

PAPER – 4 : CORPORATE AND ALLIED LAWS

QUESTIONS

SECTION – A : COMPANY LAW

Accounts

1. (a) A Public Company sought extension of time from the Registrar of Companies for holding Annual General Meeting upto a period of 3 months and it was granted. However, when the Annual General Meeting was held and the accounts were presented, it was found that the annual accounts were upto a period beyond which it is permissible. The Company contended that since Registrar of Companies granted extension of time for holding Annual General Meeting up to a period of 3 months, the same would also be applicable for presentation of accounts as well. Referring to the relevant provisions of the Companies Act, 1956, whether the contention of the company shall/may hold good?
- (b) The Profit and Loss Account and Balance Sheet of Acre Limited have been signed by two directors A and B. The Board comprises of a third director C, who is also the Managing Director. The company has also employed a Full Time Secretary. Examine whether the authentication of the financial statements is in accordance with law.

Audit

2. Mr. Kamlesh who is an individual auditor wants to compute the specified number of audits under the Companies Act, 1956 and for this purpose, he has drawn out a list of which identify, the company which shall be/not be taken into account for the purpose of calculating specified number of audits:
 - (i) Audit of Private Company
 - (ii) Guarantee companies not having share capital
 - (iii) Audit of non-profit companies
 - (iv) Special Audits
 - (v) Audits- of Foreign Companies
 - (vi) Branch Audits
 - (vii) Company audit where he is appointed as a joint auditor

Further, he wants to know that as a member of the ICAI, whether there are any other restrictions on him as a member in the matter of inclusion/exclusion of audit of private companies for the purpose of calculating specified number of audit assignments. Advice.

Dividend

3. Advise on the following situations:
 - (i) A company wants to transfer more percentage of profits to reserves.

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- (ii) A company wants to declare dividends out of past reserves instead of current year profits.
- (iii) A company wants to provide depreciation higher than the rates provided in Schedule XIV.

Directors

4. A company has 11 directors on the Board consisting of the following:
- (a) Mr. Active, Mr. Archive as nominees from two Public Financial Institutions.
 - (b) Mr. First, Mr. Second, Mr. Third appointed at the 2nd AGM.
 - (c) Mr. Fourth, Mr. Fifth appointed at the 3rd AGM.
 - (d) Mr. Addition was appointed as additional director subsequent to 3rd AGM.
 - (e) Mr. Casual was appointed as director in place of Mr. Soul who died and was earlier appointed during the 3rd AGM.
 - (f) Mr. Excellent was appointed as Managing Director for 5 years w.e.f. 2nd AGM.
 - (g) Mr. One more was appointed as additional Director soon after Mr. Addition was appointed as Additional Director.

List out in order, who shall be vacating the office at the 4th AGM of the company.

5. Whether the following persons can be appointed as a Director of a Public company:
- (i) Mr. John, who has huge personal liabilities far in excess of his Assets and Properties, has applied to the court for adjudicating him as an insolvent and such application is pending.
 - (ii) Mr. Smith, who was caught red-handed in a shop lifting case two years ago, was convicted by a court and sentenced to imprisonment for a period of eight weeks.
 - (iii) Mr. Tom, a Former Bank Executive, was convicted by a court eight years ago for embezzlement of funds and sentenced to imprisonment for a period of one year.
 - (iv) Mr. Samuel is a Director of PQR Limited, which has not filed its Annual Returns pertaining to the Annual General Meetings held in the calendar years 2006, 2007 and 2008. Advice.
6. XYZ Ltd. is a foreign collaborator in ABC Ltd incorporated in India under the Companies Act, 1956. The foreign collaborator holds 49% of the shareholding. The Board meetings of ABC Ltd are usually held in India and sometimes meetings of the Board are called at a very short notice for which there is a provision in the Articles of Association that during such situations notices of the meetings of the Board can be sent by e-mail. State in this connection whether such a provision in the Articles of Association of a foreign collaborated company is valid within the purview of the provisions of the Companies Act, 1956.

Meetings, Powers of the Boards and Related Party Transaction

7. The Board Meeting of ABC Ltd. was scheduled on a Sunday. State with reference to the

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provisions of the Companies Act, 1956, whether meetings of the Board can be held on such a day. What would be your answer, if the said Board meeting is an adjourned meeting?

8. Star Fabrics Ltd. wants to sell its products to its following customers: (a) A partnership firm in which two of the directors of the company are partners; (b) A private company in which one of the directors of the company is a member; (c) A public company in which one of the directors of the company is a director. In these three cases what steps are required to be taken by Star Fabrics Ltd.?

Inspection and Investigation

9. State the circumstances on the basis of which Central Government may order investigation into the affairs of a company.

Compromise, Arrangements and Reconstructions

10. Alpha Ltd. and Beta Ltd. entered into a scheme of amalgamation by which Alpha Ltd. would transfer its entire undertaking to Beta Ltd. However, the Central Government raised an objection that unless the objects clause of the companies are similar, and memorandum empowers to do so, the scheme of amalgamation cannot be permitted. Is the contention of the Central Government correct?

Prevention of Oppression and Mismanagement

11. A group of shareholders filed petition praying for relief against mis-management of the affairs of the company. However during the course of proceedings at the Company Law Board, it was understood that there were no longer any wrong doings by the Board in the conduct of the affairs of the company and hence it was pleaded that the complaint should be set aside. Advise with reference to the provisions of section 397 of the Companies Act, 1956.
12. The issued, subscribed and paid up capital of Sunshine Limited is Rs.5 crores consisting of 50,00,000 equity shares of Rs.10 each. The company has 700 members. A petition was made to the appropriate authority duly signed by 80 members holding 2,50,000 equity shares of the company seeking relief against oppression and mismanagement. Subsequently 20 of them withdrew their consent. Examine with reference to the relevant provisions of the Companies Act, 1956 and decided case law whether the petition is maintainable

Corporate Winding up and Dissolution

13. (a) Write short notes on:
- (i) Disclaimer of onerous property
 - (ii) Misfeasance
- (b) The Balance sheet of M/s Hush Hush Ltd. as at 31.3.2009 filed with the Registrar of Companies, Mumbai disclosed that the liabilities amounted to Rs.2.75 crores as against the Assets of Rs.1.25 crores. On the basis of the scrutiny of the Balance Sheet, the Registrar filed a winding up petition against the company stating that it is

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commercially insolvent and that the company is unable to pay its debts on the ground that the value of liabilities far exceeded the value of assets. Examine whether the company has any case to defend against the winding up petition filed by the Registrar.

Companies Incorporated Outside India and Producer Companies

14. (a) Explain the circumstances in which the registration of a Producer Company may be cancelled by the registrar?
- (b) As per provisions of the Companies Act, 1956, what is the status of XYZ Ltd., a Company incorporated in London, U.K., which has a Share Transfer Office at Mumbai?

Offences and Penalties

15. What do you mean by Non-Cognizable Offences?

E-governance

16. Mr. X applied to the Central Government for allotment of Director Identification Number (DIN). What are the obligations of Mr. X and the companies in which he is appointed as a director, after "DIN" is allotted to him, under the Companies Act, 1956 and the rules made thereunder?

Corporate Secretarial Practice

17. A private company having a paid-up capital of Rs. 6 crores has been converted into a public company. The company proposes to constitute an Audit Committee. Draft a board resolution covering the following matters taking into account the provisions of the Companies Act, if any, in this regard:
 - (i) Members of the audit committee
 - (ii) Chairman of the audit committee
 - (iii) Quorum for a meeting of the audit committee
 - (iv) Any two main functions of the committee.

SECTION – B: ALLIED LAWS

The Securities and Exchange Board of India Act, 1992

18. Explain briefly the powers of SEBI under Securities and Exchange Board of India Act, 1992 to seize the records of a Stock broker or other Intermediaries associated with Securities Market.
19. M/s Earth Chemicals and Engineering Ltd. is a closely held unlisted company with a paid up share capital of Rs. 3.00 crores, since 1st April, 2001 and its net worth as on 31st March, 2007 was Rs. 5.00 crores. The net tangible assets of the company as per last three audited balance sheets as at 31st March, 2005, 2006 and 2007 were Rs. 4.00 crores, 4.50 crores and 5.00 crores respectively out of which monetary assets were less

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than Rs. 50 lakhs in each of the three years. The company was incorporated in 1998 and commenced its business on 1st April, 1998 and since then it has earned good profits and it has not incurred any loss in any year in the past. The company has not declared any dividend so far. But according to the profits earned so far, the management could have declared dividends in each of the last five years. The name of the company was changed from Earth Engineering Ltd. to its present name effective from 1st October, 2006. The company wants to make a public issue of shares to raise Rs. 20.00 crores by issuing equity shares at premium. For the purpose of including the information in the prospectus, the company has prepared its accounts for 12 months ended 30th September, 2007 showing segment wise revenue, which reveals that revenue from chemical segment was more than the revenue from engineering segment. Keeping the relevant guidelines issued by SEBI into account, examine whether the company can make the desired issue of equity shares based on the facts stated above.

Securities Contracts (Regulation) Act, 1956

20. The application filed by M/s XYZ Ltd. for the listing of its securities has been rejected by the Mumbai Stock Exchange. Advise the company regarding the steps it can take against the rejection.

Foreign Exchange Management Act, 1999

21. State which kind of approval is required for the following transactions under the Foreign Exchange Management Act, 1999?
- (i) X, a Film Star, wants to perform alongwith associates in New York on the occasion of Diwali for Indians residing at New York. Foreign Exchange drawal to the extent of US dollars 20,000 is required for this purpose.
 - (ii) F International Ltd. has purchased the trade mark from a Foreign Company to establish retail business chain in India as a joint venture at a consolidated price of US dollars 500,000 which is to be paid in Foreign currency of that country.
 - (iii) R wants to get his heart surgery done at UK. Up to what limit Foreign Exchange can be drawn by him and what are the approvals required?
 - (iv) L wants to pursue a course in Fashion design in Paris. The Foreign Exchange drawal is US dollars 20,000 towards tuition fees and US dollars 30,000 for incidental and stay expenses for studying abroad.

The Competition Act, 2002

22. The Association of Truck Operators of India by agreement insisted that members of the association shall not deal with the non-members in transportation of goods. The Association claims that this agreement is entered for the welfare of trade and not for any other purpose. In your opinion whether the agreement would be under the purview of the Competition Act, 2002. Whether your answer would be different if the association attempts to control the provisioning of services rendered by its members.

Interpretation of Statutes, Deeds and Documents

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23. Many a time a proviso is added to a Section of the enactment. Explain the function of such a proviso while carrying out the interpretation?

Banking Regulation Act, 1949 and the Insurance Regulatory and Development Authority Act, 1999,

24. (i) What are the powers of RBI's to control loans & advances granted by banking company?
- (ii) What are the provisions in the Insurance Act, 1938 regarding nomination by Life Insurance Policy holder? Whether a minor can be a nominee in a Life Insurance Policy?

Prevention of Money Laundering Act, 2002

25. (i) What is Payment System?
- (ii) How the trials under PMLA are conducted in special courts? Is the offence under PMLA are bailable?

SUGGESTED ANSWERS/HINTS

1. (a) According to Section 166(1) of the Companies Act, 1956, there must be not more than fifteen months between two consecutive annual general meetings of a company. Section 210 requires the Board of Directors to lay at every annual general meeting of a company a profit and loss account, which must cover the period since the preceding account and must be made up to date not earlier than the date of the meeting by more than six months. The account is required to be accompanied by a balance sheet as at the date to which the profit and loss account is made up. For some special reason however, the Registrar may give an extension for not more than 3 months to hold the meeting. In such a case, the accounts must relate to a period not earlier than the date of the meeting by more than six months plus the extension period. From this, we can easily make out that except the first annual general meeting which is subject to different rules, an annual general meeting is to be held subject to the following rules:
- (i) The meeting must be held in each year.
- (ii) It must be held not later than 15 months (18 months, if extension is granted) from the date of the previous general meeting.
- (iii) Further, it must be held later than six months (or six months + extension) of the date of the balance sheet.

These three requirements are cumulative and separate: failure to comply with any of them constitutes an offence. While a company may hold its Annual General Meeting in a year within the time limit of 15 months as provided by Section 166(1) of the Companies Act, 1956, it may still contravene Section 210. A company and its director may commit offences if it does not fulfil the three requirements and failure to comply with any of them

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constitute an offence unless an extension of time has been granted for holding the meeting by the Registrar of Companies. However, the extension of time for holding the Annual General Meeting is only with reference to the meeting and not to that of submission of accounts.

- (b) Except in the case of a banking company, the balance sheet and profit and loss account of a company must be signed on behalf of the Board of directors by two directors and the Manager or Secretary, if any. If the company has a Managing Director, he should be one of the signing directors, as per Section 215. In the instant case, the profit and loss account and balance sheet have been signed by A and B, the directors. In view of Section 215 of the Companies Act, 1956, C, the managing director should be one of the two signing directors. Since the company has also employed a secretary, he should also sign the profit and loss account and balance sheet in addition to the managing director C, and one of the directors, either A or B.
2. Students may also note that the Companies (Amendment) Act, 2000 has amended section 224(1B) by adding a proviso that provisions shall not apply to a private company on and after the commencement of the Companies (Amendment) Act, i.e. 13.12.2000. Therefore, with this amendment, while computing the ceiling on number of audits, only audit of public companies would be taken into consideration. In other words, an auditor can accept audit of any number of private companies. This, however, is subject to guidelines of the Institute which provide restriction in respect of private companies as well. As per the section, an audit firm is entitled to 35 audits per partner (i.e. 70 audits in the given case) out of which not more than 10 companies per partner should be having paid-up capital of Rs. 25 Lakhs or more. The firm can do audit of any number of private companies. Thus, there is no problem in audit firm holding office of 70 private companies.

Therefore, according to this section, only audit of public companies would be taken into consideration while computing the ceiling limit of number of audits. This, however, is subject to a notification (see below) of the Institute of Chartered Accountants of India (ICAI) which provide restriction in respect of private companies as well. According to notification issued by ICAI, the specified number of audit assignments means-

- (a) in the case of a chartered accountant in practice or a proprietary firm of chartered accountant, thirty audit assignments whether in respect of private companies or other companies.
- (b) in the case of a firm of chartered accountants in practice, thirty audit assignments per partner in the firm, whether in respect of private companies or other companies. Provided that out of such specified number of audit assignments, the number of audit assignments of public companies each of which has a paid-up share capital of rupees twenty-five lakhs or more, shall not exceed ten.

Thus, the firm cannot audit 70 companies because an audit firm is allowed to audit only 60 companies whether public or private (i.e. 30 audits per partner) out of which audit of 20 public companies having paid up capital of 25 Lakhs or more is allowed.

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Students may note that while the law excluded private companies from the specified limits but the ICAI has issued the above notification restricting the overall limit to 30 company audits including private limited companies. It may be noted that a member of ICAI who fails to comply with the notification shall be liable for professional misconduct

In computing the specified number of audits for the purpose of Section 224(1B) of the Companies Act, 1956, the following audit shall not be taken into account:

- (a) Audit of private company.
- (b) Audit of Guarantee Companies not having share capital.
- (c) Special Audits.
- (d) Audit of Foreign Companies.
- (e) Branch Audits.

Though the audit of private companies has been excluded for the purpose of calculating the specified number of audits, as a member of ICAI, the Audit of Private Companies will come under the purview of calculating the ceiling limit as a matter of self-regulation.

The ICAI Notification on the above subject is reproduced below for full understanding on the subject:

No.1-CA(7)/53/2001: In exercise of the powers conferred by clause (ii) of Part II of the Second Schedule to the Chartered Accountants Act, 1949, the Council of the Institute of Chartered Accountants of India hereby specifies that a member of the Institute in practice shall be deemed to be guilty of professional misconduct, if he holds at any time appointment of more than the "specified number of audit assignments of the companies under Section 224 and /or Section 228 of the Companies Act, 1956.

Provided that in the case of a firm of chartered accountants in practice, the specified number of audit assignments shall be construed as the specified number of audit assignments for every partner of the firm.

Provided further that where any partner of the firm of chartered accountants in practice is also a partner of any other firm or firms of chartered accountants in practice, the number of audit assignments which may be taken for all the firms together in relation to such partner shall not exceed the specified number of audit assignments in the aggregate.

Provided further that where any partner of a firm or firms of chartered accountants in practice accepts one or more audit assignments in his individual capacity, or in the name of his proprietary firm, the total number of such assignment which may be accepted by all firms in relation to such chartered accountant and by him shall not exceed the specified number of audit assignments in the aggregate.

Explanation:

1. for the above purpose, the specified number of audit assignments means-

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- (a) in the case of a chartered accountant in practice or a proprietary firm of chartered accountant, thirty audit assignments whether in respect of private companies or other companies.
- (b) in the case of a firm of chartered accountants in practice, thirty audit assignments per partner in the firm, whether in respect of private companies or other companies.

Provided that out of such specified number of audit assignments, the number of audit assignments of public companies each of which has a paid-up share capital of rupees twenty-five lakhs or more, shall not exceed ten.

- 2. In computing the specified number of audit assignments.
 - (a) the number of such assignments, which he or any partner of his firm has accepted whether singly or in combination with any other chartered accountant in practice or firm of such chartered accountants, shall be taken into account.
 - (b) the audit of the head office and branch offices of a company by one chartered accountant or firm of such chartered accountants in practice shall be regarded as one audit assignment.
 - (c) the audit of one or more branches of the same company by one chartered accountant in practice or by firm of chartered accountants in practice in which he is a partner shall be construed as one audit assignment only.
 - (d) the number of partners of a firm on the date of acceptance of audit assignment shall be taken into account.
 - (e) a chartered accountant in full time employment elsewhere shall not be taken into account.
- 3. this notification shall come into force from the date of its publication in the Official Gazette.
- 4. A chartered accountant in practice as well as firm of chartered accountants in practice shall maintain a record of the audit assignments accepted by him or by the firm of chartered accountants, or by any of the partner of the firm in his individual name or as a partner of any other firm as far as possible, in the prescribed manner.

Students may note that while the law excluded private companies from the specified limits but the Institute has issued the above notification restricting the overall limit to 30 company audits including private limited companies. It may be noted that a member who fails to comply with the notification shall be liable for professional misconduct.

- 3. (i) A company can make a transfer of more than 10% to reserves provided it ensures the minimum distribution specified in Rule 3 of the Companies (Transfer of Profits to Reserves) Rules, 1975.
 - (a) The minimum distribution is the rate of dividend equal to the average of the rates of dividend for the last 3 financial years.

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- (b) Where bonus shares have been issued during the financial year, minimum distribution would be the average of the amount of dividend for the last three financial years.
 - (c) Where, however, the net profits after tax for the financial year are lower by 20% or more than the average net profits after tax for the last two financial years, it will not be necessary to ensure the minimum distribution for making a higher transfer to reserve.
 - (ii) Dividends may be declared out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with Section 205 of the Companies Act, 1956. However, the Central Government may in the public interest relax the payment of the profits without providing for depreciation. The Companies (Declaration of Dividend out of reserves) Rules, 1975 provides that
 - (a) The rate of dividend declared does not exceed the average of the rates at which dividend was declared by it in the 5 years immediately preceding that year or 10% of its paid-up capital, whichever is less.
 - (b) The total amount to be drawn from the accumulated profits earned in previous years and transferred to the reserves does not exceed an amount equal to 1/10th of the sum of its paid-up capital and free reserves and the amount so drawn must first be utilized to set off losses incurred in the financial year before any dividend in respect of preference or equity shares is declared.
 - (c) The balance of reserves after such drawal does not fall below 15% of its paid-up capital.
 - (d) The rates contained in Schedule XIV are the minimum rates below which companies are not permitted to charge for depreciation and therefore there is no bar in providing a higher rate of depreciation.
 - (iii) The rates for providing depreciation under the Income Tax Act, 1961 and that under the Companies Act, 1956 are different and have been delinked. The rates of depreciation that are provided under Schedule XIV to that of the Companies Act, 1956 are lower than those provided under the Income Tax Act, 1961 and there is no bar in a company providing for higher rate of depreciation as Companies Act, 1956 provides only for a minimum rate of depreciation.
4. Section 255 of the Companies Act, 1956, provides that unless the Articles provide for retirement of all the directors at every general meeting, not less than two-thirds of the total number of directors of a public company, or of a private company which is a subsidiary of a public company, shall retire by rotation. In terms of section 256 of the Act, one-third of the directors liable to retire by rotation shall retire at the Annual General Meeting of the Company. If the number of directors liable to retire by rotation is not three or a multiple of three, then the number nearest to one-third shall retire from the office of director.

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In order to determine the directors who shall retire by rotation at every general meeting, it is provided that the persons who have been longest in office since their last appointment shall be liable to retire. As between the persons who became directors on the same day, the directors who shall retire may be determined by agreement among themselves. In the absence of any such agreement the persons liable to retire shall be chosen by lot.

Of the 11 directors mentioned in the question, Mr. Active and Mr. Archive, who are nominees of Public Financial Institutions respectively, are non-rotational directors and are not liable to retire. Mr. Excellent being the Managing Director, is also not liable to retire. The position in regard to the remaining 8 directors is as under:

- (i) Mr. Addition & Mr. One More who were appointed as Additional Directors in subsequent to 3rd Annual General Meeting respectively, shall vacate office on the date of 4th Annual General Meeting.
 - (ii) Mr. Casual was appointed in place of Mr. Soul who died and will, therefore, hold office till the date. Mr. Soul would have held office.
 - (iii) Of the 6 rotational directors, [viz., Mr. First, Mr. Second, Mr. Third, Mr. Fourth, Mr. Fifth and Mr. Casual] 2 directors who constitute one-third, and who have been longest in office are liable to vacate office. Accordingly, two amongst Mr. First, second and third who were appointed in 1st AGM and have been longest in office, shall vacate office. Amongst themselves, either they can decide by mutual consent or by draw of lots.
5. All the cases stated above are based on the provisions of Section 274(1) of the Companies Act, 1956 dealing with disqualifications of directors. Based on the provisions of the said section, each case can be discussed as follows:
- (a) Section 274(1)(c) states that a person shall not be capable of being appointed as a director of a company if he has applied to be adjudicated as an insolvent and his application is pending in the present case, Mr. John has applied to be adjudicated as an insolvent and his application is pending with the Court. Hence, he cannot be appointed as a Director of a Company – whether public or private.
 - (b) Section 274(1)(c) states that a person shall not be capable of being appointed as a director of a company if he has been convicted by a court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months, and a period of five years has not elapsed from the date of expiry of the sentence. In the present case, although the sentence was only two years ago, but the period of sentence was only eight weeks, i.e., less than six months. Hence, Mr. Smith does not come under the prescribed disqualification and can be appointed as a director of a company.
 - (c) This case also falls within the provisions of section 274(1)(c). In this case the imprisonment was for a period of one year, i.e., for more than six months, but since more than five years have elapsed from the expiry of the sentence, Mr. Tom has come out of the prescribed disqualification and can be appointed as a director of a company.

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- (d) Section 274(1)(g) states that a person who is already a director of a public company which has not filed the annual accounts and annual returns for any continuous three years, then such a person shall not be eligible to be appointed as a director of another public company. In the present case, PQR Limited has failed to file only annual returns and not annual accounts. Hence, the disqualification for Mr. Samuel is not attracted and he can be appointed as a director.
6. In the post-Independence period, there is an upsurge of foreign consortia. Articles of foreign collaborations frequently provide that notice of Board meetings should be sent by Air Mail to foreign directors so that they may be able to attend the statutorily prescribed minimum number of meetings (i.e. 3 consecutive meeting without obtaining the leave of absence from the Board) so as to prevent the vacation of their office due to continuous non-attendance under Section 283(1) (g) of the Act. *Now a vital question crops up as to whether such a provision in the articles of foreign collaborations is valid*, because of the provisions of Section 286(1) which, as we have already stated earlier, requires the service of the said notice on a director out of India at his usual address in India. Such a question is not free from doubt. In England, such a notice is required to be given to a director abroad, only when he is within easy reach, else not. But a moot point arises whether a foreign director falls within the purview of the expression "a director other than a director for the time being in India." On a scrutiny of the act we find that whereas Section 53 provides for service of documents like notices, etc. on members by a company there is no such or similar Section providing for services of notice on directors.
7. The term "public holiday" in this context should be understood. According to the proviso to Section 2 (38) of the Companies Act, 1956, no day declared by the Central Government to be a public holiday shall be deemed to be a public holiday unless the declaration was notified before the issue of the notice of the meeting. Suppose, the notice of a meeting was issued on April 1st where by it was to be held on May 3. If on April 2, the Central Government declares the 3rd day of May as a public holiday, there is no bar to the holding of the meeting on May 3 in spite of its being declared as a public holiday. If, however, the declaration is notified before the issue of the notice convening the meeting, say on 31st March, the meeting cannot be held on May 3.

Whether or not the Board meeting can be held on a public holiday and out of business hours is a question open to conflict. As already state earlier, under Section 288, the adjourned Board meeting is to be held on a day which is not a holiday but no such restriction has been levied on the matter of holding the original Board meeting. On the basis of the provision of Section 288, one set of arguments may be that like the adjourned meeting, the holding of the original Board meeting is equally a normal and usual work of a company and that is why it should be held during usual business hours and on a day, which is not a public holiday. On this analogy, a similar inference may be drawn from the provision of Section 166(2) as well, because it prescribes only for each annual general meeting that it held on a day which is not a public holiday and during the business hours and also because annual general meeting is normal work of the company. Another set of arguments is that a meeting of the board can take place even

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on a public holiday and out of business hours because there is no such restriction as contemplated either by Section 166(2) or by Section 288. We are rather inclined to subscribe to latter set of arguments. This is because if the Legislature could think of imposing similar restrictions twice-once at the time of drafting Section 166(2) in respect of only annual general meeting and the other at the time of drafting Section 288 in respect of adjourned Board meetings-it could rationally think of similar restrictions for the third time in respect of original Board meetings. If the human element of forgetfulness on the part of the draftsmen is to be given any consideration, even then it can be upheld on the first occasion when Section 166(2) was drafted. But definitely such forgetfulness is not tenable on second occasion when Section 288 was enacted especially in respect of adjourned Board meeting. Had it been the intention of the legislature, it could easily enact a provision and add it as a sub-section to Section 288. It, therefore, seems that the legislature did not deliberately think it necessary to provide for original board meeting to be held on a day other than a public holiday and during usual business hours. The law will take its course, however the course may sound irrational. **Therefore, in the absence of any specific provisions in Act it seems that the original Board meeting can be held even on a holiday and out of the business hours, where however an adjourned meeting of the Board be held on a day which is not a public holiday.**

8. According to Section 297 of the Companies Act, 1956, except with the consent of the Board of Directors of a company, firm in which the director or directors of the company is/are partners or a private company of which such director or directors is or are a member or members shall not enter into any contract with the company for the sale, purchase or supply of any goods, materials or services. Therefore, the public company in the instant two cases should obtain the consent of its Board of Directors. This consent shall have to be taken by a resolution passed at the Board meeting and not otherwise. The resolution according the consent must be passed before the contract to sell the product is entered into or within 3 months of the date on which it was entered into; otherwise consent shall not be deemed to have been given. If the consent is not accorded, anything done in pursuance of the contract shall be voidable at the option of the Board. Care should be taken to ensure that the interested directors do not vote on the motions and their presence is not counted for the purpose of quorum for the meeting. Also it is to be seen that such directors have disclosed their interests in the contract pursuant to Section 299 of the Companies Act, 1956 unless any of them is enjoying the exemption under sub-section (6) of the above section.

The consent contemplated above is not a general consent but consent referable to each particular or specific contract or contracts. Consent requires knowledge of the necessary facts and material, which lead to the consent and cannot be given in general or abstract manner (*Watchand Nagar Industries Ltd. vs. Ratanchand, A.I.R. Bom. 256*). Therefore, the Board of the public company should take appropriate steps in this regard.

The point of the case in question relates to disclosure of interest by directors. According to Section 299(6), nothing in Section 299 shall apply to any contracts entered into or to be entered between two companies where one of the directors of the one company or two or more of them together holds or hold not more than 2% of the paid up share capital

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in the other company. This point is not clear from the facts in the problem. This is a contract to be entered into between two companies. And if the director of the first company holds 2% or less of the paid-up share capital in the second public company, the provisions of Section 299 will not apply to this case.

If, however, the said director holds more than the aforesaid 2% then the Board of Directors should see that the director, pursuant to Section 299, discloses his interest or concern at the meeting of the Board. This disclosure has to be made at the Board meeting at which the contract is considered. If the interest is acquired subsequent to the meeting then it is to be disclosed at the immediately next meeting.

The Board of the first-mentioned public company should ascertain whether the interest of director aforesaid consists solely (i) in his being a director of such company and the holder of not more shares of such number and value therein as is requisite to qualify him for appointment as a director thereof, he having been nominated as such director by the company or (ii) in his being a member holding not more than 2% of its paid-up share capital. Also, there is no restriction on voting, etc. by an interested director if a notification had been issued by the Central Government under Section 300(3) exempting the company from the purview of Section 300. If, on such assertion, the interest is not found to be so consisting as aforesaid, the Board of the company should see that interested director does not participate in the discussion or vote on the contract and that his presence is excluded from the computation of quorum.

9. Section 237(b) of the Companies Act, 1956 provides that the Central Government may appoint inspectors if, in the opinion of the Company Law Board, there are circumstances suggesting:
 - (i) that the business of the company is being conducted with intent to defraud its creditors, members or any other persons, or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members, or that the company was formed for any fraudulent or unlawful purpose;
 - (ii) that persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or
 - (iii) that the members of the company have not been given all the information with respect to its affairs which they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director, or the manager, of the company.
10. The power to amalgamate may flow from the memorandum or it may be acquired by resorting to the statute. Section 17 of the Companies Act, 1956 indicates that a company which desires to amalgamate with another company will take necessary steps to come before a court for alteration of its memorandum in aid of such amalgamation. The statute confers a right on a company to alter its memorandum in aid of amalgamation with another company. The provisions contained in sections 391 to 396 and 494, illustrate

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instances of statutory power of amalgamating a company with another company without any specific power in the memorandum. [*Hari Krishna Lokia (v) Hoolungooree Tea Co. Ltd*, 1996].

Section 391 is not only a complete code, but it is in the nature of a single window clearance system to ensure that parties are not put to avoidable, unnecessary and cumbersome procedure for making repeated applications to court for various alterations and changes. What is to be seen is the overall fairness and feasibility of scheme of amalgamation and there need not be any 'unison of objects of both transferor and the transferee company. [*R Morarjee Gokuldas spg. & wrg. Co.*, 1995]. To amalgamate with another company is the power of the company and not an object of the company. [*Re. Hari Krishna Lohia*, 1996]. Irrespective of the objects clause, the court is empowered to sanction scheme of amalgamation provided it does not prejudice the interest of the public. Therefore, based on the above judicial rulings, the contention of the central government is not correct. [*Golkunda Engg. Enterprises Ltd (v) the G. V. Ltd*, 1997].

11. The remedy available under Section 397 of the Companies Act, 1956, can be invoked only when the affairs of the company are being conducted in a manner oppressive to a shareholder or shareholders. Likewise, the remedy available under Section 398 can be invoked only when the affairs of the company are being conducted in a manner prejudicial to the interest of the company. These two Sections clearly postulate that at the time application is made, there must be a continuing course or conduct of the affairs of the company, which is oppressive to any shareholder or shareholders or prejudicial to the interest of the company. It is this course of oppressive or prejudicial conduct, which can be made the subject matter of a complaint in the application. The foregoing provisions of law do not confer any power on the Company Law Board to set aside or interfere with past and concluded transactions between the company and the shareholders or third parties which are no longer continuing wrongs or to award a compensation to the company for the aggrieved shareholders in respect of such transactions [*Seth Mohanlal Ganpatram vs. Shri Satyaji Jubilee Cotton and Jute Mills Co. Ltd. (1964) 34 Comp. Cas 777*].
12. The requisite number of members who must sign the application under Sections 397 and 398 is given in Section 399 of the Companies Act, 1956. In the case of a company having a share capital, the application must be signed by, (i) at least 100 members or, (ii) by at least 1/10th of total number of members, whichever is less. In the alternative valid application may be made by any members holding not less than 1/10th of the issued share capital of the company. In this case the application was made by 80 members and it is more than 1/10th of total number of members. Hence the application is valid at the time of presentation. The number of members required for the purpose of making a petition is 70. Subsequently 20 members withdrew their consent and the number of members continuing to give their consent is reduced to 60. It was held in *Rajahmundry Electric Supply Corporation Ltd. Vs A. Nageswara Rao* that the validity of a petition must be judged on the facts as they were at the time of its presentation and where a petition was valid when it was presented, it could not cease to be voidable by reason of events subsequent to its presentation. In view of this Supreme Court decision, it can be said that

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withdrawal of consent by 20 members subsequent to the presentation of application would not affect the validity of the petition.

13. (a) (i) **Disclaimer of onerous property:** The liquidator may, with the leave of the Tribunal, disclaim any onerous property within twelve months of the commencement of the winding-up. If the existence of any disclaimable property does not come to the knowledge of the liquidator within one month after the commencement of the winding-up, he can disclaim at any time within 12 months after he has become aware thereof or such extended period as may be allowed by the Tribunal.

An onerous property may consist of: (a) land of any tenure, burdened with onerous covenants (b) shares or stocks in companies; (c) any other property which is unsaleable or is not readily saleable, being onerous, binding the possessor thereof either to perform any onerous act or to pay any sum of money; or (d) unprofitable contracts.

His right to disclaim is lost if, within twenty eight days or such extended period as may be, allowed by the Tribunal of receiving a demand from any interested person to make his decision, (he does not give notice that he intends to apply for leave to disclaim).

Any person injured by disclaimer is treated as a creditor of the company to the amount of compensation or damages payable in respect of the injury, and may prove in the winding-up to the extent of the injury (Section 535).

- (ii) **Misfeasance:** If, in the course of winding-up of a company, it appears that any person who had taken part in the formation or promotion of the company, or any past or present director, manager, liquidator or other officer of the company has misapplied or retained or become liable or accountable for any money or property of the company, or has been guilty of any misfeasance or breach of trust in relation to the company, the Tribunal may, on the application of the Official Liquidator, or any creditor or contributory, examine into the conduct of such person, and compel him to repay or restore the money or property or make compensation to the company for misfeasance or breach of trust/misapplication etc. (Section 543).
- (b) The company can successfully defend the case against the winding up petition by stating the mere fact that the liabilities of the company are in excess of its assets would not necessarily mean that the company is unable to pay its debts or that it is commercially insolvent. *In the case of Registrar of Companies vs. Ajanta Lucky Scheme and Investment Company Private Ltd.* the Registrar of Companies filed a petition for the winding up of the company under section 433(e) read with section 439(5) of the Companies Act on the ground that the company was unable to pay its debts and that its liabilities exceeded its assets. The two issues that emerged therefrom were (a) whether the company was unable to pay its debts and meet its liabilities and (b) Whether it was a proper case for winding up. It was held (a) that

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for determining the company's ability or otherwise to pay its debts it was held to be considered whether the company was able to meet its liability as and when they accrued due. Section 434 of the Act prescribe the circumstances in which a company was to be treated as unable to pay its debts. Admittedly, none of these circumstances was present been received by the company from by regards non-fulfilment of any of their claims against the company. In case where no debt had been due, a demand therefor could not be made. The mere fact that is certain liabilities might accrue due in future which could exceed the existing assets of the company, would not necessarily lead to the conclusion that the company would be unable to meet its liabilities when they accrued due.

- 14 (a)** Section 581 ZP of the Companies Act, 1956 deals with cancellation of registration of a Producer Company. The provisions of section 581 ZP are explained as follows:

If a Producer Company fails to commence business within one year of its registration or ceases to transact business with the member or if the Registrar is satisfied, after making such inquiry as he thinks fit, that the Producer Company is not carrying any of its objects specified in Section 581B, he shall make an order striking off the name of the producer company, which shall thereupon cease to exist forthwith.

No such order cancelling the registration as aforesaid shall be passed until a notice to show cause has been given by the Registrar to the Producer Company with a copy to all its Directors on the proposed action and reasonable opportunity to represent its case has been given.

Where the Registrar has reasonable cause to believe that a Producer Company is not maintaining any of the mutual assistance principles specified, he shall strike its name off the register in accordance with the provisions contained in Section 560 of this Act.

Any member of a producer company, who is aggrieved by an order made under this Section, may appeal to the Company Law Board (Tribunal) within sixty days of the order. After disposing the appeal, if any, the order to striking off the name shall take effect.

- (b)** According to section 591 of the Companies Act, 1956, a company incorporated outside India and having a place of business in India is treated as a "Foreign Company". As per clause (c) of section 602 of the said Act, the expression 'place of business' includes a Share Transfer office. Thus, according to the provisions of the Companies Act, 1956, the status of XYZ Ltd. incorporated in London, U.K., which has a Share Transfer office in Mumbai, shall be that of a 'Foreign Company'.
- 15.** Notwithstanding anything in the Code of Criminal Procedure, 1898 (V of 1898), every offence against this Act shall be deemed to be non-cognizable within the meaning of the said Code (Section 624).

Offences punishable with compulsory imprisonment cannot be compounded.

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Other offences can be compounded by the Regional Director or Company Law Board.

An offence is compoundable by the Regional Director where the maximum amount of fine is up to Rs. 5,000/- or by the Company Law Board where the fine exceeds Rs. 5,000/-.

Application in Duplicate for compounding of offence should be made to the Registrar of companies who shall forward the same to the Regional Director or to the Company Law Board as the case may be.

- 16. Director Identification Number:** The obligations of the person who has been allotted DIN and the company provided in Section 266D, 266E and 266F of the Companies Act, 1956 is explained below:

Every existing director shall within one month of the receipt of DIN from the Central Government intimate his DIN to the company or all companies wherein he is a director. Intimation to companies from Director shall be in Form DIN-2 [Section 266D read with the Companies (Director Identification) Rules]. Intimation to companies by directors in form DIN-2 may be given in physical /paper form.

Companies, in turn are required to file Form DIN-3 for sending intimation of DIN to the Registrar of Companies (online through MCA 21 portal) within one week of receipt of intimation from directors. Form No. DIN-3 is required to be verified by Managing Director or Director or Manager of the company and certified by the company secretary in full time employment of the company or company secretary in whole time practice [Section 266 E read with companies (Director Identification) Rules].

It is obligatory on the part of the company to quote DIN in any return or information furnished under the Act, if such return contains any information relating to a director (Section 266F).

Changes in the personal particulars of a director must be intimated by the concerned director to the Central Government within 30 days of the change in Form DIN-4.

17. Draft Board Resolution – Audit Committee

“Resolved that, pursuant to section 292A of the Companies Act, 1956, an audit committee consisting of the following Directors be and is hereby constituted.

1. Shri _____, Nominee of IDBI
2. Shri _____, Nominee of ICICI
3. Shri _____, Nominee of State Bank of India
4. Shri _____,
5. Shri _____, Managing Director

Further, resolved that the Chairman of the Audit Committee shall be elected by its members from amongst themselves.

Further resolved that the quorum for a meeting of the Audit Committee shall be 1/3rd of

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the total number of members or two directors (other than the Managing Director) whichever is higher.

Further resolved that the Audit Committee shall have the authority to investigate into any matter that may be prescribed under the said section 292A and any other matter that may be referred to it by the Board from time to time.

Further resolved that the Audit Committee shall conduct discussion with the auditors periodically about internal control systems, the scope of audit including the observation of auditors.

Further resolved that the Audit Committee shall review the quarterly and annual financial statements and submit the same to the Board with its recommendations, if any.”

18. Section 11C was inserted by SEBI (Amendment) Act, 2002. Where SEBI has reasonable grounds to believe that (a) transactions in securities are being dealt with in a manner detrimental to the investors or securities market or (b) any intermediary or any person associated with securities has violated provisions of SEBI Act, Rules, Regulations or Directions issued by SEBI, it can appoint an Investigating Authority to investigate the affairs of such intermediary/person and report matter thereon to the Board [Section 11C (1)].

If Investigating Authority is of the opinion that the records are likely to be destroyed or mutilated or secreted or altered, he can make application to Judicial Magistrate of First Class for an order of seizure of such books, registers, other documents and record [Section 11C(8)]. The Magistrate can authorize Investigating Authority to enter premises, search and seize records. But Magistrate will authorize seizure of records of a listed company or company intending to be listed only if it is indulging in insider trading or market manipulation [11C (9)]. The seized records will be kept by Investigating Authority till conclusion of investigation and then return it to person concerned after placing identification marks on them [11C(10)].

19. Regulation 26 of the SEBI (ICDR) Regulations, 2009 prescribes the conditions to be fulfilled for issue of shares. As per the said Regulation, an issuer may make an initial public offer, if:
- (a) it has net tangible assets of at least three crore rupees in each of the preceding three full years (of twelve months each), of which not more than fifty per cent are held in monetary assets. Further that if more than fifty per cent of the net tangible assets are held in monetary assets, the issuer has made firm commitments to utilise such excess monetary assets in its business or project.
 - (b) it has a track record of distributable profits in terms of section 205 of the Companies Act, 1956, for at least three out of the immediately preceding five years. The extraordinary items shall not be considered for calculating distributable profits.
 - (c) it has a net worth of at least one crore rupees in each of the preceding three full years (of twelve months each).

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- (d) the aggregate of the proposed issue and all previous issues made in the same financial year in terms of issue size does not exceed five times its pre-issue net worth as per the audited balance sheet of the preceding financial year.
- (e) if it has changed its name within the last one year, at least fifty per cent of the revenue for the preceding one full year has been earned by it from the activity indicated by the new name.

In the given case,

- (a) The net tangible assets of the company as per the last three audited balance sheets as on 31st March, 2005, 2006 and 2007 were Rs. 4.00 crores, Rs. 4.50 crores, and Rs. 5.00 crores respectively. It satisfies the requirements of clause (a) as above as during each of the preceding three full years, it has net tangible assets, more than Rs.3 crores and out of which the monetary assets are not more than 50 % of the net tangible assets. (In this case it has monetary assets less than Rs 50 lacs).
- (b) The company has good track record of distributable profits in terms of section 205 of the Companies Act, 1956. In other words, it has not incurred any loss in any year in the past.
- (c) The net worth of the company during the three preceding years was at least Rs. 1 crore in the preceding three full years. (paid-up capital since 1st April, 2001 is Rs 3 crores and net worth as at 31st March, 2007 was Rs. 5.00 crores.
- (d) The aggregate of the proposed issue and all previous issues made in the same financial years does not exceed 5 times its pre-issue net worth. (Rs. 20 crores is the proposed issue and pre-issue net worth is Rs. 5 crores as on 31st March, 2007.
- (e) It is stated in the problem that the revenue earned by the company under its activity (chemical) the new name is more than from the old activity (engineering, it satisfied the condition (e) as stated above.

Hence Earth Chemicals & Engineering Ltd can proceed to make a public issue of shares to raise Rs. 20.00 crores by issuing equity shares at premium.

20. Yes, XYZ Ltd. can appeal against refusal of stock exchange to list the securities. Section 22 of Securities Contracts (Regulation) Act, 1956 deals with this. According to section where a recognized stock exchange refuses listing to a company, it has to furnish reasons for refusal to the company. Section 73(1) of the Companies Act, 1956 specifies the time period within which stock exchange has to grant listing permission. If exchange fails to do so within the time limit or refuses to list, the company may within 15 days make an appeal to the Central Government. The Central Government may after hearing the Stock Exchange vary or set aside the decision of the Stock Exchange, or grant permission for listing.

However, no appeal under this section shall be allowed after the commencement of Securities Laws (Second Amendment) Act 1999 since appeal before Securities Appellate Tribunal is permitted under Section 22A. Where a Stock Exchange refuses listing or is

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unable to grant listing within time frame prescribed, company is entitled to appeal to Securities Appellate Tribunal (SAT). SAT may, after hearing the exchange vary or set aside exchange's order or grant or refuse. (Section 22A).

21. Approval to the following transactions under FEMA, 1999:

- (i) Foreign Exchange drawals for cultural tours require prior permission/approval of the Government of India irrespective of the amount of foreign exchange required. Therefore, in the given case X, the Film Star is required to seek permission of the Government of India.
- (ii) In this case prior permission/approval of RBI is required for purchasing trade mark from a foreign company where purchase consideration is to be paid in foreign currency. Therefore, F International Ltd. needs prior permission of RBI.
- (iii) Remittance in foreign exchange for medical treatment abroad requires prior permission/approval of RBI when the expenditure in foreign currency exceeds the estimate of hospital/doctor abroad or estimate from doctor in India in that field of treatment. Therefore, R can draw foreign exchange up to the estimate of hospital/doctor abroad or estimate from doctor in India in that field of treatment and prior permission/approval of RBI is required.
- (iv) Release of foreign exchange for education abroad is permitted up to US\$ 1,00,000 on self declaration basis. Therefore, L can draw foreign exchange on self declaration basis for pursuing a course in fashion design in Paris.

22. Cartel [Section 2(c) Competition Act, 2002]: "Cartel" includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services; The term cartel like agreement has been given an inclusive meaning. Thus an association for the welfare of the trade or formed for any other purpose not mentioned in the aforesaid definition will not be a cartel. It is only when an association, by agreement amongst themselves, limits control or attempts to control the production, distribution, sale or price of, or, trade in goods or provision of services, that it will be a cartel.

23. The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment Ordinarily a proviso is not interpreted as it stating a general rule.

It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the provision to which it has been enacted as a proviso and not to the other. (*Ram Narain Sons Ltd. Vs. Assistant Commissioner of Sales Tax*, A.I.R, 1995 Sc 765)

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An explanation is at times appended to a Section to explain the meaning of the text of the section. An explanation may be added to include something within the Section or to exclude something from it. An explanation should normally be so read as to harmonise with and clear up any ambiguity in the main section. It should not be so construed as to widen the ambit of the section.

24. (i) RBI is empowered to issue directives to a banking company to determine the policy in relation to loans and advances. Such direction may relate to:
- (a) Purpose for which loan may or may not be made
 - (b) Margin stipulation
 - (c) Maximum amount of advances to any company, firm, individual or association of persons popularly known as exposure norms which is at present 15 % for individual borrower without infrastructure project, if infrastructure project it may go by additional 10%, 40% for group borrower and for infrastructure project of group borrower it may be upto 50 % of bank's capital and reserve (presently tier-I & Tier-II capital from capital adequacy point of view)
 - (d) Maximum amount of guarantee liability on behalf of any individual/ firm/ company (above exposure norm includes non-fund facilities like bank guarantee/ letter of credit etc)
 - (e) The rate of interest and other terms and condition on which such advances are made or guarantee given

It may be noted that at present, in this deregulated interest rate regime RBI gives directives on for loans and advances with sanctioned limit upto Rs. 2.00 lakhs where rate of interest should not exceed individual bank's Benchmark Prime Lending Rate(BPLR), BPLR is fixed by Bank's Board, Rate of interest for advances with sanctioned limit above Rs. 2 lakhs is determined according to credit rating exercise done by bank,

{RBI's stipulation on this score is rate of interest should not exceed BPLR+4 RBI exercise its power through its selective credit control though under selective credit control list, at present no item except sugar for buffer stock is kept More}

[Moreover, with credit policy measures of RBI Cash Reserve Ratio, Bank Rate and Repo & Reverse Rate is announced on which Bank's BPLR is somehow depended]

Section 21A:- Rate of interest charged by banking company on the basis of loan contract between the bank and debtor is not to be subject to scrutiny by the court

- (ii) As per Section 39 of the Insurance Act, 1938, the holder of a policy of life insurance on his own life may nominate a person or persons to whom the money secured by the life insurance policy shall be paid in the event of his death. Such nomination can be made either at the time of taking the policy or at any time before the maturity of the policy. Such nomination is either incorporated in the text of the policy or is stated as an endorsement on the policy document. The nomination can be cancelled or altered by

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the policyholder at anytime before the maturity of the policy. The insurer is required to communicate to the policyholder that it has recorded the nomination, its cancellation or alteration as the case may be. In case the policyholder survives the full term of policy, the insurer shall pay the maturity amount to him only and the nomination becomes redundant. In a case where the nominee dies before the maturity of the policy and if no new nomination is made, the maturity proceeds of the policy shall be paid to the policy holder and if dies before the maturity, to the legal heirs of the policy holders.

Minor as a nominee:

A minor can be nominated as a nominee in life insurance policy by its holder. The only other requirement as per proviso to Section 39(1) of the said Act is that the policyholder is to appoint, in the prescribed manner, an adult person to receive the money secured by the policy on behalf of the minor in the event of death of the policyholder during the minority of the nominee.

25. (i) In terms of clause (rb) of section 2 of The Prevention of Money Laundering Act, 2002, "payment system" means a system that enables payment to be effected between a payer and a beneficiary, involving clearing, payment or settlement service or all of them. It includes the systems enabling credit card operations, debit card operations, smart card operations, money transfer operations or similar operations.
- (ii) Sections 43 – 47 deals with provision relating to Special Courts. Section 43 empowers the Central Government (in consultation with the Chief Justice of the High Court) for trial of offence of money laundering, to notify one or more Courts of Sessions as Special Court of Special Courts for such area or areas or for such cases as may be prescribed in the notification to this effect. Section 44 clearly provides for the offences triable by Special Courts. It overrides the provisions of the Code of Criminal Procedure, 1973 and provides that –
- (i) the schedule offence and the offence punishable under section 4 shall be triable only by the Special Court constituted for the area in which the offence has been committed;
- (ii) a Special Court may, upon a complaint made by an authority authorised in this behalf under this Act take cognizance of the offence for which the accused is committed to it for trial. The requirement of police report of the facts which constitute an offence under this Act is no more applicable.

The provisions of Section 44 shall not be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section includes also a reference to a "Special Court" designated under section 43.

Section 45 provides that the offences under the Act shall be cognizable and non-bailable. Notwithstanding anything contained in the Code of Criminal Procedure,

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1973, no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond unless-

- (i) The Public Prosecutor has been given an opportunity to oppose the application for such release and
- (ii) Where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

In case of any person who is under the age of 16 years or in case of a woman or in case of a sick or infirm person, the Special Court can direct the release of such person on bail.

The Special Court cannot take cognizance of any offence under the Act, unless a complaint in writing is made by:-

- (a) The Director or
- (b) Any officer of the Central Government or a State Government, authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.

Section 45 has been amended by the Amendment Act of 2005 and it is interesting to observe, how the law grants the right of bail to the accused but avoids the misuse of this right by providing for adequate safeguards in the Section. The suo motto authority of the police officer in investigating an offence under the Act has been done away with. An authority from the Central Government by a general or special order, and fulfillment of the prescribed conditions has been introduced by the Amendment Act in right spirit. There is always a fear of such powerful legislation being misused unless adequate safeguards are provided as in the instant case.

Section 46 provides that the provisions of the code of Criminal Procedure, 1973 (including the provisions as to bails or bonds) shall apply to the proceedings before a Special Court and the Special Court shall be deemed to be a Court of Session and the persons conducting the prosecution before the Special Court, shall be deemed to be a Public Prosecutor.

Section 47 empowers the High Court to exercise (so far as applicable) all the powers granted by Chapter XXIX or Chapter XXX of the Code of Criminal Procedure 1973 on Special Court within its jurisdiction

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Applicability of relevant Amendments/Circulars/Notifications/Regulations etc. relating to Corporate Laws for November 2010, Examination:

S.No.	Subject Matter	Applicability	Website reference for
	Companies Act, 1956		
1.	Companies Bill, 2009	Not applicable	www.mca.gov.in
2.	Company Law Settlement Scheme, 2010	Not Applicable	www.mca.gov.in
3.	Easy Exit Scheme, 2010	Not Applicable	www.mca.gov.in
4.	Provisions relating to Revival and Rehabilitation of Sick-Industrial Companies	Not applicable [Only definitions as covered under Paragraph 8.0 of chapter 8 of the study material are applicable]	
5.	Companies (Second Amendment) Act, 2002 [relating to Winding Up]	Not applicable [Only the general provisions of winding up as covered under Paragraph 9.4 of chapter 9 of the study material are applicable]	
	Section B: Allied Laws		
6.	SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 <i>For highlights on ICDR vis – a vis SEBI (DIP) Guidelines 2000 (now rescinded. See ANNEXURE-I)</i> <i>For Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2010 see ANNEXURE-II</i>	Amendments upto April 2010 are Applicable	www.sebi.gov.in [The full text of the material as amended upto 8 th January, 2010 is given in the study material]
7.	SEBI (Disclosure and Investor Protection) Guidelines, 2000 (now rescinded)	Not applicable from May 2010 examination	www.sebi.gov.in

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8.	FEMA, 1999 (Circular No. 50 of A.P. (DIR Series)/Circular No. 7 of A.P. (FL Series) relating to release of Foreign Exchange for Visits Abroad as covered under FEMA 1999- Currency Component (Increased to \$3000 from \$2000)	Not applicable	www.rbi.org.in
9.	Competition (Amendment) Act, 2009 <i>For detail see ANNEXURE-III</i>	Applicable (Since from May 2010 examination)	www.mca.gov.in
10.	Prevention of Money - Laundering (Amendment) Act, 2009 <i>For detail see ANNEXURE-IV</i>	Applicable (Since from May 2010 examination)	www.rbi.org.in

ANNEXURE I

Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 w.e.f. August 26, 2009.

SEBI has been empowered in terms of section 11A(1)(a) of the Securities and Exchange Board of India Act, 1992 to specify by regulations, for the protection of investors, the matters relating to issue of capital, the manner in which such matters shall be disclosed and other matters incidental thereto. Accordingly, in exercise of powers conferred by section 30 of the Act, the Board has framed the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as “the ICDR Regulations”), which have been notified on August 26, 2009. The ICDR Regulations have been made primarily by conversion of the SEBI (Disclosure and Investor Protection) Guidelines, 2000 (since rescinded)(hereinafter referred to as “the rescinded Guidelines”). While incorporating the provisions of the rescinded Guidelines into the ICDR Regulations, certain changes have been made by removing the redundant provisions, modifying certain provisions on account of changes necessitated due to market design and bringing more clarity to the provisions of the rescinded Guidelines.

**SIGNIFICANT CHANGES IN SEBI (ICDR) REGULATION, 2009 VIS-À-VIS
SEBI (DIP) GUIDELINES, 2000**

Sr. No.	Subject Matter	Provision under the rescinded Guidelines	Provision under the ICDR Regulations
1.	Exemption from eligibility norms formaking an IPO	Exemption available to banking company, corresponding new bank and infrastructure company.	Exemption removed. Eligibility norms made applicable uniformly to all types of issuers.
2.	Debarment	Company prohibited from making an issue of securities if it had been prohibited from accessing the capital market under any order or direction passed by the Board.	Issuer not to make public issue or rights issue of specified securities if: (a) the issuer, any of its promoters, promoter group or directors or persons in control of the issuer are debarred from accessing the capital market by the Board; (b) if any of the promoters, directors or persons in control of the issuer was or also is a promoter, director or person in control of any other company which is debarred from accessing the capital

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			market under any order or directions made by the Board.
3.	Offer for sale by listed companies	No provision.	Provided for.
4.	OTCEI Issues and E-IPO	Contained in Chapter XIV and Chapter XI A.	Omitted.
5.	Firm allotment in public issues	Permitted.	Omitted.
6.	Reservation on competitive basis in public issues	(a) For Indian and multilateral development financial institutions, Indian mutual funds, foreign institutional investors and scheduled banks. (b) For shareholders of the promoting companies in the case of anew company and shareholders of group companies in the case of an existing company.	(a) Omitted. (b) For shareholders (other than promoters) in respect of listed promoting companies, in case of a new issuer and listed group companies, in case of an existing issuer.
7.	Book building process	Book building process through 75% or 100% of issue size.	75% book building route omitted.
8.	Allotment/ refund period in public issues	30 days for fixed price issues and 15 days for book built issues.	15 days for both fixed price and book built issues.
9.	Disclosure of price or price band	Required in draft prospectus in case of fixed price public issues.	Not required to be disclosed in draft prospectus.
10.	Transfer of surplus money in Green Shoe Option (GSO) Bank Account	Surplus money to be transferred to Investor Protection Fund of Stock Exchanges.	Surplus money to be transferred to Investor Protection and Education Fund (IPEF) established by the Board.
11.	Issue period for	21 days, as against 10 days	Uniform period of 10 days for

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	Infrastructure companies in public issues	for other issues.	all types of issuers.
12.	Currency of financial statements disclosed in the offer document	Particulars as per audited financial statements not to be more than 6 months old from the issue opening date for all issuers, except Government companies.	Government and non-government issuers treated at par.
13.	Definition of “Key Management Personnel”	Not defined.	Defined.
14.	Disclosure on pledge of shares by promoters	Not provided.	Provided for.
15.	Extent of underwriting obligation	Not explicit.	Where 100% of the offer through offer document is underwritten, underwriting obligations shall be for the entire amount underwritten.
16.	Financial institution as a monitoring agency	The term “Financial Institution” open to interpretation.	The term “financial Institution” replaced by “public financial institution or a scheduled commercial bank”.
17.	Definition of “employee”	Includes permanent employee/director of subsidiary or holding company of the issuer.	Excludes permanent employee/ director of subsidiary or holding company of the issuer and promoters and immediate relatives of promoters.
18.	Restrictions on advertisements	If issue opening and closing advertisement contained highlights, then the advertisement required to contain risk factors.	If advertisement contains information other than the details specified in the format for issue advertisement, the advertisement shall contain risk factors.
19.	Forfeiture of money on un-exercised warrants in preferential issues	Open to interpretation.	Where the warrant holder exercises his option to convert only some of the warrants held by him, upfront

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			payment made against only such warrants can be adjusted. The balance upfront payment made against the remaining unexercised warrants shall be forfeited.
20.	Outstanding convertible instruments in case of initial public offer (IPO)	Compulsory conversion of outstanding convertible instruments and other rights held by promoters or shareholders.	Compulsory conversion of all outstanding convertible instruments held by any person.
21.	Minimum promoters' contribution	Could be brought in by promoters/ persons belonging to promoter group/friends, relatives and associates of promoters.	Shall be brought in only by promoters whose identity, photograph, etc are disclosed in the offer document.
22.	Issue period in case of public issues	Issue period not clear in case of revision in price band in book built public issues.	Total issue period not to exceed 10 days, including any revision in price band.
23.	Timing of pre- issue advertisement for public issues	Pre-issue advertisement to be made immediately after receipt of observations from the Board.	Pre-issue advertisement to be made after registering of prospectus/ red herring prospectus with Registrar of Companies before opening of the issue.
24.	Documents to be attached with due diligence certificate	Documents such as memorandum of association and articles of association of the company, audited balance sheet, checklist for compliance with the rescinded Guidelines etc.	Only checklist to be attached.
25.	Group companies	The term "group companies" not explained.	The term "group companies" explained.

Highlights

1. Definition of employee (Regulation 2(m))

‘(m) “employee” means a permanent and full-time employee, working in India or abroad, of the issuer or of the holding company or subsidiary company or of that material associate(s) of the issuer whose financial statements are consolidated with the issuer’s financial statements as per Accounting Standard 21, or a director of the issuer, whether whole time or part time and does not include promoters and an immediate relative of the promoter (i.e., any spouse of that person, or any parent, brother, sister or child of that person or of the spouse);’

2. New Chapter

“CHAPTER XA

ISSUE OF SPECIFIED SECURITIES BY SMALL AND MEDIUM ENTERPRISES

Applicability.

- 106A. (1) An issuer whose post-issue face value capital does not exceed ten crore rupees shall issue its specified securities in accordance with provisions of this Chapter.
- (2) An issuer, whose post issue face value capital is more than ten crore rupees and upto twenty five crore rupees, may also issue specified securities in accordance with provisions of this Chapter.
- (3) The provisions of these regulations, in respect of the matters not specifically dealt or excluded under this Chapter, shall *mutatis mutandis* apply to any issue of specified securities under this Chapter:

Provided that provisions of sub-regulations (1), (2) and (3) of regulation 6, regulation 7, regulation 8, regulation 9, regulation 10, regulation 25, regulation 26, regulation 27 and sub-regulation (1) of regulation 49 of these regulations shall not apply to an issue of specified securities made under this Chapter.

Definitions.

- 106B. (1) In this Chapter, unless the context otherwise requires, -
- (a) “Main Board” means a recognized stock exchange having nationwide trading terminals, other than SME exchange;
- (b) “nominated investor” means a qualified institutional buyer or private equity fund, who enters into an agreement with the merchant banker to subscribe to the issue in case of under-subscription or to receive or deliver the specified securities in the market-making process;

Explanation: “private equity fund” means a fund registered with any regulatory authority or a fund established by any person registered with any regulatory authority;

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- (c) "SME exchange" means a trading platform of a recognised stock exchange having nationwide trading terminals permitted by the Board to list the specified securities issued in accordance with this Chapter and includes a stock exchange granted recognition for this purpose but does not include the Main Board;
- (2) All other words and expression used in this Chapter but not defined under sub-regulation (1) shall derive their meaning from regulation 2 of these regulations.

Filing of offer document and due diligence certificate.

- 106C.** (1) The issuer making a public issue or rights issue of specified securities under this Chapter shall not file the draft offer document with the Board:

Provided that the issuer shall file a copy of the offer document with the Board through a merchant banker, simultaneously with the filing of the prospectus with the SME exchange and the Registrar of Companies or letter of offer with the SME Exchange:

Provided further that the Board shall not issue any observation on the offer document.

- (2) The merchant banker shall submit a due-diligence certificate as per Form A of Schedule VI including additional confirmations as provided in Form H of Schedule VI alongwith the offer document to the Board.
- (3) The offer document shall be displayed from the date of filing in terms of sub-regulation (1) on the websites of the Board, the issuer, the merchant banker and the SME exchange where the specified securities offered through the offer document are proposed to be listed.

Underwriting by merchant bankers and underwriters.

- 106D.** (1) The issue made under this Chapter shall be hundred per cent. underwritten.

Explanation: The underwriting under this regulation shall be for the entire hundred percent of the offer through offer document and shall not be restricted upto the minimum subscription level.

- (2) The merchant banker/s shall underwrite at least fifteen per cent of the issue size on his/ their own account/s.
- (3) The issuer in consultation with merchant banker may appoint underwriters in accordance with Securities and Exchange Board of India (Underwriters) Regulations, 1993 and the merchant banker may enter into an agreement with nominated investor indicating therein the number of specified securities which they agree to subscribe at issue price in case of under-subscription.

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- (4) If other underwriters fail to fulfill their underwriting obligations or other nominated investors fail to subscribe to unsubscribed portion, the merchant banker shall fulfill the underwriting obligations.
- (5) The underwriters other than the merchant banker and the nominated investors, who have entered into an agreement for subscribing to the issue in case of under-subscription, shall not subscribe to the issue made under this Chapter in any manner except for fulfilling their obligations under their respective agreements with the merchant banker in this regard.
- (6) All the underwriting and subscription arrangements made by the merchant banker shall be disclosed in the offer document.
- (7) The merchant banker shall file an undertaking to the Board that the issue has been hundred per cent. underwritten along with the list of underwriters and nominated investors indicating the extent of underwriting or subscription commitment made by them, one day before the opening of issue.

Minimum Application Value.

106E. The issuer shall stipulate in the offer document, the minimum application size in terms of number of specified securities which shall not be less than one lakh rupees per application.

Minimum Number of Allottees.

106F. No allotment shall be made pursuant to any initial public offer made under this Chapter, if the number of prospective allottees is less than fifty.

Listing of specified securities.

- 106G.** (1) Specified securities issued in accordance with this Chapter shall be listed on SME exchange.
- (2) Where any listed issuer issues specified securities in accordance with provisions of this Chapter it shall migrate the specified securities already listed on any recognized stock exchange/s to the SME exchange.

Migration to SME exchange.

106H. A listed issuer whose post-issue face value capital is less than twenty five crore rupees may migrate its specified securities to SME exchange if its shareholders approve such migration by passing a special resolution through postal ballot to this effect and if such issuer fulfils the eligibility criteria for listing laid down by the SME exchange:

Provided that the special resolution shall be acted upon if and only if the votes cast by shareholders other than promoters in favour of the proposal amount to at least two times the number of votes cast by shareholders other than promoter shareholders against the proposal.

Migration to Main Board.

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- 106I.** (1) An issuer, whose specified securities are listed on a SME Exchange and whose post issue face value capital is more than ten crore rupees and upto twenty five crore rupees, may migrate its specified securities to Main Board if its shareholders approve such migration by passing a special resolution through postal ballot to this effect and if such issuer fulfils the eligibility criteria for listing laid down by the Main Board:

Provided that the special resolution shall be acted upon if and only if the votes cast by shareholders other than promoters in favour of the proposal amount to at least two times the number of votes cast by shareholders other than promoter shareholders against the proposal.

- (2) Where the post issue face value capital of an issuer listed on SME exchange is likely to increase beyond twenty five crore rupees by virtue of any further issue of capital by the issuer by way of rights issue, preferential issue, bonus issue, etc. the issuer shall migrate its specified securities listed on SME exchange to Main Board and seek listing of specified securities proposed to be issued on the Main Board subject to the fulfilment of the eligibility criteria for listing of specified securities laid down by the Main Board:

Provided that no further issue of capital by the issuer shall be made unless –

- (a) the shareholders of the issuer have approved the migration by passing a special resolution through postal ballot wherein the votes cast by shareholders other than promoters in favour of the proposal amount to at least two times the number of votes cast by shareholders other than promoter shareholders against the proposal;
- (b) the issuer has obtained in- principle approval from the Main Board for listing of its entire specified securities on it.

Market Making.

- 106J.** (1) The merchant banker shall ensure compulsory market making through the stock brokers of SME exchange in the manner specified by the Board for a minimum period of three years from the date of listing of specified securities issued under this Chapter on SME exchange or from the date of migration from Main Board in terms of regulation 106H, as the case may be.
- (2) The merchant banker may enter into agreement with nominated investors for receiving or delivering the specified securities in the market making subject to the prior approval by the SME exchange where the specified securities are proposed to be listed.
- (3) The issuer shall disclose the details of arrangement of market making in the offer document.

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- (4) The specified securities being bought or sold in the process of market making may be transferred to or from the nominated investor with whom the merchant banker has entered into an agreement for the market making:

Provided that the inventory of the market maker, as on the date of allotment of the specified securities, shall be at least five per cent. of the specified securities proposed to be listed on SME exchange.

- (5) The market maker shall buy the entire shareholding of a shareholder of the issuer in one lot, where value of such shareholding is less than the minimum contract size allowed for trading on the SME exchange:

Provided that market maker shall not sell in lots less than the minimum contract size allowed for trading on the SME exchange.

- (6) Market maker shall not buy the shares from the promoters or persons belonging to promoter group of the issuer or any person who has acquired shares from such promoter or person belonging to promoter group, during the compulsory market making period laid down under sub-regulation (1).

- (7) The promoters' holding shall not be eligible for offering to the market maker under this Chapter during the period specified in sub-regulation (1):

Provided that the promoters' holding which is not locked-in as per these regulations can be traded with prior permission of the SME exchange, in the manner specified by the Board.

- (8) Subject to the agreement between the issuer and the merchant banker/s, the merchant banker/s who have the responsibility of market making may be represented on the board of the issuer."

[Applicable for November 2010 Examination]

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 14th October, 2009/Asvina 22, 1931 (Saka)

THE COMPETITION (AMENDMENT) ORDINANCE, 2009

No. 6 OF 2009

Promulgated by the President in the Sixtieth Year of the Republic of India. A Ordinance further to amend the Competition Act, 2002.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for her to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

Short title and Commencement

1. (1) This Ordinance maybe called the Competition (Amendment) Ordinance, 2009.
- (2) It shall come into force at once.

Amendment of section 66 of Act 12 of 2003

2. In section 66 of the Competition Act, 2002,—
 - (a) in sub-section (1), the proviso and the Explanation thereto shall be omitted;
 - (b) in sub-section (3), for the words, brackets and figure "after the expiry of two years referred to in the proviso to sub-section (1)", the words, brackets and figures "on the commencement of the Competition (Amendment) Ordinance, 2009" shall be substituted;
 - (c) in sub-section (4), for the words, brackets and figure "on or before the expiry of two years referred to in the proviso to sub-section (1)", the words, brackets and figures "immediately-before the commencement of the Competition (Amendment) Ordinance, 2009, shall, on such commencement" shall be substituted;
 - (d) in sub-section (5), for the words, brackets and figure "after the expiry of two years referred to in the proviso to sub-section (1)", the words brackets and figures "on the commencement of the Compaction (Amendment) Ordinance, 2009" shall be substituted.

[Applicable for November 2010 Examination]

THE PREVENTION OF MONEY-LAUNDERING (AMENDMENT) ACT, 2009

NO. 21 OF 2009

[6th March, 2009.]

1. Short title and commencement.

- (1) This Act may be called the Prevention of Money-laundering (Amendment) Act, 2009.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. **The Prevention of Money Laundering (Amendment) Act, 2009 (No. 21 of 2009) has come into force with effect from June 01, 2009 as notified by the Government.**

2. Amendment of section 2.

In section 2 of the Prevention of Money-laundering Act, 2002 (hereinafter referred to as the principal Act), in sub-section (1),-

- (i) after clause (d), the following clause shall be inserted, namely:- '(da) "authorised person" means an authorised person as defined in clause (c) of section 2 of the Foreign Exchange Management Act, 1999;';
- (ii) after clause (j), the following clause shall be inserted, namely:- '(ja) "designated business or profession" means carrying on activities for playing games of chance for cash or kind, and includes such activities associated with casino or such other activities as the Central Government may, by notification, so designate, from time to time;';
- (iii) in clause (l), for the words "a non-banking financial company", the words "an authorised person, a payment system operator and a non-banking financial company" shall be substituted;
- (iv) in clause (q), after the words and figures "Reserve Bank of India Act, 1934", the words "and includes a person carrying on designated business or profession" shall be inserted;
- (v) after clause (r), the following clauses shall be inserted, namely:- '(ra) "offence of cross border implications", means- (i) any conduct by a person at a place outside India which constitutes an offence at that place and which would have constituted an offence specified in Part A, Part B or Part C of the Schedule, had it been committed in India and if such person remits the proceeds of such conduct or part thereof to India; or (ii) any offence specified in Part A, Part B or Part C of the Schedule which has been committed in India and the proceeds of crime, or part thereof have been transferred to a place outside India or any attempt has been made to transfer the proceeds of crime, or part thereof from India to a place outside India. Explanation.-Nothing contained in this clause shall adversely affect any

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investigation, enquiry, trial or proceeding before any authority in respect of the offences specified in Part A or Part B of the Schedule to the Act before the commencement of the Prevention of Money-laundering (Amendment) Act, 2009;

(rb) "payment system" means a system that enables payment to be effected between a payer and a beneficiary, involving clearing, payment or settlement service or all of them. Explanation.-For the purposes of this clause, "payment system" includes the systems enabling credit card operations, debit card operations, smart card operations, money transfer operations or similar operations; (rc) "payment system operator" means a person who operates a payment system and such person includes his overseas principal. Explanation.-For the purposes of this clause, "overseas principal" means,- (A) in the case of a person, being an individual, such individual residing outside India, who owns or controls or manages, directly or indirectly, the activities or functions of payment system in India; (B) in the case of a Hindu undivided family, Karta of such Hindu undivided family residing outside India who owns or controls or manages, directly or indirectly, the activities or functions of payment system in India; (C) in the case of a company, a firm, an association of persons, a body of individuals, an artificial juridical person, whether incorporated or not, such company, firm, association of persons, body of individuals, artificial juridical person incorporated or registered outside India or existing as such and which owns or controls or manages, directly or indirectly, the activities or functions of payment system in India;

- (vi) in clause (y), for sub-clause (ii), the following sub-clauses shall be substituted, namely:- "(ii) the offences specified under Part B of the Schedule if the total value involved in such offences is thirty lakh rupees or more; or (iii) the offences specified under Part C of the Schedule."

3. Amendment of section 5.

In section 5 of the principal Act, in sub-section (1),-

- (a) for the words "ninety days", the words "one hundred and fifty days" shall be substituted;
- (b) for the proviso, the following provisos shall be substituted, namely:-

"Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person, authorised to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be: Provided further that, notwithstanding anything contained in clause (b), any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property

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involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act."

4. Amendment of section 6.

In section 6 of the principal Act,- (i) in sub-section (1), for the words "one or more Adjudicating Authorities", the words "an Adjudicating Authority" shall be substituted; (ii) in the proviso to sub-section (8), for the word "sixty-two", the word "sixty-five" shall be substituted.

5. Amendment of section 8.

In section 8 of the principal Act, in sub-section (1), for the words and figure "offence under section 3", the words and figure "offence under section 3 or is in possession of proceeds of crime" shall be substituted.

6. Amendment of section 12.

In section 12 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:-

"(2)(a) The records referred to in clause (a) of sub-section (1) shall be maintained for a period of ten years from the date of transactions between the clients and the banking company or financial institution or intermediary, as the case may be. (b) The records referred to in clause (c) of sub-section (1) shall be maintained for a period of ten years from the date of cessation of transactions between the clients and the banking company or financial institution or intermediary, as the case may be."

7. Amendment of section 17.

In section 17 of the principal Act, in sub-section (1),-

- (i) in the opening portion, for the words "the Director", the words "the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section," shall be substituted;
- (ii) for the proviso, the following proviso shall be substituted, namely:- "Provided that no search shall be conducted unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 157 of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person, authorised to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be."

8. Amendment of section 18.

In section 18 of the principal Act,-

- (i) in sub-section (1), the following proviso shall be inserted, namely:- "Provided that no search of any person shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person authorised to

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investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be.";

(ii) in sub-section (9), the proviso shall be omitted.

9. Amendment of section 28.

In section 28 of the principal Act, in sub-section (2), clause (a) shall be omitted.

10. Amendment of section 32.

In section 32 of the principal Act, in sub-section (2), the following proviso shall be inserted, namely:-

"Provided that the Chief Justice of India shall be consulted before removal of the Chairperson or a Member who was appointed on the recommendation of the Chief Justice of India."

11. Amendment of section 38.

In section 38 of the principal Act, for the words "one or more of the other Members", the words "third Member" shall be substituted.

12. Amendment of section 60.

In section 60 of the principal Act, after sub-section (6), the following sub-section shall be inserted, namely:-

"(7) When any property in India is confiscated as a result of execution of a request from a contracting State in accordance with the provisions of this Act, the Central Government may either return such property to the requesting State or compensate that State by disposal of such property on mutually agreed terms that would take into account deduction for reasonable expenses incurred in investigation, prosecution or judicial proceedings leading to the return or disposal of confiscated property."

13. Amendment of Schedule (See www.fiuindia.gov.in)