

## Due Diligence and Corporate Compliance Management

# 377

Roll No.....

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 8

Total number of printed pages : 7

**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) Due diligence is concerned with historical financial statements and provides an opinion as to whether the financial statements represent a 'true and fair' view of the company's operations.
  - (ii) As per the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, any person aggrieved by an order of SEBI may prefer an appeal to the High Court.
  - (iii) Neeraj holds 1.95% of the share capital of Sunrise Ltd. If he wishes to enter into a contract with Sunrise Ltd., he will be required to comply with section 299 of the Companies Act, 1956.
  - (iv) Rajesh, a shareholder of Rosa Ltd. requested for copies of the register under section 301 of the Companies Act, 1956. His request was turned down stating that as the register contains details about interest of directors and contracts in which they are interested, it is confidential and copies cannot be given.
  - (v) Where the validity period of an instrument of transfer of shares has expired, the holder may make an application to the prescribed authority for extension of its validity.
- (2 marks each)
- (b) Critically examine and comment on the following :
- (i) The scope of a search report depends upon the requirements of the bank or financial institution concerned.
  - (ii) Dematerialisation is a process of conversion of physical certificates into electronic balances. Before the process of dematerialisation is set in motion some essential pre-requisites need to be considered.

(5 marks each)

2. (a) Write the most appropriate answer from the given options in respect of the following :
- (i) As per the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, for raising of funds through public issues, the responsibility of ensuring that the basis of allotment is fair and proper lies with —
    - (a) Bankers to the issue
    - (b) SEBI
    - (c) Executive director or managing director of the designated stock exchange
    - (d) Brokers to the issue.
  - (ii) American Depository Receipts (ADRs) that do not qualify or are not intended to be listed on stock exchanges are referred to as —
    - (a) Level 1 ADRs
    - (b) Level 2 ADRs
    - (c) Level 3 ADRs
    - (d) Both (b) and (c) above.
  - (iii) The compensation committee with respect to Employee Stock Option Scheme (ESOS) shall frame suitable policies and systems to ensure that there is no violation of —
    - (a) SEBI (Merchant Bankers) Regulations, 1992
    - (b) SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011
    - (c) SEBI (Prohibition of Insider Trading) Regulations, 1992
    - (d) None of the above.
  - (iv) Mergers and acquisitions in unrelated industries are called —
    - (a) Horizontal mergers
    - (b) Vertical mergers
    - (c) Conglomerate mergers
    - (d) Cogeneric mergers.
  - (v) As per clause 35 of the listing agreement, a company is required to file the share holding pattern with the stock exchange on —
    - (a) Monthly basis
    - (b) Quarterly basis
    - (c) Half-yearly basis
    - (d) Annual basis.

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- (vi) If the articles of association of the company do not have provision for capitalisation of reserves, then required resolution should be passed in a general meeting for making the provision and the same is to be filed with the Registrar of Companies in —
- (a) e-Form 2
  - (b) e-Form 5
  - (c) e-Form 23
  - (d) e-Form 32.

*(1 mark each)*

- (b) Distinguish between the following :
- (i) 'Derived instruments' and 'benchmarked instruments'.
  - (ii) 'Rights issue' and 'private placement'.

*(5 marks each)*

3. (a) Sun Ltd. and its group company Moon Ltd. acquired shares of Oasis Ltd. (the target company) over a period of time. On 29<sup>th</sup> October, 2011, Sun Ltd. and Moon Ltd. were holding 14.85% and 2.56% shares respectively of the target company. Both these companies want to further acquire shares in the target company. Can these companies freely acquire further shares in the target company as per the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ? Elaborate.

*(6 marks)*

- (b) Ashok purchased 4,000 shares of Uttam Sugar Mills Ltd. from Birendra on the faith of a share certificate held in his name. Ashok tenders to the company a transfer deed, duly executed, along with Birendra's share certificate for transferring the shares in his name. The company discovers that the certificate in the name of Birendra is forged one and, hence, refused to register the transfer. As a Practising Company Secretary, what course of action would you suggest to Ashok ?

*(5 marks)*

- (c) Ajoy Ltd. owns 38% shares of Bijoy Ltd. On 26<sup>th</sup> November, 2010, Ajoy Ltd. sent the requisition to Bijoy Ltd. for convening an extra-ordinary general meeting (EGM) with the objective of appointing two new directors and removal and replacement of one director on the Board of Bijoy Ltd. Bijoy Ltd. questioned the validity of requisition on the ground that though it was signed by the Company Secretary of Ajoy Ltd., but specific authorisation by Board resolution to file such requisition had not been annexed,

so it requested Ajoy Ltd. to send the Board resolution. Ajoy Ltd. sent a copy of resolution passed earlier on 29<sup>th</sup> November, 2006 under which specific authority was given to its Company Secretary to sign all legal documents.

However, Bijoy Ltd. decided for not convening the EGM as the required Board resolution was not received by it and informed Ajoy Ltd. accordingly. Ajoy Ltd. in turn initiated the process under section 169(6) of the Companies Act, 1956 for convening EGM on its own on 17<sup>th</sup> January, 2011.

Decide the validity of the requisition dated 26<sup>th</sup> November, 2010 and calling of EGM on 17<sup>th</sup> January, 2011 by Ajoy Ltd. citing relevant provisions of law.

*(5 marks)*

4. (a) Satya Infotech Ltd. established under the Companies Act, 1956 is planning to raise funds from Euro market through issue of GDRs. The Board of directors of the company seek your advice about the steps involved in the process of GDR issue. Advise.

*(6 marks)*

- (b) Shruti Cement Ltd., a listed company declared 10% dividend in the annual general meeting held on 30<sup>th</sup> September, 2011 for the year 2010-11. Indicate the time limit for payment of the dividend. Also state the circumstances when a company will not be deemed to have committed any default even if it does not pay the amount of dividend within the prescribed period.

*(5 marks)*

- (c) Describe the role of a Practising Company Secretary in securities management and compliances with respect to the Securities and Exchange Board of India Act, 1992.

*(5 marks)*

5. (a) Radha Cable Manufacturing Ltd. intends to issue shares under Employee Stock Option Scheme (ESOS). The following details have been extracted from the records of the company :

Face value of shares	:	₹1
Exercise price	:	₹150
Option exercisable	:	After 3 years
Current market price	:	₹360

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On the basis of above information —

- (i) Determine the intrinsic value of the option.
- (ii) Calculate the change, if any, in the intrinsic value of the option, if the exercise price is ₹360 instead of ₹150.
- (iii) How is the intrinsic value to be treated in company's accounts ?
- (iv) Calculate the value of perquisite of the option under section 17(2)(iii) of the Income-tax Act, 1961.

(6 marks)

- (b) Surya Roshni Ltd. held its annual general meeting for the year 2010-11 on 30<sup>th</sup> September, 2011. However, as the accounts were not ready, the meeting transacted all other businesses except accounts and adjourned the meeting to 16<sup>th</sup> December, 2011 for consideration of accounts. The Registrar of Companies issued show cause notice to the company for violation of section 210 of the Companies Act, 1956. Advise the company.

(5 marks)

- (c) The Board of directors of a company decides to pay 2.5% of the issue price of the debentures as underwriting commission to the underwriters. On the other hand, the articles of association of the company permits only 2% commission. The Board of directors further decides to pay the commission out of the proceeds of the debentures. Advise the company.

(5 marks)

6. (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :
- (i) 'Deal makers' are those reports wherein the diligence team has not been able to come across any violation leading them to submit what is called a '\_\_\_\_\_ report'.
  - (ii) A\_\_\_\_\_ is an issue of shares or of convertible securities by a company to a select group of persons under section 81 of the Companies Act, 1956 which is neither a rights issue nor a public issue. This is a faster way for a company to raise equity capital.

- (iii) As per listing agreement, a company has to close its transfer books at least once in a year at the time of \_\_\_\_\_ if they have not been otherwise closed at any time during the year.
- (iv) A depository participant is required to preserve its records and documents for a minimum period of\_\_\_\_\_.
- (v) \_\_\_\_\_ is the process of conversion of existing assets or future cash flows into marketable securities.
- (vi) The minimum fee for compliance certification for a company having a paid-up share capital of ₹75,00,000 shall ordinarily not be less than ₹\_\_\_\_\_.

(1 mark each)

- (b) Narrate the procedure for investment for acquisition of a foreign company through bidding or tender procedure.

(5 marks)

- (c) Prepare a check-list for compliance certificate regarding transfer of unpaid amounts to the Investor Education and Protection Fund.

(5 marks)

7. (a) Explain the compliances required with regard to **any two** of the following :

- (i) Cost audit and appointment of cost auditor.
- (ii) Forfeiture and re-issue of shares.
- (iii) Significance of corporate compliance management.

(4 marks each)

- (b) Write notes on **any two** of the following :

- (i) Disqualification for appointment as Practising Company Secretary
- (ii) Risks on trading in debt securities
- (iii) Inspection of register of members/debentureholders.

(4 marks each)

8. Critically examine and comment on *any four* of the following :
- (i) Compliance solution providers adopt systematic approach for creating or enhancing an ethics and compliance program for companies in this age of information technology and outsourcing.
  - (ii) A key step in any due diligence exercise is to develop an understanding of the purpose for the transaction.
  - (iii) As per the SEBI (Issue and Listing of Debt Securities) Regulations, 2008, the debt issued can be rolled over subject to certain conditions (compliances with respect to non-convertible debt instruments).
  - (iv) Issue of preferential allotments by unlisted companies is mainly governed by the Unlisted Public Companies (Preferential Allotment) Rules, 2003.
  - (v) In the context of corporate governance, ethics is the intent to observe the spirit of law — in other words, it is the expressed intent to do what is right.

(4 marks each)