

SHREE GURU KRIPA'S INSTITUTE OF MANAGEMENT

CA FINAL – CORPORATE AND ALLIED LAW

MAY 2013 EAMINATIONS - LATEST AMENDMENTS



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PART 1 – COMPANIES ACT, 1956

Note: PAGE NUMBER REFERRED ARE FROM PADHUKA'S CORPORATE AND ALLIED LAW – CA FINAL

Area	Notification / Circular	Effect	Page No.
Office or Place of Profit	G.S.R. No. 514(E) [F. NO. 17/174/2011-CL.V], DATED 7-7-2011	Prescribed ceiling for - Section 314(1) = Rs.50,000 or more (instead of Rs.10,000 or more) Section 314(1B) = Rs.2,50,000 or more (instead of Rs.50,000 or more)	Pg 4.66, Q.25
Payment of Remuneration beyond the ceiling limit as per Schedule XIII	G.S.R. 534(E) [F.NO. 14/3/2011-CL.VII], DATED 14-7-2011	The approval of CG is not required for <u>a subsidiary of a Listed Company</u>, if – (i) the Remuneration Committee and Board of Directors of the Holding Company give their consent for the amount of such remuneration of the applicant and for the said amount to be deemed remuneration by the Holding Company for the purpose of section 198 of the Companies Act, 1956 and; (ii) A Special Resolution has been passed at the General Meeting of the Company for payment of remuneration of the applicant and; (iii) The Remuneration of the Applicant is deemed to be remuneration paid by Holding Company and; (iv) All Members of the Subsidiary are Bodies Corporate. Further, a Listed Company or a Subsidiary of a Listed Company shall not require Central Government approval for the payment of Remuneration to its Managerial Personnel, if the remuneration is fixed by Board of Industrial and Financial Reconstruction. Further that no approval of CG is required if the Managerial Person is not having any interest in the Capital of the Company or its Holding Company, directly or indirectly or through any other Statutory Structures and not having any direct or indirect interest or related to the Directors or Promoters of the Company or its Holding Company at any time during last two years before or on the date of appointment and is having a graduate level qualification with expert and specialized knowledge in the field of his profession. Any Employee of a Company holding Shares of the Company up to 0.5% of Paid Up Share Capital thereof under any scheme formulated for allotment of Shares to such Employees including under Employees' Stock Option Plan or by way of Qualification Shares are also covered under the category of persons not having any interest in the capital of the Company.	Pg 3.73
Certain Powers of CG delegated to Regional Director w.e.f 12.08.2012	S.O. 1539(E) [F No. 1/1/2003-CL. V], dated 10-7-2012	Powers of the Central Government in the following sections have been delegated to Regional Directors – • <u>Section 297(1) proviso</u> S.297 requires the prior consent for interested contracts from central government if the paid up capital of the company is Rs.1 Crore or more. The same is delegated to Regional Director instead of CG. • Section 394A: S. 394A requires the Tribunal to give notice of every application made to it u/s 391 or 394 to the Central Government, and shall take into consideration the representations, if any, made to it by that Government before passing any order. The same is delegated to Regional Director instead of CG.	Q.No.27 / Pg. 4.73 Q.No.3 / Pg. 5.2

Area	Notification / Circular	Effect	Page No.
		Section 400: S. 400 requires intimation to Central Government of every application received u/s 397 / 398 – Oppression and Mis-Management. The same is delegated to Regional Director instead of CG. Others: The power of CG under the following sections are also delegated to Regional Director – i. Second Proviso to 439(5) and ii. 439(6); iii. Section 496(1)(a); iv. Section 508(1)(a); v. Section 551(1); vi. Section 555(7)(b) and vii. Proviso to Section 555(9)(a); viii. Proviso to Section 610(1); ix. Section 627 (Provision relating to winding up – not applicable for exams)	Q.No.3 / Pg. 6.4
Filing of Accounts	F. NO. 5/18/2005-CL-V], DATED 5-10-2011	The following class of companies have to file their Balance Sheet, Profit and Loss Account and other documents as required under section 220 of the Companies Act, 1956 with the Registrar using the Extensible Business Reporting Language (XBRL) taxonomy to the rules for the financial year ending on or after 31st March, 2011 with e-Form No. 23AC-XBRL and 23ACA-XBRL specified under the Companies (Central Government) General Rules and Forms, 1956, namely:- (i) All Companies listed with any Stock Exchange(s) in India and their Indian subsidiaries; or (ii) All Companies having Paid Up Capital of Rupees Five Crore or above; or (iii) All Companies having Turnover of Rupees Hundred Crore or above. Provided that the Companies in Banking, Insurance, Power Sectors and Non-Banking Financial companies are exempted for Extensible Business Reporting Language (XBRL) filing.	Accounts & Audit – Pg. 1.22, Q.24
Winding Up Provisions	ICAI Announcements	“Students are advised to study only General Provision of winding up as covered under Paragraph 9.4 of the Study Material” It covers Sec.528 – Sec.560 of the Act – which is covered in our study material between Pg.7.35 / Qn.10 to Pg.7.54 / Qn.35	
Remuneration u/s 309	General Circular No. 24/2012, dated 9-8-2012	Any increase in remuneration of Non-Whole Time Director(s) of a company solely on account of payment of service tax on commission payable to them by the company shall not require approval of Central Government under sections 309 and 310 of the Companies Act even if it exceeds the limit 1% or 3% of the profit [u/s 309(4)] of the company, as the case may be, in the financial year 2012-13.	Pg. 3.69
Sec. 205 – Investor Education and Protection Fund	G.S.R. 352(E), DATED 10-5-2012	- Applicability: Every Company (including NBFC and Residuary Non-Banking Companies) - Time Limit: Within a period of 90 days after the holding of AGM or the date on which it should have been held as per Section 166 of the Act, and every year thereafter till completion of the seven years period, identify the Unclaimed Amounts as referred to in Section 205C(2), separately furnish and upload on its own website as also on the Ministry's website or any other website as may be specified by the Government a statement or information. - Form: e-Form 5 INV, separately for each year - Information to be furnished: (a) Names and last known Addresses of the persons	-

Area	Notification / Circular	Effect	Page No.
		entitled to receive the sum, (b) Nature of Amount, (c) Amount to which each person is entitled, (d) Due Date for transfer into the Investor Education and Protection Fund, and (e) Such other information as considered relevant for the purpose. • Verification of e-Form: The information referred shall be duly verified and certified by a CA or CS or CWA practicing in India or by the Statutory Auditors of the Company. • Default in filing of information: Failure to furnish or furnishing of false information, the Company, and every Officer of the company who is in default, shall be liable and in such case the provisions of Section 629A of the Companies Act, 1956 shall be applicable.	

PART 2 – INSURANCE, ACT, 1938

Area	Notification Number	Effect	Page No.
Re-Insurance Percentage u/s 101A	Notification F.NO.IRDA/RI/1/57/2012, DATED 15-3-2012	The percentage cessions of the sum insured on each General Insurance Policy to be reinsured with the Indian Reinsurer <u>shall continue to be 10% in respect</u> of insurances attaching during the year 1st April, 2012 to 31st March, 2013.	Pg. 17.11 / Qn. No.15

PART 3 – PREVENTION OF MONEY LAUNDERING ACT, 2002

Area	Notification Number	Effect	Page No.
Agencies / Officials are required to assist the PMLA Authorities	Notification NO.GSR 735(E), dated 1-10-2012	In Q.7, Pg. 16.34 – add the following items after S.No:9 10. State Police Department, 11. Regulator – i.e Banking Companies and Financial Institutions who are required to maintain and furnish prescribed transactions, 12. Director General of Foreign Trade, 13. Ministry of External Affairs.	Q.7, Pg. 16.34

PART 4 – BANKING REGULATION ACT, 1949

Area	Notification Number	Effect	Page No.
Cash Reserve u/s 18	Notification DBOD.NO.RET.BC.79/12.01. 001/2012-13, DATED 29-1- 2013	Cash Reserve Ratio (CRR) required to be maintained by every banking company, not being a scheduled bank, shall be 3.00 per cent of its net demand and time liabilities upto February 8, 2013 and <u>4.00 per cent of its net demand and time liabilities from the fortnight beginning from February 9, 2013.</u> <u>Note 1: This amendment is applicable only w.e.f Nov 2013 Exams.</u> Note 2: CRR for scheduled commercial banks to be notified by RBI u/s 42(1A) – <u>as on 31.10.2012 is 4.50 % on total demand and time liabilities.</u>	Pg. 16.7 / Qn. No.15
Statutory Liquidity Reserve u/s 24	Notification DBOD.No.Ret.BC.47 /12.02.001/2012-13, dated 28-9-2012	Statutory Liquidity Ratio for Local Area Banks be reduced from 25 per cent to 23 per cent of their Net Demand and Time Liabilities (NDTL) with effect from the fortnight beginning August 11, 2012.	Pg. 16.7 / Qn. No.18

Part 5 – SARFAESI Act, 2002

Area	Notification Number / Reference	Effect	Page No.
QIB's	Notification No. LAD-NRO/GN/2012-13/09/17427, dated 3-8-2012	Alternative Investment Fund, which is a body corporate and registered under the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012, shall be a qualified institutional buyer for the purposes of the said Act. [Section 2(u)]	Pg. 16.17 / Qn. No.1
Requirement to deposit 75% of amount u/s 17	Mardia Chemicals Vs UOI [2004] 51 SCL 513 (SC)	Requirement of deposit of 75% of amount claimed before entertaining an appeal (petition) under section 17 is an oppressive, onerous and arbitrary condition against all canons of reasonableness and such a condition is invalid and it is liable to be struck down. According it was struck down. Now, the DRT shall only consider DRT shall consider whether any of the measures referred to Section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder. Effect of the Amendment: In Qn.12 the requirement to deposit 75% of the amount shall be omitted. (Regret for the error in the text book)	Pg. 16.25 / Qn. No.12
Minimum Net Owned Fund	Master Circular DNBS (PD) CC. No. 30/SCRC/26.03.001/2012-2013, dated 2-7-2012	For commencing the business of securitisation or asset reconstruction the minimum owned fund shall be an amount not less than 15% of the total financial assets acquired or to be acquired by the Securitisation Company or Reconstruction Company on an aggregate basis or Rs.100 crore whichever is lower, irrespective of whether the assets are transferred to a trust set up for the purpose of securitization or not. The Securitisation Company or Reconstruction Company should continue to hold this owned fund level until the realization of the assets and redemption of security receipts issued against such assets.	Pg. 16.19 / Qn. No.4 – Point 1

Area	Notification Number / Reference	Effect	Page No.
		The Securitization Company or Reconstruction Company can utilize this amount towards the Security Receipts issued by the trust under each scheme. This will ensure the stake of the Securitisation Company or Reconstruction Company in the assets acquired.	
Commencement of Business	Master Circular DNBS (PD) CC. No. 30/SCRC/26.03.001/2012-2013, dated 2-7-2012	The Securitisation Company or Reconstruction Company should commence business within six months from the date of grant of Certificate of Registration. The Bank may on application made by SC/RC grant extension of time beyond six months but in no case such extension of time shall exceed 12 months from the date of grant of Certificate of Registration.	Pg. 16.19 / Qn. No.4
Filing of documents with RBI	Master Circular DNBS (PD) CC. No. 30/SCRC/26.03.001/2012-2013, dated 2-7-2012	All the SCs/RCs registered to furnish the position of Owned Fund in Quarterly Statement SCRC1 and also furnish a copy of audited balance sheet along with the Directors' Report/Auditors' Report every year within one month from the date of Annual General Body Meeting, in which the audited accounts are adopted.	Pg. 16.19 / Qn. No.5
Clarification on Acquisition of Financial Assets	Master Circular DNBS (PD) CC. No. 30/SCRC/26.03.001/2012-2013, dated 2-7-2012	A Securitisation Company/Reconstruction Company is neither a 'bank' in terms of provisions of Section 2(1)(c) of the SARFAESI Act, 2002 nor a 'financial institution' in terms of provisions of Section 2(1)(m) of the said Act. Therefore, acquisition of financial assets by one SC/RC from another SC/RC will not be in conformity with the provisions of the SARFAESI Act, 2002.	-
Clarification on Acquisition of Financial Assets	Master Circular DNBS (PD) CC. No. 30/SCRC/26.03.001/2012-2013, dated 2-7-2012	'Restructuring of loans by SC/RC' is one of the measures allowed to be undertaken by SCs/RCs for realisation of their dues. As such, there is no bar on SCs/RCs deploying their funds for undertaking restructuring of acquired loan account with the sole purpose of realizing their dues.	-
General Clarifications	Master Circular DNBS (PD) CC. No. 30/SCRC/26.03.001/2012-2013, dated 2-7-2012	SCs/RCs can acquire the assets either in their own books or directly in the books of the trusts set up by them. The period for realization of assets acquired by SCs/RCs can be extended from 5 years to 8 years by the Board of Directors of the SC/RC subject to certain conditions. An upper limit of 10% of the owned funds has been stipulated for the investment of SCs/RCs in land and buildings for their own use. Any Asset / Security Receipt which remain unresolved/not redeemed as at the end of five years or eight years will now be treated as loss asset.	Pg. 16.23 / Qn. No.10
Conditions for takeover of management	Master Circular DNBS (PD) CC. No. 30/SCRC/26.03.001/2012-2013, dated 2-7-2012	An SC/RC may effect change in or takeover of the management of the business of the borrower – - Where the amount due to it from the borrower is not less than 25% of the total assets owned by the borrower; and - Where the borrower is financed by more than one secured creditor (including SC/RC), secured creditors (including SC/RC) holding not less than 75% of the outstanding security receipts agree to such action. 'Total Assets' means total assets as disclosed in its latest audited Balance Sheet immediately preceding the date of taking action.	Pg. 16.24 / Qn. No.11

Part 6 – SEBI (ICDR), 2009

Area	Notification Number	Effect	Page No.
Avg Market Capitalisation	SEBI (ICDR) (4th Amendment) Regulations, 2012	AMC of Public Shareholding of the issuer must be atleast Rs 3000 Crores (instead of Rs.5,000 Crores)	Qn. 7/ Pg.15.5
Issue cannot be underwritten	SEBI (ICDR) (4th Amendment) Regulations, 2012	75% of the Net Offer to Public cannot be underwritten. (In Qn. No. 8 / Pg. 15.6 – Change as 75% in all places instead of 50%)	Qn. 8/ Pg.15.6
Eligibility Requirements – Unlisted Company	SEBI (ICDR) (4th Amendment) Regulations, 2012	The following are the changes:- 1. <u>Net Tangible Asset</u>: The limit of 50% on monetary assets is not applicable if public issue is entirely through offer for sale. 2. <u>Distributable Profit</u>: Company should have a minimum average pre-tax operating profit of Rs.15 Crores calculated on restated / consolidated basis, during the 3 most profitable years out of the immediate preceding 5 Years. <u>(The existing profitability conditions shall stand deleted)</u> <u>Note: All the remaining conditions remains the same.</u> <u>Alternative Conditions:</u> Both Condition (a) / (b) as per the table in Pg.15.11 stands deleted. Substitute for the entire table, the following conditions – “ 2. Alternative Conditions: a. Issuer shall make issue through Book-Building Process; and b. Atleast 75% of the Issue Size shall be allotted to the QIB failing which the full subscription monies shall be refunded. ”	Qn. 19/ Pg.15.10
Anchor Investor	SEBI (ICDR) (4th Amendment) Regulations, 2012	<u>Allocation to Anchor Investors</u>: (In point 9 / Pg. 15.19 – for point (b) substitute the following) Allocation to Anchor Investors shall be on a discretionary basis and subject to the following:— – For allocation upto Rs. 10 Crores - Maximum of 2 such Investors – For allocation above Rs. 10 Crores and upto Rs. 250 Crores – Min 2 & Max 15, subject to minimum allotment of Rs. 5 Crores per such investor; – For allocation above Rs. 250 Crore – Min 5 and Max 25, subject to minimum allotment of Rs. 5 Crore per such investor;	15.19
Allocation of Net Offer to Public	SEBI (ICDR) (4th Amendment) Regulations, 2012	<u>Allocation of Net Offer to Public (Rule – 43):</u> The following shall be the mode of allocation for issue made through Book Building Process A. <u>General</u> a. Maximum 50% to Qualified Institutional Buyers b. At least 15% to Non Institutional Investors c. At least 35% to Retail Individual Investors B. <u>IPO by Unlisted Company under alternative route mechanism</u>	15.28

Area	Notification Number	Effect	Page No.
		a. Minimum 75% to Qualified Institutional Buyers b. Max 15% to Non Institutional Investors c. Max 10% to Retail Individual Investors <u>Note:</u> No Change for allocation in respect of issue made other than through the book building process	
Minimum Application Value	SEBI (ICDR) (4th Amendment) Regulations, 2012	The issuer shall stipulate in the offer document, the minimum application size in terms of number of specified securities which shall fall within the range of minimum application value of <u>Rs.10,000 to Rs.15,000.</u> Note: The illustration shall accordingly be altered.	15.32 / Pt.4
Preferential Issue	SEBI (ICDR) (4th Amendment) Regulations, 2012	In Qn.50 / Pg. 15.41 – Point 1 instead of 6 months – 26 weeks shall be substituted in all places. Thus, Average of the weekly high and low of the closing prices of the related shares quoted on the stock exchange – During the 26 weeks preceding the relevant date or during the 2 weeks preceding the relevant date (whichever is high)	Pg. 15.41

PART 7 – COMPETITION ACT, 2002

Area	Notification Number	Effect	Page No.
Section 5 & 6 of the Competition Act, 2002	Notification No.SO 93(E) / dated 8-1-2013	Banking Company u/s 45 of the Banking Regulation Act, 1949 are exempted from Sections 5 and 6 of the Competition Act, 2002, in public interest for a period of 5 years w.e.f 08.01.2013	Pg.12.22
Section 6 – Rules for Combination	Notification F.No.3-1/Amend/Comb. Regl./2012/CD/CCI, dated 23-2-2012	CCI (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 given in page no. 12.36 shall be substituted for the one below given with all amendments	Pg.12.36
Section 5 & 6 of the Competition Act, 2002	Notification No.SO 482(E) / dated 4-3-2011	Corrigendum Announced: (Previous notification available in pg.no.12.22) The Central, Government, in public interest, exempts an enterprise, whose control, shares, voting rights or assets are being acquired has assets of the value of not more than Rs.250 Crores <u>in India</u> or turnover of not more than Rs.750 Crores <u>in India</u> from the provision of Section 5 for a period of 5 years.	Pg.12.22

CCI (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011

Notification No. 1-1/Combination Regulations/2011-12/CD/CCI, DATED 11-5-2011

Note: The summary of the Combination regulation is given below for the purpose of better understanding of the student. The regulation is effective in respect of acquisitions / mergers / amalgamations approved on or after 01.06.2011. (The following is only for reference)

Aspect	Description
Effective Date	01.06.2011
Meaning of Combination	"Combination" means and includes combination as described in Section 5 of the Act and any reference to combination in these regulations shall mean a proposed combination or the combined entity, if the combination has come into effect, as the case may be. "Parties to the combination" means persons or enterprises entering into the combination and shall include

Aspect	Description
Power to determine procedure	the combined entity if the combination has come into effect. CCI may determine the procedure in specific matters which are not specifically provided in the regulation.
Exempted Combinations	The following are exempted combinations which are not likely to have AAEC (Appreciable Adverse Effect of Competition) in India – (a) An acquisition of Shares or Voting Rights solely as an investment or in the ordinary course of business in so far as the total Shares or voting rights held by the acquirer directly or indirectly, does not entitle the acquirer to hold 25% or more of the total Shares or voting rights of the Company, of which shares or voting rights are being acquired, directly or indirectly or in accordance with the execution of any document including a share holders' agreement or articles of association, not leading to acquisition of control of the enterprise whose shares or voting rights are being acquired. (b) An acquisition of Shares or voting rights where the acquirer, prior to acquisition, has 50% or more Shares or voting rights in the enterprise whose Shares or voting rights are being acquired, except in the cases where the transaction results in transfer from joint control to sole control. (c) An 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, not leading to control of the enterprise whose assets are being acquired except where the assets being acquired represent substantial business operations in a particular location or for a particular product or service of the enterprise, of which assets are being acquired, irrespective of whether such assets are organized as a separate legal entity or not. (d) An amended or renewed tender offer where a notice to the Commission has been filed by the party making the offer, prior to such amendment or renewal of the offer. Any change is also duly intimated. (e) An acquisition of Stock-in-trade, Raw Materials, Stores and Spares in the ordinary course of business. (f) An acquisition of shares or voting rights pursuant to a bonus issue or stock splits or consolidation of face value of shares or buy back of shares or subscription to rights issue of shares, not leading to acquisition of control. (g) Any acquisition of Shares or voting rights by a person acting as a Securities Underwriter or a registered Stock Broker of a stock exchange on behalf of its clients, in the ordinary course of its business and in the process of underwriting or stock broking, as the case may be. (h) An acquisition of control or Shares or voting rights or Assets by one person or enterprise of another person or enterprise within the same group. (i) A merger or amalgamation involving a holding company and its subsidiary wholly owned by enterprises belonging to the same group and/or mergers or amalgamations involving subsidiaries wholly owned by enterprises belonging to the same group. (j) An acquisition of current assets in the ordinary course of business. (k) A combination referred taking place entirely outside India with insignificant local nexus and effect on markets in India.
Form of notice for intimation of Combination	Form I within 30 days from the date of passing board resolution approving the scheme of merger or amalgamation. The belated notice filed may also be admitted by the commission. Notice shall be filed in 2 copies along with the electronic version. <u>Summary of the Combination:</u> Notice shall be accompanied by a statement not containing any confidential information, in not less than 2000 words, comprising inter alia the details regarding: (a) the products, services and business(es) of the parties to the combination; (b) the values of assets/turnover (c) the respective markets in which the parties to the combination operate; (d) the details of agreement(s)/other documents and the board resolution(s) executed/passed in relation to the combination; (e) the nature and purpose of the combination; and (f) the likely impact of the combination on the state of the competition in the relevant market(s) in which the parties to the combination operate, along with 9 copies and an electronic version thereof shall be separately given.
Additional Particulars in Form II	The parties to the combination may, at their option, give notice in Form II (as given in Schedule II) under the following instances where – a) The parties to the Combination are engaged in production, supply, distribution, storage, sale or trade of similar or identical or substitutable goods or provision of similar or identical or substitutable services and the combined market share of the parties to the combination after such combination is more than 15% in the Relevant Market; b) The parties to the combination are engaged at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or trade in goods or provision of services, and their individual or combined market share is more than 25% in the Relevant

Aspect	Description
	Market.
Failure to file notice	Where the parties to a combination fail to file notice u/s 6 as above the Commission may upon its own knowledge or information relating to such combination, inquire into whether such a combination has caused or is likely to cause an AAEC within India. Where the Commission decides to commence an inquiry without prejudice to any penalty which may be imposed or any prosecution which may be initiated under this Act, shall direct the parties to the combination to file notice (in Form II) duly filled in, verified and accompanied by evidence of requisite fee. The notice shall be filed within 30 days of receipt of communication from the Commission, by the parties to the combination.
Fees for filing	Form I – Rs.10,00,000 Form II – Rs. 40,00,000
Scrutiny of notice	(a) The notice filed shall not be valid and complete unless it is in conformity with these regulations. (b) The Secretary shall issue an acknowledgement of the receipt of notice. (c) Where the information or document(s) contained in the notice has any defect(s) or is incomplete in any respect, the parties to the combination shall be asked to remove such defect(s) or furnish the required information including document(s). (d) The Secretary shall place the proof of service of communication to the parties to the combination on record. (e) The parties shall comply with the directions within the time specified by the Commission. (f) In case the parties fail to remove the defects or fail to furnish the required information including documents(s), within the time specified the notice filed shall not be treated as a valid notice.
Time Limit for approval	If the Commission does not, on the expiry of a period of 210 days from the date of notice given to the Commission pass an order or issue direction in accordance the combination shall be deemed to have been approved by the Commission. [Sec. 31(11)]
Procedure	(a) The Secretary shall place the information relating to any change in the notice before the Commission not later than the 3 rd working day of its receipt in the Commission. (b) The Commission shall assess the significance of the information relating to that change and, if satisfied, take on record the information received. (c) Where the Commission is of the view that the change is likely to affect the factors for the determination of the AAEC significantly, it may, after giving an opportunity of being heard and after recording reasons, treat the notice already filed as not valid. (d) Where the Commission has held a notice to be not valid the Secretary shall convey the decision of the Commission to the parties to the combination within seven days of the decision of the Commission. However that no additional fee shall be payable if a notice is filed again by the parties to the combination for the same transaction within a period of 30 days from the date of communication of the decision of the Commission.
Termination of proceedings	The proceedings under this Act relating to the Combinations shall be terminated upon (a) receiving an intimation from the person(s) or enterprise(s) who filed the notice to the effect that the proposed combination will not take effect; (b) passing of an order by the Commission u/s 31.
Prima facie opinion on the combination	(a) The Commission shall form its prima facie opinion on the notice filed in Form I or Form II, as the case may be, as to whether the combination is likely to cause or has caused an AAEC within the relevant market in India, within 30 days of receipt of the said notice. (b) For the purpose of forming its prima facie opinion u/s 29(1) of the Act, the Commission may, if considered necessary, require the parties to the combination to file additional information or accept modification, if offered by the parties to the combination before the Commission has formed prima facie opinion as deemed fit by it. (c) However the time taken by the parties to the combination, in furnishing the additional information or for offering modification shall be excluded. (d) In a case where the modification is offered by the parties to the combination before the Commission has formed the prima facie opinion the additional time, not exceeding 15 days, needed for evaluation of the offered modification, shall be excluded. (e) Where the Commission deems it necessary, it may call for information from any other enterprise while inquiring as to whether a combination has caused or is likely to cause an appreciable adverse effect on competition in India.
Calling for a report from the Director General	(a) After receipt of the response to the notice to show cause from the parties to the combination the Commission may decide to call for a report from the Director General within the time as specified by the Commission. (b) The Secretary shall convey the direction of the Commission to the Director General, along with copy of the notice filed by the parties to the combination with all other documents, materials, affidavits, statements, which have been filed or are otherwise available with the said notice, the notice to show cause to the parties to the combination and response of the parties to the same.
Report by the Director General	(a) The Director General shall include in his report the basis of having reached the conclusions therein together with all evidences or documents or statements collected during the investigation and analysis

Aspect	Description
	thereof; (b) 2 copies of the report of the Director General duly signed on each page by the Director General, or his authorized officer, along with an electronic version in document format, shall be forwarded to the Secretary within the time specified by the Commission. However the Secretary may increase or decrease the number of copies of the report and may permit electronic transmission of the same.
Publication of the details of the combination	(a) Where the Commission is of the prima facie opinion that the combination has caused or is likely to cause AAEC within the relevant market in India, the Secretary shall, within 4 working days of such decision convey the direction of the Commission to the parties to the combination, to publish the details of the combination within 10 working days of the date of such direction. (b) The details of combination shall be published by the parties in Form IV. (c) The parties shall submit the details of combination to the Commission before its publication and the Commission may host the same on its official website. (d) The details of the combination to be published also be hosted by the parties on the websites of their respective enterprises not later than the time specified as above. (e) The parties shall publish the details of the combination not later than the time specified in all India editions of 4 leading daily newspapers including at least 2 business newspapers.
Proof of publication	The parties to the combination shall submit copies of publication to the Secretary not later than the 15 th day of the direction of the Commission for publication of the details of the Combination.
Appearance of the parties before the Commission	Where the Commission deems it necessary to give an opportunity of being heard to the parties to the combination before deciding to deal with the case the Secretary shall convey its directions to the said parties, to appear before it by giving a notice of such period as directed by the Commission.
Modification to the proposed combination	(a) Where the Commission is of the opinion that combination has or is likely to have AAEC but such adverse effect can be eliminated by suitable modification to such combination, it may propose appropriate modification to the combination to the parties to such combination. (b) Where the parties to the combination have accepted the modification proposed by the Commission or the Commission agrees with the amendment to the proposed modification by the parties and approves the combination or the parties accept the modification proposed by the Commission, the parties to the combination shall carry out such modification as per the terms and conditions and within the period as may be specified by the Commission and submit an affidavit to that effect. (c) Where the parties accept the modification proposed by the Commission or the Commission agrees with the amendment submitted by the parties, it shall by order, approve the combination. (d) If the parties to the combination fail to accept the modification proposed by the Commission within the time the combination shall be deemed to have an AAEC and be dealt with in accordance with the provisions of the Act.
Compliance by the parties for carrying out modification	The modification referred above shall be carried out by the parties to the combination within the period as may be specified by the Commission. The parties to the combination shall, upon completion of modification, file a compliance report for the actions required for giving effect to the combination before the Secretary within 7 days of such completion. In case the parties to the combination fail to file the compliance report, the Secretary shall place the matter of such non-compliance before the Commission for appropriate directions.
Appointment of independent agencies to oversee modification	(a) Where the Commission is of the opinion that the modification proposed by it and accepted by the parties to the combination needs supervision, it may appoint agencies, to oversee the modification, on such terms and conditions as may be decided by the Commission. (b) The agencies appointed shall be independent of the parties to the combination having no conflicts of interest. Such independent agencies referred may include an accounting firm, management consultancy, law firm, any other professional organization, or part thereof, or independent practitioners of repute. (c) The agencies appointed shall carry out the responsibilities as specified by the Commission from time to time. (d) The agencies appointed shall submit a report to the Commission upon completion of each of the actions required for carrying out the modification. (e) The payment to the agencies appointed shall be made by the parties to the combination by depositing it with the Commission or as may be directed by the Commission.
Orders of the Commission	(a) Where the Commission is of the opinion that the combination has, or is likely to have, an AAEC in the relevant market in India, it shall pass an order that the combination shall not take effect. (b) Where the Commission is of the opinion that the combination does not or is not likely to have an AAEC, it shall pass an order, approving the combination. (c) Where the Commission approves the combination with modification, the order of the Commission approving the combination shall specify the terms, conditions and the time-frame for all the actions required for giving effect to the combination. (d) Where the parties to the combination fail to carry out the modification accepted by them within the stipulated time limit, the Commission shall issue appropriate directions. (e) The Secretary shall communicate to the parties to the combination, the decision of the Commission within

Aspect	Description
	7 days of such decision. (f) The Commission shall endeavour to pass an order or issue direction in accordance with the Act within 180 of filing of the notice. (g) The orders passed by the Commission shall be published on its website.
Appeal to CAT on combinations	The Central Government or the State Government or a local authority or enterprise or any person, who is party to proceedings on matters relating to a combination and is aggrieved by any direction, decision or order may prefer an appeal to the Competition Appellate Tribunal (CAT).
Request for confidentiality	Any request for confidentiality of information or documents submitted during the investigation shall be duly considered by the commission. The request may, inter alia, clearly state the reasons, justification and implications for the business of the parties to the combination so that all relevant factors may be considered by the Commission while taking decision in the matter.

ANALYSIS OF Nov 2012 – CA FINAL CORPORATE AND ALLIED LAW EXAMINATIONS

Chapter	Area	Marks	Remarks
Part A - Companies Act			
Accounts	XBRL Filing – Circular	4	Pg. No. 1.11, Q. No. 10 (Latest Circular)
Audit	Appointment for Auditor	8	Similar to N 10, Pg. No. 1.26, Q. No. 27 / Similar to N 09, M 04, Pg. No. 1.30, Q. No. 34
Dividend	Transfer more than 10%	5	Pg. No. 1.48, Q. No. 59
Board Meetings	Interested Director / Impact on BM	8	Similar to M 99, Pg. No. 4.9, Q. No. 10
Directors – Sch XIII	Remuneration under Sch XIII	8	Similar to M 06; Refer Pg. No. 3.75
Directors – Office or Place of Profit	Office or Place of Profit	8	Pg. No. 4.66, Q. No. 25 - Sec 314
Oppression and Mismanagement	Appointment of Director u/s 408	8	Similar N 10 - Sec. 408 - Pg. No. 6.13, Q. No. 11
Compromise and Arrangement	Approval by requisite majority	5	Similar to M 06 Pg. No. 5.4, Q. No. 3
Producer Company	Alteration of MoA / AoA – Shifting of Registered Office	8	Similar to N 08, Pg. No. 8.5, Q. No. 7
Winding-Up	Overriding preferential payments u/s 529A	8	Similar to N 02, Pg. No. 7.35, Q. No. 12
Compounding of Offences	Compounding of Offence u/s 295	8	Similar to RTP, Pg. No. 4.50, Q. No. 15
Part B – Allied Law			
SCRA, 1956	Compounding of Offences	6	Pg. No. 13.20, Q. No. 32, Pt 3.
SEBI Regulations- ICDR 2009	Qualified Institutions Placement Scheme	8	Pg. No. 15.44, Q. No. 54
Banking Regulation Act, 1949	Removal and Appointment of Additional Directors	8	Similar to M 10 Pg. No. 16.12, Q. No. 28
FEMA, 1999	Inheritance / Sale / Remittance of immovable property by PROI	4	Similar to N 06 Pg. No. 11.14, Q. No. 12
Competition Act, 2002	Removal of Member	4	Pg. No. 12.8, Q. No. 10, Pt. 6(f)
Prevention of Money Laundering Act, 2002	Conditions for release under bail	4	Sec. 45 in Pg. No. 16.41, Q. No. 19
IRDA Act, 1999	Questioning of Life Policy after issue	4	Pg. No. 17.5, Q. No. 7
Interpretations of Statutes, Deeds and Documents	Harmonious Construction of Law	4	Similar M 02 /07; Pg. No. 18.6, Q. No. 8
Total		120	

Total Marks (including Choice)	120 Marks
Questions from Past Exam / RTP - Similar or Same	73 Marks
Balance available otherwise in the Book	47 Marks

Gurukripa's Guideline Answers to Nov 2012 Exam Questions
Final Corporate and Allied Laws

Question No. 1 is Compulsory. Attempt any 5 Questions from the remaining 6 Questions (Any 4 from Question No.7 alone)

Q.No.	Questions	Reference / Marks
1(a)	The paid up capital of Western Zone Insurance Limited is Rs. 7 Crores. Point out whether the said company is required to file Balance Sheets and Profit and Loss Account along with Director's and Auditor's Report for the year 2011-12 by using the XBRL taxonomy under the Companies Act, 1956?	Pg. No. 1.11, Q. No. 10 (Latest) 1) Condition: Following Companies shall file under XBRL Mode. - Listed Companies in India and their Subsidiaries, including Overseas Subsidiaries or - Companies having Paid- up Capital of Rs. 5 Crores and above or - Companies having Turnover of Rs. 100 Crores or above. 2) Exemption: Banking & Insurance Companies are exempt from the compliance of XBRL. 3) Conclusion: Since the company is an Insurance Company they are not required to file using XBRL taxonomy.
1(b)	The Board of Directors of Nimbahera Chemicals Limited proposed to transfer more than 10% of the profits of the company to the reserves for the current year. Advise the Board of Directors of the said company explaining the relevant provisions of the Companies Act, 1956 and the rules thereunder.	Pg. No. 1.48, Q. No. 59 Hint:- Board can transfer more than 10% after satisfying the following conditions:- i) Rate of Dividend for the Year is greater than or equal to the Average Rate of Dividend declared in immediately preceding 3 Years. ii) In case Bonus Shares is issued during the year of declaration of dividend, or in the immediately preceding three years, then the minimum amount of dividend to be declared shall be greater than or equal to Average Dividend Amount declared during immediately preceding 3 Years. iii) In case of Inadequate profit the company will not be required to ensure that maintenance of the Rate/ Average Amount of Dividend (As given above) if the NP After Tax for the year is lower by atleast 20% compared to the Average Net Profit After Tax at the immediately 2 preceding Years.
1(c)	A meeting of members of Jaora Agricultural Equipments Limited was convened under the orders of the Court for the purpose of considering a scheme of compromise and arrangement. The meeting was attended by 200 members holding 5,00,000 shares. 70 members holding 4,00,000	Similar to M 06 Pg. No. 5.4, Q. No. 3 The scheme of compromise/ arrangement shall be approved by majority in number representing 3/4 th in value of creditors/ Members, or class of Creditors/ Members, present and voting, either in person or by proxy where proxies are

Q.No.	Questions	Reference / Marks
	shares in the aggregate voted for the scheme. 120 members holding 90,000 shares in aggregate voted against the scheme. 10 members holding 10,000 shares abstained from voting. Examine with reference to the relevant provisions of the Companies Act, 1956 whether the scheme was approved by the requisite majority?	allowed. Hint: (a) Condition 1 - Approval from 3/4th in Value: Shareholder holding 4,00,000 shares representing more than 75% (4,00,000 Shares/ 4,90,000 Shares) approved the scheme. The condition is satisfied. (b) Condition 2 - Approval from Majority in Number: Since 120 members representing more than 60 % (120 /190) doesn't approve the scheme the company doesn't satisfy this condition. Conclusion: Since the company doesn't satisfies both the condition, the scheme is not approved by a requisite majority.
1 (d)	SEBI issued an order against a stock broker to redress the grievances of the investors within the stipulated time. The stock broker failed to do so, which is an office under the provisions of the Securities Contracts (Regulation) Act, 1956. Decide: (i) Whether the offence committed by the stock broker is compoundable? If so, by whom? (ii) Whether this offence can be compounded after institution of proceedings against the stock broker?	Pg. No. 13.20, Q. No. 32, pt 3 (Sec 23C) Any offence punishable under the Act, not being an offence punishable (a) With imprisonment only, or (b) With imprisonment and also with fine, may either before or after the institution of any proceedings, be compounded by SAT or a court before which such proceedings are pending. Issue 1: The offence committed by the Stock Broker is compoundable as he is punishable with fine only. Issue 2: The offence can be compounded even after institution of proceedings.
2 (a)	Neemuch Pharma Limited having an "Effective Capital" of Rs. 4 Crore as on 31st March, 2012 raised Rs. 2 Crore by way of issue of right shares in May, 2012 during the current Financial Year 2012-2013. The company is managed by Mr. Chandrasekhar, the Managing Director, and he is getting a minimum remuneration of Rs. 80,000 per month. The company proposes to appoint two whole-time Directors in July, 2012 on a consolidated minimum salary of Rs. 60,000 per month to each of them. What is the "Effective Capital" for the purpose of determining the minimum remuneration payable to the proposed Whole-time Directors? State the requirements to be complied with under Schedule XIII to the Companies Act, 1956 to the effect to the proposed appointments.	Similar to M 06; Refer Pg. No. 3.75 Issue I: Effective Capital: Pg. No. 3.75, Q. No. 31 Hint: Capital outstanding as on the starting of the year is relevant for the purpose of calculating Effective Capital. Bonus issue made during the Year is irrelevant. - Relevant effective Capital is Rs. 4 Crore and the company need to comply with the following - - Approval from Remuneration Committee by passing resolution for it is required and - In case the Company has made default in repayment of any of its debts (including Public Deposits) or Debentures or Interest payable thereon for a continuous period of 30 days in the preceding financial year before the date of appointment of Mr. Chandrasekhar (who is a managerial Person) Issue II: Requirements of Schedule XIII: Similar to M 06, Pg. No. 3.77

Q.No.	Questions	Reference / Marks
2 (b)	Pipliya Powders Limited has four Directors. A Board meeting was convened. It was attended by two Directors only and they appointed Mr. Soorajbhan who was related to both of them, as an Additional Director. Decide, whether the said appointment is valid under the provisions of the Companies Act, 1956? Draft a "Board Resolution" for appointment of a person as an Additional Director in a public company.	Similar to M 99, Pg. No. 4.9, Q. No. 10 1) Position if an Interested Director in a Board Meeting (Sec 300 Q.No. 8, Pg. No. 4.7) 2) Interested Director could not form a Quorum. Since, there was not valid Quorum, the appointment Mr. Soorajbhan as Additional Director is not valid. 3) Board Resolution: RESOLVED THAT pursuant to section 260 of the Companies Act, 1956, Mr. XYZ be and is hereby appointed as an additional director of the company with effect from _____ to hold office up to date of the Next AGM of the Company. FURTHER RESOLVED THAT Mr. XYZ who is appointed as an additional Director will enjoy the same power and rights as other Directors. FURTHER RESOLVED THAT Mr. ABC, Secretary of the Company be and is hereby appointed to electronically file necessary returns with ROC and do all necessary act as required to make this appointment valid.
3 (a)	Examine the validity of the following appointments with reference to the provisions of the Companies Act, 1956: Case A: Yashodharman Granites reappointed Suresh & Company, a firm of CAs, as auditors of the company at the AGM held on 30th September, 2011. The wife of one of the partners of Suresh & Company acquired large number of equity shares in Yashodharman Granites Limited on 5th October, 2011. But Suresh & Company continue to function as statutory auditors.	Similar to N 10, Pg. No. 1.26, Q. No. 27 Provision: Sec 226(3) Pg. No. 1.26, Q. No. 26 Holding of securities by wife of the auditor is not a ground of disqualification. Hence, not disqualified u/s 226. But however, the auditor should analyze the effect of Independence on his Audit based on professional ethics.
	Case B: Dalauda Cement Limited appointed CA as statutory auditor of the company at the AGM held on 30th September, 2010. The next AGM was held on 30th September, 2011 but it was adjourned to 30th November, 2011 for consideration of the accounts for the year ended 31st March, 2011. CA Naresh continued to function as Statutory Auditor of the company even though a new auditor was appointed in his place at the AGM held on 30th September, 2011.	Similar to N 09, M 04, Pg. No. 1.30, Q. No. 34 Provision of section 224(1): Pg. No. 1.28, Q. No. 30 1) If for any reason the next AGM is adjourned to a later date subsequent to the date on which it was to be convened, the Auditor will continue to hold office till the conclusion of the Adjourned Meeting, as Adjourned Meeting is a continuation of original Meeting. 2) If the new Auditor appointed in his place at the Original Meeting (when the Original Auditor was due to retire) and the meeting was adjourned, the new auditor can function as a Statutory Auditor only from the conclusion of Adjourned Meeting. 3) In this case CA Naresh will continue to hold the office till the conclusion of the Adjourned Meeting held on 30th Nov2011.

Q.No.	Questions	Reference / Marks
		4) Also the new Auditor can function as a Statutory Auditor only after the conclusion of the Adjourned Meeting i.e. after 30th November 2011.
3 (b)	Shyamgarh Chemicals Limited, a Listed Company, having a paid-up equity share capital of Rs. 80 Crores and Net Worth of Rs. 120 Crore as on 31st March, 2012 proposes to raise funds to finance its expansion programme by issue of equity shares under the “Qualified Institutions Placement Scheme.” Answer the following with reference to the provision of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009: a. What are the conditions to be satisfied by the company so that it can make Qualified Institutions Placement? b. What is the maximum amount that can be raised by the company under the issue of shares? c. What are the restrictions, if any, with regard to pricing of issue and transferability of shares by qualified institution buyers?	Pg. No. 15.44, Q. No. 54 Issue 1: Condition for QIP - Refer Reg. 82 – Special Resolution / Equity Share of same class / compliance with minimum public shareholding. Issue 2: Maximum Amount - Refer Reg. 89 – The aggregate of the proposed QIP and all previous qualified institutions placements made by the issuer in the same financial year shall not exceed 5 times the net worth of the issuer as per the audited balance sheet of the previous financial year. i.e 5 times of Rs. 120 Crs = Rs.600 Crs Issue 3: Restriction on Pricing – Refer Reg. – 85: The qualified institutions placement shall be made at a price not less than the average of the weekly high and low of the closing prices of the equity shares of the same class quoted on the stock exchange during the two weeks preceding the relevant date.
4 (a)	The Board of Directors of PQR Steel Limited propose to make the following appointments: a. ‘S’, son of ‘P’, a Director of the said company, is proposed to be appointed as Managing Director of the company on a monthly remuneration of Rs. 75,000. b. ‘D’, daughter of ‘Q’, another Director of the said company, is proposed to be appointed as Accounts Manager on a salary of Rs. 60,000 per month. c. ‘B’, brother of ‘R’, another Director of the said company is proposed to be appointed as Purchase Manager in PQR Forgings Limited, a subsidiary of PQR Steel Limited on a salary of Rs. 60,000 per month. Explain the legal requirements under the Companies Act, 1956 to be complied with by the company to give effect to the proposed appointments.	Pg. No. 4.66, Q. No. 25 (Sec 314(i)) Issue I: Appointment of S as Managing Director. Section 314(1), Pg. No. 4.66: Appointment to the position of MD is outside the purview of Section 314. Procedure for Appointment: Since ‘S’ is not a Director of the Company, steps must be taken to appoint him as Additional Director of First Director. Then he may be appointment as MD by complying with the requirements u/s 269 read with Schedule XIII of the Companies Act, 1956. The appointment can be made by the Board subject to the approval of the Company in its General Meeting as proposed Appointment is within the limits laid down in Schedule XIII. Issue II: Appointment of ‘D’: Section 314(1B) : Pg. No.-4.66, Q. No.25 - Special Resolution at the General Meeting is required for his appointment. Prior Consent in General Meeting is not required. CG Approval is also not required. Issue III - Appointment of ‘B’: Section 314(1B) : Pg. No.-4.66, Q. No.25 - ‘B’ , brother of ‘R’, would be covered under the provision of Section 314(1) and accordingly consent of the Company by passing Special Resolution is needed as he draws monthly remuneration of Rs.60,000/- which is more than the

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Q.No.	Questions	Reference / Marks	
		prescribed limit of Rs.50,000/-	
4 (b)	The Managing Director of a large public company confessed that he was responsible for manipulation of the accounts and window dressing of the published accounts of the Company. In view of this, the Central Government proposes to appoint its nominees as Directors of the Company. Explain briefly the powers of the Central Government under the Companies Act, 1956 to appoint its Nominees as Directors of a Company to prevent Oppression or Mismanagement and the role of the Central Government with regard to the affairs of such a Company.	Refer, Sec. 408 - Pg. No. 6.13, Q. No. 11 – Similar N 10 Power of CG to appoint nominee directors on the Board	8
5 (a)	Explain the term “Overriding Preferential Payments”. ABC Limited is being wound-up by the Court. The Official Liquidator has realized Rs. 100 lakh by selling the Land and Buildings mortgaged by the Company in favour of its Bankers. The Company owns Rs. 200 lakh to the Bank. The Bank has claimed that the Amount realized by sale of Land and Buildings must be paid in full to it in preference to the workmen’s dues to the extent of Rs. 50 lakh. Examine the Bank’s claim with reference to the provisions of the Companies Act, 1956.	Issue – I Pg. No. 7.38, Q. No. 15 Issue – II Similar to N 02, Pg. No. 7.35, Q. No. 12 1) Bank contention to pay the amount in full is not valid. The security of every Secured Creditor shall be deemed to be subject to a pari passu charge in favour of Workmen in respect of workmen dues , to the extent of the workmen’s portion therein. 2) The amount of Rs.100 lakhs shall be proportionately distributed as follows:- a. In this case the sum that needs to be paid towards workmen’s Compensation is 20 Lakhs. [100 Lakhs X 50 Lakhs /250 Lakhs] = Rs.20 Lakhs b. The balance of Rs.80 Lakhs shall be paid to Bank, the Secured Creditor.	8
5 (b)	Mr. Jhameshwar was working as a Manager in Banking Company. The Reserve Bank of India removed Mr. Jhameshwar on the ground that this conduct was detrimental to the interests of the Depositors. Decide whether the Reserve Bank of India has power to remove the said Manager under the provisions of the Banking Regulations Act, 1949. What remedies are available to Mr. Jhameshwar against his removal?	Similar to M 10 Pg. No. 16.12, Q. No. 28 1) Refer - Pg. No. 16.12, Q. No. 28 for provision of law. 2) RBI can remove Managerial Personnel u/s 36AA and appoint additional Director u/s 36AB 3) Remedy: He may appeal to the CG within 30 days from the date of communication of order. Decision of CG shall be final and shall not be questioned in any Court.	8
6 (a)	A Producer Company proposes to amend the objects specified in its Memorandum of Association and certain provisions in its Articles of Association. The Company also proposes to shift its registered office from the State of Kerala to Tamil Nadu. Explain the requirements to give effect to these proposals.	Similar to N 08, Pg. No. 8.5, Q. No. 7 1) Issue I: Amendment to the Object Clause: Refer Section 581H & 581I in Pg. No. 8.5, Q. No. 7 2) Issue II: Shifting of Registered Office: Refer Sec. 581 H in Pg. No. 8.5, Q. No. 7. (Similar to N 08)	8
6 (b)	The Directors of a public company received a	Similar to RTP, Pg. No. 4.50, Q. No. 15	4

Q.No.	Questions	Reference / Marks
	show cause notice from the Registrar of Companies for violation of Section 295. State whether the said offence is compoundable under the said Act. Is it possible for a person to apply for compounding of offence even after prosecution has been launched? Whether penalty paid in respect of compounding of an offence will be treated as a dis-qualification under Part 1 of Schedule XIII requiring approval of the Central Government for the appointment of such person as a MD of public company?	Hint: Issue 1: Non-Compliance u/s 295 leads to a Simple Imprisonment of 6 Months or Fine of Rs.50,000 or Both. Where the offence is compounded with Imprisonment or Fine or Both, the same shall be Compounded either before or after institution of proceedings with the permission of the Court. In the given case, the offence u/s 295 shall be compounded after the permission from court. Issue 2: Part I of Sch XIII provides that if the person is sentenced to imprisonment for any period, or a fine exceeding Rs.1,000 for the conviction of an offence, the MD / WTD / Manager shall be disqualified from appointment. Since, compounding does not amount to conviction, disqualification under Part I will not be applicable. (MCA Guidelines)
7 (a)	Mrs. Chandra, a resident outside India, is likely to inherit from her father some immovable property in India. Are there any restrictions under the provisions of the FEMA in acquiring or holding such property? State whether Mrs. Chandra can sell the property and repatriate outside India the sale proceeds.	Similar to N 06 Pg. No. 11.14, Q. No. 12 Issue 1: Person resident outside India may acquire property by way of inheritance. Hence Mrs. Chandra is permitted under FEMA to inherit the property from her father. Issue 2: Except with the Prior Permission of RBI, Person Resident Outside India, shall not repatriate outside India the Proceeds from sale of any Immovable Property in India. However RBI has granted a general permission to repatriate a sum of USD 1 Million per Financial Year. Thus Mrs. Chandra can sell the property and repatriate outside India the sale proceeds upto USD 1 Million without prior approval RBI and with a prior approval for a sum exceeding USD 1 Million. A Certificate from CA is required to be submitted to Authorized Dealer stating that appropriate taxes have been paid in India.
7 (b)	The Central Government without the matter to the Supreme Court of India for inquiry removed a member of the Competition Commission of India on the ground that he has become physically or mentally incapable of acting as a member. Decide, under the provisions of the Competition Act, 2002, whether removal of the member is lawful?	Refer Pg. No. 12.8, Q. No. 10, Pt. 6(f). Removal of a Member due to physically or mentally becoming incapable member does not require the approval of the Supreme Court. Hence the removal in the given case is lawful.
7 (c)	Mr. Fraudulent has been arrested for a Cognizable and Non Bailable Offence punishable for a term of Imprisonment for more than three years under the Prevention of Money Laundering Act, 2002. Advise, as to how can he be released on bail in this case?	Refer Sec. 45 in Pg. No. 16.41, Q. No. 19. The following shall be the conditions for bail - (a) The Public Prosecutor has been given an opportunity to oppose the application for such release, and (b) Where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for

Q.No.	Questions	Reference / Marks
		believing that – • He is not guilty of such offence, and • He is not likely to commit any offence while on bail.
7 (d)	A life insurance policy, in favour of Kamal Kumar, came into force on 1 st February, 2009. In January, 2012 the insurer came to know that there was a mis-statement in the proposal for insurance regarding the age of the nominee. Decide, under the provisions of the Insurance Act, 1938, whether the said insurance policy can be called in question?	Pg. No. 17.5, Q. No. 7 No policy can be questioned after a period of 2 years from the date of issue other than due to fraud. In the given case misstatement in the age of the Nominee is can be rectified any time. Thus, policy cannot be questioned / cancelled. 4
7 (e)	Briefly explain the meaning and application of the rule of “Harmonious Construction” in the interpretation of statutes.	Similar M 02 /07; Pg. No. 18.6, Q. No. 8 1) Meaning: when there is doubt about the meaning of the words of a statute, these should be understood in the sense in which they harmonize with the subject of the enactment and the object which the legislature had in view. When there is a real and not merely apparent conflict between the provisions of an act, and one of them has not been made subject to the other. Example: Section 166 & 210 of the Companies Act, 1956. 4

ANALYSIS OF MAY 2012 – CA FINAL CORPORATE AND ALLIED LAW EXAMINATIONS

Chapter	Area	Marks	Remarks
Part A - Companies Act			
Accounts & Audit	Interim Dividends	5	Same as J 09 in Pg. No. 1.54
	Interest on Capitals	8	Section 208 of the Companies Act, 1956.
Board Meetings	Resolution by Circulation	8	Same as J 09 in Pg. No. 4.11
General Powers of the Boards	Audit Committee Constitution and Recommendation of Audit Committee	8	Same as J 09 , Pg. No. 4.31
Specific Powers of Board			
Loans to Directors	Relating to Basic Provision of Sec. 295	4	Practical Question in Pg. No. 4.49, Q. No. 14
	Change in the Terms of Loans	8	Same as J 09 , Pg. No. 4.53
Sole Selling Agents	Appointment & Compensation	5	Practical Question in Pg. NO. 4.41, Q. No. 4
Inter- Corporate Loans & Investments	Applicability & Provisions of Sec 372A	8	Same as J 09 in Pg. No. 4.60
Political Contributions	Provisions of Political Contribution.	8	Practical Question in Pg. No. 4.37, Q. No.1
Foreign Company	Documents required for Registration.	8	Similar to J 09 , Pg. No. 9.2
Oppression & Mismanagement	Deadlock in the Management and Powers of the Tribunal	8	Similar to M 07 in Pg. No. 6.9
Part B - Allied Laws			
SCRA, 1956	Rejection of application for Listing	6	Similar to M 05 and Practical Qn. in 13.19
SEBI Regulations- ICDR 2009	Bonus Issue (Chapter IX)	8	Similar to M 01 in Pg. No. 15.49
Banking Regulation Act, 1949	Powers of Central Government relating to Acquisition of Undertakings	8	Similar to N 09, Pg. No. 16.15
FEMA, 1999	Exemptions from realizations and repatriation of foreign exchange	4	Similar to J 09 , Pg. No. 11.22
Competition Act, 2002	Appointment as Chairman	4	Same as M 07, Pg. No. 12.7
Prevention of Money Laundering Act, 2002	Offences &	4	Q. No. 2, Pg. No. 16.27.
	Punishment		Q. No. 4, Pg. No. 16.32, RTP
IRDA Act, 1999	Equity Capital & Its Exclusions	4	Practical Q. in Pg. No. 17.3 Q. No. 3 (Pt. 6)
Interpretations of Statutes, Deeds and Documents	Principles and Duties	4	Similar to RTP, N 01, Pg. No. 18.4
Total Marks (including Choice)		120 Marks	
Questions from Past Exam - Similar or Same		90 Marks	
Balance		30 Marks	

Guru Kripa's Guideline Answers for May 2012 CA Final
CORPORATE AND ALLIED LAWS

Question No. 1 is Compulsory. Attempt any 5 Questions from the remaining 6 Questions

(Any 4 from Question No.7 alone)

Q.No.	Questions	Reference / Marks									
1 (a)	Mr. DRT a director of PCS Ltd. The said company is having sufficient liquid funds and Mr. DRT is in dire need of funds. In order to mitigate the hardship of Mr. DRT the board of directors of PCS Ltd. Wants to lend ₹ 5 Lakhs to him and ₹ 2 Lakhs to his wife. (i) State whether such loans can be given and if so under what conditions. (ii) What would be your answer if the company PCS Ltd would have been PCS Private Ltd.	Pg. No. 4.49, Q. No. 14 (Sec. 295) Hint: Issue I- Mr. DRT & his wife are Specified Persons u/s 295. Hence, when loan is given to then Prior CG approval is required. (By filing Form 24AB) Issue II- Section 295 is not applicable for Pure Private Company.	4								
1 (b)	M/s KMP Ltd, having a paid up Share Capital of ₹ 50 Lakhs, Mr. BPK as its Sole Selling Agent for a period of 5 years effective from 1st January 2009. The Co. paid the following remuneration to BPK. <table><tr><td>Year</td><td>Amount of remuneration</td></tr><tr><td>2009</td><td>₹ 4,41,000</td></tr><tr><td>2010</td><td>₹ 6,32,000</td></tr><tr><td>2011</td><td>₹ 7,45,000</td></tr></table> On and from 1st January 2012, the SSA was terminated by the Co. (i) State briefly the approvals that are required to be taken by the Co. for giving effect to the appointment of Mr. BPK. (ii) Also calculate the amount of compensation payable by the Co to Mr. BPK under the provisions of the Companies Act 1956.	Year	Amount of remuneration	2009	₹ 4,41,000	2010	₹ 6,32,000	2011	₹ 7,45,000	Pg. No. 4.41, Q. No. 4 {Sec. 294AA(3)} Similar to N 97 in Pg. 4.41 Hint: Issue I- Compliance required : (a) Board Resolution. (b) Special Resolution in GM. (c) Approval of CG. Issue II- Similar to M 05 and Practical Q. No. in 4.46 Step 1: Average Remuneration received during preceding 3 years = $\frac{₹ 4,41,000 + ₹ 6,32,000 + ₹ 7,45,000}{3 \text{ years}} = ₹ 6,06,000$ Step 2: Maximum Compensation Payable: Unexpired period of Tenure (i.e 2 years) or 3 years, whichever is earlier. Step 3: Calculation of Compensation: Unexpired period of Tenure x Average Remuneration for the last three years (as per step 1) - 2 years x ₹ 6,06,000 = ₹ 12,12,000 .	5
Year	Amount of remuneration										
2009	₹ 4,41,000										
2010	₹ 6,32,000										
2011	₹ 7,45,000										
1 (c)	The Board of Directors of M/s RPP Ltd. in a meeting held on 30th April 2012 declared an interim dividend payable on the paid up equity share capital of the company. In the board meeting scheduled for 25th May 2012, the board wants to revoke the said declaration. State with reference to the provisions of the Companies Act, 1956 whether the board of directors can do so.	Same as J 09 in Pg. No. 1.54 Hint – As per section 2(14A), dividend includes any interim Dividend. All the provisions applicable to final dividend shall equally apply to Interim Dividend. Further Interim Dividend declared by the Board shall be deposited within	5								

Q.No.	Questions	Reference / Marks
		5 days in a separate bank account which shall be used only for the purpose of declaration of Dividend. Therefore, revocation of Interim Dividend in the Board Meeting held on 25th May 2012 is not permissible.
1 (d)	DVJ Ltd, a Co. incorporated under the Companies Act, 1956 applies to Bombay Stock Exchange for listing of its shares. The Stock Exchange refuses to grant listing without assigning any reasons for refusal. Co. seeks your advice on the options available to it against the Stock Exchange and wants to move the Court. Examining the provisions of the SCRA, 1956, advise the company.	Similar to M 05 and Practical Q. No. 13.19 Provision in Q. No. 30. (Section 22A) Hint - Reason for refusal should be given by the Stock Exchange to the Company. Company can appeal to SAT within 15 days from the date of refusal.
2 (a)	Win Ltd. is a Company incorporated 15 years ago and during the last three consecutive Financial Years it earned profits, as determined under Section 349 and 350 of the Companies Act, 1956, of Rs. 5.00 lakhs, 8.00 lakhs and 11.00 lakhs. In order to augment its business prospects, it wants to make donations to political parties. State whether the Company can make such donations and if yes to what extent. Also state which type of donation, subscription, payment, expenditure is regarded as contribution for political purpose.	Provision in Q. No. 1 , Pg. No. 4.37 (Sec.293A) Hint: (i) Political Contribution can be made. (ii) Maximum Contribution= 5% of the Average Net Profits determined u/s 349 & 350 during 3 immediately preceding Financial Years – 5% of $[(5 + 8 + 11) \div 3] = 0.40 \text{ Lakhs}$
2 (b)	In the course of administration of the affairs of a limited Company, Chairman of the Board of directors came across a matter which required the approval by way of a board resolution. In the prevailing circumstances, it is not possible to convene and hold a Board meeting. The Chairman approaches you to advise him of the way and the relevant procedure to obtain such approval without holding the Board meeting. Advise the Chairman.	Similar to J 09 , Pg. No. 4.11, Q. No. 11 Hint: Board Resolution may be obtained by way of passing the relevant resolution by circulation.
3 (a)	60% shares of Indo-French Ltd. Are held by the French group and balance by the Indian group. As per Articles of Association Company, both groups had equal managerial powers. The relationship between the two groups soured and the operations of the company reached a deadlock. The Indian group approached the Company Law Board (CLB) for action against the French group for oppression as stated in Section 397 of the Companies Act, 1956. Based on the above said facts, decide the following issues. (i) Whether the contention of oppression against the French group by the Indian group is tenable? (ii) What are the powers of CLB in this regard?	Similar to M 07 , Pg. No. 6.9 Refer Sec.397 Hint: Issue 1: Both Indian and French Group are equally strong and none is able to oppress the other. The situation amounts to deadlock and not oppression. Hence Sec.397 is not applicable. The contention of the Indian Group is not tenable.

Q.No.	Questions	Reference / Marks
		Issue 2: CLB may order for purchase of Shares by one group of the other. Failing which CLB may order for winding up.
3 (b)	The management of ABC Ltd. a Listed Company is contemplating to issue Bonus Shares in the ratio of 1:1. (i) Explain briefly the provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations 2009 to be followed by the management in this regard. (ii) Examine whether a bonus issue when announced can be withdrawn.	Similar to M 01 in Pg. No. 15.49 Hint: Issue I- Refer “Conditions for Bonus Issue” Issue II- Once the decision to make a bonus issue is announced, the issue cannot be withdrawn. 8
4 (a)	Amar Textiles Ltd. is a Company engaged in the manufacture of fabrics. The company has investments in shares of other bodies corporate including 70% shares in Amar Cotton Company Ltd. and it has also advanced loans to other bodies corporate. The aggregate of all investments made and loans granted by Amar Textiles Ltd. Exceeds 60% of its Paid-Up Share Capital and Free Reserves and also exceeds 100% of its Free Reserves. In course of its business requirements, Amar Textiles Ltd. Has obtained a term loan from Industrial Development Bank of India which is still subsisting. Now the company wants to increase its holding from 70% to 80% of the Equity share capital in Amar Cotton Company Ltd. By purchase of additional 10% shares from other existing shareholders. State the legal requirements to be complied with by Amar Textiles Ltd. Under the provisions of the Companies Act, 1956 to give effect the above proposal.	Similar to J 09 , Pg. No.- 4.60 Sec 372A Applicability: Amar Cotton Company is not wholly owned subsidiary of Amar Textile Ltd. Hence, Investments in such a subsidiary is not covered by exemption u/s 372A. Procedural Requirements: The highlights of the Procedural are: (i) Unanimous consent by the Board. (ii) Notice to the Members for obtaining approval in a General Meeting along with the Required Particulars. (iii) Prior Approval of PFI (IDBI/ ICICI etc) (iv) Passing of Special Resolution at GM. (v) Recording the prescribed particulars in the Register within 7 days of the Investment. (vi) Filing Form 23 to ROC within 30 days of passing Special Resolution. 8
4 (b)	The RBI issued certain directives to a Banking Co. The Co. does not care to act as per the directives. This fact comes to the notice of the officials of the Government of India. The officials, therefore desire to exercise the CG powers to acquire the said Banking Co. 1. Examining the provisions of the Banking Regulation Act, 1949, state the manner, if any, such powers can be exercised. 2. Also, state the matters that may be incorporated in the	Similar to N 09, Pg. No. 16.15 Issue I: Acquisition based on RBI's report: if on receipt of RBI's Report, the Central Government is satisfied that a Banking Company: (i) has or more than one occasion, failed to comply with the directions given to it in writing u/s 21 or 35A, in so far it relates to 8

Q.No.	Questions	Reference / Marks
	scheme of acquisition.	Banking Policy, or (ii) is being Managed in a manner Detrimental to the Interests of its Depositors. Issue II: Refer Point B “Acquisition Scheme”.
5 (a)	Big Ben Ltd., a reputed Public Co., had advanced a sum of ₹ 20 lakhs to one of its directors Mr. T on certain terms and conditions and fixing the time limit for repayment thereof. Now Mr. T has approached the Co. with a request to extend the time limit for repayment of outstanding balance loan amounting to ₹ 10 lakhs by another six months. Answer the following having regard to the provisions of the Companies Act, 1956. (i) Who is authorized to grant the extension as requested by Mr. T? (ii) Draft an appropriate notice for the meeting where such extension may be granted.	Same as J 09 , Pg. No.- 4.53 Issue I: Board shall not remit or give time for the repayment of, any debt due by a Director except with the consent such public Company or Subsidiary in General Meeting. [Sec. 293(1)(b)] Issue II: for Draft Notice format see Pg. No. 4.53
5 (b)	(i) Explain briefly the provisions of the Companies Act, 1956 regarding constitution of “Audit Committee”. (ii) MNC Ltd. Constituted an audit committee as required by the said Act. The committee in its report dated 30th April 2012 has pointed out various irregularities in the financial transactions entered into by the company. The management of the company does not agree with the contents of the audit committee report. Explain the action that can be taken in this regard.	Similar to J 09 , Pg. No.- 4.31 Issue I: Constitution- The committee shall consist of not less than three directors and such number of other Directors as the Board may determine, of which 2/3rd of the total number of members shall be directors, other than Managing or Whole- Time Directors. The members of the Audit Committee shall elect a chairman from amongst themselves. Issue II: The recommendations of the committee shall on any matter relating to Financial Management, including Audit Report, shall be Binding on the Board. If the Board does not accept the recommendations of the Audit Committee, it shall record the reasons therefore & communicate such reasons to the Shareholders.
6 (a)	DAJ Ltd. Engaged in the construction work issued to public certain shares. The money received was used for the construction purposes. Since the company is not in a position to pay any dividend for a long time because of the longer gestation period, the Board of Directors of the company wants to pay interest out of capital of its Shareholders. Advice the Board about the conditions to be complied with as required under the provisions of the	Provisions of Section 208 - The following need to be complied by the Board for payment of dividend during the long gestation period: (a) Authorization by AOA for payment of Interest out of Capital during Construction is authorized.

Q.No.	Questions	Reference / Marks
	Companies Act, 1956.	(b) If not provision is available in AOA, then Special Resolution to be passed in the General Meeting of the Shareholders. The copy of the Special Resolution need to be filed with ROC. (c) The Company should take Approval from the Central Government. Such approval from Central Government shall be conclusive evidence that the Projects have a Long Gestation period. (d) Period of Payment: Period not exceeding 6 months after the Half- year in which the Project has been completed. (e) Rate of Interest shall not exceed 4% p.a or such other interest as the CG may direct.
6 (b)	DEJYAS Company Limited incorporated in Singapore, desires to establish a place of business at Mumbai. You being a practicing Chartered Accountant has been appointed by the company as a liaison officer, for compliance of legal formalities on behalf of the company. Examining the provisions of the Companies Act, 1956 state the documents you are required to furnish on behalf of the company, on the establishment of a place of business at Mumbai.	Similar to J 09 , Pg. No. 9.2, Q. No. 4 Hint: Need to deliver to the ROC of New Delhi an Mumbai (Registered Office) documents within 30 days of Establishment of the Place of Business in India. (For list of 5 documents – Refer Pg. No.9.2)
7 (a)	BCD Exporters, New Delhi are engaged in export business and are required to realize and repatriate to India the foreign exchange arising out of export of goods by them. Advise BCD Exporters about the various exemptions from realizations and repatriation of foreign exchange as per FEMA, 1999.	Similar to J 09 , Pg. No. 11.22 Hint: Exemptions from realizations and repatriation of foreign exchange – see Q.No. 17 / Pg.11.22
7 (b)	Hon'ble Justice Mr. HCJ, a retired High Court Judge, attained the age of 61 years on 31st December 2011. The CG appointed him as the chairperson of the Competition Commission of India with effect from 1st January 2012. i) State, with reference to the Prov. of the Competition Act, 2002, the term for which he may be appointed as the chairperson of the Competition Commission of India. ii) Whether he can be reappointed as such and till when he can remain as chairperson of the Competition commission of India?	Same as M 07, Pg. No. 12.7 Hint: In the given case, Shri. HCJ can hold office up to 31st December 2014 (i.e. till he attains the age of 65 years). If the appointment is for 5 years w.e.f. 1st January 2011, he will have to step down from his office on 31st December, 2014, on his attaining of Age 65 years. Further, he cannot be re- appointment after he has attained the age of 65 Years. (Refer Point 5 of Q. No.- 9, P. No.- 12.6)
7 (c)	Explain the term “Offence of Money Laundering” within the meaning of the Prevention of Money Laundering Act, 2002. State the punishment for the offence of money laundering.	Offence of Money Laundering: Q. No. 2, Pg. No. 16.27. Scheduled Offence means- (a) The offences

Q.No.	Questions	Reference / Marks
		specified under Part A of the Schedule; or (b) The offences specified under Part B of the Schedule, if the total value involved in such offence is Rs.30 Lakhs or more. Punishment (Sec 4): [Q. No.-4, Pg. No. 16.32] Rigorous Imprisonment: Minimum 3 years, Maximum 7 Years [10 years maximum in case the proceeds of crime relates to offences specified under Part A (Para 2) i.e. Narcotic, Drugs and Psychotropic Substances Act, 1985 and Fine: Up to Rs. 5 Lakhs.
7 (d)	With reference to the provisions of Insurance Act, 1938 as amended by Insurance Regulatory and Development Authority Act, 1999, - State the norms in respect of paid up equity capital for carrying out the business of an insurer. - Also state the items that are excluded in determining the amount of paid up equity capital of an insurer under the said Acts.	Practical Q. in Pg. No. 17.3 Q. No. 3 (Pt. 6) Issue I: Every Insurer carrying on the business of Life Insurance, General Insurance or Re- Insurance in India shall be registered, only when he has minimum Paid- up Equity Capital as under- - In case of Life Insurance/ General Insurance Business- Rs. 100 Crores. - In case of Exclusive Re- Insurance Business- Rs. 200 Crores. Issue II: In determination of the Paid- Up Equity Capital the following shall be excluded: - Deposits made u/s 7 & - Any Preliminary Expenses incurred in the formation and registration of the Company.
7 (e)	Explain the principles of “Grammatical Interpretation” and “Logical Interpretation” of a Statute. What are the duties of a court in this regard?	Similar to RTP, N 01, Pg. No. 18.4 Principles: Point 2(a), Q. No. 2 Duties: Point B, Q. No. 4