Other Contemporary Changes in Law:

Question 1: What are the powers of the Central Government under the Companies Act, 2013 regarding the appointment of company prosecutors[1]?

Answer: Section 443 of the Companies Act, 2013 lays down the provisions seeking to provide that the Central Government may appoint company prosecutors with the same powers as given under the Criminal Procedure Code [Cr. PC] on Public Prosecutors.

(a) **Appointment of company prosecutors:** The Central Government may appoint (generally, or for any case, or in any case, or for any specified class of cases in any local area) one or more persons, as company prosecutors for the conduct of prosecutions arising out of ***this*** Act; and

(b) **Powers and Privileges:** The persons so appointed as company prosecutors shall have all the powers and privileges conferred on Public Prosecutors appointed under section 24 of the Cr. PC.

Question 2: The value of the security of a secured creditor of a company is Rs. 1,00,000. The total amount of the workmen's dues is Rs. 1,00,000. The amount of the debts due from the company to its secured creditors is Rs. 3,00,000. The aggregate of the amount of workmen's dues and of the amounts of debts due to secured creditors is Rs. 4,00,000.

With reference to the provisions of the Companies Act, 1956, what is the workmen's portion of the security? If the liquidator incurs Rs. 10,000 for the preservation of the security before it is realised by the secured creditor, what is the portion of Rs. 10,000 that should be borne by the secured creditors?

Answer:

(1) The workmen portion of the security is therefore 1/4th of the value of the security, i.e. 25,000, [Section 529(3) of the Companies Act, 1956].

(2) If the liquidators incur Rs. 10,000 for the preservation, it is equal to the following equation:

Whole of expenses – [Whole of expenses × Value of the security] / Workmen's portion of Dues] = Rs. 10,000 – [10,000×25,000]/ 1,00,000 = Rs. 10,000 – 2,500 = = Rs. 7,500. This is the amount to be borne by the secured creditors.

Question 3: Define Record Date under SEBI (ICDR) Regulations, 2009

Answer:

(1) A listed issuer making a rights issue shall announce a record date for the purpose of determining the shareholders eligible to apply for specified securities in the proposed rights issue.

(2) The issuer shall not withdraw rights issue after announcement of the record date.

(3) If the issuer withdraws the rights issue after announcing the record date, it shall not make an application for listing of any of its specified securities on any recognised stock exchange for a period of twelve months from the announcement record date.

Question 4: What do you understand by the expression "Disclaimer of onerous property"

Answer:

The provisions relating to disclaimer of onerous property will arise during the winding up of the company. The liquidator, may, with the leave of the court disclaim any onerous property within 12 months of the commencement of the winding up.

If the existence of any disclaimable property does not come to the knowledge of the liquidator, within one month after the commencement of the winding up, he can disclaim at any time within 12 months after he has become aware of it. The Court has, however, the power to extend the time.

An onerous property may consist of:

(a) land of any tenure burdened with onerous covenants;
(b) shares or stocks in companies;
(c) any other property which is unsaleable or not readily saleable ;
(d) unprofitable contracts.

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[1] a person, especially a public official, who brings in proceedings against someone. prosecutors are fully entitled to bring any number of offences against a single defendant

The liquidator's right to disclaim is lost if within 28 days or such extended period as may be allowed by the court, of receiving a demand from any interested person to make his decision, he does not give notice that he intends to apply to the court for leave to disclaim [Section 535(4)].

The term onerous property in the context of a liquidation or bankruptcy, applies to unprofitable contracts and to property that is unsaleable or not easily saleable or that might give rise to a continuing liability.

Admissibility of certain documents as evidence [Section 397 of the Companies Act, 2013]

Notwithstanding anything contained in any other law for the time being in force, any document reproducing or derived from returns and documents filed by a company with the Registrar on paper or in electronic form or stored on any electronic data storage device or computer readable media by the Registrar, and authenticated by the Registrar or any other officer empowered by the Central Government in such manner as may be prescribed, shall be deemed to be a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder without further proof or production of the original as evidence of any contents of the original or of any fact stated therein of which direct evidence is admissible.

Inspection, production and evidence of documents kept by Registrar [Section 399 of the Companies Act, 2013]

(1) Save as otherwise provided elsewhere in this Act, any person may—

(*a*) inspect by electronic means any documents kept by the Registrar in accordance with the rules made, being documents filed or registered by him in pursuance of this Act, or making a record of any fact required or authorised to be recorded or registered in pursuance of this Act, on payment for each inspection of such fees as may be prescribed;

(*b*) require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document to be certified by the Registrar, on payment in advance of such fees as may be prescribed:

Provided that the rights conferred by this sub-section shall be exercisable—

(*i*) in relation to documents delivered to the Registrar with a prospectus in pursuance of section 26, only during the fourteen days beginning with the date of publication of the prospectus; and at other times, only with the permission of the Central Government; and

(*ii*) in relation to documents so delivered in pursuance of section 388(1)(b), only during the fourteen days beginning with the date of the prospectus; and at other times, only with the permission of the Central Government.

(2) No process for compelling the production of any document kept by the Registrar shall issue from any court or the Tribunal except with the leave of that court or the Tribunal and any such process, if issued, shall bear thereon a statement that it is issued with the leave of the court or the Tribunal.

(3) A copy of, or extract from, any document kept and registered at any of the offices for the registration of companies under this Act, certified to be a true copy by the Registrar (whose official position it shall not be necessary to prove), shall, in all legal proceedings, be admissible in evidence as of equal validity with the original document.

FEMA Provisions:

Prior approval from RBI is required if:

1. Gift remittance exceeds US$ 5,000 per financial year per remitter or donor other than resident individual;
2. Donation exceeding US$ 5,000 per financial year per remitter or donor other than resident individual;
3. Donations by corporate, exceed 1% of their foreign exchange earnings during the previous three financial years or US$ 5,000,000, whichever is less, for,—

   (*a*) creation of Chairs in reputed educational institutes;

   (*b*) to funds (not being an investment fund) promoted by educational institutes; and

   (*c*) to a technical institution or body or association in the field of activity of the donor company.

Insurance Laws and GIC Audit:

- **[2]Solvency Margin or Control Level of Solvency [Section 64VA]:**

(1) Every insurer and re-insurer shall at all times maintain an excess of value of assets over the amount of liabilities of, not less than 50% of the amount of minimum capital as stated under section 6 and arrived at in the manner specified by the regulations.

(2) An insurer or re-insurer, as the case may be, who does not comply with sub- section (1), shall be deemed to be insolvent and may be wound-up by the court on an application made by the Authority.

(3) The Authority (i.e. IRDA) shall by way of regulation made for the purpose, specify a level of solvency margin known as control level of solvency on the breach of which the Authority shall act in accordance with the provisions of sub-section (4) without prejudice to taking of any other remedial measures as deemed fit:

Provided that if in respect of any insurer the Authority is satisfied that either by reason of an unfavourable claim experience or because of a sharp increase in the volume of new business, or for any other reason, compliance with the provisions of this sub-section shall cause undue hardship to the insurer, it may direct that for such period and subject to such conditions as it may specify, the provisions of this sub-section shall apply to that insurer with such modifications provided that such modifications shall not result in the control level of solvency being less than what is stipulated under sub-section (1).

(4) If, at any time, an insurer or re-insurer does not maintain the required control level of solvency margin, he shall, in accordance with the directions issued by the Authority, submit a financial plan to the Authority, indicating a plan of action to correct the deficiency within a specified period not exceeding six months.

(5) An insurer who has submitted a plan, as required under sub-section (4), the Authority shall propose modifications to the plan, if the Authority considers the same inadequate, and in such an eventuality, the Authority shall give directions, as may be deemed necessary, including direction in regard to transacting any new business, or, appointment of an administrator or both.

(6) An insurer or re-insurer, as the case may be, who does not comply with the provisions of sub-section (4) shall be deemed to have made default in complying with the requirements of this section.

(7) The Authority shall be entitled at any time to take such steps as it may consider necessary for the inspection or verification of the assets and liabilities of any insurer or re-insurer, or for securing the particulars necessary to establish that the requirements of this section have been complied with as on any date, and the insurer or re-insurer, as the case may be, shall comply with any requisition made in this behalf by the Authority, and in the event of any failure to do so within two months from the receipt of the requisition, the insurer or re-insurer, as the case may be, shall be deemed to have made default in complying with the requirements of this section.

(8) In applying the provisions of sub-section (1) to any insurer or re-insurer, as the case may be, who is a member of a group, the relevant amount for that insurer shall be an amount equal to that proportion of the relevant amount which that group, if considered as a single insurer, would have been required to maintain as the proportion of his share of the risk on each policy issued by the group bears to the total risk on that policy:

Provided that when a group of insurers ceases to be a group, every insurer in that group who continues to carry on any class of insurance business in India shall comply with the requirements of sub-section (1) as if he had not been an insurer in a group at any time:

Provided further that it shall be sufficient compliance of the provisions of the foregoing proviso if the insurer brings up the excess of the value of his assets over the amount of his liabilities to the required amount within a period of six months from the date of cessation of the group:

Provided also that the Authority may, on sufficient cause being shown, extend the said period of six months by such further periods as it may think fit, so, however that the total period may not in any case exceed one year.

(9) Every insurer shall furnish to the Authority return giving details of solvency margin in such form, time, manner including its authentication as may be specified by the regulations.

- **[3]Deposits [Section 7]:**

Every insurer shall, in respect of the insurance business carried on by him in India, deposit and keep deposited with the Reserve Bank of India in one of the offices in India of the Bank for and on behalf of the Central Government the

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[2] Amended by by Insurance Laws (Amendment) Act, 2015, ***w.r.e.f. 26-12-2014***

[3] Omitted by Insurance Laws (Amendment) Act, 2015, ***w.r.e.f. 26-12-2014***

amount hereafter specified, either in cash or in approved securities estimated at the market value of the securities on the day of deposit, or partly in cash and partly in approved securities so estimated:—

Class of insurance business	***Amount of deposits***
Life Insurance	1% of total gross premium written in India in any financial year, not exceeding Rs. 10 crores
General Insurance	3% of total gross premium written in India in any financial year, not exceeding Rs. 10 crores
Re-insurance	A sum of Rs. 20 crores
Gross premiums are the total gross amount of premiums, membership fees, dues, and any other considerations on insurance written on each and every kind of property or risk.	