

GUIDELINE ANSWERS

EXECUTIVE PROGRAMME

JUNE 2009

MODULE II



**THE INSTITUTE OF
Company Secretaries of India**

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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

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EXECUTIVE PROGRAMME

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COMPANY LAW

Time allowed : 3 hours

Maximum marks : 100

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

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

Question 1

Comment on any four of the following :

- (i) *An unlimited company is a company not having any limit on the liability of its members.*
- (ii) *A company can mortgage or charge any part of its 'reserve capital'.*
- (iii) *There is no statutory requirement that a director must hold qualification shares in the company in which he is a director.*
- (iv) *Statutory meeting can be held at any time and place as suited to the company.*
- (v) *Provisions of section 58A are not applicable to guarantee companies and section 25 companies (i.e., associations not for profit). (5 marks each)*

Answer 1(i)

The statement is correct. As per Section 12(2)(c) of the Companies Act, 1956, an "unlimited company" is a company not having any limit on the liability of its members. Thus, the maximum liability of the member of such a company, in the event of its being wound up, might stretch up to the full extent of their assets to meet the obligations of the company by contributing to its assets. However, the members of an unlimited company are not liable directly to the creditors of the company, as in the case of partners of a firm. The liability of the members is only towards the company and in the event of its being wound up only the liquidator can ask the members to contribute to the assets of the company which will be used in the discharge of the debts of the company.

An unlimited company may or may not have share capital. The articles of association of an unlimited company must state the number of members with which the company is to be registered and if the company has share capital, the amount of share capital with which the company is to be registered [Section 27(1)].

Answer 1(ii)

The statement is not correct. A company may charge its uncalled capital if its articles or memorandum may give an express power to charge uncalled capital, or the power may be so wide that it can be inferred by implication. For example, in *Newton v. Debentureholders of Anglo Australian Investment Co.* (1895) AC 224, the memorandum authorized the company to borrow "upon any security of the company" it was held that the power was wide enough to include a charge on uncalled capital.

However, a company cannot mortgage or charge any part of its “reserve capital”. Reserve capital is that part of the uncalled capital of a company which the limited company has decided by special resolution in terms of Section 99 of the Companies Act, 1956, not to call except in the event and for the purpose of the company being wound up. (Section 98 and 99 of the Companies Act, 1956).

Answer 1(iii)

The statement is correct. There is no statutory requirement that a director must hold qualification shares in the company in which he is a director. Thus, a person may be a director in a company without being its member unless the articles provide otherwise. However, the articles usually provide for a share qualification. The modern view is that holding a nominal share qualification does not make a director more responsible. If the articles of a company provide for share qualification, section 270 lays down that –

- (a) Each director must obtain his qualification shares within two months after his appointment as a director.
- (b) Any provision in the articles shall be void in so far as it requires a person to hold the qualification shares before his appointment as a director or to obtain them within a shorter time than 2 months after his appointment as such.
- (c) The nominal value of the qualification shares shall not exceed Rs.5,000 or the nominal value of one share where it exceeds Rs. 5,000.
- (d) For the purpose of any provision in the articles requiring a director to hold a specified share qualification, the bearer of a share warrant should not be deemed to be the holder of the shares specified in the warrant. It was also held in the case of *Spencer v. Kennedy* (1926) ch 125 that a person cannot be said to be qualified in respect of qualification shares until he is registered as holder of the shares.

Answer 1(iv)

The statement is correct. According to Section 165(1) of the Companies Act, 1956:

“Every company limited by shares, and every company limited by guarantee and having a share capital, shall, within a period of not less than one month and not more than six months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called “the statutory meeting.”

Section 165(10) provides that the provisions of Section 165 are not applicable to a private company. It therefore follows that statutory meetings are required to be convened only by a public company limited by shares or limited by guarantee and having a share capital. Thus such meetings are not required to be held by a company limited by guarantee and not having a share capital or by a private company.

So, section 165 of the Companies Act, 1956 does not specify time and place for holding a statutory meeting. Hence, it can be assumed that a statutory meeting can be held at any time and place as suited to the company.

Answer 1(v)

The statement is not correct. The provisions of section 58A and 58B of the Companies Act and Companies (Acceptance of Deposits) Rules are also applicable to

companies limited by guarantee and associations not for profit viz., section 25 companies, having share capital and formed for promoting commerce, art, science, religion, charity etc. However, guarantee companies which have no share capital have to comply with the requirements of the provisions of these sections and rules to the extent applicable.

Question 2

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

- (i) *Without the consent of the general meeting, the Board of directors can borrow money subject to a maximum of _____.*
 - (ii) *A _____ though entitled to attend a general meeting and vote on a poll, but cannot participate in the discussion.*
 - (iii) *Besides making investment and loans, a company can also provide _____ and security to another company.*
 - (iv) *A sole buying agent who holds a substantial interest in excess of 5% of the paid up share capital of the company or Rs. _____ whichever is the lesser, can be appointed only with the prior approval of the Central Government.*
 - (v) *A promoter can earn profit out of sale of his own property to the company by making _____, otherwise he has to account for the profits to the company.*
 - (vi) *An issue of debentures by a listed public company needs to maintain post-issue debt equity ratio of 2:1 as per _____.*
 - (vii) *Allotment of shares in a public issue without receiving minimum subscription amounts to _____.*
 - (viii) *A member cannot ask for inspection of minutes of _____.*
- (1 mark each)

(b) *Choose the most appropriate answer from the given options in respect of the following :*

- (i) *A company is —*
 - (a) *A voluntary association for profit*
 - (b) *A compulsory association for profit*
 - (c) *A statutory association for profit*
 - (d) *None of the above.*
- (ii) *A private company need not hold —*
 - (a) *Extra-ordinary general meeting*
 - (b) *Statutory meeting*
 - (c) *Annual general meeting*
 - (d) *Board meeting.*
- (iii) *As per section 252(2), a private company cannot have less than —*
 - (a) *3 Directors*

- (b) 2 Directors
 - (c) 5 Directors
 - (d) 7 Directors.
- (iv) Who cannot become a member of a company —
 - (a) Company as a member of another company
 - (b) Foreigner
 - (c) Trade union
 - (d) Partnership firm.
- (v) Section 125 requires a company to file prescribed particulars of charge after the date of creation of a charge with the Registrar of Companies within—
 - (a) 30 Days
 - (b) 60 Days
 - (c) 90 Days
 - (d) None of the above.
- (vi) Change of registered office of a company from one city to another city in the same State but falling under the jurisdiction of two Registrars of Companies is required to be approved by the —
 - (a) Central Government
 - (b) Registrar of Companies
 - (c) Regional director
 - (d) Company Law Board.
- (vii) A public company can be converted into a private company only after the approval of the —
 - (a) High Court
 - (b) State Government
 - (c) Central Government
 - (d) Company Law Board.
- (viii) As per the Companies Act, 1956, the types of resolutions to be passed by the shareholders are —
 - (a) 5
 - (b) 4
 - (c) 2
 - (d) 3.

(1 mark each)

Answer 2(a)

- (i) Without the consent of the general meeting, the Board of directors can borrow money subject to a maximum of **the aggregate of Company's paid-up capital and free reserves** .

- (ii) A **proxy** though entitled to attend a general meeting and vote on a poll, but cannot participate in the discussion.
- (iii) Besides making investment and loans, a company can also provide **guarantee** and security to another company.
- (iv) A sole buying agent who holds a substantial beneficial interest in excess of 5% of the paid up share capital of the company or Rs. **5,00,000** whichever is the lesser, can be appointed only with the prior approval of the Central Government.
- (v) A promoter can earn profit out of sale of his own property to the company by making **disclosure** , otherwise he has to account for the profits to the company.
- (vi) An issue of debentures by a listed public company needs to maintain post-issue debt equity ratio of 2:1 as per **SEBI Guidelines** .
- (vii) Allotment of shares in a public issue without receiving minimum subscription amounts to **irregular allotment** .
- (viii) A member cannot ask for inspection of minutes of **Meetings of Board of Directors**.

Answer 2(b)(i)

- (a) A voluntary association for profit

Answer 2(b)(ii)

- (b) Statutory meeting

Answer 2(b)(iii)

- (b) 2 Directors

Answer 2(b)(iv)

- (d) Partnership firm

Answer 2(b)(v)

- (a) 30 days

Answer 2(b)(vi)

- (c) Regional director

Answer 2(b)(vii)

- (c) Central Government

Answer 2(b)(viii)

- (d) 3

Question 3

- (a) *In what manner 'membership' in a company can be sought ?* (8 marks)
- (b) *What are the modes in which a director of a company can be appointed ?* (8 marks)

Answer 3(a)**Seeking of membership in a company**

As per section 41 of the Companies Act, 1956, in the following manner, a membership in a company is obtained:

- (i) By subscribing to the Memorandum of Association of a company at the time of incorporation of the company.
- (ii) By transfer – a person can get shares transferred in his name and cause his name to be entered in the register of members maintained by the company.
- (iii) By transmission – on a death of a member or insolvency his shares could be inherited by succession or will.
- (iv) By an application in writing – under an invitation in public issue or otherwise, a person can make application for allotment of shares (by making an offer to the company) and company accepting in the form of allotment.
- (v) Allotment by estoppel – If a person allows his name to be entered in the Register of Members of a company, then he is estopped from denying his membership.
- (vi) As a beneficial owner – under dematerialized form every person holding equity share capital of company and whose name appears in the record of depository, he shall be deemed to be member.

Answer 3(b)**Appointment of directors**

Following are the ways by which a person can be appointed as a director:

- (i) *By subscription to the memorandum* – at the time of incorporation the person who subscribes to the memorandum becomes automatically a director unless Articles of Association mention names of First Directors. He shall hold office until the conclusion of the First Annual General Meeting (Section 254 of the Companies Act, 1956).
- (ii) *By members at General Meeting* – It is the prerogative of the members to appoint a person as a director at a general meeting. Provisions in this regard are contained in section 255, 256, 257 and 265 of the Companies Act, 1956.
- (iii) *By Board of Director* – the Board of Directors can appoint Directors in certain circumstances –
 - As an additional director under section 260 – such additional director shall hold office only upto date of the next annual general meeting of the company.
 - To fill up casual vacancy under section 262 – such person shall hold office only upto the date upto which the director in whose place he is appointed would have held the office if it had not been vacated the office.
 - As an alternate director under section 313 – An alternate director shall not hold office as such for a period longer than that permissible to the original

director in whose place he has been appointed and shall vacate office if and when the original director returns to the state in which Board meetings are ordinarily held.

- (iv) *By Third Party duly authorized* – a nominee director can be appointed by third parties like banks, financial institution or other lenders etc. They can nominate a director to represent their interest on the Board.
- (v) *By Central Government* – Section 408 of the Act, vests overriding powers in Central Government to nominate directors. Sub-section (1) of this section provides that the Central Government may appoint such number of persons as directors as the Company Law Board may, by order in writing specify. Moreover, the appointment shall be made, if the Company Law Board, on a reference made to it by the Central Government or on an application of not less than one hundred members of the company or of the members of the company holding not less than one-tenth of the total voting power therein, is satisfied after such inquiry that it is necessary to make such an appointment of directors.
- (vi) *By small shareholders* – The Companies (Amendment) Act, 2000 has empowered small share holders in a company to send their representative as a director on the Board. The small holder means a shareholder holding shares of nominal value of twenty thousand rupees or less in a public company. The preconditions for such representative as provided in section 252(1) of the Companies Act, 1956 are –
 - (a) The paid-up capital of the company must be Rs.5 crore or more and
 - (b) No. of small shareholders is 1000 or above.

Question 4

Write short notes on any four of the following :

- (i) *Doctrine of ultra vires.*
- (ii) *Doctrine of constructive notice*
- (iii) *Red-herring prospectus*
- (iv) *Managerial remuneration*
- (v) *Interim dividend.*

(4 marks each)

Answer 4(i)

Doctrine of ultra vires

“Ultra Vires” means beyond the powers of. The word ‘ultra’ means beyond and the word ‘vires’ means the powers. In the case of a company whatever is not stated in the memorandum as the objects or powers, is prohibited by the doctrine of ultra vires. As a result, an act which is ultra vires is void, and does not bind the company. Neither the company nor the other contracting party can sue on it. Also, the company cannot make it valid, even if every member assents to it.

The general rule is that an act which is ultra vires the company is incapable of ratification. An act which is intra vires the company but outside the authority of the

directors may be ratified by the company in proper form [*Rajendra Nath Dutta v. Shilendra Nath Mukherjee*, (1982) 52 Comp. Cas. 293 (Cal.)].

The rule is meant to protect shareholders and the creditors of the company. But if the act is ultra vires (beyond the powers of) the directors only, the shareholders can ratify it. Or, if it is ultra vires the articles of association, the company can alter its articles in the proper way.

Answer 4(ii)

Doctrine of constructive notice

When a company is incorporated, its Memorandum and Articles of Association are filed with the Registrar of Companies. These documents are known as public documents. Any person who wants to deal with the company is expected to know about the same. The doctrine of constructive notice implies that any person dealing with the company has not only gone through the Memorandum and Articles of Association but also has understood them. [*Griffith v. Paget* (1877) Ch.D 517]. Thus, this doctrine operates in favour of a company. It is a responsibility cast upon the public to have knowledge about these documents and it can not be a defence available to outsiders that he had no knowledge about the same. For example, if the articles provide that a bill of exchange to be effective must be signed by two directors, a person dealing with the company must see that it is so signed; otherwise he cannot claim under it.

Outsiders dealing with incorporated bodies are bound to take notice of limits imposed on the corporation by the memorandum or other documents of constitution. Nevertheless they are entitled to assume that the directors or other persons exercising authority on behalf of the company are doing so in accordance with the internal regulations as set out in the Memorandum & Articles of Association.

Answer 4(iii)

Red-herring prospectus

As per the explanation to sub-section (4) of section 60B of the Companies Act, 1956, "Red-herring prospectus" means a prospectus which does not have complete particulars on the price of the securities offered and the quantum of securities offered. The red-herring prospectus carries same obligations as are applicable in the case of prospectus. Every variation between the information memorandum and the red-herring prospectus shall be highlighted by the issuer company and shall be individually intimated to the persons invited to subscribe to the securities.

Section 60B(7) provides that the applicant or proposed subscriber shall exercise his right to withdraw from the application on any intimation of variation within seven days from the date of such intimation and shall indicate such withdrawal in writing to the company and the underwriters.

The company or underwriters or bankers shall not encash subscription moneys or post-dated cheques or stock-invest received in advance, before the date of opening of the issue, without having individually intimated the prospective subscribers of the variation and without having offered an opportunity to such prospective subscribers to withdraw their application and cancel their post-dated cheques or stock-invest or return of the subscription paid.

Once the offer of securities is closed, a final prospectus indicating quantum and price of securities offered shall be filed with ROC and SEBI.

Answer 4(iv)

Managerial remuneration

To remunerate means to pay, re-compensate, or reward for work, etc. The term managerial remuneration has not been defined in the Companies Act, 1956 (Act). The remuneration paid to directors is subject to the provisions of Section 198, 309 and Schedule XIII of the Companies Act, 1956.

Managerial remuneration may take the form of monthly payments, say, salary or a specified percentage of net profits or a commission and/or by way of a fee for each meeting of the Board (called sitting fee) Besides, as per Explanation to Section 198(4) of the Act, the expression 'remuneration' shall also include:

- (a) any expenditure incurred by the company in providing any rent free accommodation, or any other benefit or amenity in respect of accommodation free of charge, to any of its directors or manager;
- (b) any expenditure incurred by the company in providing any other benefit or amenity free of charge or at a concessional rate to any of the persons aforesaid;
- (c) any expenditure incurred by the company in respect of any obligation or service, which, but for such expenditure by the company, would have been incurred by any of the persons aforesaid; and
- (d) any expenditure incurred by the company to effect any insurance on the life of, or to provide any pension, annuity or gratuity for any of the persons aforesaid or his spouse or child.

Section 198(1) lays down 11% of the net profits as the overall ceiling on the total managerial remuneration payable by a public company or a private company, which is a subsidiary of a public company, to its directors (which means all directors including managing and whole-time directors) and manager.

Answer 4 (v)

Interim dividend

A part of profits may be distributed before the annual accounts are finally prepared, audited and passed. Such dividends are called interim dividend. The interim dividend is thus a dividend paid between two annual general meetings of the company. Sub-section (1A) of section 205 of the Companies Act, 1956 empowers the Board of Directors of a company to declare interim dividend. Regulation 86 of Table A of Schedule I to the Companies Act provides:

"The Board may from time to time pay to the members such interim dividend as appear to it to be justified by the profits of the company."

Till the passing of the Companies (Amendment) Act, 2000, there was no provision in the Companies Act (except Reg. 86 of Table A) relating to interim dividend. The Companies (Amendment) Act, 2000 has introduced sub-section (14A) in section 2 whereby

'interim dividend' is now part of 'dividend' and accordingly all provisions of the Companies Act relating to 'dividends' have become applicable to 'interim dividend' also.

Question 5

- (a) *What is 'floating charge' ? When does it crystallise ? What is effect of crystallisation of a floating charge ?* (8 marks)
- (b) *What are the salient features of limited liability partnership (LLP) ?* (8 marks)

Answer 5(a)

A floating charge as a type of security is peculiar to companies as borrowers. A floating charge is not attached to any definite property but covers property of a changing nature e.g. stock-in-trade and is thus necessarily equitable. A floating charge is a charge on a class of assets present and future which in the ordinary course of business is changing from time to time leaves the company free to deal with the property as it sees fit until the holders of charge take steps to enforce their security.

Crystallization of floating charge : A floating charge attaches to the company's property generally and remains dormant till it crystallizes or becomes fixed. The company has a right to carry on its business with the help of assets having a floating charge till the happening of some event which determines this right. A floating charge crystallizes and the security becomes fixed in the following cases:

- (a) When the company goes into liquidation.
- (b) When the company ceases to carry on the business.
- (c) When the creditors or the debenture holders take steps to enforce their security e.g. by appointing receiver to take possession of the property charged.
- (d) On the happening of the events specified in the deed of charge.

Effect of crystallization of a floating charge : On crystallization, the floating charge converts itself into a fixed charge on the property of the company. It has priority over any subsequent equitable charge or other unsecured creditors. But preferential creditors who have priority for payment over secured creditors in the winding up gets priority over the claims of the bankers, lenders or debenture holders having floating charge. Where a receiver is appointed on behalf of the holders of any debentures or possession is taken by or on behalf of those debenture holders of any property subject to charge then payment made in respect of such debt shall, be recouped, as far as may be out of the assets available for payment of unsecured creditors (section 123).

Answer 5(b)

The salient features of the Limited Liability Partnership are as follows:

- (1) The LLP is a body corporate and a legal entity separate from its partners. Any two or more persons, associated for carrying on a lawful business with a view to earn profit, may by subscribing their names to an incorporation document and filing the same with the Registrar, form a Limited Liability Partnership. The LLP will have perpetual succession.
- (2) The mutual rights and duties of partners of an LLP inter se and those of the LLP

and its partners shall be governed by an agreement between partners or between the LLP and the partners subject to the provisions of the legislation. There would be flexibility to devise the agreement as per their choice. In the absence of any such agreement the mutual rights or duties shall be governed by the provisions of the legislation.

- (3) The LLP will be a legal entity, liable to the full extent of its assets with the liability of the partners being limited to their agreed contribution in the LLP which may be tangible or intangible in nature or both tangible or intangible in nature. No partner would be liable on account of the independent or unauthorized acts of other partners or their misconduct.
- (4) Every LLP shall have at least two partners or shall also have at least two individuals as designated partners of whom at least one shall be resident in India. The duties and obligations of designated partners shall be as provided in the law.
- (5) The LLP shall be under an obligation to maintain annual accounts reflecting true and fair view of its state of affairs. A statement of accounts and solvency shall be filed by every LLP with the Registrar every year. The accounts of LLPs shall also be audited, subjected to any class of LLPs being exempted from this requirement by the Central Government.
- (6) The Central Government shall have powers to investigate the affairs of an LLP, if required by appointment of competent inspector for the purpose.
- (7) The Indian Partnership Act, 1932 shall not be applicable to LLPs. Other entities may convert themselves to LLP in accordance with the provisions of the legislation.
- (8) The Central Government has framed rules for carrying out the provisions of the proposed legislation.

Question 6

- (a) *State, giving reasons in brief, whether the following statements are correct or incorrect :*
 - (i) *Auditor of a government company is appointed or re-appointed by the Central Government on the advice of Comptroller and Auditor General of India (CAG).*
 - (ii) *Joint-holders of shares in a public company are not a single member.*
 - (iii) *In case of forged, illegal or void ab-initio transactions, the doctrine of 'indoor management' protects an outsider.*
 - (iv) *DIN is a unique identification number and once obtained is valid for life time of a director.* (2 marks each)
- (b) *List out the various registers required to be maintained statutorily under the Companies Act, 1956.* (8 marks)

Answer 6(a)(i)

The statement is not correct. Section 619(2) of the Companies Act, 1956 provides that the auditor of a Government company shall be appointed or re-appointed by the Comptroller and Auditor General of India (C&AG).

Earlier, such auditors were appointed or re-appointed by the Central Government on the advice of Comptroller and Auditor General of India (C&AG).

Answer 6(a)(ii)

The statement is correct. Joint holders of shares in a public company are not a single member. Each of the joint holders of shares is a member of the company but joint holders are counted as one member for the purpose of determining the maximum number of members i.e. fifty in a private company and for determining quorum at general meetings and for the purpose of determining members required for making applications under Sections 397 and 398 of the Companies Act, 1956 etc.

Answer 6(a)(iii)

The statement is not correct. The doctrine of indoor management does not extend to transactions involving forgery or to transactions which are otherwise void or illegal ab initio. It does not protect an outsider. Because, in the case of forgery it is not that there is absence of free consent but there is no consent at all. The person whose signatures have been forged is not even aware of the transaction and the question of his consent being free or otherwise does not arise. Consequently, it is not that the title of the person is defective but there is no title at all. Therefore, howsoever clever the forgery might have been the personator acquires no rights at all.

Answer 6(a)(iv)

The statement is correct. DIN is a unique identification number and once obtained is valid for life time of a director.

All existing directors and any person intending to be appointed as a director are required to obtain the Director Identification Number (DIN). 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 branch offices in India. Only a single DIN is required for an Individual irrespective of number of directorships held by him.

Answer 6(b)

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

1. Register of investments in securities 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 and their duplicates. [Section 157(1) and 158(4)]

9. Copies of Annual Return (Section 163)
10. Books containing minutes of meetings of general, Board and committees of Directors. [Section 193(1)]
11. Register of Postal Ballot [the Companies (Passing of the resolutions by postal ballot) Rules, 2001]
12. Books of accounts. [Section 209(1)(a) to (c)]
13. Cost account records for Companies engaged in industries so specified by Central Government [Section 209(1)(d)]
14. Register of contracts with companies/firms in which directors are interested. [Section 301(5)]
15. Register of Directors/Managing Directors/Managers/Whole-time Directors/Secretary. (Section 303)
16. Register of directors' shareholdings. (Section 307)
17. Register of loans or investments made, guarantees given and security provided to other body corporate. (Section 372A)
18. Register of Renewed and Duplicate Share Certificates. [Rule 7 of the Companies (Issue of Share Certificate) Rules, 1960]
19. Register of records and documents destroyed [Section 163 and the Companies (Preservation and Disposal of Records) Rules, 1966]
20. Register of sweat equity shares [Section 79A and the Unlisted Companies (Issue of Sweat Equity Shares) Rules, 2003]
21. Dividend Register

Question 7

- (a) *Briefly explain the various modes of winding-up of a company.* (8 marks)
- (b) *Briefly explain the following terms used under e-filing —*
- (i) *Pre-fill*
 - (ii) *Attachment*
 - (iii) *Check form*
 - (iv) *Pre-scrutiny.* (2 marks each)

Answer 7(a)

A company registered under the Companies Act, 1956 may be wound up in any of the following modes:

1. By the Court i.e. compulsory winding up;
2. Voluntary winding up, which may be either:
 - (a) Members' voluntary winding up; or
 - (b) Creditor's voluntary winding up;
3. Winding up subject to the supervision of the Court.

Winding up by the Court or compulsory winding up is initiated by an application by way of petition to the appropriate Court for a winding up order.

In a member's voluntary winding up, when the company is solvent and is able to pay its liabilities in full, it need not consult the creditors or call their meeting. Its directors, or where they are more than two, the majority of its directors may, at a meeting of the Board, make a declaration of solvency verified by an affidavit stating that they have made full enquiry into the affairs of the company and that having done so they have formed an opinion that the company has no debts or that it will be able to pay its debts in full within such period not exceeding three years from the commencement of the winding up as may be specified in the declaration.

Where a declaration of solvency of the company is not made and delivered to the Registrar in a voluntary winding up, it is a case of creditor's voluntary winding up.

When a company has by special or ordinary resolution resolved to wind up voluntarily, the Court may make an order that the voluntary winding up shall continue, but subject to such supervision of the Court and with such liberty for creditors, contributories or others to apply to the Court and generally on such terms and conditions, as the Court thinks just (Section 522 of the Companies Act, 1956).

Answer 7(b)(i)

Pre-fill

Pre-fill is functionality in an e-Form that is used for filling automatically, the requisite data from the system without repeatedly entering the same. For example, by entering the CIN of the company, the name and registered office address of the company shall automatically be pre-filled by the system without any fresh entry.

Answer 7(b)(ii)

Attachment

An attachment refers to a document that is sent as an enclosure with an e-Form by means of an attached file. The objective of the attachment is to provide details relevant to the e-Form for processing. While some attachments are optional some are mandatory in nature.

The attachments to an e-Form has to in Adobe PDF format only. My MCA portal does not accept big attachment and the user is advised to keep the attachment size to minimum.

If the size of e-Form including attachment is more than the prescribed limit then the attachment may be filed through an addendum. In such cases, the details may be submitted in a floppy or compact disc at the ROC office.

Answer 7(b)(iii)

Check Form

By clicking "Check Form", the user will be in a position to find out whether the mandatory fields in an e-Form are duly filled-in. For example, if the user enters alphabets in "Date of Appointment of Director" field, he/she will be asked to correct that.

Answer 7(b)(iv)**Pre-Scrutiny**

Pre-scrutiny is a functionality that is used for checking whether certain core aspects are properly filled in the e-Form. The user has to make the necessary attachments in PDF format before submitting the e-Form for pre-scrutiny.

Question 8

- (a) *A managing director of a company stood as surety for the repayment of loan taken by it for which he was paid guarantee commission. Does this commission amount to managerial remuneration ? Support your answer with decided case law, if any. (5 marks)*
- (b) *A whole-time director of a company made an invention during the course of his employment with the company. He patented the invention in his own name and appropriated the benefits to himself. Can he do so ? Cite case law, if any. (5 marks)*
- (c) *Articles of association of a company reserved the powers for calling the annual general meeting. The managing director of the company, without reference to the Board, called an annual general meeting. Is the annual general meeting validly called ? If not, what should be done to make it valid ? Discuss with reference to case law, if any. (6 marks)*

Answer 8(a)

Guarantee commission paid to directors for giving surety against loans on credit facilities availed by the company from financial institutions is not a remuneration for any professional services within the meaning of section 309 of the Companies Act, 1956. The director giving guarantee does not render any clerical, technical or administrative services to the company. He gets the commission for the risk undertaken which is his personal liability and nothing to do with his directorship. [*Suessen Textile Bearings Ltd. v. Union of India* [1984] 55 Co mp. Cas 492 (Delhi)].

Therefore, in view of the above case law, guarantee commission paid to managing director of a company will not amount to managerial remuneration.

Answer 8(b)

The directors are liable to the company for all personal profits or gain made by them taking advantage of their position as directors.

A director was held liable when a director patented and exploited in his own name an invention made during the course of his employment with the company [*Cranleigh Precision Engineering Ltd. v. Bryan*, (1964) All ER 289].

Therefore, the whole time director can get the invention patented in his own name and appropriate the benefits to him but he is liable to the company for all the personal gains he made with the help of the patented invention.

Answer 8(c)

Subject to the provisions in the articles, any general meeting of the company can be called only on the authority of a Board resolution. If the managing director, manager,

secretary or other officer calls a meeting without the authority of the Board of directors it will not be effectual unless the Board ratifies the convening of the general meeting before it is held. [*Re. Haycraft Gold Reduction and Mining Co.*, (1900) 2 Ch 230]. Also refer *British Asbestos Co. Ltd. v. Boyd*. (1903) 2 Ch 439.

Therefore, in the present case, managing director can validly call an annual general meeting (AGM) without referring to the Board only if the Board ratifies the convening of AGM before the meeting is held.

ECONOMIC AND LABOUR LAWS

Time allowed : 3 hours

Maximum marks : 100

PART A

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

Question 1

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

- (i) Deficiency in service*
 - (ii) Exempted categories under the importer-exporter code (IEC) number*
 - (iii) Know your customer (KYC) guidelines*
 - (iv) Anti-competitive agreements*
 - (v) Minimum resale price maintenance*
 - (vi) Contents of complete specification*
 - (vii) Principal display panel.*
- (3 marks each)*

Answer 1(i)

Deficiency in Service

According to Section 2(1)(g) of the Consumer Protection Act, 1986 deficiency means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

Examples of Deficiency in Service:

- Failure to maintain the quality of performance required by the law or failure to provide services as per warranties given, by the provider of the service would amount to 'deficiency in service'.
- Default or negligence in regard to settlement of an insurance claim would constitute a deficiency of service on the part of insurance company.

Answer 1(ii)

Exempted Categories under the importer exporter code (IEC) Number

The following categories of importers or exporters have been exempted from obtaining IEC number:

- (i) Ministries/Departments of the Central or State Government.
- (ii) Persons importing or exporting goods for personal use not connected with trade or manufacture or agriculture.

- (iii) Persons importing/exporting goods from/to Nepal provided the CIF value of a single consignment does not exceed Indian Rs. 25,000.
- (iv) Persons importing/exporting goods from/to Myanmar through Indo-Myanmar border areas provided the CIF value of a single consignment does not exceed Indian Rs. 25,000.
- (v) Importers covered by clause 3(1) [except sub-clauses (e) and (l)] and exporters covered by clause 3(2) [except sub-clauses (i) and (k)] of the Foreign Trade (Exemption from application of Rules in certain cases) Order, 1993.

Answer 1(iii)**‘Know Your Customer’ (KYC) Guidelines**

In terms of the guidelines issued by the Reserve Bank of India (RBI) on *Know Your Customer [KYC] Standards – Anti Money Laundering [AML] Measures*, all banks are required to put in place a comprehensive policy framework covering KYC Standards and AML Measures. RBI introduced KYC guidelines for all banks.

KYC enables banks to know/ understand their customers and their financial dealings to be able to serve them better and manage its risks prudently.

The objective of KYC guidelines is to prevent banks from being used, intentionally or unintentionally, by criminal elements for money laundering activities. KYC procedures also enable banks to know/understand their customers and their financial dealings better which in turn help them manage their risks prudently. Banks should frame their KYC policies incorporating the following four key elements:

- (i) Customer Acceptance Policy;
- (ii) Customer Identification Procedures;
- (iii) Monitoring of Transactions; and
- (iv) Risk management.

Answer 1(iv)**Anti Competitive Agreements**

It is provided under Section 3(1) of the Competition Act, 2002 that no enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition.

Section 3(2) further declares that any anti competitive agreement within the meaning of sub-section 3(1) shall be void. Under the law, the whole agreement is construed as ‘void’ if it contains anti-competitive clauses having appreciable adverse effect on competition.

Section 3(3) provides that following kinds of agreements entered into between enterprises or association of enterprises or persons or association of persons or person or enterprise or practice carried on, or decision taken by any association of enterprises

or association of persons, including “cartels”, engaged in identical or similar goods or services which –

- (a) directly or indirectly determines purchase or sale prices;
- (b) limits or controls production, supply, markets, technical development, investment or provision of services;
- (c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way; and
- (d) directly or indirectly results in bid rigging or collusive bidding;

shall be presumed to have an appreciable adverse effect on the competition.

Section 3(4) provides that any agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including :

- (a) tie-in agreement;
- (b) exclusive supply agreement;
- (c) exclusive distribution agreement;
- (d) refusal to deal;
- (e) resale price maintenance;

shall be an agreement in contravention of sub-section (1) if such agreement causes or is likely to cause an appreciable adverse effect on competition in India.

Answer 1(v)

Minimum resale price maintenance

Minimum resale price is prohibited under Sections 39 and 40 of the MRTP Act, 1969. Section 39(1) provides that any term or condition of a contract for the sale of goods by a person to a wholesaler or retailer or any agreement between a person and wholesaler or retailer relating to such sale shall be void in so far as it purports to establish or provide for the establishment of minimum prices to be charged on the resale of goods in India.

It is only that portion in the agreement which contains provision for minimum resale maintenance which would be void. The rest of the agreement would not be affected by this provision.

Not only minimum resale price maintenance is statutorily declared void and unenforceable at law, it also gives rise to criminal liabilities and is punishable with imprisonment or fine or both under Section 51 of the Act.

Section 41 empowers the Commission to exempt particular classes of goods from the provisions of minimum resale price maintenance contained Section 39 and 40.

Answer 1(vi)**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(vii)**Principal Display Panel**

'Principal display panel', in relation to a package, has been defined under section 2(w) of the Standard Weight and Measure Act, 1976 to mean the total surface area of the package where the information is required to be given. All the information could be grouped together and given in one place; or the pre-printed information could be grouped together and given in one place and online information group together in other place.

Rule 7 of the Standard Weight and Measure (Package Commodities) Rule 1977 specifies the area, size, letter, etc. of the principal display panel in different cases. In case of a package having a capacity of five cubic centimeters or less, the principal display panel may be card or tape affixed firmly to the package or container or bearing the required information.

Rule 7(4) provides that the height of any numeral in the declaration on the principal display package should not be less than that specified in Table I to this rule.

Question 2

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

- (i) *In case an EOU fails to achieve its export obligations, it shall be liable to pay penalty at the time of exit.*
- (ii) *A person resident outside India can sell the shares and convertible debentures of an Indian company to whomsoever he wants.*
- (iii) *'Goods' means every kind of movable property other than actionable claims and includes stock and shares even before allotment.*
- (iv) *Tea is a 'food stuff' and hence constitutes an essential commodity under the Essential Commodities Act, 1955.*

- (v) *An association pursuing a definite cultural, economic, educational, religious or social programme can receive foreign contribution without any limits.*
- (vi) *The provisions contained in the Special Economic Zones Act, 2005 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.* (3 marks each)

Answer 2(i)**True**

Reasons : According to Foreign Trade Policy, the EOU units may, with the prior approval of the Development Commissioner, opt out of the scheme, subject however to payment of Excise and customs duties and in terms of the industrial policy in force at the time of exit. In case the unit has not achieved the export obligations, it shall also be liable to penalty at the time of exit from EOU Scheme.

Answer 2(ii)**False**

Reasons : As per Regulation 9 of FEM (Transfer or Issues of Security by a person Resident outside India) Regulations, 2000 a person resident outside India (Other than NRI) may transfer by way of sale or gift the shares or convertible debentures to any person resident outside India (including NRIs).

A person resident outside India can sell the shares and convertible debentures of an Indian company on a recognized Stock Exchange in India through a registered broker.

Answer 2(iii)**False**

Reasons : Goods, in terms of Section 2(1)(i) of the Consumer Protection Act, 1986 to mean goods as defined in the Sale of Goods Act, 1930. As per Section 2(7) of the Sale of Goods Act, 1930 Goods means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale.

In *Morgan Stanley Mutual Fund v. Kartik Das* (1994) 3 CLJ 27, the Supreme Court held that an application for allotment of shares cannot constitute goods. It is after allotment, rights may arise as per the articles of association of the company.

Answer 2(iv)**False**

Reasons : In *S. Samuel, AID. Harrison's Malayala v. Union of India*, AIR 2004 SC 218, Supreme Court held that Tea is not foodstuff. Even in a wider sense, foodstuffs will not include tea as tea either in the form of the leaves or in the form of beverage, does not go into the preparation of food proper to make it more palatable and digestible.

In common parlance, any one who has taken tea would not say that he has taken or eaten food. Thus tea is not a food.

Answer 2(v)**True**

Reason : Under Section 6 of the Foreign Contribution Regulation Act, 1976 associations having a definite cultural, economic, educational, religious or social programme, receipt of foreign contribution by any such association is permitted only if it registers itself with the Central Government in accordance with the Foreign Contribution (Regulation) Rules. Moreover, every such association is required, within the prescribed time and manner to give an intimation to the Central Government regarding:

- (a) amount of foreign contribution received;
- (b) source of such foreign contribution;
- (c) manner in which such contribution was received;
- (d) purpose for which such contribution was utilised;
- (e) the manner in which such contribution was utilised.

Answer 2(vi)**True**

Reason : Special Economic Zones Act, 2005 has been given overriding effect. As per Section 51 the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Question 3

- (a) *Distinguish between any two of the following :*
 - (i) 'Seizure' and 'confiscation' under the Essential Commodities Act, 1955.
 - (ii) 'COB licence' and 'industrial licence'.
 - (iii) 'Invention' and 'patentable invention' under the Patents Act, 1970.

(5 marks each)
- (b) *Choose the most appropriate answer from the given options in respect of the following :*
 - (i) *Under the Consumer Protection Act, 1986, the limitation period for filing a complaint from the date of cause of action is —*
 - (a) 60 days
 - (b) 6 months
 - (c) 1 year
 - (d) 2 years.
 - (ii) *The amount representing the full export value of goods is required to be realised and repatriated in India within —*
 - (a) 6 months
 - (b) 3 months

- (c) 1 year
- (d) 2 years.
- (iii) *The issue of Foreign Currency Convertible Bonds (FCCBs) in any financial year is subject to a ceiling of —*
 - (a) Rs.50 crore
 - (b) US \$500 million
 - (c) Rs.100 crore
 - (d) US \$1 million.
- (iv) *A registered trade mark requires to be renewed on expiry of the period of —*
 - (a) 7 years
 - (b) 10 years
 - (c) 14 years
 - (d) 5 years.
- (v) *Foreign direct investment (FDI) is prohibited in —*
 - (a) Infrastructure sector
 - (b) Hospitals
 - (c) Retail trade
 - (d) IT sector.

(1 mark each)

Answer 3(a)(i)

The general distinction between confiscation and seizure, in the context of the Essential Commodities Act, is that an essential commodity which has been seized could be confiscated. Therefore, confiscation is an action posterior to the seizure of the essential commodity.

A commodity that has not been seized cannot be confiscated. Seizure itself does not imply confiscation. The seizure should have been made by virtue of an order passed under Section 3 of the Essential Commodities Act, 1955.

Clause (j) of Section 3 empowers the Government to make an order for seizure of any essential commodity if an order made by the Central Government controlling production, supply, distribution etc. of essential commodities has been or is about to be contravened. Therefore, any contravention or intended contravention of an order passed by the Government under the Act may lead to seizure, and under the circumstances mentioned in Section 6A such seized commodity could be confiscated.

Answer 3(a)(ii)

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

An Industrial licence is a written permission from the Government to an industrial undertaking to manufacture 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)(iii)

Section 2(j) of the Patents Act, 1970 defines the term invention as to mean a new product or process involving an inventive step and capable of Industrial application.

The term 'inventive step' means a feature of an invention that involves technical advance as compared to the existing knowledge or having economic significance or both that makes the invention not obvious to a person skilled in the art.

Patentable invention is an invention relating either to a product or process that is new, involving inventive step and capable of industrial application can be patented. However it must not fall in to the categories of inventions that are non-patentable under section 3 and 4 of the Patents Act, 1970.

Answer 3(b)(i)

(d) 2 years

Answer 3(b)(ii)

(c) 1 year

Answer 3(b)(iii)

(b) US\$500 million

Answer 3(b)(iv)

(b) 10 years

Answer 3(b)(v)

(c) Retail trade.

Question 4

- (a) *What are the circumstances under which a registered trade mark is deemed to be infringed under the Trade Marks Act, 1999.* (5 marks)
- (b) *Write a note on global initiatives in the prevention of money laundering.* (5 marks)
- (c) *The insured (since deceased) had taken out four life policies with double accident benefits, premium payable half-yearly. When the third premium fell due, an agent of the insurer met the insured and took a bearer cheque towards the premium payable by him in respect of the policies. Although, the cheque was encashed immediately, it was not deposited with the insurer for 3 months. In the meantime, the insured met with a fatal accident and died. The widow filed a claim for payment of the sum assured. The insurer pleaded that the insurance agent had no implied authority to collect the premium. Will the widow succeed in her claim ?* (5 marks)

Answer 4(a)

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

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

and that such use is likely to cause confusion on the part of the public or is likely to be taken to have an association with the registered trade mark.

Answer 4(b)**Prevention of Money Laundering – Global Initiatives**

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

The major international agreements addressing money laundering include the United Nations Convention against Illicit Trafficking in Drugs and Psychotropic Substances (the Vienna Convention) and Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime.

The role of financial institutions in preventing and detecting money laundering has also been the subject of pronouncements by the Basle Committee on Banking Regulation Supervisory Practices, the European Union and the International Organization of Securities Commissions.

Answer 4(c)

The facts of the case are similar to that of *Harshad J. Shah v. Life Insurance Corporation of India* [1997(3) SCALE 423 (SC)] the Supreme Court held that the agent had no express authority to receive the premium on behalf of the Corporation. In his letter of appointment there was a condition expressly prohibiting him from collecting the premium. Nor could it be said that he had an implied authority to collect the premium, as regulation 8(4) of LIC of India (Agent) Regulation expressly prohibited the agents from collecting premium. In the facts of this case there was no room to invoke the doctrine of apparent authority underlying Section 237 of the Indian Contract Act.

In this case Supreme Court order for the amount of premium with interest and the costs to be paid to the widow.

Question 5

- (a) *What are the restrictions on the acceptance of foreign contribution by organisations of political nature under the Foreign Contributions (Regulation) Act, 1976 ?* (5 marks)
- (b) *Write a note on regulatory framework for environmental protection in India.* (5 marks)
- (c) *With reference to the relevant provisions of the Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder, advise on the following:*
- (i) *ABC Ltd., a company listed on the National Stock Exchange Ltd., is interested in investing in a company in the USA.*
 - (ii) *Ram, an NRI resident in Nepal, is interested to invest in shares and convertible debentures of an Indian company.*
 - (iii) *A foreign investor wants to invest in an Indian company which is a small scale industrial unit.*
 - (iv) *Brown, a UK citizen, is interested to make investment in the form of foreign direct investment (FDI) in retail trading business.*
 - (v) *XYZ Ltd., a company listed on the Bombay Stock Exchange Ltd., wants to issue shares under the Employees Stock Option Scheme (ESOP) to the employees of its joint venture abroad.* (1 mark each)

Answer 5(a)

Section 5 of Foreign Contribution Regulation Act, 1976 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. In this context, it has been clarified that an organisation of a political nature not being a political party means such organisation as the Central Government may specify by order published in the Official Gazette, having regard to the activities of the organisation or the ideology propagated by the organisation or the programme of the organisation or the association of the organisation with the activities of any political party.

No person resident in India and no citizen resident outside India is allowed to accept without the previous permission of the Central Government, any foreign contribution or acquire or agree to acquire any foreign currency on behalf of an organisation of political nature, not being a political party. Section 5 further prohibits a person resident in India to deliver, without the prior permission of the Central Government, any foreign currency to any person if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to an organisation of political nature. A citizen of India, resident outside India, has also been prohibited from delivering any currency, whether Indian or foreign, which has been accepted from any foreign source to an organisation of a political nature or any person, if he knows or has reasonable cause to believe that such person intends or is likely to deliver such currency to an organisation of a political nature.

It may be noted that for the purposes of Section 5, the Central Government has notified certain organisations as organisations of political nature, not being a political party.

Answer 5(b)

In India, as in other developing countries, the environmental problems are not confined to side effects of industrialisation but reflect the inadequacy of resources to provide infrastructural facilities to prevent industrial pollution.

Though the Indian Penal Code, 1860 contains penal provisions for corrupting or fouling the water or spring or reservoir so as to make it less fit for the purpose for which it is ordinarily used as well as for vitiating the atmosphere so as to make it noxious to the health of any person etc. A number of other Central and State laws covering boilers, dangerous drugs, radiation, forests, etc. were enacted during the middle of the 20th century, however the legislative and administrative measures directed specifically at protection of the environment were introduced in the 1970s and 1980s are as under :

- (i) The Water (Prevention and Control of Pollution) Act, 1974
- (ii) The Air (Prevention and Control of Pollution) Act 1981.
- (iii) Environment (Protection) Act, 1986
- (iv) Public Liability Insurance Act, 1991
- (v) The National Environment Tribunal Act, 1995
- (vi) The National Environment Appellate Authority Act, 1997.

Answer 5(c)(i)

Listed Indian companies are permitted to invest up to 50 per cent of their net worth as on the date of the last audited balance sheet in (i) shares, and (ii) bonds/fixed income securities, rated not below investment grade by accredited/ registered credit rating agencies, issued by listed overseas companies.

In the light of the above provision, ABC Ltd. can invest in a company in the USA.

Answer 5(c)(ii)

NRIs resident in Nepal and Bhutan as well as citizens of Nepal and Bhutan are permitted to invest in shares and convertible debentures of Indian companies under FDI Scheme on repatriation basis, subject to the condition that the amount of consideration for such investment shall be paid only by way of inward remittance in free foreign exchange through normal banking channels or by debit to the NRE/ FCNR (B) accounts of the NRIs.

In the light of the above, Ram a NRIs can invest in shares and convertible debentures of an Indian company.

Answer 5(c)(iii)

A foreign investor can invest in an Indian company which is a small scale industrial unit provided it is not engaged in any activity which is prohibited under the FDI policy. Such investments are subject to a limit of 24% of paid-up capital of the Indian company/ SSI Unit. However, an SSI Unit can issue equity shares/fully convertible preference shares / fully convertible debentures more than 24% of its paid-up capital if:

- (a) It has given up its small scale status,

- (b) It is not engaged or does not propose to engage in manufacture of items reserved for small scale sector, and
- (c) It complies with the sectoral caps.

Answer 5(c)(iv)

As per Foreign Direct Investment policy, foreign investment in any form is prohibited in a company or a partnership firm or a proprietary concern or any entity, whether incorporated or not (such as Trusts) which is engaged or propose to engage in retail trading business (except single brand product retailing).

In the light of the above provision, Brown can not invest in retail trading business (except single brand product retailing).

Answer 5(c)(v)

XYZ Limited can issue shares under the Employees Stock Option Scheme (ESOPs), to its employees or employees of its joint venture or wholly owned subsidiary abroad, other than citizens of Pakistan. Shares under ESOPs can be issued directly or through a Trust subject to the condition that:

- (i) The scheme has been drawn in terms of relevant regulations issued by the Securities and Exchange Board of India; and
- (ii) The face value of the shares to be allotted under the scheme to the non-resident employees does not exceed 5 per cent of the paid-up capital of the issuing company.

PART B

(Answer ANY TWO questions from this part.)

Question 6

Write notes on any four of the following :

- (i) *'Dependent' under the Employees' State Insurance Act, 1948.*
- (ii) *'Methods of fixing and revising minimum rates of wages' under the Minimum Wages Act, 1948.*
- (iii) *Object and scope of the Payment of Bonus Act, 1965.*
- (iv) *'Obligations of the principal employer' under the Contract Labour (Regulation and Abolition) Act, 1970.*
- (v) *Principles laid down by the Supreme Court with regard to retrenchment under the Industrial Disputes Act, 1947.*
- (vi) *'Occupier' under the Factories Act, 1948.* *(5 marks each)*

Answer 6(i)**Dependent under the ESI Act, 1948**

"Dependent" under Section 2(6A) of the ESI Act, 1948 means any of the following relatives of a deceased insured person namely:

- (i) a widow, a minor legitimate or adopted son, an unmarried legitimate or adopted daughter,

- (ia) a widowed mother,
- (ii) if wholly dependent on the earnings of the insured person at the time of his death, a legitimate or adopted son or daughter who has attained the age of 18 years and is infirm;
- (iii) if wholly or in part dependent on the earnings of the insured person at the time of his death:
 - (a) a parent other than a widowed mother,
 - (b) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or adopted or illegitimate if married and minor or if widowed and a minor,
 - (c) a minor brother or an unmarried sister or a widowed sister if a minor,
 - (d) a widowed daughter-in-law,
 - (e) a minor child of a pre-deceased son,
 - (f) a minor child of a pre-deceased daughter where no parent of the child is alive or,
 - (g) a paternal grand parent if no parent of the insured person is alive.

Answer 6(ii)

Methods of Fixing and Revising Minimum Rates of Wages

In fixing minimum rates of wages in respect of any scheduled employment for the first time or in revising minimum rates of wages so fixed, the appropriate Government shall follow either of the two methods specified under Section 5 of the Minimum Wages Act, 1948. These are as follows:

Method One – Appointment of Committee

This method is known as the 'Committee Method'. The appropriate Government may appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision as the case may be. After considering the advice of the committee or committees, the appropriate Government shall, by notification in the Official Gazette fix or revise the minimum rates of wages in respect of each scheduled employment. The fixation or revision shall come into force on the expiry of three months from the date of the issue of notification unless the notification otherwise provides. [Section 5(1)(a)]

Method Two- Notification of Proposal in the official Gazettee

The method is known as the 'Notification Method'. While fixing minimum wages under Section 5(1)(b), the appropriate Government shall by notification, in the Official Gazette publish its proposals for the information of persons likely to be affected thereby and specify a date not less than 2 months from the date of notification, on which the proposals will be taken into consideration. [Section 5(1)(b)]

After considering the advice of the committee or committees (i.e. method one) or all

representations received by it before the date specified in the notification (i.e. method two), the appropriate Government shall, by notification in the Official Gazette fix or revise the minimum rates of wages in respect of each scheduled employment. The fixation or revision shall come into force on the expiry of three months from the date of its issue, unless the notification otherwise provides. Where the appropriate Government proposes to revise the minimum rate of wages by method –second, it shall consult the Advisory Board (constituted under Section 7 of the Act) also.

Answer 6(iii)

Object and Scope of the Payment of Bonus Act, 1965

The object of the Payment of Bonus Act, 1965 is to provide for the payment of bonus to persons employed in certain establishments and for matters connected therewith. The Supreme Court has explained the object of the Payment of Bonus Act, 1965 in *Jalan Trading Co. (Pvt.) Ltd. v. Mill Mazdor Sabha*, AIR 1967 SC 691. Speaking through Justice Shah, the Apex Court observed that:

“ The object of the Act being to maintain peace and harmony between labour and capital by allowing the employees to share the prosperity of the establishment, and prescribing the maximum and minimum rates of bonus together with the scheme of “set-off” and “set on” not only secures the right of labour to share in the profits but also ensures a reasonable degree of uniformity”.

On the question whether the Act deals only with profit bonus, it was observed by the Supreme Court in *Mumbai Kamgar Sabha v. Abdulbhai Faizullabhai*, (1976) II LLJ 186, that “bonus” is a word of many generous connotations. There is profit based bonus which is one specific kind of claim and perhaps the most common. There is customary or traditional bonus which has its emergence from long, continued usage leading to a promissory and expectancy situation materialising in a right. There is attendance bonus and what not. The Bonus Act speaks and speaks as a whole Code on the sole subject of profit based bonus but is silent and cannot, therefore, annihilate by implication, other distinct and different kinds of bonuses, such as the one oriented on custom. The Court held that a discerning and concrete analysis of the scheme of the Bonus Act and reasoning of the Court leaves no doubt that the Act leaves untouched customary bonus.

Answer 6(iv)

Obligations of the Principal Employer

Under the Contract Labour (Regulation and Abolition) Act, 1970 a contractor is required to provide canteens, rest-rooms, latrines, urinals, drinking water, washing facilities and first aid facilities for the use of contract labour. (Sections 16-19)

If a contractor fails to provide the prescribed amenities, then the principal employer will be liable to provide such amenities. The principal employer can recover such expenses from the contractor. (Section 20)

Besides, the contractor is required to pay wages and a duty is cast on him to ensure disbursement of wages in the presence of the authorised representative of the principal employer. An obligation is also cast on the principal employer to nominate a representative duly authorised by him to be present at the time of disbursement of wages.

In case of failure on the part of the contractor to pay wages either in part or in full, the principal employer is liable to pay the same and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor. (Section 21)

Answer 6(v)

Principles Laid Down by Supreme Court with Regard to Retrenchment

The Industrial Disputes Act, 1947 defines retrenchment under Section 2(oo) as “the termination by the employer, of the service of the workman, for any reason, whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include voluntary retirement, compulsory retirement of the workman on reaching the age of superannuation or termination of service on the grounds of continued ill health.”

Thus, the definition contemplates following requirements for retrenchment:

- (i) There should be termination of the service of the workman.
- (ii) The termination should be by the employer.
- (iii) The termination is not the result of punishment inflicted by way of disciplinary action.
- (iv) The definition excludes termination of service on the specified grounds or instances mentioned in it.

The Supreme Court in the case of *Workmen of Subong Tea Estate v. Subong Tea Estate*, (1964) 1 L.L.J. 333, laid down the following principles with regard to retrenchment:

1. The management can retrench its employees only for proper reasons, which means that it must not be actuated by any motive of victimisation or any unfair labour practice.
2. It is for the management to decide the strength of its labour force, and the number of workmen required to carry out efficiently the work in his industrial undertaking must always be left to be determined by the management in its discretion.
3. If the number of employees exceeds the reasonable and legitimate needs of the undertaking, it is open to the management to retrench them.
4. Workmen may become surplus on the ground of rationalisation or on the group of economy reasonably and bona fide adopted by the management or of other industrial or trade reasons.
5. The right of the employer to effect retrenchment cannot normally be challenged but when there is a dispute in regard to the validity of the retrenchment, it would be necessary for the tribunal to consider whether the impugned retrenchment was justified for proper reasons and it would not be open to the employer either capriciously or without any reason at all to say that it proposes to reduce its labour for no rhyme or reason.

Answer 6(vi)**Occupier under the Factories Act, 1948**

Section 2(n) of the Factories Act, 1948 defines the term “occupier” as a person who has ultimate control over the affairs of the factory subject to the condition that-

- (i) in the case of a firm or other association of individuals, any one of the individual partners or members thereof shall be deemed to be the occupier;
- (ii) in the case of a company, any one of the directors, shall be deemed to be the occupier;
- (iii) in the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case may be, shall be deemed to be the occupier.

The important test whether a person is an occupier or not is the possession or vesting in of the ultimate control of the factory. An occupier may be an owner, a lessee or a mere licensee, but he must have the right to occupy the property and dictate terms of management.

There was a lot of controversy regarding ‘occupier in case of a company, as the Section 2(n)(ii) of the Factories Act provides that any one of the directors of the company shall be deemed to be occupier of the factory. The controversy was set at rest by the Supreme Court in the case of *J.K. Industries Ltd. v. Chief Inspector of Factories* (1997) I-L.L.J. SC 722, holding that only a member of Board of Directors of the Company can be occupier of the factory of the company. The ultimate control of factory owned by company vests in Board of Directors. Ultimate control which vests in Board of Directors cannot be vested in any one else. Company owning factory cannot nominate its employees or officers except director of the company as occupier of its factory.

Question 7

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

- (i) ‘Lay-off’ and ‘lock-out’ under the Industrial Disputes Act, 1947.
- (ii) ‘Arbitration’ and ‘adjudication’ of disputes under the Industrial Disputes Act, 1947.
- (iii) ‘Young person’ and ‘adult’ under the Factories Act, 1948. (5 marks each)

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

- (i) Minimum _____ years of contributory service is required for entitlement of pension under the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952.
- (ii) It is mandatory to register an establishment under the Contract Labour (Regulation and Abolition) Act, 1970 in case it employs _____ labour through a contractor.

- (iii) A factory is required to appoint a welfare officer where _____ workers are ordinarily employed.
- (iv) The employer of an industrial establishment having 100 or more employees is required to submit draft standing orders within _____ months from the date on which the Industrial Employment (Standing Orders) Act, 1946 becomes applicable.
- (v) Contracting out of compensation by a workman under an agreement shall be _____. (1 mark each)
- (c) Choose the most appropriate answer from the given options in respect of the following.
- (i) The appropriate government shall revise the minimum rates of wages under the Minimum Wages Act, 1948 at least once in every —
- (a) 2 years
 - (b) 3 years
 - (c) 4 years
 - (d) 5 years.
- (ii) The disputes relating to benefits under the Employees' State Insurance Act, 1948 are required to be filed in —
- (a) Civil Court
 - (b) Employees' Insurance Court
 - (c) Labour Court
 - (d) Industrial Tribunal.
- (iii) An employee is entitled to receive bonus provided he has worked in an accounting year in the establishment for not less than —
- (a) 30 working days
 - (b) 1 year
 - (c) 8 months
 - (d) 4 months.
- (iv) An employer is not liable to pay compensation under the Workmen's Compensation Act, 1923, if the injury does not result in disablement for a period exceeding —
- (a) 1 week
 - (b) 3 days
 - (c) 1 month
 - (d) 6 months.
- (v) The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is applicable to commercial establishments employing —
- (a) 10 or more employees
 - (b) 20 or more employees
 - (c) 50 or more employees
 - (d) 100 or more employees. (1 mark each)

Answer 7(a)(i)**Lay-off and lock-out**

- (1) In lay-off, the employer refuses to give employment due to certain specified reasons, but in lock-out, there is deliberate closure of the business and employer locks out the workers not due to any such reasons.
- (2) In lay-off, the business continues, but in lock-out, the place of business is closed down for the time being.
- (3) In a lock-out, there is no question of any wages or compensation being paid unless the lock-out is held to be unjustified.
- (4) Lay-off is the result of trade reasons but lock-out is a weapon of collective bargaining.
- (5) Lock-out is subject to certain restrictions and penalties but it is not so in case of lay-off.

However, both are of temporary nature and in both cases the contract of employment is not terminated but remains in suspended animation.

Answer 7(a)(ii)**Arbitration and Adjudication**

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.

Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute. In choosing arbitration, the parties opt for a private dispute resolution procedure instead of going to court.

The circumstances under which an industrial dispute may be voluntarily referred to arbitration have been stipulated under Section 10A of the Industrial Disputes Act, 1947.

Answer 7(a)(iii)**Young Person and Adult**

“Young Person” as per Section 2(d) of the Factories Act, 1948 means a person who is either a child or an adolescent.

“Adult” according to Section 2(a) of the Factories Act, means a person who has completed his eighteenth year of age.

Answer 7(b)

- (i) Minimum **10 years** of contributory service is required for entitlement of pension under the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952.
- (ii) It is mandatory to register an establishment under the Contract Labour (Regulation

and Abolition) Act, 1970 in case it employs **20 or more** labour through a contractor.

- (iii) A factory is required to appoint a welfare officer where **500 or more** workers are ordinarily employed.
- (iv) The employer of an industrial establishment having 100 or more employees is required to submit draft standing orders within **6 months** from the date on which the Industrial Employment (Standing Orders) Act, 1946 becomes applicable.
- (v) Contracting out of compensation by a workman under an agreement shall be **null and void**.

Answer 7(c)(i)

- (d) 5 years

Answer 7(c)(ii)

- (b) Employees' Insurance Court

Answer 7(c)(iii)

- (a) 30 working days

Answer 7(c)(iv)

- (b) 3 days

Answer 7(c)(v)

- (b) 20 or more employees

Question 8

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

- (i) *Muskan Theatre is maintaining a canteen and a cycle stand through private contractors. Regional Director, ESI Corporation sent notices to the management of the theatre for contribution of the employees engaged in the canteen and cycle stand. The management contends that they are not employees but are the workmen of the contractor. Hence, the management is not liable. Will the management succeed in its contention ?*
- (ii) *Rajat, a workman in a factory, had no vision in his left eye but the defect was not visible. Later, during welding operations, accidentally, a spark hit his blind eye. He lost his eye-ball and the blindness became visible. Though, there was no physical disability, he lost his employment because the defect became visible. Has the accident caused any disablement ? Is the employer liable to pay any compensation ?*
- (iii) *The workman of Bharat Chemicals went on go-slow strike to compel the management to concede to their demands. The management contended that go-slow is a serious misconduct and initiated disciplinary action against the erring workmen. Is the action of the management justified ?*
- (iv) *An employer failed to pay his contribution under the Employees' State Insurance*

Act, 1948. After 6 years, the ESI Corporation issued a demand notice for payment of arrears of contribution. The employer contended that the arrears of contribution beyond 5 years are not recoverable. Will the employer succeed ?

- (v) *Anil, a workman raised an industrial dispute contending that he was employed with effect from 1st April, 1986 on regular basis and his services were illegally terminated on 12th February, 1994. The employer took the stand that the workman was engaged on casual basis on daily wages for a specific period and for the specific work and that his services were not terminated on 12th February, 1994 but he had abandoned his job. The employer did not produce attendance record before the Labour Court and also failed to prove that the workman had worked for less than 240 days. The workman alleged violation of the provisions of the Industrial Disputes Act, 1947 relating to retrenchment. Will he succeed ?*
- (vi) *Ghee brought from various customers is sampled chemically, analysed and packed in tins for transportation to the head office of the company for sale in the market. Does it amount to manufacturing process under the Factories Act, 1948 ?*
- (vii) *Rohit lost his mental balance as a result of an injury by accident and committed suicide. Is the employer liable to pay compensation under the Workmen's Compensation Act, 1923 ?* (4 marks each)

Answer 8(i)

The management will not succeed in its contention. The theatre owner is liable to pay ESI contribution as principal employer.

On a similar issue in the case of *Royal Talkies Hyderabad v. ESI Corpn.*, AIR 1978 SC 1478, the Supreme Court held that if a contractor undertakes to run a canteen or a cycle stand in a theatre, he undertakes the execution of the whole or part of the work which is ordinarily part of the work of the theatre of the principal employer or is incidental to the purpose of the theatre. As such he comes within the definition of 'immediate employer' and the owner of the theatre within the definition of 'principal employer'. The theatre owner is liable for ESI contribution as principal employer of the workmen although they were engaged independently by the owner of the canteen or the cycle stand.

Answer 8(ii)

It is a case of total disablement.

"Total disablement" means, such disablement whether of a temporary or permanent nature, which incapacitates a workman for all work which he was capable of performing at the time of accident resulting in such disablement.

The expression incapacitates a workman for all work does not mean capacity to work or physical incapacity. In *Ball v. William Hunt & Sons Ltd.* 1912 A.C.496, it was held that if due to any physical defect, a workman is unable to get any work which a workman of his class ordinarily performs, and has thus lost the power to earn he is entitled to compensation for total disablement. It is immaterial that the workman is physically fit to perform some work.

Answer 8(iii)

The action of the management is justified. The act of go-slow of the workers amounts to misconduct. The legality of go-slow has been explained by the Supreme Court in the case of *Bharat Sugar Mills Ltd. v. Jai Singh*, (1961) 11 LLJ 644 (647) SC, in the following words

“Go-slow which is a picturesque description of deliberate delaying of production by workmen pretending to be engaged in the factory, is one of the most pernicious practices that discontented and disgruntled workmen sometimes resort to. Thus, while delaying production and thereby reducing the output, the workmen claim to have remained employed and entitled to full wages. Apart from this, ‘go-slow’ is likely to be much more harmful than total cessation of work by strike. During a go-slow much of the machinery is kept going on at a reduced speed which is often extremely damaging to the machinery parts. For all these reasons, ‘go-slow’ has always been considered a serious type of misconduct.”

Answer 8(iv)

The ESI Corporation can recover employer's contribution even after lapse of five years. The Supreme Court in the case of *ESIC v. C.C. Santha Kumar* (JT 2006) (10) SC 549 has held that the limitation period of 5 years specified under section 77 of the ESI Act to bring an action before the Employees Insurance Court is not applicable in case of determination of the contribution payable under section 45A of the ESI Act, 1948. If the employer fails to challenge the determination made by the ESI Corporation under the provisions of section 45A or section 75 of the ESI Act, before the Employees' Insurance Court, it becomes final against the employer. Therefore, the contention of the employer that the ESI Corporation cannot recover the dues pertaining to the period prior to five years, is not tenable in law.

Answer 8(v)

The materials on record clearly establish that the engagement of the workman was on casual basis on daily wages for specific period and for the specific work.

It has been held by the Supreme Court in a series of decisions that the burden of proof is on the workman to show that he had worked for 240 days in the preceding 12 calendar months prior to the alleged retrenchment. Further, presumption as to adverse inference for non production of muster-roll by the employer should not be taken as an inflexible rule. It is always optional, and one of the factors which is required to be taken into consideration is the background of the factors involved in the lis. [*Municipal Corpn. Faridabad v. Shri Niwas* (2004) 8 SCC 195; *Batala Co-op. Sugar Mills Ltd. v. Sowaran Singh*]

As stated above, the workman was on casual basis on daily wages for specific period and for the specific work. The termination of his services does not amount to retrenchment in view of section 2(oo)(bb) of the Industrial disputes Act. Hence, the contention of the workman that the management has violated section 25F of the Industrial disputes Act in terminating his services is devoid of merit. The workman will not succeed.

Answer 8(vi)

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

Answer 8(vii)

The employer is liable to pay compensation.

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

SECURITIES LAWS AND COMPLIANCES

Time allowed : 3 hours

Maximum marks : 100

PART A

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

Question 1

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

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

(a) *Variable rate*

(b) *Fixed rate*

(c) *Floating rate*

(d) *Not determined.*

(1 mark each)

Answer 1(a)(i)

False

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

Answer 1(a)(ii)

True

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

Answer 1(a)(iii)

True

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

Answer 1(a)(iv)

False

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

Answer 1(a)(v)

True

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

Answer 1(b)(i)

(c) Borrowed money

Answer 1(b)(ii)

(c) Three months

Answer 1(b)(iii)

(c) Usance promissory notes.

Answer 1(b)(iv)

(b) SEBI

Answer 1(b)(v)

- (b) Fixed rate

Question 2

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

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

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

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

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

(4 marks)

- (c) Expand the following :

(i) FCCB

(ii) CIS

(iii) SPN. (1 mark each)

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

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

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

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

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

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

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

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

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

Answer 2(b)

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

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

Answer 2(c)(i)

FCCB - Foreign Currency Convertible Bonds

Answer 2(c)(ii)

CIS - Collective Investment Scheme

Answer 2(c)(iii)

SPN - Secured Premium Note

Question 3

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Answer 3(b)

Procedure for grant of certificate to Venture Capital Fund

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

Effect of refusal to grant certificate

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

Answer 3(c)

Demat

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

Benefits of Demat Securities

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

Question 4

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

Answer 4(a)

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

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

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

(i) Minor Penalties-

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

(ii) Major Penalties-

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

Answer 4(b)

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

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

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

Answer 4(c)

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

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

Answer 4(d)(i)

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

Answer 4(d)(ii)

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

Answer 4(d)(iii)

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

Question 5

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

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

(2 marks each)

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

(5 marks)

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

(4 marks)

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

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

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

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

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

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

Answer 5(b)

Coupon rate — 8.4%

Year of maturity — 2018

Face value of Rs. 20 lacs @ Rs.102.50

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

= Rs. 20,50,000

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

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

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

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

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

Answer 5(c)

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

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

PART B

(Answer ANY TWO questions from this part.)

Question 6

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

Answer 6(a)

Indian Depository Receipts

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

Eligibility for issue of IDRs

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

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

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

Answer 6(b)

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

Answer 6(c)

Due Diligence

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

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

Answer 6(d)

The Ombudsman has the following powers and functions:

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

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

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

Question 7

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

Answer 7(a)

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

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

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

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

NOTE : Students may mention any five points mentioned above.

Answer 7(b)

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

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

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

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

Answer 7(c)

Bidding Procedure

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

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

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

Answer 7(d)

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

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

Question 8

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

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

(10 marks)

Answer 8(a)

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

Answer 8(b)

Utilization of ECB Proceeds

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

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

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

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

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

Answer 8(c)

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

1. *Rights of FCD/PCD holders*

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

2. *Out of Free Reserves*

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

3. *Revaluation Reserves*

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

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

Bonus issue should not be made in lieu of dividend.

5. *Fully Paid Shares*

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

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

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

7. *Statutory Dues of the Employees*

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

8. *Implementation of Proposal within Six Months*

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

9. *Provision in Articles of Association*

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

10. *Authorised Capital*

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

11. *Compliance Certificate*

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