



FINAL – November 2017

LAW

Test Code –P26

Branch (MULTIPLE) (Date : 02.07.2017)

(50 Marks)

Note: All questions are compulsory.

Question 1

Securities and Exchange Board of India (SEBI) was established for regulating the various aspects of stock market. One of its functions is to register and regulate the stock brokers. In the light of this, Mr. Sponsor is advised that the complaint against the erring stock broker may be submitted to SEBI. **(1 mark)**

The grounds on which or the defaults for which complaints may be made to SEBI are as follows:

- (a) Any failure on the part of the stock broker to issue contract notes in the form and manner specified by the stock exchange of which the stock broker is a member. **(1 mark)**
- (b) Any failure to deliver any security or any failure to make payment of the amount due to the investor in the manner within the period specified in the regulations. **(2 mark)**
- (c) Any collection of charges by way of brokerage which is in excess of the brokerage specified in the regulations. **(1 mark)**

Question 2

Residential Status

According to section 2(v) of the Foreign Exchange Management Act, 1999, 'Person resident in India' means a person residing in India for more than 182 days during the course of preceding financial year [Section 2(v)(i)]. **(1 Mark)**

However, it does not include a person who has gone out of India or who stays outside India for employment outside India or for any other purpose in such circumstances as would indicate his intention to stay outside India for an uncertain period. **(1 Mark)**

Generally, a student goes out of India for a certain period. In this case, Mr. Suri who resided in India during the financial year 2014-15 left on 15.7.2015 for Switzerland for pursuing higher studies for 2 years, he will be resident for 2015-16, as he has gone to stay outside India for a 'certain period' (If he goes abroad with intention to stay outside India for an 'uncertain period' he will not be resident with effect from 15-7-2015) **(2 Marks)**

Mr. Suri will not be resident during the Financial Year 2016-2017 as he did not stay in India during the relevant financial year i.e. 2015-16. **(1 Mark)**

Question 3

Removal of Member of Competition Commission (Section 11 of the Competition Act, 2002):

Provisions of section 11(2) of the Competition Act, 2002 empowers the Central Government to remove, by an order, a member of the Competition Commission of India from his office if such member has acquired such financial interest as is likely to affect prejudicially his functions as a Member of the Competition Commission. **(2 Marks)**

However, provisions of section 11(3) of the said Act put some restrictions on such powers of the Central Government. According to this section, in case as stated in the question, the Central Government wants

to remove a member of the Competition Commission from his office, it has to make a reference to the Supreme Court. **(1 Mark)**

The Supreme Court shall hold an enquiry in accordance with the procedure formulated by it and then report that the member in question ought to be removed from his office. **(1 Mark)**

Thus, the Central Government can remove a member of Competition Commission from his office by following the above procedure. So, contention of X is incorrect with respect to his removal by the Central Government. **(1 Mark)**

Question 4

Power of RBI to remove director:

Under section 36AA of the Banking Regulation Act, 1949, RBI can terminate any Chairman, Director, Chief Executive, other officials or any employee of the bank where it considers desirable to do so particularly when RBI is of the opinion that conduct of such persons is detrimental to the interest of the depositors or for securing proper management of the banking company. **(1 Mark)**

Before such termination concerned person should be given opportunity to be heard of. Such terminated officials can make appeal to the Central Government within 30 days from the date of communication of such termination order. **(1 Mark)**

The decision of the Central Government cannot be called into question. In case an order is issued pursuant to this section the concerned person shall cease to hold his office for a period of not exceeding 5 years as may be specified in the order. **(1 Mark)**

Contravention of the above provision shall be punishable with a fine, which may extend to ` 250 per day. **(1 Mark)**

Any such order shall be valid for a period not exceeding three years or such further periods of not exceeding three years at a time as RBI may specify. **(1 Mark)**

Question 5

Sections 43 to 47 deal with provisions relating to Special Courts. Section 43 empowers the Central Government (in consultation with the Chief Justice of the High Court) for trial of offence of money laundering, to notify one or more Courts of Sessions as Special Court or Special Courts for such area or areas or for such cases or class or group of cases as may be specified in the notification to this effect. **(2 Marks)**

Section 44 clearly provides for the offences triable by Special Courts. It overrides the provisions of the Code of Criminal Procedure, 1973 and provides that–

- (1) the scheduled offence and the offence punishable under section 4 shall be triable only by the Special Court constituted for the area in which the offence has been committed; **(2 Marks)**
- (2) a Special Court may, upon a complaint made by an authority authorized in this behalf under this Act take cognizance of the offence for which the accused is committed to it for trial. The requirement of police report of the facts which constitute an offence under this Act is no more applicable. **(2 Marks)**

Question 6

Power to issue directions [Section 12A of the Securities Contract (Regulation) Act, 1956]: Where the Securities and Exchange Board of India is satisfied after an inquiry, that it is necessary –

- (a) in the interest of investors, or orderly development of securities market; or
- (b) to prevent the affairs of any recognised stock exchange, or, clearing corporation, or such other agency or person, providing trading or clearing or settlement facility in respect of securities, being conducted in a manner detrimental to the interests of

investors or securities market; or

- (c) to secure the proper management of any such stock exchange or clearing corporation or agency or person, referred to in clause (b),

(2 Marks)

It may issue such directions, -

1. to any stock exchange or clearing corporation or agency or person referred to in clause (b) or any person or class of persons associated with the securities market; or
2. to any company whose securities are listed or proposed to be listed in a recognised stock exchange, as may be appropriate in the interests of investors in securities and the securities market. Hence, accordingly SEBI may issue such direction to RSE Stock Exchange Ltd. **(1 Mark)**

As per the Explanation given in the section, it is hereby declared that power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made there under, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.

So, accordingly the directions can be given to an individual who had made some profit in any transaction in contravention of any provision of the Securities Contracts (Regulation) Act, 1956.

(2 marks)

Question 7

As per Schedule III of the Foreign Exchange Management (Current Account Transactions) Rules, 2000, read with section 5 of the Foreign Exchange Management Act, 1999 donations exceeding one per cent of their foreign exchange earnings during the previous three financial years or USD 5,000,000, whichever is less, can be remitted by persons other than individuals for creation of Chairs in reputed educational institutes with the prior approval of the Reserve Bank of India.

(3 marks)

Considering the above provision-

- a. In the first case, "chair" creation for the department of computer science in reputed university in the U.S. is permissible. **(1 Mark)**
- b. Maximum amount that can be donated for such chair will be one per cent of their foreign exchange earnings during the previous three financial years or USD 5,000,000, whichever is less without prior approval of the Reserve Bank of India. **(1 Mark)**
- c. In case where donations exceeds one per cent of their foreign exchange earnings during the previous three financial years or USD 5,000,000, it shall require prior approval of Reserve Bank of India. **(1 Mark)**

Question 8

Bonus Issue [Chapter IX of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009]

Chapter IX of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 contains the regulations (Regulations 92 to 95) for issue of bonus shares. Loyal Ltd. can issue bonus shares in the ratio of 1:1 as follows:

1. **Authorization to issue the Bonus shares:** The Articles of Loyal Ltd. must authorize it to issue the bonus shares and capitalization of reserve. If there is no provision in the Articles authorizing the company, firstly, the Articles shall be amended by passing a special resolution. **(2 marks)**
2. **Revision of paid up share capital:** Steps for determining whether any increase in authorised share capital is required:
 - (a) Paid up share capital as on 31st March, 2016: ` 150 crores.

- (b) Paid up capital (after conversion of ` 100 crores fully convertible debentures, assuming that these debentures shall be converted into share capital of ` 100 crores) ` 250 crores (150+100).
- (c) Proposed bonus issue - 1 share for every 1 share held.
- (d) Post bonus issue capital: ` 500 crores (250+250).

Since the Authorised share capital of the company is only ` 400 crores, it has to take steps to increase the amount to ` 500 crores or beyond by complying with the provisions laid down in the Companies Act. **.(2 marks)**

- 3. **Sources of funds:** Reserves and surplus (free reserves built out of the genuine profits can be used for issue of bonus issue): ` 750 Crores. Since the source of issue of bonus shares (` 750 crores) is sufficient to issue bonus shares (` 250 crores), the proposed issue can be made. **.(2 marks)**
- 4. **Other Restriction:** Other restrictions for issue of Bonus shares are as under:
 - (a) A resolution shall be passed by the Board in a duly convened Board meeting.
 - (b) The bonus issue shall be made within 15 days of passing the Board resolution.
 - (c) The bonus issue can be made if there is no default in payment of interest or principal in respect of fixed deposits and interest on existing debentures or principal on redemption thereof; and payment of statutory dues of the employees such as contribution to provident fund, gratuity, bonus, etc.**(2 marks)**

Question 9

In accordance with the provisions of the Banking Regulation Act, 1949 as contained in section 17, every banking company incorporated in India must create a reserve fund and transfer a sum equal to not less than 20% of its net profits. **(1 mark)**

However, Central Government is empowered to exempt from this requirement on the recommendation of the Reserve Bank of India. Such exemption will be allowed only:

- 1 when the amount in the reserve fund and the share premium account are equal to the paid-up share capital of the banking company. **(1 mark)**
- 2. When the Central Government feels that its paid-up share capital and reserves are adequate to safeguard the interest of the depositors. **(1 mark)**

If the banking company appropriates any sum from the Reserve Fund or the Share Premium account, it must be reported to Reserve Bank of India within 21 days explaining the circumstances leading to such appropriation. **(1 mark)**

Therefore, applying the above provisions, contention of shareholders shall be tenable since the 15% of transfer of profits to Reserve Fund is lower than statutory limits, as provided in the Act. **(1 mark)**
