

**PAPER – 4 : CORPORATE LAWS AND SECRETARIAL PRACTICE  
UPDATES**

SL.No.	Name of the Act	Gist of the Updates	Reference to the Updates	Applicability for the May 2010 Exam
1.	<b>The Companies Act, 1956</b>  <b>Companies Bill, 2009</b>	The Companies Bill, 2009 which was introduced in the Lok Sabha has made extensive changes in the existing Companies Act, 1956. At present, it is in the form of a Bill only and pending before parliamentary Standing Committee on Finance.	www.mca.gov.in	Not Applicable
2.  (I)	<b>Securities and Exchange Board of India</b>  Notification of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009	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have been made primarily by conversion of the SEBI (Disclosure and Investor Protection) Guidelines, 2000 (since rescinded) (hereinafter referred to as “the rescinded Guidelines”). While incorporating the provisions of the rescinded Guidelines into the ICDR Regulations, certain changes have been made by removing the redundant	Circular No. CFD/DIL/ICDRR/1/2009/03/09 dated 03.09.2009  www.sebi.gov.in under the Categories “Legal Framework” and “Issues and Listing”.	Not applicable

		<p>provisions, modifying certain provisions on account of changes necessitated.</p> <p><b>For highlights on ICDR vis – a vis SEBI (DIP) Guidelines 2000 (now rescinded. See ANNEXURE-I)</b></p>		
(II)	<p>Amendments to SEBI (Employee Stock Option Purchase Scheme) Guidelines, 1999</p>	<p>There are certain provisions in the SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999 (hereinafter referred to as “the Guidelines”) which are required to be complied with by an unlisted issuer at the time of making an initial public offer. Since these provisions pertain to matters relating to issue of capital, the same have now been incorporated in the ICDR Regulations and consequently, it has been decided to amend the Guidelines to remove these provisions as well as the redundant provisions pertaining to application to Central Listing Authority.</p>	<p>Circular No. CFD/DIL/ESOP/5/2009/03/09 dated 03.09.2009 on <a href="http://www.sebi.gov.in">www.sebi.gov.in</a></p>	<p>Students may study from their knowledge point of view.</p>
3.	<p><b>The Competition Act,2002</b> The Competition. (Amendment) Act, 2009</p>	<p>The Ministry of Commerce and Affairs promulgated the Competition (Amendment) Ordinance, 2009 to further amend the Competition Act, 2002 on October 14, 2009. The Ordinance amended section 66(1), (3), (4), (5),&amp;(7) of the Competition Act, 2002.</p> <p><b>For text of amendments see ANNEXURE - II</b></p>	<p><a href="http://www.mca.gov.in">www.mca.gov.in</a></p>	<p>In view of the new amendment, full Act, 2002 will be applicable.</p>

4.  (I)	<b>Foreign Exchange Management Act,1999</b> Foreign Exchange Management (Transfer or Issue of Any Foreign Security) (Fourth Amendment) Regulations, 2009	In exercise of the powers conferred by clause (a) of sub-section (3) of Section 6 and Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank of India made the amendments in the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004. Amendment made in regulation 7 which says that an Indian Party engaged in financial services sector in India may make investment in an entity outside India but subject to certain limitations.	Notification No. FEMA 196 / 2009-RB, dated July 28,2009  www.rbi.gov.in	Students may study from their knowledge point of view.
(II)	Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) (Second Amendment) Regulations, 2009	The Reserve Bank of India made the amendments in the Schedule I and Schedule II of the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 relating to "Borrowings in foreign exchange per borrower company per financial year up to such amounts not exceeding US Dollars 500 million or its equivalent as directed by the Reserve Bank from time to time shall be permitted for such permissible end-uses as indicated by Reserve Bank from time to time"(Schedule I) and Borrowings in foreign exchange per borrower company per financial year up to such amounts as	Notification No. FEMA 194 / 2009-RB. Dated June 17, 2009  www.rbi.gov.in	Students may study from their knowledge point of view.

		directed by the Reserve Bank from time to time shall be permitted for such permissible end-uses as indicated by Reserve Bank from time to time"(Schedule II).		
(III).	Foreign Exchange Management (Deposit) (Amendment) Regulations, 2009	The Reserve Bank of India makes the following amendments in the Foreign Exchange Management (Deposit) Regulations, 2000 in Regulation 4, in sub-regulation (3), for clause (a), that " credits to the account shall be only by way of -(i) proceeds of inward remittances received from outside India through normal banking channels; and(ii) transfer of funds, from the rupee account of the diplomatic mission in India, which are collected in India as visa fees and credited to such account."	Notification No. FEMA 191/RB-2009 Dated May 20, 2009  www.rbi.gov.in	Students may study from their knowledge point of view.
(iv)	Foreign Exchange Management (Foreign Exchange Derivative Contracts) (Amendment) Regulations, 2009	The Reserve Bank made the amendments in the Foreign Exchange Management (Foreign Exchange Derivative Contracts) Regulations, 2000. The new regulation relating to " Freight" hedge is inserted as regulation 6A which says that Reserve Bank may, on an application permit a person resident in India to enter in to a freight derivative contract in an exchange or a market outside India to hedge the freight risk such person is exposed to.	Notification No. FEMA 191/RB-2009 Dated May 20, 2009  www.rbi.gov.in	Students may study from their knowledge point of view.

**ANNEXURE I**

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

**[Students may read from the knowledge point of view but this regulations are not applicable for May 2010 Examination]**

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.**

<b>Sr. No.</b>	<b>Subject Matter</b>	<b>Provision under the rescindedGuidelines</b>	<b>Provision under the ICDR Regulations</b>
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 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 a new 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 Infrastructure companies in public issues	21 days, as against 10 days for other issues.	Uniform period of 10 days for 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 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 share-holders.	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.



**ANNEXURE II**

**[Applicable for May 2010 Examination]**

**EXTRAORDINARY**

PART II — Section 1

PUBLISHED BY AUTHORITY

**No. 40 NEW DELHI, WEDNESDAY, OCTOBER 14, 2009/ASVINA 22, 1931**

Separate paging is given to this Part in order that it may be filed as a separate compilation.

**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.

## QUESTIONS

### THE COMPANIES ACT, 1956

#### Board of Meetings and Proceeding

1. State whether the acts done by the Board Meeting be invalid if it was found afterwards that there was some defect in the appointment of Directors or any person acting as a Director?
2. Can a Director assign his office by way of will to his son? Would it make any difference in case he assigns by will to someone else other than his son or relatives?
3. A Limited had four Directors. At one of its convened Board Meeting only two of them attended and they appointed two additional Directors who were their relatives. Is the appointment of those additional Directors valid?
4. In a public company the total number of Directors are 9 and 2 office of the Directors have fallen vacant. Referring to the relevant provisions of the Companies Act, 1956.
  - (a) What would be the quorum for the Board Meeting?
  - (b) Can the articles of a company fix the quorum (higher or lower) for the Board Meeting?
  - (c) Assuming if there are 15 Directors in the company and of which 13 happen to be interested Directors, what would be the quorum?
  - (d) How do you resolve the situation if all the Directors are interested in a particular transaction?

#### Directors

5. The Directors of X & Co. desire to authorise the MD to enter into the following transactions namely- (a) invest from time to time surplus funds in the purchase of shares of other companies; (b) borrow from banks money required for the purpose; (c) give loans to person, including firms in which Directors or their relatives are partners; (d) give donations to charitable trusts in which any of the Directors may be interested as trustees. Discuss.
6. A company is offering one of its flats on sale to one of its Directors on the condition that 50% of the price to be paid in cash and the rest in equated instalments. Comment on the situation, whether this could be treated as a loan under Section 295 of the Companies Act, 1956.
7. Mr. X is serving in a company in the dual capacity of a Director and an Employee? Referring to the provisions of the Companies Act, 1956. State:
  - (a) Whether there is any prohibition/restriction serving in the dual capacity?

- (b) If so whether a Director serving as an employee would amount to holding an office or place of profit?
  - (c) Whether the remuneration drawn by the Director as an employee of the company would be governed by the provisions relating to managerial remuneration?
  - (d) What would be your answer if the said Director is rendering services of a professional nature?
8. M/s ABC Ltd. was incorporated on 1st January 2007. On 1st November 2009 a political party approaches the company for a contribution of Rs. Ten lakhs for political purpose. Advise in respect of the following:
- (i) Is the company legally authorised to give this political contribution?
  - (ii) Will it make any difference, if the company was in existence on 1st October 2006?
  - (iii) Can the company be penalised for defiance of Rules of this regard?

#### **Inter Corporate Loans and Investments**

9. What is meant by oppression? State whether the aggrieved party would succeed in obtaining relief from Company Law Board on the ground of oppression in the following cases:
- (i) The majority of the Board of Directors override the minority Directors and the minority Directors apply to Company Law Board complaining oppression by majority Directors.
  - (ii) A petition by majority shareholders complaining oppression by minority shareholders
10. Discuss the process of providing loans, investments and guarantees to any body corporate in excess of prescribed limits.

#### **Winding-up of Companies**

11. M/s Info-line overtrading Ltd. was ordered to be wound up compulsorily by an order dated 15<sup>th</sup> Oct 2009 by the court. The official liquidator who has taken control of the assets and the other records of the company found that the Company had created a floating charge on 1<sup>st</sup> January, 2009 in favour of a private bank for the overdraft facility to the extent of Rs. 5 crores, by hypothecating the current assets .
- Examine what action can be taken by the official liquidator according to the provision of the Companies Act, 1956.
12. M/s PQR Ltd. has been running into losses and as such company mortgaged its machinery to one of its creditor on 1<sup>st</sup> August 2008 against payment of his dues of Rs. 5 lakhs. The other creditor filed a petition for winding up the company on 31<sup>st</sup> Dec 2008. The company was ordered to be wound up on 30<sup>th</sup> April 2009. State whether the official liquidator can declare the transaction of mortgage with the creditor as invalid.

### **Some Relevant Miscellaneous Provisions of the Companies Act,1956**

13. The paid up share capital of XYZ Ltd. is Rs. 10 crores consisting of 60 lakhs equity shares of Rs. 10 each fully paid up and 40 lakhs preference shares of Rs. 10 each, fully paid up. UTI and IDBI hold among themselves 40 lakhs equity shares and 15 lakhs preference shares. With reference to the provisions of the Companies Act,1956, examine whether XYZ Ltd is a Government company. Explain the manner of proceed in the matter of appointment of the auditors for the said company.
14. Examine with reference to the provisions of the Companies Act,1956 the company incorporated in Brazil having a Share registration office at Hyderabad is a foreign company?
15. Can a company utilize the moneys or securities received from its employees for the purpose of business?
16. Mr. Kumar having 'substantial interest' in ABC Ltd is appointed as a Sole selling agent by the Board of Directors for a period of 5 years. The company's paid-up share capital is Rs.49 crores. The Board did not place the matter in the AGM and communicated to Mr. Kumar about his appointment, who in turn accepted the offer.

Examining the provisions of the Companies Act, 1956,

- (a) Whether the appointment is in order?
- (b) What course of action you would take as the Secretary of the company, in case Mr. Kumar does not have substantial interest.

### **Law relating to Producer Companies**

17. Explain the circumstances in which the registration of a Producer Company may be cancelled by the registrar?

### **Foreign Exchange Management Act,1999**

18. Mr. Z resided in India during the financial year 2007-2008. He left India on 1st August, 2008 for UAE for the treatment of his father for 3 years. What would be his residential status during financial year 2008-2009 and during 2009-2010?
19. What are the provisions for the regulations and management by the Reserve Bank of India in respect of possession of foreign exchange?

### **The Securities and Exchange Board of India (SEBI) Act,1992**

20. State the circumstances under which Securities and Exchange Board of India may pass cease and desist order in respect of any listed company.

21. Explain the following terminologies in reference to SEBI Act, 1992.
- (a) Green Shoe Option
  - (b) Designated Stock Exchange
  - (c) Book Building
  - (d) Composite Issues

**The Competition Act,2002**

22. (i) Define the following terms:
- (a) Cartel
  - (b) Relevant Product Market
  - (c) Service
  - (d) Price
- (ii) Om Ltd. made an initial public offer of certain number of Equity shares. Examine whether these shares can be considered as 'Goods' under the Competition Act,2002 before allotment.
23. Write short notes on-
- (a) Competition Fund
  - (b) Accounts and Audit of the Competition Commission.

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

23. Working of the Delhi Stock Exchange Association Ltd. is not carried on by his governing Board in the public welfare. On receipt of representations from various investors and Investors' Association, the Central Government is thinking to withdraw the recognition granted to the said Stock Exchange. What are the circumstances for withdrawal of such recognition as per the provisions of Securities Contracts (Regulation) Act,1956 in this regard. Also state the effect of such withdrawal on the contracts outstanding on the date of withdrawal.

**Interpretation of Statutes and Corporate Secretarial Practice**

25. (a) State the rules of Interpretation/Construction of deeds and documents.
- (b) What do you understand by resolution? Draft an ordinary resolution on winding up of the company by court.

## SUGGESTED ANSWERS/HINTS

1. All Acts done by the Board Meeting by its committee Meeting or by any person acting as a Director shall be as valid as if every such Director or such person had been duly appointed and was qualified to be a Director. The validity of all such acts done is not affected even if it discovered later on that there was some defect in the appointment of any one or more of such Directors or of any person acting as a Director. The said acts will also remain unaffected even the Directors are later on discovered to be disqualified (Article 80). This provision has been intended to prevent the validity of transactions from being questioned where there has been a slip in the appointment of a Director. But the provision cannot be utilized to ignore or override the substantive provisions pertaining to such appointment. It is applicable only to acts of Directors whose appointment or qualification is later on discovered to be faulty. Where, however, their appointments have not taken place at all but they merely choose to act on the company's behalf, the protection prescribed by either Article 80 or Section 290 cannot be invoked [*Morris vs. Danssen (1964) 1, A.I.R. 586 (H, L.)*] This is because the said subsequent discovery must be a discovery of the defect; it must not be discovery of facts which go to constitute the defect [*British Asbestos Co. vs. Body (1903) 2 Ch. 439*].

Suppose a regulation like Articles 80 is included in the Article of Association of a company. What would be the possible impact of this? The impact has been summed up in Halsbury's Laws of England (*vide p. 277, 3<sup>rd</sup> Edition, Vol. VI*) thus: "An Article validating the acts of persons acting as Directors, though it is afterwards discovered that there was a defect in their appointment or qualification, operates not only between the company and outsiders but also as between the company and its members; as where *defecto* Directors make a call, summon meetings of the company, elect other Directors or allot shares, A *defecto* Director may be ordered to furnish a statement of affairs in winding up. Directors can not take advantage of any infirmity in their proceedings in which they have themselves participated; they are stopped as between themselves and the company; they are also stopped from saying they have been improperly appointed if, they have acted after appointment, persons dealing with them who know of the invalidity are likewise stopped."

It should also be noted that Section 290 applies to act of an individual Director, whereas Article 80 covers Act of the Board and of its committee.

2. Any assignment of office made after the commencement of the Act by any Director is void [Section 312]. It was held in *Oriental Metal Pressing Works Private Ltd. vs. B.K. Thakoor (A.I.R.) 1960 Bom. 167* that the appointment of one as Managing Director by the will of one Director was void in view of the provisions contained in Section 312, since, according to the High Court, the words 'any assignment' were comprehensive enough to include every assignment to transfer of a Director or of the appointment by a Director of a

person to the office of a Director in his place, whether by a deed inter vivos or by will. But this ruling has been reversed by the Supreme Court (vide A.I.R. 1961 S.C. 573). The Court considers that the word 'assignment' in Section 312 does not mean or include appointment. From its every nature transfer inevitably imports the passing of a thing from one person to another. A transfer without the passage of the thing, even when that is an office is inconceivable. On the other hand, an 'appointment' has nothing to do with passing from one person to another; it connotes the putting in of someone in a vacancy. So transfer and appointment are dissimilar. It would be an unusual statute, which by using a single word intended to prohibit at the same time, two wholly different acts. A construction leading to such a result cannot be permitted.

3. Section 300 provides that a Director shall not take part in the discussion of or vote on any contract or arrangement entered into or to be entered into by or on behalf of the company if he is in anyway whether directly or in directly concerned or interested in the contract or arrangement. The Department of Company Affairs has clarified that the word interested as used in the section should be given a restrictive interpretation and thus excludes a Director who has no pecuniary interest. Accordingly, the relationship of the Director with the contracting party will not per se make the Director concerned or interested in the contract or arrangement.

The scope of the expression 'contract' or 'arrangement' was examined by the Madras High Court in *Madras Tube Co. Ltd. vs. Hari Krishan Somani, (1985) 1 Comp LJ 195 (Mad)*. The question before the court was whether the appointment of an Additional Director would come within the scope of the word 'contract' or 'arrangement'. The company had four Directors. Only two of them attended the meeting. They appointed two Additional Directors who were related to them as brother and wife, respectively. The court came to the conclusion that although appointment as Director does not come within the scope of the expression 'contract' because the position of a Director may be conferred on a person by any method other than contract, became interested Directors. Without them there was no independent quorum. Consequently the appointments were a nullity.

The Bombay High Court re-examined the matter in *Shailesh Harilal Shah vs. Matushree Textiles Ltd., (1994)* and after giving due consideration to the authorities which influenced the Madras decision nevertheless came to the conclusion that the appointment as an additional Director of a person who is related to a Director does not violate the requirement of Section 300(1) because the position of a Director may be conferred on a person by any method other than contract but that it would amount to an arrangement. The attending Directors, therefore, became interested Directors. Without them there was no independent quorum. Consequently the appointments were nullity.

4. Where total number of Directors are 9 and 2 offices of the Directors have fallen vacant, we find:  $\frac{1}{3}$  of  $(9-2) = \frac{1}{3}$  of  $7 = \frac{7}{3}$  Directors. If the fraction of  $\frac{7}{3}$  were to be rounded off as one then 3, i.e. 2+1 Directors would constitute the quorum for the Board meetings. If at any time the number of the remaining Directors exceeds or is equal to two thirds of the total strength, the number of the remaining Directors who are non-interested but present at the meeting, not being less than two shall constitute the quorum. For example, there are in all 15 Directors and the Board Meeting commences with all the 15 Directors. During the commencing of the meeting, an item comes up for discussion in respect of which 13 happen to be "interested" Directors. In this case, in spite of the excess of the interested Directors being more than two-thirds, the prescribed minimum number of non-interested Directors constituting the quorum, namely, 2 present at the meeting are to transact the particular item of business.
5. (a) Although Section 292 empowers the Board of Directors of a company to delegate to the Managing Directors the power to invest, in general terms, the funds of the company, nevertheless because of the overriding provisions of Section 372(5) (which Section we shall discuss in detail in Study Paper 3), the transaction in the instant case would be invalid. Section 372(5) provides that no investment in shares of a company can be made by the Board of Directors of an investing company in pursuance of sub-section (2), unless it is sanctioned by a resolution passed at a meeting of the Board with the consent of all the Directors present at the meeting except those not entitled to vote thereat, and unless further notice of the resolution to be moved at the meeting has been given to every Director in the manner specified in Section 286. Since Section 372 does not provide for delegation of the power, the proposed delegation to be Managing Director in question, notwithstanding the general provision of Section 292, cannot be made.
- (b) In terms of Section 292 the Board of Directors may also delegate to the Managing Director the power to borrow money otherwise than on debentures which it can exercise only by means of resolutions passed at Board Meetings. As per Explanation to Section 292(1), it is the arrangement for an overdraft or cash credit that constitutes the exercise of the borrowing power and not the actual utilisation of the arrangement. In other words, an arrangement for an overdraft or cash credit to the tune of say Rs.5 lakhs constitutes the exercise of the borrowing power and not the actual drawing of this amount on the basis of the overdraft or cash credit. Consequently, the transaction in the instant case shall be valid. But before implementation of the proposal, the Board must pass a resolution at its meeting authorising the Managing Directors to borrow from banks money required for the purpose of the company's business. Also the resolution delegating this power shall specify the total amount outstanding at any one time up to which the delegate may borrow money.

If, however, the moneys to be borrowed together with the money already borrowed by the company (apart from temporary loans obtained from the Company's bankers in the ordinary course of business) will exceed the aggregate of the paid up capital



of the company and its free reserves, [that is to say, reserves not set apart for any specific purpose] the Board of Directors of the company in question must obtain the consent of the company in its General Meeting. Consequently, care should be taken to ensure that while delegating the power to the Managing Director the aforesaid provision has not been violated, also it should be ensured that the Memorandum of Association permits borrowing.

- (c) Since according to Section 295(1), without obtaining prior approval of the Central Government in that behalf, a company cannot directly or indirectly lend money to persons including firms, in which Directors or their relatives are partners, the company in question must in the first instance seek the Central Government's approval. Secondly, since the power to make loans may be delegated under Section 292(1)(e), the Board of Directors of the company in question must pass a resolution therefore and every resolution delegating this power to the Managing Director shall specify the total amount up to which loans maybe made by the delegate, the purpose for which loans may be made and the maximum amount of loans which may be made for each such purpose in individual cases. Thirdly, by virtue of Section 291(1), the Board must see with reference to the memorandum and articles whether the company is authorised to exercise the power.
- (d) Under Section 293(1)(e), the Board of Directors of a public company can contribute or donate to charitable and other funds not directly related to the business of the company or the welfare of its employees any amount the aggregate of which will not, in any financial year exceed Rs.50, 000 or 5% of its average net profits during the three financial years preceding whichever is greater. If this power of the company is not ultra virus the memorandum of the company, then only the Board can act in pursuance of the above-mentioned resolution of the company and in so acting, it can authorise the Managing Director to exercise the power on behalf of the Board.

It may be noted that the power of the Board to donate to general charities is not conditional to the existence of any profits. In such case, they may contribute up to the limit given in Section 293(1)(e).

- 6. (i) This transaction does not per se amount to a loan so as to violate Section 295 of the Companies Act, 1956. The burden of proving otherwise lies with the prosecution. (M.G. Electronics Components Ltd v. Asst. Registrar of Companies).
- (ii) The deposit of the cost of purchase of property cannot be regarded as a loan or advance to the M.D. or book debt attracting the provisions of section 295 or section 296 of the Companies Act. It is no concern of the M.D. on what terms the company secures premises for residential accommodation for him.
- (iii) In a petition in Dr. Freddie Ardeshir Mehta v. Union of India seeking quashing of a prosecution launched under Section 295, the Bombay High Court came to the conclusion that a company selling one of its flat to one of its Directors on receiving half price in cash and agreeing to accept the balance in instalments does not give a

loan to the Director. It is a credit sale. It cannot continued be described even as an indirect loan. In view of this decision, the transaction in question does not amount to a loan to a Director requiring approval of the Central Government.

7. There is no prohibition contained in the Companies Act for a Director acting in the dual capacity of a Director and an employee. However, Section 314 puts a restriction for a Director while accepting office or place of profit in the company. For this purpose, the Director appointment in the office or place of profit need to be approved by the shareholders in the General Meeting. A Director however, without recourse to Section 314 can render services to the company in his professional capacity on one time basis.
8.
  - (i) Since ABC Ltd. has not completed three years of existence on 2nd November 2007, it is not eligible to give political contribution.
  - (ii) Yes, because in that case, ABC limited shall complete three financial years of its existence, therefore, will be eligible to give political contribution subject to the condition that such a contravention of the provisions of this section will make a company liable to fine which may extend to three times the amount so contributed. Further every officer of the company in default would be liable to imprisonment for a term which may extend to three years and also to fine.
  - (iii) The amended section 293A seeks to impose an obligation on every company to disclose in its profit and loss account contributions made by it to any political party or for any political purpose. Contravention of the provisions of this section will make a company liable to fine which may extend to three times the amount so contributed. Further every officer of the company in default would be liable to imprisonment for a term which may extend to three years and also to fine.
9. Oppression: The term 'oppression' is not defined in the Companies Act, 1956. Oppression, according to the Dictionary meaning of the word, is any act exercised in a manner burdensome, harsh and wrongful. The meaning of the term 'oppression' was explained by Lord Cooper in the Scottish case of *Elder v. Elder and Watson Ltd*, as given below:

"The conduct complained of should be at the lowest involve or visible departure from the standards of fair dealing and a violation of the conditions of fair play or which every shareholder who entrusts his money to a company is entitled to rely.

  - (i) Oppression of a member as a Director: The oppression dealt with by section 397 is only oppression of members in their character as such; and it is only in that character they can involve section 397. The harsh treatment, for instance, of a member who is a Director or other officer or employee, by the Board of Directors or management does not come within (section 397). It has been held in *Re. Bellador Silk Ltd.* that if the majority of the Board of Directors override the minority Directors the latter cannot resort to section 397 and hence the minority Directors will not succeed in getting relief from CLB on the ground of oppression.

(ii) Right not confined to minority: According to section 399, the right to apply for relief under section 397/398 is given to 100 members or 1/10th of the total number of members or any member or members holding not less than 1/10th of the issued share capital of the company. There is nothing in this section which suggests even indirectly that unless the application is made by minority shareholders it is not maintainable. The right to apply is, therefore, not confined to oppressed minority of the shareholders alone. It was held by Calcutta High Court in *Re. Sindhri Iron Foundry (P) Ltd.* that the oppressed majority also might apply for relief under Section 397. Therefore, the petitioners are likely to succeed in getting relief provided the other condition laid down in section 397 (i.e. that to wind up the company would unfairly prejudice such members, but that otherwise the facts would justify the making of a winding-up order on just and equitable ground) is satisfied, even though the Delhi High Court held a contrary view in *Suresh Kumar Sanghi v. Supreme Motors Ltd.*

**10. Loans, Investments and guarantees in excess of prescribed limits:** As per provisions given in the sections 372 A of the Companies Act, 1956 where the aggregate of the loans and investments so far made, the amounts for which guarantee or security so far provided to or in all other bodies corporate, along with the investment, loan, guarantee or security proposed to be made or given by the Board, exceeds the aforesaid limits, no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting.

However, the Board may give guarantee, without being previously authorised by a special resolution if:

1. a resolution is passed in the meeting of the board authorising to give guarantee in accordance with the provisions of this section;
2. there exists exceptional circumstances which prevent the company from obtaining previous authorisation by a special resolution passed in a General Meeting for giving a guarantee;
3. the resolution of the Board under (1) as above is confirmed within twelve months, in a General Meeting of the company or the Annual General Meeting held immediately after passing of the Board Resolution, whichever is earlier.

**11. The given problem relates to section 534 of the Companies Act, 1956 as explained below:**

As per Section 534, a floating charge created by the company within 12 months preceding the commencement of its winding up shall be invalid.

Exceptions-

- (a) A floating charge shall not be invalid where it is proved that the company was solvent immediately after the creation of the charge.
  - (b) A floating charge shall be valid upto the amount of any cash paid to the company (whether at the time of creation of charge or thereafter) as a consideration for the charge. Also, interest shall be allowed on that amount at the rate of 5% per annum or such other rate as may be notified by the Central Government in the Official Gazette.
12. In case of a winding up by the court, the winding up shall be deemed to have commenced at the time of presentation of the petition for the winding up. Thus, where a petition is made to the court and the court orders the winding up, the order relates back to the date of the presentation of the petition.

As per the section 531, a transaction shall be deemed to be a fraudulent preference and consequently invalid if all the following conditions are fulfilled:

- (a) The transaction relates to transfer of property, delivery of goods, payment of money or other act relating to the property of the company.
- (b) It took place within 6 months before the commencement of the winding up of the company.
- (c) It was an entirely voluntary act and not made under any pressure.
- (d) The dominant motive was to give a creditor a preference over other creditors.

In the given case, the winding up of M/s PQR Ltd. commenced on 31<sup>st</sup> December 2008 that is the date of presentation of petition of winding up. M/s PQR Ltd. mortgaged its machinery in favour of the creditor on 1<sup>st</sup> August 2008, i.e., within the 6 months before the commencement of winding up. The mortgage was made voluntarily by the company, without any consideration, and not under any pressure. Thus, the dominant motive behind the transaction was to give the preference to the creditor over the others. Since all the requirements of Section 531 are satisfied in the given case, the mortgage of the machinery made in the favour of the creditor amounts to fraudulent preference, and is therefore void. Therefore, the decision of the official liquidator to declare the mortgage in favour of creditor as void, is correct.

**13. As per Section 617 ,Government Company means -**

Any company in which not less than fifty-one percent of the paid-up share capital is held by the Central Government and partly by any State Government or Government or partly by the Central Government and partly by one or more State Governments. It also includes a company, which is a subsidiary of a Government company as thus defined.

As per Section 619 B ,the provisions relating to audit of Government Companies shall apply to a company in which not less than 51% of the paid up share capital is held by one or more corporations owned or controlled by the Central Government or the State Government.

Thus in the given problem the paid up share capital of XYZ Ltd. is Rs.10 crores (Paid up capital includes both equity share capital and preference share capital). Rs. 5.5 crores of paid up share capital of XYZ Ltd. is held by UTI and IDBI .However no share in XYZ Ltd. is held by the Central Government or any State Government and therefore XYZ Ltd. is not a Government Company.

UTI and IDBI are the corporations owned by the Central Government, which hold more than 51% of the paid up capital of XYZ Ltd. Therefore, the appointment of auditors of XYZ Ltd. will be made in the same manner in which auditors of a Government Company are appointed, i.e., the appointment of auditors shall be made by the Comptroller and Auditor General of India and the remuneration of auditors shall be determined in the General Meeting

14. As per Section 591, a company shall be a Foreign Company if-
- (a) Company is incorporated in foreign countries/outside India; and
  - (b) have offices and places of business in India .

As per the above provision in the given problem a share transfer office or share registration office constitutes a place of business (section 602). Since, the company incorporated outside India has a share registration at Hyderabad, it is clear that the company has established a place of business in India and is therefore a Foreign Company.

15. Sections 417 Companies Act, 1956 deal with the Employees' Securities and Provident Funds which seeks to ensure that any money or security given by an employee to the company is not invested in the business of the company. Section 417 provides that-

Any money or security deposit made by an employee of a company under the terms of his contract of services, must be kept or deposited by the company within 15 days from the date of deposit in a Post Office Savings Bank Account or in a special account to be opened with the State Bank of India or a Scheduled Bank or, where the company itself is a Scheduled Bank, in a special account to or be opened by it at or with the State Bank of India or any other Scheduled Bank.

The Company must not utilise any portion of such moneys or securities except for the purposes agreed to, in the contracts of service.

- 16. Appointment of Sole Selling Agent:** Section 294 and 294AA of the Companies Act, 1956 regulate the appointment of sole selling agents. These sections provide that:
1. No company shall appoint a sole selling agent for any areas for a term exceeding 5 years at a time and the term may be extended for another period but not exceeding 5 years on each occasion. [Section 294(1)].
  2. The Board of Directors may appoint a sole selling agent but only subject to the condition that the appointment shall cease to be valid if it is not approved by the company in the first general meeting held after the date on which the appointment is made. In case, the company in General Meeting, as aforesaid, disapproved the appointment, it shall cease to be valid with effect from the date of that General Meeting [Section 294(2) and (2A)].
  3. Where the Central Government is of opinion that the demand for goods of any category, to be specified by that government is substantially in excess of the production or supply of such goods and the services of sole selling agents will not be necessary to create a market for such goods, the Central Government may by notification in the Official Gazette, declare that sole selling agents shall not be appointed by a company for the sale of such goods, for such period, as may be specified in the declaration.
  4. No company shall appoint any individual firm or body corporate, who or which has a substantial interest in the company as sole selling agent of that company unless such appointment has been previously approved by the Central Government.
  5. A company having a paid-up share capital of Rs.50 lakhs or more shall not appoint a sole selling agent except with the consent of the company accorded by a special resolution and the approval of the Central Government.
  6. The Central Government may vary the terms and condition of appointment of a sole selling agent if those are found to be prejudicial to the interest of the company.
  7. In case a company has more than one selling agents in any area, the Central Government may declare any one of such agents as the sole selling agent for such area after obtaining from the company and considering the terms and conditions of appointment of the selling agents.

Procedure for appointment of sole selling agents:

1. Call a meeting of the Board of Directors and determine the name of the sole selling agent to be appointed. If the paid-up share capital of the company is less than Rs.50 lakhs and the appointee does not have a substantial interest in the company, the Board may also resolve to appoint him as sole selling agent subject to the approval of the general body meeting. Date for the general

meeting may also be fixed by the Board in its meeting, appointing the sole selling agent.

2. In case the appointee either has a substantial interest in the company, or the paid-up share capital of the company is Rs.50 lakhs or more, application for the approval of the Central Government should be made in Form 1 of the Companies (Appointment of Sole Agents) Rules, 1975.
3. See that the terms and conditions of appointment or reappointment do not contain the tenure exceeding 5 years, at a time.
4. Issue of notices for holding the General Meeting. Where the paid-up share capital of the company is Rs.50 lakhs or more, it shall require passing a special resolution; otherwise an ordinary resolution shall be sufficient.
5. Forward three copies of the notices and a copy of the proceedings of the General Meeting to the Stock Exchange(s) with which the shares of the company are listed (if listed).
6. If the proposed sole selling agent is to be appointed in a foreign country, he must obtain the prior permission of the RBI.

Thus applying the above provisions in the first part of the question the appointment of Mr. Kumar is not in order, as there have been a number of violation on the part of the company as per the Companies Act, 1956. Appointment without the approval of the general meeting and without the approval of the Central Government is not valid since the company's paid-up share capital is more than Rs.50 lakhs in this case. Moreover, since Mr. Kumar has substantial interest in the company, approval of Central Government in Form 1 is must. Thus, the appointment of Mr. Kumar is not in order.

In the second part of the question, the answer would not be different, as the capital (paid-up share capital) is more than 50 lakhs Rupees. In this case though the appointee (Mr. Kumar) does not have substantial interest, but the company's paid share capital is more than 50 lakhs, consent of the company in General Meeting (special resolution) and the approval of the Central Government is required

17. Section 581 ZP 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.

18. Mr. Z had resided in India during financial year 2007-2008 for more than 182 days. Further, he has gone to UAE for Treatment of his father. In other words, he has not gone out of, or stayed outside India for or on taking up employment, or for carrying a business or any other purpose, in not circumstances as would indicate his intention to stay outside India for an uncertain period. Accordingly he would be 'person resident in India' during the financial year 2008-2009.

For the financial year 2009-2010, he would not have been in India in the preceding financial year (2008-2009) for period exceeding 182 days. Accordingly, he would not be 'person resident in India' during the financial year 2009-2010.

19. Holding of foreign exchange (Section 4)

No person resident in India shall acquire, but, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India.

This section restricts a resident in India from acquiring, holding, owing, possessing or transferring in any manner foreign exchange, foreign security or any immovable property situated outside India. However the acquisition of such immovable property outside India on lease for a period not exceeding five years is permissible provided such transactions are not specifically prohibited.

In terms of regulations relating to acquisition and transfer of immovable property outside India, such acquisition by a person resident in India would require prior approval of Reserve Bank except in the following cases:

- Property held outside India by a foreign citizen resident in India;
- Property acquired by a person on or before 8th July, 1947 and held with the permission of Reserve Bank;
- Property acquired by way of gift or inheritance from persons referred to in above
- Property purchased out of funds held in RFC account.



**20.** Section 11D empowers SEBI to pass an order requiring a person to cease and desist from committing or causing the violation of the act or rules made thereunder. SEBI may pass a cease and desist order by complying with the following two requirements:

- (a) SEBI shall cause an inquiry to be made to determine whether any person has violated, or is likely to violate, any provisions of this act or any rules or regulations made thereunder.
- (b) SEBI shall not pass a cease and desist order against any listed company or a public company which intends to get its securities listed on any recognized stock exchange, unless it has reasonable ground to believe that such company has indulged in insider trading or market manipulation

**21.** (a) "Green Shoe Option" means an option of allotting equity shares in excess of the equity shares offered in the public issue as a post-listing price stabilizing mechanism .

(b) "Designated Stock Exchange" means a stock exchange in which securities of the company are listed or proposed to be listed and which is chosen by the company for purposes of a particular issue under these guidelines.

Provided that where any of such stock exchange have a nation wide trading terminals, the company shall choose one of them as the designated stock exchange.

Provided further that the company may choose a different exchange as a designated stock exchange for any subsequent issue, subject to the above clause.

(c) "Book Building" means a process undertaken to elicit demand and to assess the price for determination of the quantum or value of specified securities or Indian Depository Receipts, as the case may be, in accordance with these regulations;

(d) "Composite Issues" means an issue of securities by a listed company on a public cum rights basis offered through a single offer document wherein the allotment for both public and rights components of the issue is proposed to be made simultaneously.

**22. (i)** (a) "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[Section2(c)].

- (b) "Relevant Product Market" means a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use;

It is an area in which the sellers of particular product or service providers operate. This type of market may be local, national, or international. It involves identification of geographical areas within which competition take place. [Section 2(t)].

- (c) "Service" means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising.[Section 2(u)].

- (d) "Price", in relation to the sale of any goods or to the performance of any services, includes every valuable consideration, whether direct or indirect, or deferred, and includes any consideration, which in effect relates to the sale of any goods or to the performance of any services although ostensibly relating to any other matter or thing.[Section 2(o)].

- (ii) As per section 2(i), 'goods' means goods as defined in the Sale of Goods Act, 1930, and includes-

- (a) products manufactured, processed or mined;
- (b) debentures, stocks and shares after allotment; and
- (c) goods imported in India.

Thus, 'shares after allotment' are goods, but 'shares before allotment' are not goods

- 23. (a)** Competition Fund-There shall be constituted a fund to be called the "Competition Fund" and shall be credited thereto—

- (a) all Government grants received by the Commission;
- (b) the monies received as costs from parties to proceedings before the Commission;
- (c) the fees received under this Act;
- (d) the interest accrued on the amounts referred to in clauses (a) to (c).

The Fund shall be applied for meeting:—

- (a) the salaries and allowances payable to the Chairperson and other Members and the administrative expenses including the salaries, allowances and pension payable to the Director General, Additional, Joint, Deputy or Assistant Directors General, the Registrar and" officers and other employees of the Commission;
- (b) the other expenses of the Commission in connection with the discharge of its functions and for the purposes of this Act.

The Fund shall be administered by a committee of such Members of the Commission as may be by the Chairperson. The committee appointed under sub-section (3) shall spend monies out of the Fund for carrying out the objects for which the Fund has been constituted.[Section 51]

**(b) Accounts and Audit**

The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

The accounts of the Commission shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General of India.

However, the orders of the Commission, being matters appealable to the Supreme Court, shall not be subject to audit under this section.

The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Commission shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India generally has, in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.

The accounts of the Commission as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.  
[Section 52]

#### **24. Withdrawal of Recognition:**

As per Section 5 of the Securities Contracts (Regulation) Act, 1956, Central Government is empowered to withdraw the recognition granted to a stock exchange.

The procedure for withdrawal of recognition is as follows:

If Central Government is of the opinion that recognition given to an Exchange must be withdrawn, it may withdraw the recognition after serving due notice on governing Board of the Exchange. Withdrawal however will not affect validity of Contracts entered into before the date of withdrawal notification. [Sub-section 1].

Sub-section 2 provides that, Where the recognised stock exchange has not been corporatised or demutualised or it fails to submit the scheme referred to in sub-section (1) of section 4B within the specified time therefore or the scheme has been rejected by the Securities and Exchange Board of India under sub-section (5) of section 4B, the recognition granted to such stock exchange under section 4, shall, notwithstanding anything to the contrary contained in this Act, stand withdrawn and the Central Government shall publish, by notification in the Official Gazette, such withdrawal of recognition:

Provided that no such withdrawal shall affect the validity of any contract entered into or made before the date of the notification, and the Securities and Exchange Board of India may, after consultation with the stock exchange, make such provisions as it deems fit in the order rejecting the scheme published in the Official Gazette under sub-section (5) of section 4B.”

#### **25. (a) Rules of Interpretation/Construction of Deeds and Documents**

The first and foremost point that has to be borne in mind is that one has to find out what a reasonable man, who has taken care to inform himself of the surrounding circumstances of a deed or a document, and of its scope and intendments, would understand by the words used in that deed or document.

It is inexpedient to construe the terms of one deed by reference to the terms of another.

Further, it is well established that the same word can not have two different meanings in the same document, unless the context compels the adoption of such a rule.

The Golden Rule is to ascertain the intention of the parties to the instrument after considering all the words in the document/deed concerned in their ordinary, natural sense. For this purpose, the relevant portions of the document have to be considered as a whole. The circumstances in which the particular words had been used have also to be taken into account. Very often, the status and training of the parties using the words have also to be taken into account as the same words may

be used by a ordinary person in one sense and by a trained person or a specialist in quite another in a special sense. It has also to be considered that very many words are used in more than one sense. It may happen that the same word understood in one sense will give effect to all the clauses in the deed while taken in another sense might render one or more of the clauses ineffective. In such a case the word should be understood in the former and not the latter sense.

It may also happen that there is a conflict between two or more clauses of the same document. An effort must be made to resolve the conflict by interpreting the clauses so that all the clauses are given effect to. If, however, it is not possible to give effect to all of them, then it is the earlier clause that will over-ride the latter one.

Similarly, if one part of the document is in conflict with another part, an attempt should always be made to read the two parts of the document harmoniously, if possible. If that is not possible, then the earlier part will prevail over the latter one which should, therefore, be disregarded.

- (b) Resolution: The word 'resolution', is 'a formal proposal put before a public assembly or the formal determination of such proposal on any matter'. Derived from this meaning, a resolution is a formal agreement as to adoption of proposal put before an assembly of persons or meeting. In the context of company management, it is either a Board meeting or a General meeting of the members. The passing of a resolution should be construed as the manner in which a meeting formally acts expressing the intent and purpose of the meeting and if it is a meeting of members, it means the will of the company, and if it is a meeting of the Board of Directors, it means the exposition of the intent of the executive action initiated or to be initiated subject to the limiting and regulatory force of the different statute.

Draft of an Ordinary Resolution on winding up of the company by Court under Section 433:

Whereas the company has been incurring continued losses for the past several years and WHEREAS the assets of the company are insufficient to meet the liabilities and WHEREAS it is no longer possible to run the company except at a loss. Now therefore it is Resolved that the company be wound up by the Hon'ble High Court at Bombay, which will become effective from the date the Court declares the company to be wound up by such Court and that the Board of Directors be and is hereby authorised to make necessary applications therefor and take action for the winding up of the company by the said Court.