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**FINAL MAY 2014 EXAM**

**CORPORATE AND ALLIED LAW**

**Prelims (Test Code - F N J 3 0 4)**

(Date : 06 April, 2014)

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## Answer 1

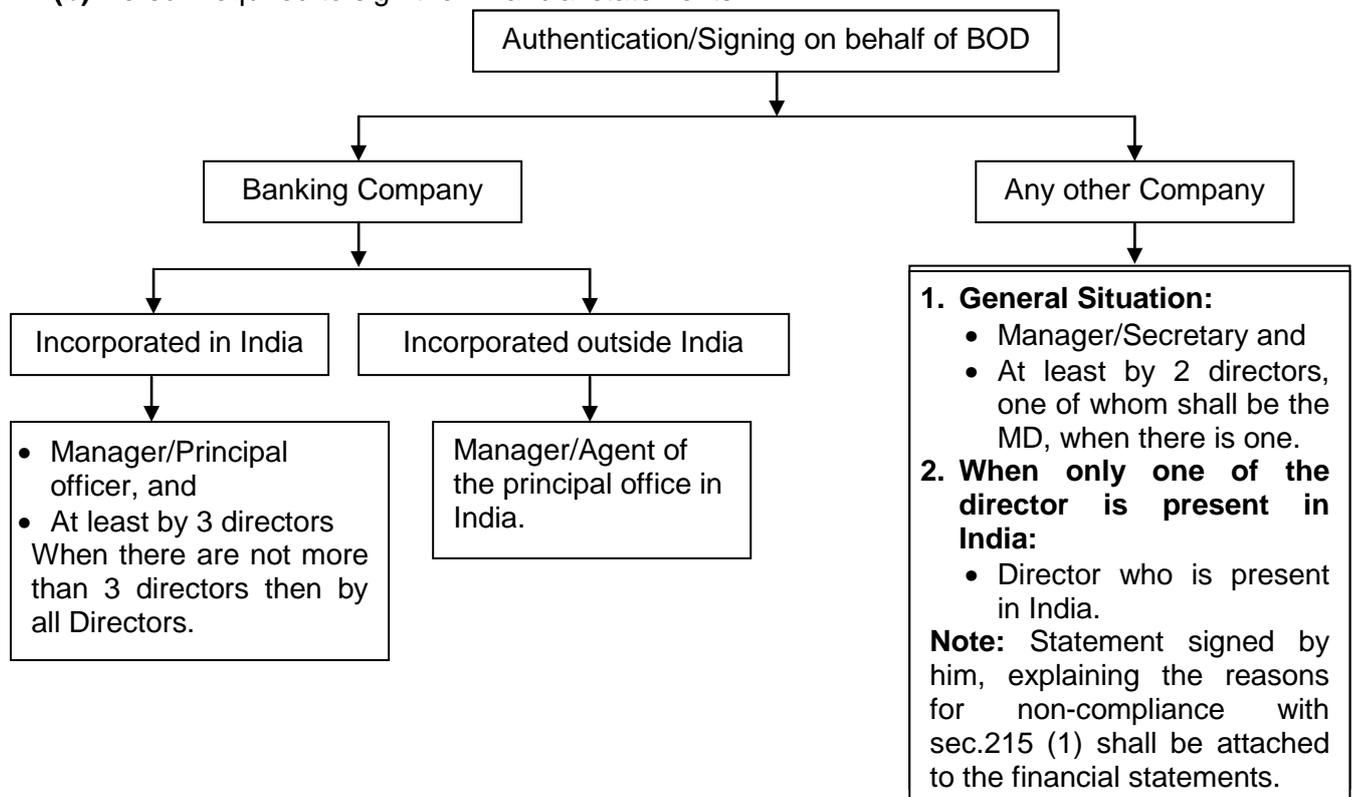
### (a) Provision:

**Borrowing on Promissory Note:** Borrowing permissible under the AOA can also be made on Promissory Note and is within the powers of the Directors.

**Borrowing by MD:** If the MD, vide a Board Resolution, is vested with full powers of the management of the affairs of the Company and is authorized to sign all the papers of the Company, he would have full powers to borrow money on a promissory note even without a Board resolution u/s 292. (**P. Rang swami Reddiar vs. R.Krishnaswami Reddiar 43 CC 232**)

1. The Company can borrow by way of Promissory Note also.
2. Directors can delegate, the power to borrow moneys otherwise than on Debentures, to the Principal Officer of the Branch Office (i.e. Branch Head), if any. However, the resolution delegating the power should specify the total amount outstanding at any one time up to which the moneys may be borrowed by the delegate.
3. If the MD, vide a Board Resolution, is vested with full powers of the management of the affairs of the Company and is authorized to sign, all the papers of the Company, he would have full powers to borrow money on a Promissory Note even without a Board Resolution u/s 292.

### (b) Person required to sign the Financial statements:



### Conclusion:

Authentication of Financial Statements by A & B (i.e. without being signed by Secretary and Managing Director) does not satisfy Sec.215 requirements. In such case, the Company and every officer in default shall be punishable with fine up to ₹ 5,000 [Sec. 218].

### (c) Provision:

Under section 399(1)(a) of the Companies Act, 1956, in the case of a company having share capital, the following member(s) have the right to apply to the Company Law Board under section 397 or 398:

1. Not less than 100 members of the company or not less than one-tenth of the total number of members, whichever is less; or
2. Any member or members holding not less than one-tenth of the issued share capital of the company provided the applicant(s) have paid all the calls and other sums due on the shares.

**Conclusion:**

In the given case, since there are eight shareholders. As per the condition (a) above, 10% of 8 i.e. 1 satisfies the condition. Therefore a single member can present a petition to the Company Law Board (CLB), regardless of the fact that he holds less than one tenth of the company's share capital.

- (d) The Central Government by virtue of powers as conferred upon it under Section 5 of the Securities Contracts (Regulation) Act, 1956, may withdraw the recognition after serving due notice on the governing Board of the Stock Exchange. Withdrawal however will not affect the validity of contracts entered into before the date of withdrawal of notification (sub-section 1). Sub-section (2) provides that where the recognised stock exchange has not been corporatized or demutualised or it fails to submit the scheme referred to in sub-section (1) of Section 4B within the specified time therefore or the scheme has been rejected by the Securities Exchange Board of India under sub-section (5) of section 4B, the recognition granted to such stock exchange under Section 4, shall, notwithstanding anything to the contrary contained in this Act, stand withdrawn and the Central Government shall publish by notification in the Official Gazette, such withdrawal of recognition. Provided that no such withdrawal shall affect the validity of any contract entered into or made before the date of the notification, and the Securities Exchange Board of India may, after consultation with the stock exchange, make such provisions as it deems fit in the order rejecting the scheme published in the Official Gazette under sub-section (5) of Section 4B.

**Answer 2**

(a)

**1. Appointment of MD who is more than 70 years of age:**

**Principle:** A Company can appoint a managerial person who has attained the age of 70 years, without approval of the Central Government, provided his appointment is approved by special resolution.

**Conclusion:** The Company can appoint a MD who is more than 70 years of age, by passing a special resolution in a general meeting.

**2. Payment of Commission at 4% of Net Profits p.a. to Ordinary Directors:**

**Principle:** Ordinary Directors may be paid Commission, if the Company by special resolution authorizes such payment, not exceeding 1% of Net Profit, if the Company has a MD/WTD/Manager, or up to 3% of Net Profits in any other case. [Sec.309 (4)(b)] Increase above the 1% / 3% limits require approval of Central Government also.

**Conclusion:** Payment of Commission at 4% of Net Profits p.a. to Ordinary Directors requires Central Government approval.

**3. Payment of remuneration to Ordinary Director for rendering professional services**

**Principle:** Under Proviso to Sec.309 (1), Remuneration paid for "other services" by Directors can be excluded from "Managerial Remuneration", if -

(a) The services rendered are of a professional nature, and

(b) In the opinion of the Central Government, the Director possesses the requisite qualifications for the practice of the profession.

**Conclusion:** In this case, approval of the Central Government is required for remuneration to Ordinary Director for rendering professional services.

**4. Payment of remuneration of ₹ 70,000 p.m. to WTD, if Company is running in loss and having an Effective Capital of ₹ 95 Lakhs.**

**Principle:** In case of a loss making Company, with Effective Capital of ₹ 95 Lakhs, the maximum remuneration payable without approval of Central Government is -

(a) ₹ 75,000 p.m. (without Special Resolution by Shareholders), and

(b) ₹ 1,50,000 p.m. (if approved by Special Resolution of Shareholders).

The above is subject to compliance with other conditions specified in Schedule XIII.

**Conclusion:** Payment of remuneration of ₹ 70,000 p.m. to WTD is within the limits prescribed in Schedule XIII. So, the payment is in order.

**(b) Appointment of a partner of the company's auditors as a director:**

**Provision:**

Problem as asked in the question is based on the provisions of Companies Act, 1956 as contained in Section 2(30) read with Section 226(3)(b) and (c). Accordingly, Mr. Fame is appointed as a director of the company 'Fame and Fame' cannot be reappointed as company's auditors.

It is so because a director is an officer of the company within the meaning of section 2(30) of the Companies Act, 1956 and the audit firm becomes disqualified under section 226(3) (b) and (c) even if any of its partner is also an officer of the company. It is immaterial that the audit of the company is being looked after by another partner of the firm

**Conclusion:**

Therefore, if Mr. Fame is appointed as a director of the company, 'Fame and Fame' cannot be reappointed as company's auditors.

**(c) Probable change in composition of BOD:** If the Tribunal is of the opinion that change in the composition of BOD of the company is likely to take place, and that any such change would be prejudicial to the public interest, the Tribunal may, by order, direct that –

**If transfer of shares has already taken place:**

1. Voting Rights in respect of those shares shall not be exercisable for a specified period.
2. No resolution passed or action taken to effect a change in the composition of the BOD before the date of the order shall have effect unless confirmed by the Tribunal.

**If transfer of shares is likely to take place:**

Any transfer of shares in the company during the period specified in the order, shall be void.

**Conclusion:** Tribunal can declare the transfer void/may restrict the voting rights.

**Answer 3**

**(a) Issue 1:** The Court may refuse to grant winding-up order. Suspension of business for a whole year is a ground u/s 433(c) seeking winding-up by the court but the power of the Court in this regard is discretionary. The Court shall refuse winding-up on this ground if the intention of the company not to resume its business is absent. Thus, in the given case, winding-up order shall not be issued. **(Murlidhar v. Bengal Steamship Co. Ltd)**

**Issue 2:** Where the company fails to resume its operations for 5 years and prospects also seem gloomy, the Court may order the winding-up of the Company. **(Rupa Bharati Ltd vs Registrar of Companies).**

**(b) Issue 1 - Time limit for holding AGM:**

Particulars	First AGM	Subsequent AGM
1. Time limit	Within 90 days from the date of its incorporation.	One AGM each year, such that the time interval between 2 AGMs is not more than 15 months.
2. Time extension by ROC	Not possible	Possible only for special reasons, by a period not exceeding 3 months.
3. Matters for consideration	<ul style="list-style-type: none"><li>• Adoption of Articles</li><li>• Election of Directors</li><li>• Other matters, as decided by BOD.</li></ul>	Election of Directors Other matters, as decided by BOD

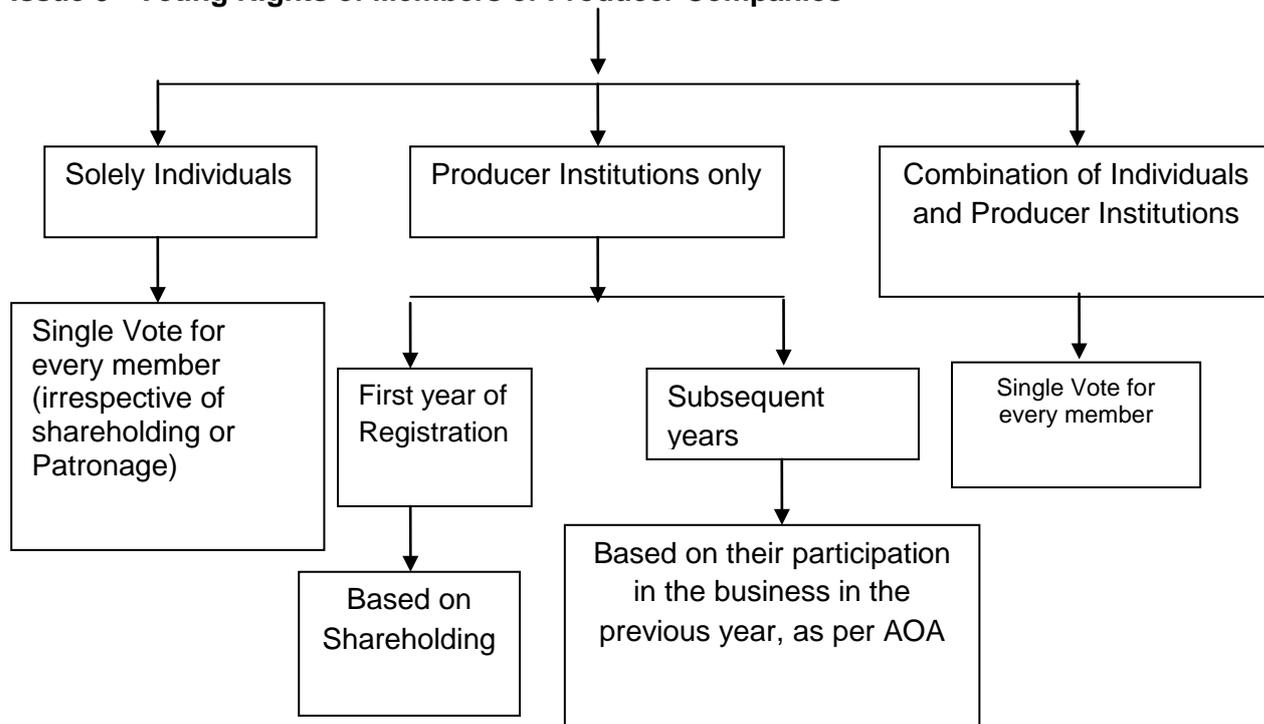
**Conclusion:** 90 days from date of Incorporation (i.e. within 30 Nov 2012)

**Issue 2 - Quorum:**

1. Unless the AOA provide for a larger number, 1/4<sup>th</sup> of the total number of Members of the Producer Company shall be the quorum for its AGM.
2. Where a Producer Company is formed by Producer Institutions, they shall be represented in the General Body through the Chairman or the Chief Executive. A Producer institution that has committed defaults u/s 581Q shall not be represented.

**Conclusion:** 1/4<sup>th</sup> of the total number of Members. (i.e. 1/4<sup>th</sup> of 220 = 55 Members)

### Issue 3 - Voting Rights of Members of Producer Companies



**Note:** A producer Company may, if so authorised by its AOA, restrict the voting rights to Active Members, in any special or general meeting.

**Conclusion:** Single Vote for every Member, since the Membership consists of combination of Individuals and Producer Institutions.

### Issue 4 – Surrender of shares:

1. Situation	Where the BOD of a Producer Company is satisfied that – Any Member has ceased to be a Primary Producer, or Any Member has failed to retain his qualification to be a member as specified in the Articles.
2. BOD's Power	BOD shall direct the surrender of shares together with special rights, if any, to the Producer company, at par value or such other value as the BOD may determine.
3. Procedure	The member must be served with a prior written notice and given an opportunity of being heard, before the direction for surrender of shares is given by BOD.

**Note:** Surrender is also applicable if the Nominee of a deceased member is not a producer. However, no prior notice/ hearing opportunity need be given in such case.

**Conclusion:** Yes, it is possible to remove a member under specified conditions.

### (c) Maximum Compensation:

- Maximum Compensation for loss of office payable by a company to its SSA shall be the remuneration which he would have earned if he had been in office for – (i) the unexpired residue of his term, or (ii) 3 years, whichever is shorter.
- The remuneration shall be calculated on the basis of the average remuneration actually earned by him during a period of 3 years immediately preceding the date on which his office ceased or was terminated, or where he held his office for a lesser period than 3 years during such period.

**Step – 1 :-** Average Remuneration received during preceding 3 years =  $(₹ 4,41,000 + 6,32,000 + 7,45,000) \div 3 = ₹ 6,06,000$

**Step – 2:-** Maximum Compensation payable = Average Remuneration  $\times$  Unexpired period of tenure –  $₹ 6,06,000 \times 2 \text{ years} = ₹ 12,12,000$

**Step – 3:-** Ram will not be eligible for compensation, since he refuses to act as the SSA of the amalgamated Company.

**Answer 4**

(a)

**(i) Provision:**

**Approval of scheme at the Meeting [Sec.391(2)]:** at the meeting, the scheme of compromise/arrangement shall be approved by a majority in number representing  $\frac{3}{4}$ <sup>th</sup> in value of creditors/members, or class of Creditors / **Members**, present and voting, either in person or by proxy (where proxies are allowed under Rules made u/s 643).

**Issue 1:** Scheme shall be approved by a majority in number representing  $\frac{3}{4}$ <sup>th</sup> in value. Number of Members attended and voted = 310 Members holding 12,40,000 Shares. Number of Members voted in favor of the Scheme = 160 (Hence, majority approved). Number of Shares held by above members = 10,00,000 (exceeds  $\frac{3}{4}$ <sup>th</sup>). Thus, the Scheme is approved by the requisite majority.

**Issue 2:** Yes, The scheme requires approval from Preference Shareholders also.

**(ii) Provision:**

**According to Sec. 27A:-**

**Transferor's Right:** The holder of any security being units or other instrument issued by a Collective Investment Scheme whose name appears in the books of the Collective Investment Scheme shall be entitled to receive and retain any dividend declared by scheme. The holder shall have such right notwithstanding that the said security has already been transferred by him for consideration.

**Transferee's Right:** However, if the transferee who claims the dividend / income from the transferor, has lodged the security and all other documents required for making the transfer of security within 15 days of the date on which the dividend / income became due, the holder (Transferor) shall have no right to retain such dividend / income.

**Analysis and Conclusion:**

**Lodging after 1 month:** The holder of securities (i.e. D, the Transferor) has the right to receive or retain the income on these securities for the financial year ended 31<sup>st</sup> March, since the instrument for transfer was lodged 1 month after the date on which the income became due. [Statutory Time Limit for lodging = 15 days.]

**Lodging after 14 days:** In this case, the holder (i.e. D, the Transferor) cannot receive and retain the income, since the instruments for transfer was lodged with the Company within the statutory period of 15 days by the Transferee.

(b)

**1. Analysis:**

<b>Default by ABC Ltd</b>	<b>Effect u/s 274(1)(g)</b>	<b>Conclusion</b>
Failure to file annual accounts for the year ended 31.03.2012	Failure is for 1 year only, and in respect of Annual Accounts only.	Disqualification is not applicable.
Failure to pay interest on loan taken from public financial institutions from 01.01.2012	Default is in respect of payment of interest on loan (not on Deposits from Financial Institutions)	Disqualification is not applicable.
Failure to repay matured deposits from 01.04.2012.	Failure to repay matured deposits for a period of 1 year or more attracts disqualification. Here default continues for more than 1 year.(i.e. from 01.04.2012 to 01.06.2013 )	Disqualification is attracted.

**2. Conclusion:**

- (i)** Since disqualification u/s 274(1)(g) is attracted, Ram cannot give the declaration sought by MN Ltd for Additional Directorship of MN Ltd.
- (ii)** Disqualification u/s 274(1)(g) is in respect of appointment in any other Public Company, it does not affect the existing appointments. Hence, he can continue as director in XYZ

Ltd and PQR Ltd. However, he cannot seek re-appointment when he retires by rotation, till the expiry of 5 years from the date of default.

**3. Effect of Registration from ABC Ltd.(i.e. Defaulting Company):**

- (i) If Ram has resigned from his office on 31.12.2012, he does not hold office on the date when the default becomes effective, i.e. 1.4.2013[1 year from the date of default].
- (ii) So Ram will not be subject to disqualification u/s 274(1)(g), and he can give the declaration as required by MN Ltd.
- (iii) He can also seek re-appointment in XYZ Ltd and PQR Ltd.

**Answer 5**

**(a)**

**1. Powers to collect information:**

The central Government may, by an order notified in Official Gazette, require – (a) companies generally, or (b) any class of companies, or (c) any company, to furnish such information or statistics with regard to their or its constitution or working, and within a specified time.

**Note:** Where a body corporate incorporated outside India and having established an office within India, carries on business in India, all references to a company u/s 615 shall be deemed to include references to the Body Corporate in relation to **business in India** only.

**2. Date:**

The date of publication of the order in the official Gazette shall be deemed to be the date on which the demand for information or statistics is made on such company (ies).

**3. Notice:**

Such order shall be served on the company. It may also be addressed to any person who is, or has at any time been an Officer or Employee of the company. However, such person shall not be punishable for contravention, unless the court is satisfied that he was in a position to comply with the order and made wilful default in doing so.

**4. Production of Books:**

For satisfying itself that any information or statistic furnished by a company u/s 615 is correct and complete, the central government may require such company –

- (i) To produce such records or documents in its possession or under its control for **inspection**, or
- (ii) To furnish such **further information** as may be specified.

**5. Inquiry:**

The Central Government may also, by order, direct an inquiry to be made for –

- (i) Obtaining any information or statistics which a Company has failed to furnish u/s 615, or
- (ii) Satisfying itself that any information or statistics furnished by a company u/s 615 is correct and complete, and if such information or statistics is incorrect or incomplete, for the purpose of obtaining such information or statistics as may be necessary to make the information to statistics furnished correct and complete.

**6. Contravention:**

Failure to comply with Sec.615 requirements, or knowingly furnishing any information or statistics which is incorrect or incomplete in any material respect, renders the company and Officer in default, liable for imprisonment up to 3 months, and / or fine up to ₹10,000.

**(b)**

**1. Agreement[Sec.2(b)]:** “Agreement” includes any arrangement, or understanding, or action in concert,

- (i) Whether or not, such arrangement, understanding or action is formal or in writing, or
- (ii) Whether or not, such arrangement, understanding or action is intended to be enforceable by legal proceedings.

**2. Analysis:** The understanding reached by the cement Manufacturers by the Cement Manufacturers to control the price of cement will be an “agreement” within the meaning of Sec. 2(b) even though the understanding is not in writing and it is not intended to be enforceable by legal proceedings.

**3. Horizontal Anti-competitive Agreements [Sec.3(3)]:** Any agreement entered into between Enterprises or Association of Enterprises, or person or Association of persons, or between any person and Enterprise or practice carried on, or decision taken by, any Association of Enterprises or Association of persons, including Cartels, engaged in identical or similar trade of goods or provision of services which –

- (i) Directly or indirectly determines purchase or sale prices,
  - (ii) Limits or controls production, supply, markets, technical development, investment or provision of services,
  - (iii) Shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way,
  - (iv) Directly or indirectly results in **bid rigging** or collusive bidding,
- Shall be **presumed to have an appreciable adverse effect on competition.**

**Note:**

1. Exception: An agreement entered into by way of joint ventures and which increases the efficiency in production, supply, distribution, storage, acquisition, or control of goods or provision of services, shall not be presumed anti competitive.
2. **“Bid rigging”** means any agreement, between enterprises or person engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process of bidding.

**Conclusion:**

1. **Agreement:** The above arrangement between Cement Producers is an agreement u/s 2(b) of the Competition Act.
2. **Effect:** The horizontal anti-competitive agreement u/s 3(3) of the Act, which prevails in the given case, is presumed to be anti-competitive and hence void.

**Answer 6**

**(a) Provision:**

Acquisition of immovable property situated outside India and foreign securities by a person resident in India are regulated by Sections 4 and 6 of the Foreign Exchange Management Act, 1999.

Section 4 of FEMA 1999 provides that no person resident in India shall acquire, hold, own, possess or transfer any foreign exchange, foreign security of any immovable property situated outside India, except as provided in the Act. Section 6(4) provides that a person resident in India may hold, own, transfer or invest in foreign currency foreign security or any immovable property situated outside India if such currency security or property was inherited from a person who was resident outside India. Further, RBI is empowered to frame regulations relating to capital account transactions in consultation with the Central Government (Section 6(2)) and Section 6(3). Accordingly RBI has issued certain Regulations. Two regulations are relevant in this case.

In terms of Regulations 5(1) (a) of Foreign Exchange Management (Acquisition and Transfer of Immovable Property outside India) Regulations 2000, a person resident in India may acquire immovable property outside India by way of gift or inheritance from a person who was resident outside India without approval of RBI.

Similarly, in terms of Regulations 19(1) (iii) of Foreign Exchange Management (Transfer or issue of any Foreign Securities) Regulation 2000 a person resident in India being an individual may acquire foreign securities by way of inheritance from a person whether resident in or outside India.

**Conclusion:**

In the light of the provisions of FEMA and Regulations explained above there are no restrictions with regard to inheritance of either immovable property situated outside India or foreign security. Such inheritances do not require approval of RBI.

**(b) Provision:**

**According to Sec.17:-**

1. **Creation:** Every Banking Company incorporated in India shall create a Reserve Fund.
2. **Transfer:** Not less than 20% of profits as disclosed in the Profit & Loss A/c before any dividend is declared shall be transferred to Reserve Fund every year.
3. **Exemption:** Based on RBI's recommendation, the Central Government may grant exemption to Banking Company from the requirement of Sec. 17 for a specified period. However, the exemption will be granted only if -
  - (i) Having regard to the adequacy of the Paid up Capital and Reserves of Banking Company in relation to its Deposit Liabilities, the Central Govt is satisfied that the exemption can be granted, and

(ii) Aggregate of Amount of Reserve Fund and Share Premium A/c is not less than Paid up Capital of the Banking Company.

**Appropriation:**

1. Where Banking Company appropriates any sum from the Reserve Fund or Share Premium A/c, it shall report the fact to RBI explaining the circumstances relating to appropriation within 21 days from the date of appropriation.
2. RBI may, at its discretion, extend the period beyond 21 days or condone the delay.

**Conclusion:**

**Case A:** Minimum Amount to be transferred to the Reserve Fund is 20% of Profits. So, the objection made by the Shareholders is valid. However, the action of the Board shall be valid if the Banking Company has obtained in writing, an order of the Central Government, waiving compliance with the requirements of transfer to the Reserve Fund.

**Case B:** In case the Board has transferred to the Reserves 30% of Net Profits, it is valid since the requirement of transfer to Reserves (20% of Profits) is the minimum requirement given under the Act. The Board is free to transfer to Reserve, anything over and above 20% of Net Profits.

**Answer 7**

**(a) Provision:**

“Suspicious Transaction” means a transaction including an attempted transaction, whether or not made in cash which, to a person acting in good faith –

1. Gives rise to a reasonable ground of suspicion that it may involve proceeds of an offence specified in the Schedule to the Act, regardless of the value involved, or
2. Appears to be made in circumstances of unusual or unjustified complexity, or
3. Appears to have no economic rationale or bonafide purpose, or
4. Gives rise to a reasonable ground of suspicion that it may involve financing of the activities relating to terrorism.

Transaction involving financing of the activities relating to terrorism includes transaction involving funds suspected to be linked or related to, or to be used for terrorism, terrorist acts or by a terrorist, terrorist organisation or those who finance or are attempting to finance terrorism.

**Examples:** Broad categories of reason for suspicion and examples of suspicious transactions for a banking company are indicated as under –

<b>Nature</b>	<b>Suspicious Transactions</b>
Identity of Client	<ol style="list-style-type: none"> <li>1. False identification documents</li> <li>2. Identification documents which could not be verified within reasonable time</li> <li>3. Accounts opened with names very close to other established business entities</li> </ol>
Background of Client	Suspicious background or links with known criminals
Multiple Accounts	<ol style="list-style-type: none"> <li>1. Large number of accounts having a common account holder introducer or authorized signatory with no rationale</li> <li>2. Unexplained transfers between multiple accounts with no rationale</li> </ol>
Activity in accounts	<ol style="list-style-type: none"> <li>1. Unusual activity compared with past transactions</li> <li>2. Sudden activity in dormant accounts</li> <li>3. Activity inconsistent with what would be expected from declared business</li> </ol>
Nature of transactions	<ol style="list-style-type: none"> <li>1. Unusual or unjustified complexity</li> <li>2. No economic rationale or bonafide purpose</li> <li>3. Frequent purchases of drafts or other negotiable instruments with cash</li> <li>4. Nature of transactions inconsistent with what would be expected from declared business</li> </ol>
Value of transactions	<ol style="list-style-type: none"> <li>1. Value just under the reporting threshold amount in an apparent attempt to avoid reporting</li> <li>2. Value inconsistent with the client's apparent financial standing</li> <li>3. Transfer of Large Sum</li> </ol>

(b)

1. **Reasonable and Sensible Meaning:** The words of a statute must be construed so as to lead to a sensible meaning (Maxim: ut us maquis valeat quampareat'). Generally the words or phrases of a statute are to be given their ordinary meaning.
2. **Policy and Object of Statute:** If the Court finds that giving a plain meaning to the words will not be a fair or reasonable construction, it becomes the duty of the Court to depart from the dictionary meaning and adopt the construction which will advance the remedy and suppress the mischief. The Court does not have to resort to conjecture or surmise. A reasonable construction will be adopted in accordance with the policy and object of the statute.

The Memorandum of Association of a Company must be read fairly and its import derived from a reasonable interpretation of the language which it employs.	Dr.A.L.Mudaliar vs. LIC of India
In order to determine whether a transaction is "intra vires" the objects of a Company, the objects should be reasonably construed - neither with rigidity nor with laxity.	Waman Lal Chotanlal Parekh vs. Scindia Steam Navigation Co. Ltd.

(c) **Provision:**

As per Rule 2 of the Companies (Declaration of Dividend out of Reserves) Rules, 1975 dividend may be declared by a company for any year out of the accumulated profits earned by it previous years and transferred by it to the reserves subject to certain conditions. One of the conditions is that the rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the 5 years immediately preceding that year or 10% of its paid-up capital which ever is less. As the proposed dividend exceeds 10%, it is necessary to seek the approval of the Central Government as required under section 205A (3)

**Conclusion:**

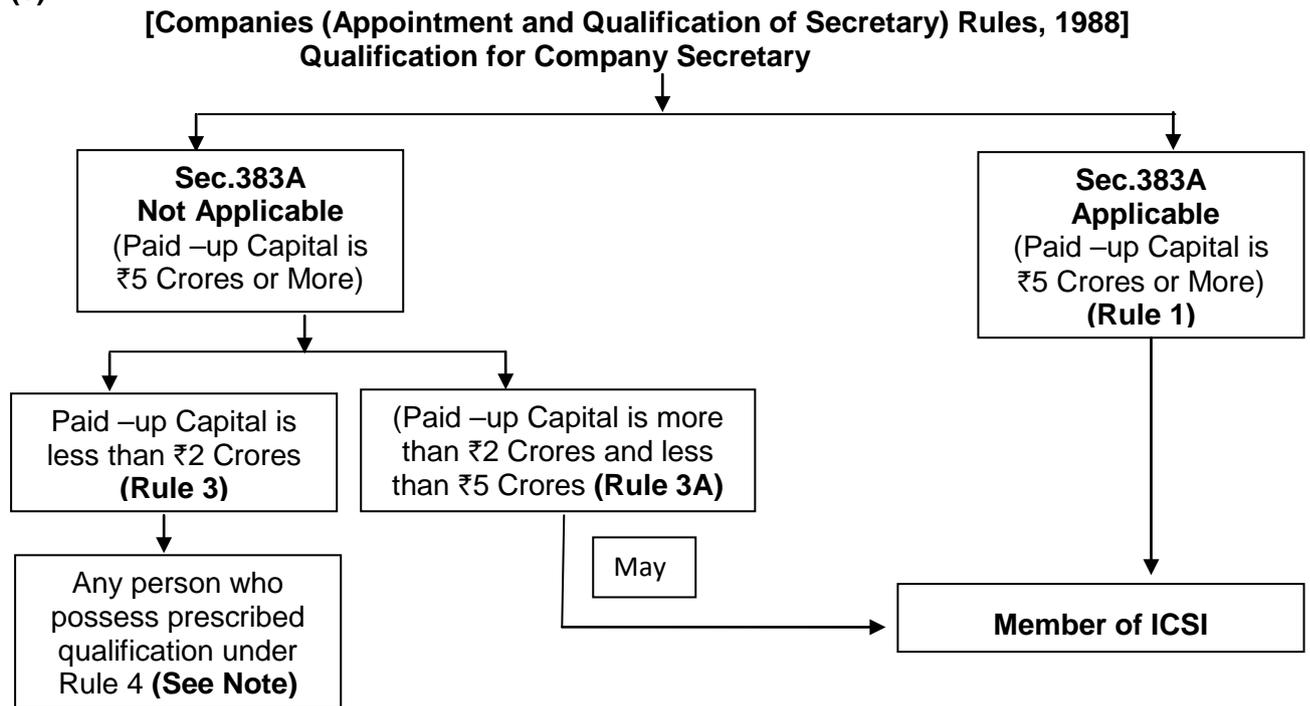
Only after obtaining the approval of the Central Government, the company may declare dividend at rate of 20% for year 2008-09, even if the other conditions relating to the amount that can be drawn from the reserves and minimum balance in the reserve are fulfilled. However, the credit balance, if any, carried in the profit and loss account will be available for declaration of dividend without any restriction. Hence in such a case dividend may be declared at the rate of 20% for 2008-09, without approval of the Central Government.

(d)

1. **Books:** IRDA shall maintain proper accounts and other relevant records and prepare an Annual Statement of Accounts, in the form prescribed by the Central Government in consultation with the C & AG.
2. **Audit:**
  - (i) **Auditor:** The accounts of IRDA shall be audited by the C & AG at such intervals as may be specified by him.
  - (ii) **Expenses of Audit:** Any expenditure incurred in connection with audit shall be payable by the IRDA to the C & AG.
  - (iii) **Power of Auditor:**
    - The C & AG and any other person appointed by him in connection with the audit of the accounts of IRDA shall have the same rights, privileges and authority in connection with the audit as the C & AG generally has in connection with the audit of the Government accounts.
    - They shall have the right to demand the production of books of account, connected vouchers and other documents and papers and to inspect any of the offices of IRDA.
3. **Reporting:** IRDA's accounts, as certified by the C & AG or any other person appointed by him in this behalf, together with the Audit Report thereon, shall be forwarded annually to the

Central Government. The Central Government shall cause the same to be laid before each House of Parliament.

(e)



**Note 1: Prescribed Qualification [Rule 4]**

1. Membership of the ICSI/ICAI/ICWAI;
2. Pass in the Intermediate examination conducted either by the ICSI;
3. PG degree in commerce or Corporate Secretary ship granted by any University in India;
4. Degree in law granted by the any University;
5. PG Degree or Diploma in Management Sciences, granted by any university, or the IIM Ahmadabad, Calcutta, Bangalore or Lucknow;
6. PG Diploma in CS granted by the Institute of Commercial Practice under the Delhi Administration or Diploma in Corporate Laws and Management granted by the Indian Law Institute, New Delhi;
7. PG Diploma in Company Law and Secretarial Practice granted by the University of Udaipur; or
8. Membership of the Association of Secretaries and Managers, Calcutta, registered under the West Bengal Registration of Societies Act, 1961.

**Note 2:** If the paid-up share capital the company increased to ₹ 5 crores or more, the company shall, within a period of 1 year from such increase appoint a whole time secretary.

## MARKS ALLOCATION SHEET

Que . No.	Sub point No.(if any)	Name of Chapter	Description of Concept	Mark Allocati on	Total Marks
1	(a)	General Power of the boards	Provision	2	
1	(a)	General Power of the boards	Each point have 1 mark	3	5
1	(b)	Accounts & Audit	Provision	3	
1	(b)	Accounts & Audit	Conclusion	2	5
1	(c)	Oppression & mismanagement	Provision	3	
1	(c)	Oppression & mismanagement	Conclusion	2	5
1	(d)	SEBI	Explanation	5	5
2	(a)	Managerial Personnel	In each point principle contains 1 mark and conclusion contains 1 mark	8	8
2	(b)	Office or Place of profit	Provision	2	
2	(b)	Office or Place of profit	Conclusion	2	4
2	(c)	Investigation	Relevant Provision	3	
2	(c)	Investigation	Conclusion	1	4
3	(a)	Winding up	Each issue have 2 marks	4	4
3	(b)	Producer Companies	Each issue have 2 marks	8	8
3	(c)	Sole Selling Agents	Provision	2	
3	(c)	Sole Selling Agents	Conclusion	2	4
4	(a)(i)	Compromise, Arrangement, Amalgamation & Reconstruction	Provision	2	
4	(a) (i)	Compromise, Arrangement, Amalgamation & Reconstruction	Issue - 1	1	
4	(a) (i)	Compromise, Arrangement, Amalgamation & Reconstruction	Issue – 2	1	4
4	(b)(ii)	SCRA, 1956	Provision	2	
4	(b) (ii)	SCRA, 1956	Analysis & Conclusion	2	4
4	(b)	Board of directors-Basics	Issue - 1	3	
4	(b)	Board of directors-Basics	Issue – 2	2.5	
4	(b)	Board of directors-Basics	Issue – 3	2.5	8
5	(a)	Offences & Miscellaneous Provision	Each point have 1 mark	6	6
5	(b)	The competition act, 2002	Agreement	3	
5	(b)	The competition	Analysis	2	

		act, 2002			
5	(b)	The competition act, 2002	Horizontal Anti-competitive agreements	3	
5	(b)	The competition act, 2002	Conclusion	2	10
6	(a)	FEMA	Provision	6	
6	(a)	FEMA	Analysis & Conclusion	2	8
6	(b)	Banking regulation act, 1949	Provision	3	
6	(b)	Banking regulation act, 1949	Appropriation	2	
6	(b)	Banking regulation act, 1949	Conclusion ( Each case have 1.5 mark)	3	8
7	(a)	Prevention of money laundering act, 2002	Meaning	2	
7	(a)	Prevention of money laundering act, 2002	Example (any two)	2	4
7	(b)	Interpretation of statues, deeds & documents	Explanation	4	4
7	(c)	Dividends & manner & time of Payment	Provision	2	
7	(c)	Dividends & manner & time of Payment	Analysis & Conclusion	2	4
7	(d)	IRDA act, 1999	Books	1	
7	(d)	IRDA act, 1999	Audit	2	
7	(d)	IRDA act, 1999	Reporting	1	4
7	(e)	Secretarial practice & E-Governance	Explain provision	4	4