

MONEY LAUNDERING ACT

QUESTION 1: RTP NOV - 2017

Explain the **responsibilities** of banking companies under the Prevention of Money Laundering Act, 2002.

ANSWER :

Section 12 provides for the obligation of Banking Companies, Financial Institutions and Intermediaries or a person carrying on a designated business or profession. According to sub-section (1), every banking company, financial institution and intermediary or a person carrying on a **designated business** or **profession shall**–

- (a) maintain a record of all transactions, including information relating to transactions covered under clause (b), in such manner as to enable it to **reconstruct individual transactions**;
- (b) furnish to the **Director** with in such time as may be prescribed, information relating to such transactions, whether **attempted** or **executed**, the **nature** and value of which may be prescribed;
- (c) verify the identity of its clients in such **manner** and subject to such **conditions**, as may be prescribed;
- (d) identify the beneficial owner, if any, of such of its clients, as may be prescribed;
- (e) maintain **record** of documents evidencing identity of its **clients** and beneficial owners as well as account files and business correspondence relating to its clients.

Every information maintained, furnished or verified, save as otherwise provided under any law for the time being in **force** shall be **kept confidential**.

There cords referred to in clause (a) of sub-section (1) shall be maintained for a period of **five years** from the date of transaction between a **client** and the **reporting entity**.

There cords referred to in clause (b) of sub-section (1) shall be maintained for a period of **five years** after the **business relationship** between a client and the reporting entity has ended or the account has been closed, whichever is later.

The Central Government may, by notification, exempt any reporting entity or class of reporting entities from any **obligation** under this chapter

QUESTION 2 : MAY - 2017

Enumerate the **obligations** of banking companies under the Prevention of Money Laundering Act, 2002.

ANSWER:

Section 12 of the Prevention of Money Laundering Act, 2002 provides for the obligation of Banking Companies, Financial Institutions and In term diaries or a person carrying on a designated business or profession According to sub-section (1), every banking company, financial institution and intermediary or a person carrying on a designated business or

profession shall–

- (a) maintain a record of all transactions, including information relating to transactions covered under clause (b), in such manner as to enable it to reconstruct individual transactions;
- (b) furnish to the Director within such time as may be prescribed, information relating to such transactions, whether attempted or executed, the nature and value of which may be prescribed;
- (c) verify the identity of its clients in such manner and subject to such conditions, as may be prescribed;
- (d) identify the beneficial owner, if any, of such of its clients, as may be prescribed;
- (e) maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients.

Every information maintained, furnished or verified, save as otherwise provided under any law for the time being in force shall be kept confidential.

The records referred to in clause (a) of sub-section (1) shall be maintained for a period of five years from the date of transaction between a client and the reporting entity.

The records referred to in clause (e) of sub-section (1) shall be maintained for a period of five years after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later.

The Central Government may, by notification, exempt any reporting entity or class of reporting entities from any obligation under this chapter.

QUESTION 3: MAY – 2017

- (a) How a trial under the Prevention of Money Laundering Act, 2002 is conducted in Special Courts?
- (b) Explain the usefulness of 'Heading and Title of a chapter in an Act and marginal notes of a Section' as in terms aid in interpreting the provisions of a Statute.

ANSWER:

- (a) 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. 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) 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.

- (b) **Heading and Marginal Notes:** A number of sections in an Act applicable to any particular object are grouped together, sometimes in the form of chapters, **pre-fixed** by Heading and / or **Titles**. Marginal notes means titles to the section.

In *Uttam Das Chela Sunder Das v. SGPC AIR 1996 SC 2133*, it was observed that 'Marginal notes or caption undoubtedly, part and parcel of legislative exercise and the language employed there in provides the key to the legislative intent. The words employed are not mere surplusage'. Marginal note is legislative and noted it or trial exercise *C Bhagirath v. Delhi Admn. AIR, 1985 SC 1050*. It gives an indication as to what was exactly the mischief that was intended to be remembered and throws light on the intention of legislature. It is **relevant factor** to be taken in to consideration in construing the ambit of the section. *Shree Sajjan Mills Ltd. (v) CIT (1985) 156 I TR 585 (SC)*. Heading, title and marginal notes can be referred to if the words are ambiguous. If there is any doubt in the interpretation of words in a section, the headings help to resolve the doubt. But they cannot control the plain words of a statute.

To **sum up**, heading, title and marginal notes can be used to understand the legislative intent, but cannot limit or restrict the clear word used in a section.

QUESTION 4: RTP MAY – 2015

X has been arrested for committing an offence, under the Prevention of Money Laundering Act, 2002. The offence is **punishable** with imprisonment for a term exceeding **three years**. Can he be released on bail ? Discuss.

ANSWER:

Bail In non-bailable offences (Section 45 of The Money Laundering Act, 2002)

1. Section 45 provides that the offences under the Act shall be cognizable and non-bailable. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, **no person** accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond unless-
 - (i) The **Public Prosecutor** or has been given an opportunity to oppose the application for such release; and
 - (ii) Where the Public Prosecutor or opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence that he is not likely to commit any offence while on **bail**.
2. Further, in case of any person who is under the age of **16** years or in case of a woman or in case of a sick or infirm person, the Special Court can direct the release of such person on bail.
3. The Special Court cannot take cognizance of any offence punishable under section **4** unless a **complaint** in writing is made by:-

- (a) The Director or
- (b) Any **officer** of the Central Government or a State Government authorized in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.

Thus, Mr. X has no right to be release do n bail but the court may release him on bail in its discretion.

QUESTION 5: MAY – 2013

- (a) "Money Laundering" does not mean just **siphoning of fund.**"
Mention this statement explaining the **significance** and **aim** of the Prevention of Money Laundering Act, 2002.

ANSWER:

- (a) **“Money laundering” does not mean just siphoning of fund:**

Money Laundering is a moving of **illegally** acquired cash through financial systems so that it appears to be legally acquired. Thus, money laundering is not just the siphoning of fund but it is the conversion of money which is illegally obtained.

Prevention of Money Laundering Act, 2002 has been enacted with aim for combating **channel lising** of money in to **illegal activities**.

Significance and Aim of Prevention of Money Laundering Act, 2002: The preamble to the Act provides that it aims to prevent money–laundering and to provide for confiscation of property derived from, or involved in, money–laundering and formatters **connected there with** or incidental there to.

In order to further strengthen the existing **legal** frame work and to effectively combat money laundering, terror financing and cross-border economic offences, an Amendment Act, 2009 was **passed**. The new **law seeks** to check use of **black money** for financing terror activities. Financial intermediaries like full-fledged money changers, money transfer service providers and credit card operators have also been brought under the ambit of The Prevention of Money-Laundering Act. Consequently, these intermediaries, as also casinos, have been brought under there porting regime of the enforcement authorities. It also checks the misuse of promissory notes by **FII**s, who would now be required to furnish all details of their source. The new law would check misuse of “proceeds of crime” be it from sale of banned narcotic substances or breach of the Un lawful Activities (Prevention) Act. The passage of the Prevention of Money Laundering (Amendment), 2009 have enabled India’ sentry in to **Financial Action Task Force** (FATF), an inter-governmental body that has them and ate to combat money laundering and terrorist financing.

QUESTION 6: NOV – 2013

PTM Limited, a banking company maintained the record of all transactions for a period of **5 years** from the date of cessation of the transactions between the clients and the company. Decide whether the Company has fulfilled its obligation under the provisions of the Prevention of Money Laundering Act, 2002.

ANSWER:

- (a) **Obligation of Banking Companies Etc.:** Section **12** of the Prevention of Money Laundering Act, 2002 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 **five 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 within the prescribed time to the Director appointed under section **49** for the purposes of the Act.
 - (c) verify and maintain the records of the identity of all its clients, in the prescribed manner.

As per above provisions, it is clear that PTM Limited fulfill its obligation under the Act.

QUESTION 7: RTP NOV – 2016

- (a) Explain the meaning of the term “Money Laundering”. Z, a known smuggler was caught in transfer of funds illegally exporting **narcotic drugs** from India to some countries in **Africa**. State the **maximum** punishment that can be awarded to him under Prevention of Money Laundering Act, 2002.
- (b) Briefly explain the meaning and application of the rule of "**Harmonious Construction**" in the interpretation of statutes.

ANSWER:

- (a) **Money Laundering:** 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 and projecting it as untainted property shall be guilty of offence of money laundering. [Section **3** of the Prevention of Money Laundering Act, 2002]

Paragraph **2** of Part **A** of the Schedule to the Prevention of Money Laundering Act, 2002, covers Offences under the **Narcotic Drugs** And **Psychotropic**

Substances Act, 1985. Whereby, illegal import in to India, export from India or transshipment of narcotic drugs and psychotropic substances (section 23) is covered under paragraph 2 of Part A.

Punishment: Section 4 of the said Act provides for the punishment for Money-Laundering. Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than 3 years but which may extend to 7 years and shall also be liable to fine. But where the proceeds of crime involved in money-laundering relate to any offence specified under paragraph 2 of Part A of the Schedule, the maximum punishment may extend to 10 years instead of 7 years.

- (b) **Meaning of rule Harmonious Construction:** When there is doubt about the meaning of the words of a statute, these should be understood in the sense in which they harmonise with the subject of the enactment and the object which the legislature had in view. Where there are in an enactment two or more provisions which cannot be reconciled with each other, they should be so interpreted, wherever possible, as to give effect to all of them. This is what is known as the Rule of Harmonious Construction.

It must always be borne in mind that a statute is passed as a whole and not in sections and it may well be as summed to be animated by one general purpose and intent. The Court's duty is to give effect to all the parts of a statute, if possible. But this general principle is meant to guide the courts in furthering the intent of the legislature, not over riding it.

Application of the Rule: The Rule of Harmonious Construction is applicable only when there is area land not merely apparent conflict between the provisions of an Act, and one of them has not been made subject to the other. When after having construed their context the words are capable of only a single meaning, the rule of harmonious construction disappears and is replaced by the rule of literal construction

QUESTION 8: MAY – 2014

Explain the meaning of the term “Money Laundering”. Z, a known smuggler was caught in transfer of funds illegally exporting narcotic drugs from India to some countries in Africa. State the maximum punishment that can be awarded to him under Prevention of Money Laundering Act, 2002.

ANSWER:

- (a) **Money Laundering:** 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 and projecting it as untainted property

shall be guilty of offence of money laundering. [Section 3 of the Prevention of Money Laundering Act, 2002]

Paragraph 2 of Part A of the Schedule to the Prevention of Money Laundering Act, 2002, covers Offences under the Narcotic Drugs And Psychotropic Substances Act, 1985. Illegal import in to India, export from India or transshipment of narcotic drugs and psychotropic substances (section 23) is covered under paragraph 2 of Part A.

Punishment: Section 4 of the said Act provides for the punishment for Money-Laundering. Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall **not be less than 3** years but which may extend to **7 years** and shall also be liable to fine without any limit. But where the proceeds of crime involved in money-laundering relate to any offence specified under paragraph 2 of Part A of the Schedule, the maximum punishment may extend to 10 years instead of 7years.

QUESTION 9: MAY – 2016 RTP

- (a) Mr. Fraudulent has been arrested for a cognizable and **non-bailable** offence punishable for a term of imprisonment for more than three years under the Prevention of Money Laundering Act, 2002. Advise, as to how can he be released on bail in this case?
- (b) Explain the “Rule of Exceptional Construction” with regards to interpretation of **Statutes**.

ANSWER:

- (a) Section 45 of the Prevention of Money Laundering Act, 2002, provides that the offences under the Act shall be **cognizable** and **non-bailable**. Not with standing anything contained in the Code of Criminal Procedure, 1973, no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond unless-
 - (i) The Public Prosecution has been given an opportunity to oppose the application for such release and
 - (ii) Where the Public Prosecution opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to **commit any offence** while on **bail**.

In case of any person who is under the age of **16 years** or in case of a **woman** or in case of a **sick** or in **firm** person, the Special Court can direct the release of such person on **bail**.

- (b) **Rule of Exceptional Construction:** This rule has several aspects, viz.:

- (i) **The Common Sense Rule:** Despite the general rule that full effect must be given to every word, if no sensible meaning can be fixed to a word or phrase, or if it would defeat the real object of the enactment, it should be eliminated. The words of a statute must be so construed as to give a sensible meaning to them, if at all possible.
- (ii) **Conjunctive and Disjunctive Words ‘or’ and ‘and’:** The word ‘or’ is normally disjunctive and ‘and’ is normally conjunctive. However, at times they are read as vice versa to give effect to them as if est intention of the legislature as disclosed from the context. This would be so where the literal reading of the words produces an unintelligible or absurd result: in such a case ‘and’ may be read for ‘or’ and ‘or’ for ‘and’ even though the result of so modifying the words is less favourable to the subject, provided that the intention of the legislature is otherwise quite clear.
- (iii) **‘May’, ‘must’ and ‘shall’ :** Before discussing this aspect, it would be worth while to note the terms ‘**mandatory**’ and ‘**directory**’. Practically speaking, the distinction between a provision which is ‘**mandatory**’ and one which is ‘**directory**’ is that when it is **mandatory**, it must be **strictly observed**; when it is ‘**directory**’ it would be sufficient that it is substantially complied with. However, we have to look to the substance and not merely the form :an enactment in mandatory form might substantially be directory and, conversely, a statute in directory form may in substance be mandatory. Hence, it is the substance that count and must take precedence over mere form. If a provision gives a power coupled with a duty, it is mandatory: whether it is or is not so would depend on such consideration as:
- the nature of the thing **empowered** to be done,
 - the object for **which** it is done, and
 - the person for **whose** benefit the power is to be exercised.

QUESTION 10: NOV – 2015 RTP

- (a) Explain the meaning of the term— Money Laundering l. Z, a known smuggler was caught in transfer of funds illegally exporting narcotic drugs from India to some countries in Africa. State the maximum punishment that can be awarded to him under Prevention of the Money Laundering Act, 2002.
- (b) (i) What is the effect of proviso? Does it qualify the main provisions of an **Enactment**?
- (ii) Does an explanation added to a section widen the ambit of a section?
- (iii) What do you understand by the term —Preamble and how does it help in) Interpretation of a statute?

ANSWER:

- (a) **Money Laundering:** Who so ever 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 and projecting it as untainted property shall be guilty of offence of money laundering. [Section 3 of the Prevention of Money Laundering Act, 2002]

Paragraph 2 of Part A of the Schedule to the Prevention of Money Laundering Act, 2002, covers offences under the Narcotic Drugs and Psychotropic Substances Act, 1985. Whereby, illegal import in to India, export from India or **transshipment of narcotic drugs** and psychotropic substances (section 23) is covered under paragraph 2 of Part A.

Punishment: Section 4 of the said Act provides for the punishment for Money-Laundering. Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than 3 years but which may extend to 7 years and shall also be liable to fine. But where the proceeds of crime involved in money-laundering relate to any offence specified under paragraph 2 of Part A of the **Schedule**, the maximum punishment may extend to 10 years instead of 7 years.

- (b) (i) Normally a **Proviso** is added to a section of an Act to except something or **qualify** something stated in that particular section to which it is added. A proviso should not be, ordinarily, interpreted as a general rule. A proviso to a particular section carves out an exception to them a in provision to which it has been **enacted** as a Proviso and to no other provision. [Ram Narian Sons Ltd. Vs. Commissioner of Sales Tax **AIR** (1955) S.C. 765]
- (ii) Sometimes an explanation is added to a section of an Act for the purpose of explaining the main provisions contained in that **section**. If there is some ambiguity in the provisions of them a in section, the explanation is inserted to harmonise and clear up and ambiguity in them a in section. Something may added be to or something may be excluded from the main provision by in section of an explanation. But the explanation should not be construed to widen the ambit of the section.
- (iii) The—**Preamble** expresses the scope, object and purpose of the Act. It may recite the ground and the cause making a statue and the evil, which is sought to be remedied by it. It is a part of the statute and can legitimately be used for construing it. However ,it does not over-ride the plain provisions of the Act, but if the wording of the statute gives rise to the doubts as to its proper construction, **e. g.** ,where the **words** or **phrase** have more than **one meaning** and a doubt a rises as to which of the two meanings is intended in the Act, then the Preamble can and ought to be referred to in order to arrive at the proper construction.

The Banking Regulation Act, 1949**The Insurance Act, 1938, The Insurance Regulatory and Development Authority Act, 1999,****The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002****QUESTION 1: MAY 2013**

Explain briefly the concept of "Securitization" under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

ANSWER:

Securitisation means acquisition of financial assets by any securitization company or reconstruction company from any originator, whether by raising of funds by such securitization company or reconstruction company from **qualified institutional buyers** by issue of security receipts representing undivided interest in such financial assets or otherwise [Section 2(z)].

Banks/Financial Institution (known as originators) give loans secured by properties to original borrowers. These loans or receivables are known as **financial assets** [Sec. 2(i)]. These financial assets are acquired by securitization company or reconstruction company (known as special purpose vehicles- SPV). The SPV issues security receipts which are distributed to investors (i.e. qualified institutional buyers). The **SPV** pays the bank/financial institution for the assets purchased with the proceeds from the sale of securities.

In short, securitization is a method adopted by banks/financial institutions for raising funds by way of selling receivables for money. These receivables are illiquid because these are **non-performing assets**.

QUESTION 2 : NOV 2013

Mr. Krishna wants to nominate **Mr. Ram**, his 10 years old son, as a nominee for his life insurance policy. Advise him under the provisions of the Insurance Act, 1938.

ANSWER:

Minor as a Nominee: A minor can be nominated as a nominee in life insurance policy by its holder. The only other requirement as per **Proviso** to Section **39 (1)** of the Insurance Act, 1938 is that the policy holder is to appoint in the prescribed manner, an adult person to receive the money secured by the policy on behalf of them in or in the event of death of the policy holder during the minority of the **nominee**. The given problem is based on above provision i.e. minor as a nominee. Here, Mr. Krishna wants to nominate Mr. Ram his minors on as a nominee for his life insurance policy. He can do so after fulfilling the requirement of the above provision

QUESTION 3 : MAY 2014

The Board of directors of **SUV** Limited, a banking company incorporated in India, for the accounting period ended 31-03-2013 transferred **15%** of its net profit to its Reserve Fund. Certain shareholders of the company object to the above act of the Board on the ground that it is **violative** of the provisions of the Banking Regulation Act, 1949. Decide whether the contention of the shareholders is tenable under the Banking Regulation Act, 1949.

ANSWER:

- (b) According to section **17** of the Banking Regulation Act, 1949, 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. However, the Central Government is empowered to exempt from this requirement on the recommendation of the Reserve Bank of India (RBI). 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.
 2. when the Central Government feels that its paid-up share capital and reserves are adequate to **safeguard** the interest of the depositors.

If the banking company appropriates any sum from the Reserve Fund or the Share Premium account, it must be reported to RBI within **21 days** explaining the circumstances leading to such appropriation.

In the present case, The Board of directors of SUV Limited, a banking company incorporated in India, for the accounting period ended 31st March, 2013 transferred **15%** of its net profit to its Reserve Fund.

Thus, according to the provisions of the Act, contention of shareholders of SUV Limited shall be tenable since the percentage of transfer of profits to Reserve Fund is lower than statutory limits, as provided in the Act.

QUESTION 4 : MAY 2014

Explain the meaning of the terms **“non-performing asset”** and **“asset reconstruction”** used in the SARFAESI Act, 2002.

ANSWER:

- (a) **“Non-performing asset”** means an asset or account of a borrower, which has been classified by a bank or financial institution as sub-standard, doubtful or loss asset, in accordance with the directions or under guidelines relating to asset classifications issued by the Reserve Bank [Section **2 (o)** of the SARFAESI Act, 2002]

“Asset reconstruction” means acquisition by any securitization company or reconstruction company of any right or interest of any bank or financial institution in any financial assistance for the purpose of realization of such financial assistance. [Section **2(b)** of SARFAESI Act, 2002]

QUESTION 5 : NOV – 2014

Referring to the provisions of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 state the circumstances under which the Reserve Bank of India may cancel the certificate of registration granted to a Securitisation Company.

ANSWER:

(a) Cancellation of Certificate of Registration (Sections 3 and 4 of the securitization & reconstruction of financial assets & enforcement of Security Interest Act, 2002)

As per the section 4 of the Securitisation & Reconstruction of Financial Assets & Enforcement of security Interest Act, 2002, the Reserve Bank may cancel a certificate of registration granted to a securitization company or are construction company, if such company-

- (i) ceases to carry on the **business of securitisation** or as set reconstruction; or
- (ii) ceases to **receive** or hold any investment from a qualified institutional buyer; or
- (iii) has failed to comply with any **conditions** subject to which the certificate of registration has been **granted to it**; or
- (iv) at any time fails to fulfil any of the conditions referred to in clauses (a) to (g) of sub-section (3) of section 3; or
- (v) fails to-
 - (a) comply with any **direction** issued by the Reserve Bank under the provisions of this Act; or
 - (b) maintain accounts in accordance with the requirements of **any law** or any direction or order issued by the Reserve Bank under the provisions of this Act; or
 - (c) submit or offer for **inspection** its books of account or other **relevant documents** when so demanded by the Reserve Bank; or
 - (d) obtain prior approval of the Reserve Bank required under sub-section (6) of section 3.

QUESTION 6 : MAY 2015

Explain the composition and role of the 'Tariff Advisory Committee' under the provisions of the Insurance Act, 1938.

ANSWER:

- (a) The 'Tariff Advisor Committee' (TAC) has been established to control and regulate the rates and terms offered by insurers in general insurance business. TAC comprised of **sixteen** members including the **chairman** and **vice chairman**. Ten members represent Indian companies and rest represent trust of **foreign**

companies. The Authority by notification makes relations for TAC. TAC with prior approval of authority is also eligible in framing new regulations. TAC can regulate rates, but such regulation should not in anyway put the business of insurer in to **jeopardy** or lead to any form of discrimination. Their actions are validated by the Authority. Before any stipulations being introduced or enhanced, views of the other party need to be heard. The controller of insurance usually be the Chairman of the TAC but with the enactment of IRDA Act, 1999, chair person of the IRDA shall become the chairman of the Advisory Committee. The Advisory Committee can see kin formation and other documents from the insurer and the latter has to comply with those requisitions. All the whole-time employees employed before commencement of Amendment Act, 1968 shall hence for the after enactment, become employees of the Advisory Committee. The Advisory Committee has a power to install regional committees. The authority can issue licenses to survey or sand loss assess or as per relevant provisions of IRDA Act,1999.

QUESTION 7 : RTP MAY – 2015

- (a) Referring to the provisions of the **Banking Regulation Act**, 1949, answer the following:
- (i) What are the **powers** of the Central Government to acquire any Banking company?
 - (ii) State the **matters** that may be included in the **scheme of acquisition** prepared by the Central Government.
- (b) With reference to the provisions of Insurance Act, 1938 as amended by Insurance Regulatory and Development Authority Act, 1999, state the norms in respect of paid up equity capital for carrying out the business of an insurer. Also state the **items** that are excluded in determining the amount of **paid up** equity capital of an insurer under the said Acts.

ANSWER:

- (a) (i) In accordance with the provisions of the Banking Regulation Act, 1949, as contained in Section **36 AE**, Central Government is empowered to acquire a Banking Company if it is of the opinion that the Banking Company has failed to comply the direction given to it by the Reserve Bank of India (RBI) relating to policy matters under Section **21** and **35 A** and / or the bank is being managed In a manner detrimental to the interest of the depositors or that of to the banking policy, or for better provision of credit generally or of credit to any particular section of the community or in any particular area; it is necessary to acquire the under taking of such banking company, it (Central Government) may after consultation with RBI as it thinks fit, by notified order, acquire the under taking of such banking company w.e.f. such date as may be specified (here in after referred as the appointed date) in this be half by the Central Government. In case of such a notification, on the appointed date the under taking of the acquired bank and its assets and liabilities shall stand transferred to, and vest in, the **Central**

Government.

Before acquiring the under taking of any banking company, the Central Government shall give an able opportunity to the banking company proposed to be acquired of showing cause against the proposed action.

- (ii) **MATTERS TO BE PROVIDED IN THE SCHEME:** The Scheme is prepared in consultation with the Reserve Bank of India (RBI). The scheme may provide for transfer of assets and liabilities of the acquired bank, constitution of the first Board of Management and matters incidental there to, the service condition of the employees, compensation payable to the shareholders of the acquired bank and such other incidental, consequential and supplemental matters as may be necessary to complete the transfer.
- (b) **Requirement of Paid Up equity capital for insurance business:** No insurer carrying on the business of life insurance, general insurance or re-insurance in India on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall be registered unless he has, —
- (i) a paid-up equity capital of rupees one hundred crores, in case of a person carrying on the business of life insurance or general insurance; or
 - (ii) a paid-up equity capital of rupees two hundred crores, in case of a person carrying on exclusively the business as are-insurer:

Items to be excluded in determining the amount of paid up equity share capital: In determining the paid-up equity capital specified above, following item must be excluded-

- (i) The deposit of 1% and 3% of the gross premium with respect to life insurance and general insurance business in any financial year to be made by the insurer to the Reserve Bank of India.
- (ii) In the case of re-insurance business, a deposit of sum of rupees twenty crores made by the insurer to the Reserve Bank of India.
- (iii) Any preliminary expenses incurred in the formation and registration of the company, and

QUESTION 8 : NOV 2015 RTP

- (a) The Board of Directors of VDV Ltd., a banking company incorporated in India, for the accounting year ended 31-3-2015 transferred 15% of its net profit to its Reserve Fund. Certain shareholders of the company object to the above act of the Board of Directors on the ground that it is violative of the provisions, of the Banking Regulation Act, 1949. Examine the provision of Banking Act and decide:
- (i) Whether contention of the Shareholders is tenable.
 - (ii) Would your answer be still the same in case the Board of Directors transfer 30% of the company's net profits to Reserve Fund.
- (b) M, wants to nominate Mr. S, his 10 years old son, as a nominee for his life insurance

policy. Advise him under the provisions of the Insurance Act, 1938.

ANSWER:

(a) 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 equivalent to not less than 20% of its net profits. However, Central Government is empowered to exempt from this requirement on the recommendation of the RBI. 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.
2. when the Central Govt. feels that its paid-up share capital and reserves are adequate to safeguard the interest of the depositors.

If the banking company appropriates any sum from the Reserve Fund or the Share Premium account, it must be reported to RBI within 21 days explaining the circumstances leading to such appropriation.

Therefore, applying the above provisions:

- (i). 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.
 - (ii). In the second case the contention of shareholders shall not be tenable, since 30% is more than the minimum statutory limit of 20% of the net profits.
- (b) Section 39 of the Insurance Act, 1938 deals with the nomination by policy holder. According to which, the holder of a policy of life insurance on his own life may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death.

Provided that, where any nominee is a minor, it shall be lawful for the policy holder to appoint any person in the manner laid down by the insurer, to receive the money secured by the policy in the event of his death during the minority of the nominee. The given problem is based on above provision i.e. minor as a nominee. Here, Mr. M wants to nominate S as his minor on as a nominee for his life insurance policy. He can do so after fulfilling the requirement of the above provision.

QUESTION 9 : NOV 2015

Bharat Insurance Company issued a policy having sum assured of `5 lakh on the life of Ms. Nirmala. While obtaining education loan of `4 lakh for higher studies, Ms. Nirmala assigned the above insurance policy in favour of the Bank providing the loan. Who, in this case, will be called the 'policy holder' under the Insurance Act, 1938 and why? Explain.

ANSWER:

As per section 2(2) of the Insurance Act, 1938, 'Policy holder' includes a person to whom the whole of the interest of policy holder in the policy is assigned once and for all, but does not include an assignee there of whose interest in the policy is defeasible or is for the time being subject to any condition. As per the given facts, Ms. Nirmala assigned insurance policy in favour of Bank. As of consequence, Bank becomes assignee. According to the above given definition of policy holder, assignee is excluded from its preview. Thus, in the given case, Ms. Nirmala will be the Policy holder.

QUESTION 10 : NOV 2015

Under Section 31 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, certain situations have been specified in which the provisions of this Act are not applicable. You are required to mention **any four** of **such situations**.

ANSWER:

- (a) Under Section 31 of the **SARFAESI** Act,2002, the situations in which the provisions of this Act do not apply are as follows:
- (i) a lien on any goods, money or security given by or under the Indian Contract Act, 1872 or the **Sale of Goods** Act, 1930 or any other law for the time being in force;
 - (ii) a pledge of movables with in the meaning of section 172 of the Indian Contract Act, 1872;
 - (iii) Creation of any security in any aircraft as defined in clause (1) of section 2 of the Aircraft Act, 1934;
 - (iv) Creation of security interest in any vessel as defined in clause (55) of section 3 of the Merchant Shipping Act, 1958;
 - (v) any conditional sale, hire-purchase or lease or any other contract in which no security interest has been created;
 - (vi) any rights of un paid seller under section 47 of the Sale of Goods Act, 1930
 - (vii) any properties not liable to attachment (excluding the properties specifically charged with the debt recoverable under this Act or sale under the first proviso to subsection (1) section 60 of the Code of Civil Procedure,1908;
 - (viii) any security interest for securing re payment of any **financial asset** not exceeding one lakh rupees;
 - (ix) any security interest created in agricultural land;
 - (x) any case in which the amount due is less than **twenty percent** of the principal amount and interest there on.

QUESTION 11 : MAY 2016 RTP

- (a) X, an ewlye stablished insurance company started the business of health insurance. It decided to get itself registered with the paid up equity capital of ` 99 crore excluding the preliminary expenses incurred during formation and registration. Examine in the light of the Insurance Act, 1938, whether X can be registered and can conduct the insurance business.
- (b) RST Ltd. is a securitization and reconstruction company under **SARFAESI Act**, 2002. The certificate of registration ranted to it was cancelled. State the authority which can cancel the registration and the right of RST Ltd. against such cancellation

ANSWER:

- (a) **Requirements as to Capital:** As per the Insurance Laws (Amendment) Act, Section 6 of the Insurance Act,1938,has been amended. According to which the Requirements as to capital for registration of the insurer has been modified. No Insurer (not being an insurer as defined in sub-clause(d) of clause (9) of section 2) Carrying on the business of life insurance, general insurance, health insurance or re-Insurance in India or after the commencement of the Insurance Regulatory and **Development Authority Act**, 1999, shall be registered unless he has minimum paid Up equity capital as prescribed below-

Type of Insurance Business	Minimum Paid-up equity capital required (with a provision for further enhancement & Paid-up equity excludes preliminary expenses incurred during formation and registration)
Life insurance or general	` 100 crore
Health insurance(exclusively)	` 100 crore
Re-insurer (exclusively)	`200crore (besides re-insurer shall not be Registered unless he has net owned funds of not less than `5,000crore)

In the given case, X an insurance company is an insurer carrying business of health insurance. For registration as per the above provision, minimum paid-up equity capital required for conduct of business of health insurance is `100 crore.Since Paid up equity capital of X insurance company is less than 100 crore, so it cannot be registered for carrying of the insurance business.

Cancellation of Certificate of Registration under SARFAESI Act, 2002-The Reserve Bank of India may cancel a certificate of registration granted to a securitization and reconstruction company for the reasons stated in Section 4 of **SARFAESI Act**, 2002.

RST Ltd., can prefer an appeal to the Central Government (Secretary, Ministry of Finance, Government of India) within a period of **30 days** from the date on which order of cancellation was communicated to it. The Central Government must also give such company a reasonable opportunity of being heard before rejecting the appeal. If RST Ltd., is holding investments of qualified institutional buyers at the time of **cancellation of certificate of registration**, it shall be deemed to be a securitization and reconstruction company until it repays the entire investments held by it, together with interest if any, within such period as may be specified by the Reserve Bank.

QUESTION 12 : NOV 2016

- (a) Mr. Gopal is a director in a Bank. The Reserve Bank of India terminates him on the ground that his conduct is detrimental to the interest of the depositors. Decide, whether the Reserve Bank of India can do so under the **Banking Regulation Act, 1949**. Can the Reserve Bank of India appoint additional Director in a Bank under the said Act?
- (b) Explain Asset Reconstruction, Financial Assets under the Securitization and Reconstruction of Financial Assets Enforcement of Security and Interest Act 2002.

ANSWER:

- (a) **Power of RBI to remove director:** Under section **36 AA** 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. 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. The decision of the Central Government cannot be called in to 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. Contravention of the above provision shall be punishable with a fine, which may extend to **₹250 per day**.

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.

Under section 36 AB: RBI is empowered to appoint additional Directors for the banking company with **effect** from the date to be specified in the order, in the interest of the bank or that of **depositors**. Such **additional directors** shall hold office for a period not exceeding three years or such further periods not exceeding three years at a time.

- (b) **Asset Reconstruction:** 'Asset Reconstruction' means acquisition by any securitization company or reconstruction company of **any right or interest** of any bank or financial institution in any financial assistance for the purpose of realization of such financial assistance. [Section 2(b) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act,

2002.]

Financial Assets

Financial Assets' means debtor receivables and includes:

- (i) a claim to any debtor receivable so r part thereof, whether **secured** or **unsecured**; or
- (ii) any debtor receivables secured by mortgage of, or charge on, immovable property; or a mortgage, charge, hypothecation or pledge of movable property; or
- (iii) any right or interest in the security, whether full or part underlying such debtor receivables; or
- (iv) any beneficial interest in property, whether movable or immovable or in such debt, receivables, whether such interest is existing, future accruing, conditional or contingent; or
- (v) any financial assistance.[Section 2(1)].

QUESTION 13 : RTP MAY – 2017

- (a) (i) Mr. Gobiis a director in a Bank of India. On the allegation that his act is detrimental to the interest of the depositors, the Reserve Bank of India takes a call against him and terminates him. Decide, whether the Reserve Bank of India can do so under the **Banking Regulation Act, 1949**.
- (ii) Can the Reserve Bank of India appoint additional Director in a Bank under the said Act?
- (b) State which of the following debts may be considered as financial assets as per the **SARFAESI Act, 2002**:
 - (i) a mortgage, charge, **hypothecation** or **pledge** of movable property;
 - (ii) any beneficial right, title or interest in any tangible asset given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of such asset or an obligation incurred or credit otherwise provided to enable the borrower to acquire such tangible asset.
 - (iii) any right, title or interest on any intangible asset or licence or assignment of such intangible asset, which secures the obligation to pay any un paid portion of the purchase price of such intangible asset or an obligation incurred or credit otherwise extended to enable the borrower to acquire such intangible asset or obtain licence of the in tangible asset any security interest created in agricultural land

ANSWER:

- (a) (i) **Power of RBI to remove director:** Under section **36 AA** 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. 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. The decision of the Central Government cannot be called in to 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. Contravention of the above provision shall be punishable with a fine, which may extend to **₹250 per day**.

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.

- (ii) Appointment of additional director by RBI:** Under section **36 AB**, RBI is empowered to appoint additional Directors for the banking company with effect from the date to be specified in the order, in the interest of the bank or that of depositors. Such additional directors shall hold office for a period not exceeding three years or such further periods not exceeding three years at a time.
- (b)** As per the definition given in the SARFAESI Act, 2002, "**financial asset**" means debt or receivables and includes-
- (i) a claim to any **debtor receivables** or part thereof, whether secured or unsecured; or
 - (ii) any debtor receivables secured by, mortgage of, or charge on, immovable property; or
 - (iii) a mortgage, charge, hypothecation or pledge of **movable property**; or
 - (iv) any right or interest in the security, whether full or part underlying such debtor receivables; or
 - (v) any beneficial interest in property, whether movable or immovable, or in such debt, receivables, whether such interest is existing, future, accruing, conditional or contingent; or
 - (va) *any beneficial right, title or interest in any tangible asset given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of such asset or an obligation incurred or credit otherwise provided to enable the borrower to acquire such tangible asset; or
 - (vb) *any right, title or interest on any intangible asset or licence or assignment of such intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of such intangible asset or an obligation incurred or credit otherwise extended to enable the borrower to acquire such intangible asset or obtain licence of the intangible asset;

or;

(vi) any financial assistance [Section 2(1)]

The use of the word 'future' in clause (v) of section 2 (1) means that the term financial asset includes a future debt also. In case of a future debt, what exists today is an agreement to transfer and it will be possible to transfer the future debt when it actually arises, for examples a les that will occur in future. In case of conditional receivable, the receivable is transformed in to a financial asset after the fulfillment of the relevant conditions

In view of above, all are debts as per the SARFAESI Act, 2002 except given under (iv).

[*Note: In corporate vide Amendment made by the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act. 2016 notified on 16th August 2016.]

QUESTION 14 : MAY - 2017 FINAL EXAMINATION

Popular Limited defaulted in the repayment of term loan taken from a Bank against security created as a first charge on some of its assets. The bank issued notice pursuant to Section 13 of the SARFAESI Act, 2002 to the Company to discharge its liabilities within a period of 60 days from the date of the notice. The company failed to discharge its liabilities within the time limit specified. Explain the measures to be taken by the Bank to enforce its security interest under the said Act.

ANSWER:

(a) **Sub-section (4) of section 13 of SARFAESI Act, 2002**, provides that if the borrower fails to discharge his liability in full within the 60 days, the secured creditor or may take recourse to one or more of the following measures to recover his secured debt:

- (i) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset;
- (ii) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt;

- (iii) appoint any person (here after referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured

creditor

- (iv) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom money is due or may be due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the **secured debt**.

In the instant case, the Bank may take the above mentioned procedure to enforce its security interest in case Popular Limited has failed to discharge its liabilities within the time limit specified.

QUESTION 15 : RTP NOV – 2017

M/s Samrat is a company engaged in providing services of supplying goods all over the world through aircrafts. The aircrafts of the said company is registered and insured in India with the reputed insurance company. Company found that the insurance policy of one of aircraft which is in Europe had expired. Company said to his officer to get new **Insurance policy** of that aircraft in Europe. State the validity of such an act of registration of aircraft In Europe.

ANSWER:

Given problem is based on the section **2CB** of the **Insurance Act**, 1938. Said section deals with the Indian properties not to be insured with foreign insurers. According to the section, no person shall take out or renew any policy of insurance in respect of any property in India or any ship or other vessel or aircraft registered in India with an insurer whose principal place of business is outside India, without the permission of the **IRDAI**.

In the given case, act of registration of aircraft of M/s Samrat which is an Indian property, with an insurer in Europe, is **an invalid act**.

SEBI ACT/ SCRA

QUESTION 1 : RTP – NOV-2015

1. (i) On the complaint of **Mr. X**, SEBI after enquiry finds that Mr. Y a **Chief Executive Officer** of the Company, on the basis of unpublished price sensitive information, has indulged in the trading of the securities of that company. Explain, on the basis of the said finding, what action SEBI can take against Mr. Y under the Securities and **Exchange Board of India Act, 1992**.
- (ii) **Gauri Chemicals Limited**, a listed company, having a paid-up equity share capital of `80 crore and net worth of `120 crores as on 31st March, 2015 proposes to raise funds to finance its expansion programme by issue of equity shares under the "**Qualified Institutions Placement Scheme**."

Answer the following with reference to the provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009:

- (i) What are the conditions to be satisfied by the company so that it can make **Qualified Institutions Placement**?
- (ii) What is the maximum amount that can be raised by the company under the proposed **issue of shares**?
- (iii) What are the restrictions, if any, with regard to pricing of issue and transferability of shares by **qualified institution buyers**?

ANSWER :

1. (i) Section 15G of the Securities and Exchange Board of India (SEBI) Act, 1992 deals with penalty for Insider Trading .According to this ,if any
 - (a) either on his own behalf or on behalf of any other person, deals in securities of a body corporate on any stock exchange on the basis of any unpublished price sensitive information; or
 - (b) communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law, or
 - (c) counsels or procures for, any other person to deal in any securities of anybody corporate on the basis of **unpublished price sensitive information**,

shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher. As such SEBI can, after following the prescribed procedure, impose a

penalty on Mr. Y. The maximum penalty that SEBI can impose is Rupees twenty-five crores or three times the amount of profits made out of insider trading, whichever is **higher**.

(ii) (1) **Conditions for qualified institutions placement [Chapter VIII of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009]:** Gauri Chemicals Limited, a listed company may make qualified institutions placement if it satisfies the following conditions:

- (a) a special resolution approving the qualified institutions placement has been passed by its shareholders;
- (b) the equity shares of the same class, which are proposed to be allotted through qualified institutions placement or pursuant to conversion or exchange of eligible securities offered through qualified institutions placement, have been listed on a recognized stock exchange having nationwide trading terminal for a period of at least one year prior to the date of issuance of notice to its shareholders for convening the meeting to pass the special resolution;
- (c) it is in compliance with the requirement of **minimum** public shareholding specified in the Securities Contracts (Regulation) Rules, 1957;
- (d) In the special resolution, it shall be, among other relevant matters, specified that the allotment is proposed to be made through qualified institutions placement and the relevant date referred in the regulations shall also be specified.

(2) **Restrictions on amount raised:** The aggregate of the proposed **qualified institutions placement** and all previous qualified institutions placements made by the issuer in the same financial year shall not exceed five times the net worth of the issuer as per the audited balance sheet of the previous financial year.

In the instant case, the net worth of Gauri Chemicals Limited is ₹120 crore. Therefore, the maximum amount that can be raised by the company under the proposed issue of shares is ₹600 crore (5*120).

(3) **Restrictions on Pricing of issue and transferability of shares:**

Pricing of issue: The qualified institutions placement shall be made at a price not less than the average of the weekly high and low of the closing prices of the equity shares of the same class quoted on the stock exchange during the two weeks preceding the relevant date.

Transferability of shares: The eligible securities allotted under **qualified institutions placement** shall not be sold by the allottee for a period of one year from the date of allotment, except on a recognized stock exchange.

QUESTION 2: NOV-2015

- (i) What are the ways in which any person may be prohibited on the use of manipulative and deceptive devices, insider trading and substantial acquisition of **securities or control**?
- (ii) How the **price of the specified securities** is determined by the issuer as per the SEBI (ICDR) Regulations, 2009?

ANSWER:

1. (i) **Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control [Section 12 A]:** No person shall directly or indirectly—
 - (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on are cognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Actor the rules or the regulations made there under;
 - (b) employ any device, scheme or artifice to defraud in connection with issue or dealing insecurities which are listed or proposed to be listed on are cognized **stock exchange**;
 - (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit up on any person, in connection with the issue, dealing insecurities which are listed or proposed to be listed on are cognized stock exchange, in contravention of the **provisions of this Act** or the rules or the regulations made there under;
 - (d) engage in insider trading;
 - (e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made there under;
 - (f) acquire control of any company or securities more than the percentage of **equity share capital** of a company whose securities are listed or proposed to be listed on are cognized stock exchange in contravention of the regulations made under this Act.
- (ii) **Determination of Price and price band-**Regulation 30 of the SEBI (ICDR) Regulations, 2009 deals with the Price and price band.
 - (1) **Reference of price / floor price in the prospectus-**According to the regulation the issuer may mention a price or price band in the draft prospectus (in case of a fixed price issue) and **floor price or price band** in the red herring prospectus (in case of a book built issue) and determine the price at a later date before registering the prospectus with the Registrar of Companies: Provided that the prospectus registered with the Registrar of Companies shall contain only one price or the **specific coupon** rate, as the case may be.
 - (2) **Announcement of floor price/price band-** The issuer shall announce the floor price or price band atleast five working days before the opening of the bid (in case of an initial

public offer) and atleast one working day before the opening of the bid (in case of a further public offer), in all the newspapers in which the pre issue advertisement was released.

- (3) **Basis of issue price in the prospectus**-The announcement shall contain relevant financial ratios computed for both upper and lower end of the price band and also a statement drawing attention of the investors to the section titled “basis of issue price” in the prospectus.
- (3A) **Above details disclosed on the websites**-The announcement and the relevant financial ratios, shall be disclosed on the websites of those stock exchanges where the securities are proposed to be listed and shall also be pre-filled in the application forms available on the websites of the stock exchanges.
- (4) **Maximum Capon price band**-The capon the price band shall be less than or equal to one hundred and twenty percent of the floor price.
- (5) **Minimum Capon Floor price**-The floor price or the final price shall not be less than the face value of the specified securities.

Explanation: For the purposes of sub-regulation (4), the “capon the price band” includes capon the coupon rate in case of convertible debt instruments

QUESTION 3: MAY 2015

What is the required qualification for the appointment of:

- (i) The Presiding Officer
- (ii) Member of the Securities Appellate Tribunal as per the provisions of the Securities and Exchange Board of India (SEBI) Act, 1992?

ANSWER:

- (a) **Qualification for appointment as Presiding Officer or Member of Securities Appellate Tribunal:** As per the provisions of Section 15M of the Securities and Exchange Board of India (SEBI) Act, 1992, a person shall not be qualified for appointment as the Presiding Officer or Member of Securities Appellate Tribunal unless he-
- (a) is a sitting or retired judge of the Supreme Court or a sitting or retired Chief Justice of a High Court ;or
 - (b) is a sitting or retired judge of a High Court who has completed not less than seven years of service as a Judge in a High Court.

The Presiding Officer of the Security Appellate Tribunal shall be appointed by the Central Government in consultation with the Chief Justice of India or his nominee.

A person shall not be qualified for appointment as member of a Securities Appellate Tribunal unless he is a person of ability, integrity and standing who has shown capacity in dealing with problems relating to securities market and has qualification and experience of corporate law, securities laws, finance, economics or accountancy.

A member of the Board or any person holding a post at senior management level equivalent to Executive Director in the Board shall not be appointed as Presiding Officer or **Member** of a **Securities Appellate Tribunal** during his service or tenure as such with the Board or within two years from the date on which the ceases to hold office as such in the Board.

QUESTION 4: NOV 2014

Central Government has received complaints regarding improper functioning of a stock exchange. Explain the powers of the **Central Government** under the Securities Contracts (Regulation) Act, 1956 to suspend the business of the stock exchange.

ANSWER:

(a) **Powers of the Central Government to suspend business of the Stock Exchange (Section 12 of the Securities Contracts (Regulation) Act,1956):**

According to the provisions of the **Securities Contracts (Regulations) Act**, 1956, if in the opinion of the Central Government an emergency has arisen and for the purpose of meeting of the emergency the Central Government considers it expedient so to do, it may, by Notification in the **Official Gazette**, for reasons to be set out therein, direct or cognized stock exchange to suspend such of its business for such period not exceeding **7 days** and subject to such conditions as may be specified in the notification, and if in the opinion of the Central Government the interest of the trade or the public interest requires that the period should be extended, may, by like notification extend the said period from time to time.

Provided that where the period of suspension is to be extended beyond the first period, no notification extending the period of suspension shall be issued unless the Governing Body of the recognized Stock Exchange has been given an opportunity of being heard in the matter.

QUESTION 5: NOV 2014

A group of complainants have alleged that Mr. Z, a Member of the Securities and Exchange Board of India (SEBI) has pecuniary interest in some of the cases that came up before the Board and that he misused his position and therefore, he should be removed from his office. The complainants seek your advice. **Advise.**

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; has been convicted of an

offence which, in the opinion of the Central Government, involves a moral turpitude.

- (iii) has, in the opinion of the Central Governments of abused his **position** as **to render** his continuance in office detrimental to the public interest.
- (iv) Before removing a member, he will be given area son able 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 interesting some of the cases that came up before the Board and he misused his position and therefore, he should be removed from his office.

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 area son able opportunity of being heard in the matter.

QUESTION 6: MAY-2016

XYZ, are cognized stock exchange fails to comply with certain directions issued by the Securities and Exchange Board of India and the adjudicating officer initiated proceedings for the purpose of **imposing penalty**. The stock exchange seeks your advice whether it is possible to go for settlement of the proceedings. Advise explaining the **relevant provisions** of the Securities Contracts (Regulation) Act, 1956 ?

ANSWER:

Settlement of administrative and civil proceedings [Section 23J A of the Securities Contracts (Regulation) Act, 1956]-

- (1) **Filing of application to the Board-** Notwithstanding anything contained in any other law for the time being in force, any person, against whom any proceedings have been initiated or may be initiated under **section 12 A** or **section 23-I**, may file an application in writing to the Board proposing for settlement of the proceedings initiated or to be initiated for the alleged defaults.
- (2) **Board may consider for the settlement-**The Board may, after taking in to consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such sum by the default error on such other terms as may be determined by the Board in accordance with the regulations made under the Securities and Exchange Board of India Act,1992.
- (3) **Procedure to be followed as prescribed under the SEBI Act-**For the purposes of settlement under this section, the procedure as specified by the Board under the Securities and Exchange Board of India Act,1992 shall apply.
- (4) **No appeal to an order-**No appeal shall lie under section 23 L against any order passed by the Board or the adjudicating officer, as the case may be, under this section.

So according to the above provision of the Securities Contracts (Regulation) Act, 1956, XYZ, stock exchange may **propose** for the settlement of the proceedings.

QUESTION 7: RTP NOV – 2016

- (a) SEBI received a complaint from an invest or that he has not received the payment due to him from a registered stock broker. Explain the action that can be taken by SEBI against the stock broker under the provisions of Securities and **Exchange Board of India Act**, 1992 and the fact or so that will be taken in to account while taking such action.
- (b) The Balance Sheet of Royal Ltd .as on 31-03-2015 disclosed the following details:
- (i) Authorised sharecapital`400crores
 - (ii) Paid up sharecapital`150crores
 - (iii) Reserves and surplus`750crores

The company has issued in the year 2010, **Fully Convertible Debentures** of `100 crores which are due for conversion in the year 2015. The company proposes, after the conversion of Debentures to issue Bonus shares in the ratio of 1:1. Explain briefly the requirements of the Securities and Exchange Board of India (SEBI) Regulations to be followed by the company in this regard.

ANSWER:

- (a) **Penalty for default in case of stock brokers:** **Section 15F** of Securities and Exchange Board of India Act, 1992 provides for penalty for default in case of stock brokers. If any person who, is registered, as a stock broker under this Act:
- (i) fails to issue contract notes in the form and in the manner specified by the stock exchange of which such broker is a member, he shall be liable to a **penalty** which shall not be less than one lakh rupees but which may extend to for which the contract note was required to be issued by that broker;
 - (ii) fails to deliver any security or fails to make payment of the amount due to the invest or in the manner or within the period specified in the regulations, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which he sponsors or carries on any such collective investment scheme including mutual funds subject to a maximum of one crore rupees.;
 - (iii) charges an amount of brokerage which is in excess of the brokerage specified in the regulations, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to five times the amount of brokerage charged in excess of the specified brokerage, whichever is higher.

Factors for taking in to account while action

While adjudging **quantum of penalty** under section **15J**, the adjudicating officer shall have due regard to the following factors:

- (a) the amount of **disproportionate gain** or **unfair advantage**, wherever quantifiable, made as are

sult of the defaults.

- (b) the amount of loss to an investor or group of investors as a result of the default.
- (c) the repetitive nature of the default.
- (b) Taking in to consideration the above factors, the adjudicating officer may levy a maximum penalty as prescribed in section 15F for default by the concerned stock broker in making the payment to the investor. 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. Royal Ltd. can issue bonus shares in the ratio of 1:1 as follows:

1. The Articles of Royal 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. Steps for determining whether any increase in authorized share capital is required:
 - (a) Paid up share capital as on 31st March, 2015: ` 150 crores.
 - (b) Paid up capital (after conversion of ` 100 crores fully convertible debentures, assuming that these debentures shall be converted in to 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, 2013.

3. Sources of bonus shares:
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 (` 250crores), the proposed issue can be made.
4. Other legal requirements for issue of Bonus shares areas under.
 - (a) A resolutions hall 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.
5. The bonus issue can be made if there is no defaulting 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.

QUESTION 8: RTP NOV -2016

- (a) Working of **City Stock Exchange** Association Ltd., is not being carried on by its governing Board in public interest .On receipt of representations from various investors and Investors '**Association**, the Central government is thinking to with draw the recognition granted to the said Stock Exchange. You are required to state the circumstances the procedure for withdrawal of such recognition as per the provisions of Securities Contracts (Regulation) Act, 1956 in this regard. Also state the effect of such withdrawal on the contracts outstanding on the date of withdrawal.
- (b) A stock exchange desirous of taking over another stock exchange, seeks your advice on corporatisation. Examining the provisions of the Securities Contracts (Regulation) Act, 1956 and the meaning of the terms '**corporatisaton**' and '**demutualisation**', advise the stock exchange about the steps to be taken to give effect to the scheme of corporatisation.

ANSWER:

- (a) **Section 5** of the Securities Contracts (Regulation) Act, 1956 empowers the Centra Government to withdraw there cognition ranted to a stock exchange. The Circumstances and procedure to be followed for withdrawal of such recognition is Stated below:
- (i) if considering the interest of the trade or the public interest, the **Central government** is of the opinion that the recognition granted to a stock exchange should be withdrawn, the Central Government shall serve a written notice on the governing body of the stock exchange.
 - (ii) The said notice shall specify the reasons for the proposed withdrawal of the **recognition**.
 - (iii) The governing body of the stock exchange shall be afforded an opportunity of being heard by the **Central Government**.
 - (iv) Even after hearing the governing body, the Central Government is satisfied that the recognition granted to the stock exchange should be withdrawn; the Central Government may, by way of a notification in the **Official Gazette**, withdraw the recognition granted to the stock exchange.

The provision to the said section 5 states that no such withdrawal shall affect the validity of any contract entered in to or made prior to the date of notification with drawing the recognition and the Central Government may, after consultation with the stock exchange, make such provision as it deems fit in the notification of withdrawal or in any subsequent notification for the due performance of any contracts outstanding on that date.

(b) Corporatisation & Demutualisation of Stock Exchanges: ‘Corporatisation’ means the succession of are cognized stock exchange, being a body of individuals or a society registered under the Societies Registration Act, 1860, by another stock exchange, being a company incorporated for the purpose of assisting, regulating or controlling the business of buying, selling or dealing insecurities carried on by such individuals or society. ‘Demutualisation’ means the segregation of ownership and management from the trading rights of the members of are cognized stock exchange in accordance with a scheme approved by the SEBI.

Steps for Corporatisation and Demutualization [Section 4 B-Securities Contracts (Regulations) Act, 1956]

In accordance with the provisions of the Securities Contracts (Regulation) Act,1956, as contained in section 4 B:

1. All recognized stock exchanges referred to in **section 4 A** shall, with in such time as may be specified by the SEBI submit a scheme for corporatization and demutualization for its approval.
2. On receipt of the scheme, the SEBI may, after making such enquiry as may be necessary in this behalf and obtaining such further information, if any, as it may require and if it is satisfied that it would be in the interest of the trade and also in the public interest, approve the scheme with or without modification.
3. No scheme shall be approved by the SEBI if the issue of shares for lawful consideration or provision of trading rights in lieu of membership card of the members of are **cognized stock exchange** or payment of dividends to members have been proposed out of any reserves or assets of that stock exchange.
4. Where the scheme is approved, the scheme so approved shall be published immediately by-
 - (a) The SEBI in the **Official Gazette**
 - (b) The recognized Stock Exchange in such two daily newspapers circulating in India, as may be specified by the SEBI, and upon such publication, not withstanding anything to the contrary contained in this Actor any other law for the time being in force or any agreement, award, judgment, decree or other instrument for the time being in force, the scheme shall have effect and be binding on all persons and authorities including all members, creditors, depositors and employees of the recognized stock exchange and on all persons having any contract, right, power, **obligation or liability** with, against, over, to, or in connection with, the recognized stock exchange or its members.
5. Where the SEBI is satisfied that it would not be in the interest of the trade and also in the public interest to approve the scheme, it may, by an order, reject the scheme and such order of **rejection** shall be published by it in the **Official Gazette**. SEBI shall give are as on able opportunity of being heard to all the persons concerned and the recognized stock exchange concerned before passing an order rejecting the scheme.
6. SEBI may, while approving the scheme by an order in writing, restrict-

- (a) the voting rights of the shareholders who are stock brokers of the recognized stock exchange.
 - (b) the right of shareholders or a stock broker of the recognized stock exchange to appoint the representatives on the governing board or the stock exchange.
7. The order made by SEBI shall be published in the Official Gazette and on the publication thereof, the order, notwithstanding anything to the contrary contained in the Companies Act, 1956 or any other law for the time being in force, have full effect.
 8. Every recognized stock exchange, in respect of which the scheme for corporatisation or demutualization has been approved shall either by fresh issue of equity shares to the public or in any other manner as may be specified by the regulations made by SEBI, ensure that at least 51% of its equity share capital is held, within 12 months from the date of publication of the order by the public other than share holders having trading rights. The SEBI may, on sufficient cause being shown to it and in the public interest, extend the said period by another 12 months.

QUESTION 9 : MAY -2013 (SCRA)

The Securities and Exchange Board of India received serious complaints against Mr. Satyanarayan, a member of Mavli Stock Exchange. State as to what powers can be exercised by the Securities and Exchange Board of India to make enquiries and to take action in this matter, under the provisions of the Securities Contracts (Regulation) Act, 1956?

ANSWER:

Disciplinary action against members of Stock Exchange: SEBI can exercise the following powers under Securities Contracts (Regulation) Act, 1956 on receipt of serious complaints against the affairs of Mr. Satyanarayan, a member of Mavli Stock Exchange.

- (i) SEBI may, if it is satisfied that it is in the interest of the trade or in the public interest, by order in writing call upon the member of the stock exchange to furnish in writing information or explanation in respect of the matter under inquiry [Section 6 (3) (a)].
- (ii) SEBI instead of calling for information, may either appoint one or more persons to make an enquiry or direct the governing body of stock exchange to make inquiry and submit report to SEBI [Section 6 (3) (b)].

In case of adverse findings, SEBI can direct Mavli Stock Exchange to take disciplinary action against Mr. Satyanarayan, such as fine, expulsion from membership, suspension from membership for a specified period and any other penalty of a like nature not involving the payment of money. Bye-laws of the stock exchange usually provide for such punishment [Section 9 (3) (b)]. Mavli Stock Exchange is under obligation to take the action as directed.

QUESTION 10: MAY – 2015

- (a) A group of complainants have alleged that Mr. Z, a Member of the Securities and Exchange Board of India (SEBI) has **pecuniary interest** in some of the cases that came up before the Board and that he misused his position and therefore, he should be removed from his office. The complainants seek your advice. **Advise.**
- (b) A group of investors are upset with the functioning of two leading stock brokers of Calcutta Stock Exchange and want to make a complaint to SEBI for intervention and redressal of their grievances. Explain briefly the purpose of establishing SEBI and what type of defaults by the stock brokers come within the purview of SEBI Act, 1992.

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 an able 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.

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.

- (b)** The Securities and Exchange Board of India (SEBI) was established primarily for the purpose of
- (i) to protect the **interests** of investors in securities
 - (ii) to promote the development of securities market
 - (iii) to regulate the securities market and
 - (iv) For matters connected there with and incidental there to.

The following defaults by stock brokers come within the purview of SEBI Act:

- (i) Any failure on the part of the stock broker to issue contract notes in the form and in the manner specified by the Stock Exchange.
- (ii) Any failure on the part of the broker to deliver any security or to make payment of the amount due to the investor in the manner or within the period specified in the regulations.
- (iii) Any collection of charges by way of **brokerage** in excess of the brokerage as specified in the regulations. (Section 15 F, SEBI Act,1992)

QUESTION 11:MAY -2015

The Balance Sheet of Royal Ltd. as at 31-03-2015 disclosed the following details:

- (i) Authorised share capital `400crores Paid up share capital `150crores
- (ii) **Reserves and surplus** `750crores

The company has issued in the year 2010, Fully Convertible Debentures of `100 crores which are due for conversion in the year 2015. The company proposes, after the conversion of Debentures to issue Bonus shares in the ratio of 1:1. Explain briefly the requirements of the Securities and Exchange Board of India (SEBI) Regulations to be followed by the company in this regard.

ANSWER:

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. Royal Ltd. can issue bonus shares in the ratio of 1:1 as follows:

- (1) The Articles of Royal 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) Steps for determining whether any increase in authorised share capital is required:
 - (a) Paid up share capital as on 31st March,2015: `150crores.
 - (b) Paid up capital (after conversion of `100 crores fully convertible debentures, assuming that these debentures shall be converted in to share capital of `100 crores) `250 crores(150+100).
 - (c) Proposed bonus issue-1 share for every1shareheld.
 - (d) Post bonus issue capital: `500 crores (250+250).
- (3) 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.

Sources of bonus shares: **Reserves and surplus** (free reserves built out of the genuine profits can be used for issue of bonus issue): `750Crores Since the source of issue of bonus shares (`750 crores) is sufficient to issue bonus shares (`250 crores), the proposed

issue can be made.

- (4) Other legal requirements for issue of Bonus shares are as under:
- (a) Are solution 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.
- (5) 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.

QUESTION 12: RTP MAY -2017

- (a) State the conditions imposed on issuers to make a public and rights issues of specified securities?
- (b) Mr. Sponsor, an investor is not satisfied with the dealings of his stock broker, Mr. Advisor. Mr. Advisor is registered with **BSE**. Mr. Sponsor seeks your advise on the various prospects available to make a complaint against the stock broker under Securities and Exchange Board of India Act, 1992 and also the grounds on which such complaint can be made. **Advise**

ANSWER:

- (a) No issuer shall make a public issue or rights issue of specified securities:
- (i) if 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**;
 - (ii) 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;
 - (iii) *[omitted]
 - (iv) **un less** it has made an application to one or more recognized stock exchanges for listing of specified securities on such stock exchanges and has chosen one of them as the designated stock exchange:

Provided that in case of an initial public offer, the issuer shall make an application for listing of the specified securities in atleast one recognized stock exchange having **nationwide trading terminals**;

- (v) un less it has entered in to an agreement with a depository for **dematerialization** of specified **securities** already issued or proposed to be issued;
- (vi) un less all existing partly paid-up equity shares of the issuer have either been fully paid up or forfeited;
- (vii) un less firm arrangements of finance through verifiable means towards **seventy five percent** .of the stated means of finance, excluding the amount to be **raised** through the proposed **public issue** or rights issue or through existing identifiable internal accruals,

have been made.

[*Clause (c) omitted by SEBI (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2016, w.e.f. 25.05.2016.]

- (b) 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.

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**.
- (b) Any failure to **deliver** any security or any failure to make payment of the amount due to the investor in the manner with in the period specified in the regulations.
- (c) Any collection of charges by way of brokerage which is in **excess** of the brokerage specified in the **regulations**.

QUESTION 13: RTP MAY 2017 SCRA.

Describe the provisions of the Securities Contracts (Regulation) Act, 1956 regarding the **powers** of the Central Government to supersede the Governing Body of a recognized Stock Exchange and the consequences of such supersession.

ANSWER:

According to the provisions of section **11** of the Securities Contracts (Regulation) Act, 1956, where the Central Government is of opinion that the **governing body** of any recognized stock exchange should be superseded, then notwithstanding anything contained in any other law for the time being in force, the Central Government may serve on the governing body a written notice that the Central Government is considering the **super session** of the governing body for the reasons specified in the notice. After giving an opportunity to the governing body of such Stock Exchange to be heard in the matter, the **Central Government** may, by notification in the **Official Gazette**, declare the *governing body of such Stock Exchange to be superseded.

The Central Government may appoint any person or persons to exercise and perform all the powers and duties of the governing body. If more than one person is so appointed, one of them may be the **Chairman** and another as the **Vice-Chairman**. Such person or persons shall hold office for such period as may be specified in the Notification and the Central Government may vary such period by way of another Notification.

On the publication of the notification in the Official Gazette, following are the **consequences**:

- (i) The members of the governing body of such Stock Exchange cease to hold office as such members on and from the date of notification.
- (ii) The person or persons appointed by the Central Government may exercise and perform all the powers and duties of the governing body which has been so superseded.
- (iii) The property of the Stock Exchange as deemed necessary and so specified in writing by such person or persons to carry on the business of the Stock Exchange shall vest in such person or persons.

QUESTION 14 : MOCK TEST PAPER MARCH 2017

SEBI is of the opinion that in the interest of investors it is desirable to amend the rules of XYZ Stock Exchange prohibiting the appointment of the broker-member as **President** of the stock exchange. Explain with reference to the provisions of the Securities Contracts (Regulation) Act, 1956 whether it is possible for **SEBI** to **amend** the rules of the Stock Exchange, if the rules are not amended by the stock exchange.

ANSWER:

Power of Central Government/SEBI to direct rules to be made or to make rules:
The Central Government is empowered under section 8 of the Securities Contracts (Regulation) Act, 1956 to issue written order directing all or any of the recognized stock exchanges to make any rules or to amend any rules already made within 2 months from the date of the order in respect of matters specified in section 3(2). One of them atters specified in section 3(2) is the governing body of stock exchange, its constitution and powers of management and the manner in which its business is to be transacted. Hence, the Central Government is empowered to direct the Stock Exchange in respect of prohibition of **broker-member** being appointed as president of the stock exchange. According to the notification issued by the Central Government under section 29 A, this power is also exercisable by SEBI.

If any recognized stock exchange fails or neglects to comply with any order made by SEBI within **2 months**, SEBI may itself make the rules made, either in the form prepared in the order or with such modifications there of as may be agreed to between the stock exchange and SEBI. The amended rules should be published in the Gazette of India and also in the **Official Gazette** of the State in which the principal office of the recognized stock exchange is situated. After such publication, the rules will be valid, as if they had been made or amended by the stock exchange itself.

Hence, SEBI can issue directions to the recognized stock exchange to amend the rules and if the said stock exchange does not take steps for **amending** the rules, SEBI may amend the rules on its own by following the procedure laid down in **section 8**

QUESTION 15: RTP NOV – 2017

- (a) Mr. Z was appointed as the presiding officer of the Securities Appellate Tribunal (SAT) for a term of five years. Considering his good performances during the tenure of his service, it was proposed by the competent authority to re-appoint him

for another term. During reappointment he has completed good **69 years** of age. Examine in the light of the SEBI Act, 1992, the eligibility of his appointment / reappointment as a presiding officer in the Securities Appellate Tribunal.

- (b) Examine with reference to the provisions of the Securities Contracts (Regulation) Act, 1956 whether it is possible for City Stock Exchange Limited, a company incorporated under the **Companies Act** and are cognized Stock Exchange, to insist that its **members** should appoint only other members as their proxies to attend and vote at the meeting of the Stock Exchange.

ANSWER:

- (a) **Tenure of office of Presiding Officer and other Members of Securities Appellate Tribunal (Section 15 N)**-According to the provision, the Presiding Officer or every Judicial or Technical Member of the Securities Appellate Tribunal (SAT) shall hold office for a term of **five years** from the date on which he enters upon his office, and shall be eligible for reappointment for another term of maximum **five** years.

Provided that no Presiding Officer or the Judicial or Technical Member shall hold office after he has attained the age of seventy years.

As per the given provision, during re-appointment, Mr. Z was of **69** years. As per the section he shall be eligible for reappointment for another term of maximum five years but as per the provision on Presiding Officer or the Judicial or Technical Member shall hold office after he has attained the age of **seventy** years.

Accordingly, in the given case Mr. Z can be re-appointed but only for **one** year.

[Note: This section is inserted by the Finance Act, 2017 vide Gazette Notification dated March 31, 2017. W.e.f. from April 26, 2017]

- (b) **Proxies in the case of stock exchange:** Section **7A** of the Securities contracts (Regulation) Act, 1956, permits a recognized stock exchange to make rules or amend any rules made by it to provide for all or any of them at terms listed in section **7A (1)** including the restriction on the right of a member to appoint another person as his proxy to attend and vote at a meeting of the stock exchange. If the rules of City Stock **Exchange** Ltd permit its members to appoint only another member as his **proxy**, then members cannot appoint non-members as proxies.

If the rules of City Stock Exchange Ltd do not have any such provision, then it is possible to amend the rules providing for such restriction. But the rules can be amended only with approval of Central Government / SEBI. These should be published on the Official Gazette. Such rules will be valid notwithstanding anything to the contrary contained on the Companies Act, 1956 [Section **7A (2)**].

According to the Companies Act, a member can appoint another person (whether a member or not) is a company as his proxy. Though City Stock Exchange Ltd is a company; it is possible to provide for restriction relating to appointment of proxies taking advantage of Section **7A** of **SCRA, 1956**.

QUESTION 16:NOV -2016

RSE Stock Exchange Limited, a recognised stock exchange is involved in trading of shares of Son Limited. The SEBI on receiving a complaint from a group of invest or enquired and found that trading of hares of Son Limited is being conducted in a manner detrimental to the interest of the **general investors**. In order to curb the same, the SEBI wants to issue some directions to RSE Stock Exchange Limited. Referring to the provisions of the Securities Contract (Regulations) Act, 1956, discuss whether the SEBI has power to issue such directions. Can such **directions** be given to an individual whom had made some profit in any transaction in contravention of any provision of the Securities Contracts (Regulation) Act,1956, or regulations made there **under**?

ANSWER:

(a) Power to issue directions [Section 12 A 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 recognized 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),

it may issue such **directions**,-

- (i) 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
- (ii) to any company whose securities are listed or proposed to be listed in are cognized 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 As per the Explanation given in the section, it is here by 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.

QUESTION 17: RTP NOV -2013

A recognized stock exchange proposes to make bye-laws for the regulation and control of contracts relating to the purchase and sale of securities. State the legal requirements under the Securities Contracts (Regulation) Act, 1956 to give effect to the proposal. Explain the powers of the Securities and Exchange Board of India to amend the **bye-laws** of a recognized stock exchange.

ANSWER:

- (a) **Power of Stock Exchange to make bye-laws:** Any recognized stock exchange may make bye-laws for the regulation and control of contracts relating to the purchase and sale of securities by complying with the requirements under section 9 (1) of the Securities Contracts (Regulation) Act, 1956. The bye-laws made by the stock exchange are subject to the previous approval of the Securities and Exchange Board of India.

The bye-laws made under this section may

- (i) specify the **bye-laws**, the contravention of which shall make a contract **void** under sub-section (1) of section 14 of the said Act and
- (ii) provide that the contravention of any of the bye-laws shall render the member concerned liable to punishments, namely, fine or expulsion from membership or suspension from **membership** or **any other penalty** of a like nature not involving the payment of money [Sub-section(3)].

Any bye-laws made under this section shall be subject to such conditions in regard to previous publication as may be prescribed, and, when approved by the SEBI, shall be published in the Gazette of India and also in the **Official Gazette** of the State in which the principal office of the recognized stock exchange is situated, and shall have effect as from the date of its publication in the Gazette of India [Sub-section(4)].

If the SEBI is satisfied, in any case, that in the interest of the trade or in the public interest any bye-laws should be made immediately, it may, by order in writing specifying the reasons therefore, dispense with the condition of previous publication.

Power of SEBI to amend bye-laws: Section 10 of the Securities Contracts (Regulation) Act, 1956 empowers the SEBI to amend bye-laws of a recognized **stock exchange**.

SEBI may either on a request in writing received by it in this behalf from the **governing body** of a recognized stock exchange or on its own motion 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 amend the bye-laws and record its reasons also. **Amended** bye-laws should be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the stock exchange is situated.

If the stock exchange has any objection to the amendments made by the SEBI, it may, within **2 months** apply to the SEBI for **revision**.

