

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Securities and Investment Law
Semester-VII (Batch: 2014-19)

Mid Semester Test: August-2017

Date: 23rd August, 2017

Duration: 2 hours

Max. Marks: 30

Instructions:

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in-line.
- Do not write anything on the question paper.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.

Attempt **any three** of the following:

Marks

- Q.1 International Investment Law has emerged as a strong mechanism for the protection of the investments made by the foreign investor. Most Favoured Nation (MFN) as a principle of International Investment Law has proved to be very controversial entailing serious consequences for the state concerned. Discuss the approach of Indian government (as a host State) towards this principle in the light of its experience. (10)
- Q.2 What are Securities? The words 'other marketable securities of a like nature' have been subjected to an overwhelming judicial scrutiny over the years, so much so that they have become *sine qua non* in any discussion on securities. Elucidate. (10)
- Q.3 (a) The depositories and their participants levy charges on the opening of new demat accounts, custody charges and transaction charges towards the credit of the securities. The Board (SEBI) as a regulator of the securities market had issued a circular rationalising the tariff structure with regard to the levy of these charges. After issuance of the circular, several representations were received by the Board from the investor community and with a view to encourage more investors to hold securities in demat mode, the Board as per the aforesaid circular made entry into the demat environment free except from applicable statutory charges. The Board found that depositories and their participants had been levying transaction charges on the beneficial owners when they transferred their securities from one participant to another although no account closure charges were levied. In other words, an investor who was not satisfied with the services of a participant could move his demat account to another participant only at a cost by paying the transaction charges that were being levied by the depositories and their participants. The Board in its wisdom thought that the investors should be freed of this cost. It then issued the circular conveying to the two depositories and all their participants and also to the investors in general its decision that no charges shall be levied by a depository on its participant and consequently the participant shall not levy any charges on a beneficial owner when the latter (beneficial owner) transfers all the securities lying in his account to another participant of the same depository or to another depository. It was made clear that the beneficial owner's account with the transferee participant and the transferor participant should be one and the same i.e. the two accounts should be identical in all respects. It was also clarified that in case (7+3= 10)

the account with the transferor participant was a joint account, the account with the transferee participant should also be a joint account in the same sequence of ownerships. The depositories and their participants were advised to put in place necessary systems and procedures to differentiate between an account closure transaction and a normal share transfer transaction before the coming into force of the impugned circular so as to avoid any problems in the live environment and ensure smooth implementation of the aforesaid decision. They were advised to make suitable amendments in their relevant bye-laws, rules and regulations to implement the decision of the Board.

Aggrieved by the administrative circular issued by the Board, one of the company registered as 'Depository' files an appeal to SAT. The grievance of the company is that it is a company incorporated under Companies Act 1956 and have its Articles and Memorandum of Association which permits it to make profits and distribute dividend to its shareholders and that the Board has, without any justification interfered with its functioning, in as much as it has been debarred from levying fee/ charges when it is rendering service to the investors who hold demat account with it.

Whether appeal would lie against the administrative circular issued by Board? Explain different types of functions exercised by Board including the powers of the Board amenable to the appellate jurisdiction of the SAT. Justify your answer citing relevant provisions under SEBI Act and case laws.

(b) Write a short note on SEBI Informal Guidance Scheme.

- Q.4 (a) Explain, how Delhi High Court in *National Stock Exchange of India Limited vs Central Information Commission* held that 'National Stock Exchange' is 'Public Authority' under RTI Act. (8+2=10)
- (b) What is Howey Test?
