

**PAPER – 4 : CORPORATE AND ALLIED LAWS**

**Updates in Corporate Laws**

S.No.	Name of the Act	Gist of the Updates	Reference to the Updates	Applicability for the May 2010 Exam
<b>Section A : Company Law</b>				
1	<b>The Companies Act, 1956</b> Companies Bill, 2009	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
<b>Section B: Allied Laws</b>				
<b>I. Securities and Exchange Board of India</b>				
2.	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have been made primarily by conversion of the SEBI (Disclosure and Investor Protection) Guidelines, 2000 (since rescinded) (hereinafter referred to as “the rescinded Guidelines”). While incorporating the provisions of the rescinded Guidelines into the ICDR Regulations, certain changes have been made by removing the redundant provisions, modifying certain	Circular No. CFD/DIL/ICDR R/1/2009/03/09 dated 03.09.2009  www.sebi.gov.in under the Categories “Legal Framework” and “Issues and Listing”.	Not applicable

		provisions on account of changes necessitated. <b>For highlights on ICDR vis – a vis SEBI (DIP) Guidelines 2000 (now rescinded. See ANNEXURE-I)</b>		
3.	Amendments to SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines,1999	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.	Circular No. CFD/DIL/ESOP /5/2009/03/09 dated 03.09.2009 on  www.sebi.gov.in	Students may study from their knowledge point of view.
<b>II. The Competition Act,2002</b>				
4.	The Competition (Amendment)Act, 2009	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),&(7) of the Competition Act, 2002. <b>For text of amendments see ANNEXURE - II</b>	www.mca.gov.in	In view of the New amendment, full Act, 2002 will be applicable.
<b>III. Foreign Exchange Management Act,1999</b>				
5.	Foreign Exchange Management (Transfer or Issue of Any Foreign Security)	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,	Notification No. FEMA 196 / 2009-RB, dated July 28,2009	Students may study from their knowledge point of view.

	(Fourth Amendment) Regulations, 2009	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.	www.rbi.gov.in	
6.	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 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).	Notification No. FEMA 194 / 2009-RB. Dated June 17, 2009  www.rbi.gov.in	Students may study from their knowledge point of view.
7.	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	Notification No. FEMA 191/RB-2009 Dated May 20, 2009	Students may study from their knowledge point of view.

		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."	www.rbi.gov.in	
8.	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 out side 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.
<b>IV. The Banking Regulation Act, 1949</b>				
9	Requirement for obtaining prior approval of RBI in cases of acquisition/transfer of control of NBFCs accepting deposits	To enable RBI to verify that the 'fit and proper' character of the management of NBFCs is continuously maintained, it has been decided that any take over / acquisition of shares of a deposit taking NBFC or merger/amalgamation of a deposit taking NBFC with another entity or any merger/amalgamation of an entity with a deposit taking NBFC that would give the acquirer / another entity control of the deposit taking NBFC, would require prior permission of RBI.	Circular No. RBI/2009-10/162 DNBS(PD)CC.No. 160/03.10.001/2009-10 Dated September 17, 2009 www.rbi.gov.in	Students may study from their knowledge point of view.

10.	Introduction of Interest Rate Futures- NBFCs	The Directions issued by the Reserve Bank that NBFCs may participate in the designated interest rate futures exchanges recognized by SEBI,	RBI/2009-10/165 DNBS.PD.CC.No.161/3.10.01/2009-10 September 18, 2009 www.rbi.gov.in	Students may study from their knowledge point of view.
11.	Payment of Interest on Savings Bank Account on a Daily Product Basis	RBI has been decided that the interest on balances in savings bank accounts would be calculated on a daily product basis with effect from April 1, 2010.	RBI/2009-10/169 RPCD.CO.RRB. BC.No. 25 /03.05.33/2009-10 September 24, 2009 www.rbi.gov.in	Students may study from their knowledge point of view.
<b>V. The Insurance Regulatory and Development Authority Act, 1999</b>				
12.	To ensure and enhance clarity to that the charges (which are deducted from the contributions or from the fund) are reasonable relevant to the services being provided.	The IRDA (Insurance Regulatory Authority of India) has issued Circular to ensure and further enhance clarity and to ensure that the charges (which are deducted from the contributions or from the fund) are reasonable relevant to the services being provided and clearly understandable by the customers, the IRDA has mandated that an overall cap on all charges be there when put together.	Circular No. 20/IRDA/ACTL/2009-10 dated. 22-7-2009  www.irdaindia.org	Students may study from their knowledge point of view.
13.	CORPORATE GOVERNANCE FOR INSURANCE SECTOR 94 SEBI & Corporate Laws (SCL) (Statutes) (St.) 426	The IRDA (Insurance Regulatory and Development Authority has issued Circular, issuing the Corporate Governance Guidelines for the insurance sector and that companies are required to ensure compliance of the Guidelines to be in place latest from the financial year commencing 2009-10. These guidelines should be placed by the companies before their Board alongwith an action plan	Circular No. IRDA/F&A/CIR/025/2009-10 dated. 05.08.2009 www.irdaindia.org	Students may study from their knowledge point of view.

		towards compliance and that a compliance report is to submitted to the IRDA in due course. The circular also contains the key issues in relation to the corporate governance guidelines alongwith IRDA explanatory comments.		
<b>VI. Prevention of Money Laundering Act, 2002</b>				
14.	ANTI MONEY LAUNDERING (AML) STANDARDS	The SEBI has issued Circular in relation to Anti Money Laundering (AML) Standards / Combating Financing of Terrorism (CFT) / Obligations of Securities Market Intermediaries under Prevention of Money Laundering Act, 2002 and Rules framed thereunder for which earlier the SEBI had issued consolidated requirements/obligations to be fulfilled by all registered intermediaries with regard to AML / CFT. In this regard, the SEBI has issued additional requirements to be fulfilled or the clarifications with regard to existing requirements which are contained in detail in the Circular.	Circular No. ISD/AML/CIR-1/2009 dated 1-9-2009  www.sebi.gov.in	Students may study from their knowledge point of view.
15	Prevention of Money laundering Act, 2002 – Obligations of NBFCs in terms of Rules notified thereunder'	The RBI has issued Circular in relation to the Prevention of Money Laundering (Amendment) Act, 2009 (PMLA, 2009), it provides that NBFCs shall maintain records for a period of ten years from the date of transaction between the clients and the banking company. Accordingly NBFCs (including RNBCs) are advised to maintain for at least ten years from the date of	RBI/2009-10/220 DNBS(PD). CC 164/03.10.042/2009- 10 www.rbi.gov.in	Students may study from their knowledge point of view.

		<p>transaction between the NBFC (including RNBC) and the client, all necessary records of transactions in terms of the Prevention of Money-Laundering (Maintenance of Records of the Nature and Value of Transactions, the Procedure and Manner of Maintaining and Time for Furnishing Information and Verification and Maintenance of Records of the Identity of the Clients of the Banking Companies, Financial Institutions and Intermediaries) Rules, 2005 (PMLA Rules), both domestic or international, which will permit reconstruction of individual transactions (including the amounts and types of currency involved, if any) so as to provide, if necessary, evidence for prosecution of persons involved in criminal activity.</p>		
16.	Prevention of Money-laundering (Amendment) Act, 2009	<p>The amendments to the Act have been made with a view to strengthen the legal framework for Anti-Money Laundering and Combating the Financing of Terror (AML/CFT). List of offences in Part A (offences without threshold value) of the Schedule to the Act and Part B (offences with threshold value) have been significantly expanded. The amendments, inter alia, specify the time frame for retention of various records viz., CTRs/STRs and client identity records.</p> <p><b><i>For detail see ANNEXURE-III</i></b></p>	<p>Notification No. S.O. 1388(E) dated 1-6-2009</p> <p><a href="http://www.fiuidia.gov.in">www.fiuidia.gov.in</a></p>	Applicable

**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

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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 may be 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 Competition (Amendment) Ordinance, 2009" shall be substituted.

**ANNEXURE III**

**[Applicable for May 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 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 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 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](http://www.fiuindia.gov.in))



## QUESTIONS

### SECTION – A : COMPANY LAW

#### Accounts and Audit

1. Can the Board of Directors of a company decide to prepare profit and loss account and the balance sheet for a financial year exceeding 12 months?

#### Accounts and Audit

2. The auditor of the ABC Company resigned his office on 31<sup>st</sup> Nov,2009, while the financial year of the company ends on the 31<sup>st</sup> March 2010.Explain how the auditor will be appointed?

#### Dividend

3. The shareholders at an annual general meeting unanimously passed a resolution for payment of dividend at a rate higher than that recommended by the directors. Discuss the validity of the resolution.

#### Directors

4. The Directors of Shara Ltd 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.Advise.
5. (i) Mr. X is a director of a company and also a Chartered Accountant by profession and one of the partners in M/s Lee and John Co. The company appointed the said firm as Chartered Accountant of the company on a regular basis. Does Mr. X holds any office or place of profit in the company. Would your answer be different if his appointment is on a case-to-case basis?  
(ii) The articles of association of KPM Ltd. incorporated with an authorized share capital of Rs. 50 crores divided into 5 crore equity shares of Rs. 10 each contained the following clause:

“The Qualification of a director shall be the holding of at least 1,000 equity shares in the company and such a director,if not already qualified shall have to obtain his qualification within a period of 30 days from the date of his appointment as a director.”

Examine the validity of the above clause in the light of the provisions of the Companies Act,1956.

6. A director of a Sun Capital Public Company has taken a loan from the company without the approval of the Central Government,
  - (i) is it possible to avoid prosecution by applying to the Central Government for approval or by refunding the loan?
  - (ii) whether the offence is compoundable before or after institution of prosecution and the authority can compound the offence?

#### **Meetings, Powers of the Boards and Related Party Transaction**

7. Satyam Ltd., recently went in for public issue of shares and for this purpose it paid brokerage to a share broking firm in which one of the Directors of the company is a partner in that firm. State in this connection:
  - (i) Whether the concerned interested director should disclose his interest in the firm to the company. If so, When?
  - (ii) Should he still disclose, if the company already knew of this fact?

What would be your answer, if the concerned director merely acted as a broker between the firm and the company?
8. During the year 2009, A Ltd. held four meetings of the Board on 1st January 2009, 9th May 2009, 15th October 2009 and 30th December 2009. Examine whether this was in accordance with the provisions of the Companies Act, 1956?

#### **Inspection and Investigation**

9. A majority of the shareholders of M/s IQ Capital Ltd. have realised that some of the business activities carried out in the name of the company are not in the interest of either the company or its members. They want that the company should make an application to the Central Government to appoint an inspector to carry out an investigation so as to find out the whole truth. What step should be taken to achieve the purpose?

#### **Compromise, Arrangements and Reconstructions**

9. A meeting of members of a company was convened under the orders of the court to consider a scheme of compromise and arrangement. The meeting was attended by 200 members holding 5,00,000 shares in aggregate 70 members holding 4,00,000 shares voted for the scheme. The remaining members voted against the scheme. Examine with reference to the relevant provision of the companies Act, 1956 whether the scheme is approved by the required majority.

#### **Prevention of Oppression and Mismanagement**

11. The group of requisite shareholders under Section 399 filed a petition before the Company Law Board for relief against oppression. Meanwhile, a secured creditor filed a civil suit for winding up for non-payment of his debt. The shareholders contended that

winding up proceeding should not be heard as the Company Law Board is seized of the petition under Section 397. Is there contention tenable?

What would be your answer, if in the said situation a composite petition (petition praying for relief against oppression as well petition for winding up) is filed in the Court of Law?

12. Rainbow Ltd. is engaged in the business of construction. A,B and C, directors of the Rainbow Ltd. are holding 75% of the capital of this company. The company passed a resolution at its general meeting that it would not be interested in a particular contract for construction of a bridge. Subsequently, the same contract was obtained by A,B and C in their own names. The minority shareholders filed a case against Directors asking them to account for the profits. Discuss.

### **Corporate Winding up and Dissolution**

13. A official liquidator of a company in liquidation instituted misfeasance proceedings against the director thereof and during the pendency of the proceeding itself the director passes away.

What is meant by misfeasance? Can the legal representatives of the deceased director be impleaded and the proceedings continued against them?

### **Companies Incorporated Outside India and Producer Companies**

14. (a) Under Section 603 of the Companies Act, 1956, what are particulars required for incorporating a prospectus to be issued by an existing Foreign Company.  
(b) State the provision under the Companies Act,1956 regarding the endowment of the financial assistance to the members of the Producer Company.

### **E-governance**

15. What amendments are made in the Companies Act,1956 in relation with the e-filing and authentication of documents?

### **Corporate Secretarial Practice**

16. Draft a resolution for the re-appointment of the Whole –time Director.

### **Other Miscellaneous Provisions of the Companies Act,1956**

17. M/s Computer Palace Ltd., recommended to recruit engineers for the operation of its new programme. To prevent early migration of the employees, the company has entered into an agreement with the employees containing a stipulation that each employee should deposit the security of Rs. 20,000 which will be refunded to the employee on completion of 2 years of contract of service. Elucidate the provision of the Companies Act on the matter of collection and deployment of monies received as security deposits from the employees.

## SECTION – B : ALLIED LAWS

### **The Securities and Exchange Board of India**

18. Define the following terminologies given under the SEBI Act, 1992
- (i) Designated Stock Exchange
  - (ii) Green Shoe Option
  - (iii) Convertible Debt Instrument
  - (iv) Book Building
19. State the procedure where by SEBI can make or amend bye-laws of recognized Stock Exchanges.

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

20. (i) Define the terms given under Securities Contracts(Regulation)Act,1956
- (a) Stock exchange
  - (b) Securities
- (ii) Mumbai stock Exchange wants to establish additional trading floor. Advise.

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

21. (i) Explain the following terms in reference with the FEMA Act,1999
- (a) Foreign Exchange
  - (b) Service
  - (c) Repatriate in India
  - (d) Capital Account Transaction
- (ii) State whether are following transactions under act are prohibited/ require prior approval of the Government /RBI for drawal of foreign exchange.
- (a) Remittance out of lottery winnings.
  - (b) Payment related to call back services of telephone.
  - (c) Remittance under technical collaboration agreements.
  - (d) Remittance of prize money / sponsorship of sports activity abroad

### **The Competition Act, 2002**

22. Adidas Ltd.,(referred to as seller), manufacturer of foot wears entered into an agreement with purchaser' for the sale of products. The agreements includes, among others, the following clauses:

- (a) That the purchaser shall not deal with the goods, products, articles, by whatever name called, manufactured by any person other than the seller.
- (b) That the purchaser shall sell the goods manufactured by the seller at the price as embossed on the price label of the footwear. However, the purchaser is allowed to sale the footwear at prices lower than those embossed on the price label.

Examine the validity of the above clauses with relevant provisions of the Competition Act,2002.

### **Interpretation of Statutes, Deeds and Documents**

23. In the Companies Act, 1956 and in FEMA,1999, there are several provisions which start with the words 'without prejudice' and notwithstanding'. Explain the nature and significance thereof, applying the principles of Statutory Interpretation.

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

24. (i) In what way, Assests and liabilities get transferred from IIRA to IRDA.  
(ii) To what extent RBI has the power to control loans and advances granted by a Banking Company?

### **Prevention of Money Laundering Act, 2002**

25. What are the obligations of the Banking Companies, Financial Institutions and Intermediaries under the Prevention of Money Laundering Act, 2002.

## **SUGGESTED ANSWERS/HINTS**

1. The period for which profit and loss account is prepared shall be referred to as a financial year. It may be less or more than a calendar year, but it shall not exceed 15 months. However, it may extend to 18 months with the special permission of the registrar (Section 210).

Thus, in the given case, the profit and loss account and the balance sheet may be prepared for a period exceeding 12 months but upto a period of 15 months only. However, if special permission of registrar is obtained, this period may extend to 18 months.

2. As per the provisions given under Section 224(6) of the Companies Act, 1956: the board may fill any casual vacancy in the office of an auditor. However when casual vacancy is caused by the resignation of an auditor, the vacancy shall be filled by the shareholder in general meeting. Till the time a casual vacancy continues, the remaining auditor/auditors (i.e., the other joint auditors), if any, may act. Any auditor appointed in a casual vacancy shall hold office until the conclusion of the next Annual General Meeting.

3. Articles of companies usually contain provisions with regards to declaration of dividend on the pattern of regulations 85 to 94 of Table A of the Companies Act, 1956. Under the regulation 85, the power to declare a dividend vests with the general meeting, but it has no power to declare a dividend exceeding the amount recommended by the Board of Directors.
4.
  - (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), 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 money may be borrowed by the delegate.

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 therefor and every resolution delegating this power to the Managing Director shall specify the total amount up to which loans may be 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).

5. (i) Chartered Accountants appointed by a company on a regular basis are hit by a restrictive provisions of sub-sections I and I(b) of Section 314 if he is a director receiving remuneration over and above to which he is entitled. In case the office or place of profit is held by an individual other than a director or by any firm, private company or other body corporate, if it obtains from the company anything by way of remuneration whether as salary, fees, commission perquisite or otherwise, approval of the company is not required where the monthly remuneration is less than Rs. 10,000/-. Accordingly, if a director is holding the place of Chartered Accountants for the company he would be covered by Section 314(3) irrespective of the fact that office or place of profit carries a total monthly remuneration less than Rs.10,000/-.
- (ii) There is no statutory requirement that a director must hold qualification share. Share qualification is to be obtained by a director only if the Articles of the company do require. Where the Article requires a director to hold qualification shares, a director who is not already qualified, shall obtain the qualification shares within 2 months of his appointment as a director. Any provision in the Articles shall be void in so far as it requires a person to hold the qualification shares before his

appointment as a director or to obtain them within a shorter time than 2 months. Further, the nominal value of qualification shares shall not exceed Rs. 5,000.

According to the provision, the above value of qualification shares as per the Articles is Rs.10,000. Since this amount exceeds the maximum amount that is Rs. 5000 as laid down under Section 270, the articles are inconsistent with the act, and therefore void.

6. (i) According to Section 295 of the Companies Act, no Public Company shall make any loan to any of its directors either directly or indirectly without obtaining the previous approval of the Central Government. As the Act envisages prior approval, Central Government will not entertain any application from the company seeking approval for a loan already given to its director.

The company has, therefore, contravened the provisions of Section 295(1) and for this offence every person who is knowingly a party to this contravention including the person to whom the loan is made shall be punishable either with fine which may extend to Rs. 50,000 or with simple imprisonment for a term which may extend to six months [Section 255(4)]. Where any such loan has been repaid in full, no punishment by way of imprisonment shall be imposed and where the loan has been repaid in part, the maximum punishment, which may be imposed by way of imprisonment, shall be proportionately reduced. So, by refunding the loan in full, it is possible to avoid punishment in the form of imprisonment, but it is not possible to avoid prosecution and punishment in the form of fine.

- (ii) All offences other than an offence which is punishable under the Companies Act with imprisonment only or with imprisonment and also with fine are compoundable under Section 621A. As the offence under Section 295 is punishable with fine or imprisonment, it is compoundable but with the permission of the Court [Section 621A(2)]. The offence may be compounded either before or after the institution of prosecution. If the offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, either by the Registrar or by any shareholder or by any person authorised by the Central Government. Where the composition of any offence is made after the institution of any prosecution, such composition shall be brought to the notice of the court by the Registrar in writing and on such notice of the composition of the offence being given, the company or its officer in relation to whom the offence is so compounded shall be discharged [Section 621A(4)].

The offence may be compounded by the Regional Director where the maximum amount of fine, which may impose for such offence, does not exceed Rs. 50,000 and in other cases by the Company Law Board. In this case, Regional Director may compound the offence, as the maximum fine is only Rs.50,000. On receipt of applications from the persons liable for penalty under Section 295(4) along with the comments of the Registrar, the Regional Director may specify the amount not exceeding the maximum fine which shall be paid to the Central Government for compounding of the offence.



7. (i) According to Section 297, a director of the company or his relative, a firm in which such a director or relative is a partner, any other partner in such a firm or a Private Company of which the director is a member or director, must not enter into contracts with company for the sale, purchase, or supply of goods, materials or services or for underwriting shares or debentures except with the consent of the Board of Directors. If the company is having a paid-up capital of Rs.1 crore or more no such contract shall be entered into except with the previous approval of the Central Government. The consent of the Board is deemed to have been given only if it is accorded by a resolution of the Board and not otherwise, either before or within three months of the date of entering into the contract [Sub-Section (4)].

In view of the legal position as states above, the appropriate brokerage can be paid to the broking firm if the contract had been entered into with the consent of the Board of Directors of X & Co. Ltd. the director in question is to disclose his concern or interest at the first meeting of the Board Meeting held after the director becomes concerned or interested in the contract. A general notice given in this regard to the Board is deemed to be sufficient disclosure of his concern or interest, if either it is given at the meeting of the Board of Directors concerned or he takes reasonable steps to ensure that it is brought up and read at the first meeting of the board after it is given.

The condition under which the sanction of the Board of Directors in respect of contracts by directors or persons connected therewith would not be required [as contained in sub-section (2) of Section 297] have been liberalised. The restrictions do not apply to:

- (a) the purchase of goods and materials from, or sales thereof to, the company for cash at prevailing market prices;
- (b) any contract or contracts between the company and directors or persons connected therewith in respect of sale, purchase or supply of goods in which the parties to the contract regularly trade or do business in; provided they are in respect of goods and materials or services the value whereof or the cost of service would not exceed Rs.5,000 in aggregate in any year comprised in the period of the contract;
- (c) the transactions by Banking or Insurance Company entered into with any director, relative, firm, partner, etc. in the ordinary course of his business.

Section 297(3) provides that a director or persons connected with him may enter into a contract in the circumstances of urgent necessity without obtaining consent of the Board, even if the value of such a contract exceeds Rs. 5,000 in the aggregate, but in such a case the consent of the Board must be obtained at meeting within three months of the date of entering into the contract.

- (ii) The term 'disclosure' means to make others aware of something, which they are not aware. The disclosure of interest by a director has been provided in Section 299

only with a view to know that the director occupies fiduciary position in the company should disclose his interest in any arrangement or contract either directly or indirectly so that the company is in a position to know whether he is acting in any way prejudicial to the interest of the company or for his own benefit. When board is aware of the fact of the interest of a director in a particular transaction, it would not be necessary for such a director to formerly disclose his interest. (Ramakrishna Rao vs. Bangalore Race Club, 40 Comp. Case 674 (Mysore). A. Sivasailam vs. Registrar of Companies {C.A. No. 11/621A/SRB/94 decided on 31.5.94 (CLB)}.

(iii) A contract to act as broker where the duty of the broker is merely to bring together the two contracting parties, namely, the company, on the one hand, and the purchaser of shares or debentures, on the other, does not seem to be covered either by clause (b) or by clause (a) of sub-section (1) of Section 297. It is not covered by clause (b) for two reasons: First, clause (b) specifically refers to underwriting and importing into that clause the act of broking is not permissible. Secondly, there is a good deal of difference between underwriting and broking. In the case of the former, the obligation extends far beyond the mere bringing together the two contracting parties together, while in the case of latter, the broker earns his commission only when he succeeds in bringing the two parties together and not otherwise. To act as a broker is also not covered by clause (a) because commission earned as a broker is not earned by supplying services. The Madras High Court has rightly held that "rendering of services should consist of the doing of an act for the benefit of another which is more than the mere making of a contract and which goes beyond the performance of an obligation undertaken in the course of an ordinary commercial contract". (Radhakrishna Rao vs. Province of Madras AIR 1952 Mad. 718)

8. As per section 285, at least four Board meetings shall be held in each calendar year and at least one Board meeting shall be held in each quarter.

As per section 288, where a board meeting can not be held for want of quorum, then unless the articles provide otherwise, it shall automatically stand adjourned to the same day, time, and place in the next week, or if that day is a public holiday, then to next succeeding day, which is not a public holiday. Section 285 shall not be deemed to be contravened, if a Board meeting could not be held for want of quorum.

According to the provision laid down, in the present case no meeting was held during the quarter July-September, 1993. Hence, Section 285 has been violated.

9. The provision relating to the investigation of the affairs of a company are contained in Section 235 and 237. In the present case, following options are open to M/S IQ Capital Ltd.:
1. Passing a special resolution. The company may pass a special resolution declaring that the affairs of the company ought to be investigated. Then, the Central

Government shall order an investigation of the affairs of the company [Section 237(a)].

2. Petition to the court. The directors may make a petition to the court in this regard. The Central Government shall order investigation of the affairs of the company if the court, by order, declare that the affairs of the company ought to be investigated[Section 237(a)]
3. Application to the Central Government. The requisite number of the members of the company may make an application to the Central Government. If the Central Government declares that the affairs of the company ought to be investigated , it shall order an investigation of the affairs of the company.

'Requisite number of members' means-

- (a) in the case of the company having a share capital, not less than 200 members, or members holding not less than 1/10 of the total voting power.
- (b) in the case of the company having no share capital, not less than 1/5 of the total number of members[Section 235(2)].

10. The given problem is based on the section 391 of the Companies Act,1956.

Accordingly where the scheme of the compromise of arrangement is required to be approved by the members, it must be approved by majority of members who are present and voting. Such majority of members must also be the members representing 3/4th in the value of the members present and voting at the meeting. In other words, a scheme of arrangement between the company and members must be approved by more than 50% of the members who hold atleast 75% of the value of shares. It is to be noted that members or creditors not present in the meeting or present in the meeting but remaining neutral are not to be counted.

Members or creditors may vote in person or by proxy, where the proxies are allowed.

In the given case-

Members who attended the meeting	200 members
Shares held by the members who attended the meeting	5,00,000 shares
Members who voted in favour of the scheme	70 members
Shares held by the members who voted in favour of the scheme	4,00,000
Members who voted against the scheme	130 members
Shares held by the members who voted against the scheme	1,00,000

Thus from the above it is clear that the scheme has not been approved by the majority of members, present and voting ,through it has been approved by the members holding 3/4th of the shares. It is evident that the requirements of approval by members in terms

of majority in number of members and three fourths in value of shares are cumulative, i.e., these are two separate compliances. Accordingly, the scheme has not approved by the requisite majority, and therefore this scheme shall not be sanctioned by the court.

11. In *A.K. Puri vs. Devi Dass Gopal Kishan Ltd.*, (995) 17CLA, the J&K High Court held that there was no conflict of jurisdiction with respect to Sections 397, 398 and Section 433. The court observed that there is no statutory provisions in the Companies Act which provides for stay of the winding up proceedings under Section 433 when the CLB was seized of a petition between the same parties under Section 397/398. In other words, there is neither explicit nor implicit to carry on the winding up proceedings even when the CLB was seized of the matter.

The question whether shareholders can file a writ petition for relief against Oppression and Mismanagement during pendency of proceedings before the CLB, the Supreme Court in *World-wide Agencies Pvt. Ltd., vs. Mrs. M.T. Desor* (1990) 67 CC. 607 held against such filing as a shareholder cannot be allowed to bypass the express provisions of the Companies Act.

Winding up petition as a creditor on ground of inability to pay debts is not a bar to admission of a composite petition under Section 397 and 398 by the same party in the capacity of a member. [*MMTC Ltd. vs. Indo French Biotech Enterprise Ltd* (2000)] 23 SCL 192 (CLB).

12. The Majority Rule governs the internal management of the company. As such if any wrong is done to the company, the proper plaintiff to institute a suit is the company itself and the court would not interfere at the instance of the individual shareholders [*Foss v Harbottle*(1843) 2 Hare 461]. However, if the majority misuses its power to defraud or oppress the majority, an action can be brought by an individual member.

Three directors holding 75% of the share capital of the company used their positions as directors and obtained a contract in their own names. As it amounted to breach of duty towards the company, as called a general meeting in which a resolution was passed to the effect that the company had no interest in the contract. It was held that directors utilised the contract belonging to the company for their personal gain and it amounted to a fraud on the minority. The company could Claim profits realised by the directors[*Cook v Deeks*(1916)1AC 554].

The facts of the given case are identical to the facts specified in the above case and so it can be said that the minority shareholders will succeed.

13. The expression 'misfeasance' means grave breach of duty or abuse of power usually associated with taking undue benefit or advantage at the cost of the company. The misfeasance proceedings initiated under Section 543 against a director of a company in winding-up can be continued on his death against his heirs and legal representatives for the purpose of determining and declaring the loss or damage caused to the company

though no compulsive order may be made in those proceedings under Section 543 against the heirs and legal representatives. On conclusion of the proceedings under Section 543 a declaration of liability may be made. Such declaration partakes the character of a decree in a suit and can be enforced under Section 634 and 635. The provisions of Section 50 of CPC have to be applied when the person who is made liable dies and the liability of the legal representatives should be determined accordingly [Official liquidator vs. Pasthasarathi Sinha (1983) 53 Comp. Cases 163 (SC)].

- 14 (a)** Under Section 603, of the Companies Act, 1956, the prospectus to be issued by an existing or intended Foreign Company in India must be dated and contain the following particulars:
- (a) the instrument constituting or defining the constitution of the company;
  - (b) the enactment's or provisions under which the company was incorporated;
  - (c) the address of the place in India where the said instrument, enactments etc. translation thereof in English if they are in some other foreign language, can be inspected;
  - (d) the date on which and the country in which the company was incorporated; and
  - (e) whether there is a place of business in India and if so, the address of its principal office.

The provision contained in (a), (b) and (c) above, shall not be applicable if the prospectus is issued more than 2 years after the company had become entitled to commence business.

The prospectus of Foreign Company must contain the matters laid down in Part-I of the Schedule II and set out the report specified in Part II of the Schedule subject always to the provisions of Part-III of the Schedule

- (b)** The board may, subject to the provisions made I articles, provide financial assistance to the members of the producer company by way of-
- (a) Credit facility, to any member, in connection with the business of the producer of the company, for the period not exceeding six months.
  - (b) Loans and advances, against security specified in articles to any member, repayable within a period exceeding three months but not exceeding seven years from the date of disbursement of such loan or advance.

However, any loan or advance to any director or his relatives shall be granted only after the approval by the members in General Meeting.

- 15.** In exercise of the powers conferred by Sub-Section (1) of Section 642 and 610B read with Sections 610A and 610E of the Companies Act, 1956, the Central Government made the following rules and amended the Companies (Electronic Filing and

Authentication of Documents) Rules, 2006. These rules are called as the Companies (Electronic Filing and Authentication of Documents) Amendment Rules, 2009. In the Companies (Electronic Filing and Authentication of Documents) Rules, 2006, in rule 3, in sub-rule (1), after the proviso, the following proviso has been inserted.

Rule 3 of Companies (Electronic Filing and Authentication of Documents) Amendment Rules, 2009 –

- (1) Every e-form or application or document or declaration required to be filed or delivered under the Act and the Rules made there under, shall be filed in computer readable electronic form, in portable document format (pdf) and authenticated by a managing director, director or secretary or person specified in the act for such purpose by the use of a valid digital signature.

Provided that where the documents are required to be filed on non-judicial stamp paper, the company shall submit such documents accordingly in the physical form, in addition to their submission in electronic form.

“ Provided further that if stamp duty on such documents is paid electronically through Ministry of Corporate Affairs portal [www.mca.gov.in](http://www.mca.gov.in), in such case, the company shall not be to make physical submission of such documents, in addition to their submission in the electronic form:

Provided also that in respect of certain documents filed under the Companies Act,

1956 which are not covered for payment of stamp duty through Ministry of Corporate Affairs portal, and stamp duty payable on such documents in respective state is equal to or less than one hundred rupees, the company shall scan such stamped documents complete in all respects and shall file electronically for evidencing by the Registrar and shall not be required to submit such documents, except those which are required to be filed for compounding of offences under clause (a) of sub-section (4) of section 621A of the Companies Act, 1956, in the physical form separately:

“Provided also that the company shall retain such documents duly stamped in original for a minimum period of three years from the date of filing of such documents and shall be required to produce the same as and when the same is required for inspection and verification by the competent authority being the Collector of Stamps of respective State or Union territory or the Registrar”.

- (2) Every managing director, director or secretary or person specified in the Act for authentication of e-form, documents or application, etc., which are required to be filed or delivered under the act or rules made there under, shall obtain a digital signature certificate from the certifying authority for the purpose of such authentication and such certificate shall not be valid unless it is of Class II or Class III specification under the Information Technology Act, 2000.

16. The required resolution for the re-appointment of Whole-time Director is framed as follows:

- I. "Resolved that Shri ABC who fulfills the conditions specified in Parts I and Part II of Schedule XII to the Companies Act, 1956 be and is hereby appointed as the Whole-time Director of the company for a period of five years effective from .....and that he may be paid remuneration by way of salary, commission and perquisites in accordance with Part II of Schedule XIII of the Act.

Resolved further that in the event of loss or inadequacy of profit the salary payable to him shall be subject to the limits specified in Schedule XIII".

- II. Resolved that Shri ABC be and is hereby appointed as Whole-time Director of the company subject to the approval of the Central Government for a period of five years effective from..... and that he may be paid remuneration as follows:

- (i) Salary
- (ii) Commission
- (iii) Perquisites:

Housing, Medical reimbursement, Leave Travel Concession, Club fee Personal Accident Insurance, Gratuity, Provident Fund etc.

Resolved further that the secretary of the company be and is hereby authorised to make an application to the Central Government seeking their approval to the above appointment.

17. As per the Section 417 any money or security given by an employee to the company is not invested in the business of the company, avoiding the risk of losing the same.

Where the companies receives any money or security from any of its employees in pursuance of his contract of service with the company, the company shall keep or deposit such money or security within 15 days-

- (a) in a post office savings bank account;or
- (b) in a special account opened for this purpose in the state Bank of India or in Scheduled Bank; or
- (c) where the company itself is a Scheduled Bank of India,in a special account opened for this purpose either in itself or in the State Bank of India or in any other Scheduled Bank.

No portion of such moneys or securities shall be utilized by the company except for the purposes agreed to in the contracts of service.

18. (i) “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.

- (ii) “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 .
- (iii) “Convertible Debt Instrument” means an instrument which creates or acknowledges indebtedness and is convertible into equity shares of the issuer at a later date at or without the option of the holder of the instrument, whether constituting a charge on the assets of the issuer or not.
- (iv) “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.
19. Power of SEBI to make or amend bye-laws of recognised Stock Exchanges (Section 10, SCRA): SEBI may either on a request in writing received by it in this behalf from the governing body of a recognised Stock Exchange or on its own motion make bye-laws on matters specified in Section 9 of SCRA or amend any bye-laws made by such Stock Exchange. SEBI will have to be satisfied, after consultation with the governing body of the Stock Exchange, that it is necessary or expedient to make or amend the bye-laws and record its reasons also. The bye-laws so made or amended will have to be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the recognised Stock Exchange is situated and upon such publication, the bye-laws so made or amended shall have effect. It has also been provided that where the governing body of a recognised Stock Exchange objects to any bye-laws made or amended by SEBI on its own motion, it may within months of the publication in the Gazette, apply to SEBI for revision thereof and SEBI may, after giving an opportunity to the governing body to be heard in the matter, revise-the bye-laws so made and amended. After such revision, the same shall have to be published in the Gazette. The obligation to publish the amendments or revisions of the bye-laws in the Gazette is mandatory unless SEBI is satisfied in any case that in the interest of trade or public interest, the condition of previous publication may be dispensed with which may be ordered in writing specifying the reasons therefor.



- 20. (i) (a)** “Stock Exchange” means –
- (i) any body of individuals, whether incorporated or not, constituted before corporatisation and demutualisation under sections 4A and 4B, or
  - (ii) a body corporate incorporated under the Companies Act, 1956 whether under a scheme of corporatisation and demutualisation or otherwise, for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities.’
- (b)** “Securities” include—
- (i) Shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;
    - (ia) derivative;
    - (ib) units or any other instruments issued by any collective investment scheme to the investors in such schemes;
    - (ic) Security receipt as defined in clause(2g) under section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002.
    - (id) units or any other such instrument issued to the investors under any mutual fund scheme;
    - (ie) any certificate or instrument (by whatever name called), issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case maybe;
  - (ii) Rights or interests in securities;
- (ii)** According to Section 13A of the Securities Contracts (Regulation) Act, 1956, a Stock Exchange may establish additional trading floor with the prior approval of the Securities and Exchange Board of India in accordance with the terms and conditions stipulated by the said Board.

For the purpose of this section ‘Additional Trading Floor’ means a trading ring or trading facility offered by a recognized Stock Exchange outside its area of operation to enable the investor to buy and sell Securities through such trading floor under the regulatory frame work of that Stock Exchange.

- 21. (i)** (a) “Foreign Exchange” means foreign currency and includes:
- (i) deposits, credits and balances payable in any foreign currency,
  - (ii) drafts, travellers cheques, letters of credit or bills of exchange expressed or drawn in Indian currency but payable in any foreign currency,
  - (iii) drafts, travellers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency.
- (b) “Service” means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, medical assistance, legal assistance, chit fund, real estate, transport, processing, supply of electrical or other energy, boarding or lodging or both, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;
- (c) “Repatriate in India” means bringing into India the realised Foreign Exchange and
- (i) the selling of such Foreign Exchange to an authorised person in India in exchange for rupees, or
  - (ii) the holding of realised amount in an account with an authorised person in India to the extent notified by the Reserve Bank, and includes use of the realised amount for discharge of a debt or liability denominated in Foreign Exchange and the expression “repatriation” shall be construed accordingly.
- (d) “Capital Account Transaction” means a transaction, which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liability in India of persons resident outside India, and includes transactions referred to in sub-section (3) of Section 6.
- (ii)** Current account transactions for which drawal of foreign exchange is prohibited:
- (a) Remittance out of lottery winnings.
  - (b) Payment related to call back services of telephones.
- Current Account transactions, which requires prior approval of the government:
- (a) Remittance under technical collaboration agreements where payment of royalty exceeds 5% on local sales and 8% on exports and lump sum payment exceeds US\$ 2 Millions.

- (b) Remittance of price money/sponsorship of sports activity abroad by a person other than International, National, State level, Sport Bodies, if the amount involved exceeds US \$1 lakh.

Current Account transactions, which requires RBI approval:

- (a) Exchange facilities exceeding US \$1 lakh for person going abroad;
- (b) Exchange facilities for immigration exceeding US \$1 lakh or amount prescribed by the country of immigration.

- 22.** Section 3(1) prohibits entering into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India. Any such agreement, if made, shall be void.

The following agreements shall be deemed to be prohibited under sec 3 (1) if such agreements cause or are likely to cause an appreciable adverse effect on competition:

- (a) tie-in arrangement - includes any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods;
- (b) exclusive supply agreement - includes any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person;
- (c) exclusive distribution agreement- includes any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal or sale of the goods;
- (d) refusal to deal - includes any agreement which restricts, or is likely to restrict, by any method the persons or classes of persons to whom goods are sold or from whom goods are bought;
- (e) resale price maintenance - includes any agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.

The answers to the given problem are given here under:-

- (i) The purchaser is prohibited from dealing with goods, products, articles by whatever name called, manufactured by any person other than the seller. This clause falls under "exclusive supply agreement" and is deemed to be prohibited under sec 3(1), if it causes or likely to cause an appreciable adverse effect on competition.
- (ii) Purchaser has been directed by the seller to sell the goods manufactured by the seller at the price as imposed on the price label of the footwear, or at the

price lower than what is imposed on the price level. Agreement clearly states that prices lower than the price stipulated by the seller can be charged, the agreement does not fall under the clause “resale price maintenance” and is therefore valid.

23. A provision containing the words ‘notwithstanding’ is generally termed as ‘non obstante clause’. The provision containing the word ‘notwithstanding’ has an over-riding effect on the other provision, i.e., such provision shall prevail over the other provision. In other words, if there is any inconsistency or departure between the non obstante clause and another provision, it is the non obstante clause which will prevail. Accordingly, a non obstante clause restricts the operation and effect of all the contrary provisions.

For example, section 265 of the Companies Act, 1956 provides for appointment of directors by proportional representation. It reads as –“Notwithstanding anything contained in this Act,...”. The effect of the non obstante provision is that the appointment of directors under sec 265 is not to be affected by any other provision of the Companies act, 1956. In other words, the directors can be appointed by way of proportional representation even if such appointment would not be permissible under any other provision of the Act, e.g., Sections 255 and 256.

Where a section contains the word ‘notwithstanding’, it over-rides the other provisions as specified in the section. This can be explained as under:

Where a provision is framed as “Notwithstanding anything contained in this Act,...”, it over-rides the entire Act, e.g., Section 265 of the Companies Act, 1956.

The words ‘without prejudice’ are used in an Act as follows:

- (a) An expression containing the words ‘without prejudice to the generality of ...’ indicates that anything contained in the provision following such words is not intended to cut down the generality of the meaning of the preceding provision. For example, section (j) of FEMA reads as – “Current Account Transaction means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes, (1)...,(ii)...,(iii)...and (iv)...” Thus, transactions referred to in clauses (i) to (iv) are illustrative only and do not restrict the meaning of the ‘Current’ under ‘Current Account Transaction’; any Transactions that is not a Capital Account Transaction shall still be covered under ‘Current Account Transaction’.
- (b) An expression containing the words ‘without prejudice to the provisions of section...’ means that the expression shall not affect anything done in pursuance of the section which follows such words. For example, sec 37(2) of FEMA reads as-“Without prejudice to provisions of sub-section (1),...” Thus, section 37 (2) does not affect anything done in pursuance of sec 37 (1).

**24. (i)** Transfer of Assets, liabilities, etc. of Indian Insurance Regulatory Authority (IIRA) to Insurance Regulatory Development Authority (IRDA) (Section 13)

On any appointed day, all assets and liabilities shall stand transferred from IIRA to IRDA. Here, the accounts, documents and other papers are also included.

All contractual obligations entered by IIRA with third parties till before the appointed day shall automatically transferred to IRDA.

Similarly all debts owed to IIRA also stands transferred to IRDA.

Also, legal proceedings including suits whether instituted by or against IIRA shall stand transferred to IRDA.

**(ii)** RBI's power to control loans & advances granted by Banking Company

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:

- (i) Purpose for which loan may or may not be made
- (ii) Margin stipulation
- (iii) 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)
- (iv) 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)
- (v) 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

## 25. Obligation of Banking Companies, Financial Institutions and Intermediaries

Section 12 provides for the obligation of Banking Companies, Financial Institutions and Intermediaries of securities market. Every Banking Company, Financial Institution and Intermediary shall –

- (a) maintain a record of all transactions, the nature and value of which may be prescribed, whether such transactions comprise of a single transaction or a series of transactions integrally connected to each other, and where such series of transactions take place within a month. Such records shall be maintained for a period of ten years from the date of cessation of the transactions between the clients and the banking company or financial institution or intermediary, as the case may be.
- (b) furnish information of the above transactions to the Director within the prescribed time.
- (c) verify and maintain the records of the identity of all its clients, in the prescribed manner.

If the principal officer of a Banking Company or Financial Institution or Intermediary, has reason to believe that a single transaction or series of transactions integrally connected to each other have been valued below the prescribed value so as to defeat the provisions of this section, such officer shall furnish information in respect of such transactions to the Director within the prescribed time.

Section 13 deals with the powers of the Director. The Director may, either of his own motion or on an application made by any authority, officer or person, call for records referred to in sub-section (1) of section 12 and may make such inquiry or cause such inquiry to be made, as he thinks fit. If the Director, in the course of any inquiry, finds that a Banking Company, Financial Institution or an Intermediary or any of its officers has failed to comply with the provisions of Section 12, then, without prejudice to any other action that may be taken under any other provisions of this Act, he may, by an order, levy a fine on such Banking Company or Financial Institution or Intermediary which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure. [Section 13(2)]. The Director shall forward a copy of the order passed under sub-section (2) to every Banking Company, Financial Institution or Intermediary or person who is a party to the proceedings under that sub-section.

Section 14 gives immunity to Banking Companies, Financial Institutions and Intermediaries of Securities Market, etc., against civil proceedings for furnishing information under clause (b) of sub-section (1) of section 12.

Section 15 provides for prescribing the procedure and manner of maintaining and furnishing information. The Central Government may, in consultation with the Reserve Bank of India, prescribe the procedure and the manner of maintaining and furnishing information under Sub-Section (1) of Section 12 for the purpose of implementing the provisions of this Act.