law forbids, but the nondisclosure of it. If full disclosure is made, as was done in *Salomon v. Salomon & Co. Ltd.*, the profit is admissible.

In case, therefore, the promoter wishes to sell his own property to the company, he should either disclose the fact:

- (a) to an independent Board of directors; or
- (b) in the articles of association of the company; or
- (c) in the prospectus; or
- (d) to the existing and intended shareholders directly.

In addition to disclosing secret profits, a promoter has the duty to disclose to the company any interest he has in a transaction entered into by him.

Answer 1(ii)

As provided by Section 45 of the Companies Act, 1956, the members become personally liable if the membership falls below the statutory limits i.e., seven in a public company and two in a private company and the business is carried on for more than six months thereafter. It is also provided in Section 323 of the Act that a limited company may, if so authorized by its articles, alter its memorandum by special resolution so as to render the liability of its directors or of any of its directors or manager as unlimited.

Answer 1(iii)

The Articles of association of a company are its byelaws or rules and regulations that govern the management of its internal affairs and the conduct of its business. The articles can be altered by passing a special resolution in general meeting subject to the following:

- (a) Alteration in the Articles must not exceed the powers given by the Memorandum of Association. In the event of conflict, Memorandum of Association prevails.
- (b) It must not be inconsistent with any of the provisions of the Companies Act or any other statute or order of court under Section 397 and Section 398.
- (c) Altered articles must not contain anything illegal or against public policy and should be for the benefit of the company as a whole.
- (d) Alteration must not constitute fraud on minority nor inflict hardship on it without any corresponding benefit to the company as a whole.
- (e) An alteration tending to increase the liability of its members to contribute to the share capital is not binding on them unless they consent in writing to such increased liability.
- (f) A company cannot justify breach of contract with other parties by altering its Articles.
- (g) No alteration in Articles can be made to convert a public company into private company or in clauses relating to MD/whole-time director etc. without approval of Central Government.
- (h) Alteration to Articles cannot have retrospective effects.

Answer 1(iv)

The directors have uncontrolled and unfettered powers to refuse registration of transfer of shares. The given statement is not true.

The provisions with regard to power of the Board to refuse registration and appeal against refusal are contained in Section 111 of the Companies Act, 1956. It may be noted that though the inherent power of the Board to refuse registration of transfer of shares, if so, authorised by the articles and intimation thereof to the transferor and the transferee has been retained, this right has been sheltered with sufficient safeguards by the Amendment Act of 1988 by requiring companies to categorically state the reasons therefor. According to Sub-section (1) of Section 111, if a company refuses, whether in pursuance of any power of the company under its articles or otherwise, to register the transfer of or the transmission by operation of law of the right to any shares or interest of a member in, or debentures of the company, it shall within two months from the date on which the instrument of transfer, or the intimation of such transmission, as the case may be, was delivered to the company, send notice of the refusal to the transferee and the transferor or to the person giving intimation of such transmission, as the case may be, by giving reasons for such refusal.

Where the articles give power to the Board of directors to refuse to register a transfer of shares, such power must be exercised actively by the directors, and unless they do so, the transfer must be registered. This means that there must be a refusal to register a transfer by a resolution of the Board of directors passed either unanimously or by majority.

Where the articles give the directors absolute and uncontrolled power to refuse registration of a transfer, they can do so without giving any reason and such refusal can be attacked only if the directors have not exercised their discretion honestly in the interest of the company.

If their refusal is exercised mala fide, i.e. if they act oppressively, capriciously, or corruptly, the Company Law Board will interfere and order registration of the transfer of shares (*B. Choukhani v. Western India Theatres Ltd.*, A.I.R. 1957 Cal. 709). Unless the contrary is proved, the power is deemed to have been exercised properly (*Berry & Stewart v. Tottenham Hotspur Football and Athletic Co. Ltd.*, 1936, 3 A11 E.R. 554).

Answer 1(v)

Section 383A of the Companies Act, 1956 as amended by the Companies (Amendment) Act, 1988 introduced the statutory requirement for certain companies to have a company secretary. Sub-section (1) of the Section provides that every company having a paid-up share capital of such sum as may be prescribed shall have a whole-time secretary and where the Board of directors of any such company comprises of only two directors, neither of them shall be the secretary of the company. The Government has in exercise of its powers under this section and Section 2(45), framed the Companies (Appointment and Qualifications of Secretary) Rules, 1988 and provided that every company having a paid-up share capital of not less than rupees two crore must have a whole-time secretary who should be a member of the Institute. Further, the rules provide

that in the case of a company with a lesser paid-up share capital, where the paid-up share capital of such company is increased to rupees two crore or more, the company shall within a period of one year from the date of such increase appoint a person as a whole-time secretary who should be a member of the Institute.

Every company, which is not required to employ a whole-time secretary under Sub-section (1) and having a paid-up share capital of ten lakh rupees or more, shall file with the Registrar a certificate from a secretary in whole-time practice in such form and within such time and subject to such conditions, as may be prescribed as to whether the company has complied with all the provisions of the Act and a copy of such certificate shall be attached with Board's report referred to in Section 217 of the Act.

Where a company fails to comply with the above provisions, the company and every officer of the company, who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

Answer 1(vi)

Every company intending to invite, allowing or causing any other person to invite deposits, shall issue an advertisement. This is implied by the provisions of Section 58A(2) of the Act. However, a company can accept public deposits without publishing any text of advertisement in the newspaper.

As per Rule 4A of the Companies (Acceptance of Deposits) Rules, 1975 –

- (1) Where a company intends to accept deposits without inviting, or allowing or causing any other person to invite, such deposits, it shall, before accepting deposits, deliver to the Registrar for registration a statement in lieu of advertisement containing all the particulars required to be included in the advertisement by virtue of sub-rule (2) of rule 4 and duly signed in the manner provided in sub-rule (4) of that rule.
- (2) A statement delivered under sub-rule (1) shall be valid until the expiry of six months from the date of closure of the financial year in which it is so delivered or until the date on which the balance sheet is laid before the company in general meeting or, where the annual general meeting for any year has not been held, the latest day on which that meeting should have been held in accordance with the provisions of the Act, whichever is earlier.

Question 2

- (a) *State with reasons and relevant legal provisions/case law, if any, whether the following statements are correct or incorrect. Attempt any five :*
 - (i) *A public limited company can commence business immediately on incorporation.*
 - (ii) *Hire-purchase and leasing transactions lead to 'borrowing'.*
 - (iii) *Share certificate is an official publication.*
 - (iv) *The place from which a representative of a foreign company in India conducts meetings of shareholders or even directors, and procures orders from customers is a 'place of business' of the foreign company.*

(v) *Modification of charge in the event of change in law requires registration.*

(vi) *Raja, a director of Empire Ltd., resigned his directorship. He is liable to file Form No. 32 with the Registrar of Companies. (2 marks each)*

(b) *Write short notes on any two of the following :*

(i) *Shelf prospectus*

(ii) *Modes of acquiring membership*

(iii) *Director's identity number (DIN). (3 marks each)*

Answer 2(a)(i)

Incorrect, a public company, after incorporation, must obtain a certificate to commence business from the Registrar before it can commence business or exercise its borrowing powers. In order to obtain this certificate, the company must comply with Section 149 of the Companies Act. If the company has issued a prospectus then Section 149(1) applies and if it has not issued a prospectus, Section 149(2) applies.

"Commence any business" does not mean merely the business for which the company was started, but it also includes the power to borrow and make any transaction including sale, and purchase of property, etc. [*Kishangarh Electric Supply Co. Ltd. v. United State of Rajasthan*, AIR 1960 Raj. 49].

Answer 2(a)(ii)

Incorrect. Borrowing implies receipt of money. In hire purchase and leasing transactions, assets are taken for use and the owner is compensated for the use of the asset by paying cash. Hire Purchases and leasing transactions are not covered by Clause (d) of Section 293(1) of the Companies Act, 1956 which deals with borrowing, as they do not amount to borrowing.

Answer 2(a)(iii)

Incorrect. Share certificate is not an official publication under section 147(1)(c) of the Companies Act. Under Section 82, shares are moveable property transferable in the manner provided in the articles of the company. The share certificates are certificate of title and are moveable property but are not official publication in the nature of prospectus, balance sheet, advertisement etc.

Answer 2(a)(iv)

Incorrect. It was held in the case of [*P J Johnson v. Astrofiel Armadom* (1989) 3 Comp L J 1] that mere presence of a representative of a foreign company is not sufficient if his only authority is to elicit orders from customers and therefore, it was not a "place of business."

Answer 2(a)(v)

Correct. So long as the terms or conditions or the extent of operation of any charge is modified for whatever reason, the provisions of Section 135 would become applicable. Therefore, even in case of modification of charges without any mutual agreement between

the parties thereto, namely, as a result of a change in law, the provisions of Section 135 are attracted. (Letter: No. 8/42 (135)/66-CL-V dated 25.11.1966).

Answer 2(a)(vi)

Incorrect. The director is not liable but the Company Secretary of the Company, as one of the officers in default is liable to file form No. 32 and give notice to ROC. [*Soumil Dilip Mehta v. State of Maharashtra* (2003) 113 Comp. Cas.443(Guj)]

Answer 2(b)(i)**Shelf Prospectus**

A new section 60A has been inserted by the Companies (Amendment) Act, 2000. “Shelf Prospectus” means a prospectus issued by any financial institution or bank for one or more issues of securities or class of securities specified in the shelf prospectus. The financial institutions/banks are not required to issue prospectus every time they offer shares to the public within the period of validity of such shelf prospectus which is one year from the date of opening of the first issue of securities. A company filing a shelf prospectus shall be required to file an information memorandum along with shelf prospectus. This concept will save expenditure and time of the companies in issuing a prospectus every time they wish to issue securities.

Answer 2(b)(ii)**Modes of Acquiring Membership**

As per Section 41 of the Companies Act, 1956, membership of a company can be acquired by any of the following modes:

1. By subscribing to the Memorandum of Association of the Company;
2. By agreeing in writing to become a member :
 - (a) by making an application to the company for allotment of shares; or
 - (b) by executing an instrument of transfer of shares as transferee; or
 - (c) by consenting to the transfer of share of a deceased member in his name;or
 - (d) by acquiescence or estoppel;
3. By holding equity shares in the company by purchase of shares in the secondary market either in physical form or through depository participant account

and on his name being entered in the register of members of company.

Answer 2(b)(iii)**Director’s Identity Number (DIN)**

In the current scenario of e-filing, all existing directors and every other person, before becoming a director are required to obtain the Director Identification Number (DIN). DIN is a unique identification number for an existing director or a person intending to become the director of a company. DIN is also mandatory for directors of Indian Companies who are not citizens of India. However, DIN is not mandatory for directors of foreign company having branches in India. Only a single DIN is required for an individual,

irrespective of number of directorships held by him. An existing Director / person intending to become a Director is required to make an application to Ministry of Corporate Affairs (MCA) for this unique identification number in the application form (Form DIN).

Question 3

- (a) *What are the consequences of non-registration of a charge ?*
 - (b) *Whether a member of a company can be expelled ? Discuss with reference to a case law.*
 - (c) *A listed company is having an executive chairman. Explain the provisions regarding composition of the Board of directors in terms of the listing agreement.*
 - (d) *Define 'small depositors' and state how their interest is safeguarded.*
- (4 marks each)

Answer 3(a)

Non registration of charge

The consequences of non-registration of a charge will be as follows :-

1. The charge will be void as against the liquidator and against creditors.
2. The company may give a subsequent valid mortgage to secure the same debt. But if a subsequent creditor, even with notice of the first charge, takes a registered charge before the first charge is registered, he obtains priority.
3. During liquidating process, the creditor becomes unsecured creditor.
4. The creditor who holds equitable charge on the security of the company will lose his lien on the title deeds of documents because of non-registration of the charge.
5. Due to non-registration of the charge, the loan becomes repayable immediately and the company cannot repudiate the loan on the ground of non-registration.
6. Omission to register particulars of charges is punishable with fine which may extend to Rs. 5,000 for every day during which the default continues. A further fine of Rs. 10,000 may be imposed under Section 142.

Answer 3(b)

Expulsion of member

For a long time there has been a controversy about right of the company to expel a member if it is found that his conduct is detrimental to the interest of the company.

The Ministry of Corporate Affairs (MCA) is of the view that providing for expulsion of members is opposed to the fundamental principles of the company's jurisprudence and is ultra vires the company. Referring to the case of *Bajaj Auto Ltd. v. N.K. Firodia*, (1971) 41 Com Cases in the circular, the MCA's view is that authorizing the Board of Directors to expel a member is illegal and void.

Even if the company provides in the articles of association a right to expel a member, this right is not legal because any such provision contained in the articles of association is repugnant to the provisions of the Companies Act, 1956.

Answer 3(c)

Clause 49 of the listing agreement has given the following provisions for composition of the board of directors :

1. Not less than 50 per cent of the board of directors should be non-executive directors.
2. The number of independent directors depends on whether the Chairman is executive chairman or non-executive chairman.
3. In case of non-executive chairman, at least one third of the board should comprise of independent directors.
4. Where the chairman is executive chairman, at least fifty per cent of the board should comprise of independent directors.

Independent directors are those directors who apart from receiving director's remuneration do not have any other material pecuniary relationship or transactions with the company, its promoters, its management, or its subsidiaries, which may affect their independence of judgement.

Answer 3(d)**Small Depositors**

To safeguard the interest of depositors, a provision has been inserted in the Companies Act, 1956 by inserting Section 58AA by the Companies (Amendment) Act, 2000.

A small depositor has been defined to mean a deposit holder who has deposited in a financial year, a sum not exceeding Rs. 20,000/- in a company and includes his successors, nominees and legal representatives. (Section 58AA).

1. It is obligatory on the part of company to inform the Company Law Board / Company Law Tribunal (CLB/CLT) within 60 days of any default in non-payment of deposit on due date or non-payment of interest.
2. The provision further prohibits companies from accepting deposits from small depositors till they repay the matured deposits of each small deposit holder including interest accrued thereon.
3. The company is required to disclose about the default in non-repayment to small depositors on due date, in all their advertisements / application forms for inviting deposits.
4. The new provision also provides for penal action in case of failure to comply with any order of CLB / CLT, of punishment with imprisonment which may extend to three years and also be liable to fine of Rs. 5000 for every day of default.

Section 58AAA was also inserted by the Companies (Amendment) Act, 2000. This section makes every offence connected with or arising out of acceptance of deposits, a cognizable offence under the Code of Criminal Procedure, 1973.

Question 4

- (a) *What is 'forfeiture of shares' ? State the procedure for forfeiture of shares.*
(10 marks)

(b) *Re-write the following sentences after filling-up the blank space with appropriate word(s) so as to convey the correct meaning :*

- (i) *An incorporated company has _____ succession.*
- (ii) *The statutory report shall be forwarded to every member of the company at least _____ days before the day on which the meeting is to be held.*
- (iii) *The maximum amount of fine under section 193 for not recording the minutes of the Board of directors and general meetings is Rs. _____.*
- (iv) *An explanatory statement must be annexed to the notice for the general meeting according to section 173 for consideration of _____ business at a general meeting.*
- (v) *A dividend once declared cannot be revoked except with the consent of the _____.*
- (vi) *In terms of Clause 47 of the listing agreement, Compliance Officer shall be _____ of the company. (1 mark each)*

Answer 4(a)

Forfeiture of Shares

While raising share capital, the companies may call the money due on the shares at intervals as and when the funds are required by the company. While making the calls, the Board of Directors must comply with the provisions of articles of association in this regard. After passing of resolution by the Board to make a call on the shares, call notices are issued to the shareholders requiring them to make payment of call money within a time frame. In case shareholders do not pay the call money inspite of repeated requests, then the Board of Directors is empowered to forfeit the shares. The provisions contained in the articles regarding forfeiture of shares must be strictly complied with.

The following rules may be noted in connection with forfeiture of shares :

1. *Articles to Authorise* — Shares can be forfeited for non-payment of any call, if the articles authorize. As per Regulation 29 of Table A, shares can be forfeited only against non-payment of any call, or instalments of a call.
2. *Resolution for forfeiture* – Article 31 of the Table A provides that if the defaulting shareholder does not pay the amount within the specified time as required by the notice, the directors may pass a resolution forfeiting the shares.
3. *Proper Notice* – Before the shares of a member are forfeited, a proper notice to that effect must have been served. Regulation 30 of Table A provides that a notice requiring payment of the amount due along with any interest accrued must be served, mentioning a further day (not less than 14 days from the date of service of the notice) on or before which the payment is to be made. A proper notice is a condition precedent to the forfeiture and even the slightest defect in the notice will invalidate the forfeiture [*Public passenger Services Ltd. v. M.A. Khader* (1966) 1 Comp. LJ1].
4. *Bona fide exercise* – power of forfeiture must be exercised bona fide and for the benefit of the company. The power must be used in order to coerce reluctant shareholders into paying their calls.

Reissue of Forfeited Shares

Company can either cancel the forfeited shares or reissue the same to another person at the discretion of the Board. Such forfeited shares can be issued at discount also if the Board so decides. No return of allotment is required to be filed in respect of re-issue of forfeited shares.

Answer 4(b)

- (i) An incorporated company has **Perpetual** succession.
- (ii) The statutory report shall be forwarded to every member of the company at least **21** days before the day on which the meeting is to be held.
- (iii) The maximum amount of fine under section 193 for not recording the minutes of the Board of directors and general meetings is **Rs. 500**.
- (iv) An explanatory statement must be annexed to the notice for the general meeting according to section 173 for consideration of **Special** business at a general meeting.
- (v) A dividend once declared cannot be revoked except with the consent of the **Shareholders**.
- (vi) In terms of Clause 47 of the listing agreement, Compliance Officer shall be **the Company Secretary** of the company.

Question 5

Distinguish between any four of the following :

- (i) *'Reserve capital' and 'capital reserve'.*
 - (ii) *'Interim dividend' and 'final dividend'.*
 - (iii) *'Motion' and 'resolution'.*
 - (iv) *'Revocable trust' and 'irrevocable trust'.*
 - (v) *'Debenture' and 'loan'.*
- (4 marks each)*

Answer 5(i)

<i>Reserve Capital</i>	<i>Capital Reserve</i>
(1) It is a part of uncalled capital of the company as decided by passing a special resolution under section 99.	(1) It is the accumulation of profits created out of capital profits or earnings.
(2) It is receivable only at the time of winding up of the company.	(2) It is the amount already received by the company.
(3) It is applied only at the time of winding up of a company.	(3) It can be applied at any time to write off the losses of capital nature or issue of bonus shares.
(4) It is not mandatory to create Reserve Capital.	(4) It is mandatory to create Capital Reserve in case of Capital Profit.

Answer 5(ii)

With the enactment of the Companies (Amendment) Act, 2000, interim dividend stands on the same footing as that of the final dividend. Both interim and final dividend when declared, become debt and are payable within 30 days of declaration. However, the following differences should be noted:

<i>Interim Dividend</i>	<i>Final Dividend</i>
(1) It is declared in between two annual general meetings.	(1) It is declared at the end of financial year.
(2) No sanction of shareholders in the general meeting is required.	(2) Sanction of shareholders at the general meeting is required.

Answer 5(iii)

'Motions' and 'Resolutions' are used synonymously but in legal sense there is difference between the two. Motion is a proposal submitted for a discussion and a decision is adopted by means of a resolution.

A Motion is a proposal and a resolution is the adoption of a motion duly made and seconded. But every motion need not be followed by a resolution, as in case of a motion being made for adjournment of meeting.

A Motion becomes a resolution only after the requisite majority of members have adopted it. A motion should be in writing and signed by the mover and put to the vote at the meeting by the Chairman. In case of company meetings, only such motions are proposed as are covered by the agenda.

Answer 5(iv)**Revocable and Irrevocable Trusts**

A revocable trust is one which is revocable when it is created by a non-testamentary instrument or orally and a power of revocation has been expressly reserved by the settler. A trust may be revoked by the consent of all the beneficiaries who are competent to contract (Section 78).

All other trusts are irrevocable. Besides if a trust is created for charitable or religious purposes, such a trust cannot be revoked.

Answer 5(v)

Debenture - A debenture is a document given by a company under its seal as an evidence of a debt to the holder usually arising out of a loan. Most commonly, but not necessarily, it is secured by a charge. A document which either creates a debt or acknowledges it, is a debenture.

The following need to be noted for issuance of debentures:

- (1) Under section 117B of the Companies Act, no company shall issue a prospectus or a letter of offer to the public for subscription of its debentures, unless the

company has, before such issue, appointed one or more debenture trustees for such debenture. Thereby, debenture trust deed has to be executed for this purpose.

- (2) Every company issuing debentures is required to create a Debenture Redemption Reserve under section 117C, to which adequate amount shall be credited out of its profits until such debentures are redeemed, to be utilized for redemption of debentures only.
- (3) Credit rating of not less than investment grade is to be obtained from not less than two credit rating agencies registered with SEBI as per clause 2.5.1A of SEBI (DIP) Guidelines, 2000.
- (4) As per the definition of debentures under section 2(12) of Companies Act, debentures include bonds.
- (5) Debentures need not be classified as long term and short term under Schedule VI.

Loans— A loan creates a right in the creditor to demand repayment, and the substance of a debt is a liability upon the debtor to repay the money. [Ram Ratan Karmarkar v. Amulya Charan Karmarkar, 56 CWN 728].

The following need to be noted in respect of loans:

- (1) Section 295 of the Companies Act relating to loans to directors and section 370 of the Companies Act, relating to loans etc. to companies under the same management apply in respect of loans.
- (2) Loans are required to be classified as secured and unsecured; and long term and short term under Schedule VI to Companies Act.
- (3) Unsecured loans are treated as deposits under section 58A of the Companies Act.
- (4) Credit rating is not required for giving loans.
- (5) Loans do not include bonds.
- (6) Unlike debenture, loans can be given by individuals and partnership firms.
- (7) In the international market, loans can be taken in the nature of External Commercial Borrowings.

Question 6

- (a) *State the provisions of the Companies Act, 1956 regarding issue of shares at a premium. For what purpose the share premium may be applied ? (5 marks)*
- (b) *Gomez, the chairman of a company, borrowed Rs. 5 lakh from the State Bank of India, Patna under a promissory note. A suit was filed for the recovery of debts on the basis of the pronote executed by the chairman. The company refused to accept the liability on the plea that the chairman had borrowed funds without authorisation from the company. Will the company succeed ? Explain. (5 marks)*
- (c) *Garima Ltd., a public company in which 32% of the subscribed capital is held by the Central Government, wishes to reappoint Lal Pal & Co. as its auditors in the*

annual general meeting proposed to be held on 30th June, 2007. Advise Garima Ltd. about the procedure to be followed in this regard. (6 marks)

Answer 6(a)

Issue of shares at a premium

A company may issue shares at a premium i.e. at a price above the face value of shares, as provided for under Section 78 of the Companies Act, 1956. For e.g. Rs.100 shares issued at a price of Rs. 110 thereby earning a premium of Rs.10 per share irrespective of the fact whether the shares are listed on Stock Exchange or not. If shares are issued at a premium, whether for cash or other consideration, the amount of premium on shares is required to be transferred to an account called the "Securities Premium Account. The premium cannot be treated as profit and as such it is not available for distribution as dividend.

Purposes for which share premium can be applied:

- (1) Issuing fully paid bonus shares.
- (2) Writing off the preliminary expenses of the company.
- (3) Writing off the expenses of any issue of shares or debentures.
- (4) Writing off the commission paid or discount allowed on the issue of any shares or debentures.
- (5) Providing for premium, if any, payable on the redemption of redeemable preference shares or debentures of the company.

A private company and an unlisted company not making a public issue is at liberty to issue capital at a premium as may be decided by the board of directors.

Answer 6(b)

In *Kumar Krishna Rohatgi and others v. State Bank of India and others* (1980) 50 Comp. Case722, the Company borrowed an amount of Rs.5 lakhs from the State Bank of India under a promissory note guaranteeing the repayment by executing a guarantee in favour of the company. The pronote was renewed from time to time. In the suit for recovery, the Company contended that the pronote was executed by the chairman without Board resolution authorizing him to execute as required under Section 292(1)(c) of the Companies Act, 1956. The Patna High Court held that in cases where the directors borrowed funds without proper authorization from the company and the amount borrowed was utilized for the benefit of the company, the company cannot then repudiate its liability to repay, since general law implied a promise to be paid by the principal when the money so borrowed by an agent had gone into the coffins of the principal. Hence, the principal had taken the benefit of the amount borrowed. Hence, the company's contention was rejected by the Patna High Court. If the same fact of benefit been taken is assumed here, the decision shall apply to the case in question mutates mutandis.

Answer 6(c)

A special resolution is required for the reappointment of M/s. Lal & Co. as Auditors under Section 224A.

The appointment of auditors is made by an ordinary resolution passed at the annual general meeting of the company. But where twenty five percent or more of the subscribed share capital of the company is held jointly or singly by a public financial institution, a Government company, Central Government, any State Government, a nationalized bank or an Insurance company carrying on general insurance business, the appointment or reappointment of an auditor shall be made by a special resolution at each annual general meeting.

Question 7

- (a) *The name of Piyush is found entered in the register of members of a company. But, Piyush contends that he is not a member of the company. The company maintains that Piyush had orally agreed to become a member of the company, and hence, his name was entered in the register and so he is a member. Is the contention of Piyush valid ?* (5 marks)
- (b) *An annual general meeting of Hum Log Ltd. called on 30th December, 2004 was adjourned to 31st March, 2005, and was held on that date. The next meeting was held in February, 2006. Can the company be held liable for not holding any meeting in 2005 ?* (5 marks)
- (c) *A proxy was appointed by a member on an instrument duly executed. Will the vote cast by the proxy be valid in the following cases :*
 - (i) *When the member himself attended and cast his vote at the meeting without revoking the authority of the proxy; and*
 - (ii) *When the member died in the meantime ?* (3 marks each)

Answer 7(a)

Yes, the contention of 'P' is valid. Person other than subscriber to memorandum should agree in writing to become a member of a company under Section 41.

Thus in this situation, P is neither a person who has subscribed to the memorandum nor he had agreed in writing to become a member. So his contention is valid. [*H.H. Manabendra Shah v. Official Liquidator, Indian Electric Tools Corporation Ltd.*]

Answer 7(b)

Yes, the Company is liable for not holding the meeting in the year 2005, because the meeting held on 31st March, 2005 was not a different meeting from the one which was scheduled on 30th December, 2004. It was the same meeting. Accordingly, the Company can be prosecuted for not holding any meeting of the company in 2005 [*Meenakshi Mills Co. Ltd. v. Asst. Registrar of Joint Stock Companies* (1938) 8.Comp. Case 175 Madras]. As regards the gap between two Annual General Meetings, it is spelt out in Section 166 read along with Section 210 of the Companies Act.

Answer 7(c)

- (i) **Proxy :** The vote given by the proxy will not be valid, because where a shareholder who having appointed a proxy, personally attends and votes at the meeting, the proxy is revoked thereby and his right to vote is terminated [*Cousins v. International Bricks Co. Ltd., 2 Ch PO (CA) at 101: (1932) 2 Com Cases 108*]. But the revocation should be communicated before the meeting. Revocation

will be too late if communicated after the meeting has commenced. In such a case, the votes cast by the proxy will be valid in a poll [*Spiller v. Mayo (Rhodestina) Development Co. (1908) Ltd.*, (1926) WN 78].

- (ii) The vote cast by the proxy shall be invalid if the member appointing the proxy dies and company comes to know of the death of the member before the commencement of the meeting. However, if the company has no notice of such death, the vote cast by the proxy shall be valid.

Question 8

- (a) *Explain the provisions relating to 'no compensation to sole-selling agent for loss of office' under section 294A.* (5 marks)
- (b) *A company was in dire need of further capital. The majority representing 98% of the shares were willing to provide the capital if they could buy-up the 2% minority shares. The majority passed a resolution altering the articles and enabling them to purchase the minority shares. The minority shareholders refused to surrender their shares and challenged the validity of the majority resolution. Decide.* (5 marks)
- (c) *40 out of 100 members of a company submitted a requisition for holding of an extraordinary general meeting in order to remove the managing director from the office. On the failure of the company to call the meeting, the requisitionists themselves called the meeting at the registered office of the company. On the appointed date, they could not hold the meeting at the registered office, as it was kept under lock and key by the managing director himself. The members held the meeting elsewhere and adopted a resolution removing the managing director from office. Is the resolution valid? Give reason.* (6 marks)

Answer 8(a)

Compensation to Sole Selling Agent for loss of office

According to Section 294A, no company shall pay or be liable to pay any compensation to its sole selling agent for the loss of his office in the following cases:

- (a) Where the appointment of the sole selling agent ceases to be valid by virtue of Sub section 2A of Section 294;
- (b) Where the sole selling agent resigns his office in view of the reconstruction of the company or its amalgamation with any other body corporate or bodies corporate and is appointed as the sole selling agent of the reconstructed company or of the body corporate resulting from the amalgamation;
- (c) Where the sole selling agent resigns his office, otherwise than on the reconstruction of the company or its amalgamation as aforesaid;
- (d) Where the Sole-Selling agent has been guilty of fraud or breach of trust in relation to, or of gross negligence in the conduct of his duty as the sole selling agent;
- (e) Where the sole selling agent has instigated or has taken part directly or indirectly in bringing about the termination of the sole selling agency.

Answer 8(b)

The majority resolution is void as it is neither just nor equitable for the benefit of the company as a whole to purchase the shares of minority compulsorily.

As in the decided case, *Brown v. British Abrasive Wheel Co. (1919)*¹ Ch. 290, the majority shareholders holding ninety-eight (98%) of the shares were willing to subscribe further capital which the company badly needed, but only if they were able to acquire the shareholdings of the minority. They passed a special resolution to alter the articles to enable them to purchase the minority shares compulsorily on certain terms. The plaintiff refused to sell his shares and challenged the validity of the majority resolution. It was decided that the alteration was not for the benefit of the company but for the benefit of the majority and accordingly, an injunction was granted against the company prohibiting it from carrying out the resolution.

Answer 8(c)

Yes, the resolution is valid. However, this is subject to the condition that the meeting was held by them within three months from the date of deposit of the requisition. The requisitionist may hold the meeting at any suitable place if the registered office is not made available to them under section 169 of the Companies Act, 1956, as it amounts to impracticability of conducting a meeting which includes impracticability of holding a meeting. Holding of a meeting is impracticable where registered office of a company is locked and is not available. [*Mr. S. Rathnavelusamichettiar v. M. R. S. Manickavelu Chettiar* (1951) 21 Comp. Cas.93 (Mad)].

COMPANY SECRETARIAL PRACTICE

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

Draft specimen resolutions along with necessary explanatory statements, wherever required, for transacting the following items of business indicating the kind of meeting at which each resolution is to be passed and the type of resolution required for. Attempt any five :

- (i) *Change of name of the company consequent to the conversion into a public company.*
- (ii) *Appointment of an auditor, a person other than a retiring auditor.*
- (iii) *Disposal of forfeited shares.*
- (iv) *Making final call on shares on which 80% money was collected at the time of issue.*
- (v) *Alteration of articles by addition/insertion of a new article.*
- (vi) *Opening of a bank account with a scheduled bank for payment of dividend.*
- (vii) *Appointment of a person as a director who is an additional director.*

(4 marks each)

Answer 1(i)

Type of Meeting - General Meeting

Type of Resolution - Special Resolution

“RESOLVED THAT -

- (i) pursuant to the proviso to Section 21 of the Companies Act, 1956, as a consequence of the conversion of the company from a private limited company into a public limited company, the name of the company be and is hereby changed from “..... Private Limited” to “..... Limited”; and
- (ii) clause I (name clause) in the memorandum of association of the company be and is hereby altered by substituting the same with the following:
 - I. The name of the company isLimited.”

Explanatory Statement

The Board of directors of the company had, at its meeting held on, resolved that consequent upon conversion of the company from private limited company to public limited company, the name of the company be changed from “..... Private Limited” to “..... Limited” and accordingly clause I (name clause) in the memorandum of

association of the company is to be altered by substituting the same with a clause as set out in the notice for approval of the shareholders of the company.

I. The name of the company isLimited.

No director is concerned or interested in the proposed resolution.

Answer 1(ii)

Type of Meeting - General Meeting

Type of Resolution - Special Resolution

“Resolved that, Chartered Accountant,, be and is hereby appointed Auditor of the company in place of the retiring Auditor,, Chartered Accountant, to hold office from the conclusion of this Annual General Meeting until the conclusion of the next Annual General Meeting at the Remuneration of Rs..... plus out-of-pocket expenses.”

Answer 1(iii)

Type of Meeting - Board Meeting

Type of Resolution - Board Resolution

“Resolved that equity shares of Rs..... each bearing Distinctive Nos..... to, both inclusive, previously registered in the name of Shri.....and forfeited on as per declaration duly signed by Company Secretary placed on the table, be sold to Shri..... for Rs..... per share and that, upon payment of that sum, a certificate of equity shares credited with Rs..... paid-up per share be issued to the said Shri..... accordingly.”

Answer 1(iv)

Type of Meeting - Board Meeting

Type of Resolution - Board Resolution

“Resolved that in accordance with and subject to the provisions of the articles of association of the company, the final call of Rs..... per share be made on the holders of..... partly paid equity shares of Rs..... each payable on or before the..... or such other extended date as may be decided by the Board to the Company’s bankers, or at any of their branches, authorized for this purpose and that in the event of non-payment of call money by, interest at% per annum be charged from such members from the date following the last date fixed for payment of call money to the date of realization of the cheque in terms of the prospectus/ letter of offer dated.....”

Answer 1(v)

Type of Meeting - General Meeting

Type of Resolution - Special Resolution

“RESOLVED THAT the Articles of Association of the company be and are hereby

altered by inserting at the end of article of the Articles of Association of the company, the following:

“Notwithstanding anything contained in these articles, the managing directors and whole-time directors of the company shall not be required to hold any such qualification shares.”

Explanatory Statement

Article of the company's articles of association provides that the qualification of a director shall be the holding of equity shares in the company of the aggregate nominal value of Rs The managing directors/whole-time directors are, pursuant to article not normally liable to retire by rotation.

However, if at any time, the number of directors (including the managing/whole-time directors) as are not subject to retirement by rotation shall exceed one-third of the total number of directors for the time being, then it is provided by article that such directors are liable to retire by rotation to comply with the provisions of Section 255 of the Companies Act, 1956. As it is not contemplated that in such circumstances, the managing directors/whole-time directors should be required to hold qualification shares, it is proposed to make it clear beyond doubt that the managing directors/whole-time directors shall not be required to hold qualification shares.

A copy of the existing articles together with the proposed alteration is available for inspection at the registered office of the company during the business hours on any working day.

None of the directors is concerned or interested in the proposed resolution save and except to the extent of qualification shares required or not required by them to be held in the company.

Answer 1(vi)

Type of Meeting - Board Meeting

Type of Resolution - Board Resolution

“Resolved that –

- (a) a Bank Account to be titled “..... Limited Equity/Preference Dividend Warrants Payment Account (2005-2006)” be opened with..... Bank, for honouring dividend warrants to be issued by the company in respect of the equity dividend for the year ended on – when presented to the said bank or any of its specified branches in India and to make payments thereon by debiting the dividend warrants payment account.
- (b) theBank and all its specified branches in India, is authorized to effect payment, through the aforesaid dividend warrant payment account, of the company's equity shares dividend warrants, specimen of which be lodged with the Bank and if necessary with all its specified branches in India in due course, bearing printed signatures of Mr....., Managing Director of the Company.
- (c) the following officers of the company viz:
 - 1. Mr....., Managing Director;

2. Mr....., Director (Finance); and
3. Mr....., Company Secretary

are authorized singly to operate and close the dividend payment account for and on behalf of the company and also to sign for and on behalf of the company as “Authorised Signatory” all cheques, warrants relating to the said dividend warrants payment account.”

Answer 1(vii)

Type of Meeting - Annual General Meeting

Type of Resolution - Ordinary Resolution

The Company appoints Mr./Ms....., whose term of office as an additional director of the company expires at this annual general meeting and in respect of whom the company has received a notice under Section 257 of the Companies Act, 1956, from a member proposing the candidature of Mr./Ms..... for the office of Director, as a Director of the company whose period of office will be liable to determination by retirement by rotation.

Question 2

- (a) *State the procedure for variation in the member’s rights.* (6 marks)
- (b) *“A company can keep its registers at a place other than the registered office.”*
Comment. (5 marks)
- (c) *State the procedure for appointment of “small shareholders’ director”.* (5 marks)

Answer 2(a)

Variation of Members’ Rights

The members’ rights are determined by the Companies Act, 1956, Memorandum of Association, Articles of Association of the company and the terms of issue of shares. Members’ rights relate to payment of dividend, voting at the members meetings and return of capital and participate in the surplus assets on winding up of the company.

Pursuant to Section 86 of the Act as amended by the Companies (Amendment) Act, 2000, the equity share capital may be issued with voting rights or with differential rights as to dividend, voting or otherwise in accordance with such rules and subject to such conditions as may be prescribed.

Under Section 106 of the Act, the rights attached to the shares of any class can 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; provided that it is authorised by the Memorandum of Association & Articles of Association or in 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 Variation of Members' Rights

1. Check whether power to vary members' right contained in the Memorandum and Articles of Association of the company, and such rights of the company are not prohibited by either of them and also by the terms of issue of that class of shares.
2. Convene a Board Meeting after giving notice to all the directors of the company as per Section 286 of the Act and also to the stock exchanges.
- 3.1 Hold the Board meeting so convened and decide as to which of the following ways to adopt for variations—
 - (a) obtaining written consent of the holders of not less than three fourths of the issued shares of that class; or
 - (b) convening a separate meeting of the holders of the issued shares of that class for passing a special resolution thereat.
- 3.2 If the Board approves the first method as mentioned in 3.1 (a) above, then also—
 - (i) approve the resolution for circulation among the holders of the issued shares of that class, and
 - (ii) circulate such resolution amongst the holders and obtain their approval in writing of at least three fourths of the issued shares of that class.
- 3.3 If the Board approves the second method as mentioned in 3.1 (b) above, or the company fails to obtain written approval from the holders of not less than three fourths of the issued shares of that class, then —
 - (i) authorize the company secretary to convene a separate meeting of the holders of the issued shares of that class; and
 - (ii) approve the notice of such meeting containing special resolution with an explanatory statement relating thereto and a proxy form.
- 4.1 Give twenty-one days' prior notice of the meeting to the holders of shares of that class and also to the stock exchanges.
- 4.2 Hold the separate meeting of the holders of issued shares of that class and pass special resolutions so proposed by three-fourths majority of the holders present.
5. In both the cases, file e-Form No. 23 within thirty days from the date of approval or the date of passing resolution, as the case may be.
6. Inform the stock exchange where the shares of that class are listed about the variation in the members' rights thereof.
7. If variation affects the rights of the holders of other class of shares, simultaneously obtain consent or approval from them.
8. On variation becoming effective, make necessary changes in all the papers, documents, registers etc.

Answer 2(b)

Pursuant to the provisions of Section 163 of the Companies Act, 1956, the Registers and Returns together with copies of certificates and documents required to be annexed thereto may, instead of being kept at the registered office of the company, be kept at any other place within the city, town or village in which the registered office is situate. The procedure is as under:

1. Call a meeting of the Board of Directors of the company;
 2. Hold the Board Meeting and decide —
 - (a) to keep the registers and the returns at the place, other than the Registered Office of the Company, in the same city, village or town in which the Registered Office is situate;
 - (b) to recommend a special resolution to the shareholders of the company to consider and pass, with or without modifications at the general meeting (Annual or Extra-ordinary, as the case may be);
 - (c) to fix up date, time, place and agenda for convening a general meeting; and
 - (d) to approve draft notice of the general meeting and authorise the company secretary to sign and issue notice of the meeting in accordance with the provisions of the Act.
 3. Send notice of the general meeting at least 21 clear days before the date of meeting to members of company.
 4. Send three copies of the notice of the meeting to the stock exchanges.
 5. Send a copy of the proposed special resolution to the concerned Registrar of Companies in advance to the passing of the special resolution.
- Hold the general meeting and pass the special resolution as proposed or with such modification(s) as may be considered necessary by not less than 3/4th majority of the members.
7. File electronic Form No. 23 within 30 days from the date of passing the resolution with the concerned Registrar of Companies.
 8. Paint or affix the name and address of the registered office on the outside of such office in the language(s) which is in general use in that locality. (Section 147 of the Act).

Answer 2(c)**Procedure for Appointment of Director to be Elected by Small Shareholders**

1. According to Section 252 of the Companies Act, 1956, a public company having a paid-up capital of five crore rupees or more and having one thousand or more small shareholders (holding shares of nominal value of Rs. 20,000 or less) may have a director elected by such small shareholders.
2. If public company satisfies the above condition it may have atleast one director elected by such small shareholders. However, before making an appointment of

such director, it should be ensured that such person does not suffer from any of the disqualification mentioned under Rule 5 of the Companies (Appointment of Small Shareholders' Director) Rules, 2001. Further ensure that such person is not already holding office as small shareholders' director in more than one company.

3. A company may act suo-moto to elect a small shareholders' director from amongst small shareholders or upon the notice of small shareholders, who are not less than 1/10th of total small shareholders and have proposed name of a person who shall also be a small shareholder of the company.
4. Small shareholders intending to propose a person shall leave a notice of their intention with the company at least 14 days before the meeting under signature of at least 100 small shareholders of the person whose name is being proposed for the post of director and of other small shareholders proposing such person as a candidate for the post of director or small shareholders.
5. A person proposed for the post of small shareholders' director shall sign, and file with the company, his consent in writing to act as a director.
6. If the company is listed then such director shall be elected through postal ballot subject to the requirements mentioned above.
7. If the company is not listed then such small shareholders' nominee shall be elected subject to above conditions if majority of small shareholders recommend his candidature for the post of director in their meeting.
8. Such director shall hold office for a maximum period of three years subject to meeting the requirements of provisions of the Companies Act. However he shall not be liable to retire by rotation.

Question 3

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

- (i) 'Drafting' and 'conveyancing'.
- (ii) 'Charge' and 'mortgage'.
- (iii) 'Company Secretary' and 'Compliance Officer'. (5 marks each)

(b) *Re-write the following sentences after filling-up the blank space with appropriate word(s) so as to convey the correct meaning :*

- (i) A _____ need not necessarily prepare and get its articles of association registered along with memorandum of association.
- (ii) Company shall obtain confirmation of _____ for shifting of registered office within the same State but under the jurisdiction of another Registrar of Companies.
- (iii) The minimum paid-up share capital in case of a public limited company should be Rs. _____.
- (iv) The minimum number of directors in case of a producer company shall be _____.
- (v) No special resolution is required to be passed in general meeting if the buy-

back is up to _____ % of the total paid-up share capital and free reserves of the company.

- (vi) *No loan to any body corporate shall be made at a rate lower than the _____.* (1 mark each)

Answer 3(a)(i)**Drafting**

Drafting may be defined as “the synthesis of law and facts in a language form” [Stanley Robinson; Drafting its Application of Conveyancing and Commercial Documents (1980); Butterworths; Chapter 1, p.31]. The essence of drafting is the law, the facts and the language. All the three characteristics rank equally in importance. In other words, legal drafting is the crystallisation and expression in definitive form of a legal right, privileged, function, duty or status.

Drafting in a legal sense means an act of preparing the legal documents like agreements, contracts, deeds etc. A proper understanding of drafting cannot be realised unless the nexus between the law, the facts and the language is fully understood and accepted.

Conveyancing

Conveyancing is the art of drafting deeds and documents whereby land or interest in land i.e. immovable property, is transferred by one person to another.

Conveyance is an act of conveyancing or transferring any property, whether movable or immovable from one person to another permitted by custom conventions and law within the legal structure of the country. A deed of transfer is a conveyance deed which could be for movable or immovable property and according to the Transfer of Property Act, 1882, transfer may be by sale, by lease, by giving gift, by exchange, by will or bequeathal. But acquisition of property by inheritance does not amount to transfer under the strict sense of legal meaning.

Drafting and Conveyancing : Distinguished

The terms “drafting and conveyancing” provide the same meaning although these terms are not interchangeable. Conveyancing gives more stress on legal documentation concerned with the transfer of property from one person to another, whereas “drafting” gives a general meaning synonymous with the preparation of documents.

Answer 3(a)(ii)**Charge**

A charge is a right created by any person including a company referred to as “the borrower” on its assets and properties, present and future, in favour of a financial institution or a bank, referred to as “the lender”, which has agreed to extend financial assistance.

Section 124 of the Companies Act, 1956 states that “charge” includes “mortgage”.

A charge may be fixed or floating depending upon its nature.

Mortgage

A mortgage is a legal process whereby a person, who borrows money from another person and secures the repayment of the borrowed money and also the payment of interest at the agreed rate, by creating a right or charge in favour of the lender on his movable and/or immovable property.

Charge and Mortgage distinguished

There is a clear distinction between a mortgage and a charge, the former being a transfer of an interest in immoveable property as a security for the loan whereas the latter is not a transfer, though it is none the less a security for the payment of an amount.

Answer 3(a)(iii)**Company Secretary and Compliance Officer***Company Secretary*

According to Section 2 (45) of the Companies Act, 1956, Secretary means a Company Secretary within the meaning of clause (c) of Sub-section (1) of Section 2 of the Company Secretaries Act, 1980 and includes any other individual possessing the prescribed qualifications and appointed to perform the duties which may be performed by a secretary under the Act or any other ministerial or administrative duties.

Compliance Officer

In case of a listed company under clause 47 of the listing agreement, it has to appoint the company secretary as the compliance officer who will be responsible for monitoring the share transfer process and report to the Board in its each meeting. The compliance officer will directly liaise with the authorities such as SEBI, Stock Exchanges, ROC etc. and investors with respect to implementation of various clauses of the listing agreement, rules and regulations and other directives of such authority and investor services and complaints on related matters.

Company Secretary and Compliance Officer distinguished

Though for a listed company, both the Company Secretary and compliance officer happen to be the same person, but in case of an unlisted company, there is no need to have a compliance officer. However, if the paid up capital of the unlisted company is more than Rs. 2 Crores, it shall have to have a Company Secretary. Company Secretary is a wider term while compliance officer is a narrower term. Even in case of a listed company which does not have a company secretary, any other person might be appointed by the Board of Directors as compliance officer for the purpose of Clause 47 of the Listing Agreement.

Answer 3(b)

- (i) Public company limited by share capital only
- (ii) Regional Director
- (iii) 5 lakh

- (iv) Five
- (v) 10%
- (vi) Prevailing bank rate.

Question 4

State, with reasons in brief, whether the following statements are correct or incorrect. Attempt any eight :

- (i) *Every member of a company is also a shareholder of the company.*
 - (ii) *Liability of directors of a company can be made unlimited.*
 - (iii) *No return of allotment is required to be filed with the Registrar of Companies for re-allotment of forfeited shares.*
 - (iv) *Compliance with the provisions of the Secretarial Standards issued by the Institute of Company Secretaries of India (ICSI) is not mandatory.*
 - (v) *A company having profits must declare at least 10% dividends.*
 - (vi) *Proxy has no right to speak.*
 - (vii) *Quorum in a Board meeting has to remain present throughout the meeting.*
 - (viii) *Charge on any book debts of the company requires registration with the Registrar of Companies.*
 - (ix) *First auditors of the company have to be appointed at a general meeting.*
 - (x) *As per Table-A, Schedule-I of the Companies Act, 1956, a company limited by shares can make call on shares for any part of the nominal value of shares.*
- (2 marks each)*

Answer 4(i)

The Statement is False.

Generally every shareholder is a member and every member is a shareholder. However, there are exceptions where the member is not a shareholder. A member who has transferred his shares in the company, though he does not hold any shares yet he continues to be member of the company until the transfer is registered and his name is removed from the Register of Members.

Answer 4(ii)

The Statement is True.

Pursuant to the provisions of Section 323 (1) of the Companies Act, 1956, a limited company may, if so authorized by its Articles, by Special Resolution, alter its memorandum so as to render unlimited the liability of its directors or of any director or manager. However, no alteration of the memorandum making the liability of the directors unlimited shall apply to a director holding office before the date of such alteration, until the expiry of his term, unless he has accorded his consent to his liability becoming unlimited.

Answer 4(iii)

The Statement is True

Pursuant to the provisions of Section 75(5) of the Companies Act, 1956, the provisions regarding filing of return of allotment shall not apply to the issue and allotment by a company of the shares which were forfeited for non-payment of calls.

Answer 4(iv)

The Statement is True.

The Secretarial Standards issued by the Institute of Company Secretaries of India are recommendatory in nature and the compliance with the provisions mentioned in the Secretarial Standards is not mandatory.

Answer 4(v)

The Statement is False.

Declaration of Dividend is prerogative of the Board of Directors. If they feel that the company would be requiring sufficient liquidity to meet the needs for expansion, modernization etc., they may prefer not to declare any dividend or a lesser percentage of dividend. The shareholders can not force the Board of Directors to declare dividends.

Answer 4(vi)

The Statement is True.

Pursuant to the provisions of Section 176(1) of the Companies Act, 1956, any member of a company entitled to attend and vote at the meeting, shall be entitled to appoint another person as his proxy to attend and vote at the meeting instead of himself, but a proxy so appointed shall not have any right to speak at the meeting.

Answer 4(vii)

The Statement is True.

In terms of Section 300 of the Companies Act, 1956, quorum has to be present throughout the meeting. Section 300 provides that no director of a company shall, as a director, take any part in the discussion of, or vote on, any contract or arrangement entered into, or to be entered into, by or on behalf of the company, if he is in any way, whether directly or indirectly, concerned or interested in the contract or arrangement; nor shall his presence count for the purpose of forming a quorum at the time of any such discussion or vote; and if he does vote, his vote shall be void.

Also, pursuant to the provisions of Secretarial Standards issued by the Institute of Company Secretaries of India, the quorum in a Board meeting should be present throughout the meeting and no business should be transacted when the quorum is not so present.

Answer 4(viii)

The statement is true in view of the Sub-section (4) of Section 125 of the Companies Act, 1956. Section 125 of the Act requires a company to file, within 30 days after the date of the creation of a charge, with the Registrar, complete particulars together with the instrument, if any, creating, evidencing or modifying the charge, or a copy thereof

verified in the prescribed manner for registration; otherwise the charge shall be void against the liquidation and creditors and on the charge becoming void, the money thereby shall immediately become payable.

Answer 4(ix)

The statement is false. As per Sub-section (5) of Section 224 the Companies Act, 1956, the first auditor or auditors of a company shall be appointed by the Board of directors within one month of the date of registration of the company, and the auditor or auditors so appointed shall hold the office until the conclusion of the first annual general meeting of the company.

Answer 4(x)

The Statement is False.

The Board may, from time to time, make calls upon the members in respect of any moneys unpaid on their shares (whether on account of the nominal value of the shares or by way of premium) and not by the conditions of allotment thereof made payable at fixed times.

Provided that no call shall exceed one-fourth of the nominal value of the share or be payable at less than one month from the date fixed for the payment of the last preceding call.

Question 5

- (a) *Anmol Ltd., a widely held listed company, had paid-up share capital of Rs. 5 crore. Besides this, it had free reserves of Rs. 15 crore. A proposal for an investment of Rs. 14 crore in the securities of Brij Ltd. came up for approval before the meeting of the Board of directors. The Board of directors of the company comprised of 10 directors out of whom 8 directors were present at the meeting. All directors voted in favour of the resolution. State whether the decision of the Board of directors is tenable in view of the provisions of Section 372A.*

Would your answer be different if 2 directors out of 8 directors present at the meeting voted against the resolution ?

(Note : The company had no other investments earlier.) (6 marks)

- (b) *Mention the scope and main functions of the Secretarial Standards Board.* (5 marks)

- (c) *In a producer company, what are the matters to be transacted at the annual general meeting ?* (5 marks)

Answer 5(a)

Pursuant to the provisions of Section 372A of the Companies Act, 1956, no company shall, directly or indirectly:

- (a) make any loan to any other body corporate;
- (b) give any guarantee, or provide security, in connection with a loan made by any other person to, or to any other person by, any body corporate; and
- (c) acquire, by way of subscription, purchase or otherwise the securities of any other body corporate,

exceeding 60% of its paid up share capital and free reserves, or hundred percent of its free reserves, whichever is more.

However, if the company desires to give loans, provide security or make investments in excess of the aforesaid limits, the company shall obtain approval of the shareholders through a special resolution passed at their meeting.

In the given problem, the Company “A Limited” is having paid up share capital of Rs. 5 Crores and free reserves of Rs. 15 Crores. Pursuant to the provisions of Section 372 A the Company can make investment to the extent of higher of following two limits:

- (a) 60% of paid up share capital and free reserves : Rs. 12 Crores
- (b) 100% of free reserves : Rs. 15 Crores

Higher of the above two works out to Rs. 15 Crores. Thus, if the company wants to make investment of Rs. 14 Crores, it can do the same through passing a resolution at the meeting of the Board of Directors with the consent of all directors present at the meeting.

Part II

Provisions of Sub-Section (3) of Section 372 A stipulate that the resolution for loans / investments at a meeting shall be passed with the consent of all directors present at the meeting.

If 2 directors out of 8 directors of Anmol Ltd. present at the meeting voted against the resolution for the proposed investment of Rs.14 crores, then the company cannot make such investment.

Answer 5(b)

The scope of Secretarial Standards Board (SSB) is to identify the areas in which Secretarial Standards need to be issued by the Council of ICSI and to formulate such Standards, taking into consideration the applicable laws, business environment and best secretarial practices. SSB will also clarify issues arising out of such Standards and issue Guidance Notes for the benefit of members of ICSI, corporates and other users.

The main functions of Secretarial Standards Board are:

- (i) Formulating Secretarial Standards;
- (ii) Clarifying issues arising out of the Secretarial Standards;
- (iii) Issuing Guidance Notes; and
- (iv) Reviewing and updating the Secretarial Standards/Guidance Notes at periodic intervals.

Answer 5(c)

Section 581S states that the following powers shall be exercised by the Board of directors of a Producer Company on behalf of the company only by means of resolutions passed at the annual general meeting of the company:

- (a) approval of budget and adoption of annual accounts of the Producer Company;

- (b) approval of patronage bonus;
- (c) issue of bonus shares;
- (d) declaration of limited return and decision on the distribution of patronage;
- (e) specify the conditions and limits of loans that may be given by the Board to any director; and
- (f) approval of any transaction of the nature as is to be reserved in the articles for approval by the Members.

Question 6

- (a) *Explain the provisions of clause 49 of the listing agreement with regard to composition and functions of audit committee.* (6 marks)
- (b) *A company is having a scheme of providing house building loans to its employees/officers subject to an upper ceiling of Rs. 5 lakh and payment of interest @ 8% per annum. The managing director of the company wants to avail of the house-building loan of Rs. 10 lakh and the Board of directors passed a resolution for providing him loan of Rs. 10 lakh at an interest rate of 6% per annum. Being secretarial auditor of the company, advise the company as to whether the resolution passed by the Board of directors is valid in view of the provisions of the Companies Act, 1956. If not, what action the company should have taken to provide loan to the managing director ?* (5 marks)
- (c) *The Board of directors of your company desires to declare dividend out of reserves. Being the Secretary of the company, give your advice to the Board of directors regarding the conditions and procedure to be followed for declaration of dividend out of reserves?* (5 marks)

Answer 6(a)**Composition of Audit Committee**

A qualified and independent audit committee shall be set up, giving the terms of reference subject to the following:

- (i) The audit committee shall have minimum three directors as members. Two-thirds of the members of audit committee shall be independent directors.
- (ii) All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.
- (iii) The Chairman of the Audit Committee shall be an independent director;
- (iv) The Chairman of the Audit Committee shall be present at Annual General Meeting to answer shareholder queries;
- (v) The audit committee may invite such of the executives, as it considers appropriate (and particularly the head of the finance function) to be present at the meetings of the committee, but on occasions it may also meet without the presence of any executives of the company. The finance director, head of internal audit and a representative of the statutory auditor may be present as invitees for the meetings of the audit committee;

- (vi) The Company Secretary shall act as the secretary to the committee.

Functions of Audit Committee

The functions of the audit committee shall include the following:

1. Oversight of the company's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible.
2. Recommending to the Board, the appointment, re-appointment and, if required, the replacement or removal of the statutory auditor and the fixation of audit fees.
3. Approval of payment to statutory auditors for any other services rendered by the statutory auditors.
4. Reviewing, with the management, the annual financial statements before submission to the board for approval, with particular reference to:
 - (a) Matters required to be included in the Director's Responsibility Statement to be included in the Board's report in terms of clause (2AA) of Section 217 of the Companies Act, 1956,
 - (b) Changes, if any, in accounting policies and practices and reasons for the same,
 - (c) Major accounting entries involving estimates based on the exercise of judgment by management,
 - (d) Significant adjustments made in the financial statements arising out of audit findings,
 - (e) Compliance with listing and other legal requirements relating to financial statements,
 - (f) Disclosure of any related party transactions,
 - (g) Qualifications in the draft audit report.
5. Reviewing, with the management, the quarterly financial statements before submission to the board for approval
6. Reviewing, with the management, performance of statutory and internal auditors, adequacy of the internal control systems.
7. Reviewing the adequacy of internal audit function, if any, including the structure of the internal audit department, staffing and seniority of the official heading the department, reporting structure coverage and frequency of internal audit.
8. Discussion with internal auditors any significant findings and follow up there on.
9. Reviewing the findings of any internal investigations by the internal auditors into matters where there is suspected fraud or irregularity or a failure of internal control systems of a material nature and reporting the matter to the board.
10. Discussion with statutory auditors before the audit commences, about the nature and scope of audit as well as post-audit discussion to ascertain any area of concern.

11. To look into the reasons for substantial defaults in the payment to the depositors, debenture holders, shareholders (in case of non payment of declared dividends) and creditors.
12. To review the functioning of the Whistle Blower mechanism, in case the same is existing.
13. Carrying out any other function as is mentioned in the terms of reference of the Audit Committee.

Answer 6(b)

Section 295 of the Companies Act, 1956, prohibits a public company and a private company which is a subsidiary of a public company from making a loan to its directors, etc., without prior approval of the Central Government. Ministry of Corporate Affairs had formulated guidelines for the grant of house building loans by such companies to their managing director/whole-time directors. The existing guidelines envisage grant to house building loan up to a ceiling of Rs. 5 lakhs on payment of interest at 10% per annum.

Various associations of trade and industry had made requests/representations for increasing the ceiling of house building loans and the companies had also made applications for grant of house building loans of Rs.10 lakhs or more at the reduced rate of interest, as per schemes applicable to the other officers of the company.

The Government, therefore, decided to allow companies to make the house building loans to their managing director/whole-time directors without obtaining prior approval of the Central Government under Section 295 of the Companies Act, 1956, on such terms and conditions as are applicable to its officers/employees. The approval of the Central Government will, however, be necessary in the case of companies having no such scheme or where the house building loan proposed to be made is not covered by the terms and conditions as are applicable to its officers/employees.

In the present case, the amount of loan is not within the upper ceiling of Rs. 5 lakh as per companies scheme. Hence the resolution passed by Board of directors is not valid. If the company still wants to provide such loan than, approval of Central Government is necessary in such case.

Answer 6(c)

Advice to the Board of directors regarding the conditions and procedure to be followed for declaration of dividend out of reserves should be given by the company secretary as under:

- (1) Give notice as per section 286 to all the directors of the company for holding a Board meeting. In the meeting, take decision to declare dividend out of company's reserves because of inadequacy or absence of profits and also fix the date, time and place of the Annual General Meeting.
- (2) Ensure that the Companies (Declaration of Dividend out of Reserves) Rules, 1975 are complied with.
- (3) Ensure that while computing the amount of profits, the amount transferred from the Development Rebate Reserve is included and all items of capital reserves including reserves created by revaluation of assets are excluded.

- (4) In the case of listed companies, inform the Stock Exchange about decision to recommend declaration of dividend out of Company's Reserves.
- (5) Issue notices in writing at least 21 days before the date of the Annual General Meeting and hold the meeting and pass the necessary resolution.
- (6) In the case of listed companies, forward three copies of the notice and a copy of the proceeding of the general meeting to the Stock Exchange.
- (7) Open a bank account for making dividend payment and credit the said bank account with the total amount of dividend payable within five days of declaration of dividend.
- (8) Issue dividend warrants within 30 days from the date of declaration of dividend.
- (9) Make arrangements with the bank and in collaboration with other banks if required, for payment of the Dividend Warrants at par at the centres as determined by the Stock Exchanges in case of listed company. [Clause 21 of listing agreement]
- (10) Have sufficient number of dividend warrants printed in consultation with the company's banker appointed for the purpose of dividend. Get the approval of RBI for printing the warrants with MICR facility. Get the dividend warrants filled in and signed by the persons authorised by the Board.

Question 7

- (a) *What is 're-materialisation' ? State the procedure for re-materialisation of electronic securities into physical certificates of such securities. (6 marks)*
- (b) *Enumerate the situations where a company may remove a sole-selling agent. (5 marks)*
- (c) *When is a form or document said to be defective ? (5 marks)*

Answer 7(a)

Rematerialisation is conversion of electronic securities into physical certificates of such securities. This can be done in the following manner:

1. Beneficial owner sends request to DP.
2. Depository Participant intimates Depository (NSDL or CDSL) of such request electronically.
3. Depository (NSDL/CDSL) confirms rematerialisation request to the company's Share Transfer Agent.
4. Share Transfer Agent updates accounts and prints certificates and confirm the Depository (NSDL/CDSL).
5. Depository (NSDL/CDSL) updates accounts and downloads the details to the DP.
6. Share Transfer Agent dispatches certificates to holder thereof.
7. The DP also sends intimation about rematerialisation to its client.

Answer 7(b)

A company may by special resolution to be passed in general meeting, remove a sole selling agent in the following situations:

- (a) At the expiry of his term.
- (b) Where the appointment of sole-selling agent ceases to be valid by reason of disapproval of his appointment by the company in general meeting.
- (c) Where sole-selling agent resigns his office.
- (d) Where sole-selling agent has been guilty of breach of contract in relation to the conduct of his duty as the sole-selling agent of the company.
- (e) Where sole-selling agent has been guilty of gross negligence in relation to the conduct of his duty as the sole-selling agent.
- (f) Where sole-selling agent has been guilty of fraud in relation to the conduct of his duty as the sole-selling agent.
- (g) Where the sole-selling agent has instigated or has taken part in bringing about the termination of the sole-selling agency.

Answer 7(c)

A form or document is defective for any one of the following reasons:

- (i) the form or document does not contain the necessary enclosures;
- (ii) certain particulars in the document or form have been left unfilled;
- (iii) certain particulars apparent on the face of it seem false;
- (iv) the document is not filed in proper time or is not accompanied by the requisite filing fee;
- (v) the document is not properly signed or certified.

If a document is found to be not in order for any of the reasons stated above, the Registrar will not register the document until the particulars left unfilled are filled or the error is rectified by the company. For this purpose, facility of resubmission is available under MCA21 portal. However resubmission can be made, only when the ROC requires that the company resubmit the form with corrections. If within the date document is required to be filed, the blank is not filled in or the apparent error is not corrected then the Registrar is at liberty to launch prosecution against the company and its officers for default in filing the document.

Question 8

- (a) *Mention any six statutory books/registers and any six non-statutory registers maintained by a company.* (6 marks)
- (b) *Sunder Ltd., having paid-up share capital of Rs. 30 lakh, wants to appoint a Company Secretary in Whole-time Practice for issue of 'compliance certificate'. Briefly state the procedure to be followed by Sunder Ltd. for such an appointment.* (5 marks)
- (c) *What is the procedure for acceptance of deposits from friends, relatives and associates through private placement ?* (5 marks)

Answer 8(a)**Statutory Boos/Registers**

Every company incorporated under the Act is required to keep at its registered office, inter alia, the following books and registers -

1. Register of investments not held in company's name. [Section 49(7)]
2. Register of deposits. [Section 58A and the Companies (Acceptance of Deposits) Rules, 1975 and the RBI Non Banking Financial Companies Directions]
3. Register of securities bought back. (Section 77A)
4. Register of charges. (Section 143)
5. Register and index of members. [Sections 150, 151 and the Companies (Issue of Share Capital with Differential Voting Rights) Rules, 2001]
6. Register and index of debenture holders. (Section 152)
7. Register and index of beneficial owners. (Section 152A)
8. Foreign register of members and debenture holders. (Section 157)
9. Registers and returns. (Section 163)
10. Register of Postal Ballot. [Section 192A and the Companies (Passing of the resolutions by postal ballot) Rules, 2001]

The non-statutory registers are given below —

1. Director's attendance book.
2. Shareholders/proxies attendance register.
3. Register of sealed documents.
4. Register of share applications and allotments.
5. Register of share transfers/transmissions.
6. Dividend register.
7. Register of powers of attorney/probate/letters of administration/death certificates/succession certificates.
8. Register of dividend mandates.
9. Register of Bank A/c particulars.
10. Register of electronic clearing service.

Answer 8(b)**Procedure for Appointment of Company Secretary in Whole-time Practice for Issue of Compliance Certificate**

1. Before appointment of Secretary in whole-time practice, ensure that individual to be appointed, satisfies the definition of secretary in whole-time practice under Section 2(45A) of Company Secretaries Act, 1980 i.e. he is a member of the Institute of Company Secretaries of India and is not in full-time employment anywhere.

2. Further ensure that individual proposed to be appointed, holds a certificate of practice from the Institute of Company Secretaries of India and that certificate is valid.
3. Convene a Board meeting after giving notice to all the directors of the company in accordance with Section 286 of the Companies Act, 1956.
4. Consider the proposal to appoint company secretary in whole-time practice for issue of compliance certificate and pass Board resolution in the meeting, appointing company secretary in whole-time practice for issue of compliance certificate.
5. The resolution should mention the remuneration to be paid to such individual as company secretary in whole-time practice.
6. The appointment shall be made upto the conclusion of the annual general meeting held after such appointment.

Answer 8(c)

The procedure for acceptance of deposits through private placement is as follows:

- (1) Convene a meeting of the Board of directors after giving notice to all directors of the company as per Section 286 to decide about the acceptance of deposits from friends, relatives and associates without inviting from public.
 - (2) Approve the text of statement in lieu of advertisement for accepting deposits duly prepared in accordance with the Companies (Acceptance of Deposits) Rules, 1975.
 - (3) File the statement in lieu of advertisement duly signed by majority of Directors to the Registrar of Companies as per the rules before accepting any deposits.
 - (4) Prepare application form for private circulation as per the Rules and obtain application from a limited set of persons.
 - (5) Issue receipts for deposits accepted.
 - (6) Maintain deposit register as required under the Rules.
 - (7) Pay interest on due dates and repay deposits on maturity as per the terms of acceptance of deposits.
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ECONOMIC, LABOUR AND INDUSTRIAL LAWS

Time allowed : 3 hours

Maximum marks : 100

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

Question 1

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

- (i) Industrial entrepreneur memorandum*
- (ii) Foreign security*
- (iii) Water pollution*
- (iv) Contents of complete specification*
- (v) International copyright*
- (vi) Objectives of the Competition Act, 2002*
- (vii) Registered user.*

(3 marks each)

Answer 1(i)

Industrial Entrepreneur Memorandum (IEM)

Industrial undertakings exempt from obtaining an industrial licence are required to file Industrial Entrepreneur Memorandum (IEM) in Part 'A' (as per prescribed format) with the Secretariat of Industrial Assistance (SIA), Department of Industrial Policy and Promotion, Government of India, and obtain an acknowledgment.

No further approval is required. Immediately after commencement of commercial production, Part B of the IEM has to be filled in the prescribed format. The facility for amendment of existing IEMs has also been introduced.

Answer 1(ii)

Foreign Security

The term Foreign Security has been defined under Section 2(o) of The Foreign Exchange Management Act, 1999, to mean any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency and includes securities expressed in foreign currency but where redemption or any form of return such as interest or dividend is payable in Indian currency.

Answer 1(iii)

Water Pollution

The object of the Water (Prevention and Control of Pollution) Act, 1974 is to prevent and control water pollution and maintain or restore wholesomeness of water.

Water Pollution, refers to pollution of Water as per the Act . According to Section 2(e) Pollution means such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or any other liquid, gaseous or solid substance into water (whether directly or indirectly) as may,

or is likely to, create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms.

Hence, pollution in above mentioned form is called as Water Pollution

Answer 1(iv)

Contents of Complete Specification

Section 10 of the Patents Act, 1970 dealing with contents of specifications provides that every specification, whether provisional or complete, shall describe the invention and begin with a title sufficiently indicating the subject matter to which the invention relates.

Every complete specification is required to –

- (a) fully and particularly describe the invention and its operation or use and the method by which it is to be performed;
- (b) disclose the best method of performing the invention which is known to the applicant and for which he is entitled to claim protection;
- (c) end with a claim or claims defining the scope of the invention for which protection is claimed; and
- (d) be accompanied by an abstract to provide technical information on the invention.

Answer 1(v)

International copyright

The Copyright Act, 1957 applies only to works first published in India, irrespective of the nationality of the author. However section 40 of the Act empowers the Government of India to extend the benefits of all or any of the provisions of the Act to works first published in any foreign country. The benefits granted to foreign works does not extend beyond what is available to the works in the home country and that too on a reciprocal basis i.e. the foreign country must grant similar protection to works entitled to copyright under the Act. The term of Copyright protection in India to the foreign work, can not exceed that conferred by the foreign country.

Government of India has passed the International Copyright Order, 1958. According to this order any work first published in any country which is a member of the Berne Convention or the Universal Copyright Convention will be accorded the same treatment as if it was first published in India.

Answer 1(vi)

Objectives of Competition Act, 2002

The objectives of the Competition Act is to provide for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets in India, to protect the interests of consumers, and to ensure freedom of trade carried on by other participants in markets in India and for matters connected therewith or incidental thereto.

Answer 1(vii)**Registered User**

Section 48 of Trade Marks Act, 1999 deals with registered users. Section 49 provides for registration as registered user. Section 50 deals with the power of the Registrar to vary or cancel registration as registered user on the ground that the registered user has used the trade mark otherwise than in accordance with the agreement or in such a way as to cause or likely to cause confusion, or deception or the proprietor/registered user misrepresented or has failed to disclose any material facts for such registration or the stipulation in the agreement regarding the quality of goods is not enforced or the circumstances have changed since the date of registration, etc. However, Registrar has been put under obligation to give reasonable opportunity of hearing before cancellation of registration.

With a view to simplify the procedure for registration of registered user and to ascertain whether the registered user agreement is in force, section 51 empowers the Registrar to require the proprietor to confirm at any time during the continuation of registration as registered user, whether the agreement, on the basis of which registered user was registered is still in force, and if such confirmation is not received within a period of one month, the Registrar shall remove the entry thereof from the Register in the prescribed manner. Section 52 recognises the right of registered user to take proceedings against infringement. Section 54 provides that the registered user will not have a right of assignment or transmission. However, it is clarified that where an individual registered user enters into partnership or remains in a reconstituted firm, the use of the mark by the firm would not amount to assignment or transmission.

Question 2

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

- (i) *All 'inventions' are patentable.*
- (ii) *Competition kills competition.*
- (iii) *A 'trade practice' does not include a single or isolated action of any person in relation to any trade.*
- (iv) *The Monopolies and Restrictive Trade Practices Act, 1969 seeks to regulate 'trade practices' and not 'trade'.*
- (v) *The three-tier machinery for the redressal of consumer disputes and grievances under the Consumer Protection Act, 1986 is 'quasi-judicial in nature'.*
- (vi) *'Person resident of India' is a person residing in India for more than 182 days during the preceding financial year.*
- (vii) *A certification trade mark is a 'trade mark' under the Trade Marks Act, 1999.*

(3 marks each)

Answer 2(i)

Invention is the subject matter of patent under The Patents Act, 1970. However, section 3 of The Patents Act, 1970 lists out certain inventions/discoveries and other things which cannot be patented under the Act.

Hence, it is clear that all inventions are not patentable.

Therefore, the statement is false.

Answer 2(ii)

The term “Competition” is not defined in the Act. However, in the corporate world, the term is generally understood as a process whereby the economic enterprises compete with each other to secure customers for their product. In the process, the enterprises compete to outsmart their competitors, sometimes to eliminate their rivals. Competition in the sense of economic rivalry has a natural tendency. In other words, competition kills competition.

Thus, the statement is true.

Answer 2(iii)

In terms of section 2(u) of the The Monopolies and Restrictive Trade Practices Act, 1969, Trade Practice means any practice relating to the carrying on of any trade and includes-

- (i) anything done by any person which controls or affects the price charged by, or the method of trading of, any trader or any class of traders,
- (ii) a single or isolated action of any person in relation to any trade.

To be a ‘practice a particular conduct must be repetitive in nature; if it has happened in one particular case for which there is some explanation, it cannot be said to be practice. (In Re : *Auto Agents and Bajaj Auto Ltd.* RTP Enq. No. 129/1986 order dated 10.12.1990)

Hence, the statement is true.

Answer 2(iv)

The Monopolies and Restrictive Trade Practices Act, 1969 seeks to regulate trade practice and not the trade. Various kinds of trade practices viz. (i) Monopolistic trade practices (MTP); (ii) Restrictive Trade Practices; and (iii) Unfair Trade Practices (UTP) are regulated under MRTP Act, 1969.

Hence, the statement is true.

Answer 2(v)

For the purposes of protecting the interest of consumers, and at the same time , providing for remedies which are simpler, more accessible, quicker and less expensive, the Consumer Protection Act, 1986 provides for three tier machinery for the redressal of consumer disputes grievances at the district, State and National Levels. These agencies are quasi judicial in nature, as, they are not required to follow strict rules of Civil Procedure Code regarding pleadings and evidence. At the same time these agencies are required to observe principles of natural justice.

Hence, the statement is true.

Answer 2(vi)

In terms of section 2(v) of the foreign Exchange Management Act, 1999, 'Person resident of India' has been defined to mean a person residing in India for more than 182 days during the course of the preceding financial year. However, two categories of persons are excluded from the purview of definition.

The first category includes any person who has gone out of India or who stays outside India for or on taking up employment outside India, or for carrying on outside India a business or vocation. The definition also includes person who stays outside India for any other purpose in such circumstances as would indicate his intention to stay outside India for an uncertain period.

The second category of persons which have been excluded from the definition of person resident in India include:

A person who has come to stay or stays in India, in either case otherwise than

- (i) for or taking up employment in India; or
- (ii) for carrying on in India a business or vocation in India; or
- (iii) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period.

Hence, the statement is true.

Answer 2(vii)

Section 2(1)(e) of the Trademarks Act, 1999, defines the term certification trade mark as to mean a mark capable of distinguishing the goods or services in connection with which it is used in the course of trade which are certified by the proprietor of the mark in respect of origin, material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics from goods or services not so certified and registerable as such in respect of those goods or services in the name, as proprietor of the certification trade mark, of that person. Certification trade mark may be used in addition to the users own trademark on his goods. Hence, the statement is true.

Question 3

(a) Distinguish between any two of the following :

- (i) *'Letter of intent' and 'industrial licence'.*
- (ii) *'Intellectual property' and 'industrial property'.*
- (iii) *'Political party' and 'an organisation of political nature'. (5 marks each)*

(b) *Re-write the following sentences after filling-up the blank space with appropriate word(s) so as to convey the correct meaning :*

- (i) *Literary, dramatic, musical or artistic works enjoy copyright protection for _____ years after the death of the author.*
- (ii) *The District Forum, the State Commission or the National Commission constituted under the Consumer Protection Act, 1986 shall not admit a*

complaint unless it is filed within _____ years from the date on which the cause of action has arisen.

- (iii) Foreign contribution means the donation, delivery or transfer made by a foreign source of any article, not being an article given to a person as a gift for his personal use, if the market value, in India, of such article, on the date of such gift, does not exceed Rs. _____.*
- (iv) The Noise Pollution (Regulation and Control) Rules, 2000 provide that a loud speaker or a public address system shall not be used at night between _____ except in closed premises.*
- (v) 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 any person resident outside India, is defined as a _____.*

(1 mark each)

Answer 3(a)(i)

Letter of intent

Letter of intent is a provisional license. It has initial validity of 3 years within which the unit is required to commence production. The validity of the letter of intent may be extended further upto 3 years by the Competent Authority. Proposals for extension beyond 6 years are considered in exceptional circumstances on case to case basis.

Industrial licence

An industrial licence is a written permission from the Government to an industrial undertaking for manufacture of specified articles, listed in the First Schedule and includes particulars of industrial undertaking, its location, articles to be manufactured, the capacity on the basis of maximum utilization of plant and machinery etc. The licence is subject to a validity period within which the licensed capacity of the undertaking should be established.

Answer 3(a)(ii)

Intellectual Property

As the term intellectual property relates to the creations of human mind and human intellect, this property is called Intellectual property. In other words, intellectual property relates to pieces of information which can be incorporated in tangible objects at the same time in an unlimited number of copies at different locations anywhere in the world. The property right does not vest in those copies but in the information reflected in those copies. Similar to property rights in movable and immovable property, intellectual property is also characterised by certain rights as well as limitations such as right to use and licence and also limited duration in the case of copy right and patents.

Industrial Property

Industrial property right is a collective name for rights referring to the commercial or industrial activities of a person. These activities may include the activities of industrial or commercial interests. They may be called inventions, creations, new products, processes of manufacture, new designs or model and a distinctive mark for goods etc.

The term industrial property has acquired a meaning which clearly covers inventions as well as other marks. The Paris Convention also recognised industrial property to cover patent, trademark, service mark, trade names, utility models, industrial designs, indication of source and appellations of origin and the repression of unfair competition.

Answer 3(a)(iii)

Political party

In terms of section 2(1)(g) of Foreign Contribution (Regulation) Act, 1976, Political Party means –

(i) an association or body of individual citizens of India which is, or is deemed to be, registered with the Election Commission of India as a political party under the Election Symbols (Reservation and Allotment) Order, 1968, as in force for the time being; or which has set up candidates for election to any Legislature, but is not so registered or deemed to be registered under the Election Symbols (Reservation and Allotment) Order, 1968; (ii) a political party mentioned in column 1 of Table I to the notification of the Election Commission of India No. 56/J&K 84, dated the 27th September, 1984 as in force for the time being.

An Organisation of Political Nature

Section 5 of FCRA prohibits an organisation of a political nature not being a political party, from accepting any foreign contribution, except with the prior permission of the Central Government.

For the purposes of section 5, the Central Government has notified certain organisations as organisations of political nature, not being a political party. These include trade unions, friendship societies/associations and students bodies besides organisations like Anand Marg, Congress Seva Dal, Seva Dharma Mission, Peoples Union for Civil Liberties, Rashtriya Swayam Sewak Sangh, Moral Re-armament, All India Peace and Solidarity Organisation, Shiromani Gurudwara Prabhandhak Committee and Jammāt-e-Islami Hind etc.

Answer 3(b)(i)

Literary, dramatic, musical or artistic work enjoy copyright protection for **60 years** after the death of the author.

Answer 3(b)(ii)

The District Forum, the State Commission or the National Commission constituted under the Consumer Protection Act, 1986 shall not admit a complaint unless it is filed within **2** years from the date on which the cause of action has arisen.

Answer 3(b)(iii)

Foreign contribution means the donation, delivery or transfer made by a foreign source of any article, not being an article given to a person as a gift for his personal use, if the market value, in India, of such article, on the date of such gift, does not exceed **Rs. One thousand**.

Answer 3(b)(iv)

The Noise Pollution (Regulation and Control) Rules, 2000 provides that a loud speaker or a public address system shall not be used at night between **10 PM to 6 AM** except in closed premises.

Answer 3(b)(v)

Any transaction, which alters the assets or liabilities, outside India of persons resident in India or assets or liabilities in India of any person resident outside India, is defined as a **capital account transaction**.

Question 4

- (a) *State whether the following transactions are valid and permitted under the Foreign Exchange Management (Current Account Transactions) Rules, 2000 :*
- (i) *An NRI sent a gift of US \$6,000 to his younger sister on her marriage in June, 2006 and again sent another gift of US \$4,000 on the occasion of marriage of his younger brother in November, 2006.*
 - (ii) *An Indian patient is in need of specialised medical treatment in a US hospital at a cost of US \$1,25,000.*
 - (iii) *A student, after graduation, wants to proceed to USA for pursuing higher studies in an engineering course for which he requires US \$1,25,000 per academic year, which is the estimate from the foreign university.*
 - (iv) *An Indian businessman wants to remit US \$10,000 for purchase of a trade mark/franchise in India.*
 - (v) *A company incorporated in India has to make a remittance of US \$90,000 by way of reimbursement of pre-incorporation expenses. (1 mark each)*
- (b) *Explain the concept of 'special economic zone' (SEZ). (5 marks)*
- (c) *Mention the important factors which the Competition Commission of India will take into consideration for determining whether an agreement has an 'appreciable adverse effect' on competition. (5 marks)*

Answer 4(a)(i)

In terms of rule 5 of Foreign Exchange Management (Current Account Transaction) Rules 2000, no person shall draw foreign exchange for a transaction included in the Schedule III without prior approval of the Reserve Bank.

Schedule III provides for Gift remittances exceeding US \$ 5000 per remitter/donor per annum.

In view of the aforesaid legal position, the transaction requires approval of the Reserve Bank as the amount exceed US \$ 5000, except the remitter makes payment out of RFC Account.

Answer 4(a)(ii)

In terms of rule 5 of Foreign Exchange Management (Current Account Transaction) Rules 2000, no person shall draw foreign exchange for a transaction included in the Schedule III without prior approval of the Reserve Bank.

Schedule III provides for release of foreign exchange for meeting expenses of medical treatment exceeding US \$ 1,00,000 or its equivalent.

In view of the aforesaid legal position, the transaction requires approval of the Reserve Bank as the amount exceed US \$ 1,00,000 except the remitter makes payment out of RFC Account.

Answer 4(a)(iii)

In terms of rule 5 of Foreign Exchange Management (Current Account Transaction) Rules 2000, no person shall draw foreign exchange for a transaction included in the Schedule III without prior approval of the Reserve Bank.

Schedule III provides for release of foreign exchange for studies abroad exceeding the estimates from the institution abroad or US \$ 1,00,000 “per academic year” whichever is higher.

In view of the aforesaid legal position, the transaction requires approval of the Reserve Bank as the amount exceed US \$ 1,00,000, except remitter makes payment out of RFC Account.

Answer 4(a)(iv)

In terms of rule 5 of Foreign Exchange Management (Current Account Transaction) Rules 2000, no person shall draw foreign exchange for a transaction included in the Schedule III without prior approval of the Reserve Bank.

Schedule III provides for remittance towards purchase of trademark/franchise.

In view of the aforesaid legal position, and since the amount has not been prescribed the transaction requires prior approval of the Reserve Bank, except the remitter makes payment out or RFC Account.

Answer 4(a)(v)

In terms of rule 5 of Foreign Exchange Management (Current Account Transaction) Rules 2000, no person shall draw foreign exchange for a transaction included in the Schedule III without prior approval of the Reserve Bank.

Schedule III provides for remittances exceeding US \$ 1,00,000 by an entity in India by way of reimbursement of pre-incorporation expenses.

In view of the aforesaid legal position, the transaction does not requires prior approval of the Reserve Bank.

Answer 4(b)

Special Economic Zones

Special Economic Zones (SEZ) are growth engines that can boost manufacturing, augment exports and generate employment. The private sector has been actively associated with the development of SEZs. The SEZs require special fiscal and regulatory regime in order to impart a hassle free operational regime encompassing the state of the art infrastructure and support services.

The Government of India had announced a Special Economic Zone scheme in April, 2000 with a view to provide an internationally competitive environment for exports. The objectives of Special Economic Zones include making available goods and services free of taxes and duties supported by integrated infrastructure for export production, expeditious and single window approval mechanism and a package of incentives to attract foreign and domestic investments for promoting export-led growth. Foreign Trade Policy explains the policy of the Government relating SEZs and the law relating thereto is contained in special Economic Zones Act, 2005.

Eligibility

Special Economic Zone (SEZ) a specifically delineated duty free enclave is deemed to be foreign territory for the purposes of trade operations and duties and tariffs. Goods and services going into the SEZ area from DTA are treated as exports and goods coming from the SEZ area into DTA are treated as if these are being imported. SEZ units may be set up for manufacture of goods and rendering of services.

Management of SEZ

SEZ has been put under the administrative control of the Development Commissioner. All activities of SEZ units within the Zone, unless otherwise specified, including export and re-import of goods have been permitted through self-certification procedure.

Entitlement for SEZ Developer

For development, operation and maintenance of infrastructure facilities in SEZs, the developer have been made eligible for the following entitlements

- (a) Income tax exemption as per 80 IA of the Income Tax Act.
- (b) Import/ procure goods without payment of Customs/Excise duty.
- (c) Exemption from Service tax.
- (d) Exemption from CST.

Answer 4(c)

Section 19(3) of the Competition Act, 2002 provides that while determining whether an agreement has appreciable adverse effect on competition, the Commission shall give due regard to all or any of the following factors, namely –

- (a) creation of barriers to new entrants in the market;
- (b) driving existing competitors out of the market;
- (c) foreclosure of competition by hindering entry into the market;
- (d) accrual of benefits to consumers;
- (e) improvements in production or distribution of goods or provision of services; and
- (f) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

Question 5

Attempt any three of the following :

- (i) A tenant entered into a lease agreement of a flat for use as residential house. After occupying the flat, the tenant demanded of the landlord to effect some repairs and re-paint the building. The owner refused on the ground that there was no such clause in the lease agreement. The tenant filed a complaint in the Consumer Disputes Redressal Forum for 'deficiency in service'. Will he succeed? (5 marks)
- (ii) What are the powers of the Central Government to prohibit receipt of foreign contribution under the Foreign Contribution (Regulation) Act, 1976 ? (5 marks)
- (iii) Mention the conditions subject to which a patent is granted under the Patents Act, 1970. (5 marks)
- (iv) Enumerate the general powers of the Central Government for protecting and improving the quality of the environment and for preventing, controlling and abating environmental pollution under the Environment (Protection) Act, 1986. (5 marks)

Answer 5(i)

Facts of the case are similar to *Laxmiben Lakshmidhand Sha v. Sakerben Kanji Chandan & others* [1986-2004 CONSUMER 7414 (NS)], wherein the Supreme Court held that the tenant entering into lease agreement with the landlord cannot be considered as consumer under section 2(1)(d) of the Act. Where there was no provision in the lease agreement in respect of cleaning, repairing and maintaining the building, the rent paid by tenant is not the consideration for availing these services and therefore, no question of deficiency in service. [See also *C.P. Balliappa v. Indo American Hybrid Seeds*, 2001 CTJ 57 (CP) (SCDRC)]

In view of the aforesaid legal position, tenant claim for compensation will fail, since there was no provision in the lease agreement for cleaning, repairing or maintaining the building and the rent paid was not a consideration for the cleaning, repairing or maintaining the building. Hence, tenant cannot be said to be consumer for the purposes of the claim.

Answer 5(ii)**Power of the Central Government to Prohibit Receipt of Foreign Contribution**

Section 10 of Foreign Contribution (Regulation) Act, 1976 deals with the powers of Central Government to prohibit the receipt of foreign contribution, etc. in certain cases. Accordingly, the Central Government has been empowered to:

- (a) prohibit any association not specified in section 4 or any person from accepting any foreign contribution;
- (b) require any association specified in section 6(1), to obtain prior permission of the Central Government before accepting any foreign contribution;
- (c) require any person or class of persons or any association, not being an association specified in section 6, to furnish intimation within such time and in such manner as may be prescribed as to the amount of any foreign contribution received by

such person or class of persons or association, as the case may be, and the source from which and the manner in which such contribution was received and the purpose for which and the manner in which such foreign contribution was utilised;

- (d) require any person or class of persons, not specified in section 9, to obtain prior permission of the Central Government before accepting any foreign hospitality;
- (e) require any person or class of persons, not specified in section 9 to furnish intimation, within such time and in such manner as may be prescribed as to the receipt of any foreign hospitality, the source from which and the manner in which such hospitality was received.

However, the Central Government is not authorised to make any such prohibition, unless it is satisfied that the acceptance of foreign contribution/foreign hospitality by such association or person or class of persons, as the case may be, is likely to affect prejudicially the sovereignty and integrity of India; or the public interest; or freedom or fairness of election to any Legislature; or friendly relations with any foreign State; or harmony between religious, racial, linguistic or regional groups, castes or communities.

Answer 5(iii)

Grant of patents subject to conditions

Section 47 of the Patents Act, 1970 dealing with grant of patents subject to conditions provides that the grant of a patent shall be subject to the conditions that:

- (1) any machine, apparatus or other article in respect of which the patent is granted or any article made by using a process in respect of which the patent is granted, may be imported or made by or on behalf of the Government for the purpose merely of its own use;
- (2) any process in respect of which the patent is granted may be used by or on behalf of the Government for the purpose merely of its own use;
- (3) any machine, apparatus or other article in respect of which the patent is granted or any article made by the use of the process in respect of which the patent is granted, may be made or used, and any process in respect of which the patent is granted may be used by any person, for the purpose merely of experiment or research including the imparting of instructions to pupils; and
- (4) in the case of a patent in respect of any medicine or drug, the medicine or drug may be imported by the Government for the purpose merely of its own use or for distribution in any dispensary, hospital or other medical institution maintained by or on behalf of the Government or any other dispensary, hospital or other medical institution which the Central Government may, having regard to the public service that such dispensary, hospital or medical institution renders, specify in this behalf by notification in the Official Gazette.

Answer 5(iv)

The Central Government has been granted general powers under Section 3 of Environment (Protection) Act, 1986 to take all such measures as it deems necessary, for protecting and improving the quality of the environment and for preventing, controlling

and abating environmental pollution. Such measure include with respect to all or any of the following matters:

- (i) coordinating the actions of various State Governments, officers and authorities under the Act or rules made thereunder or under any other law concerning environmental pollution;
- (ii) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;
- (iii) laying down standards for the quality of environment;
- (iv) laying down standards for emission or discharge of environmental pollutants (different standards may be laid down for different sources of emission or discharge of environmental pollutants);
- (v) restricting the carrying on of industries, operations or processes in certain areas or permitting them to be carried out subject to certain safeguards;
- (vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;
- (vii) laying down procedures and safeguards for the handling of hazardous substances;
- (viii) examining manufacturing processes, materials and substances as are likely to cause environmental pollution;
- (ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;
- (x) inspecting any premises, plant, equipment, machinery, manufacturing process, materials, etc. and issuing directions to any person, officer or authority etc. to take steps for the prevention, control and abatement of environmental pollution;
- (xi) establishing or recognising environmental laboratories;
- (xii) collecting and disseminating information relating to environmental pollution;
- (xiii) preparing manuals, codes, guides etc. to prevent control and abate environmental pollution;
- (xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of the Act.

Question 6

Attempt any three of the following :

- (i) *Mention the provisions of the National Environment Tribunal Act, 1995 relating to compensation for death, injury to a person and damage to property and environment. (5 marks)*
- (ii) *Discuss the provisions of the Trade Marks Act, 1999 regarding assignment and transmission of registered trade marks. (5 marks)*
- (iii) *Mention the provisions of the Environment (Protection) Act, 1986 relating to offences by companies. (5 marks)*
- (iv) *Avtar made a complaint to the Consumer Disputes Redressal Forum that the Regional Provident Fund Commissioner had not settled his provident fund dues*

within the period stipulated in the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and for the 'deficiency in service'. he also claimed damages for non-settlement of the dues within the stipulated period. The Regional Provident Fund Commissioner in his reply contended that there was no hiring of service for consideration since he was performing a statutory function. Will Avtar succeed? (5 marks)

Answer 6(i)

Compensation for Death, Injury to a Person and Damage to Property and Environment

Chapter II of the National Environment Tribunal Act, 1995 deals with compensation for death of or injury to a person and damage to property and environment. Section 3(1) states that where death of or injury to any person (other than workman) or damage to any property or environment has resulted from an accident, the owner shall be liable to pay compensation for such death, injury or damage.

A claimant in any claim for compensation, is under no obligation to plead and establish that the death, injury or damage in respect of which the claim has been made was due to any wrongful act, neglect or default of any person. In this context the term injury includes, permanent total or permanent partial disability or sickness resulting out of an accident.

Sub-section (3) provides that if the death, injury or damage caused by an accident cannot be attributed to any individual activity but is the combined and resultant effect of several such activities, operations and processes, the Tribunal may apportion the liability for compensation amongst those responsible for such activities, operations and processes on an equitable basis.

Answer 6(ii)

Assignment and Transmission

Trademarks Act, 1999 contains provisions relating to Assignment and Transmission of registered trademarks, which are discussed herein below:

Section 37 of the Act, entitles the registered proprietor of a trademark to assign the trade mark and to give effectual receipts for any consideration for such assignment. Section 38 deals with the assignability and transmissibility of a registered trade mark with or without goodwill of the business either in respect of all goods or services or part thereof. Section 39 provides that unregistered trade mark may be assigned or transmitted with or without the goodwill of the business concerned.

Section 40 contains restriction on assignment or transmission of trade mark where multiple exclusive rights would be created in more than one person in relation to same goods or services; same description of goods or services; goods or services or description of goods or services which are associated with each other, which would be likely to deceive or cause confusion. Nevertheless, such assignment is not deemed to be invalid, if having regard to the limitations imposed, the goods are to be sold in different markets- either within India or through exports.

The Act under section 42 stipulates conditions for assignment of a trade mark without goodwill of business. Such an assignment shall not take effect unless the assignor obtains directions of the Registrar and advertises the assignment in accordance with the directions of the Registrar in the prescribed manner.

Section 43 deals with the assignability and transmissibility of certification trade marks and provides that the assignment of certification trade mark can only be done with the consent of the Registrar. Section 44 states that associated trade marks shall be assignable and transmissible only as a whole but they will be treated as separate trade marks for all other purposes. Section 45 deals with the procedure for registration of assignment and transmission and provides that where the validity of an assignment is in dispute between the parties, the Registrar may refuse to register the assignment or transmission unless the rights of parties are determined by the competent court.

Answer 6(iii)

Offences by Companies under Environment (Protection) Act, 1986

Section 16 of 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. Further, 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 6(iv)

Facts of the case are similar to *Regional Provident Fund Commissioner, Faridabad v. Shiv Kumar Joshi* [Revision Petition No. 238 of 1994 decided on 30.1.1996 (NCDRC)] wherein the complainant had alleged that his provident fund dues had not been settled within the period of 20 days of the claim as provided in the 1952 Act and Scheme and that this constituted deficiency in service. He claimed damages of Rs. 65,000 for the Commissioner's failure and negligence in settling his claim within the stipulated time. The Commissioner in reply contended that there was no hiring of service for consideration in this case since he was performing a statutory function.

The District Forum allowed the complaint and its view was affirmed by the State Commission. In appeal to National Commission, it was contended on behalf of the Commissioner that the expression service excludes rendering of service free of charge, and that the Act and the Scheme did not provide for any consideration being charged for executing statutory functions.

Dismissing the revision petition the National Commission observed that it was not correct to contend that the Commissioner was exercising statutory power and was discharging statutory functions under the 1952 Act and the Scheme and therefore, he could not come within the ambit of the expression service.

Administration charges were levied and recovered by the Commissioner for payment of services rendered by him and his staff. Under the Scheme it is the responsibility of the principal employer to pay both the contribution payable by himself and also administrative charges. A duty is also cast for investment of moneys belonging to the employees provident fund just as any banker or financial institution under the control of the Central Government. The Commissioner is required to credit interest to each account.

Referring to Lucknow Development Authority's case, the National Commission observed that the Commissioner under the Act gave statutory service on payment of administrative charges and they were required to invest the contributions to the provident fund like any banker or financing institution and to credit interest to the subscribers account. This was rendering of service for consideration as defined in the Act.

In view of the aforesaid legal position, Avtar can succeed in his claim for deficiency in services for not settling his provident fund dues within the period stipulated in the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

Question 7

(a) *Discuss any two of the following :*

- (i) *Adjudication as a method of resolution of industrial disputes*
- (ii) *Lay-off compensation*
- (iii) *General duties of the occupier*
- (iv) *Employee welfare.* (5 marks each)

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

- (i) *A driver of a bus was involved in an accident which impaired the movement of his left hand. He claimed compensation for permanent total disablement under the Workmen's Compensation Act, 1923. The employer contested the claim stating that the driver is capable of performing other duties. Will the driver succeed ?*
- (ii) *Rajat was suspended from service by the company. He was subsequently reinstated with full back wages. The company refused to pay bonus for the period of his suspension. Is Rajat entitled to get bonus for the period of his suspension ?*
- (iii) *Arpit was dismissed from service for an act of misconduct. The company did not pay him any bonus. Arpit contended that he was eligible for payment of bonus for the accounting year in which dismissal took place. Will he succeed ?*
- (iv) *Jay-Kay Ltd. employed casual workmen for a short duration of two months to execute a contingency plan of its operations. Are the casual workmen entitled for provident fund contribution from the employer ?*
- (v) *Kailash, a teacher in a private school having a basic salary of Rs.3,500 per month, claims gratuity from the school management when he resigned from the service after serving for a period of 12 year. Will he succeed ?*
- (vi) *Cement Employees' Union took up the case of a dismissed non-union member employee and raised an industrial dispute. The management of the company contended that the employee was not a member of any union recognised by the company and, therefore, there cannot be any industrial dispute in this case. Will the employer's stand succeed ?*

- (vii) *Bahadur, an employee deputed by the management to participate in a football match, met with an accident resulting in his death while on his way to the playground. Is it an 'employment injury' under the Employees' State Insurance Act, 1948 ?* (3 marks each)

Answer 7(a)(i)

Adjudication as a Method of Resolution of Industrial Disputes

Adjudication involves intervention in the dispute by the third party appointed by the government for the purpose of deciding the nature of final settlement. On getting a report of the failure of conciliation, the government has to decide whether it would be appropriate to refer the dispute to adjudication.

Adjudication is conditioned by various constitutional, political and socio economic aspects. The decisions or awards of these adjudication bodies have far-reaching effects. These awards have a much wider appeal and influence over the course developments in industrial relations and even the national economy as a whole.

The Industrial Disputes Act, 1947 provides for a three-tier system of adjudication:

- (1) Labour Courts;
- (2) Industrial Tribunals; and
- (3) National Tribunals.

These are the adjudicating bodies which decide the disputes referred to them by the appropriate government and pass their awards. The constitution, duties and powers of these authorities have been stipulated under the Industrial Disputes Act, 1947. (See Sections 7, 7-A, 7-B, & 7-C)

The Labour Courts adjudicate upon disputes listed in Schedule II of the Act. The Industrial Tribunals adjudicate upon disputes listed in schedule II or III of the Act. The National Tribunals adjudicate upon disputes which are of national importance, or when the dispute is of such a nature as to affect industrial establishments situated in more than one State.

The Presiding Officers of a Labour Court, Tribunal or National Tribunal are deemed to be public servants within the meaning of Section 21 of the Indian Penal Code. Every Labour Court, Tribunal or National Tribunal is deemed to be Civil Court for the purposes of Section 345, 316 and 348 of the Code of Criminal Procedure, 1973. Thus, we see that Section 11(1) gives wide powers to various authorities. However, power to lay-down its own procedure is subject to rules made by the appropriate Government.

The Industrial Disputes (Central) Rules, 1957 have prescribed a detailed procedure which these authorities are required to follow. (See Rules 9 to 30). The authorities are not bound to follow the rules laid down in Civil Procedure Code, 1908 or the Indian Evidence Act. However, being quasi-judicial bodies, they should use their discretion in a judicial manner without caprice and act according to the general principles of law and rules of natural justice.

Answer 7(a)(ii)**Lay-Off Compensation**

Under Section 2(kkk) of the Industrial Disputes Act, 1947 “lay-off” means failure, refusal or inability of an employer to give employment due to following reasons, to a workman whose name appears on the muster-rolls of his industrial establishment and who has not been retrenched:

- (a) shortage of coal, power or raw materials, or
- (b) accumulation of stocks, or
- (c) break-down of machinery, or
- (d) natural calamity, or
- (e) for any other connected reason [Section 2(kkk)].

If the employees are laid off in pursuance to the provisions of the Section 2(kkk) of the Industrial Disputes Act, 1947, they are entitled to lay-off compensation in accordance with the provisions of Section 25-C of the Industrial Disputes Act, 1947. The right of a workman to lay-off compensation is designed to relieve the hardship caused by unemployment due to no fault of the workman. It is based on grounds of humane public policy. The requisites regarding payment of compensation to a workman, who is laid-off, are contained in Section 25-C which inter-alia provides:

Whenever a workman (other than a badli workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment and who has completed not less than one year of continuous service under an employer is laid-off, whether continuously or intermittently, he shall be paid by the employer for all days during which he is so laid-off, except for such weekly holidays as may intervene, compensation which shall be equal to fifty percent (50%) of the total of the basic wages and dearness allowance that would have been payable to him had he not been so laid-off.

If during any period of 12 months a workman is laid-off for more than 45 days, no such compensation shall be payable to the workman during any period of 12 months after the expiry of the first 45 days if there is an agreement to that effect between the workman and the employer.

Where a workman is laid-off for a period of more than 45 days during a period of 12 months, the employer can lawfully retrench him in accordance with the provisions contained in Section 25-F at any time after the expiry of the first 45 days of lay-off. When the employer does so, any compensation paid to the workman for having been laid-off during the proceeding 12 months may be set-off against the compensation payable for retrenchment.

Answer 7(a)(iii)**General Duties of the Occupier**

These general duties of the Occupier have been spelled out under Section 7A of the Factories Act, 1948. Section 7A which has been inserted by the Factories (Amendment) Act, 1987 provides as under:

- (1) Every occupier shall ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are at work in the factory.

- (2) Without prejudice to the generality of the provisions of sub-section (1), the matters to which such duty extends shall include :
- (a) The provision and maintenance of plant and systems of work in the factory that are safe and without risks to health;
 - (b) the arrangement in the factory for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;
 - (c) the provisions of such information, instruction, training and supervision as are necessary to ensure the health and safety of all workers at work;
 - (d) the maintenance of all places of work in the factory in a condition that is safe and without risks to health and provisions and maintenance of such means of access to, and egress from, such places as are safe and without such risks;
 - (e) the provision, maintenance or monitoring of such working environment in the factory for the workers that is safe, without risks to health and adequate as regards facilities and arrangements for their welfare at work.
- (3) Except in such cases as may be prescribed, every occupier shall prepare, and as often as may be appropriate revise, a written statement of his general policy with respect to the health and safety of the workers at work and organisation and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision thereof to the notice of all the workers in such manner as may be prescribed.

Answer 7(a)(iv)

Employee Welfare

Welfare work in its accepted parlance means voluntary effort of employers to improve the conditions of their employees. It is this activity that puts the human factor in its true light. The most valuable possessions of a workman are his health, strength and intelligence. The prolongation of working life and prevention of diseases are problems which affect every employee. It is both in the interest of the employer himself and the workers that welfare activities are carried out by the employers. Because some employers do not follow the example of their enlightened brethren, the State provides for minimum requirements with respect to health and safety as well as welfare, makes special provisions for specific welfare activities, particularly inside the factories, such as washing facilities, first aid appliances, canteens, restrooms, crèches, etc.

The State has also introduced measures for social security of the workers in the Employees State Insurance Act, 1948, Employees Provident Funds and Miscellaneous Provisions Act, 1952 and the Payment of Gratuity Act, 1972. These measures provide financial assistance to employees inside and outside the work establishment, especially in organised sector. For unorganised sector, Government through constitution of welfare funds extends a measure of social assistance. The Government has constituted certain Funds to provide housing, medical care, educational and recreational facilities to workers employed in beedi industry, cine workers and coal-mine workers.

However, State alone cannot be expected to provide measures to overcome the difficulties of the workers. The employers in their own interest and that of the worker must provide services for the welfare of the workers and their family.

Answer 7(b)(i)

The driver will not succeed.

In *Divisional Manager KSRTC v. Bhimaiah*, 1977 II L.L.J. 521, it has been held that where the workman, a driver of bus belonging to the employer was involved in an accident which resulted in an impairment of the free movement of his left hand disabling him from driving vehicles, it was held that this is not one of the injuries mentioned in the 1st Schedule which are accepted to result in permanent total disablement. In the present case the workman was also capable of performing duties and executing works other than driving vehicles. Nature of injury is to be determined not on the basis of the work he was doing at the time of accident.

Answer 7(b)(ii)

Rajat is entitled to get bonus for the period of suspension. Bonus can be paid to a dismissed employee if he is reinstated with full back wages. It was held in the case of *Project Manager, Ahmadabad Project, ONGC v. Sham Kumar* (1995) 1 LLJ 863 that an employee suspended but subsequently reinstated with full back wages cannot be treated to be ineligible for bonus for the period of suspension.

Answer 7(b)(iii)

Arpit will not succeed. If an employee is dismissed from service for any act of misconduct enumerated in Section 9, he stands disqualified from receiving any bonus under the Act, and not the bonus only for the accounting year in which the dismissal takes place. [*Pandian Roadways Corpn. Ltd. v. Presiding Officer, Principal Labour Court*, (1996) 2 LLJ 606].

Answer 7(b)(iv)

Persons employed for a short duration or on account of some urgent necessity or abnormal contingency, which was not a regular features of the business of the establishment cannot be considered as employees for the purpose of determining the employment strength in relation to applicability of Section 1(3)(b) of the EPF Act, 1952. In the case of *R.P.F. Commr., A.P. v. T.S. Hariharan*, A.I.R (1971) SC 1519, the Supreme Court held that casual workers are not covered under Section 1(3)(b). The Supreme Court observed as follows:

“Considering the language of Section 1 (3) (b) of the Act it appears that the *employment of a few persons on account of some emergency or for a very short period necessitated by some abnormal contingency which is not a regular feature of the business of the establishment* and which does not reflect its business prosperity or its financial capacity and stability from which it can reasonably be concluded that the establishment can in the normal way bear the burden of contribution towards the provident fund under the Act would not be covered by this definition. The word ‘employment’ must, therefore, be construed as employment in the regular course of business of the establishment. Such employment obviously would not include employment of a few persons for a short period

on account of some pressing necessity or some temporary emergency beyond the control of the company”.

Answer 7(b)(v)

Kailash will not succeed. Teacher is not an employee under the Payment of Gratuity Act, 1972. The Supreme Court in *Ahmedabad Pvt. Primary Teachers Association v. Administrative Officer LLJ (2004)*, has held that since the teacher cannot be called an employee under Section 2(e) of the Act because he is not doing any work which can be called as skilled, unskilled, manual, supervisory, technical or clerical work, he is not entitled to make any claim for gratuity.

Earlier, the Apex Court in *Sunderambal v. Government of Goa [AIR (1988) SC 1700. (1989) LAB 1C 1317]*, held that the teachers employed by the educational institution cannot be considered as workmen within the meaning of Section 2(s) of the Industrial Disputes Act, as imparting of education which is the main function of the teachers cannot be considered as skilled or unskilled manual work or supervisory work or technical work or clerical work. The teacher necessarily performs intellectual duties and the work is mental and intellectual as distinct from manual.

Answer 7(b)(vi)

Employers stand will not succeed. It has been provided under Section 2-A that where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute even if no other workman nor any union of workmen is party to the dispute.

In *Western India Match Co. Ltd. v. Western India Match Co. Workers' Union, (1970) 2 LL.J. 256*, it was held that a dispute may become an industrial dispute if other workmen take it up. A dispute may initially be an individual dispute. The workmen may make that dispute as their own on the ground that they have a community of interest and are directly and substantially interested in the conditions of employment. It is immaterial whether the individual workman was a member of the union when the cause arose

The Supreme Court in *Dimakuchi Tea Estate Case* held that only condition for an individual dispute turning to an industrial dispute 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. Further, the community of interest does not depend on whether the concerned workman was a member or not at the date when the cause occurred, for without his being a member the dispute may be such that other workmen by having a common interest therein would be justified in taking up the dispute as their own and espousing it.

Answer 7(b)(vii)

It is an employment injury. Employment injury under Section 2(8) of the E.S.I. Act 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. An 'insurable employment' means an employment in a factory or establishment to which this Act applies.

In *Regional Director, E.S.I. Corpn. v. L. Ranga Rao, (1981) Lab. I. C. 1563*.

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. 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

In view of the above mentioned legal provisions and the decision on the point, it as an employment injury

SECURITIES LAWS AND REGULATION OF FINANCIAL MARKETS

Time allowed : 3 hours

Maximum marks : 100

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

Question 1

Write notes on any four of the following :

- (i) Carrot and stick bond*
- (ii) Basket trading system*
- (iii) Employees stock option*
- (iv) Collective investment scheme*
- (v) Ombudsman in stock market*
- (vi) Exchange traded funds.*

(5 marks each)

Answer 1(i)

Carrot and stick bond

In Carrot and Stick Bonds, carrot is the lower than normal conversion premium i.e. the premium over the present market price of the equity shares is fixed at a reasonable level so that the price of the equity shares need not increase significantly to make conversion practical. The stick is the issuer's right to call the issue at a specified premium if the price of the equity shares is traded above a specified percentage of the conversion price.

Answer 1(ii)

Basket trading system

The Bombay Stock Exchange provides the investors as well as its member brokers a facility of Basket Trading System, with a view to provide investors the facility of creating sensex linked portfolio and also to create a linkage of market prices of the underlying securities of sensex in the cash segment and futures on sensex. In this system the investors through the member brokers of the exchange are able to buy or sell all 30 scrips of sensex in one go in the proportion of their respective weights in the sensex. The investors can also create their own baskets by deleting certain scripts from 30 scripts in the sensex.

Answer 1(iii)

Employees stock option

Employee Stock Option means the option given to the whole-time directors, officers or employees' of a Company which gives them the right to purchase or subscribe at a future date the securities offered by the company at a pre-determined price. Employee stock option plays vital role in rewarding and motivating employees in attracting and retaining the best talent in the company.

Answer 1(iv)**Collective investment scheme**

Collective Investment Scheme (CIS) under SEBI (Collective Investment Schemes) Regulations, 1999 means any scheme or arrangement made or offered by any company under which :

- (a) 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;
- (b) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement.
- (c) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors; and
- (d) the investors do not have day-to-day control over the management and operation of the scheme or arrangement.

The CIS Regulations, however, excludes any scheme or arrangement made or offered by a co-operative society, deposits accepted by non-banking financial companies; contract of insurance; deposits accepted under Section 58A of the Companies Act, 1956 etc.

Answer 1(v)**Ombudsman in stock market**

“Ombudsman” means any person appointed under regulation 3 of SEBI (Ombudsman) regulations, 2003 and unless the context otherwise requires, includes stipendiary Ombudsman. Regulation 2(n) of the Regulations defines stipendiary Ombudsman as a person appointed under Regulation 9 for purpose of acting as Ombudsman in respect of a specific matter or matters in a specific territorial jurisdiction and for which he may be paid such expenses, honorarium, sitting fees as may be determined by the Board from time to time.

An Ombudsman has crucial role to play in redressal of investors' grievances. Any person who has a grievance against a listed company or an intermediary relating to any of the matters specified in SEBI (Ombudsman) Regulations may himself or through his authorized representative or any investors association recognized by SEBI, make a complaint to the Ombudsman within whose jurisdiction the registered or corporate office of such listed company or intermediary is located. If SEBI has not notified any Ombudsman for a particular locality or territorial jurisdiction, the complainant may request the Ombudsman located at the Head Office of the SEBI for forwarding his complaint to competent jurisdiction. The powers and functions of ombudsman have also been defined under the said Regulations.

Answer 1(vi)**Exchange Traded Funds**

Exchange Traded Funds (ETFs) represent a basket of securities that are traded on an exchange. They are similar to index mutual funds but are traded more like a stock.

They are a rapidly growing class of financial product and are typically organized as unit trusts. ETFs can be bought and sold throughout the trading day, allowing for intraday trading - which is rare with mutual funds. Unlike mutual funds, ETFs do not trade necessarily at the net asset values of their underlying holdings, meaning an ETF could potentially trade above or below the value of the underlying portfolios.

Question 2

- (a) *“The financial markets have two major components — the money market and the capital market.” Discuss. (5 marks)*
- (b) *How the proceeds of external commercial borrowings (ECB) can be utilised as per norms ? (5 marks)*
- (c) *Organise Infotech Ltd., an existing listed company, wants to make a bonus issue of shares. The Chief Executive Officer (CEO) of your company wants to know about pre-requisites for bonus issue. As the Company Secretary, prepare a note on the SEBI guidelines applicable in this regard. (6 marks)*

Answer 2(a)

The financial markets have two major components namely: Money Market and Capital Market. The money market refers to the market where borrowers and lenders exchange short-term funds to solve their liquidity needs. Money market instruments are generally financial claims that have low default risk, maturities under one year and high marketability. The Capital Market is a market for financial investments that are direct or indirect claims to capital. It is wider than the Securities Market and embraces all forms of lending and borrowing, whether or not evidenced by the creation of a negotiable financial instrument. The Capital Market comprises the complex of institutions and the mechanisms through which intermediate term funds and long term funds are pooled and made available to business, government and individuals. The Capital Market also encompasses the process by which securities already outstanding are transferred.

Answer 2(b)

Utilization of ECB Proceeds

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

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

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

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

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

Answer 2(c)

*From :
XYZ Company Secretary*

*To: CEO
Organise Infotech Limited*

As desired, please find the note on the Requirements to be complied by Organise infotech Ltd while making a Bonus Issue

- (1) The proposed bonus issue should not dilute the value or rights of the fully or partly convertible debentures.
- (2) If the conversion of Fully Convertible Debentures(FCD)/Partly Convertible Debenture(PCD) is pending, the reservation of shares out of bonus issue is to be made in proportion to the convertible part of FCD's or PCD's. The shares so reserved may be issued at the time of conversion of such debentures on the same terms on which the rights or bonus issues were made.
- (3) The bonus issue is to be made out of free reserves built out of the genuine profits or securities premium collected in cash only.
- (4) The reserves created by revaluation of fixed assets should not be capitalized.
- (5) Bonus issue should not be made in lieu of dividend.
- (6) If there are any partly paid-up shares, these shares should be made fully paid-up before the bonus issue is made.
- (7) The company should not have defaulted in the payment of any interest or principal in respect of its fixed deposits and interest on existing debentures or on redemption of debentures.
- (8) The company should not have defaulted in the payment of its statutory dues to the employees such as contribution to provident fund, gratuity, bonus.
- (9) The bonus issue should be made within a period of six months from the date of approval of the Board of Directors.
- (10) The Articles of Association of the Company should provide for capitalization of reserves and if there is no provision in the Articles of Association, a general body meeting of the company is to be held and a special resolution making provisions in the Articles of Association for capitalization should be passed.
- (11) If consequent upon the issue of bonus shares, the subscribed and paid-up capital of the company exceed the authorized share capital, a General Meeting of the company should be held to pass necessary resolution for increasing the authorized capital.
- (12) A certificate duly signed by the issuer company and countersigned by Statutory Auditor or Company Secretary in Practice to the effect that the guidelines in relation to bonus issues have been complied with, is required to be forwarded to SEBI.

Submitted please

XYZ
Company Secretary

Question 3

- (a) *Describe the objectives of constituting SEBI and state the composition of the SEBI Board.*
 - (b) *State the requirements for monitoring of ratings by a credit rating agency.*
 - (c) *State the approvals required for issue of Global Depository Receipts (GDRs) and Foreign Currency Convertible Bonds (FCCBs).*
 - (d) *“Quality of Corporate Governance is a function of certain factors.” Explain.*
- (4 marks each)*

Answer 3(a)

The objective of constituting SEBI is to ensure effective regulation of the securities market. SEBI Act, 1992 was enacted to empower SEBI with statutory powers for (a) protecting the interests of investors in securities, (b) promoting the development of the securities market, and (c) regulating the securities market and for matters connected therewith or incidental thereto. Its regulatory jurisdiction extends over corporates in the issuance of capital and transfer of securities, in addition to all intermediaries and persons associated with securities market.

Section 4(1) of SEBI Act provides that SEBI Board shall consist of the following members, namely:

- (a) a Chairman;
- (b) two members from amongst the officials of the Ministry of the Central Government dealing with Finance and administration of the Companies Act, 1956;
- (c) one member from amongst the officials of the Reserve Bank;
- (d) five other members of whom at least three shall be the whole time members, to be appointed by the Central Government.

Answer 3(b)

SEBI (Credit Rating Agencies) Regulations, 1999 requires that Credit rating agency should during the lifetime of securities rated by it continuously monitor the rating of such securities. It should also disseminate information regarding newly assigned ratings, and changes in earlier rating promptly through press releases and websites, and, in the case of securities issued by listed companies, such information should also be provided simultaneously to all the stock exchanges where the said securities are listed.

Answer 3(c)

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

- (1) A meeting of Board of Directors is required to be held for approving the proposal to raise money from Euro Capital market, through board resolution indicating therein specific purposes for which funds are required, quantum of the issue, country in which issue is to be launched, time of the issue etc.
- (2) A special resolution under Section 81(1A) of the Companies Act, 1956 is required

to be passed at a duly convened general meeting of the shareholders of the company.

- (3) Approval from Ministry of Finance is required for FCCB issues exceeding stipulated limit
- (4) The issuer company has to obtain approvals from Reserve Bank of India under circumstances specified under the guidelines issued by the concerned authorities from time to time.
- (5) The issuing company has to make a request to the domestic stock exchange for in-principle consent for listing of underlying shares which shall be lying in the custody of domestic custodian.
- (6) The company is required to obtain in principle consent of Financial Institutions on the broad terms of the proposed issue.

Answer 3(d)

The corporate governance framework depends on the legal, regulatory and institutional environment, business ethics and awareness of the environment and societal interests of the constituencies in which it operates. The degree to which corporations observe basic principles of good corporate governance is an increasingly important factor for taking key investment decisions. Quality of governance primarily depends on following factors:

- (i) Integrity of the management;
- (ii) Ability of the board;
- (iii) Adequacy of the process;
- (iv) Commitment level of individual board members;
- (v) Quality of corporate reporting;
- (vi) Participation of stakeholders in the management.

Question 4

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

- (i) *'Leverage funds' and 'hedge funds'.*
- (ii) *'Futures' and 'options'.*
- (iii) *'Income oriented schemes' and 'growth oriented schemes'. (4 marks each)*

(b) *Define the following authorities as per the Securities Appellate Tribunal (Procedure) Rules, 2000 :*

- (i) *Presiding officer*
- (ii) *Registrar*
- (iii) *Appellate tribunal*
- (iv) *Adjudicating officer.*

(1 mark each)

(c) *Expand any four of the following :*

- (i) *CBOE*
- (ii) *ESPS*
- (iii) *OMO*
- (iv) *SMILE*
- (v) *KYC*
- (vi) *CARE.*

(1 mark each)

Answer 4(a)(i)

‘Leverage funds’ and ‘hedge funds’

Leverage Funds also known as borrowed funds, increase the size and value of portfolio and offer benefits to members through excess of gains over cost of borrowed funds. They tend to indulge in a speculative trading and risky investments.

Hedge Funds employ their funds for speculative trading, i.e., for buying shares whose prices are likely to rise and for selling shares whose prices are likely to dip. Hedge funds use a wide variety of trading strategies involving position-taking in a range of markets. They employ as assortment of trading techniques and instruments, often including short-selling, derivatives and leverage.

Answer 4(a)(ii)

‘Futures’ and ‘options’

Futures : A contract obliging one signatory to buy and another to sell a standard quality of a financial instrument on a pre-determined price. Futures may be commodity futures or security futures.

Options : A contract which gives the holder the right to purchase (call) or sell (put) the underlying futures contract or security at a specified price within a specified period of time . Options may be Put or Call options.

Answer 4(a)(iii)

‘Income oriented schemes’ and ‘growth oriented schemes’

Income oriented scheme : This scheme primarily offer fixed income to investors. Naturally enough, the main securities in which investments are made by such funds are the fixed income yielding ones like bonds.

Growth oriented scheme : These schemes offer growth potentialities associated with investment in capital market namely : (i) high source of income by way of dividend and (ii) rapid capital appreciation, both from holding of good quality scrips. These funds, with a view to satisfying the growth needs of investors, primarily concentrate on the low risk and high yielding spectrum of equity scrips for the corporate sector.

Answer 4(b)

- (i) “Presiding Officer” means the Presiding Officer of the Securities Appellate Tribunal appointed under Section 15L of the SEBI Act.

- (ii) “Registrar” means the Registrar of the Appellate Tribunal and includes an officer of such Appellate Tribunal who is authorized by the Presiding Officer to function as Registrar.
- (iii) “Appellate Tribunal” means the Securities Appellate Tribunal established under section 15K of the SEBI Act.
- (iv) “Adjudicating officer” means an officer appointed under sub-section (1) of section 15-I of the SEBI Act.

Answer 4(c)

- (i) CBOE : Chicago Board of Options Exchange
- (ii) ESPS : Employees Stock Purchase Scheme
- (iii) OMO : Open Market Operations
- (iv) SMILE : Securities Market Infrastructure Leveraging Expert
- (v) KYC : Know Your Clients
- (vi) CARE : Credit Analysis & Research Limited

Question 5

- (a) *Asian Mutual Fund is a mutual fund registered with SEBI. Its asset management company (AMC) conducted business through associated brokers in excess of limits prescribed under Regulation 25(7) of the SEBI (Mutual Fund) Regulations, 1996. SEBI initiated penal proceedings against the Asian Mutual Fund and it's AMC for the contravention.*

While responding to charges given in the show cause notice, Asian Mutual Fund and it's AMC pleaded that there was no mens rea in the acts of the AMC and, hence, no penal action should be taken by SEBI. Adjudicating officer imposed a penalty of Rs. 25 lakh under Section 15E of the Securities and Exchange Board of India Act, 1992 for failure to comply with Regulation 25(7).

You are required to advise with the help of decided case law whether Asian Mutual Fund should file an appeal against the order passed by the adjudicating officer. (8 marks)

- (b) *“Derivatives are contracts, which derive their values from the value of one or more of other assets.” Comment.* (4 marks)
- (c) *State major functions of the ‘central listing authority’.* (4 marks)

Answer 5(a)

The facts of the case are similar to those of *Shriram Mutual Fund v. SEBI* (2003), wherein Shriram Mutual Fund conducted business through brokers associated with its sponsors in excess of permissible limits prescribed under regulations 25(7)(a) of SEBI Regulations on 12 occasions.

The Adjudicating Officer, after hearing the parties, imposed penalty of Rs.5 lacs for failure to comply with Regulations 25(7) of SEBI (Mutual Funds) Regulations, 1996 and also imposed a penalty of Rs. 2 lacs for its failure to comply with the terms and conditions of Certificate of Registration granted to it.

Shriram Mutual Funds filed an appeal to Securities Appellate Tribunal(SAT) against the order of adjudicating officer contending that the transactions with the associate brokers were related to thinly traded securities, for which there were no ready markets available through normal stock exchange or were relating to securities which did not have any large volume or trade in the market. It was further contended that these securities were either thinly traded, or did not have any volumes.

SAT while setting aside the order of the Adjudicating Officer held that the penalty is warranted by the quantum which has to be decided by taking into consideration the factors stated in Section 15-J, of SEBI Act, 1992.

Aggrieved by the order of the Tribunal, SEBI filed an appeal to Supreme Court.

Important points of law considered by the Supreme Court was whether the Tribunal was justified in allowing the appeal and that whether once it is conclusively established that the Mutual Fund has violated the terms of the certificate of registration and the statutory regulations, the imposition of penalty become a *sine qua non* of the violation. In other words, the breach of a civil obligation which attracts penalty in the nature of fine under the provisions of the Act, and the Regulations would immediately attract the levy of penalty irrespective of the fact whether the contravention was made by the defaulter with any guilty intention or not.

The Supreme Court while allowing the appeal observed that penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention have been made by the defaulter with guilty intention or not. It was held that unless the language of the statute indicates the need to establish the presence of *mens rea*, it is wholly unnecessary to ascertain whether such a violation was intentional or not. On a careful perusal of Section 15-E of the Act, the Supreme Court observed that there is nothing which requires that *mens rea* must be proved before penalty can be imposed under these provisions. Hence, once the contravention is established, penalty will follow. The order passed by SAT was set aside by Supreme Court.

In the light of the above, though Asian Mutual Fund can be advised to file an appeal to the SAT against the order of Adjudicating Officer on the grounds that the securities were either thinly traded or did not have any volumes, but in terms of the decision of Supreme Court in Shriram Mutual Fund case, the Asian Mutual Fund will not succeed, if SEBI prefers an appeal to Supreme Court against the order of SAT.

Answer 5(b)

Derivatives are contracts which derive values from the value of one or more of other assets, called underlying assets. The asset from which a derivative derive its value is called 'underlying asset'. It may be share, commodity or even a market index. Some of the most commonly traded derivatives are futures, forward, options and swaps.

Derivatives include a security derived from a debt instrument, shares, loans, whether secured or unsecured, risk instrument or contract for differences or any other form of

security. Derivatives is meant essentially to facilitate temporarily hedging of price risk of inventory holding or a financial/commercial transaction over a certain period. Every derivative contract has a fixed expiration date. Financial derivatives are financial contract whose value is based upon the value of other underlying financial assets such as shares, stocks, bonds and foreign exchange with the change in price of such assets, the value of derivatives will also change.

Answer 5(c)

Functions of the Central Listing Authority

The Authority has been empowered to perform following functions:

- (i) to receive and process applications for letter precedent to listing from applicants and issue, if it deems fit, a letter precedent to listing to any such applicant;
- (ii) to make recommendations to SEBI on issues pertaining to the protection of the interest of the investors in securities and development and regulation of the securities market, including the listing agreements, listing conditions and disclosures to be made in offer documents; and,
- (iii) to undertake any other functions as may be delegated to it by SEBI from time to time.

However, the SEBI Central Listing Authority Regulations, 2003 were repealed with effect from 02 January, 2007.

Question 6

- (a) *What is 'bailout takeover' ? State the procedure for bailout takeover as set out in the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.* (4 marks)
- (b) *How would you fix the price in preferential issue of shares in a listed company ?* (4 marks)
- (c) *What do you understand by 'independent directors' in the context of corporate governance ?* (4 marks)
- (d) *What do you mean by the following money market instruments ? Describe any two :*
 - (i) *Certificates of deposits*
 - (ii) *Inter-corporate deposits*
 - (iii) *Gilt-edged securities.* (2 marks each)

Answer 6(a)

Bailout takeovers

Bailout takeover means substantial acquisition of shares in a financially weak company not being a sick industrial company, in pursuance to a scheme of rehabilitation approved by a public financial institution or a scheduled bank. The lead institution is required to appraise the financially weak company taking into account the financial viability and assess the requirement of funds for revival and draw up the rehabilitation package on the principle of protection of interests of minority shareholders, good management, effective revival and transparency.

The rehabilitation scheme specifically provides for the details of any change in management. The scheme may also provide for outright purchase of shares, exchange of shares and combination of both.

Before giving effect to any scheme of rehabilitation the lead institution is required to invite offers for acquisition of shares from at least three parties.

After receipt of the offers, the lead institution selects one of the parties having regard to the managerial competence, adequacy of financial resources and technical capability of the person acquiring shares to rehabilitate the financially weak company.

The lead institution provides necessary information to any person intending to make an offer to acquire shares about the financially weak company and particularly in relation to its present management technology range of products manufactured, shareholding pattern, financial holding and performance and assets and liabilities of such company for a period covering five years from the date of the offer as also the minimum financial and other commitments expected of from the person acquiring shares for such rehabilitation.

Answer 6(b)

Offer prices of shares issued on preferential basis should not be less than the higher of the average of the weekly high and low of the closing price of related shares quoted on the stock exchange during the six months or two weeks preceding the relevant date. The relevant date for the purpose means a date 30 days prior to the date of annual general meeting convened in terms of Section 81(1A) of Companies Act, 1956 to consider the proposed issue.

In case of issue of warrants on preferential basis with an option to apply and get shares allotted, the price of resultant shares will also be determined in the above manner. However the issuer may adopt relevant date as mentioned above or a date thirty days prior to the date on which the warrant holders become entitled to apply for the shares.

Answer 6(c)

As per Clause 49 of the Listing agreement, which is pertaining Corporate Government. 'Independent director' shall mean non-executive director of the company who –

- (a) apart from receiving director's remuneration, does not have any material pecuniary relationships or transactions with the company, its promoters, its directors, its senior management or its holding company, its subsidiaries and associates which may affect the independence of the director;
- (b) is not related to promoters or persons occupying management positions at the board level or at one level below the board;
- (c) has not been an executive of the company in the immediately preceding three financial years;
- (d) is not a partner or an executive or was not partner or an executive during the preceding three years, of any of the following:
 - (i) the statutory audit firm or the internal audit firm that is associated with the company;

- (ii) the legal firm(s) and consulting firm(s) that have a material association with the company.
- (e) is not a material supplier, service provider or customer or a lessor or lessee of the company which may effect the independence of the director; and
- (f) is not a substantial shareholder of the company, i.e. owning two percent or more of the block of voting shares.

Independent directors are known to bring an objective view in Board deliberations. They act as the guardians of the interest of all shareholders and stakeholders, especially in the areas of potential conflict. They bring a valuable outside perspective to the deliberations.

Answer 6(d)(i)

Certificates of Deposits

Certificates of Deposit (CDs) is a negotiable money market instrument and issued in dematerialised form or as a Usance Promissory Note, for funds deposited at a bank or other eligible financial institution for a specified time period. Guidelines for issue of CDs are presently governed by various directives issued by the Reserve Bank of India, as amended from time to time.

Answer 6(d)(ii)

Inter-Corporate Deposits

Inter Corporate Deposit is an unsecured loan extended by one corporate to another. Existing mainly as a refuge for low rated corporates, this instrument allows funds surplus corporates to lend to other corporates. Also the better-rated corporates can borrow from the banking system and lend in this market. As the cost of funds for a corporate is much higher than a bank, the rates in this market are higher than those in the other markets. ICDs are unsecured, and hence the risk inherent is high.

Answer 6(d)(iii)

Gilt-edged securities

These securities are issued by Governments such as Central and State Governments, Semi-Government Authorities, City Corporations, Municipalities, Port Trust, State Electricity Boards, Metropolitan Authorities, Housing Boards and Large Financial Institutions. They are held by RBI and are eligible to be reckoned for the purpose of Statutory Lending Rate of the Banks. Though they are long dated securities, they are in great demand as banks have to buy/sell them for maintaining the level of Net Demand and Time Liabilities (NDTL). Being a security issued by the sovereign government, they are considered the most secured financial instruments which guarantees both safety of the capital and the income.

Question 7

- (a) *You are the Company Secretary of Golden Biotech Ltd. The Board of directors of the company is contemplating buy-back of securities of the company through purchase in open market at stock exchange. State the law and procedure for buy-back as laid down under the SEBI Regulations. (8 marks)*

- (b) *Explain the term 'price sensitive information'. Which information is considered to be price sensitive ?* (4 marks)
- (c) *When does a stock broker become liable for prosecution by SEBI ? Explain with relevant provisions in the Securities and Exchange Board of India Act, 1992 and the Regulations made thereunder.* (4 marks)

Answer 7(a)

Regulation 14(2)(a) of SEBI (Buy back of Securities Regulations), 1998, enables a company to buy back its securities from the open market through stock exchanges. The Procedure for buy back through purchase in open market at stock exchange is as follows:

- (1) In the special resolution or Board resolution passed for buy-back through stock exchange, the maximum price at which the buy-back shall be made should be specified.
- (2) Promoters or persons in control are not permitted to offer their securities when buy-back is made through stock exchanges
- (3) The company should appoint a merchant banker and make a public announcement containing necessary disclosures, at least 7 days prior to the commencement of buy-back. A copy of the same should be filed with SEBI within 2 days of such announcement along with the required fees
- (4) The buy-back shall be made only on stock exchanges having nationwide trading terminals.
- (5) The buyback of shares or other specified securities shall be made only through order matching mechanism except 'all or none' order matching system.
- (6) Buy-back be made only through stock exchanges which have electronic trading facility.
- (7) The company and the merchant banker is required to submit the information regarding the shares or other specified securities bought- back to the stock exchange on a daily basis and publish the said information in a national daily on a fortnightly basis and every time when an additional five per cent of the buy back has been completed. However where there is no buy back during a particular period the company and the Merchant Banker is not required publishing the details in a national daily.
- (8) The identity of the Company as a purchaser shall appear on the electronic screen when the order is placed.

Answer 7(b)

As per 2(ha) of SEBI (Prohibition of Insider Trading) Regulations, 1992, 'Price sensitive information' means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company.

The following information shall be deemed to be price sensitive:

- (i) periodical financial results of the company;
- (ii) intended declaration of dividends (both interim and final);
- (iii) issue of securities or buy-back of securities;

- (iv) any major expansion plans or execution of new projects;
- (v) amalgamation, mergers or takeovers;
- (vi) disposal of the whole or substantial part of the undertaking;
- (vii) any significant changes in policies, plans or operations of the company.

Further listing agreement requires listed companies to immediately inform certain information which are considered to be the price sensitive, such as change in general character or nature of business; information having bearing on operation/payment of the company.

Answer 7(c)

Liability for prosecution

A stock broker or a sub-broker shall be liable for prosecution under Section 24 of the Act for any of the following violations, namely—

- (i) Dealing in securities without obtaining certificate of registration from the Board as a stock broker or a sub-broker.
- (ii) Dealing in securities or providing trading floor or assisting in trading outside the recognized stock exchange in violation of provisions of the Securities Contract (Regulation) Act, 1956 or rules made or notifications issued thereunder.
- (iii) Market manipulation of securities or index.
- (iv) Indulging in insider trading in violation of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992.
- (v) Violating the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.
- (vi) Failure without reasonable cause—
 - (a) to produce to the investigating authority or any person authorized by him in this behalf, any books, registers, records or other documents which are in his custody or power; or
 - (b) to appear before the investigating authority personally or to answer any question which is put to him by the investigating authority; or
 - (c) to sign the notes of any examination taken down by the investigating authority.
- (vii) Failure to pay penalty imposed by the adjudicating officer or failure to comply with any of his directions or orders.

Question 8

- (a) *What are the rights and responsibilities of the members of a company as per the SEBI's Investors Education Guide ?*
- (b) *What are the provisions in the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 regarding minimum number of shares to be acquired under the takeover offer ?*
- (c) *State briefly the requirements for bidding process related to public issue of equity shares.*

(d) Outline the main legislations governing securities market in India.

(4 marks each)

Answer 8(a)

Rights of Members as per SEBI's Investor Education Guide

- (i) To receive share certificates on allotment or transfer, as the case may be, in due time.
- (ii) To receive copies of notices for various general meetings and attend them either personally or through proxies and to participate and vote.
- (iii) To receive copies of abridged annual report, balance sheet, profit and loss account and auditor's report.
- (iv) To receive dividends declared (including interim dividends) in time.
- (v) To receive other corporate benefits such as rights issues, bonus issues as and when approved.
- (vi) To apply to the Company Law Board to call or direct the calling of annual general meeting of the company.
- (vii) To inspect minute books of the general meetings and to take copies thereof.
- (viii) To proceed against the company by way of civil or criminal proceedings wherever justified.
- (ix) To apply for the winding up of the company.
- (x) To receive the residual proceeds on winding up.

Besides the above rights enjoyed as individual shareholder, the following rights can also be claimed as a group:

- (i) To requisition an extraordinary general meeting.
- (ii) To demand a poll on any resolution.
- (iii) To apply to Company Law Board to investigate the affairs of the company.
- (iv) To apply to Company Law Board for relief in cases of oppression and mismanagement.

Responsibilities of Members

Besides the above rights members also have certain responsibilities to be discharged. They are:

- (a) To remain informed.
- (b) To be vigilant.
 - To participate and vote in general meetings.
 - To exercise rights as an individual and also as a group.

Answer 8(b)

Minimum Number of Shares to be Acquired

Regulation 21 prescribes the following criteria in regard to minimum number of shares

which are to be acquired by the offeror for giving effect to the takeover of a company or substantial acquisition of its shares:

- (1) The public offer made by acquirer to the shareholders of the target company should be for a minimum of 20% of the voting capital of the company.
- (2) If the acquisition made in pursuance of a public offer results in the public shareholding in the target company being reduced below the minimum level required as per the Listing Agreement, the acquirer shall take necessary steps to facilitate compliance of the target company with the relevant provisions thereof, within the time period mentioned therein.
- (3) Where the public offer is made under sub-regulation (2A) of regulation 11 the minimum size of the public offer shall be the lesser of the following –
 - (a) twenty per cent of the voting capital of the company; or
 - (b) such other lesser percentage of the voting capital of the company as would, assuming full subscription to the offer, enable the acquirer, together with the persons acting in concert with him, to increase his holding to the maximum level possible, which is consistent with the target company meeting the requirements of minimum public shareholding laid down in the Listing Agreement.
- (4) Where the number of shares offered for sale by shareholders are more than the shares agreed to be acquired by the person making the offer, such person is required to, accept the offers on a proportional basis in consultation with merchant banker taking care that the basis of acceptance is decided in a fair and equitable manner and does not result in non-marketable lots.
- (5) The acquisition of shares from a shareholder should not be less than marketable lots or the entire holding if it is less than the marketable lot.
- (6) For the purpose of computing percentage, the voting rights as at the expiration of 15 days after the closure of the public offer is reckoned.

Answer 8(c)

The method and process of bidding should be in compliance of the following requirements:

- (i) Bid shall be open for atleast three days and not more than seven working days, which may be extended to a maximum of ten working days in case the price band is revised in accordance with the guidelines
- (ii) The advertisement made should contain the date of opening and closing of the bidding(not less than 5 days), the names and addresses of the syndicate members as well as the bidding terminals for accepting the bids and the method and process of bidding.
- (iii) Bidding shall be permitted only if an electronically linked transparent facility is used.
- (iv) The 'syndicate members' shall be present at the bidding centres so that at least one electronically linked computer terminal at all the bidding centres is available for the purpose of bidding.

- (v) The number of bidding centres, in case 75% of the net offer to the public is offered through the book building, process shall not be less than the number of mandatory collection centres as specified in these regulations. In case 100% of the net offer to the public is made through book building process, the bidding centres shall be at all the places, where the recognized stock exchanges are situated. The same norms as applicable for collection centres shall be applicable for the bidding centres also.
- (vi) Individual as well as qualified institutional buyers shall place their bids only through the 'brokers' who shall have the right to vet the bids. The applicant shall enclose the proof of DP ID and Client ID along with the application, while making bid
- (vii) During the period the issue is open to the public for bidding, the applicants may approach the brokers of the stock exchange/s through which the securities are offered under on-line system, to place an order for bidding to the securities.
- (viii) Every broker shall accept orders from all clients/investors who place orders through him. The investors shall have the right to revise their bids provided that Qualified Institutional Buyers shall not be allowed to withdraw their bids after the closure of the bidding.
- (ix) There shall be a standard bidding form to ensure uniformity in bidding and accuracy.
- (x) At the end of each day of the bidding period the demand shall be shown graphically on the terminals for information of the syndicate members as well as the investors. The identities of the Qualified Institutional Buyers making the bidding, would however not be made public.

The stock exchanges shall display data pertaining to book built issues in a uniform format, inter alia giving category wise details of bids received. The data pertaining to an issue shall be displayed on the site for a period of atleast three days after closure of bids.

Answer 8(d)

Main legislations governing securities market in India

The four main legislations governing the securities market are : (a) The SEBI Act, 1992 which establishes SEBI to protect investors and develop and regulate securities market; (b) The Companies Act, 1956, which sets out the code of conduct for the corporate sector in relation to issue, allotment and transfer of securities, and disclosures to be made in public issues; (c) The Securities Contracts (Regulation) Act, 1956, which provides for regulation of transactions in securities through control over stock exchanges; and (d) The Depositories Act, 1996 which provides for electronic maintenance and transfer of ownership of demat securities.
