



**J.K. SHAH**<sup>®</sup>  
**TEST SERIES**  
Evaluate Learn Succeed

**SUGGESTED SOLUTION**

CA FINAL NOV'19

SUBJECT- CORPORATE AND ECONOMIC LAWS

Test Code - **FNJ 7245**

**BRANCH - () (Date :)**

Head Office : Shraddha, 3<sup>rd</sup> Floor, Near Chinai College, Andheri (E), Mumbai – 69.

Tel : (022) 26836666

## **ANSWER-1**

### **ANSWER-A**

#### **Removal of Member of the SEBI (Section 6 of the Securities and Exchange Board of India Act, 1992)**

According to section 6 of the Securities and Exchange Board of India Act, 1992, the Central Government shall have the power to remove a member appointed to the Board, if he :

- (i) is, or at any time has been adjudicated as insolvent;
- (ii) is of unsound mind and stands so declared by a competent court;
- (iii) has been convicted of an offence which, in the opinion of the Central Government, involves a moral turpitude.
- (iv) has, in the opinion of the Central Government so abused his position as to render his continuance in office detrimental to the public interest.

Before removing a member, he will be given a reasonable opportunity of being heard in the matter.

In the present case, a group of complainants have alleged that Mr. Z, a member of the SEBI has pecuniary interest in some of the cases that came up before the Board and he misused his position and therefore, he should be removed from his office.

**(4 MARKS)**

Here, above complainants may approach the Central Government for removal of Mr. Z, a member of the SEBI and if the Central Government is of the opinion that Mr. Z has so abused his position as to render his continuation in office detrimental to the public interest, the Central Government may remove Mr. Z from his office after giving him a reasonable opportunity of being heard in the matter.

**(1 MARK)**

### **ANSWER-B**

Section 2(e) of Foreign Exchange Management Act, 1999 states that 'capital account transactions' means :

- (a) a transaction which alters the assets or liabilities, including contingent liabilities, outside India of person's resident in India.
- (b) a transaction which alters assets or liabilities in India of persons resident outside India and includes transactions referred to in section 6(3).

According to the said definition, a transaction which alters the contingent liability will be considered as capital account transaction in the case of person resident in India, but it is not so in the case of person resident outside India.

Purchase of immovable property by Mr. Hillary Benjamin in India is a capital account transaction. It has also been specifically provided in section 6(3)(i) as a capital account transaction.

Guarantee will be considered as a capital account transaction in the following cases :

- (1) Guarantee in respect of any debt, obligation or other liability incurred by a person resident in India and owed to a person resident outside India.
- (2) Guarantee in respect of any liability, debt or other obligation incurred by a person resident outside India.

**(3 MARKS)**

In this case, Mr. Hillary Benjamin, a resident outside India gives a guarantee in respect of a debt incurred by a person resident in India and owned to a person resident in India. Hence, it would appear that guarantee by Mr. Hillary Benjamin cannot be considered as a capital account transaction within the meaning of Section 2(e), particularly because it is a contingent liability.

**(1 MARK)**

All capital account transactions are prohibited unless specifically permitted. RBI is empowered to issue regulations in this regard [Section 6(3)]. Permissible capital account transactions by persons resident outside India are given in Schedule II to the Foreign Exchange Management (Permissible Capital Account Transactions) Regulation, 2000. According to the said regulations both the purchase of immovable property by Mr. Hillary Benjamin and guarantee by Mr. Hillary Benjamin are permissible.

**(1 MARK)**

## **ANSWER-2**

### **ANSWER-A**

The question can be answered with reference to Section 6 of the Securities Contract (Regulations) Act, 1956 which empowers the Central Government to call for information. Accordingly :

- (a) Duty of HEM Stock Exchange Limited to furnish periodic returns to SEBI :** Every recognized stock exchange should furnish periodical returns to SEBI in the prescribed format. These Returns contain information on current affairs of the Exchange including volume and value of transactions, short deliveries, important decisions taken by Board etc. [Section 6(1) of the Securities Contracts (Regulation) Act, 1956].
- (b) Power of SEBI to ask for the information asked as stated above, over and above the periodic returns :** SEBI may by order in writing call for information or explanation relating to affairs of an Exchange or its member. [Section 6(3)(a) of the Act]
- (c) Period for which the stock Exchange is required to maintain the books of accounts which may be inspected by SEBI :** Every Stock Exchange has to maintain books of accounts for a period of 5 years and these books may be inspected by SEBI at any point of time. [Section 6(2) of the Act]
- (d) Duty of the Stock Exchange and the persons dealing with the stock exchange with regard to the information sought for by SEBI :** Every Director, Manager, Secretary or officer of the Exchange; every member of such stock exchange; if the member of the stock exchange is a firm, every partner, manager, secretary or other officer of the firm and every other person or body of persons who has had dealings in the course of business with any of the persons mentioned above whether directly or indirectly, is bound to provide information to Equity officer or SEBI representative who are looking into the affairs of the Exchange. [Section 6(4) of the Act]

**(4\*1 = 4 MARKS)**

### **ANSWER-B**

#### **Establishment of Appellate Tribunal**

According to Section 25 of the Prevention of Money Laundering Act, 2002, the Appellate Tribunal constituted under sub – section (1) of section 12 of the Smugglers and Foreign Exchange

Manipulators (Forfeiture of Property) Act, 1976 shall be the Appellate Tribunal for hearing appeals against the orders of the Adjudicating Authority and the other authorities under this Act.

### **Appeals to Appellate Tribunal**

Section 26 deals with the right and time frame to make an appeal to the Appellate Tribunal. The Director or any person aggrieved by an order made by the Adjudicating Authority under this Act may prefer an appeal to the Appellate Tribunal.

The appeal shall be filed within a period of 45 days from the date on which a copy of the order made by the Adjudicating Authority is received and it shall be in such form and be accompanied by prescribed fees. The appeal shall be in such form and be accompanied by such fee as may be prescribed. The Appellate Tribunal may extend the period if it is satisfied that there was sufficient cause for not filing it within the period of 45 days.

The Appellate Tribunal may after giving the parties to the appeal an opportunity of being heard, pass such order as it thinks fit, confirming, modifying or setting aside the order appealed against.

### **Appeals to High Court**

The Act also provides further appeal. According to Section 42 any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within 60 days from the date of communication of the order of the Appellate Tribunal.

In the light of the provisions of the Act explained above the company is advised to prefer an appeal to Appellate Tribunal in the first instance.

**(6 MARKS)**

### **ANSWER-3**

### **ANSWER-A**

#### **Quarterly compliances – Listed Entity**

A Listed company has to comply with the following quarterly compliances under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 :

#### **1. Regulation 13(3) : Grievance Redressal Mechanism**

The listed entity shall file with the recognized stock exchange(s) on a quarterly basis, within 21 days from the end of each quarter, a statement giving the number of investor complaints pending at the beginning of the quarter, those received during the quarter, disposed of during the quarter and those remaining unresolved at the end of the quarter.

#### **2. Regulation 27(2) : Other Corporate Governance Requirements**

A listed entity shall submit quarterly compliance report on corporate governance in the format as specified by the Board from time to time to the recognized stock exchange(s), within 15 days from close of quarter.

#### **3. Regulation 31(1) : Holding of Specified Securities and Shareholding Pattern.**

A listed entity shall submit a statement showing holding of securities and shareholding pattern separately for each class of securities : -

- (a) One day prior to listing of its securities on the stock exchange (s);
- (b) On a quarterly basis, within 21 days from the end of each quarter; and

- (c) Within 10 days of any capital restructuring of the listed entity resulting in a change exceeding 2% per cent of the total paid – up share capital.

**4. Regulation 33(3) : Financial Results**

The listed entity shall submit quarterly and year – to – date standalone financial results to the stock exchange within 45 days of end of each quarter, other than the last quarter.

**5. Regulation 32 (1) : Statement of Deviation (S) Or Variation(S)**

A listed entity shall submit to the stock exchange the following statement(s) on a quarterly basis for public issue, rights issue, preferential issue etc. –

- (a) indicating deviations, if any; in the use of proceeds from the objects stated in the offer document or explanatory statement to the notice for the general meeting, as applicable;
- (b) indicating category wise variation (capital expenditure, sales and marketing, working capital etc.) between projected utilization of funds made by it in its offer document or explanatory statement to the notice for the general meeting, as applicable and the actual utilization of funds.

**(6 MARKS)**

**ANSWER-B**

"Default" means:

- (a) non-payment of any debt or any other amount payable by the borrower to any secured creditor consequent upon which the account of such borrower is classified as non- performing asset in the books of account of the secured creditor; or
- (b) non-payment of any debt or any other amount payable by the borrower with respect to debt securities after notice of ninety days demanding payment of dues served upon such borrower by the debenture trustee or any other authority in whose favour security interest is created for the benefit of holders of such debt securities. **[Section 2(j)]**

**Conditions for calling default under this act is:**

- debt or any other amount- The amount due should be in the nature of debt.
- Secured creditor- An unsecured creditor doesn't have recourse to this act
- Classification of NPA- A stressed asset which is yet to be classified as NPA cannot be resolved through this act.

For non-payment of debenture or bonds to be called default, a notice of 90 days is a pre-requisite by the debenture trustee or beneficiary of the security.

**(4 MARKS)**

**ANSWER-4**

**ANSWER-A**

The term "current account transaction" is defined in section 2(j) of Foreign Exchange Management Act, 1999. It means a transaction other than a capital account transaction and includes:

- (i) payments due in connection with foreign trade, other current business, services, and short – term banking and credit facilities in the ordinary course of business.

- (ii) payments due as interest on loans and as net income from investments.
- (iii) remittances for living expenses of parents, spouse and children residing abroad and
- (iv) expenses in connection with foreign travel education and medical care of parents, spouse and children.

According to Section 5 of FEMA, 1999 any person may sell or draw foreign exchange to or from an authorized person if such sale or drawal is a current account transaction. Provided that the Central Government may in public interest and in consultation with the Reserve Bank, impose such reasonable restrictions for current account transactions as may be prescribed.

Further, any person may sell or draw foreign exchange to or from an authorized person for a capital account transaction subject to the provisions of section 6(2).

**(5 MARKS)**

### **ANSWER-B**

As per the Prevention of Money Laundering Act, 2002, whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money laundering (Section 3).

“Proceeds of crime” means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property [Section 2(1)(u)].

Every Scheduled Offence is a Predicate Offence. The occurrence of the scheduled Offence is a pre requisite for initiating investigation into the offence of money laundering.

In the given case, Mr. X assigned Ali to deliver counterfeit currency notes to be given to his friends in Hongkong, which is an offence falling within the purview of scheduled offence in Part A of the PMLA, 2002 under section 489B of the IPC. This section deals with the using as genuine, forged or counterfeit currency-notes or bank-notes. According to the section whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be liable under the Prevention of Money Laundering Act.

**(4 MARKS)**

Hence, Ali, Mr. X and his friends in Hongkong, all are said to be liable under the Prevention of Money Laundering Act.

**(1 MARK)**

### **ANSWER-5**

**(10\*1 = 10 MARKS)**

1. C
2. D
3. B
4. D
5. B
6. B
7. A
8. A
9. D
10. C