

Due Diligence and Corporate Compliance Management

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Roll No.....

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 8

Total number of printed pages : 8

NOTE : Answer SIX questions including Question No.1 which is compulsory.

1. (a) State, with reasons in brief, whether the following statements are true or false :
- (i) As per annexure 1(d) of clause 49 of the listing agreement, every listed company is mandatorily required to establish a whistle-blower policy.
 - (ii) An issuer may list its debt securities issued on private placement basis on a recognised stock exchange.
 - (iii) As per SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, there is a law of minimum subscription and it applies for public issues, rights issues and debt instruments privately placed by listed companies.
 - (iv) The date-stamping requirement is applicable in relation to transfer deed executed for transfer of any kind of securities in a company.
 - (v) Independent director cannot be an executive of the company in the immediately preceding five financial years.

(2 marks each)

- (b) Examine and comment on the following :

- (i) In the age of information technology and outsourcing where corporate solutions are available at every step and in respect of every matter, compliance solution providers adopt certain approaches for creating or enhancing an ethics and compliance program for companies.
- (ii) As per Regulation 7 of the Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2000, Indian party seeking to make investment in an entity engaged in the financial sector should fulfil certain additional conditions.

(5 marks each)

2. (a) Write the most appropriate answer from the given options in respect of the following :
- (i) Which of the following type of companies are not required to file documents and forms with the Registrar of Companies in e-forms No. 23AC-XBRL and 23ACA-XBRL —
 - (a) Listed with stock exchange
 - (b) Having paid-up capital of `5 crore or above
 - (c) Having turnover of `100 crore or above
 - (d) Having average profit of `5 crore or above in last three years.
 - (ii) Notice of consolidation, sub-division or increase in share capital or increase in number of members is given to the Registrar of Companies in —
 - (a) E-form No.3
 - (b) E-form No.4
 - (c) E-form No.5
 - (d) E-form No.6.
 - (iii) SCORES, a web-based processing system commenced by SEBI relates to —
 - (a) Online submission of share application forms by investors
 - (b) Online monitoring of complaints from investors
 - (c) Online approval system for public issues
 - (d) Online approval system for issuing Indian depository receipts (IDRs).
 - (iv) The stamp duty payable on transfer of debentures —
 - (a) Is nil, being exempt
 - (b) Is at uniform rate throughout the country
 - (c) Varies from State to State
 - (d) None of the above.

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- (v) Section 81 of the Companies Act, 1956 does not relate to —
- (a) Issue of shares on rights basis
 - (b) Issue of bonus shares
 - (c) Further issue of shares to persons who may or may not be existing members
 - (d) Conversion of loans into equity.
- (vi) In case of revision in price band, the public issue must be kept open for the following combination of minimum and maximum working days respectively —
- (a) 3 - 10
 - (b) 5 - 15
 - (c) 1 - 10
 - (d) 3 - 30.

(1 mark each)

- (b) Distinguish between the following :
- (i) 'Internal audit' and 'concurrent audit'.
 - (ii) 'Pre-issue advertisements for public issue of shares' and 'post-issue advertisements for public issue of shares'.

(5 marks each)

3. (a) Ramesh was the managing director of KMF Pvt. Ltd. He was also a substantial shareholder and promoter of Hari group of companies. Ramesh was willing to sell his total stake in Hari group of companies. Negotiations were going on for acquisition of three listed companies of Hari group by KMF Pvt. Ltd. As the managing director, he was involved in the negotiations on behalf of KMF Pvt. Ltd. Memorandum of understanding had also been executed between the parties for the deal.

Meanwhile, KMF Pvt. Ltd. purchased shares of the companies of Hari group through a broker of recognised stock exchange. Order of purchase for the shares was placed by Ramesh and contract note had been furnished to him by the broker in the name of KMF Pvt. Ltd.

Before finally closing the deal for acquisition of companies by KMF Pvt. Ltd., the matter has been placed before you to carry out due diligence particularly with reference to SEBI (Prohibition of Insider Trading) Regulations, 1992.

Submit your views.

(5 marks)

- (b) NVN Holdings Pvt. Ltd. is an investment company. It has only two directors/promoters/shareholders, Navin and Varun, both having 50% shareholding each. These two directors of this private limited company, in their individual capacity, were also promoters of Deepak Style Ltd., the target company. They together held 33.38% of the voting rights/share capital in the target company. The remaining 15 promoters of the target company held 12.32% of the voting rights in that company. Thus, the total holding of the promoter group in the target company came to 45.70% including that of the two directors.

Now, NVN Holdings Pvt. Ltd. acquired 6.17% of the total equity capital of the target company without making public announcement.

You are required to —

- (i) Explain the meaning of public announcement; and
- (ii) State whether any default has been made by NVN Holdings Pvt. Ltd. with reference to SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

(6 marks)

- (c) You have been appointed as secretarial auditor by Jai Udyog Ltd. While checking the records, you find that security deposits of the employees who had left the company were still lying unpaid. On enquiry, it was revealed that the laptop given to an employee, Rohit had not been returned to the company after his retirement. Further, residential accommodation provided to another employee, Gautam, was not vacated by him even after termination of his service with the company. Notices were already given to them for handing over the assets to the company. The directors of the company are not sure whether action under section 630 of the Companies Act, 1956 can be initiated against these *ex-employees*.

Advise the Board of directors of the company in the matter.

(5 marks)

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4. (a) With reference to the relevant provisions of the Companies Act, 1956, advise the company on the following matters :

- (i) Company wants to keep its books of account at more than one place in India other than its registered office in pursuance of the provisions of sub-section (1) of section 209 of the Companies Act, 1956.
- (ii) Company wants to give an advance salary of `80,000 to the daughter of the managing director, who is employed in the company as Company Secretary.

(3 marks each)

(b) Kamal Consulting Ltd. seeks your advice in respect of the borrowing of `65 crore from a financial institution by the Board of directors for which it passed a resolution at a meeting held on 10th May, 2012. Mohan, one of the directors, opposed the said resolution, being not in the interest of the company and raised an issue that the said borrowing is outside the powers of the Board of directors. The following information is available with respect to the company :

(i) Share capital	30 crore
(ii) Reserves and surplus	30 crore
(iii) Secured loans	50 crore
(iv) Temporary loans repayable on demand	20 crore

Advise the management of the company whether the power of borrowing of the company is within the powers conferred under the Companies Act, 1956.

(5 marks)

(c) Raju is having securities in a depository account. He intends to create a pledge on a security owned by him. He seeks your advice about the requirement of Regulation 58 of the SEBI (Depositories and Participants) Regulations, 1996 for creating of pledge on the security.

(5 marks)

5. (a) State in the light of requirement of clause 49 of the listing agreement as to whether the following persons can be appointed as independent directors on the Board :
- (i) Krishan, who is an executive of the company since its inception.
 - (ii) Soumitro, who holds 1.5% of the equity shares of the company having voting rights.
 - (iii) Pradeep, who is already a director of 14 companies.
 - (iv) Shalini, who is appointed by a financial institution which has lent funds to the company.

(6 marks)

- (b) The Board of directors of Radha Arts Pvt. Ltd. having paid-up capital of ₹ 4 crore consists of two directors. One of the directors is a member of the Institute of Company Secretaries of India. The company intends to appoint him as Company Secretary also. State the legal position as per the Companies Act, 1956.

(4 marks)

- (c) ATN Global Software Inc., a US company wants to raise the funds from Indian capital market. The Board of directors of the company seeks your advice on the following issues :
- (i) Can a foreign company access Indian securities market for raising funds ?
 - (ii) What parties would be involved in the issue of securities from Indian securities market ?
 - (iii) Who is eligible to issue securities in Indian securities market ?
 - (iv) Who can purchase the securities and what would be the minimum application amount for such issuance of securities ?

(6 marks)

6. (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :
- (i) An issuer is required to allot the securities and refund the excess amounts within _____ from the closure of the offer.
 - (ii) The merger of a dairy farming business with a supplier of agricultural foodstuffs is an example of _____ .

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- (iii) An Indian party is permitted to make investment in overseas joint ventures (JV)/wholly owned subsidiaries (WOS), not exceeding _____ of its net worth.
- (iv) Securities which have some of the attributes of both debt securities and equity securities are known as _____ .
- (v) New depository participants which are operational for less than _____ in an audit period can submit audit report for that audit period with the audit report for next audit period.
- (vi) In the case of a public limited company, the director must obtain qualification shares within _____ from the date of appointment.

(1 mark each)

- (b) Azad Ltd. is having paid-up share capital of ` 1 crore consisting of 7,00,000 equity shares of ` 10 each and 3,00,000 preference shares of ` 10 each, both fully paid-up. Out of the paid-up capital, 3,00,000 equity shares are held in the company by nationalised banks and Life Insurance Corporation (LIC). These banks and LIC have further purchased 2,50,000 preference shares of the company.

Now, the company is not sure about its status whether it has turned as a government company. It has approached you to clarify about its status so that matter of appointment of auditors could also be decided. Advise the company referring to relevant provisions.

(5 marks)

- (c) Swift Ltd. is seeking your advice as to how the registration of charges (created/modified) with the Registrar of Companies as required under sections 124 to 145 of the Companies Act, 1956 will be made. Advise.

(5 marks)

7. Write notes on **any four** of the following :

- (i) Role of information technology in compliance management systems
- (ii) Secretarial audit
- (iii) Remuneration committee
- (iv) Documents to be checked in due diligence process
- (v) Book building and reverse book building
- (vi) Redemption and roll-over of debt securities.

(4 marks each)

8. Critically examine and comment on *any four* of the following :

- (i) The acquirer has to undertake a preliminary study of the target company before initiating any action for its takeover.
- (ii) Every listed company is required to comply with the requirements specified in Rule 19(2) and Rule 19A of the Securities Contracts (Regulation) Rules, 1957 with respect to minimum public holdings.
- (iii) Due diligence investigations are generally for corporate mergers and acquisitions.
- (iv) The scope of a search report depends upon the requirement of the bank or financial institution concerned.
- (v) The securities market facilitates the internationalisation of an economy by linking it with the rest of the world.

(4 marks each)