# COMPANY LAW

**1. Distinguish between company and partnership.**

**A company is a voluntary association of persons, with a corporate body, limited liability, perpetual succession and common seal. Partnership on the other hand, is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.**

- A company comes into existence when it is registered under the Companies Act. A partnership is created by mutual agreement between the partners.
- The minimum no. of partners in a partnership is two whereas the minimum no. of members in case of private company is two and in case of public company is seven. In partnership, the maximum no. of partners is limited to twenty. Whereas the maximum no. of shareholders is 50 in case of private company and unlimited in case of public company
- A company has a separate and distinct legal personality of its own whereas a partnership has no separate existence
- The liability of shareholders in case of a company is limited, whereas the partners are jointly and severally liable for all the acts of the firm
- Shares in a company are freely transferable except in case of a private company. But in partnership, no partner can transfer shares without the consent of the other partners
- There is separation of ownership and management in case of companies. However, in case of a partnership firm the partners are both the owners and the managers of the firm
- Unlike a partnership firm, a company enjoys perpetual succession
- A company's existence can only come to end by means of a court order, but a partnership firm can be dissolved at any time by agreement between the partners.

**2. What do you mean by lifting of Corporate Veil? What are the circumstances under which corporate veil may be lifted?**

**Normally when a company is incorporated, the principle of corporate personality of a company is respected and in many cases the courts have refused to go behind the curtain to find out the real persons composing the company. But when people start misusing this veil of corporate personality then it becomes necessary for the courts to pierce the corporate veil and look at the persons who are in fact the real beneficiaries. This is known as lifting or piercing the corporate veil.**

## CIRCUMSTANCES IN WHICH CORPORATE VEIL CAN BE LIFTED

- **By the judiciary**
- **Under the provisions of the Companies Act, 1956**

Lifting of corporate veil by the judiciary: Courts in various cases have lifted the corporate veil of companies under the following circumstances:

**(a)** For determining the character or status of the company
**(b)** For the protection of revenue
**(c)** Where the doctrine conflicts with public policy
**(d)** For preventing fraud or improper conduct
**(e)** Company acting as agent of the shareholders
**(f)** In case of economic offences
**(g)** Where company is used as a medium to avoid welfare legislation.

Lifting of corporate veil under the provisions of the Companies Act, 1956: Similarly, even Companies Act contains various provisions where in case of certain defaults corporate veil may be lifted. In such circumstances, there is no separate distinct identity between the company and members and they are treated as one and the same. The following are few of the sections:

(a) Section 45 – reduction in minimum no. of members and the company continues as such for more than 6 months.
(b) Section 147 - misdescription of name of the company
(c) Section 542 – where the business of the company has been carried on with the intent to defraud creditors of the company
(d) Sections 212 – 214 - even a 100% subsidiary is a separate legal entity and its holding company is not liable for its acts
(e) Section 69 - If the application money of those applicants to whom no shares have been allotted is not repaid
(f) Ultra vires acts - Directors of a company shall be personally liable for such acts.

Thus we can see from the above that although a company on being incorporated has a separate and distinct legal entity from its members, but if the said concept is misused by the members / directors, the courts have been empowered to lift the corporate veil to see whether actually they are different or the same.

**3. Can company be regarded as citizen of India?**

- A company is regarded as a legal person, but it is not a citizen under the Indian Constitution – Heavy Engineering Mazdoor Union vs. State of Bihar
- A company has no fundamental rights available under the Constitution – Supreme Court in State Trading Corporation vs. CTO

**4. Write short note on illegal association.**

**In terms of Section 11 of the Companies Act, 1956, an association or partnership is an illegal association if –**

- It consists of > 10 persons in case of banking business and > 20 persons in case of any other business;
- Its object is acquisition of gain by association or partnership or by individual members thereof;
- It is not incorporated as a company under the Companies Act, 1956 or in pursuance of any other law
- However a joint family carrying on business shall not be an illegal association.

**Features of an illegal association:**

- The members shall be personally liable for all the acts and dealings made in the name of such association.
- The association cannot enter into any contract in its own name
- It cannot sue and be sued in its own name.
- Every member shall be liable to a maximum penalty of Rs. 10,000/- .
- Even a subsequent reduction in the number of members cannot make it legal.
- An illegal association cannot be wound up under the Companies Act, 1956.

**5. Explain the legal position of promoters.**

- **The term promoter has not been defined precisely in the Companies Act, 1956**
- To be a promoter, one need not necessarily be associated with the initial formation of the company – one who subsequently helps to arrange floating of its capital will equally be regarded as promoter – Lagunas Nitrate Co. vs. Lagunas Syndicate
- He is neither an agent nor the trustee of the proposed company since the company had not yet come into existence. He stands in a fiduciary capacity in relation to the company.
- In Erlanger vs. New Sobrero Phosphate Co., it was held that the promoters of a company stand undoubtedly in a fiduciary position. They have in their hands the creation and moulding of the company. They have the power to define how and when and in what shape and under what supervision, it shall start into existence and begin to act as a trading corporation.

**6. What do you mean by the doctrine of Ultra Vires?**

**'Ultra' means beyond and 'vires' means powers**; thus ultra vires means doing an act beyond powers

- An **act ultra vires the directors** – **it is not totally void** as the same can be ratified by the shareholders and then it becomes binding on the company
- An **act ultra vires the AOA** – **such acts can also be ratified by the company** by altering the AOA but only if the act is intra vires the MOA & the Act
- An **act ultra vires the MOA –** if the company does any act beyond the purview of its objects clause it shall be termed as ultra vires the MOA and shall be **wholly void and inoperative**.

**Effect of ultra vires transactions :**

- transaction null and void
- company cannot sue and be sued
- member can restrain the company by getting an injunction
- directors are personally liable to third parties
- a company is not liable for ultra vires torts.

**7. Can Statutory Corporations be regarded as State within the meaning of Article 12 of the Indian Constitution?**

- **A company formed under an Act of Parliament or Legislature is called a statutory corporation. Example: RBI, LIC, GIC etc.**
- In Raman Dayaram Shetty vs. International Airport Authority, the Supreme Court considered the statutory character of the corporation as a definitive criterion to identify it with State within the meaning of Article 12 of the Indian Constitution.
- Further in Som Prakash vs. Union of India, the Bharat Petroleum Corporation was held to be a State.

**The following are the criteria which may be considered to hold statutory corporations as State:**

- The source of share capital
- The extent of state control over the corporation
- Whether the corporation has monopoly status
- Whether functions of the corporation are of public importance and closely related to governmental functions
- Whether what belonged to a dept of government formerly was transferred to the corporation

**8. Distinguish between Pre-incorporation contracts and Provisional Contracts.**

- Pre-incorporation contracts are contracts purported to be made on behalf of the company before incorporation. Provisional contracts are made after incorporation of a company but before obtaining certificate of commencement of business.
- Pre-incorporation contracts exist both in case of public and private companies. Provisional contracts exist only in case of public companies.
- Pre-incorporation contracts are void and cannot be ratified. Provisional contracts are valid but can be effected only after the company obtains certificate of commencement of business.

**9. Comment - Certificate of Incorporation is conclusive evidence that all requirements of the Companies Act has been complied with.**

- **A certificate of incorporation issued by the RoC is a conclusive evidence that all the requirements of the Act in relation to registration have been complied with. – Section 35.**
- The term conclusive evidence means that no inquiry shall be allowed to be made regarding the correctness or incorrectness of any particulars contained in the certificate of incorporation
- Once issued the said certificate cannot be challenged in any Court or Tribunal on any grounds whatsoever.

**10. What are the various clauses of Memorandum of Association?**

(a) Name Clause - A company being a distinct entity must have a name of its own to establish its separate entity. Last words of the name of the company shall be 'limited' or 'private limited' as the case may be. The name should not be undesirable in the opinion of the Government. It should not be prohibited under The Emblems and Names (Prevention of Improper Use) Act, 1950. Also the name should not be identical with or too resemble the name with which another company is registered or a registered trademark - Section 20 of the Act.

(b) Registered office Clause - Every company must have a registered office to which all communications and notices will be addressed. This Clause states the name of the State in which the registered office of the company is situated – the exact address need not be stated.

(c) Objects Clause - This clause defines the sphere of the company's activities and the specific objectives for the formation of the company. All companies registered after 1965 must divide its objects into Main Objects and Other Objects (ancillary or incidental to the attainment of the main objects). Anything done beyond the objects is ultra vires and void and cannot be ratified even by assent of the whole body of shareholders.

(d) Capital Clause - This states the amount of capital with which the company is to be registered. It also states the number and value of shares into which the capital of the company is divided.

(e) Liability Clause - This clause states the liability of the members of the company. In case of a company limited by shares or by guarantee – this clause shall state that the liability of the members is limited.

**(f)** Association Clause - In this clause the subscribers declare that they desire to be formed into a company & agree to take the shares stated against their names. The names, addresses and occupations of the subscribers must be given. Each subscriber must sign in the presence of atleast one witness who shall attest his signature.

**11. A company has unlimited powers to alter its Articles of Association. Comment.**

**Section 31 of the Act empowers members, subject to the conditions contained in the memorandum of association, to alter the articles of association by passing a special resolution to that effect.**

Following are some of the limitations on alteration of articles of association -

- not to be inconsistent with memorandum of association
- not to be inconsistent with Companies Act or any other law
- not to be inconsistent with any alteration made by Company Law Board
- the altered articles of association must not include anything which is illegal or opposed to public policy or unlawful
- the alteration must be bonafide for the benefit of the company as a whole
- the alteration must not constitute a fraud of minority by the majority
- the altered articles of association cannot operate retrospectively but only from the date of the amendment.

**12. Can the registered office of a company be shifted from one State to another State?**

**In terms of Section 17 of the Companies Act, 1956, a company can change its registered office from one State to another State, only under certain circumstances and by passing a special resolution and taking confirmation from the Company Law Board.**

The following are the certain circumstances under which a company can shift its registered office from one State to another State:

(a) to carry on its business more economically or more efficiently

(b) to attain its main purpose by new or improved means

(c) to enlarge or change the local area of its operations

(d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company

(e) to restrict or abandon any of the objects specified in the MOA

(f) to sell or dispose of the whole or any part of the undertaking of the company

(g) to amalgamate with any other company or body of persons.

**13. Explain the procedure for issue of shares at premium.**

In terms of Section 78 of the Companies Act, a company may issue shares at premium i.e. at a price above the nominal value of the share. The Companies Act does any contain any conditions regarding such issue. Where a company issues shares at premium, even though the consideration may be other than cash, a sum equal to the amount of premium received must be transferred to the 'Securities Premium Account'.

Such securities premium may be utilized for –

- Issuing fully paid-up bonus shares
- Writing off the preliminary expenses of the company
- Writing off the commission paid on issue of shares / debentures
- Writing off the discount allowed on issue of shares / debentures
- Providing for premium payable on redemption of preference shares / debentures
- For buy-back of shares

The use of securities premium for any other purpose shall amount to reduction of share capital.

**14. What is the liability for misstatement in a prospectus?**

**In terms of Section 65 of the Companies Act:**

- A statement included in the prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included and
- Where a omission from a prospectus is calculated to mislead, the prospectus shall be deemed to be a prospectus in which untrue statement is included.

Civil liability for misstatement in prospectus – Section 62:

- Every person who is a director of the company at the time of the issue of the prospectus
- Every person who has authorised himself to be named and is named in the prospectus either as a director, or as having agreed to become a director, either immediately or after an interval of time
- Every person who is a promoter of the company and
- Every person who has authorised the issue of the prospectus

Criminal liability for misstatement in the prospectus – Sec. 63:

- 2 years or fine upto Rs. 50,000/- or both

**15. Explain the procedure for issue of shares on rights basis and issue of bonus shares.**

**Issue of Rights shares – Section 81**

- Such issue can only be made after the expiry of 2 years from the formation of the company or after the expiry of 1 year from the first allotment of shares
- In case rights issue is made to existing shareholders of a company proportionately, then the company needs to pass a board resolution and follow the procedure given below:
  a. Atleast 15 days' notice containing (a) the number of shares offered (b) a statement that if the offer is not accepted within the specified time, it shall deemed to be declined and (c) a statement that the shareholder has a right to renounce the shares offered to him to any other person (who need not be a member)
  b. Shareholders may renounce the shares to any person who shall not have a further right to renounce
- **In case rights issue is made to other than existing shareholders of a company, then the company needs to pass [ordinary resolution + approval of CG] or special resolution.**

**Issue of Bonus shares**

- The company must be authorized by its articles of association to issue bonus shares.
- The bonus issue must be authorized by ordinary resolution
- Bonus issue may be made from undistributed profits which are available for dividend, securities premium account, capital redemption reserve etc.
- Bonus shares must be fully paid-up and can only be issued to existing shareholders
- In addition, listed companies are also required to comply the relevant SEBI Regulations

**16. Does forfeiture amounts to reduction of capital?**

Forfeiture of shares means taking back the shares by the company from the shareholders. If the shareholders make default in payment of calls on shares, then the company can use the option of forfeiting the shares. For forfeiture, a company needs specific provision in the Articles of Association. The company will also need to specify the grounds of forfeiture and pass a board resolution to this effect. Before effecting forfeiture, company needs to give a 14 days' notice to the defaulting shareholder clearly specifying the last date upto which calls can be paid, amount payable and that the shares will be forfeited in case of non payment of calls. Forfeiture of shares amounts to reduction of capital as the same results in reduction of paid-up capital of the company. However, the same does approval of the High Court in terms of Section 100 of the Companies Act, 1956.

**17. What do you mean by buy back of shares?**

**In terms of Section 77A of the Companies Act, 1956, a company can buy back its own shares subject to the following conditions:**

- The company requires prior authorization in its Articles of Association
- The company must take approval of its shareholders by way of special resolution. However the company may buy back its shares by passing a Board resolution, provided that the same ≤ 10% of paid-up capital + free reserves.
- The buyback shall be ≤ 25% of paid-up capital + free reserves
- The debt-equity ratio of the company ≤ 2:1
- All the shares must be fully paid-up
- The buy-back shall be completed within 12 months from the date of passing BR / SR (if not, the Board shall disclose the reasons thereof in the Board's Report)
- The buyback may be made from the existing shareholders on a proportionate basis / from the open market / from odd lots / by purchasing shares from employees
- The company shall file with the RoC a declaration of solvency that it will not be rendered insolvent within the next 1 year
- The company shall extinguish and physically destroy all the shares bought back within 7 days of completion of buy back
- The company shall not make further issue of the same kind of shares within the next 6 months, except by way of bonus issue, conversion of options / warrants etc.

**18. Explain the procedure for registration of charges.**

- **In terms of Section 124 of the Companies Act, 1956, a charge generally means making available property as a security for the payment of debt.**
- In terms of Section 125 of the Act, the following charges are required to be compulsorily registered with the Registrar of Companies:
  - (a) Charge for the purpose of securing any issue of debentures
  - (b) Charge on uncalled share capital of the company
  - (c) Charge on any immovable property
  - (d) Charge on any book debts of the company

(e) Charge, not being a pledge, on any movable property of the company
(f) Floating charge on the undertaking or any property of the company including stock-in-trade
(g) Charge on calls made but not paid
(h) Charge on a ship or any share in a ship
(i) Charge on goodwill / patent / trade mark / copyright

- **A charge is required to be registered within 30 days of its creation by filing Form 8 with the Registrar of Companies**
- Additional 30 days is permitted if the company pays additional fees and the RoC is satisfied that there was sufficient reason for delay
- Further delay can only be condoned by the Company Law Board.

**19. Write short notes on debentures and sweat equity shares.**

**Debentures**

- Sec. 2(12) of the Companies Act, 1956 defines Debenture as including debenture stock, bonds & any other securities of a company, whether constituting a charge on the assets of the company or not
- It is a name applied to certain types of documents evidencing an indebtedness which is normally but not necessarily secured by a charge over property.
- No company shall issue any debentures carrying voting rights under Section 117 of the Act
- A company can issue irredeemable debentures / debentures that are redeemable on the happening of a contingency / on the expiration of a period under Section 120 of the Act

**Sweat equity shares**

- In terms of Section 79A of the Companies Act, 1956, Sweat equity shares means shares issued by a company to its employees / directors at a discount or for consideration other than cash for providing know-how or making available rights in the nature of IPRs or value additions
- Atleast 1 year must have elapsed from the date on which company is entitled to commence business.
- The company needs to take approval of shareholders through special resolution (the special resolution shall specify the number of shares, current market price, consideration and the class of employees / directors to whom such shares shall be issued)
- Listed companies shall comply with SEBI regulations and unlisted companies shall comply with the rules prescribed by Central Govt.

**20. Distinguish between forfeiture of shares and surrender of shares.**

- Shares are forfeited at the initiative of company. Whereas surrender is a voluntary act by the shareholder.
- In the case of forfeiture, nothing is refunded to the concerned shareholder. However, in case of surrender, the amount paid may be refunded at the discretion of the Board.
- Forfeiture is recognized by the Companies Act, 1956, whereas surrender is not recognized by the Companies Act, 1956.

**21. Do we have voting rights on preference shares?**

- **In terms of Section 87(2) of the Companies Act, 1956, a preference shareholder shall have the right to vote only on resolutions which directly affect the rights attached to preference shares held by them.**
- However, where the dividend in respect of the preference shares are in arrears as follows then they are entitled to vote on all resolutions placed before general meetings.
  a. in case of cumulative preference shares - for an aggregate period of not less than 2 years on the date of the meeting
  b. in case of non-cumulative preference shares – for 2 financial years immediately preceding the meeting or for 3 years during a period of 6 years ending with the financial year preceding the meeting

**22. What are the modes of acquiring membership?**

- By subscribing to the Memorandum of Association
- By agreement and registration
- By agreeing to purchase qualification shares
- By application and allotment
- By transfer / transmission of shares
- By estoppel

**23. Short note on expulsion of a member.**

- **The MCA following the judgment in <u>Bajaj Auto Limited vs. N K Firodia</u> has expressed the view that company cannot by amending its Articles of Association give itself a power to expel a member.**
- This is opposed to the fundamental principle of the company's jurisprudence and is ultra vires the company
- However many authors have dissented with the aforesaid view. According to them, there is nothing illegal or ultra vires in the exercise of a power of expulsion of the shareholder, if it is exercised bona fide to protect the interests of the company where the shareholder's act or conduct is considered to be detrimental or injurious to the interests of the company.

**24. What are the rights of joint members?**

- Joint holders of shares in a public company are not a single member. Each of such joint holders is a member of the company – <u>Narandas vs. India Manufacturing Co.</u>
- Notices and other documents required to be served by the company will be deemed to be properly served if the same is effected on the first named joint holder.
- Unless instructions have been received to the contrary, the company can pay dividend to the first named shareholder.
- Any joint holder is entitled to be present in the general meeting and take part in the proceedings and vote. In the event of poll, voting right can only be exercised by one of the joint holders.
- Joint holders are jointly and severally liable to pay the calls.
- Proxy form to be valid should be signed by all the joint shareholders.

**25. Write short notes on Transmission of shares and Nomination of shares.**

**<u>Transmission of shares – Sections 109A and 109B</u>**

- Transmission means passing of the title to a person to another by operation of law
- In case of joint holding, transmission shall only take place when all the joint holders die
- A person entitled to shares as a consequence of death or insolvency of a member needs to make an application in writing to the company requesting the company to admit him as a member
- Such person may also chose to transfer such shares without becoming a member by executing a transfer deed.
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**<u>Nomination of shares – Section 109</u>**

- Every member who is an individual can make a nomination at anytime
- The nominee shall be an individual; a minor may be named as a nominee provided the name of a guardian is mentioned in the nomination form
- After the death of the holder, an application signed by the nominee alongwith a death certificate of the member shall be submitted to the company. The application shall state that the nominee has elected to become a member of the company.
- The nominee is also entitled to transfer such shares.

**26. Can the directors of a company resign?**

- No provision in the Companies Act relating to resignation by directors.
- It takes effect immediately, without requiring any acceptance in the following cases -
  (a) when the Articles do not contain any provision requiring acceptance of resignation or
  (b) when the Articles allow the director to resign at anytime
- The resignation takes effect only on acceptance in the following cases -
  (a) when the Articles require the acceptance or
  (b) when the resignation letter states so or
  (c) where the director resigning is a managing director / whole time director / manager – Achuta Pai vs. Registrar of Companies.
- **A verbal resignation accepted at a meeting is sufficient even if the Articles provide for a resignation in writing – <u>Latchford Premier Cinema vs. Ennion.</u>**
- Once made resignation is irrevocable – <u>Gossip vs. Gossip</u>.

**27. Explain the procedure for appointment of additional directors and appointment of to fill casual vacancy.**

**<u>Appointment of additional directors– Section 260 of the Act</u>**

- Section 260 permits a company through its Articles to empower its Board to appoint additional directors.
- Such directors shall hold office only upto the date of the next AGM.
- Additional Director vacates office on the last date on which the general meeting should have been called – <u>Krishna Prasad Pilani vs. Colaba Land and Mills Company.</u>
- The number of directors including additional directors cannot exceed the maximum number prescribed by the Articles of the company.
- According to the MCA, if AGM is held on time or if it is held before time, then additional director will retire immediately before the commencement of the meeting.
- Section 260 applies to all companies – public as well as private – <u>Needle Industries (India) Limited vs. Needle Industries Newey (India) Holdings Limited.</u>
- The general meeting will have the power to appoint additional directors where the directors have not filled the vacancies or when they are not able to do so either because there is a deadlock in Board or because there is no validly appointed director in office

**<u>Appointment of directors to fill casual vacancy – Section 262 of the Act</u>**

- Casual vacancy – vacancy caused due to death, insolvency, resignation or disqualification.
- A causal vacancy occurring in the position of a director appointed in general meeting may be filled up by the Board.
- Such person shall hold office till the time the person in whose place he is appointed would have held the office.
- No provision in the Articles is required for appointment of such directors.
- The Section only applies to public companies.

**28. Write short note on Office or place of profit.**

**<u>Meaning of Office or Place of Profit:</u>**

- <u>Held by a director:</u> If the director holding it obtains from the company anything over and above the remuneration to which he is entitled as a director.
- <u>Held by any other person</u>: If such person obtains from the company anything by way of remuneration by whatever name called.

**29. Explain the Liability of Non-Executive Directors.**

- **The Directors of a company are liable to the company, to the shareholders and to the third parties.**
- The liability of a director to the company may arise from –
  (a) Breach of fiduciary duty
  (b) Ultra vires acts
  (c) Negligence and
  (d) Breach of trust and misfeasance
- **The liability of a director to third parties may arise from –**
  **(a) Liability under the provisions of the Companies Act, 1956**
  (b) **Liability for breach of warrant or authority**
- **However, MCA, vide General Circular No. 8/2011 dated 25th March, 2011**, has clarified that Independent Directors, Nominee Directors and Directors appointed by the Central Government should not be held liable for any act of omission or commission by the company or by any officers of the company which constitute a breach or violation of any provision of the Companies Act, 1956, and which occurred without their knowledge attributable through Board process and without their consent or connivance or where they have acted diligently in the Board process.

**30. What are the disqualifications of directors?**

**Grounds of disqualifications of directors under Section 274 of the Companies Act, 1956:**

- A person who has been found to be of unsound mind by a Court of competent jurisdiction AND the finding is in force
- A person who is an undischarged insolvent
- A person who has applied to be adjudicated as an insolvent AND his application is pending
- A person who has been convicted by a Court of any offence involving moral turpitude AND is sentenced to imprisonment for not less to 6 months, and a period of 5 years has not elapsed from the date of expiry of the sentence
- A person who has not paid any call in respect of shares of the company held by him, whether alone or jointly with others, AND 6 months have elapsed from the last day fixed for the payment of the call
- A person who has been disqualified for appointment as a director by an order of the Court under Section 203 of the Act (i.e. he is convicted of any offence in connection with promotion, formation or management of the company or he is found guilty in the course of winding up proceedings of the company
- A director of a public company (Company A) shall be disqualified from being appointed / re-appointed in any public company (Company B, C, D, etc.) for a period of 5 years (including Company A), if Company A
  - Has not filed annual accounts AND annual returns for any continuous 3 financial years; or
  - Has failed to repay its deposit or interest thereon on due date or redeem its debentures on due date or pay dividend and such failure continues for 1 year or more.

**31. Explain the powers which the Board of Directors may exercise only with the approval of shareholders.**

**The following are the powers which the Board of Directors may exercise only with the approval of shareholders under Section 293 of the Companies Act, 1956:**

- Sell, lease or otherwise dispose of whole, or substantially the whole, of the undertaking of the company
- Remit, or give time for repayment of any debt due by a director
- Invest, otherwise than in trust securities, the amount of compensation received by the company in respect of the compulsory acquisition of any such undertaking as referred above
- Borrow moneys, where the moneys to be borrowed, together with the moneys already borrowed by the company (apart from temporary loans obtained from the company's bankers in the ordinary course of business), will exceed

the aggregate of the paid-up capital of the company and its free reserves

- Contribute to charitable and other funds not directly relating to the business of the company or the welfare of its employees, any amounts in excess of Rs. 50,000/- or 5% of its average net profits during the 3 financial years immediately preceding, whichever is greater.

**32. What do you mean by Officer in default?**

**The expression Officer in default has been defined under Section 5 of the Companies Act, 1956 to include the following persons:**

(a) managing director
(b) whole-time director
(c) manager
(d) secretary
(e) any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act;
(f) any person charged by the Board with the responsibility of complying with that provision
**(g)** where any company does not have any of the officers specified in clauses (a) to (c), any director who may be specified by the Board in this behalf or where no director is so specified, all the directors.

**33. Write short note on Role of a company secretary.**

- As a statutory officer
- As a corporate manager
- As a co-ordinator
- As a administrative officer
- As a liaison officer
- To assist the Board in formulating policy decisions

The company secretary acts in three fold capacity namely:

(a) as an agent of the Board of directors i.e. as a liaison link between the Board on one hand and executive and the staff, shareholders, customers and general public on the other;
(b) as an officer-in charge of secretarial work
(c) as a chief business executive of the company.

**34. Explain the duties and role of Chairman of a meeting.**

**Powers of the Chairman**

- To maintain order and decorum
- To give ruling as to points of order
- To decide priority of speakers
- To maintain relevancy and order in debate
- To adjourn a meeting
- To exercise a casting vote
- To ascertain the sense of the meeting and declare the results of voting

**Duties of the Chairman**

- To see that the meeting is properly convened and duly constituted
- To allow no discussion unless there is a specific motion before the meeting
- To maintain order and decorum
- To see that all the members get an equal opportunity to speak
- To see that the sense of the meeting is properly ascertained
- To exercise his power of adjournment judicially

**35. What are the methods of ascertaining sense of the meeting?**

- By acclamation
- By voice vote
- By division
- By show of hands
- By ballot
- By poll

**36. What do you mean by postal ballot?**

**Postal Ballot means voting by shareholders by postal or electronic mode instead of voting personally by presenting for transacting businesses in a general meeting of the company.**

**Section 192A read with Companies (passing of the resolution by postal ballot) Rules, 2011 provides the following procedure for conduct of postal ballot:**

- Notice to all shareholders alongwith a draft resolution and requesting them to send their assent / dissent within 30 days of posting the letter
- It shall be sent by registered post acknowledgement due or through e-mail provided the company obtains the e-mail addresses of its shareholders
- Company shall issue advertisement in one English and vernacular newspaper after despatch of the pstal ballot forms
- If it is assented by the majority it shall be deemed to be passed at a meeting
- Voting by electronic mode is also permitted.

**In terms of the aforesaid Rules, the following businesses shall be mandatorily conducted via postal ballot:**

- Alteration of objects clause of the memorandum of association
- Alteration of articles of association for insertion of provisions re. private company
- Buy back of shares
- Issue of shares with differential voting rights
- Change in registered office outside the local limits of the city, town or village
- Sale of whole of the undertaking of the company
- Give loans, guarantees, or security in excess of the limits u/s 372A
- Election of a small shareholder director
- Variation of rights attached to a class of shares / debentures

**37. Short note on conduct of Board and General Meetings through video-conferencing.**

**The MCA, vide Circular No. 28/2011 dated 20th May, 2011, has permitted directors to participate in Board / Committee meetings through the video conferencing facility subject to compliance with the following –**

- Every director must personally attend atleast one meeting of the Board / Committee in a financial year
- It shall not be mandatory for companies to provide its directors with the facility to attend meetings through video conferencing; the notice of meetings shall contain the necessary information regarding availability of this facility, in cases where such facility is provided
- The Chairman / CS shall be responsible to safeguard the integrity of the meeting conducted via video conferencing
- At the commencement of such meetings, the Chairman / CS shall make a roll call where the director attending the meeting through electronic mode shall state his name, location and that he can completely and clearly see and communicate with the other participants;
- The directors participating through electronic mode shall be counted for the purpose of quorum.
- At the end of such meeting, the Chairman shall announce the summary of the decisions taken in that meeting and

the names of directors who have consented or dissented to those decisions.

**Similarly, the MCA has also permitted shareholders to participate in general meetings through the video conferencing facility subject to compliance with following conditions -**

- It shall not be mandatory for companies to provide the facility of video conferencing to its shareholders for the general meetings
- In such cases also, the notice of general meetings shall contain the necessary information regarding the availability of this facility and the Chairman / CS shall be responsible to safeguard the integrity of the meeting conducted via video conferencing;
- The meeting shall be deemed to be held at the place where the Chairman is physically present.

**38. What do you mean by Small depositors? Explain their rights?**

- In terms of Section 58AA of the Companies Act, 1956, Small Depositor is a depositor whose deposit in a financial year ≤ Rs. 20,000/-
- If a company makes a default in the repayment of deposits / payment of interest to a small depositor, the company shall intimate to the CLB within 60 days of default
- The intimation shall be on a monthly basis and shall include name and address of the small depositor, principal amount of deposit and interest accrued on such deposits
- CLB may order such a company to repay the deposits within 30 days
- The company shall not accept further deposits, till the deposits as above are repaid
- Company shall also disclose the fact of such default in all future advertisements and application forms issued after the date of default.

**39. What are the various methods of appointing auditor in a company?**

- In terms of Section 224(5) of the Companies Act, 1956, **the first auditors of a company** shall be appointed by the Board of Directors within 1 month of registration of the company. Such auditors shall hold office till the conclusion of the first AGM of the company. If the Board of Directors fails to exercise its power, the company in general meeting shall appoint the first auditors.
- In terms of Section 224(1) of the Companies Act, 1956, **the subsequent auditors of a company** shall be appointed every year in the AGM of the company by passing an ordinary resolution of shareholders. Such auditor shall hold office till the conclusion of the next AGM
- **If at an AGM no auditors have been appointed / re-appointed**, the CG may appoint the auditor in terms of Section 224(3)
- **In case of casual vacancy in the position of an auditor**, such casual vacancy will be filled by the Board of Directors. However in case of resignation by auditor such vacancy can only be filled up at the general meeting.
- In terms of Section 224, in case of companies in which 25% or more of the subscribed share capital is held singly or jointly by a PFI / Govt. company / CG / SG / any financial or other institution in which 51% is held by SG / nationalized bank / insurance companies, auditor shall be appointed by special resolution.

**40. Short note on Liabilities of an auditor.**

- **Civil Liability of an auditor**
  The term officer as defined in the Companies Act also includes an auditor

- **Liability for mis-statement in prospectus**
  Sec. 62 provides that an auditor shall be liable to compensate every person who subscribes for the shares / debentures of the company on the faith of the prospectus containing an untrue statement made by the auditor

- **Liability for misfeasance**
  Sec. 534 provides that the auditor may be held liable for misfeasance or breach of trust

- **Criminal Liability**
  Various sections of the Act provide for criminal liability of auditors

**41. Short note on Director's Report and Audit Committee.**

Director's Report is a comprehensive document circumscribing both financial and non-financial information, serving to inform the stakeholders about the performance and prospects of the company. relevant changes in management, capital structure, major policies, recommendations as to distributions of profits, future programmes of expansion, modernization and diversification, further issue of capital etc.

**Contents of the director's report under Section 217 of the Companies Act, 1956**

- State of affairs of the company
- Amount proposed to be transferred to reserves and amount recommended by way of dividend
- Material changes and commitments affecting the financial position of the company occurring between the year end and the date of the director's report
- Conservation of energy, technology absorption, foreign exchange earnings and outgo of the company
- Name of every employee whose remuneration is ≥ Rs. 5,00,000/- per month or Rs. 60,00,000/- p.a.
- Reasons for failure to complete a buy back within the specified time
- Explanations and information relating to any reservation, qualification or adverse remarks in the auditor's report
- It shall also contain a Directors Responsibility Statement

**Audit Committee (Section 292A of the Companies Act, 1956)**

- Every public company having paid-up capital ≥ Rs. 5 crores shall constitute an audit committee
- IT IS NOT A COMMITTEE OF AUDITORS
- It shall consists of at least 3 directors of which 2/3rd will be non whole time directors
- The Chairman of the Committee shall be elected from amongst themselves
- The Audit Committee shall have periodic discussions with the auditors periodically about internal control systems, scope of audit including the observations of auditors and review the half yearly and annual financial statements before submission to the board of directors of the company
- The Chairman of the Audit Committee shall attend the AGM of the company.

**42. Short note on interim dividend and Investor Education and Protection Fund.**

**Interim Dividend**

- A part of profits which may be distributed before the accounts are finally passed –such dividend is called interim dividend
- It is a dividend between 2 AGMs of a company
- Sec. 205(1A) empowers the BOD to declare and pay interim dividend to the shareholders
- All provisions applicable to dividend apply to interim dividend.

**Investor Education and Protection Fund**

- A fund shall be established by the Central Government for the benefit and protection of the investors.
- Such fund shall be credited with –
  (a) amounts in the unpaid dividend accounts of companies
  (b) application moneys received by companies for allotment of any securities and due for refund
  (c) accrued interest on the aforesaid amounts
  (d) grants and donations given to the Fund
  (e) interest or other income received out of the investments made from the Fund
- The aforesaid amounts shall be transferred to IEPF only if the same remains unclaimed for 7 years

**43. Are transfers of profit to reserves mandatory before declaration of dividend?**

Before declaring dividend > 10% the company shall make mandatory minimum transfer of profits to reserves in accordance with the **Companies (Transfer of Profits to Reserves) Rules, 1975** as below -

| Rate of Dividend | % of Profit required to be transferred to reserve |
|---|---|
| Upto 10% | Nil |
| > 10% but ≤ 12.5% | Not less than 2.5% of the current profits |
| > 12.5% but ≤ 15% | Not less than 5% of the current profits |
| > 15% but ≤ 20% | Not less than 7.5% of the current profits |
| > 20% | Not less than 10% of the current profits |

It can be observed from the above, that in case the company declares dividend <10% of its net profits, it need not make any transfer of profits to reserves.

**44. What are the additional disclosures in the Director's report pursuant to the listing agreement?**

- In terms of Clause 49 of the Listing Agreement, a Management Discussion and Analysis Report shall be given by listed companies either as a separate report or as part of the director's report
- Listed companies shall also disclose compliance with Corporate Governance requirements under Clause 49 of the Listing Agreement.

**45. Explain the Rule of Foss vs. Harbottle and its exceptions.**

- All questions relating to management of the affairs of the company are required to be decided either by simple majority or by a special majority of shareholders.
- **This rule was first enunciated in Foss vs. Harbottle, where the members took action against the directors for fraudulent actions and applied to the court for penalizing them; the company in general meeting resolved by majority not to take any action against these directors – hence no action was taken against them.**
- In Rajamundry Electric Supply Company vs. A Nageshwara Rao, the Supreme Court held that the court will not intervene at the instance of the shareholders in the matter of general administration and will not interfere with the management of the company by its directors so long as there acing within the powers conferred on them under the Articles of the company.

**Exceptions to the Rule of Foss vs. Harbottle**

**As per decisions of the Court**

- Breach of fiduciary duty – Satya Charan Lal vs. Rameshwar Prasad Bajoria
- When the act complained of constitutes a fraud on the minority – Greenhalgh vs. Ardene Cinemas Ltd.
- Where the act is supported by a resolution passed by an insufficient majority – Baillie vs. Oriental Telephone Co.
- Where the personal rights of an individual member are being infringed
- Where the act done is illegal or ultra vires the company

**Under the provisions of the Companies Act**

- Variation of class rights under Section 106 & 107 – this can be done with approval of 3/4th of the shareholders; holders of ≥ 10% may apply to Court for cancellation of such variation
- Scheme of reconstruction or amalgamation – In such cases the Court has to ensure whether the members / creditors are fairly represented by those who attend the meeting, that the statutory majority were acting bona fide & and that the amalgamation is such that an intelligent honest person belong to the concerned class might reasonably approve
- Oppression and Mismanagement

**46. What are the statutory registers that are required to be maintained by a company?**

- Register of investments not held in company's name
- Register of deposits
- Register of securities bought back
- Register of charges
- Register and index of members
- Register and index of debenture holders
- Register and index of beneficial owners
- Foreign Register of members and debenture holders
- Annual return
- Minutes of Board and general meetings
- Register of Postal Ballot
- Books of Accounts
- Cost Accounting records
- Register of companies / firms in which directors are interested
- Register of directors / MD / secretary
- Register of director's shareholding
- Register of inter corporate loans, investments and guarantees
- Register of renewed and duplicate share certificates
- Register of documents and registers destroyed
- Dividend register

**47. Write short note on Limited Liability Partnerships.**

**Limited Liability Partnership is an incorporated partnership formed and registered under the Limited Liability Partnership Act, 2008 with limited liability and perpetual succession.**
The following are the salient features of LLP:

- It is a body corporate and legal entity separate from its partners
- The mutual rights and duties of partners inter se and those of the LLP and its partners shall be governed by an agreement between them
- The liability of the partners shall be limited to the extent of the agreed contribution in the LLP
- It shall have atleast 2 partners and 2 Designated partners
- It shall maintain annual accounts
- A statement of accounts and solvency shall be filed by the LLP with the Registrar every year
- Indian Partnership Act, 1932 shall not apply to them
- The Limited Liability Partnerships Act, 2008 shall apply to them.

**48. Explain the concept of producer company.**

- **Section 581A defines Producer Company as a body corporate having its objects or activities specified in Section 581B of the Act.**
- The membership of producer companies is open to such people who themselves are primary producers which is an activity by which some agricultural produce is produced by such primary producers.
- The activities specified in Section 581B, inter alia, include activities of harvesting, drying, preserving, brewing, generation & transmission of power etc.
- Any 10 or more individuals, each of them being a producer, any 2 or more producer institutions, i.e. producer companies or any other institution having only producers or producer companies as its members or a combination of

10 or more individuals and producer institutions, can get a producer company incorporated under the Act.

**49. What are the powers of a court to wind up a company?**

In terms of Section 433 of the Companies Act, 1956, the following are the grounds on which court can compulsorily wind up a company:

- A company by passing a special resolution makes a petition to the court for winding up
- A company makes default in holding statutory meeting or filing statutory report
- A company fails to commence business within one year from incorporation or suspends its business for one year
- The number of members of a company is reduced below the statutory minimum
- A company is unable to pay its debts
- The court finds it just and equitable to wind up a company

**50. When can the Central Govt. investigate into the affairs of a company ?**

In terms of Section 237 of the Companies Act, 1956, the following are the circumstances under which the Central Govt. can investigate into the affairs of a company:

- On report by the RoC
- On application of members as follows:
    1. companies having share capital – 200 members or members holding 1/10th of voting power
    2. companies without share capital – 1/5th of members
- On passing special resolution or Court order
- On opinion of Company Law Board.

# GENERAL & COMMERCIAL LAWS

**1. Explain the Concept of State.**

- **Under Article 12 of the Constitution of India, "the State" includes—**
  (a) the Government and Parliament of India;
  (b) the Government and the Legislature of each of the States; and
  (c) all local or other authorities,
  (i) within the territory of India; or
  (ii) under the control of the Government of India.
- **The expression 'local authorities' refers to authorities like Municipalities, District Boards, Panchayats, Improvement Trusts, Port Trusts and Mining Settlement Boards.**
- The Supreme Court has held that 'other authorities' will include all authorities created by the Constitution or statute on whom powers are conferred by law and it is not necessary that the authority should engage in performing government functions - Electricity Board, Rajasthan v. Mohanlal
- The Supreme Court in Sukhdev Singh v. Bhagatram, has pointed out that corporations acting as instrumentality or agency of government would become 'State' because obviously they are subjected to the same limitations in the field of constitutional or administrative law as the government itself, though in the eye of law they would be distinct and independent legal entities.

**2. What do you mean by the Federal nature of the Constitution?**

- **Federal system – when there is dual government and powers are distributed between governments**
- Characteristics of a federal constitution –
  a. It is a written one
  b. Powers are distributed between the Central and State Govts.
  c. The Constitution has supremacy power
  d. There is an independent judiciary system
  e. There is a rigid procedure for amendment of the constitution
- In **Keshavananda Bharati vs. State of Kerala** – the Supreme Court held that Indian Constitution is federal in nature.

**3. Distinguish between directive principles and fundamental rights.**

**The Directives, differ from the fundamental rights in the following respects :**

- The Directives are not enforceable in the courts and do not create any justiciable rights in favour of individuals.
- The Directives require to be implemented by legislation and so long as there is no law carrying out the policy laid down in a Directive neither the state nor an individual can violate any existing law.
- The Directives per-se do not confer upon or take away any legislative power from the appropriate legislature.
- The courts cannot declare any law as void on the ground that it contravenes any of the Directive Principles.
- The courts are not competent to compel the Government to carry out any Directives or to make any law for that purpose.
- Though it is the duty of the state to implement the Directives, it can do so only subject to the limitations imposed by the different provisions of the Constitution upon the exercise of the legislative and executive power by the state.
- The Directive Principles of State Policy are in many cases of a wider import than the Fundamental Rights. Hence, the question of priority in case of conflict between the two classes of the provisions may easily arise.
- **Supreme Court in State of Madras v. Champakram Dorairajan, observed that the Directive Principles of State Policy have to conform to and run as subsidiary to the chapter of Fundamental Rights. The Court ruled that while the Fundamental Rights were enforceable, the Directive Principles were not, and so the laws made to implement Directive Principles could not take away Fundamental Rights.**

**4. Write Short notes on Doctrine of eclipse and Doctrine of pith & substance.**

**Doctrine of Eclipse**

- Any law existing before commencement of Constitution inconsistent with it shall be void
- But the same shall become eclipsed only to the extent it comes under the shadow of the fundamental rights i.e. is inconsistent with it but the eclipsed or dormant parts become active and effective again if the prohibition is removed.

**Doctrine of pith & substance**

Where a law in reality and substance falls within an item on which the legislature which enacted that law is competent to legislate, then such law shall not become invalid merely because it incidentally touches a matter outside the competence of legislature.

**5. Explain the Ordinance making powers of the President.**

- **Article 123 of the Constitution provides that the President shall have the power to legislate by Ordinances at any time when it is not possible to have a parliamentary enactment on the subject, immediately.**
- The ambit of this Ordinance-making power of the President is co-extensive with the legislative powers of Parliament, that is to say it may relate to any subject in respect of which parliament has the right to legislate and is subject to the same constitutional limitations as legislation by Parliament.
- This independent power of the executive to legislate by Ordinance has the following peculiarities:
  a. the Ordinance-making power will be available to the President only when both the Houses of Parliament have been prorogued or is otherwise not in session, so that it is not possible to have a law enacted by Parliament.
  b. This power is to be exercised by the President on the advice of his Council of Ministers.
  c. The President must be satisfied about the need for the Ordinance and he cannot be compelled
  d. The Ordinance must be laid before Parliament when it re-assembles, and shall automatically cease to have effect at the expiration of 6 weeks from the date of re-assembly or before resolutions have been passed disapproving the Ordinance.
  e. The period of six weeks will be counted from the latter date if the Houses reassemble on different dates.

**6. Write Short note on Article 21 of the Indian Constitution.**

- **Article 21 – NO PERSON SHALL BE DEPRIVED OF HIS LIFE OR PERSONAL LIBERTY EXCEPT ACCORDING TO PROCEDURE ESTABLISHED BY LAW.**
- Right to life – right to live with human dignity
- Right to live in freedom from noise pollution is a fundamental right
- Personal liberty is not limited to bodily restraint or to confinement to prison – Kharak Singh vs. State of UP
- Deprivation of life and personal liberty must be according to procedure, just, fair, reasonable and pragmatic – Ahmedabad Municipal Corporation vs. Nawab Khan Gulab Khan
- Maneka Gandhi vs. Union of India – personal liberty includes right to go abroad
- A K Gopalan vs. State of Madras – there must be a law + procedure and executive should follow the procedure to deprive a person from personal liberty.

**7. Can Parliament enact laws on items in the State List?**

Parliament can enact laws on items in the State List under the following circumstances:

- **In the National Interest (Article 249)** - Parliament can make a law with respect to a matter enumerated in the State List if the Council of States declares by a resolution supported by two-thirds of its members present and voting, that it is necessary or expedient in the national interest that Parliament should make a law on that matter. The laws passed by Parliament under the provision cease to have effect automatically after six months of the expiry of the resolution period.

- **<u>During a proclamation of emergency (Article 250)</u>** - While a Proclamation of Emergency is in operation, Article 250 of the Constitution of India removes restrictions on the legislative authority of the Union Legislature in relation to the subjects enumerated in the State List. These laws will cease to have effect on the expiration of six months after the proclamation ceases to operate. After that date, such union laws shall become inoperative, except in respect of things done or omitted to be done before the expiry of the said period.
- **<u>Breakdown of Constitutional Machinery in a State (Article 356 and 357)</u> -** In case the Governor of a State reports to the President, or he is otherwise satisfied that the Government of a State cannot be carried on according to the provisions of the Constitution, then he (President) can make a proclamation to that effect. By that proclamation, he can assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State, and declare that the powers of Legislature of that State shall vest in Parliament.
- **<u>On the request of two or more States (Article 252)</u>** - The exercise of such power is conditional upon an agreement between two or more States requesting Parliament to legislate for them on a specified subject. This article provides that, if two or more States are desirous that on any particular item included in the State List there should be a common legislation applicable to all such States then they can make a request to Parliament to make such law on that particular subject.
- **<u>Legislation for enforcing international agreements (Article 253)</u>** - Parliament has exclusive power with respect to foreign affairs and entering into treaties and agreements with foreign countries and implementing of treaties and agreements and conventions with foreign countries.

**8. Short notes on Writ of mandamus and Writ of Habeas Corpus.**

**<u>Writ of Mandamus –</u>**

- Mandamus means command
- Under this writ Court commands a person to perform some public / quasi public duty which he has refused to perform and performance of which cannot be enforced by any other legal remedy

**Purpose of writ of mandamus –**

- For enforcement of fundamental rights
- For enforcement of a statutory duty by any public officer
- To direct any public official / Govt. not to enforce any law which is unconstitutional

**Cannot be issued –**

- Against the President or State Governors for exercise of their duties
- Against private individuals except where they are in collusion with the State.

**<u>Writ of Habeas Corpus</u>**

- Words 'habeas corpus' means to have a body
- This writ is in nature of an order calling upon an person who has detained another to produce him free if there is no legal justification

**The purpose for which the writs are available are as -**

- For enforcement of fundamental rights
- Where order of imprisonment / detention is ultra vires the statutes which authorises such imprisonment / detention

**This writ are not issued under the following circumstances –**

- Where the person against whom the writ is issued is not within the jurisdiction of the Court
- To secure release of a person imprisoned on a criminal charge
- To interfere the proceedings for contempt by a Court or by Parliament

**9. Where there is a right there is a remedy – Comment.**

- Ubi Jus ibi remedium – where there is a right there is a remedy
- Article 32 gives sufficient rights to move Supreme Court and Article 226 to move High Court
- The Supreme Court shall issue directions / orders / writs. Parliament may empower any other court
- Rights granted by this Article shall not be suspended
- The Madras HC in Aditanar Educational Institution vs. Asst. Director of Income Tax held that the relief under Article 226 can be granted inspite of the availability of alternate remedy only based on undisputed facts

**10. Write Short Notes on Rule of Ejusdem Generis and the Rule of Literal Construction.**

**Rule of Ejusdem Generis**
- Ejusdem Generis means same kind or species
- When particular words pertaining to a class, category or genus are followed by general words, the general words should be construed as limited to things of the same kind as specified, unless there is something to show that a wider sense was intended

**Conditions**
- The statute contains an enumeration by specific words
- The members / subjects of the enumeration constitute a class / category
- The class / category is not exhausted by the enumeration
- The general terms follow the particular enumeration
- There is no clearly manifested intent that the general term be given a broader meaning than the doctrine requires
- There is a distinct genus, category or class which comprises more than one species – the general words shall be presumed to be restricted to that genus

**Rule of Literal Construction**
- Words, phrases and sentences of a statute are ordinarily to be understood in their natural, ordinary or popular and grammatical meaning
- The above shall not be applied if it leads to an absurdity or the content or object of the statute suggests a different meaning
- Nothing should be added or taken out from the statute unless there are adequate grounds to justify the inference that Legislature intended something which it omitted to express
- Thus a court –
  a. Cannot infer that something has been left out from the statute &
  b. Therefore it cannot add some words or explanations etc. to the existing provision of law.

**11. Explain the Internal Aids for interpretation**

- **Title -** Generally shows the scope and purpose of the Act. Cannot override the clear meaning of the statute.
- **Preamble -** The preamble of a statute is not part thereof but contains generally the motives or inducement thereof – Mills vs. Wilkins. Preamble can be consulted in determining the meaning of any word used in the statute within the scope of the statute – Supreme Court in Kamalpura Kochunni vs. State of Madras
- **Heading & Title of a Chapter -** Headings and titles may be used to resolve any doubt as to ambiguous words used in a statute. Only in case of ambiguity and doubt, the headings or subheadings may be referred to as an aid for construing the provision but even in such case aid could not be used for cutting down the wide application of the clear words used in the provision. – Supreme Court in Frick India Ltd. vs. UOI
- **Marginal Notes -** Are given against the sections. Are not supportive in interpreting the provisions of the Act. Marginal notes appended upon to the Articles of Constitution of India have been held to constitute as part thereof – Golaknath vs. State of Punjab
- **Interpretation Clauses -** In all statutes many words are specifically defined – may be inclusive definitions or

exhaustive ones

- **Proviso -** Proviso is a clause which is an exception to the main provision. They are considered as part of the main provision. It is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily a proviso is not interpreted as stating a general rule.
- **Illustrations & Explanations -** Illustrations help to provide some indication of the intention of the legislature. But they cannot have the effect of modifying the language of the section and they cannot either curtail or expand the ambit of the Section which alone forms the law.
- **Schedules -** Must be read together with the statute for all purposes of construction. In case of conflict between enactment and schedule – the enactment shall prevail – Ramchand Textiles vs. Sales Tax Officer
- **Statement of Objects of the enactment -** Before a statute is notified a bill is placed before the Parliament. After the same is passed and notified it becomes an Act. Notes on clauses of the bill and Statement of Objects and Reasons can be used in interpreting the provisions of the statute.

**12. Short note on Noscitur a sociis Pari Materia.**

- The meaning of doubtful word is to be known by reference to meaning by other words associated by it
- When two or more words which are susceptible of analogous meaning are coupled together, they are understood to be used in the cognate sense
- Becomes applicable only when the intention of the legislature is doubtful

**13. Write Short notes on Heading, Title and Preamble.**

- **Title -** Generally shows the scope and purpose of the Act. Cannot override the clear meaning of the statute.
- **Preamble -** The preamble of a statute is not part thereof but contains generally the motives or inducement thereof – Mills vs. Wilkins. Preamble can be consulted in determining the meaning of any word used in the statute within the scope of the statute – Supreme Court in Kamalpura Kochunni vs. State of Madras
- **Heading & Title of a Chapter -** Headings and titles may be used to resolve any doubt as to ambiguous words used in a statute. Only in case of ambiguity and doubt, the headings or subheadings may be referred to as an aid for construing the provision but even in such case aid could not be used for cutting down the wide application of the clear words used in the provision. – Supreme Court in Frick India Ltd. vs. UOI.

**14. Discuss the rule of Reasonable Construction.**

- Excusive reliance on the bare dictionary meaning of words may not necessarily assist a proper construction of the statutory provision in which the words occur
- A provision of law cannot be interpreted as to divorce it entirely from common sense – every word or expression used in an Act should receive a natural and fair meaning
- Only when the language of a statute, in its ordinary meaning and grammatical construction leads
  - to manifest contradiction of the enactment or
  - to some inconvenience or absurdity
  - to hardship or injustice not intended

  then a construction lay put upon it which modifies the meaning of the words and even the structure of the sentence - Tirath Singh vs. Bachittar Singh

**15. Who are the persons against whom specific performance is enforceable and who are the persons against whom specific performance is not enforceable?**

- **According to Section 19, specific performance of a contract may be enforced against** (a) either party thereto, (b) any person claiming under him,
- However representative cannot appear in the following cases –
  a. Settlement on marriage

b. Contract entered by the tenant for life
c. Contract entered into by a company which amalgamates with other company
d. When promoters have entered into pre-incorporation contracts

**Under Section 16, specific performance of a contract cannot be enforced in favour of a person —**

- who would not be entitled to recover compensation for its breach,
- who has became incapable of performing, or violates any essential term of the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract,
- who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

**16. Write short note on declaratory decrees.**

- **A declaratory decree is a decree whereby any right as to any property or the legal character of a person is judicially ascertained.**
- The Supreme Court in State of Madhya Pradesh v. Mangilal Sharma, \held that a declaratory decree merely declares the right of the decreehoder vis-a-vis the judgement debtor and does not in terms direct the judgement debtor to do or refrain from doing any particular act or thing. It cannot be executed as it only declares the rights of the decree-holder qua the judgement debtor and does not, in terms, direct him to do or refrain from doing any particular act or thing.

**Conditions for obtaining declaratory decree**

- The plaintiff must be entitled to a right in the property at the time of suit
- The right must have been denied by the defendant
- The plaintiff must have a suit for declaration
- No other relief is available to the plaintiff

**17. Which are the contracts which cannot be specifically enforceable?**

- A contract for non-performance of which compensation in money is an adequate relief
- A contract which runs into minute or numerous details
- A contract which is dependent on the personal qualification of the parties
- A contract which is of such nature that the Court cannot enforce specific performance of its material terms
- A contract which is in nature determinable
- A contract the performance of which involves a continuous duty which the court cannot supervise
- A contract which has an arbitration clause shall not be specifically enforced except as provided under the Arbitration Act

**18. Write short note on perpetual injunction.**

- Perpetual injunction is granted for perpetual period, till further directions from the Court.
- Perpetual injunction can only be granted by the decree made at the hearing and upon the merit of the suit.
- Perpetual injunction is granted under the following circumstances:
  1. To prevent breach of obligation
  2. When the defendant invades or threatens to invade plaintiff's right to enjoyment of property the Court may grant such injunction
  3. Where the defendant is the trustee of property for the plaintiff
  4. Where there exists no standard for determining the actual damage caused due to invasion
  5. Where invasion is such that compensation in money will not afford adequate relief

**6.** Where injunction is necessary to prevent multiplicity of judicial proceedings

**19. Write Short note on International Commercial Arbitration.**

In terms of Section 2(1)(f) of the Arbitration and Conciliation Act, 1996, International commercial arbitration means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under law in force in India and where at least one of the parties is:

(i) an individual who is a national of, or habitual resident in, any country other than India; or

(ii) a body corporate which is incorporated in any country other than India; or

(iii) a company or an association or a body of individuals whose central management and control is exercised in any country other than India; or

(iv) the Government of a foreign country.

**20. Explain the provisions of Arbitration Act for setting aside the arbitral award.**

- The parties can approach the Court for setting aside the Award.
- An application may be made in accordance with Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside an arbitral award.
- Section 34 stipulates the following grounds on which the award may be challenged before the Court:
  - (a) Incapacity of a party;
  - (b) Invalidity of the arbitration agreement;
  - (c) Party applying was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case;
  - (d) Award not in accordance with the terms of submission to arbitration in regard to the dispute;
  - (e) Arbitral tribunal not properly constituted or the arbitral procedure was not in accordance with the agreement of the parties;
  - (f) Subject matter of the dispute not capable of settlement by arbitration under the law for the time being in force;
  - (g) Award being in conflict with 'the public policy of India'.
- Section 34(3) of the Act prescribes the time limit for making an application for setting aside an arbitral award. The application cannot be made after three months have elapsed from the date on which the party making that application had received the arbitral award.
- The period of three months could be extended to a maximum of 30 days by the Court but not thereafter if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period.

**21. What are the kinds of Tortious liability?**

- **Strict or Absolute Liability:** In some torts, the defendant is liable even though the harm to the plaintiff occurred without intention or negligence on the defendant's part. In other words, the defendant is held liable without fault. These cases fall under the following categories:
  (i) Liability for Inevitable Accident – Such liability arises in cases where damage is done by the escape of dangerous substances brought or kept by anyone upon his land. Such cases are where a man is made by law an insurer of other against the result of his activities.
  (ii) Liability for Inevitable Mistake – Such cases are where a person interferes with the property or reputation of another.
  (iii) Vicarious Liability for Wrongs committed by others – Responsibility in such cases is imputed by law on grounds of social policy or expediency. These case involve liability of master for the acts of his servant.
- **Vicarious Liability:** Normally, the tortfeasor is liable for his tort. But in some cases a person may be held liable for the tort committed by another. A master is vicariously liable for the tort of his servant, principal for the tort of his agent and partners for the tort of a partner. This is known as vicarious liability in tort.

**22. Explain the concept of strict and absolute liability.**

**Strict or Absolute Liability:** In some torts, the defendant is liable even though the harm to the plaintiff occurred without intention or negligence on the defendant's part. In other words, the defendant is held liable without fault. These cases fall under the following categories:

(i) Liability for Inevitable Accident – Such liability arises in cases where damage is done by the escape of dangerous substances brought or kept by anyone upon his land. Such cases are where a man is made by law an insurer of other against the result of his activities.

(ii) Liability for Inevitable Mistake – Such cases are where a person interferes with the property or reputation of another.

(iii) Vicarious Liability for Wrongs committed by others – Responsibility in such cases is imputed by law on grounds of social policy or expediency. These case involve liability of master for the acts of his servant.

**23. Law of Limitation bars the remedy but does not extinguish the right – Comment**

- General principle – law is made to protect only diligent and vigilant people
- Bombay Dyeing and Manufacturing Co. Ltd vs. State of Bombay – law of limitation only bars the remedy of approaching the court of law; it does not extinguish the right

**24. Where once time has begun to run, no subsequent disability or inability to institute a suit or make an application can stop it – Comment.**

- **Section 9 of the Limitation Act, 1963 states that Once time has begun to run, no subsequent disability or inability to institute a suit stops it**
- Where letters of administration to the estate of a creditor have been granted to his debtor, the running of the period of limitation for a suit to recover the debt shall be suspended while the administration continues.
- **The period of limitation begins to run when the cause of action accrues.** In certain circumstances a cause of action may be completed so that the time begins to run, even though the action itself cannot be brought because of some reason not part of the cause of action.

**25. What are the facts of which evidence need not be given?**

- All laws in force in territory of India
- Articles of war of Indian army, navy or air force
- Seals of all courts in India
- Existence, title and national flag of every country recognised by the Govt. of India
- Territories under the domain of the Govt. of India
- Names of the members & officers of the Court
- Public holidays, festivals & fasts recognised in the Official Gazette

**26. Write Short note on Dying Declarations.**

- Statement made by a person regarding the course of his death or regarding any of the circumstances that resulted in his death
- It is admissible as evidence whether in writing or not
- The person after making the declaration must die.

**27. When do the statements under special circumstances become relevant ?**

**The following statements become relevant on account of their having been made under special circumstances**:

- Entries made in books of account, including those maintained in an electronic form regularly kept in the course of business. Such entries, though relevant, cannot, alone, be sufficient to charge a person with liability; (Section 34)
- Entries made in public or official records or an electronic record made by a public servant in the discharge of his

official duties, or by any other person in performance of a duty specially enjoined by the law; (Section 35)

- Statements made in published maps or charts generally offered for the public sale, or in maps or plans made under the authority of the Central Government or any State government; (Section 36)
- Statement as to fact of public nature contained in certain Acts or notification; (Section 37)
- Statement as to any foreign law contained in books purporting to be printed or published by the Government of the foreign country, or in reports of decisions of that country. (Section 38).

**28. What are the conditions for transfer for the benefit of unborn person?**

- **Section 13 of the Transfer of Property Act, 1882** lays down that where on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of such person shall not take effect unless it extends to the whole of the remaining interest of the transferor in the property.
- Thus if a property is given to an unborn person, two conditions should be satisfied:
  (i) it should be preceded by a life estate in favour of a living person, and
  (ii) it should comprise the whole of the remaining interest of the transferor so that there can be no further interest in favour of others.
- **Section 14 of the Transfer of Property Act, 1882** provides that no transfer of property can operate to create an interest which is to take effect after the life time of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration for that period, and to whom, if he attains full age, the interest created is to belong.
- Illustration: A transfers property of which he is the owner to B in trust for A and his intended wife successively for their lives, and after the death of the survivor, for the eldest son of the intended marriage for life, and after his death for A's second son. The interest so created for the benefit of the eldest son does not take effect, because it does not extend to the whole of A's remaining interest in the property.

**29. Short notes on Doctrine of fraudulent transfer and Doctrine of Election.**

**Doctrine of fraudulent transfer**

- Where a person transfers his property so that his creditors shall not have anything out of the property, the transfer is called a fraudulent transfer.
- A debtor in order to defeat or delay the rights of a creditor, may transfer his property to some person, who may be his relative or a friend. The law does not allow this.
- Section 53 embodies the principle. It states - "Every transfer of immoveable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed."
- Thus, where an owner of the property contracts a debt and then transfers his property to someone so that the creditor cannot proceed against the property to realise his debt, such a transfer is voidable at the option of the creditor.
- The transfer is valid so long as the creditor does not challenge it in a Court of law and gets a declaration that the transfer is invalid.

**Doctrine of Election**

- **Section 35 of the Transfer of Property Act, 1882** deals with Doctrine of Election. Suppose, a property is given to you and in the same deed of gift you are asked to transfer something belonging to you to another person. If you want to take the property you should transfer your property to someone else, otherwise you cannot take the property which is transferred to you by some one. Election may be defined as "the choosing between two rights where there is a clear intention that both were not intended to be enjoyed".
- The foundation of doctrine of election is that a person taking the benefit of an instrument must also bear the burden, and he must not take under and against the same instrument. It is, therefore, a branch of a general rule that no one may approbate and reprobate - Copper v. Copper.

- Illustration: A transfers to you his paddy field and in the same deed of transfer asks you to transfer your house to C. Now, if you want to have the paddy field you must transfer your house to C, because the transferor is transferring to you his paddy field on the condition that you give your house to C.

**30. Distinguish between mortgage and charge.**

- A mortgage is transfer of an interest in the property made by the mortgagor as a security for the loan, while the charge is not the transfer of any interest in the property though it is security for the payment of an amount.
- A charge may be created by act of parties or by operation of law. A mortgage can only be created by act of parties.
- A mortgage deed must be registered and attested by two witnesses, while a charge need not be made in writing, and if reduced to writing, it need not be attested or registered.
- In certain types of mortgage (viz., mortgage by conditional sale and anomalous mortgage) the mortgagor can foreclose the mortgaged property but in charge, the charge-holder cannot foreclose though he can get the property sold as in a simple mortgage.
- From the very nature of it, a charge as a general rule, cannot be enforced against a transferee for consideration without notice. But in a mortgage, the transferee of mortgaged property from the mortgagor, can only acquire the remaining interest of the mortgagor, and is therefore, only bound by the mortgage.
- In a charge created by act of parties the specification of the particular fund or property negatives a personal liability and the remedy of the charge-holder is against the property only. In a mortgage, there can be security as well as personal liability. In fact, the absence of a personal liability is the principal test that distinguishes a charge from a simple mortgage.

**31. Explain the various types of mortgage.**

- **Simple mortgage** – mortgagor binds him personally to pay the debt & in the event of failure, the mortgagee may apply the property
- **Mortgage by conditional sale** – the mortgage is with a condition that in the event of failure to pay money the transaction is treated as sale
- **Usufructuary Mortgage** – where the mortgagor delivers the property and authorises mortgagee to retain the property until payment
- **English Mortgage** – the mortgagor binds himself to pay the money and transfers the property subject to the condition that the property will be retransferred on payment
- **Mortgage by deposit of title deeds / equitable mortgage** – person delivers the documents of title to the creditor to create security
- **Anomalous mortgage** - others

**32. Write Short notes on Spes Successionis and Doctrine of Lis Pendens.**

**Spes Successionis**

- Latin Phrase which means - Chance of an heir apparent
- When a person is the owner of property, the property is in existence and it is in his possession. This he may transfer. But if property is neither in existence nor is the person the owner of the property then it cannot be transferred. For example, if a person is intending to buy certain property but, he has no interest in that property, he cannot transfer it unless the property comes to his hands, i.e., unless he becomes the owner of the property after buying it.
- Thus a gift of future property is void. Similarly, the chance of a heir apparent succeeding to the estate of a deceased person cannot be transferred.
- Suppose A is the owner of the property and B is his son. B is the heir of A. During the life time of his father A, B has only a hope expectancy that he will inherit the property of his father. This type of property which B hopes to get after the death of the father cannot be transferred, during the life time of A.

**Doctrine of Lis Pendens**

- Lis means dispute, Lis pendens means a pending suit, action, petition or the like.
- **Section 52 of the Transfer of Property Act, 1882** incorporates the doctrine of Lis pendens. It states that during the pendency of a suit in a Court of Law, property which is subject to litigation cannot be transferred.
- **In order to constitute a Lis pendens, the following elements must be present:**
  1. There must be a suit or proceeding in a Court of competent jurisdiction.
  2. The suit or proceeding must not be collusive.
  3. The litigation must be one in which right to immoveable property is directly and specifically in question.
  4. There must be transfer of or otherwise dealing with the property in dispute by any party to the litigation.
  5. Such transfer must effect the rights of the other party that may ultimately accrue under the terms of the decree or order.

**33. Explain the different methods of stamping.**

- Section 10 of the Indian Stamp Act, 1899 provides that all duties with which any instrument is chargeable shall be paid, and such payment shall be indicated on such instrument, by means of stamps according to the provisions contained in the Act, or when no such provision is applicable thereto, as the State Government concerned may by rule, direct. The rules may, among other matters, regulate:

  (i) in the case of each kind of instrument, the description of stamps which may be used;
  (ii) in the case of instruments stamped with impressed stamps, the number of stamps which may be used;
  (iii) in the case of bills of exchange or promissory notes, the size of the paper on which they are written.
- There are two types of stamping, namely:

  (i) Adhesive stamping, and
  (ii) Impressed stamping.

**34. What are the consequences of unstamping of documents?**

- **Section 35 stipulates that no instrument chargeable with duty shall be–**

  (i) admitted in evidence for any purpose whatsoever by any person authorised by law (such as judges or commissioners) or by the consent of the parties (such as arbitrators) to record evidence; or
  (ii) shall be acted upon; or
  (iii) registered; or
  (iv) authenticated by any such person as aforesaid or by any public officer.

  unless such instrument is duly stamped.
- **Exceptions:**

  (a) An unstamped instrument other than instruments chargeable withn duty < 10 paise / BOE / pro note, may be admitted as evidence on payment of penalty of Rs. 5/-
  (b) An insufficiently stamped instrument may be admitted as evidence on payment of penalty of Rs. 5/-
  (c) An unstamped receipt on payment of penalty of Re. 1/-
  (d) Where a contract consists of 2 letters, and one letter is duly stamped
  (e) An unstamped instrument executed by Govt with the certificate of Collector
  (f) If an instrument is produced before the Collector within 1 year of execution and the person tells the Collector that the instrument is not duly stamped and offers to pay the amount due

**35. Short note on Denoting Duty.**

**In terms of Section 16 of the Indian Stamp Act, 1899:**

- Where duty of an instrument (whether amount or exemption) depends on a second instrument, the payment of duty on the second instrument shall be noted on the first instrument by endorsement by the Collector of stamps
- An application needs to be made for the purpose and both the instruments shall be produced before the Collector

**36. What is the time limit for registration of documents and effects of non-registration of documents?**

- A document other than a will must be presented within four months of its execution. In cases of urgent necessity, etc. the period is eight months, but higher fee has to be paid.
- **Section 49 of the Indian Registration Act, 1908** provides that no document required to be registered shall:
  (a) affect any immovable property comprised therein; or
  (b) confer any power to adopt; or
  (c) be received as evidence of any transaction affecting such property or conferring such power unless it has been registered.
- An unregistered document cannot be used in any legal proceeding to bring out indirectly the effect which it would have if registered.

**37. Which are the documents whose registration is compulsory and whose registration is optional?**

**Documents whose registration is compulsory**

- Instruments of gift of immoveable property
- Non-testamentary instruments which create any right / interest of > Rs. 100/-
- Non-testamentary instruments transferring any right / interest of > Rs. 100/-
- Lease of immoveable property from year to year or for a term > 1 year
- Documents containing contracts for transfer of any immoveable property for part performance of contract shall be registered if executed after 2001
- Authorities to adopt a son and not considered by a will

**Documents whose registration is optional**

- Document creating interest < Rs. 100/-
- Lease of immoveable property for a term less than 1 year
- Wills

**38. Write short note on Registration of wills.**

- It is optional
- The testator or after his death any person claiming as executor under the will can present the same for registration.

**39. Distinguish between computer and computer network.**

- Computer means any electronic, magnetic, optical or other high-speed data processing device or system which performs logical, arithmetic, and memory functions, by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software, or communication facilities which are connected or related to the computer in a computer system or computer network.
- On the other hand, computer network means the interconnection of one or more computers through -
  (i) the use of satellite, microwave, terrestrial line or other communication media; and
  (ii) terminals or a complex consisting of two or more interconnected computers, whether or not the interconnection is continuously maintained.

**40. Write Short notes on Digital Signature, Domain names and Hacking.**

**Digital Signature**

Digital signature (i.e. authentication of an electronic record by a subscriber, by electronic means) is recognised as a valid method of authentication. The authentication is to be effected by the use of "asymmetric crypto system and hash function", which envelop and transform electronic record into another electronic record.

Verification of the electronic record is done by the use of a public key of the subscriber. The private key and the public key are unique to the subscriber and constitute a functioning key pair.

**Domain names**

It is vital, that prior to entering into any type of business activity, a company must be traceable relatively easily, on the Internet, i.e. it must have an address in cyber-space. This may be linked to a company having its Registered Office to which all communications are usually directed. This explains the utility of registration under a particular domain name and website. This has been made possible with the emergence of the Domain Name System ("DNS"). Such registration would enable the company to conduct on-line transactions, as well as make it easily traceable by customers, suppliers, etc.

**Hacking**

- Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or any person, destroys or deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means, commits hacking.
- Whoever commits hacking, shall be punished with imprisonment upto three years or with fine which may extend upto two lakh rupees or with both.

**41. Explain the Doctrines of Res judicata and Res subjudice.**

**Doctrine of Res subjudice**

- **Section 10 of the Code of Civil Procedure 1908** provides that no Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties or between parties under whom they or any of them claim, litigating under the same title, where such suit is pending in the same or any other Court (in India) having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.
- However, the pendency of a suit in a foreign court does not preclude the Courts in India from trying a suit founded on the same cause of action.

**Doctrines of Res judicata**

- **Section 11 of the Code of Civil Procedure 1908** deals with the doctrine of Res Judicata that is, bar or restraint on repetition of litigation of the same issues. It is a pragmatic principle accepted and provided in law that there must be a limit or end to litigation on the same issues.
- The doctrine underlines the general principle that no one shall be twice vexed for the same cause - S.B. Temple v. V.V.B. Charyulu
- For the applicability of the principle of res judicata embodied in Section 11, the following requirements are necessary:
  (a) The matter directly and substantially in issue in former suit shall also be directly and substantially in issue in later suit.
  (b) The former suit has been decided—former suit means which is decided earlier.
  (c) The said issue has been heard and finally decided.
  (d) Such former suit and the latter are between the same parties or litigation under the same title or persons claiming under parties above.

**42.** **Distinguish between judgment, decree and order.**

| Judgment | Decree | Order |
|---|---|---|
| Statement given by the judge on the grounds of a decree or order | Formal expression of an adjudication by a court determining the rights of the parties with regard to all or any of the matters in controversy in the suit | Formal expression of any decision of a civil court which is not a decree |
| It is the judge's statement | It conclusively determines the rights of the parties with regard to all or any of the matters in controversy | An order has no such characteristics |
| The decree is operative part of the judgment. The judgment is followed by the decree | An appeal lies from a decree | No appeal lies from an order |

**43.** **Distinguish between reference, review and revision.**

| Reference | Review | Revision |
|---|---|---|
| It refers to a case where at any time before judgement a court in which a suit has been instituted may state a case and refer the same for opinion of the High Court. | It refers to a case whereby an aggrieved party may apply to the Court to recall the case for further consideration | It refers to a case where the HC revises an order passed by a subordinate court |
| There is no question of appeal in cases of reference. | It is made in a case where appeal is allowed but no appeal has been made or no appeal is allowed | It is made in a case for which no appeal lies |
| It is made suo moto by the lower court. | It is made on application by the party to the suit | It is made suo moto by the Court |

**44.** **Distinguish between investigation, inquiry and trial.**

- The three terms — 'investigation', 'inquiry' and 'trial' denote three different stages of a criminal case.
- The first stage is reached when a police officer either on his own or under orders of a Magistrate investigates into a case. If he finds that no offence has been committed, he submits his report to the Magistrate who drops the proceedings.
- But if he is of different opinion, he sends that case to a Magistrate and then begins the second stage—a trial or an inquiry.
- The Magistrate may deal with the case himself and either convict the accused or discharge or acquit him. In serious offences the trial is before the Session's Court, which may either discharge or convict or acquit the accused.

**45.** **What are the powers of the police officer to arrest without warrant?**

**Section 41 of Code of Criminal Procedure 1973**, enumerates different categories of cases in which a police officer may arrest a person without an order from a Magistrate and without a warrant. These include:

- Person who has been concerned in a cognizable offence
- Person against whom a reasonable complaint is made
- Against whom credible information has been received

- Against whom a reasonable suspicion arises
- Who has in his possession without lawful excuse a weapon of house breaking
- Who has claimed to be an offender of law and order by State Govt.
- Who has in his possession stolen property
- Who obstructs a police officer while executing his duty
- Who has escaped or attempts to escape from lawful custody
- Who is reasonable suspected to a deserter from any Armed forces

**46. Short note on power of Magistrate in case of apprehended danger.**

- A District magistrate or sub-divisional magistrate or any other executive magistrate who is of the opinion that immediate prevention is necessary to prevent any obstruction / injury to any person / danger to human life / health / safety he may abstain any person from doing any act
- Such order shall remain in force for maximum 2 months.

**47. Short note on the place of filing suits.**

- **Section 16 of the Code of Civil Procedure 1908** - Following suits shall be instituted in the court within the local limits of whose jurisdiction the property is situated
  - (a) Suits for recovery of immoveable property
  - (b) Suits for partition of immoveable property
  - (c) Suits for foreclosure / sale / redemption in case of mortgage of immoveable property
  - (d) Suits for determination of any other right / interest in immoveable property
  - (e) Suits for compensation for wrong to immoveable property
- **Section 17 of the Code of Civil Procedure 1908** - where a suit is for compensation for wrong to immoveable property situated within the jurisdiction of different courts, the suit may be filed in any court within whose local limits any part of the property is situated
- **Section 18 of the Code of Civil Procedure 1908** - – in case of uncertainty any court may admit the suit and record a statement to that effect
- **Section 19 of the Code of Civil Procedure 1908** - – where a suit is for compensation for wrong to any person or moveable property, if the defendant resides in the local limits of one court and wrong was done within the jurisdiction of another, the suit may be instituted at the option of the plaintiffs in either of the said courts
- **Section 20 of the Code of Civil Procedure 1908** - - Suit shall be instituted in the court within the local limits of whose jurisdiction –
  - (a) The defendant or each of the defendants at the time of commencement of suit resides or carries on business or personally works for gain
  - (b) Any of the defendants at the time of the commencement of suit resides or carries on business or personally works for gain provided leave of court or consent of other defendants is obtained
  - **(c)** Where the cause of action arose (wholly or in parts)

**48. What are the duties of a Public Information Officer?**

- **PIO shall deal with requests from persons seeking information and where the request cannot be made in writing, to render reasonable assistance to the person to reduce the same in writing.**
- If the information requested for is held by or its subject matter is closely connected with the function of another public authority, the PIO shall transfer, within 5 days, the request to that other public authority and inform the applicant immediately.
- PIO, on receipt of a request, shall as expeditiously as possible, and in any case within 30 days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request.
- Where the information requested for concerns the life or liberty of a person, the same shall be provided within

| | |
|---|---|
| | forty-eight hours of the receipt of the request.<br>• Where a request has been rejected, the PIO shall communicate to the requester - (i) the reasons for such rejection, (ii) the period within which an appeal against such rejection may be preferred, and (iii) the particulars of the Appellate Authority.<br>• PIO shall provide information in the form in which it is sought unless it would disproportionately divert the resources of the Public Authority or would be detrimental to the safety or preservation of the record in question.<br>• If information sought has been supplied by third party or is treated as confidential by that third party, the PIO shall give a written notice to the third party within 5 days from the receipt of the request. |
| **49.** | **Which are the categories of information exempted from the requirement of the RTI Act?**<br>• Where disclosure prejudicially affects the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence<br>• Information which has been expressly forbidden by any court or tribunal or the disclosure of which may constitute contempt of court<br>• Where disclosure would cause a breach of privilege of Parliament or the State Legislature<br>• Information including commercial confidence, trade secrets or intellectual property, where disclosure would harm competitive position of a third party, or available to a person in his fiduciary relationship, unless larger public interest so warrants<br>• Information received in confidence from a foreign government<br>• Information the disclosure of which endangers life or physical safety of any person or identifies confidential source of information or assistance<br>• Information that would impede the process of investigation or apprehension or prosecution of offenders<br>• Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers.<br>• Personal information which would cause invasion of the privacy unless larger public interest justifies it. |
| **50.** | **Explain the manner in which request can be made by a citizen for information under the RTI Act?**<br>• Application for request of information under the Right to Information Act, 2005 is to be submitted in writing or electronically, with prescribed fee, to Public Information Officer.<br>• Information to be provided within 30 days. 48 hours where life or liberty is involved.<br>• 35 days where request is given to Asst. PIO.<br>• Time taken for calculation and intimation of fees excluded from the time frame.<br>• No action on application for 30 days is a deemed refusal.<br>• If the interests of a third party are involved then time limit will be 40 days (maximum period + time given to the party to make representation).<br>• No fee for delayed response. |

# ECONOMIC & LABOUR LAWS

**1. Write short notes on Industrial Licence and Industrial Entrepreneur's Memorandum.**

**Industrial Licence**

- Industrial licence is written permission by the Government to an industrial undertaking to manufacture specified articles.
- In terms of Section 11 of the Industries (Development) Regulation Act, 1951, no person or authority other than Central Government, shall establish any new industrial undertaking without a licence from the Central Government. The licence may contain such conditions including in particular, the location and size of the undertaking as the Central Government may deem fit.
- A licence is required under the following circumstances:
  - (h) Licence for Producing or Manufacturing New Articles
  - (i) Licence for Carrying on Business After the Revocation of Certificate of Registration
  - (j) Licence for Carrying on Business by an Industrial Undertaking to which the Act became applicable
  - (k) Licence for Change in Location
  - (l) Licence for Effecting Substantial Expansion

**Industrial Entrepreneur's Memorandum**

- Industries exempted from obtaining industrial license including existing units undertaking substantial expansion, are required to file an Industrial Entrepreneur Memoranda (IEM) in Part 'A' (Form IEM) with the Entrepreneurial Assistance Unit of the Secretariat of Industrial Assistance (SIA), Department of Industrial Policy and Promotion, Government of India, Udyog Bhavan, New Delhi 110011, and obtain an acknowledgement. No further approval is required.
- Subsequently, immediately after commencement of commercial production, Part 'B' of Form IEM has to be filed.

**2. What is COB Licence?**

- Where a small scale industry exceeds the prescribed small scale limit of investment in plant & machinery by way of natural growth
- COB license is also required where exemption granted to Industry from licensing requirements is withdrawn
- Application to Secretariat of Industrial Assistance (SIA), Department of Industrial Policy and Promotion, Government of India.

**3. Explain the requirement under MSMED Act, 2006 for payment to micro and small enterprises.**

- Section 15 of the Micro, Small, and Medium Enterprises Development Act, 2006, provides that where any supplier, supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day.
- However, in no case the period agreed upon between the supplier and the buyer in writing should exceed 45 days from the day of acceptance or the day of deemed acceptance.
- Section 16 provides that in case the buyer fails to make payment of the amount to the supplier, the buyer, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force should pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.
- Schedule VI to the Companies Act requires disclosure in the Accounts of the dues by a co. to a small or a micro enterprise.

**4. Write short notes on Special Economic Zones, IEC Code and Focus Product & Focus Market Scheme.**

**Special Economic Zones**

- Special Economic Zone (SEZ) is a specifically delineated duty free enclave and shall be deemed to be foreign territory for the purposes of trade operations and duties and tariffs.
- There were 19 SEZ's existing prior to the notification of the SEZ Act, 2005, inter alia including Santa Cruz (Maharashtra), Cochin (Kerala), Kandla and Surat (Gujarat), Chennai (Tamil Nadu), Visakhapatnam (Andhra Pradesh), Falta (West Bengal) Noida (Uttar Pradesh) etc. As on date the total number of operational SEZ's is 158.

**Major incentives available for the SEZ Unit**

- Duty free import/domestic procurement of goods for development, operation and maintenance of SEZ units
- 100% Income Tax exemption on export income for SEZ units under Section 10AA of the Income Tax Act for first 5 years, 50% for next 5 years thereafter and 50% of the ploughed back export profit for next 5 years.
- Exemption from minimum alternate tax under section 115JB of the Income Tax Act.
- External commercial borrowing by SEZ units upto US $ 750 million in a year without any maturity restriction through recognized banking channels.
- Exemption from Central Sales Tax and Service Tax.
- Single window clearance for Central and State level approvals.
- Exemption from State sales tax and other levies as extended by the respective State Governments.

**IEC Code**

- The Foreign Trade Policy prohibits export or import by any person without an IEC number unless specifically exempted. An IEC number is granted on application by competent authority in accordance with specified procedure.
- The following categories of importers or exporters have been exempted from obtaining IEC number:
  (a) Ministries / Departments of the Central or State Government.
  (b) Persons importing or exporting goods for personal use not connected with trade or manufacture or agriculture.
  (c) Persons importing / exporting goods from / to Nepal / Myanmar provided the CIF value of a single consignment does not exceed Indian Rs.25,000.
- An application for grant of IEC number is required to be made in the prescribed form alongwith specified documents, by the Registered/Head Office of the applicant to the Regional authority under whose jurisdiction, the Registered office in case of company and Head office in case of others, falls.
- An IEC number allotted to an applicant remains valid for all its branches/divisions/ units/factories as indicated in the format of IEC.

**Focus Product & Focus Market Scheme**

- Focus market scheme – duty entitlement of 3% of FOB value of exports
- Focus product scheme - duty entitlement of 2% of FOB value of exports

**5. What do you mean by abuse of Dominant position?**

**Meaning of dominant position – Section 4 of the Competition Act, 2002**

A position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to-

- operate independently of competitive forces prevailing in the relevant market or
- affect its competitors or consumers or the relevant market in its favour

**Meaning of abuse of dominant position**

- imposes unfair or discriminatory condition / price in purchase or sale (including predatory price) of goods or service.

- limits or restricts production of goods / services or technical or scientific development
- indulges in practices resulting in denial of market access
- makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which have no connection with the subject of such contracts
- uses its dominant position in one relevant market to enter into, or protect, other relevant market

**6. Explain the provisions of the Competition Act relating to regulation of combinations.**

- Acquisition of shares / voting rights / control or amalgamation / merger exceeding the below-mentioned ceilings attract Sections 5 & 6 of the Competition Act, 2002 -:

| | **Either in India** | | **Or Globally** | |
|---|---|---|---|---|
| | **Assets** | **Tu** | **Asset** | **Turnov** |
| **Jointly, the parties to the acquisition, including the enterprise being acquired have** | Exceeding Rs. 1500 crores | Exceeding Rs. 4500 crores | Exceeding 750 million USD including atleast Rs. 750 crores in India | Exceeding 2250 million USD, including atleast Rs. 2250 crores in India |
| **Jointly, the acquiring group, together with the enterprise being acquired have** | Exceeding Rs. 6000 crores | Exceeding Rs. 18000 crores | Exceeding 3 billion USD including atleast Rs. 750 crores in India | Exceeding 2250 million USD, including atleast Rs. 2250 crores in India |

- In terms of the said Sections, no person or enterprise shall enter into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and such a combination shall be void.
- Any person or enterprise, who or which proposes to enter into a combination, shall give notice to CCI disclosing the details of the proposed combination, within 30 days of approval of the said proposal by its board of directors or execution of any agreement or other document for acquisition
- No combination shall come into effect until 210 days have passed from the day on which the notice has been given to the CCI or CCI has passed orders, whichever is earlier.

**7. Which combinations are exempted from the purview of the Competition Act?**

- Acquisition of not more than 25% shares or voting rights in any company, solely as an investment or in the ordinary course of business.
- Acquisition of further shares or voting rights in cases where the acquirer, prior to acquisition, holds 50% or more shares.
- Acquisition of shares / voting rights / control / assets by one person or enterprise of another person or enterprise within the same group.
- Acquisition of assets not directly related to the business activity of the party acquiring the asset or made solely as an investment or in the ordinary course of business.
- Acquisition of stock–in-trade, raw materials, stores, spares and other current assets in the ordinary course of business.
- Acquisition of shares or voting rights pursuant to sub-division or consolidation of shares, bonus issue or rights issue, not leading to acquisition of control.
- Combinations taking place entirely outside India with insignificant local nexus and effect on markets in India.
- Mergers / amalgamations between holding companies and wholly-owned subsidiary companies

- Increase in shareholding pursuant to buy back of shares, provided the same does not result in acquisition of control.

**8. Write short notes on Bid Rigging, Relevant product market and relevant geographic market.**

**Bid Rigging**

- Agreement between enterprises engaged in identical or similar goods or services
- Has the effect of eliminating or reducing competition for bids
- Or adversely affecting or manipulating the process for bidding
- Some of the common adopted ways of bid rigging
  - Agreement to submit identical bids
  - Agreement as to who shall submit the lowest bid
  - Agreements not to submit bid against each other
  - Agreements on common norms to calculate prices or terms of bid
  - Agreement to squeeze out outside bidders
  - Agreement designating bid winners in advance on a rotational basis

**Relevant Product Market**

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

**Relevant Geographic Market**

In terms of Section 2(s) of the Competition Act, 2002, Relevant Geographic Market means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from conditions prevailing in neighbouring areas.

The terms 'relevant geographical market' and 'relevant product market' have relevance in determination of the agreements being anti competitive, in evaluating combinations and dominance of an enterprise or group. An agreement in the nature of cartel which limits or controls production, supply, market, technical development, investments etc. need to be looked as being anti competitive with reference to relevant market. Similarly agreement to share the market or sources of production by way of allocation of geographical area of market, types of goods or services or number of customers in the market or by any similar way and these need to be interpreted in the context of the definition of relevant geographical market under Section 2(s).

**9. Short note on Competition Commission of India.**

- The Competition Commission of India is a body corporate having perpetual succession and a common seal. The Commission has power to acquire, hold movable or immovable property and to enter into contract in its name and by the said name, sue or be sued.
- The Commission consists of a Chairperson and not less than two and not more than six other Members. The Chairperson and the Members are to be appointed by the Central Government.
- Section 8(2) provides that they shall be person of ability, integrity and standing and who has special knowledge of and such professional experience of not less than fifteen years in international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs or competition matters including competition law and policy which in the opinion of the Central Government, may be useful to the commission.
- The Chairperson and other Members are to be appointed on whole time basis.
- The Chairperson and every other Member shall hold office as such for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment. However, the Chairperson or other Members shall

not hold office as such after he has attained the age of sixty-five years.

- The Competition Commission of India has been empowered to lay down its own procedure and regulations. It is not bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall have to observe the principles of natural justice and subject to the provisions of the Act.
- The Commission shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying the suit.

**10. Explain the Redressal Machinery under the Consumer Protection Act.**

- The Act provides for a three-tier quasi-judicial redressal machinery at the District, State and National level for redressal of consumer disputes and grievances as follows:
  - (a) **District Forum** - value of goods and services upto Rs. 20 lakhs
  - **(b) State Commission**
    - value of goods and services > Rs. 20 lakhs upto Rs. 1 crores
    - Appeals against orders of District Forum
    - Call for records in any consumer dispute pending or decided by the District Forum
  - **(c) National Commission**
    - value of goods and services > Rs. 1 crore
    - Appeals against orders of State Commission
    - Call for records in any consumer dispute pending or decided by the State Commission.

**11. What is the definition of Consumer?**

In terms of **Section 2(1)(d) of the Consumer Protection Act, 1986**, Consumer means any person who

(a) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(b) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purpose.

**12. What do you mean by deficiency of service?**

In terms of **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.

Few case laws on the subject:

- Non-delivery of a video cassette by a courier service company resulting in the complainant losing admission in the desired college was held to be deficiency in service as the complainant was put to serious hardship and loss by reason of the neglect of the courier – **Skypack Couriers Pvt. Ltd. vs. M/s Anupama Bagla**
- In **Lucknow Development Authority vs. Roop Kishore Tandon,** the failure of a Housing Board to give possession of the flat after receiving the price and after registering it in favour of the allottee was held to be deficiency of service.
- Mere failure to provide nursing and financing facilities to a SSI which consequently became sick was not held to be

deficiency in service – **Special Machines vs. Punjab National Bank**

**13. Explain the Powers of the CG under the Essential Commodities Act?**

- **Under the Essential Commodities Act, 1955, Central Government is empowered to issue orders for regulating / prohibiting the production / supply / distribution of essential commodities –**
  - For maintaining / increasing supplies
  - For securing the equitable distribution and availability at fair prices
  - For securing essential commodity for the defence of India
- Central Government also empowered to issue orders–
  - For regulating production / manufacture of essential commodity
  - For bringing under cultivation any waste / arable land
  - For controlling price at which any essential commodity may be bought / sold
  - For regulating storage / transport / distribution etc. of any essential commodity
  - For prohibiting the sale of any essential commodity
  - For requiring any person holding in stock any essential commodity to sell whole / part of that stock
  - For regulating any class of commercial / financial transactions relating foodstuffs
  - For collecting any information / statistics
  - For entry, search or examination of premises

**14. Explain the concept of seizure and confiscation of essential commodities.**

- The expression 'seize' means to take possession contrary to the wishes of the owner of the property and that such action is unilateral action of the person seizing. The person from whom anything is seized loses, from the moment of seizure, the right or power to control or regulate the use of that thing. The dictionary meaning of the word 'seize' means to lay hold of suddenly or forcible, to take hold of, to reach and grasp, to clutch'.
- 'Confiscation' according to Wharton's Law Lexicon, is condemnation and adjudication of property to the public treasury as of goods seized under the Customs Act. Confiscation, according to Strouds judicial Dictionary, must be an act done in some way on the part of the Government of the country where it takes place and in some way beneficial to that Government, though the proceeds may not strictly speaking be brought into its treasury.
- **Section 6A of the Essential Commodities Act, 1955 provides that where any essential commodity is seized, a report of such seizure shall be made, without any unreasonable delay, to the collector of the district or the Presidency town in which such essential commodity is seized.**
- The Collector at his discretion, may direct for the production of the seized commodity before him and if he is satisfied that there has been contravention of the order he may pass order for confiscation of (a) the essential commodity so seized, (b) any package, covering or receptacle in which such essential commodity is found, and (c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity.
- No foodgrains or edible oilseeds seized from a producer shall, if the seized foodgrains or edible oilseeds have been produced by him, be confiscated under this section.
- In the case of any animal, vehicle, vessel or other conveyance the owner of such animal, vehicle etc., shall be given an option to pay in lieu of its confiscation, a fine not exceeding the market price at the date of seizure of the essential commodity sought to be carried by such animal, vehicle, vessel, or other conveyance.
- Accordingly, it can be seen 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.

**15. Write short notes on Maximum permissible error and Principal Display Panel.**

**Maximum permissible error**

- As indicated in First Schedule to the Legal Metrology Act, 2009
- Factors –
  - variations caused by unavoidable deviation in weighing, measuring or counting the contents of individual packages that may occur in good packaging practice
  - variations caused by the ordinary and customary exposure to conditions, such as, climate, transport, storage or the like that normally occur in good distribution practice after the commodity is introduced in trade or commerce
  - variations due to the nature of packaging material or container.

**Principal Display Panel**

- Every declaration required to be made under these rules shall appear on the principal display panel
- Such declaration shall be –
  - legible and prominent
  - numerals of the retail sale price and net quantity declaration shall be printed, painted or inscribed on the package in a colour that contrasts conspicuously with the background of the label
- Where a package is provided with an outside container or wrapper such container or wrapper shall also contain all the declarations which are required to appear on the package except where such container or wrapper itself is transparent and the declarations on the package itself are easily readable through such outside wrapper
- The particulars of the declarations required to be specified under this rule on a package shall either be in Hindi in Devnagri script or in English.

**16. Explain the declaration to be made on standard packages.**

- **No person shall pre-pack any commodity for sale, distribution or delivery unless the package in which the commodity is pre-packed bears thereon, or on a label is securely affixed thereto, such declarations as are required to be made under these rules.**
- The declaration shall contain –
  - the name and address of the manufacturer, or where the manufacturer is not the packer, the name and address of the manufacturer and packer and for any imported package the name and address of the importer shall be mentioned on every package
  - The common or generic names of the commodity contained in the package and in case of packages with more than one product, the name and number or quantity of each product shall be mentioned on the package
  - The net quantity, in terms of the standard unit of weight or measure, of the commodity contained in the package or where the commodity is packed or sold by number, the number of the commodity contained in the package shall be mentioned
- The declaration shall contain –
  - The month and year in which the commodity is manufactured or pre-packed or imported shall be mentioned in the package. For packages containing food articles the provisions of Food Safety and Standards Act, 2006 shall apply
  - The retail sale price of the package
  - Where the sizes of the commodity contained in the package are relevant, the dimensions of the commodity contained in the package and if the dimensions of the different pieces are different, the dimensions of each such different piece shall be mentioned
- Declarations relating to month and year of manufacture and MRP are not required to be made on any package

containing bidis / incense sticks and LPG cylinders

- Every package containing genetically modified food shall bear at the top of its principal display panel the words GM
- Every package shall also bear the name, address, telephone number, e mail address, if available, of the person who can be or the office which can be, contacted, in case of consumer complaints
- Any packaging material or wrapper which could not be exhausted may be used by the manufacturer / packer till 31st March, 2012, after making the required corrections by way of stamping or putting sticker or online printing.

**17. Short notes on permissible capital and current account transactions.**

**Permissible Current Account Transactions**

- The term current account transaction has been defined to mean a transaction other than a capital account transaction and includes payments due in connection with foreign trade, other current business, services and short term banking and credit facilities in the ordinary course of business; payments due as interest on loan and as net income from investments; remittances for living expenses of parents, spouse and children residing abroad and expenses in connection with foreign travel, education and medical care of parents, spouse and children.
- **Following are few current account transactions which are permissible with prior approval of Government:**
  (a) Remittance of freight of vessel chartered by a PSU
  (b) Multi-modal transport operators making remittance to their agents abroad
  (c) Remittance of container detention charges > rate prescribed by Director General of Shipping
  (d) Payment of imports through ocean transport by a Govt. dept. or a PSU on CIF basis
  (e) Remittance of prize money or sponsorship of sports activity abroad > US $ 1,00,000.
- **Following are few current account transactions which are permissible with prior approval of RBI:**
  (a) Release of exchange exceeding US$ 10,000 or its equivalent in one calendar year, for one or more private visits to any country (except Nepal and Bhutan).
  (b) Gift remittances exceeding US$ 5,000 per remitter/donor per annum.
  (c) Donation exceeding US$ 5,000 per remitter/donor per annum.
  (d) Exchange facilities exceeding US$ 1, 00,000 for persons going abroad for employment.

**Permissible Capital Account Transactions**

- 'Capital account transaction' has been defined to mean any transaction which alters the assets or liabilities including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of person resident outside India.
- **Classes of Capital Account Transactions of Persons Resident in India**
  a) investment by a person resident in India in foreign securities.
  b) foreign currency loans raised in India and abroad by a person resident in India;
  c) transfer of immovable property outside India by a person resident in India;
  d) guarantees issued by a person resident in India in favour of a person resident outside India;
  e) export, import and holding of currency/currency notes;
  f) loans and overdrafts by a person resident in India from a person resident outside India;
  g) maintenance of foreign currency accounts in India and outside India by a person resident in India;
  h) taking out of insurance policy by a person resident in India from an insurance company outside India;
  i) loans and overdrafts by a person resident in India to a person resident outside India;
  j) remittance outside India of capital assets of a person resident in India;
  k) sale and purchase of foreign exchange derivatives in India and abroad and commodity derivatives abroad by a

person resident in India.

- **Classes of Capital Account Transactions of Persons Resident Outside India**
  a) Acquisition and transfer of immovable property in India by a person resident outside India.
  b) Guarantee by a person resident outside India in favour of, or on behalf of a person resident in India.
  c) Import and export of currency/currency notes into/from India by a person resident outside India.
  d) Deposits between a person resident in India and a person resident outside India.
  e) Foreign Currency accounts in India of a person resident outside India.
  f) Remittance outside India of capital assets in India of a person resident outside India.

**18. Explain the provisions of FEMA relating to acquisition of immoveable property outside India.**

PRI cannot acquire or transfer immoveable property situated outside India without permission from RBI

**Exemptions**

- Property held by a PRI who is national of a foreign state
- Property acquired by a PRI on or before 8th July, 1947, and continued to be held by him with permission of RBI
- Further a PRI may acquire such property
  - when he was resident outside India
  - by way of inheritance from a PROI
  - by way of gift or inheritance from a PRI who acquired it before July, 1947
  - by way pf purchase out of foreign exchange held in RFC Account
- Such PRI may transfer it by way of gift to his relative who is a PRI
- A company incorporated in India having overseas offices, may acquire immovable property outside India for its business and for residential purposes of its staff, in accordance with the directions issued by the RBI.

**19. What are the requirements for raising funds through ADRs and GDRs?**

- In accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Government of India
- A company can issue ADRs / GDRs if it is eligible to issue shares to persons resident outside India under the FDI Policy
- Indian listed companies not eligible to raise funds from the capital market or which are restrained from accessing the securities market are not eligible
- Unlisted companies can raise funds but they would require prior listing in the domestic market

No monetary limit

- No end use restrictions except real estate or the stock market
- Voting rights on shares issued under the Scheme shall be as per the provisions of Companies Act, 1956 and in a manner in which restrictions on voting rights imposed on ADR/GDR issues shall be consistent with the Company Law provisions.
- The pricing of ADR / GDR issues should be made at a price determined under the provisions of the Scheme of issue of Foreign Currency Convertible Bonds and Ordinary Shares (through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Government of India and directions issued by the RBI

**20. Explain the provisions of FEMA relating to Direct Investment in a JV / Wholly owned subsidiary outside India.**

**<u>Limits for Direct Investment in a JV / Wholly owned subsidiary outside India</u>**

- 400% of the net worth of the Indian Party as on the date of the last audited accounts
- Ceiling is not applicable if investment is made out of funds held in EEFC Account or out of funds raised through ADRs / GDRs.
- The above ceiling will include contribution to capital, loans granted and 100% guarantees issued to or on behalf of JV / WOS.

**<u>Conditions</u>**

- The Indian Party should not be on the RBI's Exporter's Caution list / list of defaulters
- All transactions should be routed through one branch of an authorized dealer
- Where the investment is > USD 5 million, valuation of the shares of the company shall be made by a Merchant Banker
- This automatic route facility is not available for investment in Pakistan.

**21. Short notes on establishment of branch, project and liaison offices.**

**<u>Branch Offices</u>**

- Companies incorporated outside India and engaged in manufacturing / trading activities may set up branch offices with specific approval of RBI
- Such branch offices are permitted to represent the parent company and undertake various research, consultancy, technical support activities
- Retail trading activities of any nature, manufacturing and processing activities are not allowed
- Have to file annual activity reports to RBI
- Branch Offices are permitted to acquire property for their own use and to carry out the permitted / incidental activities but not for leasing or renting out the property.
- However, entities from Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran or China are not allowed to acquire immovable property in India even for a Branch Office without prior RBI approval.

**<u>Project Offices</u>**

- General permission available to foreign companies to establish project offices in India provided they have secured a contract from an Indian company to execute a project in India and the project is funded by inward remittance from abroad
- If the above criteria is not met, then the foreign entity has to approach RBI

**<u>Liaison Office</u>**

- Companies incorporated outside India may establish Liaison Offices with specific approval of RBI – which can only undertake liaison activities acting as a channel of communication between Head Office and parties in India
- Application to RBI alongwith MOA and AOA and Certificate of registration in the country of incorporation
- Initial permission granted by RBI generally valid for 3 years
- Have to file annual activity reports to RBI
- Entities from Nepal are allowed to establish only Liaison Offices in India.

**22. What are the restrictions on acceptance of foreign contributions by certain associations.**

- Section 5(1) of the Foreign (Contribution) Regulation Act, 2010, provides that the Central Government may, 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 organisations with the activities of any political party, by an order published in the Official Gazette, specify such organisation as an organisation of a political nature not being a political party.
- Further, the Central Government may, frame the guidelines specifying the ground or grounds on which an organisation shall be specified as an organisation of a political nature.

**23. Explain the restrictions on acceptance of foreign hospitality.**

- Section 6 of the Foreign (Contribution) Regulation Act, 2010 prohibits acceptance of foreign hospitality by certain persons except with the prior permission of Central Government. Accordingly no member of a Legislature or office-bearer of a political party or Judge or Government servant or employee of any corporation or any other body owned or controlled by the Government shall, while visiting any country or territory outside India, accept, except with the prior permission of the Central Government, any foreign hospitality.
- However, it shall not be necessary to obtain any such permission for an emergent medical aid needed on account of sudden illness contracted during a visit outside India, but, where such foreign hospitality has been received, the person receiving such hospitality shall give, within one month from the date of receipt of such hospitality an intimation to the Central Government as to the receipt of such hospitality, and the source from which, and the manner in which, such hospitality was received by him.

**24. Explain the concept of Sustainable development.**

- It is essential for the people who live now to use resources of earth sustainably and prudently so that they do not deny certain benefits to future generations
- Right to wholesome environment is a fundamental right under Article 21 of Indian constitution
- Man has the fundamental right to freedom, equality and adequate conditions of life and he bears a responsibility to protect and improve the environment for the present and future generation

**Principles of Sustainable Development**

- Inter-generational equity
- Precautionary principle
- Polluter pays principle – Indian Council for Enviro-Legal Action vs. UOI – absolute liability of harm to the environment extends not only to compensate the victims of pollution, but also to the cost of restoring environmental degradation. Remediation of the environment is a part of the process of sustainable environment.

**25. Write short notes on Public Liability Insurance Act, 1991 and Pollution Control Boards.**

**Public Liability Insurance Act, 1991**

- The Public Liability Insurance Act, 1991, has been enacted for providing immediate relief to the persons affected by accidents occurring while handling any hazardous substance and for other incidental and connected matters.
- The growth of hazardous industries, processes and operations in India has been accompanied by growing risks of accidents, not only to the workmen of such undertakings, but also members of the public in the vicinity. Whereas the workers are generally protected under the Workmen's Compensation Act and the Employees' State Insurance Act, members of the public who may be victims are not assured of any relief except through long-drawn legal processes. Considering that majority of the affected people belong to weaker sections of the society, and very limited resources available with them to go through legal proceedings, this Act provides for Mandatory Public Liability Insurance to be taken by companies for installations handling any hazardous substance notified under the Environment Protection Act.
- Therefore, every owner, before starting handling any hazardous substance, have to take out one or more policies to

cover the liability of providing immediate relief on a specified scale to any person who suffers injury or damages to property or, in the event of death, to the legal heirs of the deceased.

- Application for relief is to be made by the applicant to the Collector within 5 years of the accident, who, after giving notice to the owner and the insurer and giving the parties an opportunity of being heard, shall make the award determining the amount of relief payable. The victim will however be free to approach the Court for higher compensation.

**Pollution Control Boards**

- Section 3 of the Air (Prevention and Control of Pollution) Act, 1981, provides for the constitution of the Central Pollution Control Board for prevention and control of air pollution. Accordingly, the Central Pollution Control Board constituted under Section 3 of the Water (Prevention and Control of Pollution) Act, 1974 shall exercise the powers and perform the functions of the Central Pollution Control Board for the prevention and Control of Air Pollution under the Act.

**Powers and Functions of the Central Board**

a) advise the Central Government on any matter concerning the improvement of the quality of air and prevention, control or abatement of air pollution;

b) plan and cause to be executed a nation-wide programme for the prevention, control or abatement of air pollution;

c) co-ordinate the activities of the State Boards and resolve disputes among them;

d) provide technical assistance and guidance to the State Boards, carry out and sponsor investigations and research relating to problems of air pollution and prevention, control or abatement of air pollution.

e) plan and organize the training of persons engaged or to be engaged in programmes for the prevention, control and abatement of air pollution on such terms and conditions as the Central Board may specify;

f) organise through mass media, a comprehensive programme regarding the prevention, control or abatement of air pollution;

g) collect, compile and publish technical and statistical data relating to air pollution and the measures devised for its effective prevention, control and abatement and prepare manuals, codes or guides relating to prevention, control or abatement of air pollution;

h) lay down standards for the quality of air;

i) collect and disseminate information in respect of matters relating to air pollution;

**Functions of the State Board**

a) to plan a comprehensive programme for the prevention, control or abatement of air pollution and to secure the execution thereof;

b) to advise the State Government on any matter concerning the prevention, control or abatement of air pollution;

c) to collect and disseminate information relating to air pollution;

d) to collaborate with the Central Board in organising the training of the persons engaged or to be engaged in programmes relating to prevention, control or abatement of air pollution and to organise mass-education programme relating thereto;

e) to inspect, at all reasonable times, any control equipment, industrial plant or manufacturing process and to give, by order, such directions to such persons as it may consider necessary to take steps for the prevention, control or abatement of air pollution;

f) to inspect air pollution control areas at such intervals as it may think necessary, assess the quality of air pollution and take steps for the prevention, control or abatement of pollution in such areas.

**26. Explain the power of Central Government relating to entry, inspection and take samples etc. under the Environment Protection Act.**

- In terms of Section 10 of the Environment Protection Act, 1986, any person empowered by the Central Government has been authorised to enter at all reasonable times, any place for the purpose of
  a) performing any of the functions entrusted to him;
  b) determining whether and if so in what manner, any such functions are to be performed;
  c) determining whether any of the provisions of the Act or rules make thereunder or any notice, order, directions etc. issued under the Act is being or has been complied with;
  d) examining or testing any equipment, industrial plant, record, register document etc. or for conducting a search of any building in which an offence under this Act has been committed or apprehended to be committed. Such a person would also have the right to seize any equipment, industrial plant, record, register, document etc. if he has reason to believe that it may furnish evidence of the commission of an offence punishable under the Act or any rules made thereunder or if he believes that such seizure is necessary to prevent or mitigate environmental pollution.
- In terms of Section 11 of the Environment Protection Act, 1986, the Central Government or any officer empowered in this behalf, may take, for the purpose of analysis, sample of air, water, soil or other substances from any factory, premises or other place in such manner as may be prescribed. However, the power of the person collecting samples is subject to fulfilment of following requirement:
  i. a notice of the intention to have the sample so analysed is served on the occupier or his agent or the person in charge of place;
  ii. the sample is collected in the presence of the occupier or his agent or the person in charge;
  iii. the container(s) in which the sample has been placed is marked and sealed and signed both by the person taking the sample and the occupier or his agent or the person in charge;
  iv. the samples are sent to the environmental laboratories without any delay.
- However, in the event of the occupier or his agent or the person- in-charge willfully absenting himself, or being present, refuses to sign the sealed and marked containers bearing the sample, the person taking the sample may cause the container(s) to be sealed, marked and signed by him before sending it to the environmental laboratory and shall inform the Government analyst in writing, about the wilful absence of, or refusal to sign by, the occupier, his agent, or the person in charge.

**27. Write short notes on environmental clearances and the case of MC Mehta vs. Union of India.**

**Environmental Clearances**

- The following projects need prior environmental clearances –
  - All new projects or activities listed in the Schedule
  - Expansion and modernisation of existing activities listed in the Schedule
  - Any change in the product mix in an existing manufacturing unit
- **Stages of clearances –**
  - Screening
  - Scoping
  - Public consultation
  - Appraisal

**MC Mehta vs. Union of India**

- Supreme Court in **M.C. Mehta and Another v. Union of India** and others ruled that an application for compensation in a pollution case can be maintained under Article 32 of the Constitution, for, such application is for the protection of the fundamental rights of the people and the Court has all incidental and ancillary powers including the power to forge new remedies and fashion new strategies designed to enforce fundamental rights.

- On the question of liability of an enterprise engaged in hazardous activities, the Supreme Court laid down for the first time a far-reaching ruling, that an enterprise which is engaged in hazardous or inherently dangerous activity and an industry which poses a potential threat to the health and safety of the persons working in the factory and of those residing in the surrounding area owes an absolute and non-delegatable duty to the community to ensure that no harm results to any one on account of an hazardous or inherently dangerous nature of the activity which it has undertaken.
- The Court further reiterated that the rule in **Rylands v. Fletcher** of strict liability would apply in India but without any exceptions whatsoever recognised in England. The Court also ruled that the measure of compensation must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect.

**28. Write short notes on Noise pollution and National Green Tribunal.**

**Noise pollution**

- Noise pollution simply connotes unwanted sound in the atmosphere. It is unwanted because it lacks the agreeable musical quality. Noise is therefore, sound, but it is pollution when the effects of sound become undesirable - Bijayanada Patra and others vs. District Magistrate, Cuttack and Others.
- In order to control the noise pollution caused from various sources such as industrial activity, construction activity, generator sets, loud speakers, public address system, music systems, vehicular horns and other mechanical devices the Central Government has framed certain rules known as 'The Noise Pollution (Regulation and Control) Rules, 2000.
- The rules provide for the ambient air quality standard in respect of noise for different areas/zones. An area comprising 100 metres around hospitals, educational institutions and courts has been declared as the silence area/zone. The ambient air quality standards shall also be considered by the all development authorities, local bodies while taking any development activity.
- A loud speaker or a public address system shall not be used at night (between 10:00 p.m. to 6:00 a.m.) except in closed premises for communication. Whoever commits any offence of playing music or uses any sound amplifiers, beats a drum or blows a horn, etc. in a silence zone/area shall be liable to a penalty.

**National Green Tribunal**

- The National Green Tribunal Act, 2010 intend to provide for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto.
- The Tribunal shall consist of a full time Chairperson; and not less than ten but subject to maximum of twenty full time Judicial Members as the Central Government may, from time to time, notify; and not less than ten but subject to maximum of twenty full time Expert Members, as the Central Government may, from time to time, notify.
- The Chairperson of the Tribunal may, if considered necessary, invite any one or more person having specialised knowledge and experience in a particular case before the Tribunal to assist the Tribunal in that case.
- The Tribunal, by an order, may provide,—
  - (a) relief and compensation to the victims of pollution and other environmental damage;
  - (b) restitution of property damaged;
  - (c) restitution of the environment for such area or areas, as the Tribunal may think fit.

**29. What are the contents of complete specification?**

Section 10 of the Patents Act, 1970 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.

**30. Write short notes on restoration of lapsed patents and grant of Compulsory licences in connection with patents.**

**Restoration of Lapsed Patents**

- Section 60 of the Patents Act, 1970 provides that where a patent has ceased to have effect by reason of failure to pay any renewal fee within the period prescribed, the patentee or his legal representative and where the patent was held by two or more persons jointly, then with the leave of the Controller one or more of them without joining the others, may within 18 months from the date on which the patent ceased to have effect, make an application for the restoration of the patent.
- Section 61 provides that if, after hearing the applicant in cases where the applicant so desires or the Controller thinks fit, the Controller is prima facie satisfied that the failure to pay the renewal fee was unintentional and that there has been no undue delay in the making of the application, he shall publish the application in the prescribed manner; and within the prescribed period, any person interested may give notice to the Controller of opposition thereto on either or both of the following grounds that —

(a) the failure to pay the renewal fee was not unintentional; or

(b) there has been undue delay in the making of the application.

- If notice of opposition is given within the prescribed period aforesaid, the Controller shall notify the applicant, and shall give to him and to the opponent an opportunity to be heard before deciding the case. If no notice of opposition is given within the prescribed period aforesaid or if in the case of opposition, the decision of the Controller is in favour of the applicant, the Controller shall, upon payment of any unpaid renewal fee and such additional fee as may be prescribed, restore the patent and any patent of addition specified in the application which has ceased to have effect on the cesser of that patent.

**Grant of Compulsory licences in connection with patents**

- Section 84 of the Patents Act, 1970 provides that at any time after the expiration of three years from the date of the sealing of a patent, any person interested may make an application to the Controller for grant of compulsory licence on patent on any of the following grounds, namely:
  (a) that the reasonable requirements of the public with respect to the patented invention have not been satisfied, or
  (b) that the patented invention is not available to the public at a reasonably affordable price, or
  (c) that the patented invention is not worked in the territory of India.
- An application for compulsory licence may be made by any person notwithstanding that he is already the holder of a licence under the patent and no person shall be estopped from alleging that the reasonable requirements of the public with respect to the patented invention are not satisfied or that the patented invention is not worked in the territory of India or that the patented invention is not available to the public at a reasonably affordable price by reason of any admission made by him, whether in such a licence or otherwise or by reason of his having accepted such a licence.

- Section 90 of the Patents Act, 1970 provides that in settling the terms and conditions of a compulsory licence, the Controller shall endeavour to secure that —
  i. the royalty and other remuneration, if any, reserved to the patentee or other person beneficially entitled to the patent, is reasonable, having regard to the nature of the invention, the expenditure incurred by the patentee in making the invention or in developing it and obtaining a patent and keeping it in force and other relevant factors;
  ii. the patented invention is worked to the fullest extent by the person to whom the licence is granted and with reasonable profit to him;
  iii. the patented articles are made available to the public at reasonably affordable prices;
  iv. the licence granted is a non-exclusive licence;
  v. the right of the licencee is non-assignable;
  vi. the licence is for the balance term of the patent unless a shorter term is consistent with public interest;

**31. Distinguish between inventions and patentable inventions.**

**The following may be inventions but are not patentable within the meaning of Section 3 of the Patents Act, 1970:**

- an invention which is frivolous or which claims anything obviously contrary to well established natural laws;
- an invention the primary or intended use or commercial exploitation of which could be contrary to public order or morality or which causes serious prejudice to human, animal or plant life or health or to the environment;
- the mere discovery of a scientific principle or the formulation of an abstract theory or discovery of any living thing or non-living substances occurring in nature;
- the mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any property or mere new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant;
- substance obtained by a mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance;
- the mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way;
- a method of agriculture or horticulture;
- any process for the medicinal, surgical, curative, prophylactic diagnostic, therapeutic or other treatment of human beings or any process for a similar treatment of animals to render them free of disease or to increase their economic value or that of their products;
- plants and animals in whole or any part thereof other than micro-organisms but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals;
- a computer programme per se other than its technical application to industry or a combination with hardware;
- a literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions;
- a mere scheme or rule or method of performing mental act or method of playing game;
- a presentation of information;
- topography of integrated circuits.

**32. Write short notes on Collective Marks and assignment of copyrights.**

**Collective Marks**

- Collective Marks means a trades mark distinguish the goods or services of members of an association of person not being a partnership within the meaning of the Indian Partnership Act, 1932 which is the proprietor of the mark from those of others.
- Sections 61 to 68 of the Trademarks Act, 1999 contain provisions relating to the registration of Collective trade marks. These sections provide for registration of a collective mark which belongs to a group or association of persons and the use thereof is reserved for members of the group or association of persons.
- Collective marks serve to distinguish characteristic features of the products or services offered by those enterprises.
- It may be owned by an association which may not use the collective mark but whose members may use the same. The association ensures compliance of certain quality standards by its members, who may use the collective mark if they comply with the prescribed requirements concerning its use.
- The primary function of a collective mark is to indicate a trade connection with the Association or Organisation.

**Assignment of Copyrights**

- An assignment may be defined as the transfer of a particular right, leaving nothing with the assignor by virtue of assigning a particular right, and bestowing on the assignee the whole of the legal interest in the right issued.
- Section 18 of the Copyright Act 1957 provides for the assignment of copyright in an existing work as well as future work. In both the cases an assignment may be made of the copyright either wholly or partially and generally or subject to limitations and that too for the whole period of copyright or part thereof.
- However, in case of assignment of copyright in any future work, the assignment has the real effect only when the work comes into existence.
- Section 19 of the Copyright Act 1957 provides that an assignment of copyright should be in writing signed by the owner of the copyright. Mere acceptance of remuneration or delivery of manuscript does not constitute an assignment of copyright. Copyright is different from the material object which is the subject of the copyright. So it should be clear that the transfer of the material object does not necessarily involve a transfer of the copyright.
- The assignment of copyright should specify the assigned work, rights including duration, territorial extent of assignment and the amount of royalty. However, in the absence of duration and territorial extent, the assignment shall be valid for a period of five years and within the territory of India.

**33. Explain the provisions of Trademarks Act relating to removal of trademark for non-use.**

- Section 47 of the Trademarks Act, 1999 deals with removal of a trade mark from the register on the ground of non-use and provides that a trade mark which is not used within 5 years of its registration, becomes liable for removal either completely or in respect of those goods or services for which the mark has not been used. The five years period starts from the date on which the trade mark is actually entered on the register.
- However, Section 47(3) protects a mark from being removed from the register on ground of non-use if such non-use is shown to have been due to special circumstances in the trade which may include restriction imposed by any law or regulation on the use of trade mark in India.

**34. What is money laundering?**

Money laundering is the processing of criminal proceeds to disguise its illegal origin. Terrorism, illegal arms sales, financial crimes, smuggling, and the activities of organised crime, including drug trafficking and prostitution rings, generate huge sums. Embezzlement, insider trading, bribery and computer fraud also produce large profits and create an incentive to legitimise the ill-gotten gains through money laundering. When a criminal activity generates substantial profits, the individual or group involved in such activities route the funds to safe heavens by disguising the sources, changing the form, or moving the funds to a place where they are less likely to attract attention.

**35. Write short notes on Financial Action Task Force and obligations of banks and financial institutions under PMLA.**

**Financial Action Task Force**

- The Financial Action Task Force (FATF) is an inter-governmental body whose purpose is the development and promotion of policies, both at national and international levels, to combat money laundering and terrorist financing. The Task Force is therefore a "policy-making body" which works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas.
- The FATF monitors members' progress in implementing necessary measures, reviews money laundering and terrorist financing techniques and counter-measures, and promotes the adoption and implementation of appropriate measures globally. In performing these activities, the FATF collaborates with other international bodies involved in combating money laundering and the financing of terrorism.
- The FATF does not have a tightly defined constitution or an unlimited life span. The Task Force periodically reviews its mission. The FATF has been in existence since 1989. The FATF currently comprises 34 members' jurisdictions and 2 regional organizations, representing most major financial centers in all parts of the globe. India became 34th member of FATF in the year 2010.

**Obligations of banks and financial institutions under PMLA**

Under the PMLA, every banking company, financial institution and intermediary—

- Shall maintain record of nature and value of certain transactions –
  a) Cash transactions > Rs. 10 lakhs
  b) Series of cash transactions within one calendar month > Rs. 10 lakhs
  c) All suspicious transactions
- Shall maintain records of identity of its clients and shall require disclosures to be made by them
- Should Appoint a Principal Officer who shall ensure compliance with above
- Should Submit cash transaction report, suspicion transaction report etc.
- Should have a KYC policy

**36. Explain the provisions of Minimum Wages Act relating to mandatory payment of minimum wages to the workers.**

- Section 3 of the Minimum Wages Act, 1948 lays down that the 'appropriate Government' shall fix the minimum rates of wages, payable to employees in an employment specified in the Schedule.
- In the case of an employment specified in Part I, the minimum rates of wages must be fixed for the entire State, no parts of the State being omitted. The rates to be fixed need not be uniform. Different rates can be fixed for different zones or localities - Basti Ram v. State of A.P.
- The "appropriate Government" may not fix minimum rates of wages in respect of any scheduled employment in which less than 1000 employees in the whole State are engaged. But when it comes to its knowledge after a finding that this number has increased to 1,000 or more in such employment, it shall fix minimum wage rate.

**37. Write short notes on amount of gratuity payable to a worker and rights and obligations of employers w.r.t to payment of gratuity.**

- Gratuity is calculated on the basis of continuous service as defined above i.e. for every completed year of service or part in excess of six months, at the rate of fifteen days wages last drawn. The maximum amount of gratuity allowed under the Act is Rs. 10 lakh.

**Employers Duty to Determine and Pay Gratuity**

- As soon as gratuity becomes payable the employer shall, whether the application has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the Controlling Authority, specifying the amount of gratuity so determined.

- The employer shall arrange to pay the amount of gratuity within thirty days from the date of its becoming payable to the person to whom it is payable.
- If the amount of gratuity payable is not paid by the employer within the specified period, the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at the rate of 10% per annum.

**38. Explain the computation of bonus payable to the workers.**

- Calculation of Gross profits –

  Net Profits after tax + depreciation + bonus + tax + capital losses + losses from business outside India – capital profits and profits from business outside India
- Gross profits – depreciation under IT Act – direct tax
- Then add the difference between the direct tax on gross profit of PY and tax on (gross profit for PY – bonus of PY) to determine the available surplus
- Then 67% of available surplus = Allocable surplus

**39. Short note on payment of Customary or interim bonus to the employees.**

In terms of Section 17 of the Payment of Bonus Act, 1965, where in any accounting year (a) an employer has paid any puja bonus or other customary bonus to an employee; or (b) an employer has paid a part of the bonus payable under this Act to an employee before the date on which such bonus becomes payable; then, the employer shall be entitled to deduct at the amount of bonus so paid from the amount of bonus payable by him to the employee under this Act in respect of that accounting year and the employee shall be entitled to receive only the balance.

**40. Can gratuity payable to workers be attached by a decree of Court ?**

Gratuity has been exempted from attachment in execution of any decree or order of any Civil, Revenue or Criminal Court. This relief is aimed at providing payment of gratuity to the person or persons entitled there to without being affected by any order of attachment by an decree of any Court.

**41. Short note on Employees' Provident Fund Scheme.**

- The Central Government has framed a Scheme called Employees Provident Fund Scheme. The Fund vests in and is administered by the Central Board constituted under the Employees Provident Fund and Miscellaneous Provisions Act, 1952.
- The Employees Provident Fund Scheme contains provisions regarding the terms and conditions subject to which a member of the Central Board may be appointed and of procedure of the meetings of the Central Board.
- The Scheme also lays down the manner in which the Board shall administer the funds vested in it however subject to the provisions of Section 6AA and 6C of the Employees Provident Fund and Miscellaneous Provisions Act, 1952.

**42. What do you mean by Employees Deposit Linked Insurance Scheme.**

- The Employees' Deposits-Linked Insurance Scheme, 1976 came into force on the 1st August, 1976.
- It is applicable to all factories / establishments to which the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 applies.
- All the employees who are members of the Provident Funds in both the exempted and the unexempted establishments are covered under the scheme.
- The employees are not required to contribute to this Insurance Fund. The employers are required to pay contributions to the Insurance Fund at the rate of 1% of the total emoluments, i.e., basic wages, dearness allowance including, cash value of any food concession and retaining allowance, if any.

- The employers of all covered establishments are required to pay charges to the Insurance Fund, at the rate of 0.01% of the pay of the employee-members for meeting the administrative charges, subject to a minimum of Rs. 2/- per month.
- Payment of assurance benefit- In case of death of a member, an amount equal to the average balance in the account of the deceased during the preceding 12 months or period of membership, whichever is less shall be paid to the persons eligible to receive the amount or the Provident Fund accumulations.
- In case the average balance exceeds Rs. 50,000, the amount payable shall be Rs. 50,000 plus 40% of the amount of such excess subject to a ceiling of Rs. 1 lakh.

**43. Short note on Employees' State Insurance.**

Section 38 of the Employees' State Insurance Act, 1948 makes compulsory that all the employees in factories or establishments to which this Act applies shall be insured in the manner provided by this Act. Such insured persons shall pay contributions towards Insurance Fund through their employers who will also pay their own contribution. Such insured persons are entitled to get certain benefits from that fund which shall be administered by the Corporation. Any dispute will be settled by the Employees' Insurance Court.

**44. What do you mean by employment injury under the ESI Act?**

- In terms of Section 2(8) of the Employees' State Insurance Act, 1948, employment injury means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India.
- It is well settled that an employment injury need not necessarily be confined to any injury sustained by a person within the premises or the concern where a person works. Whether in a particular case the theory of notional extension of employment would take in the time and place of accident so as to bring it within an employment injury, will have to depend on the assessment of several factors.
- There should be a nexus between the circumstances of the accident and the employment. On facts no case could be an authority for another case, since there would necessarily be some differences between the two cases. Therefore, each case has to be decided on its own facts. It is sufficient if it is proved, that the injury to the employee was caused by an accident arising out of and in the course of employment no matter when and where it occurred. There is not even a geographical limitation.
- The place or time of accident should not be totally unrelated to the employment - <u>Regional Director, E.S.I. Corpn. v. L. Ranga Rao.</u>
- Where an employee who is on his way to factory meets with an accident, one K.M. from the place of employment, the Court held that the injury cannot be said to be caused by accident arising out of and in the course of his employment. Mere road accident on a public road while employee was on his way to place of employment cannot be said to have its origin in his employment in the factory <u>- Regional Director ESI v. Francis de Costa</u>.

**45. Explain the Employer's liability for payment of compensation to workers when contractor is engaged.**

- Sometimes, employer may engage a contractor instead of employing his own employee for the purpose of doing any work in respect of his trade or business. Such a contractor then executes the work with the help of the employee engaged by him. If any injury is caused by an accident to any of these employees, the employer cannot be held liable because they are not employed by him and hence are not his employees.
- But Section 12 of the Employees' Compensation Act, 1923 makes the employer liable for compensation to such employees hired by the contractor under following circumstances:
  (a) The contractor is engaged to do a work which is part of the trade or business of the employer (called principal).
  (b) The employee were engaged in the course of or for the purpose of his trade or business.
  (c) The accident occurred in or about the premises on which the principal employer has undertaken or undertakes to execute the work concerned.

  The amount of compensation shall be calculated with reference to the wages of the employee under the employer by whom he is immediately employed.

- Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor or any other person from whom the employee could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section, he shall be entitled to be indemnified by any person standing to him in relation of a contractor from whom the employee could have recovered compensation and all questions as the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.
- The above provision, however, does not prevent an employee from recovering compensation from the contractor instead of the employer, i.e., the Principal.

**46. Distinguish between partial disablement and total disablement.**

- Partial disablement can be classified as temporary partial disablement and permanent partial disablement.
  (a) Where the disablement is of a temporary nature: Such disablement as reduces the earning capacity of an employee in the employment in which he was engaged at the time of the accident resulting in the disablement; and
  (b) Where the disablement is of a permanent nature: Such disablement as reduces for all time his earning capacity in every employment which he was capable of undertaking at the time.
- In the case of Sukhai v. Hukam Chand Jute Mills Ltd - it was observed - "If a workman suffers as a result of an injury from a physical defect which does not in fact reduce his capacity to work but at the same time makes his labour unsaleable in any market reasonably accessible to him, there will be either total incapacity for work when no work is available to him at all or there will be a partial incapacity when such defect makes his labour saleable for less than it would otherwise fetch."
- "Total disablement" means, such disablement whether of a temporary or permanent nature, which incapacitates an employee for all work which he was capable of performing at the time of accident resulting in such disablement.
- Where the worker lost his vision of one eye permanently in an accident in course of his employment in colliery, the compensation should be assessed in accordance with total disablement - Katras Jherriah Coal Co. Ltd. v. Kamakhya Paul.
- In an injury the workman, had amputated his left arm from elbow, who was a carpenter. It was held by the Supreme Court in Pratap Narain Singh Deo v. Sriniwas Sabata, that it is a total disablement as the carpenter cannot carry his work with one hand and not a partial permanent disablement.
- Where the workman, a driver of bus belonging to the employer was involved in an accident which resulted in an impairment of the free movement of his left hand disabling him from driving vehicles, it was held that this is not one of the injuries which are accepted to result in permanent total disablement. In the present case the workman was also capable of performing duties and executing works other than driving vehicles. Nature of injury to be determined not on the basis of the work he was doing at the time of accident - Divisional Manager KSRTC v. Bhimaiah.

**47. Write short notes on Prohibition of employment of contract labour and welfare and health of contract labour.**

**Prohibition of employment of contract labour**

The appropriate Government is empowered under the Contract Labour (Regulation and Abolition) Act, 1970 to prohibit employment of contract labour in any process, operation or other work in any establishment by issuing a notification in the Official Gazette. The following steps are, however, required to be taken before such a notification is issued:

(1) the appropriate Government shall consult the Central Board or as the case may be, the State Board,
(2) the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors such as:
  (a) whether the process, operation or other work incidential to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment.

(b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;
(c) whether it is done ordinarily through regular workmen in that establishment similar thereto;
(d) whether it is sufficient to employ considerable number of wholetime workmen. (Section 10)

**<u>Welfare and Health of Contract Labour</u>**

- <u>Canteens:</u> In every establishment wherein contract labour numbering 100 or more is ordinarily employed by a contractor, one or more canteens shall be provided and maintained by the contractor for the use of such contract labour.
- <u>Rest rooms:</u> In every place where contract labour is required to halt at night in connection with the work of an establishment, there shall be provided and maintained by the contractor for the use of the contract labour such number of rest rooms or such of the suitable alternative accommodation. The rest room or alternative accommodation shall be sufficiently lighted and ventilated and shall be maintained in a clean and comfortable condition.
- <u>Other facilities:</u> It shall be the duty of every contractor employing contract labour to provide and maintain:
  (a) a sufficient supply of wholesome drinking water for the contract labour at convenient places;
  (b) a sufficient number of latrines and urinals of the prescribed types conveniently situated and accessible to the contract labour; and
  (c) washing facilities.
  **(d)** First Aid facilities: The contractor is required to provide and maintain a first aid box equipped with the prescribed contents at every place, where contract labour is employed by him. The first aid box should be readily accessible during working hours.

**48.** **Distinguish between lay off and lock out.**

- In lay off, the employer refuses to give employment to workmen due to certain specified reasons. Lock out on the other hand is a deliberate closure of the business and the employer locks out the workers not due to any such reasons.
- In lay off the business of the company continues. However in lock out, the place of the business is closed down for the time being.
- In lay off wages are not paid. No wages or compensation is paid unless the lock out is held to be unjustified.
- Lay off is the result of trade reasons. Lock out is weapon against collective bargaining.
- in case of lay off, no penalties are applicable. However, lock out is subject to certain restrictions and penalties.

**49.** **Whether individual dispute can be said to be industrial dispute?**

- According to <u>Section 2A of the Industrial Disputes Act, 1947</u>, where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between the workman and his employer connected with or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.
- The ambit of Section 2A is not limited to bare discharge, dismissal, retrenchment or termination of service of an individual workman, but any dispute or difference between the workman and the employer connected with or arising out of discharge, dismissal, retrenchment or termination is to be deemed industrial dispute. It has to be considered whether the claim for gratuity is connected with or arises out of discharge, dismissal, retrenchment or termination of service.
- The meaning of the phrase "arising out" of is explained in Mackinnon Mackenzie & Co. Ltd. v. I.M. Isaak. A thing is said to arise out of another when there is a close nexus between the two and one thing flows out of another as a consequence.

**50.** **Discuss the various types of strikes.**

- **Stay-in, sit-down, pen-down or tool-down strike** - In all such cases, the workmen after taking their seats, refuse to do work. Even when asked to leave the premises, they refuse to do so. All such acts on the part of the workmen acting in combination, amount to a strike. Since such strikes are directed against the employer, they are also called primary strikes.
- **Go-slow** - Go-slow does not amount to strike, but it is a serious case of misconduct. In the case of Bharat Sugar Mills Ltd. v. Jai Singh, the Supreme Court explained the legality of go-slow 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 prenicious 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."
- **Sympathetic strike** - Cessation of work in the support of the demands of workmen belonging to other employer is called a sympathetic strike.
- **Hunger strike** - Some workers may resort to fast on or near the place of work or residence of the employer. If it is peaceful and does not result in cessation of work, it will not constitute a strike.
- **Work-to-rule** - Since there is no cessation of work, it does not constitute a strike.

**51.** **Write short notes on Unfair Labour Practices, wages for the strike period and Prohibition of strikes and lockouts.**

**Unfair Labour Practices**

Section 25T of the Industrial Disputes Act, 1947 lays down that no employer or workman or a Trade Union, shall commit any unfair labour practice. Section 25U provides that any person who commits any unfair labour practice shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

Following are few examples of unfair labour practices:

**On the part of employers and trade unions of employers**

- To interfere with, restrain from, or coerce, workmen in the exercise of their right to organise, form, join or assist a trade union or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection that is to say:
  (a) threatening workmen with discharge or dismissal, if they join a trade union.
  (b) threatening a lock-out or closure, if a trade union is organised;
  (c) granting wage increase to workmen at crucial periods of trade union organisation, with a view to undermining the efforts of the trade union at organisation.
- To dominate, interfere with or contribute support, financial or otherwise to any trade union, that is to say:
  (a) an employer taking an active interest in organising a trade union of workmen; and
  (b) an employer showing partiality or granting favour to one of several trade unions attempting to organise his workmen or to its members, where such a trade union is not a recognised trade union.
- To establish employer sponsored trade unions of workmen.
- To abolish the work of a regular nature being done by workmen, and to give such work to contractors as a measure of breaking a strike.
- To transfer a workman mala fide from one place to another under the guise of following management policy.
- Failure to implement award, settlement or agreement.
- To indulge in acts of force or violence.

- To refuse to bargain collectively, in good faith with the recognised trade unions.

**On the part of workmen and trade unions of workmen**

- To advise or actively support or instigate any strike deemed to be illegal under this Act.
- To coerce workmen in the exercise of their right to self-organisation or to join a trade union or refrain from joining any trade union, that is to say:
  (a) for a trade union or its members to picketing in such a manner that non-striking workmen are physically debarred from entering the work places;
  (b) to indulge in acts of force or violence or to hold out threats of intimidation in connection with a strike against non-striking workmen or against managerial staff.
- For a recognised union to refuse to bargain collectively in good faith with the employer.
- To indulge in coercive activities against certification of bargaining representative.
- To stage, encourage or instigate such forms of coercive actions as wilful go slow, squatting on the work premises after working hours or gherao of any of the members of the managerial or other staff.
- To stage demonstrations at the residences of the employers or the managerial staff members.

**Wages for the Strike Period**

- The payment of wages for the strike period will depend upon whether the strike is justified or unjustified. This also depends upon several factors such as service conditions of workman, the cause which led to strike, the urgency of cause or demand of workman, the reason for not resorting to dispute settlement machinery under the Act or service rules/regulations etc.
- No wages are payable if the strike is illegal or it is unjustified.
- Further, if the workers indulge in violence, no wages will be paid even when their strike was legal and justified - Dum Dum Aluminium Workers Union v. Aluminium Mfg. Co.
- In the case of Crompton Greaves Ltd. v. The Workmen, it was observed that for entitlement of wages for the strike period, the strike should be legal and justified.
- Supreme Court in Bank of India v. T.S. Kelawala decided, that where employees are going on a strike for a portion of the day or for whole day and there was no provision in the contract of employment or service rules or regulations for deducting wages for the period for which the employees refused to work although work was offered to them, and such deduction is not covered by any other provision, employer is entitled to deduct wages proportionately for the period of absence or for the whole day depending upon the circumstances.

**Prohibition of strikes and lockouts**

General prohibition of strikes and lock-outs – Section 23 of the Industrial Disputes Act, 1947

No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out:

a) during the pendency of conciliation proceedings before a Board and seven days the conclusion of such proceedings;
b) during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal and two months after the conclusion of such proceedings;
c) (bb) during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under sub-section (3A) of Section 10A; or
d) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award.

Prohibition of strikes and lock-outs in public utility service

No person employed in a public utility service shall go on strike in breach of contract.

(a) without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking, i.e., from the date of the notice to the date of strike a period of six weeks should not have elapsed; or
(b) within 14 days of giving of such notice, i.e., a period of 14 days must have elapsed from the date of notice to the

date of strike; or

(c) before the expiry of the date of strike specified in any such notice as aforesaid, i.e., the date specified in the notice must have expired on the day of striking; or

(d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conciliation of such proceedings.

**52. Explain the provisions of Industrial Disputes Act relating to reference of industrial disputes through arbitration.**

- Section 10-A of the Industrial Disputes Act, 1947_provides for the settlement of industrial disputes by voluntary reference of such dispute to arbitrators.
- Where any industrial dispute exists or is apprehended and the same has not yet been referred for adjudication to a Labour Court, Tribunal or National Tribunal, the employer and the workmen may refer the dispute, by a written agreement, to arbitration specifying the arbitrator or arbitrators. The presiding officer of a Labour Court or Tribunal or National Tribunal can also be named by the parties as arbitrator.
- Where an arbitration agreement provides for a reference of the dispute to an even number of arbitrators, the agreement shall provide for the appointment of another person as umpire who shall enter upon the reference, if the arbitrators are equally divided in their opinion, and the award of the umpire shall prevail and shall be deemed to be the arbitration award for the purposes of this Act.
- A copy of the arbitration agreement shall be forwarded to appropriate Government and the Conciliation Officer and the appropriate Government shall within one month from the date of the receipt of such copy, publish the same in the Official Gazette.
- The arbitrator or arbitrators shall investigate the dispute and submit to the appropriate Government the arbitration award signed by the arbitrator or all arbitrators, as the case may be.
- Where an industrial dispute has been referred to arbitration and a notification has been issued, the appropriate Government may, by order, prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference.

**53. Explain the definition of factory.**

- Section 2(m) of the Factories Act, 1948 states that "Factory" includes any premises including the precincts thereof
  (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on; or
  (ii) whereon twenty or more workers are working, or were working on a day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on.
- But does not include a mine subject to the operation of the Mines Act, 1952 or a mobile unit belonging to the armed forces of the Union or a railway running shed, or a hotel, restaurant or eating place.
- Essential elements of a factory:
  (3) There must be a premises.
  (4) There must be a manufacturing process which is being carried on or is so ordinarily carried on in any part of such a premises.
  (5) There must be ten or more workers who are/were working in such a premises on any day of the last 12 months where the said manufacturing process is carried on with the aid of power. But where the manufacturing process is carried on without the aid of power, the required number of workers working should be twenty or more.
- The Supreme Court in Ardeshir H. Bhiwandiwala v. State of Bombay, observed that the legislature had no intention to discriminate between workers engaged in a manufacturing process in a building and those engaged in such a process on an open land and held that the salt works, in which the work done is of conversion of sea water into crystals of salt, come within the meaning of the word 'premises'.

**54. What do you mean by manufacturing process?**

- Section 2(k) of the Factories Act, 1948 provides that Manufacturing Process means any process for
  a) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise, treating or adopting any article or substance with a view to its use, sale, transport, delivery or disposal; or
  b) pumping oil, water or sewage or any other substance; or
  c) generating, transforming, transmitting power; or
  d) composing types for printing, printing by letter-press, lithography, photogravure or other similar process, or book-binding; or
  e) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or
  f) preserving or storing any article in cold storage.
- Madras High Court in the case of re. Seshadrinatha Sarma, held that to constitute a manufacture there should not be essentially some kind of transformation of substance and the article need not become commercially as another and different article from that at which it begins its existence so long as there has been an indisputable transformation of substance by the use of machinery and transformed substance is commercially marketable.

**55. Who can be appointed as Occupier of factories?**

- A person who has ultimate control over the affairs of the factory
- Deemed occupier –
  – Firm – any partner
  – Company – any director
  – Factory owned by Govt. – person appointed by govt. to manage the affairs of the factory
- **J K Industries vs. Chief Inspector of Factories** – only a director can be occupier in case of a company

**56. Explain the provisions of Factories Act relating to annual leave with wages.**

- According to Section 79 of the of the Factories Act, 1948, where a worker has worked for a minimum period of 240 days or more in a factory during any calendar year, i.e., the year beginning from 1st January, he is entitled to leave with wages on the following basis:
  (i) for adults – One day for every 20 days of work performed by them during the previous calendar year.
  (ii) for children – One day for every fifteen days of work performed by him during the previous calendar year.
- If a worker does not commence his services from 1st January, he is entitled to these leaves at the above mentioned rates provided he has worked for 2/3rd of the total number of days in the remaining part of the calendar year.
- These leaves are exclusive of all holidays whether occurring during or at either end of the period of leave.
- In calculating leave, fraction of leave of half a day or more shall be treated as one full day's leave and fraction of less than half a day shall be ignored.
- For the purpose of calculating the minimum period, following periods are also included:
  (i) any days of lay-off as agreed or as permissible under the Standing Orders.
  (ii) for female workers, period of maternity leave not exceeding 12 weeks.
  (iii) leave earned in the year prior to that in which the leave is enjoyed.
- A worker who is discharged or dismissed from service or quits his employment or is superannuated or dies while in service during the course of calendar year, he or his heir or nominee as the case may be, shall be entitled to wages in lieu of the quantum of leave to which he was entitled immediately before his discharge, dismissal, quitting of employment, superannuation or death.
- If any worker does not avail any earned leave entitled to him during the calendar year, it can be carried forward to the next calendar year subject to the maximum of 30 days for an adult worker and 40 days for a child worker.

**57. Write short notes on Payment of subsistence allowance and matters to be provided in the standing orders.**

**Payment of Subsistence Allowance**

Section 10A of the Industrial Employment (Standing Orders) Act, 1946 provides as follows:

Where any workman is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, the employer shall pay to such a workman the subsistence allowance

(a) at the rate of 50% of the wages which the workman was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension: and

(b) at the rate of 75% of such wages for the remaining period of suspension if the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman.

Any dispute regarding subsistence allowance may be referred by the workman or the employer, to the Labour Court constituted under the Industrial Disputes Act, 1947.

**Matters to be provided in the Standing Orders**

- Classification of workmen, e.g., whether permanent, temporary, apprentices, probationers or badlis.
- Manner of intimating to workmen periods and hours of work, holidays, pay-days and wage rates.
- Shift working.
- Attendance and late coming.
- Conditions of, procedure in applying for, and the authority which may grant leave and holidays.
- Requirement to enter premises by certain gates, and liability to search.
- Closing and reopening of sections of the industrial establishment, and temporary stoppage of work and the rights and liabilities of the employer and workmen arising therefrom.
- Termination of employment, and the notice thereof to be given by employer and workmen.
- Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct.
- Means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants.
- Service record-matters relating to service card, token tickets, certification of services, change of residential address of workers and record of age.

# SECURITIES LAWS

**1. Explain the Powers and Role of SEBI?**

**Section 11 of the SEBI Act, 1992 lays down that it shall be the duty of SEBI to protect the interests of the investors in securities and to promote the development of, and to regulate the securities markets by such measures as it thinks fit. These measures would include:**

(a) regulating the business in stock exchanges and any other securities markets;
(b) registering and regulating the working of primary and secondary market intermediaries;
(c) registering and regulating the working of the depositories, participants, custodians of securities, foreign institutional investors, credit rating agencies;
(d) registering and regulating the working of venture capital funds and collective investment schemes, including mutual funds;
(e) promoting and regulating self-regulatory organisations;
(f) prohibiting fraudulent and unfair trade practices relating to securities markets;
(g) promoting investors' education and training of intermediaries of securities markets;
(h) prohibiting insider trading in securities;
(i) regulating substantial acquisition of shares and takeover of companies;
(j) calling for information from, undertaking inspection, conducting inquiries and audits of the stock exchanges, mutual funds, other persons associated with the securities market, intermediaries and self-regulatory organisations in the securities market;

**2. Explain the relation between securities market and economic growth.**

- **A well functioning securities market is conducive to sustained economic growth.**
- The securities market fosters economic growth to the extent that it-(a) augments the quantities of real savings and capital formation from any given level of national income, (b) increases net capital inflow from abroad, (c) raises the productivity of investment by improving allocation of investible funds, and (d) reduces the cost of capital.
- It is reasonable to expect savings and capital accumulation and formation to respond favourably to developments in securities market.
- **International Linkage:** The securities market facilitates the internationalisation of an economy by linking it with the rest of the world. This linkage assists through the inflow of capital in the form of portfolio investment. Moreover, a strong domestic stock market performance forms the basis for well performing domestic corporate to raise capital in the international market.
- **Improved Investment Allocation:** Any financial development produces allocational improvement over a system of segregated investment opportunities. The benefits of improved investment allocation is such that Mc Kinnon defines economic development as reduction of the great dispersion in social rate of return to existing and new investments under domestic entrepreneurial control.
- **Standardised products and reduction in costs:** In as much as the securities market enlarges the financial sector, promoting additional and more sophisticated financing, it increases opportunities for specialisation, division of labour and reductions in costs in financial activities. The securities market and its institutions help the user in many ways to reduce the cost of capital. They provide a convenient market place to which investors and issuers of securities go and thereby avoid the need to search a suitable counterpart.
- **Developmental benefits**
  1. The securities market provides a fast-rate breeding ground for the skills and judgement needed for entrepreneurship, risk bearing, portfolio selection and management.
  2. An active securities market serves as an 'engine' of general financial development and may, in particular, accelerate the integration of informal financial systems with the institutional financial sector. Securities directly displace traditional assets such as gold and stocks of produce or, indirectly, may provide portfolio assets for unit trusts, pension funds and similar FIs that raise savings from the traditional sector.
  3. The existence of securities market enhances the scope, and provides institutional mechanisms, for the operation of monetary and financial policy.

**3. Short notes on Composition of SEBI and SAT.**

**Composition of SEBI**

- **SEBI is a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable and to contract, sue and be sued in its own name.**
- SEBI has its Head Office at Mumbai and has powers to establish its offices at other places in India. SEBI presently has offices also in Kolkata, New Delhi, Chennai and Ahemedabad.
- SEBI Board shall consist of the following members, namely:
  (a) a Chairman;
  (b) two members from amongst the officials of the Ministry of the Central Government dealing with Finance and administration of the Companies Act, 1956;
  (c) one member from amongst the officials of the Reserve Bank;
  (d) five other members of whom at least three shall be the whole time members,
  to be appointed by the Central Government.
- The Chairman and the other members are from amongst the persons of ability, integrity and standing who have shown capacity in dealing with problems relating to securities market or have special knowledge or experience of law, finance, economics, accountancy, administration or in any other discipline which, in the opinion of the Central Government, shall be useful to SEBI.

**Composition of SAT**

- **The Securities Appellate Tribunal shall consist of a Presiding Officer and two other members to be appointed by the Central Government by notification.**
- A person shall not be qualified for appointment as the Presiding Officer of Securities Appellate Tribunal unless he is a sitting or retired Judge of the Supreme Court or a sitting or retired Chief Justice of a High Court. It has also been prescribed that the presiding officer of the Securities Appellate Tribunal shall be appointed by the Central Government in consultation with chief justice of India or his nominee.
- A person shall not be qualified for appointment as a member of Securities Appellate Tribunal unless he is a person of ability, integrity and standing who has shown capacity in dealing with problems relating to securities market and has qualification and experience of corporate law, securities laws, finance, economics or accountancy.
- The Presiding Officer and every other member of Securities Appellate Tribunal shall hold office for a term of five years from the date he enters upon his office and is eligible for reappointment.
- It has also been provided that the person attaining the age of 68 years cannot hold office as the presiding officer of Securities Appellate Tribunal. Also a person who has attained the age of 62 years cannot hold office as member of Securities Appellate Tribunal.

**4. Distinguish between Commercial Paper and Certificate of Deposit.**

- **A Certificate of Deposit (CD) is a time deposit, financial product commonly offered to consumers by banks.** In case of CDs the banks issue a certificate for a deposit made, such certificate is transferable, i.e. holder of CD is holder of deposit. Commercial Paper, on the other hand, is a money-market security issued (sold) by large banks and corporations to get money to meet short term debt obligations , and is only backed by an issuing bank or corporation's promise to pay the face amount on the maturity date specified on the note.
- **Commercial paper is usually sold at a discount from face value, and carries shorter repayment dates than bonds.** The longer the maturity on a note, the higher the interest rate the issuing institution must pay. Interest rates fluctuate with market conditions, but are typically lower than banks rates. They normally give a higher return than Bank term deposit, and are rated by approved rating agencies (e.g. CARE, ICRA, CRISIL, and FITCH) which considerably enhance their tradability in the secondary market, depending upon demand.
- Commercial Paper is issued only through the bankers who have sanctioned working capital limits to the company. It is counted as a part of working capital. Unlike public deposit, commercial paper really cannot augment working capital resources. There is no increase in the overall short term borrowing facilities. CDs can be issued to individuals, corporations, trusts, funds and associations. NRIs can also subscribe to CDs, but on non-repatriable basis only. In secondary market such CDs cannot be endorsed to another NRI. They are issued at a discount rate

freely determined by the issuer and the market / investors.

- Commercial Paper is issued in denominations of Rs. 5 lakhs. But the minimum lot or investment is Rs 25 lakhs (face value) per investor. The secondary market transactions can be for Rs.5 lakhs or multiples thereof. CDs are issued in denominations of Rs.1 Lac and in the multiples of Rs. 1 Lac thereafter.

**5. Short notes on Tracking stocks and Disaster bonds.**

**Tracking stocks**

- A tracking stock is a security issued by a parent company to track the results of one of its subsidiaries or lines of business; without having claim on the assets of the division or the parent company.
- It is also known as "designer stock". When a parent company issues a tracking stock, all revenues and expenses of the applicable division are separated from the parent company's financial statements and bound to the tracking stock. Oftentimes, this is done to separate a subsidiary's high-growth division from a larger parent company that is presenting losses.
- The parent company and its shareholders, however, still control the operations of the subsidiary.
- Example - QQQQ, which is an exchange-traded fund that mirrors the returns of the NASDAQ 100 index.

**Disaster bonds**

- Also known as Catastrophe or CAT Bonds, Disaster Bond is a high-yield debt instrument that is usually insurance linked and meant to raise money in case of a catastrophe. It has a special condition that states that if the issuer (insurance or Reinsurance Company) suffers a loss from a particular pre-defined catastrophe, then the issuer's obligation to pay interest and/or repay the principal is either deferred or completely forgiven.
- Example - Mexico sold $290 million in catastrophe bonds, becoming the first country to use a World Bank program that passes the cost of natural disasters to investors. Goldman Sachs Group Inc. and Swiss Reinsurance Co. managed the bond sale, which will pay investors unless an earthquake or hurricane triggers a transfer of the funds to the Mexican government.

**6. What do mean by participatory notes?**

- **Also referred to as "P-Notes" Financial instruments used by investors or hedge funds that are not registered with the Securities and Exchange Board of India to invest in Indian securities.**
- Indian-based brokerages buy India-based securities and then issue participatory notes to foreign investors. Any dividends or capital gains collected from the underlying securities go back to the investors.
- These are issued by FIIs to entities that want to invest in the Indian stock market but do not want to register themselves with the SEBI.
- RBI, which had sought a ban on PNs, believes that it is tough to establish the beneficial ownership or the identity of ultimate investors.
- PNs can be misused for money laundering.

**7. Short note on Money market mutual funds.**

- A money market fund is a mutual fund that invests solely in money market instruments. Money market instruments are forms of debt that mature in less than one year and are very liquid. Treasury bills make up the bulk of the money market instruments. Securities in the money market are relatively risk-free.
- Money market funds are generally the safest and most secure of mutual fund investments. The goal of a money-market fund is to preserve principal while yielding a modest return by investing in safe and stable instruments issued by governments, banks and corporations etc.

**8. Short notes on Exchange Traded Funds, Hedge Funds & Fund of Funds.**

**Exchange Traded Funds**

- An exchange-traded fund (or ETF) is an investment vehicle traded on stock exchanges, much like stocks.
- An ETF holds assets such as stocks or bonds and trades at approximately the same price as the net asset value of its underlying assets over the course of the trading day.
- Most ETFs track an index, such as the S&P 500 or MSCI EAFE. ETFs may be attractive as investments because of their low costs, tax efficiency, and stock-like features, and single security can track the performance of a growing

number of different index funds (currently the NSE Nifty)

- An Index fund selects a market index and makes investments in the basket of stocks drawn from the constituents of that index. The fund may invest in any or all of the stocks constituting that index but not necessarily in the same proportion. Only large institutional investors actually buy or sell shares of ETF.
- **Advantages of ETFs**
  - (a) Trading flexibility
  - (b) Costs
  - (c) Better Performance
  - (d) Tax efficiency
  - (e) Short selling permitted
- **Disadvantages of ETFs**
  - (a) Commissions are an added cost.
  - (b) Only institutions and the extremely wealthy can deal directly with the ETF.
  - (c) They don't trade at the NAV of their underlying holdings.

**Hedge Funds**

- A hedge fund is an investment fund open to a limited range of investors that undertakes a wider range of investment and trading activities in both domestic and international markets, and that, in general, pays a performance fee to its investment manager.
- Every hedge fund has its own investment strategy that determines the type of investments and the methods of investment it undertakes. Hedge funds, as a class, invest in a broad range of investments including shares, debt and commodities.
- As the name implies, hedge funds often seek to hedge some of the risks inherent in their investments using a variety of methods, with a goal to generate high returns through aggressive investment strategies, most notably short selling, leverage, program trading, swaps, arbitrage and derivatives.
- Legally, hedge funds are most often set up as private investment partnerships that are open to a limited number of investors and require a very large initial minimum investment.
- Investments in hedge funds are illiquid as they often require investors keep their money in the fund for at least one year.

**Fund of Funds**

- A "fund of funds" (FoF) is an investment strategy of holding a portfolio of other investment funds rather than investing directly in shares, bonds or other securities. This type of investing is often referred to as multi-manager investment.
- A fund of funds allows investors to achieve a broad diversification and an appropriate asset allocation with investments in a variety of fund categories that are all wrapped up into one fund.

**9. Short notes on Secured premium notes and Derivatives.**

**Secured premium notes**

- SPN is a secured debenture redeemable at premium issued along with a detachable warrant, redeemable after a notice period, say four to seven years.
- The warrants attached to SPN gives the holder the right to apply and get allotted equity shares; provided the SPN is fully paid.
- There is a lock-in period for SPN during which no interest will be paid for an invested amount.
- The SPN holder has an option to sell back the SPN to the company at par value after the lock in period. If the holder exercises this option, no interest/ premium will be paid on redemption.
- In case the SPN holder holds it further, the holder will be repaid the principal amount along with the additional amount of interest/ premium on redemption in instalments as decided by the company.
- The conversion of detachable warrants into equity shares will have to be done within the time limit notified by the company.
- Example -TISCO issued warrants for the first time in India in the year 1992 to raise ` 1212 crore.

**Derivatives**

- A derivative is a financial instrument whose characteristics and value depend upon the characteristics and value of some underlying asset typically commodity, bond, equity, currency, index, event etc.
- Advanced investors sometimes purchase or sell derivatives to manage the risk associated with the underlying security, to protect against fluctuations in value, or to profit from periods of inactivity or decline.
- Derivatives are often leveraged, such that a small movement in the underlying value can cause a large difference in the value of the derivative.
- Derivatives are usually broadly categorised by:
  (a) The relationship between the underlying and the derivative (e.g. forward, option, swap)
  (b) The type of underlying (e.g. equity derivatives, foreign exchange derivatives and credit derivatives)
  **(c)** The market in which they trade (e.g., exchange traded or over-the-counter)

**10. Short note on Mortgage backed securities.**

- **Mortgage backed security is a type of asset-backed security, basically a debt obligation that represents a claim on the cash flows from mortgage loans, most commonly on residential property.**
- Mortgage backed securities represent claims and derive their ultimate values from the principal and payments on the loans in the pool.
- These payments can be further broken down into different classes of securities, depending on the riskiness of different mortgages as they are classified under the MBS.
- **Characteristics:**
  (a) Mortgage originators to refill their investments
  (b) New instruments to collect funds from the market, very economic and more effective
  (c) Conversion of assets into funds
  **(d)** Financial companies save on the costs of maintenance of the assets and other costs related to assets, reducing overheads and increasing profit ratio.

**11. Short note on the rating process followed by credit rating agencies.**

- Request for rating assignment from an issuer
- Appointment of analytical group or rating team
- Conducting basic research
- Meeting with the management of the issuer
- Rating committee
- Analysis and preparation of report
- Preview meeting
- Rating meeting
- Assign rating
- Rating notification of the issuer
- Assignment of rating
- Surveillance of rating

**12. What are the factors considered by rating agencies for rating?**

- Industry risk
- Company's industry and market position
- Operating efficiencies
- Accounting quality
- Financial flexibility
- Earnings protection
- Financial leverage
- Cash flow adequacy

- Management evaluation

**13. Short notes on Merchant Bankers and Registrar & Share Transfer Agents.**

**Merchant Bankers**

- **In terms of SEBI's directions, merchant bankers shall only undertake the following activities:**
  a) Managing of public issue of securities;
  b) Underwriting connected with the aforesaid public issue management business;
  c) Managing/Advising on international offerings of debt/equity i.e. GDR, ADR, bonds and other instruments;
  d) Private placement of securities;
  e) Primary or satellite dealership of government securities;
  f) Corporate advisory services related to securities market including takeovers, acquisition and disinvestment;
  g) Stock broking;
  h) Advisory services for projects;
  i) Syndication of rupee term loans;
  j) International financial advisory services.
- **Regulation 3 of SEBI (Merchant Bankers) Regulations, 1992 lays down that an application by a person desiring to become merchant banker shall be made to SEBI in the prescribed form seeking grant of a certificate.**
- **Eligibility Criteria:**
  a) the applicant shall be a body corporate other than a non-banking financial company;
  b) the applicant has the necessary infrastructure like adequate office space, equipments and manpower to effectively discharge his activities;
  c) the applicant has in his employment a minimum of two persons who have the experience to conduct the business of the merchant banker;
  d) a person directly or indirectly connected with the applicant has not been granted registration by SEBI;
  e) the applicant fulfills the capital adequacy requirement;
  f) the applicant, his partner, director or principal officer is not involved in any litigation connected with the securities market which has an adverse bearing on the business of the applicant;
  g) the applicant, his director, partner or principal officer has not at any time been convicted for any offence involving moral turpitude or has been found guilty of any offence;
  h) the applicant has the professional qualification from an institution recognised by the Government in finance, law or business management;
  i) the applicant is a fit and proper person;

**Registrar & Share Transfer Agents**

- **'Registrar to an Issue'** means the person appointed by a body corporate or any person or group of persons to carry on the following activities on its or his or their behalf i.e.:
  (i) collecting application for investor in respect of an issue;
  (ii) keeping a proper record of applications and monies received from investors or paid to the seller of the securities;
  (iii) (a) assisting body corporate or person or group of persons in determining the basis of allotment of the securities in consultation with the stock exchange;
  (b) finalising the list of person entitled to allotment of securities;
  (c) processing and despatchment of allotment letters, refund orders or certificates and other related documents in respect of the issue;
- **'Share Transfer Agent'** means:
  (a) any person who on behalf of any body corporate, maintains the records of holders of securities issued by such body corporate and deals with all matters connected with the transfer and redemption of its securities;
  (b) the department or division, by whatever name called, of a body corporate performing the activities as share transfer agents if at any time the total number of holders of its securities issued exceed one lakh.
- **Eligibility Criteria:**
  (a) has the necessary infrastructure like adequate office space, equipments and manpower to effectively discharge

his activities;
(b) has any past experience in the activities;
(c) any person directly or indirectly connected with him has been granted registration by SEBI under the Act;
(d) fulfills the capital adequacy requirement;
(e) has been subjected to any disciplinary proceedings under the Act;
(f) any of its director, partner or principal officer is or has at any time been convicted for any offence involving moral turpitude or has been found guilty of any economic offence;
**(g)** is a fit and proper person.

**14. Short note on Self Regulatory Organisations.**

- **Self Regulatory Organisations is an organisation of intermediaries which is representing a particular segment of the securities market and which is recognised by SEBI but excludes a SE**
- They are typically the organizations created by the industry players
- They perform the functions much beyond that of an industry association, which is merely an interface between the industry and the regulators and other government bodies for propagating the industry benefits
- **Eligibility criteria**

(a) the applicant should have been granted license under section 25 of Companies Act, 1956;
(b) the memorandum of association, should specify admission of members and discharging the functions of Self Regulatory Organization as one of its main objects;
(c) the applicant should have a minimum networth of Rs. 1 crore;
(d) the applicant is to have adequate infrastructure, to enable it to discharge its functions as a Self Regulatory Organization;
(e) the directors have the professional competence, financial soundness and general reputation of fairness and integrity to the satisfaction of SEBI;
(f) neither the applicant, nor any director of the applicant is involved in any legal proceeding connected with the securities market, which may have an adverse impact on the interests of the investors;
(g) neither the applicant, nor any director has at any time in the past been convicted of any offence involving moral turpitude or any economic offence;
(h) the applicant has, in its employment, persons having adequate professional and other relevant experience to the satisfaction of SEBI;
(i) the applicant, in all other respects, is a fit and proper person for the grant of a certificate;
**(j)** grant of certificate to the applicant is in the interest of investors and the securities market.

**15. What are the obligations of Stockbrokers and sub brokers?**

- Every stock broker shall keep and maintain books of accounts, records and documents namely – Register of Transactions (Sauda book); clients ledger; general ledger; journals; cash book; bank pass book; documents register including particulars of securities received and delivered in physical form and the statement of account and other records relating to receipt and delivery of securities provided by the depository participants in respect of dematerialised securities, members contract books showing details of all contracts entered into by him with other members of the same exchange or counterfoils or duplicates of memos of confirmation issued to such other members; counterfoils or duplicates of contract notes issued to clients; written consents of clients in respect of contracts entered into as principals; margin deposit book; registers of accounts of sub-brokers; an agreement with sub-broker specifying scope of authority, and responsibilities of the stock brokers as well as sub-brokers and an agreement with the sub-broker and with the client of sub-broker to establish privity of contract between the stock broker and the client of the sub-broker.
- Every stock broker shall intimate to SEBI the place where the books of accounts, records and documents are maintained. He shall, after the close of each accounting period, furnish to SEBI if so required, as soon as possible but not later than 6 months from the close of the said period, a copy of the audited balance sheet and profit and loss account for the said accounting period.
- Every stock broker shall preserve the books of accounts and other records for a minimum period of 5 years.
- Stock broker shall not deal with any person as sub-broker unless such person has been granted certificate of

registration by SEBI.

- Every stock broker is required to appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions etc. issued by SEBI or Central Government and for redressal of investors' grievances. Compliance officer shall immediately and independently report to SEBI any non-compliance observed by him.

**16. What are the obligations of intermediaries under the Prevention of Money Laundering Act?**

**Every banking company, financial institution and intermediary—**

- Shall maintain record of nature and value of certain transactions –
  - a) Cash transactions > Rs. 10 lakhs
  - b) Series of cash transactions within one calendar month > Rs. 10 lakhs
  - c) All suspicious transactions
- Shall maintain records of identity of its clients and shall require disclosures to be made by them
- Should Appoint a Principal Officer who shall ensure compliance with above
- Should Submit cash transaction report, suspicion transaction report etc.
- Should have a KYC policy

**17. Explain the obligations of underwriters and portfolio managers.**

**<u>Obligations of Underwriters</u>**

- Every underwriter shall abide by the code of conduct at all times.
- Every underwriter shall enter into an agreement with the body corporate and his general responsibilities. The contents of the agreement shall include the period of agreement, the amount of underwriting obligations, the period by which the underwriter should subscribe, the amount of commission/brokerage payable, and other details for fulfilling the underwriting obligations.
- The general responsibilities of the underwriter are as follows:

1. The underwriter shall not derive any direct or indirect benefit from underwriting the issue other than the commission or brokerage payable under an agreement for underwriting.
2. The total underwriting obligations under all the agreements shall not exceed 20 times the networth.
3. Every underwriter, in the event of being called upon to subscribe for securities of a body corporate pursuant to an agreement shall subscribe to such securities within 45 days of the receipt of such intimation from such body corporate.

**<u>Obligations of portfolio manager</u>**

- The discretionary portfolio manager shall individually and independently manage the funds of each client in accordance with the needs of a client in a manner which does not partake the character of a mutual fund, whereas the non discretionary portfolio manager shall manage the funds in accordance with the directions of the client.
- The portfolio manager shall not accept from the client, funds or securities worth less than Rs. 25 lakhs.
- The portfolio manager shall act in a fiduciary capacity with regard to the clients funds.
- He shall transact in securities within the limitation placed by the client for dealing in securities under the provisions of RBI Act, 1934.
- He shall not derive any direct or indirect benefit out of the clients funds or securities.
- The portfolio manager shall keep the funds of all clients in a separate account to be maintained by it in a Scheduled Commercial Bank.
- He shall ensure proper and timely handling of complaints from his clients and take appropriate action promptly.

**18. Explain the concept of recognised Stock Exchanges.**

- **Section 3 of the Securities (Contract) Regulation Act, 1956** lays down that any stock exchange, desirous of being recognised for the purposes of this Act may make an application in the prescribed manner to the Central Government.
- Every application shall contain such particulars as may be prescribed, and shall be accompanied by a copy of the bye-laws of the stock exchange for the regulation and control of contracts and also a copy of the rules relating in

general to the constitution of the stock exchange and in particular to—

(a) the governing body of such stock exchange, its constitution and powers of management and the manner in which its business is to be transacted;

(b) the powers and duties of the office bearers of the stock exchange;

(c) the admission into the stock exchange of various classes of members, the qualifications, for membership, and the exclusion, suspension, expulsion and re-admission of members;

(d) the procedure for the registration of partnerships as members of the stock exchange.

- If the Central Government is satisfied (powers are exercisable by SEBI also) after making such inquiry as may be necessary in this behalf and after obtaining such further information, if any, as it may require;
  - (a) that the rules and bye-laws of a stock exchange applying for registration are in conformity with such conditions as may be prescribed with a view to ensure fair dealing and to protect investors;
  - (b) that the stock exchange is willing to comply with any other conditions (including conditions as to the number of members) which the Central Government, after consultation with the governing body of the stock exchange and having regard to the area served by the stock exchange and its standing and the nature of the securities dealt with by it, may impose for the purpose of carrying out the objects of this Act; and
  - (c) that it would be in the interest of the trade and also in the public interest to grant recognition to the stock exchange;

  it may grant recognition to the stock exchange subject to the conditions imposed upon it as aforesaid and in such form as may be prescribed.
- Every grant of recognition to a stock exchange under this section shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the stock exchange is situated, and such recognition shall have effect as from the date of its publication in the Gazette of India.
- No application for the grant of recognition shall be refused except after giving an opportunity to the stock exchange concerned to be heard in the matter; and the reasons for such refusal shall be communicated to the stock exchange in writing.

**19. Explain the process of application for listing of securities to Stock Exchanges.**

**A public company as defined under the Companies Act, 1956, desirous of getting its securities listed on a recognised stock exchange, shall apply for the purpose to the stock exchange and forward along with its application the following documents and particulars:**

- Memorandum and articles of association and, in the case of a debenture issue, a copy of the trust deed.
- Copies of all prospectuses or statements in lieu of prospectuses issued by the company at any time.
- Copies of offers for sale and circulars or advertisements offering any securities for subscription or sale during the last five years.
- Copies of balance sheets and audited accounts for the last five years, or in the case of new companies, for such shorter period for which accounts have been made up.
- A statement showing dividends and cash bonuses, if any, paid during the last ten years (or such shorter period as the company has been in existence, whether as a private or public company),
- Certified copies of agreements or other documents relating to arrangements with or between vendors, underwriters, brokers, selling agents, managing directors and technical directors, general manager, sales manager, managers or secretary.
- A statement containing particulars of the dates of, and parties to all material contracts, agreements (including agreements for technical advice and collaboration), concessions and similar other documents (except those entered into in the ordinary course of business carried on or intended to be carried on by the company) together with a brief description of the terms, subject-matter and general nature of the documents.
- A brief history of the company since its incorporation giving details of its activities including any reorganization, reconstruction or amalgamation, changes in its capital structure (authorised, issued and subscribed) and debenture borrowings, if any.
- Particulars of shares and debentures issued (i) for consideration other than cash, whether in whole or part, (ii) at a premium or discount, or (iii) in pursuance of an option.

- Certified copies of acknowledgment card or the receipt of filing offer document with SEBI.
- A list of highest ten holders of each class or kind of securities of the company as on the date of application along with particulars as to the number of shares or debentures held by and the address of each such holder.
- Particulars of shares or debentures for which permission to deal is applied for.

**20. Explain the concept of Demutualisation of Stock Exchanges.**

- The process of demutualization is to convert the traditional "not for-profit" stock exchanges into a "for profit" company and this process is to transform the legal structure from a mutual form to a business corporation form.
- The important features of the demutualisation exercise are as follows:
  (1) The board of a stock exchange should consist of 75% public interest / shareholder directors and only 25% broker directors, and
  (2) 51% shareholding of the stock exchange should be divested to public / investors other than trading member brokers and only 49% of shareholding can remain with the trading member brokers. This will transform our broker-owned stock exchanges into professionally run corporate stock exchanges.
- The purpose of demutualisation is as follows:
  (a) Stock exchanges owned by members tend to work towards the interest of members alone, which could on occasion be detrimental to rights of other stakeholders. Division of ownership between members and outsiders can lead to a balanced approach, remove conflicts of interest, create greater management accountability.
  (b) Publicly owned stock exchanges can enter into capital market for expansion of business.
  (c) Publicly owned stock exchange would be more professionally managed than broker owned.
  (d) Demutualisation enhances the flexibility of management.

**21. Short notes on Trading & Settlement Mechanism and Straight Through Processing.**

**Trading & Settlement Mechanism**

**Trading at BSE**

- BSE has, for the guidance and benefit of the investors, classified the scrips in the Equity Segment into 'A', 'B', 'T', and 'Z' groups on certain qualitative and quantitative parameters. The "F" Group represents the Fixed Income Securities. The "T" Group represents scrips which are settled on a trade-to-trade basis as a surveillance measure. Trading in Government Securities by the retail investors is done under the "G" group.
- The 'Z' group includes companies which have failed to comply with its listing requirements and/or have failed to resolve investor complaints and/or have not made the required arrangements with both the Depositories, viz., Central Depository Services (I) Ltd. (CDSL) and National Securities Depository Ltd. (NSDL) for dematerialization of their securities.
- With effect from December 31, 2001, trading in all securities listed in equity in the Equity segment takes place in one market segment, viz., Compulsory Rolling Settlement Segment (CRS).
- The scrips of companies which are in demat can be traded in market lot of 1. However, the securities of companies which are still in the physical form are traded in the market lot of generally either 50 or 100. Investors having quantities of securities less than the market lot are required to sell them as "Odd Lots". This facility offers an exit route to investors to dispose of their odd lots of securities, and also provides them an opportunity to consolidate their securities into market lots.
- **Compulsory Rolling Settlement**: All transactions in all groups of securities in the Equity segment and Fixed Income securities listed on BSE are required to be settled on T+2 basis (w.e.f. April 1, 2003). The settlement calendar, which indicates the dates of the various settlement related activities, is drawn by BSE in advance and is circulated among the market participants. Under rolling settlements, the trades done on a particular day are settled after a given number of business days. A T+2 settlement cycle means that the final settlement of transactions done on T, i.e., trade day by exchange of monies and securities between the buyers and sellers respectively takes place on second business day (excluding Saturdays, Sundays, bank and Exchange trading holidays) after the trade day. The transactions in securities of companies which have made arrangements for dematerialization of their securities are settled only in demat mode on T+2 on net basis, i.e., buy and sell positions of a member-broker in the same scrip are netted and the net quantity and value is required to be settled. However, transactions in securities of companies,

which are in “Z” group or have been placed under “trade-to-trade” by BSE as a surveillance measure (“T”), are settled only on a gross basis and the facility of netting of buy and sell transactions in such scrips is not available.

**Trading and Settlement at NSE**

- NSE introduced for the first time in India, fully automated screen based trading. It uses a modern, fully computerised trading system designed to offer investors across the length and breadth of the country a safe and easy way to invest. The NSE trading system called 'National Exchange for Automated Trading' (NEAT) is a fully automated screen based trading system, which adopts the principle of an order driven market.
- National Stock Clearing Corporation Limited carries out clearing and settlement functions as per the settlement cycles of different sub-segments in the Equities segment. The clearing function of the clearing corporation is designed to work out a) what counter parties owe and b) what counter parties are due to receive on the settlement date. Settlement is a two way process which involves legal transfer of title to funds and securities or other assets on the settlement date. NSCCL has also devised mechanism to handle various exceptional situations like security shortages, bad delivery, company objections, auction settlement etc.

**Straight Through Processing**

Straight Through Processing (STP) is generally understood to be a mechanism that automates the end to end processing of transactions of financial instruments. It involves use of a system to process or control all elements of the work flow of a financial transaction, what are commonly known as the Front, Middle, Back office and General Ledger. In other words, STP allows electronic capturing and processing of transactions in one pass from the point of order origination to final settlement.

**Advantages of Straight through Processing as under:**

- Reduced risk
- Automation of manual process minimizing errors
- Improved operational efficiency in handling larger volumes
- Facilitates movement towards shorter settlement cycles (T+1)
- Lower cost per trade
- Timely settlement of trades and instructions
- Eliminates paper work and minimizes manual intervention
- Enables increased cross border trading (FII trades)
- Greater transparency with clear audit trail
- Increases competitive advantage of our markets
- Messaging standards as per ISO 15022 standards.

**22. Explain the concept of short selling and securities lending & borrowing mechanism.**

**Short Selling**

- Short Selling means selling of a stock that the seller does not own at the time of trade. Short selling can be done by borrowing the stock through Clearing Corporation/Clearing House of a stock exchange which is registered as Approved Intermediaries.
- A typical short-sell transaction would have three parties (the original owner or the lender, the short-seller, and the new buyer), unlike a normal share purchase transaction, which consists of two parties (the buyer and the seller).

**Basic Features**

- Short selling can be done by retail as well as institutional investors.
- Naked short sale is not permitted in India, all short sales must result in delivery, and information on short sale has to be disclosed to the exchange by end of day by retail investors, and at the time of trade for institutional investors.
- No institutional investor shall be allowed to do day trading i.e., square-off their transactions intra-day.
- The Securities Lending and Borrowing mechanism allows short sellers to borrow securities for making delivery.
- Securities in the F&O segment are eligible for short selling.
- The institutional investors shall disclose upfront at the time of placement of order whether the transaction is a short sale. However, retail investors would be permitted to make a similar disclosure by the end of the trading hours on

the transaction day.

- The brokers shall be mandated to collect the details on scrip-wise short sell positions, collate the data and upload it to the stock exchanges before the commencement of trading on the following trading day. The stock exchanges shall then consolidate such information and disseminate the same on their websites for the information of the public on a weekly basis.

**Securities Lending & Borrowing Mechanism**

- **Securities Lending and Borrowing (SLB) is a scheme that has been launched to enable settlement of securities sold short.** SLB enables lending of idle securities by the investors through the clearing corporation/clearing house of stock exchanges to earn a return through the same. For securities lending and borrowing system, clearing corporations/clearing house of the stock exchange would be the nodal agency and would be registered as the "Approved Intermediaries"(AIs) under the Securities Lending Scheme, 1997.
- Under SLB, securities can be borrowed for a period of 7 days through a screen-based order matching mechanism.

**Basic Features**

- The SLB shall take place on an automated, screen based, order-matching platform which will be provided by the AIs.
- Securities in the F&O segment are eligible for SLB.
- All categories of investors including retail, institutional etc. will be permitted to borrow and lend securities.
- The settlement of the lending and borrowing transactions shall be done on a gross basis at the level of the clients i.e. no netting of transactions at any level will be permitted.
- Adequate systems shall be put in place by the stock exchanges/Depositories to distinguish the SLB transactions from the normal market transactions in the demat system.

**23. Explain the various Market abuse mechanisms.**

Market Abuse is a broad term which includes abnormal price/ volume movement, artificial transactions, false or misleading impressions, insider trading, etc. In order to detect aberrant behaviour/ movement, it is necessary to know the normal market behaviour. The department uses various tools to determine normal and abnormal market behaviour some of which are detailed below:

- **On line Surveillance:** One of the most important tools of the Surveillance is the On-line Real Time Surveillance system which was commissioned in 1999 with main objectives of detecting potential market Abuses at a nascent stage to reduce the ability of the market participants to unduly influence the price and volumes of the scrips traded at the Exchange, improve the risk management system and strengthen the self regulatory mechanism at the Exchange.
- **Off-Line Surveillance:** The Off-Line Surveillance system comprises of the various reports based on different parameters and scrutiny thereof.
  - — High/Low Difference in prices
  - — % change in prices over a week/fortnight/month
  - — Top N scrips by Turnover
  - — Trading in infrequently traded scrips
  - — Scrips hitting New High/Low
- **Derivative Market Surveillance**:
  - — Abnormal fluctuation in the prices of a Series
  - — Market Movement (Cash vis-à-vis Derivative)
  - — Member Concentration (Cash vis-à-vis Derivative)
  - — Closing Price Manipulation (Cash & Derivative)
- **Investigations:** The Exchange conducts in-depth investigations based on preliminary enquiries/ analysis made into trading of the scrip as also at the instance of SEBI. In case irregularities observed, necessary actions are initiated and/or investigation case forwarded to SEBI, if necessary.
- **Surveillance Actions:**
  (a) Special Margins - Special margins are imposed on scrips which have witnessed abnormal price/ volume

movements. Special margin is imposed @ 25 % or 50 % or 75 % as the case may be, on the client wise net outstanding purchase or sale position (or on both side) by the department.

(b) Reduction of Circuit Filters - The circuit filters are reduced in case of illiquid scrips or as a price containment measure in low volume scrips. The circuit filters are reduced to 10 % or 5 % or 2 % as the case may be, based on the criteria decided by the Exchange.

(c) Circuit Breakers - In addition to the price bands on individual scrips, SEBI decided to implement index based market wide circuit breakers system, w.e.f., July 02, 2001.The circuit breakers are applicable at three stages of the index movement either way at 10 %, 15 % and 20 %. These circuit breakers will bring about a coordinated trading halt in both Equity and Derivative market.

(d) Trade to Trade - If a scrip is shifted on a Trade-to trade settlement basis, selling/ buying of shares in that scrip would result into giving/ taking delivery of shares at the gross level and no intra day/ settlement netting off/ square off facility would be permitted. The scrips which form part of 'Z group' are compulsorily settled on a trade to trade settlement basis. In addition to that Surveillance department transfers various scrips from time to time on a trade to trade settlement basis to contain the excessive volatility and/or abnormal volumes in the scrip.

(e) Suspension of a scrip - The scrips are suspended by the Surveillance department in exceptional cases pending investigation or if the same scrip is suspended by any other Stock Exchange as a Surveillance action.

(f) Warning to Members - The department may issue verbal/ written warning to member/s when market manipulation in the scrip is suspected.

(g) Imposition of penalty/suspension/de-activation of terminals - The department imposes penalty or deactivate BOLT terminals or suspend the member/s who are involved in market manipulation, based on the input/ evidence available from investigation report or as and when directed by SEBI.

(h) Rumour Verification

(i) Pro-active Measures -

— The Department compiled and disseminated a list of companies who have changed their names to suggest that their business interest is in the software Industry.

— List of NBFC's, whose application for registration rejected by RBI, was compiled and disseminated by the department.

**24. Explain the obligations of listed companies under Clause 49 of the Listing Agreement.**

**BOARD OF DIRECTORS AND ITS COMPOSITION:**

- The Non-executive Directors on Board should not be less than 50% of the Board of Directors.
- In case of Executive Chairman - at least half of the Board should comprise of independent directors or
- In case of Non-Executive Chairman - at least one-third of board should comprise independent directors. However where the non-executive Chairman is a promoter of the company or is related to any promoter or person occupying management positions at the Board level or at one level below the Board, at least half of the Board shall consist of independent directors.
- The Board meeting to be held at least four times a year. The gap between two Board meetings shall not exceed more than four months.

**AUDIT COMMITTEE**

Audit Committee is required to be set up, consisting of:

- Minimum of three members of which two third of the members to be independent.
- All members shall be financially literate and at least one member to have accounting or related financial management expertise
- Chairman of the committee shall be an independent Director.

**SUBSIDIARIES COMPANIES:**

- At least one independent director on the Board of Directors of the holding company shall be a director of a material non-listed Indian subsidiary company.
- The Audit Committee of the listed holding company shall also review the financial statements in particular, the

investments made by the unlisted subsidiary company.
- The minutes of the Board meeting of the unlisted subsidiary company shall be placed at the Board meeting of the listed holding company.

**DISCLOSURES**
- Of Related Party Transaction – statement, details of transactions not in the normal course of business etc. to be made to the Audit Committee
- Of Accounting Treatment where treatment different from Accounting Standards is followed to be given in the Company's financial statements
- Of Risk assessment and minimization procedures to the Board.
- Of utilization of Proceeds from Public issue, Rights issue, Preferential issue etc. to the Audit Committee.
- Of inter-se relationships between directors in the Annual Report, notice of appointment of a director, prospectus and letter of offer for issuances and any related filings made to the stock exchanges where the company is listed.

**CEO/ CFO CERTIFICATION**
The CEO, i.e. the Managing Director or Manager appointed in terms of the Companies Act, 1956 and the CFO i.e. the whole-time Finance Director or any other person heading the finance function discharging that function shall certify to the Board.

**REPORT ON CORPORATE GOVERNANCE**
- Annual Report of the Company should comprise a separate section on Corporate Governance wherein specified information is required to be disclosed.
- Quarterly Compliance Report to be submitted to Stock Exchanges within 15 days from the close of the quarter in the prescribed format.

**CERTIFICATE OF COMPLIANCE :**
The Compliance of conditions of Corporate Governance is to be certified by the auditors of the company or practicing Company Secretary.

**25.** **Short notes on Asset Management Company and Advertisement Code of Mutual Funds.**

**Asset Management Company**
Under SEBI (Mutual Funds) Regulations, 1996, every mutual fund is required to have an Asset Management Company (AMC) incorporated in the Companies Act, 1956 to manage the funds of the mutual fund. The AMC should be approved by SEBI and should enter into an agreement with the trustees of the mutual fund to formulate schemes, raise money against units, invest the funds in accrued securities and after meeting the permissible costs as per norms, distribute income to the share holders of the funds.

**Advertisement Code of Mutual Funds**
- An advertisement shall be truthful, fair and clear and shall not contain a statement, promise or forecast which is untrue or misleading.
- The advertisement shall not be so designed in content and format or in print as to be likely to be misunderstood, or likely to disguise the significance of any statement. Advertisements shall not contain statements which directly or by implication or by omission may mislead the investor.
- The sales literature may contain only information, the substance of which is included in the funds current advertisements in accordance with the Code.
- Advertisements shall not be so framed as to exploit the lack of experience or knowledge of the investors. As the investors may not be sophisticated in legal or financial matters, care should be taken that the advertisement is set forth in a clear, concise, and understandable manner. Extensive use of technical or legal terminology or complex language and the inclusion of excessive details which may detract the investors should be avoided.
- The advertisement shall not contain information, the accuracy of which is to any extent dependent on assumptions. Any advertisement that makes claims about the performance of the fund shall be supported by relevant figures.
- The advertisement shall not compare one fund with another, implicitly or explicitly, unless the comparison is fair and all information relevant to the comparison is included in the advertisement.

- The funds which advertises yield must use standardised computations such as annual dividend on face value, annual yield on the purchase price, and annual compounded rate of return.
- Mutual funds shall indicate in all advertisements, the names of the Settlor, Trustee, Manager and/or Financial Advisor to the Fund, bringing out clearly their legal status and liability of these entities. All advertisements containing information regarding performance, advertising yield, return or any scheme detail or inviting subscription to the scheme shall contain disclosures of all the risk factors.
- All advertisements shall also make a clear statement to the effect that all mutual funds and securities investments are subject to market risks, and there can be no assurance that the fund's objectives will be achieved.
- All advertisements issued by a mutual fund or its sponsor or AMC, shall state all investments in mutual funds and securities are subject to market risks and the NAV of the schemes may go up or down depending upon the factors and forces affecting the securities market.
- No advertisement shall be issued stating that the scheme has been subscribed or oversubscribed during the period the scheme is open for subscription.
- Advertisement on the performance of a mutual fund or its AMC shall compare the past performances only on the basis of per unit of statistics as per these Regulations. Advertisements for NAVs must indicate the past as well as these latest NAV of a scheme. The yield calculations will be made as provided in these regulations.

**26. Explain the different types of Mutual funds.**

**Schemes according to Maturity Period**

- Open ended mutual funds: An open ended mutual funds is a fund with a non-fixed number of outstanding shares/units, that stands ready at any time to redeem them on demand. The fund itself buys back the shares surrendered and is ready to sell new shares. Generally the transaction takes place at the net asset value which is calculated on a periodical basis. The net asset value (Net Asset Value per share value of the fund's is total net assets after liabilities divided by the total number of shares outstanding on a given day) of the mutual funds rises or falls as a result of the performance of securities in the portfolio and the stock exchanges.
- Close ended mutual funds: It is the fund where mutual fund management sells a limited number of shares and does not stand ready to redeem them. Primary example of such mutual fund is UTI's Master share. The shares of such mutual funds are traded in the secondary markets. The requirement for listing is laid down to grant liquidity to the investors who have invested with the mutual fund. Therefore, close ended funds are more like equity shares

**Schemes according to investment objective**

- Income Oriented Schemes: The fund primarily offer fixed income to investors. Naturally enough, the main securities in which investments are made by such funds are the fixed income yielding ones like bonds.
- Growth Oriented Schemes: These funds offer growth potentialities associated with investment in capital market namely: (i) high source of income by way of dividend and (ii) rapid capital appreciation, both from holding of good quality scrips. These funds, with a view to satisfying the growth needs of investors, primarily concentrate on the low risk and high yielding spectrum of equity scrips of the corporate sector.
- Hybrid Schemes: These funds cater to both the investment needs of the prospective investors - namely fixed income as well as growth orientation. Therefore, investment targets of these mutual funds are judicious mix of both the fixed income securities like bonds and debentures and also sound equity scrips. In fact, these funds utilise the concept of balanced investment management. These funds are, thus, also known as "balanced funds".
- High Growth Schemes: As the nomenclature depicts, these funds primarily invest in high risk and high return volatile securities in the market and induce the investors with a high degree of capital appreciation. Aggressive investors willing to take excessive risks are the normal target group of such funds.
- Tax Saving Schemes: These schemes offer tax rebates to the investors under tax laws as prescribed from time to time. This is made possible because the Government offers tax incentive for investment in specified avenues. For example, Equity Linked Saving Schemes (ELSS) and pensions schemes.
- Special Schemes: This category includes index schemes that attempt to replicate the performance of particular index such as the BSE, Sensex or the NSE-50 or industry specific schemes (which invest in specific industries) or sectoral schemes (which invest exclusively in segment such as 'A' Group or initial public offering). Index fund schemes are

ideal for investors who are satisfied with a return approximately equal to that of an index. Sectoral fund schemes are ideal for investors who have already decided to invest in particular sector or segment.

- Real Estate Funds: These are close ended mutual funds which invest predominantly in real estate and properties.
- Off-shore Funds: Such funds invest in securities of foreign companies with RBI permission.
- Leverage Funds: Such funds, also known as borrowed funds, increase the size and value of portfolio and offer benefits to members from out of the excess of gains over cost of borrowed funds. They tend to indulge in speculative trading and risky investments.
- Hedge Funds: They employ their funds for speculative trading, i.e. for buying shares whose prices are likely to rise and for selling shares whose prices are likely to dip.
- Fund of Funds: They invest only in units of other mutual funds. Such funds do not operate at present in India.
- New Direction Funds: They invest in companies engaged in scientific and technological research such as birth control, anti-pollution, oceanography etc.
- Money Market Mutual Funds: These funds invest in short- term debt securities in the money market like certificates of deposits, commercial papers, government treasury bills etc. Owing to their large size, the funds normally get a higher yield on such short term investments than an individual investor. Money market mutual funds used to be regulated by the Reserve Bank of India on the basis of specified guidelines to be laid down by the Reserve Bank of India.

**27. Short notes on Foreign Venture capital investors and Collective Investment Scheme.**

**Foreign Venture Capital Investors**

Foreign Venture Capital Investor means an investor incorporated and established outside India, which proposes to make investment in venture capital fund(s) or venture capital undertakings in India and is registered under the SEBI (Foreign Venture Capital Investors) Regulations, 2000.

**Eligibility Criteria**

- the applicants track record, professional competence, financial soundness, experience, general reputation of fairness and integrity;
- whether the applicant has been granted necessary approval by the Reserve Bank of India for making investments in India;
- whether the applicant is an investment company, investment trust, investment partnership, pension fund, mutual fund, endowment fund, university fund, charitable institution or any other entity incorporated outside India; or
- whether the applicant is an asset management company, investment manager or investment management company or any other investment vehicle incorporated outside India;
- whether the applicant is authorised to invest in venture capital fund or carry on activity as a foreign venture capital investors;
- whether the applicant is regulated by an appropriate foreign regulatory authority or is an income tax payer; or submits a certificate from its banker of its or its promoter's track record where the applicant is neither a regulated entity nor an income tax payer;
- the applicant has not been refused a certificate by SEBI;
- whether the applicant is a fit and proper person.

**Collective Investment Scheme (CIS)**

The CIS has been defined to mean any scheme or arrangement made or offered by any company under which (a) the contributions, or payments made by the investors, by whatever name called, are pooled and utilised solely for the purposes of the scheme or arrangement; (b) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement; (c) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors; and (d) the investors do not have day to day control over the management and operation of the scheme or arrangement.

The CIS, however, does not include any scheme or arrangement (a) made or offered by a co-operative society, (b) under which deposits are accepted by non banking financial companies, (c) being a contract of insurance, (d) providing for any Scheme, Pension Scheme or the Insurance Scheme framed under the Employees Provident Fund and Miscellaneous Provision Act, 1952, (e) under which deposits are accepted under section 58A of the Companies Act, 1956, (f) under which deposits are accepted by a company declared as Nidhi or a mutual benefit society under section 620A of the Companies Act, 1956, (g) falling within the meaning of Chit business as defined in clause (d) of section 2 of Chit Fund Act, 1982 and (h) under which contributions made are in the nature of subscription to a mutual fund. The Act empowers the Central Government to make rules to provide for the requirements, which shall be complied with by CIS for the purpose of getting their units listed on any stock exchange.

Eligibility Criteria:

- the applicant is set up and registered as a company under the Companies Act, 1956;
- the applicant has, in its Memorandum of Association specified the managing of collective investment scheme as one of its main objects;
- the applicant has a net worth of not less than Rs,. 5 crores;
- the applicant is a fit and proper person for the grant of such certificate;
- the applicant has adequate infrastructure to enable it to operate collective investment scheme in accordance with the provision of these regulations;
- the directors or key personnel of the applicant should consist of persons of honesty and integrity having adequate professional experience in related field and have not been convicted for an offence involving moral turpitude or for any economic offence or for the violation of any securities laws;
- at least 50% of the directors of such Collective Investment Management Company shall consist of persons who are independent and are not directly or indirectly associated with the persons who have control over the Collective Investment Management Company;
- no person, directly or indirectly connected with the applicant has in the past been refused registration by SEBI under the Act;
- at least one of the directors on the board of the Collective Investment Management Company, who is not subject to retirement, is a representative of the trustee;
- the Collective Investment Management Company is not a trustee of any collective investment scheme.

**28. Explain the various forms of venture capital funds.**

**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. EVentures, Infinity are examples of incubators in India.

**Angel Investors**
An angel is an experienced industry-bred individual with high net worth. Typically, an angel investor would invest only his chosen field of technology, take active participationin day-to-day running of the Company invest small sums in the range of USD 1-3 million not insist on detailed business plans sanction the investment in up to a month help company for "second round" of funding.

**Venture Capitalists (VCs)**
VCs are organizations raising funds from numerous investors and hiring experienced professional managers to deploy the same. They typically: invest at "second" stage invest over a spectrum over industry/ies have hand-holding "mentor" approach insist on detailed business plans invest into proven ideas/businesses provide "brand" value to investee invest between USD 2-5 million.

**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.

**Trust or a Company**
A fund established in the form of a trust or a company including a body corporate and registered under SEBI Regulations and which has a dedicated pool of capital, raised in a manner specified in the Regulations and invests in

venture Capital undertaking.

**29. Which securities are not available for buy back?**

- Securities in lock-in period - In the case of a listed company, securities issued to the promoters, to a group, or to employees, subject to lock-in period as per SEBI (ICDR) Regulations, 2009 are not available for buy-back until the lock-in period expires.
- Non-transferable securities - Securities which are under lien or are pledged or restricted by any court for transfer or which otherwise statutorily cannot be transferred are not available for buy-back until such securities again become freely transferable.
- Disputed securities kept in abeyance - Securities which are under dispute and have been kept in abeyance or in respect of which transfer or transmission has not been effected, are not available for buy-back.

**30. Explain the process of buy back through the stock exchange route.**

- A company can buy back its securities from the open market through stock exchanges.
- The special resolution or board resolution shall specify the maximum price at which the buy back shall be made.
- It shall only be done through Stock Exchanges having electronic trading facility.
- Company shall appoint a Merchant Banker and make public announcement.
- The public announcement should be made at least 7 days prior to the commencement of buy-back. A copy of the public announcement should be filed with SEBI within 2 days of such announcement along with the fees. The public announcement should also contain disclosures regarding details of the brokers and the stock exchanges through which the buy-back of securities would be made.
- The buy-back shall be made only on stock exchanges having nationwide trading terminals.
- The buy-back of shares or other specified securities shall be made only through the order matching mechanism except 'all or none' order matching system
- Company and the Merchant Banker shall submit information about the shares bought back to the Stock Exchanges on a daily basis and publish the same on a fortnightly basis and every time 5% buy back has been done.
- Promoters or persons in control cannot offer their shares under this mechanism.

**31. Short note on Buy back through book building process.**

- A listed company may buy-back its securities from the open market through book building. This is a process by which a supply of the securities proposed to be bought back by a listed company is elicited and built up and the price for buy-back of such securities is assessed for the determination of the quantum of such securities to be bought back.
- In the special resolution / board resolution passed for buy-back through book building, the maximum price at which the buy-back shall be made should be specified.
- The following additional disclosures should also be made in the explanatory statement where the buy-back of securities is made through book building :
  a) the maximum price at which the buy-back of securities shall be made;
  b) whether the Board is being authorised at the general meeting to determine subsequently the specific price at which the buy-back may be made at the appropriate time;
  c) in case the promoters intend to offer their securities, the following disclosures shall also be made in the explanatory statement:
    i. the quantum of securities proposed to be tendered by promoters; and
    ii. the details of their transactions and their holdings for the last 6 months prior to the passing of the special resolution for buy-back including information of number of securities acquired, the price and the date of acquisition.
- The book building process should be conducted through an electronically linked transparent facility and all bidding centers, the number of which should not be less than 30, should have at least one electronically linked computer terminal.
- The company should appoint a merchant banker and make a public announcement as in the case of a buy-back through tender offer.

- The public announcement should be made at least 7 days prior to the commencement of buy-back.
- The company should open an escrow account as in the manner prescribed for buy-back through tender offer. However, the amount to be deposited in the escrow account should be determined with reference to the maximum price specified in the public announcement. The deposit in the escrow account should be made before the date of the public announcement.
- The offer for buy-back should remain open to securityholders for not less than 15 days and not more than 30 days.
- The price of securities to be bought back should be decided by the merchant banker and the company on the basis of quotations received from the securityholders. The highest accepted price should be final and it should be paid to all holders whose securities have been accepted for buy-back.
- In this mode of buy-back, the promoters and persons in control are permitted to offer their securities for buy-back as in the case of tender offer.
- Shareholders may indicate the number of shares that they are willing to tender at specified period(s) given in the tender/offer form and the number of shares they would like to tender at the "cut-off price" which may be determined by the Board.

**32. What are the benefits of the depository system?**

- **Elimination of bad deliveries** - In the depository environment, once holdings of an investor are dematerialised, the question of bad delivery does not arise i.e. they cannot be held "under objection". In the physical environment, buyer of shares was required to take the risk of transfer and face uncertainty of the quality of assets purchased. In a depository environment good money certainly begets good quality of assets.
- **Elimination of all risks associated with physical certificates** - Dealing in physical securities have associated security risks of theft of stocks, mutilation of certificates, loss of certificates during movements through and from the registrars, thus exposing the investor to the cost of obtaining duplicate certificates and advertisements, etc. This problem does not arise in the depository environment.
- **Immediate transfer and registration of securities** - In the depository environment, once the securities are credited to the investors account on pay out, he becomes the legal owner of the securities. There is no further need to send it to the company's registrar for registration.
- **Faster disbursement of non cash corporate benefits like rights, bonus, etc.** – Depository system provides for direct credit of non cash corporate entitlements to an investors account, thereby ensuring faster disbursement and avoiding risk of loss of certificates in transit.
- **Reduction in brokerage by many brokers for trading in dematerialised securities** - Brokers provide this benefit to investors as dealing in dematerialised securities reduces their back office cost of handling paper and also eliminates the risk of being the introducing broker.
- Reduction in handling of huge volumes of paper and periodic status reports to investors on their holdings and transactions, leading to better controls.
- **Elimination of problems related to change of address of investor, transmission, etc. -** In case of change of address or transmission of demat shares, investors are saved from undergoing the entire change procedure with each company or registrar. Investors have to only inform their DP with all relevant documents and the required changes are effected in the database of all the companies, where the investor is a registered holder of securities.

**33. Short note on Internal audit of operations of depository participants.**

The two Depository service providers in India, viz., National Securities Depository Ltd. (NSDL) and Central Depository Services (India) Limited (CDS) have allowed Company Secretaries in Whole-time Practice to undertake internal audit of the operations of Depository Participants (DPs).

- **NSDL** - Every Participant shall ensure that an internal audit in respect of the operations of the Depository is conducted at intervals of not more than three months by a qualified Chartered Accountant or a Company Secretary holding a certificate of Practice and a copy of the internal audit report shall be furnished to the Depository.
- **CDSL** - Every Participant shall ensure that an internal audit shall be conducted in respect of the participant's operations relating to CDS by a qualified Chartered Accountant in accordance with the provisions of the Chartered Accountants Act, 1949 or by a Company Secretary in practice in accordance with the provisions of the Company

Secretaries Act, 1980, at such intervals as may be specified by CDS from time to time. A copy of Internal Audit report shall be furnished to CDS.

**34. Explain the Rights and obligations of the depository participants.**

- Depository Participants are required to enter into an agreement with beneficial owners.
- It is required that separate accounts are to be opened by every participant in the name of each of the beneficial owner and the securities of each beneficial owners are to be segregated and shall not be mixed up with the securities of other beneficial owners or with the participant's own securities.
- The participants are obliged to reconcile the records with every depository on a daily basis.
- Participants are required to maintain the following records for a period of five years—
  - records of all the transactions entered into with a depository and with a beneficial owner;
  - details of security dematerialised, rematerialised on behalf of beneficial owners with whom it has entered into an agreement;
  - records of instructions received from beneficial owners and statements of account provided to beneficial owners; and
  - records of approval, notice, entry and cancellation of pledge or hypothecation.

**35. Short notes on Employee Stock Option Scheme and Reservation on competitive basis.**

**Employee Stock Option Scheme**

- It is an option given to the whole-time directors, officers or employees of the company which gives such directors, officers or employees the benefit or right to purchase or subscribe at a future date, the securities offered by the company at a pre-determine price.
- The company shall constitute a compensation committee consisting of a majority of independent directors which shall administer and supervise the scheme
- It shall inter alia, decide the quantum of options to be granted, conditions under which the options shall vest, time period within which options should be exercised etc.
- For issue of ESOPs, SR will be passed in General Meeting. Explanatory statement shall contain various details of the total options granted, requirement of vesting, exercise price, maximum number of options to be issued per employee, etc.
- The companies have the freedom to determine the exercise price of the options
- There should exist a minimum period of 1 year between the grant of options and their vesting.
- The employees do not have the right to receive dividend / any other benefits in respect of ESOPs till shares are issued upon exercise of the option
- ESOPs are non-transferable to any other person

**Reservation on competitive basis**

- In case of a public issue the company may make reservation on competitive basis out of the issue size excluding promoters' contribution and net offer to public in favour of the following categories of persons:
  (a) employees of the company including employees of the promoting companies excluding the promoters and an immediate relative of the promoter
  (b) shareholders (other than promoters) of listed promoting companies and listed group companies
- The reservation on competitive basis shall be subject to following conditions:
  1. the aggregate of reservations for employees shall not exceed 5% of the post issue capital
  2. value of allotment to any employee shall not exceed Rs. 2 lakh
  3. reservation for shareholders shall not exceed 10% of the issue size
  4. any unsubscribed portion in any reserved category may be added to any other reserved category and the unsubscribed portion, if any, after such inter-se adjustments among the reserved categories shall be added to the net offer to the public category.

**36. Explain the concept of Green Shoe Option.**

- **Green Shoe Option means an option of allotting equity shares in excess of the equity shares offered in the public issue as a post-listing price stabilizing mechanism.**
- A company desirous of availing the option, shall in the resolution of the general meeting authorizing the public issue, seek authorization also for the possibility of allotment of further shares to the 'stabilizing agent' (SA) at the end of the stabilization period.
- The company shall appoint one of the merchant bankers as the SA, who will be responsible for the price stabilization process, if required and shall enter into an agreement with him
- The SA shall also enter into an agreement with the promoter(s) or preissue shareholders who will lend their shares, specifying the maximum number of shares that may be borrowed from the promoters or the shareholders, which shall not be in excess of 15% of the total issue size.
- The SA shall borrow shares from the promoters or the pre-issue shareholders of the issuer company or both, to the extent of the proposed over-allotment.
- The securities borrowed shall be in dematerialized form and allocation of these securities shall be made on a pro-rata basis.

**37. Short note on Fast Track Issues.**

**Certain companies are exempted from the requirement from the requirement of filing draft offer document with SEBI and SEs and obtaining in-principle approval from SEs subject to fulfillment of the following conditions :**

- The shares of the company have been listed on any stock exchange having nationwide terminals for a period of at least three years immediately preceding the date of filing the prospectus with RoC or letter of offer with designated SE.
- The average market capitalisation of public shareholding of the company is at least Rs. 5,000 crores
- The annualized trading turnover of the shares of the company during 6 calendar months immediately preceding the month of filing the prospectus with RoC or letter of offer with designated SE has been at least 2% of the weighted average number of shares listed during the said six months period
- The company has redressed at least 95% of the total investor complaints received till the end of the quarter immediately preceding the month of filing the prospectus with RoC letter of offer with designated SE.
- The impact of auditors' qualifications, if any, on the audited accounts of the company in respect of the financial years for which such accounts are disclosed in the offer document does not exceed 5% of the PAT of the company for the respective years
- No prosecution proceedings or show cause notices issued by SEBI are pending against the company or its promoters or whole time directors as on the date of filing the prospectus with RoC letter of offer with designated SE.
- The entire shareholding of the promoter group is held in dematerialized form.

**38. Short notes on ASBA and IPO Grading.**

**<u>ASBA</u>**

- ASBA is an application containing an authorization to the investor's bank to block in his bank account an amount equivalent to the application money. The money remains in the bank. Upon finalization of the basis of allotment, only the amount equivalent to the allotment amount is debited to the bank account, and the rest is freed up. If the allotment is nil, then the entire blocked application amount gets released.
- Applying through ASBA process has the following benefits for the investor:
  (i) The investor need not pay the application money by cheque. He only issues an authorization to his bank to block the bank account to the extent of the application money.
  (ii) The investor does not have to bother about refunds, as in ASBA only that much money which is required for allotment of securities, is taken from the bank account.
  (iii) The investor continues to earn interest on the blocked money as the same remains in his bank account.
  (iv) The ASBA application form is much simpler.

(v) The investor deals with a known intermediary i.e. his own bank.

- The issuer is required to provide ASBA mode in all public issues though book building where a uniform payment option is being offered to the retail investors.

**IPO Grading**

- IPO grading is the professional assessment of a Credit Rating Agency (CRAs) on the fundamentals of a company in relation to the other listed equity shares in India.
- It is mandatory for the issuer company coming with IPO to obtain IPO grading from a Credit Rating Agency and disclose the same on the cover page of offer document and Application form.
- IPO grading endeavors to provide the investor with an informed, objective independent and unbiased opinion of a CRA after analyzing various relevant factors. It is an additional input available for your investment decision.
- An IPO grade is NOT a suggestion or recommendation as to whether an investor should subscribe to the IPO or not. IPO grade needs to be read together with the disclosures made in the offer document including the risk factors as well as the price at which the shares are being offered.
- IPO grade does not take into account the price of the shares being offered. Therefore, the investors need to make an independent judgment regarding the price of the investment.

**39. What are the requirements of SEBI Regulations relating to preferential issue?**

- **Preferential Issue means issue of specified securities to any select person or group of persons on a private placement basis**
- Does not include an offer of specified securities made through a public issue, rights issue, bonus issue, ESOPs or qualified institutions placement or an issue of sweat equity shares or depository receipts issued in a country outside India or foreign securities

**Conditions for issue**

- The company shall pass a SR
- All the equity shares held by the proposed allottees are in the dematerialized form
- The company shall obtain the PAN of the proposed allottees
- In the explanatory statement given to the shareholders the company shall inter alia disclose the objects of the preferential issue, proposal of promoters / directors to subscribe to the offer, shareholding pattern of the company before and after the issue, time within which such issue shall be completed, the identity of the proposed allottees etc.
- The Statutory Auditors of the company shall certify that the all requirements have been complied with
- In case the promoters of the company have sold their shares during the 6 months preceding the relevant date, they shall be ineligible for allotment of securities on preferential basis.
- The resolution passed for such issues shall be valid for 15 days from the date of passing it.
- The company shall not make a preferential issue if the same is not in compliance with the conditions for continuous listing
- The currency of the instruments / warrants which will be converted into equity shares at a later date shall not exceed 18 months
- Lock-in period of the instruments allotted on preferential basis shall be as follows –
  - to the promoter / promoter group - 3 years from the date of allotment
  - to persons other than the above – 1 year from the date of allotment
- The details of all moneys utilized from such preferential issue shall be disclosed in the accounts of the company indicating their purpose.

**40. Explain the various types of debt market instruments.**

- Corporate debentures –

a. Non-Convertible Debentures
b. Partly Convertible Debentures
c. Fully Convertible Debentures

d. Optionally Convertible Debentures
e. Secured debentures
f. Unsecured debentures
- Fixed income products
- Bonds

**41.** **Short notes on Debt market intermediaries and Listing of debt securities.**

**Debt market intermediaries**

- **Primary Dealers**: Primary dealers (PDs) are important intermediaries in the government securities markets. They act as underwriters in the primary market, and as market makers in the secondary market. PDs underwrite a portion of the issue of government security that is floated for a predetermined amount. The underwriting commitment of each PD is broadly decided on the basis of its size in terms of its net owned funds, its holding strength, the committed amount of bids and the volume of turnover in securities.
- **Brokers:** Brokers play an important role in secondary debt market by bringing together counterparties and negotiating terms of the trade. It is through them that the trades are entered on the stock exchanges. The brokers are regulated by the stock exchanges and also by SEBI.

**Listing of debt securities**

No issuer can make a public issue of debt securities unless the following conditions are satisfied (on the date of filing the draft offer document and the final offer document):

(a) The issuer has to apply to one or more recognized stock exchanges for the listing of such securities. If the application is made to more than one recognized stock exchange, the issuer should choose one of them as the designated stock exchange (having nationwide trading terminals). However, for any subsequent public issue, the issuer may choose a different stock exchange as the designated stock exchange, subject to the requirements of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008.

(b) The issuer has to obtain in-principle approval for the listing of its debt securities on the recognized stock exchanges where the application for listing has been made.

(c) Credit rating has to be obtained from at least one credit rating agency registered with SEBI, and has to be disclosed in the offer document.

(d) It has entered into an arrangement with a depository registered with SEBI for the dematerialization of the debt securities that are proposed to be issued to the public, in accordance with the Depositories Act, 1996 and other relevant regulations.

(e) The issuer is required to appoint one or more merchant bankers registered with SEBI, at least one of whom has to be a lead merchant banker.

(f) The issuer is required to appoint one or more debenture trustees in accordance with the provisions of Section 117B of the Companies Act, 1956 and the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993 and also has to enter into trust deed with them.

(g) The issuer is not allowed to issue debt securities for providing loans to or the acquisition of shares of any person who is part of the same group or who is under the same management.

**(h)** For the redemption of the debt securities issued by a company, the issuer has to create a debenture redemption reserve in accordance with the provisions of the Companies Act, 1956.

**42.** **What are the various contents of Offering Circular?**

- Background of the company and its promoters including date of incorporation and objects, past performance, production, sales and distribution network, future plans, etc.
- Capital structure of the company - existing, proposed and consolidated.
- Deployment of issue proceeds.
- Financial data indicating track record of consistent profitability of the company.
- Group investments and their performance including subsidiaries, joint venture in India and abroad.
- Investment considerations.
- Description of shares.

- Terms and conditions of global depository receipt and any other instrument issued along with it.
- Economic and regulatory policies of the Government of India.
- Details of Indian securities market indicating stock exchange, listing requirements, foreign investments in Indian securities.
- Market price of securities.
- Dividend and capitalisation.
- Securities regulations and exchange control.
- Tax aspects indicating analysis of tax consequences under Indian law of acquisition, membership and sale of shares, treatment of capital gains tax, etc.
- Status of approvals required to be obtained from Government of India.
- Summary of significant differences in Indian GAAP, UK GAAP and US GAAP and expert's opinion.
- Report of statutory auditor.
- Subscription and sale.
- Transfer restrictions in respect of instruments.
- Legal matters etc.
- Other general information not forming part of any of the above.

**43. Short notes on FCCBs and ECBs.**

**FCCBs**

**Foreign Currency Convertible Bonds (FCCBs)** means bonds issued and subscribed by a non-resident in foreign currency and convertible into ordinary shares of the issuing company in any manner, either in whole, or in part, on the basis of any equity related warrants attached to debt instruments.

Eligibility Requirements

- Indian Company should be eligible to raise funds from the Indian capital market
- Company should not be restrained from accessing the securities market by SEBI
- Unlisted Indian companies issuing GDRs / FCCBs shall be required to simultaneously list themselves on Indian Stock Exchanges.
- The company shall have a consistent track record of good performance (financial or otherwise) for a minimum period of 3 years.
- FCCBs shall be denominated in any convertible foreign currency and the ordinary shares of an issuing company shall be denominated in Indian rupees.
- The company shall deliver the ordinary shares or bonds to a Domestic Custodian Bank who will, in terms of agreement, instruct the Overseas Depositary Bank to issue GDRs to non-resident investors against the shares or bonds held by the Domestic Custodian Bank.
- There are no end use restrictions on the funds raised through GDRs / FCCBs except that the funds cannot be used for real estate and investment in the capital market.

Approvals required

- Approval of the Board of Directors and shareholders of the Company.
- For issuing FCCB's exceeding $ 100 million, approval of the Ministry of Finance is required. The maximum amount that the company can raise through issue of FCCB's is $ 750 million.
- Approval of the RBI.
- In-principle consent of banks / financial institutions.

**ECBs**

External Commercial Borrowings (ECB) refer to commercial loans in the form of bank loans, buyers' credit, suppliers' credit, securitized instruments (e.g. floating rate notes and fixed rate bonds, non-convertible, optionally convertible or partially convertible preference shares) availed of from non-resident lenders with a minimum average maturity of 3 years.

**Requirements for ECBs – Automatic Route**

- Corporates, including those in the hotel, hospital, software sectors and Infrastructure Finance Companies except financial intermediaries, such as banks, financial institutions, Housing Finance Companies and Non-Banking Financial Companies are eligible to raise ECB.
- Individuals, Trusts and Non-Profit making organizations are not eligible to raise ECB.
- Units in Special Economic Zones (SEZ) are allowed to raise ECB for their own requirement.
- The maximum amount of ECB which can be raised by a corporate other than those in the hotel, hospital and software sectors is USD 750 million or its equivalent during a financial year.
- Corporates in the hotel, hospital and software sectors can raise upto USD 200 million under the automatic route, subject to the condition that the proceeds of the ECBs should not be used for acquisition of land and beyond that under the approval route.
- ECB up to USD 20 million or its equivalent in a financial year with minimum average maturity of three years.
- ECB above USD 20 million or equivalent and up to USD 750 million or its equivalent with a minimum average maturity of five years.

**Requirements for ECBs - Approval Route**

- ECB beyond 50% of the owned funds by financial institutions which are classified as Infrastructure Finance Companies are considered on a case to case basis.
- Banks and financial institutions which had participated in the textile or steel sector restructuring package as approved by the Government are also permitted to the extent of their investment in the package.
- ECB with minimum average maturity of 5 years by NBFCs from multilateral financial institutions, reputable regional financial institutions, official export credit agencies and international banks to finance import of infrastructure equipment for leasing to infrastructure projects.
- SEZ developers can avail of ECBs for providing infrastructure facilities within SEZ.
- Corporates which have violated the extant ECB policy and are under investigation by the Reserve Bank and / or Directorate of Enforcement are allowed to avail of ECB only under the approval route.
- Cases falling outside the purview of the automatic route limits.

**44. What do you mean by FCEBs?**

- **Foreign Currency Exchangeable Bond (FCEB) means a bond expressed in foreign currency, the principal and interest in respect of which is payable in foreign currency, issued by an Issuing Company and subscribed to by a person who is a resident outside India, in foreign currency and exchangeable into equity share of another company, to be called the Offered Company, in any manner, either wholly, or partly or on the basis of any equity related warrants attached to debt instruments.**
- The Issuing Company shall be part of the promoter group of the Offered Company and shall issue hold equity shares being offered at the time of issuance of FCEB.
- The Offered Company shall be a listed company, which is engaged in a sector eligible to receive Foreign Direct Investment.
- An Indian company, which is not eligible to raise funds from the Indian securities market, including a company which has been restrained from accessing the securities market by the SEBI shall not be eligible to issue FCEB.
- Issuance of FCEB shall require prior approval of the Reserve Bank under the Approval Route for raising ECB.
- The proceeds of FCEB may be invested by the issuing company overseas by way of direct investment including in JV / WOS abroad or in the promoter group companies.
- The pricing of FCEBs should not be less than the average of the weekly high and low of the closing prices of the related shares quoted on the stock exchange during the 6 months or 2 weeks preceding the relevant date.
- Minimum maturity of FCEB shall be five years.

**45. Short notes on Road shows.**

**Roadshows represent meetings of issuers, analysts and potential investors. Details about the company are presented in the roadshows and such details usually include the following information about the company making the issue:**

- History
- Organisational structure
- Principal objects
- Business lines
- Position of the company in Indian and international market
- Past performance of the company
- Future plans of the company
- Competition - domestic as well as foreign
- Financial results and operating performance
- Valuation of shares
- Review of Indian stock market and economic situations.

**46. Explain the various requirements relating to issue of IDRs.**

**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**

- 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
- It has a continuous trading record or history on a stock exchange in its parent country for at least 3 immediately preceding years.
- 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 5 years

**Requirements of SEBI ICDR Regulations, 2009**

- The issuing company is listed in its home country.
- The issuing company is not prohibited to issue securities by any regulatory body.
- The issuing company has track record of compliance with securities market regulations in its home country.
- Issue size shall not be less than Rs. 50 crores.
- Minimum application amount shall be Rs. 20,000/-
- At least 50% of the IDRs issued shall be allotted to QIBs on proportionate basis.
- The balance 50% may be allocated among the categories of non-institutional investors and retail individual investors including employees at the discretion of the issuer and the manner of allocation shall be disclosed in the prospectus.
- Minimum subscription shall be 90%.
- IDRs shall not be automatically fungible into underlying equity shares of issuing company.
- The merchant banker shall submit post issue monitoring reports (3 days and 15 days) similar to public issues.

**47. Explain the legal framework for investor protection in India.**

In order to afford adequate protection to the investors, provisions have been incorporated in different legislations such as the Companies Act, Securities Contracts (Regulation) Act, Consumer Protection Act, Depositories Act, and Listing Agreement of the Stock Exchanges supplemented by many guidelines, circulars and press notes issued by the Ministry of Finance, Ministry of Company Affairs and SEBI from time to time. The legislations as well as the rules and regulations notified thereunder specify disclosure requirements to be complied with by the companies and also punishments and remedies for failure of compliance. The following are few examples of such requirements:

**Companies Act, 1956**

- Section 58A (Acceptance of Deposits) - No Company shall invite any public deposits without issuing an advertisement in accordance with the Companies (Acceptance of Deposit) Rules, 1975. Where a Company fails to repay any deposit or part thereof, the Company Law Board may either on its own or on the application of the depositors, by order direct the Company to make re-payment of such deposits thereof forthwith or within such time and subject to such conditions as may be specified in the order.

- Section 63 (Mis-statements in Prospectus): This Section deals with criminal liability for misstatement in prospectus issued by a company. For such misstatements, the section provides for imprisonment upto 2 years which and fine which may extend to Rs. 50,000/- or with both and the offence is compoundable.
- Section 205 (Non-payment of Dividend): This section, inter alia, requires a company who has declared a dividend for any financial year to deposit the amount of such dividend (including interim dividend, if any) in separate bank account within 5 days from the date of declaration of such dividend.
- Section 205C: This section provides for establishment of Investors' Education and Protection Fund by the Central Government. Various types of unpaid/unclaimed amounts of application money/matured deposits/matured debenture etc. are to be credited to the said fund. The said accumulation in this fund are to be utilized for promotion of investors' awareness and protection of investors' interests.
- Transfers and Transmission of Securities - Failure to comply with the provisions of Companies Act can be brought before the Company Law Board through an appeal under Section 111 and 111A. After hearing the parties Company Law Board may by order direct the company to register the transfer.
- Section 219 (Failure to Send Financial Statements): This section provides for the right of a member for copies of Balance sheet and Auditors Report. Default in complying with this requirement is punishable with fine which may extend to Rs. 5,000/-.
- Protection to Debentureholders: Section 117A to 117C protect the debenture holders, and the new sections contains stringent punishments for default.

**SEBI Act, 1992**

In the preamble to the SEBI Act, 1992 two objectives are mentioned. The first objective is protecting the interest of the investors in securities and the second is to promote the development of and to regulate the securities market and for matters connected therewith or incidental thereto. Thus priority is accorded to investor protection in the SEBI Act.

**Securities Contracts (Regulation) Act, 1956**

Section 23 provides for penalties which may extend to 10 years or with fine which may extend to Rs. 25 crores or with both for contravention of the provisions of the Act.

Section 23A to Section 23H provide for penalty in respect of failure to furnish information, return etc., failure by any person to enter into an agreement with clients, failure to redress investor grievances, failure to segregate securities or moneys of client or clients, failure to comply with provisions of listing conditions or delisting conditions or grounds, excess dematerialization or delivery of unlisted securities, failure to furnish periodical returns, contravention with any provision of the act where no separate penalty is provided.

**Reserve Bank of India Act, 1934**

Section 45 QA of the Reserve Bank of India Act gives a depositor similar rights as are provided under Companies Act to approach CLB for payment of matured deposits in the case of NBFCs

**Indian Penal Code**

Economic Offence Wings of the Police Departments have powers under IPC to take up the cases of cheating, forgery and misappropriation etc. relating to investments.

**48. Who is an Ombudsman?**

Ombudsman in its literal sense is an independent person appointed to hear and act upon citizen's complaint about government services. This concept was invented in Sweden and the idea has been widely adopted. For example, various banks, insurance companies have appointed Ombudsman to attend to the complaints of their customers.

**Establishment of Office of Ombudsman**

SEBI has been empowered to appoint, on recommendation of a Selection Committee, one or more Ombudsmen for such territorial jurisdiction as may be specified from time to time by an order. The Selection Committee referred in sub-regulation(2)should consist of the following members, namely:

1. an expert in the areas relating to financial market operations to be nominated by the Chairman.
2. a person having a special knowledge and experience of law, finance or economics, to be nominated by the Chairman.
3. a representative of SEBI not below the rank of Executive Director who shall be Secretary of the Selection Committee, to be nominated by the Chairman.

**Eligibility Criteria for Appointment of a Ombudsman**

In order to be appointed as an Ombudsman, a person is required to be—

- a citizen of India;
- of high moral integrity;
- not below the age of forty five years; and
- either a retired District Judge or qualified to be appointed a District Judge, or having at least ten years experience of service in any regulatory body, or having special knowledge and experience in law, finance, corporate matters, economics, management or administration for a period of not less than ten years, or an office bearer of investors' association recognised by the Board having experience in dealing with matters relating to investor protection for a period of not less than 10 years.

**49. Explain the various grounds of compulsory delisting.**

- The company has incurred losses during the preceding 3 consecutive years and it has negative networth;
- Shareholding of the company held by the public has come below the minimum level applicable to the company as per the listing agreement (i.e. 25%) and the company has failed to raise public holding to the required level within the time specified by the RSE;
- Trading in securities of the company has remained suspended for a period exceeding 6 months;
- Securities of the company have remained infrequently traded during the preceding 3 years;
- Company or any of its promoters or any of its director has been convicted for failure to comply with any of the provisions of the SCRA or the SEBI Act, 1992 or the Depositories Act, 1996 or rules, regulations, agreements made there under, as the case may be and awarded a penalty of not less than Rs. 10 million or imprisonment of not less than 3 years;
- Addresses of the company or any of its promoter or any of its directors, are not known or false addresses have been furnished or the company has changed its registered office in contravention of the provisions of the Companies Act, 1956.

**50. Short note on SEBI Informal Guidance Scheme.**

- In the interests of better regulation of and orderly development of the Securities market, SEBI has issued SEBI (Informal Guidance) Scheme 2003 w.e.f. 24.6.2003. The following persons may make a request for informal Guidance under the scheme:
  (a) any intermediary registered with the SEBI.
  (b) any listed company.
  (c) any company which intends to get any of its securities listed and which has filed either a listing application with any stock exchange or a draft offer document with the Board or the Central Listing authority.
  (d) any mutual fund trustee company or asset management company.
  (e) any acquirer or prospective acquirer under the SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 1987.
- The informal guidance may be sought for and given in two forms:
  — No-action letters: SEBI indicates that the Department would or would not recommend any action under any Act, Rules, Regulations, Guidelines, Circulars or other legal provisions administered by SEBI.
  — Interpretive letters: SEBI provides an interpretation of a specific provision of any Act, Rules, Regulations, Guidelines, Circulars or other legal provision being administered by SEBI in the context of a proposed transaction in securities or a specific factual situation.
- The request seeking informal guidance should state that it is being made under this scheme and also state whether it is a request for a no-action letter or an interpretive letter and should be accompanied with a fee of Rs. 25,000/- and

addressed to the concerned Department of SEBI. It should also describe the request, disclose and analyse all material facts and circumstances involved and mention all applicable legal provisions. SEBI may dispose off the request as early as possible and in any case not later than 60 days after the receipt of the request. The Department may give a hearing or conduct an interview if it feels necessary to do so. The requestor shall be entitled only to the reply. The internal records or views of SEBI shall be confidential.

- SEBI may not respond to the following types of requests:

(a) those which are general and those which do not completely and sufficiently describe the factual situation;
(b) those which involve hypothetical situations;
(c) those requests in which the requestor has no direct or proximate interest;
(d) where the applicable legal provisions are not cited;
(e) where a no-action or interpretive letter has already been issued by that or any other Department on a substantially similar question involving substantially similar facts, as that to which the request relates;
(f) those cases in which investigation, enquiry or other enforcement action has already been initiated;
(g) those cases where connected issues are pending before any Tribunal or Court and on issues which are subjudice; and,
(h) those cases where policy concerns require that the Department does not respond.