

SUGGESTED ANSWERS

PROFESSIONAL PROGRAMME

ADVANCED COMPANY LAW AND PRACTICE (PP-ACL&P/2013)



**THE INSTITUTE OF
Company Secretaries of India**

IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

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TEST PAPER 1/2013
(This Test Paper is based on entire Study Material)

Time allowed : 3 hours

Max. Marks : 100

Attempt All Questions

Question No. 1

Draft the following:

- (i) Resolution to give effect to consolidation of shares made by the company in its memorandum of association.*
- (ii) A notice under Section 640B for the Central Government's approval to increase remuneration of the Managing Director.*
- (iii) Special Resolution for altering the Articles of a private company converting it into a public company.*
- (iv) Board Resolution for the appointment of first auditor. (5 marks each)*

Answer to Question No. 1(i)

Ordinary Resolution to give effect to consolidation of shares made by the company in its memorandum of association

“RESOLVED THAT—

- (i) pursuant to Section 94(1)(b) and other applicable provisions, if any, of the Companies Act, 1956, and Article... of Articles of Association of the company, all the 5,00,00,000 (five crore) equity shares of Rs.5 (Rupees five) each of the company be and are hereby consolidated into two crore and fifty lakh (2,50,00,000) equity shares of Rs. 10/- (Rupees ten) each;*
- (ii) all the present shareholders holding in all 2,00,00,000 (two crore) issued, subscribed and fully paid equity shares of Rs. 5 (Rupees five) each be issued, in lieu of their present shareholding, the number of fully paid consolidated equity shares of Rs.10 (Rupees ten) each;*
- (iii) the board of directors of the company be and is hereby authorised to take all the necessary steps for giving effect to the foregoing resolution, including recall of the existing share certificates, issue of new share certificates in lieu of the existing issued share certificates in terms of the foregoing resolutions and in accordance with the applicable provisions of the Companies Act, 1956 and those of the Companies (Issue of Share Certificates) Rules, 1960.”*

Answer to Question No. 1(ii)**Notice under Section 640B for Central Government's Approval to Increase Managing Director's Remuneration**

.....Limited

Notice is hereby given pursuant to Section 640B of the Companies Act, 1956 (the Act) that the company intends to make an application to the Central Government for its approval under Section 310 of the Act to the increase in the remuneration payable to Shri....., Managing director of the Company.

Registered Office:

For.....Limited

.....

.....Secretary

.....

Answer to Question No. 1(iii)**Special Resolution for Altering Articles of a Private Company Converting it into a Public Company**

"RESOLVED THAT –

- (i) pursuant to the applicable provisions of the Companies Act, 1956, the company be and is hereby converted into a public company;
- (ii) the name of the company be and is hereby changed from Private Limited to Limited; and
- (iii) the regulations contained in the document submitted for consideration and approval of this meeting, and initialled by the chairman of the meeting for the purpose of identification, be and are hereby approved and adopted as the articles of association of the company in substitution for, and to the exclusion of, the present articles of association of the company."

Explanatory Statement

The Board of directors of the company, at its meeting held on, discussed the pros and cons of a public limited company and a private limited company, and decided to convert the company into a public limited company and also decided that the present articles of association of the company, which were adopted by the company when it was incorporated as a private limited company, be also substituted by a new set of articles.

Since the proposed alterations, deletions, insertions etc. to the present articles of association were numerous, the Board decided that it would be convenient to adopt an altogether new set of articles of association incorporating all the proposed alterations.

Your directors commend the proposed special resolution for your consideration and adoption of the new set of articles of association of the company in place of the existing articles of association of the company.

None of the directors is concerned or interested in the proposed resolution.

Answer to Question No. 1(iv)**Board Resolution for the Appointment of First Auditor**

“RESOLVED THAT the consent of the Board of directors be and is hereby given to the appointment of M/s ABC and Co., Chartered Accountants, as First Auditors of the Company to hold office up to the conclusion of the First Annual General Meeting of the company at a remuneration of Rs. in addition to the out of pocket expenses incurred by them in connection with audit of company accounts.

RESOLVED FURTHER THAT the Secretary of the company be and is hereby directed to give intimation of the appointment to the Auditors so appointed within seven days of the date of the resolution.”

Question No. 2

- (a) Choose the most appropriate answer from the given options in respect of the following:
- (i) The minimum number of directors of the audit committee in case of a listed company with 12 directors shall be —
 - (a) 2 Directors
 - (b) 3 Directors
 - (c) 4 Directors
 - (d) 5 Directors.
 - (ii) The power to borrow money otherwise than on Debentures can be exercised only at —
 - (a) Board Meeting
 - (b) General Meeting
 - (c) Either at Board Meeting or at General Meeting
 - (d) Resolution by Circulation
 - (iii) A casual vacancy arising out of resignation of company's auditor can be filled by —
 - (a) Company in general meeting by ordinary resolution
 - (b) Company in general meeting by special resolution
 - (c) Board of Directors
 - (d) Audit Committee.
 - (iv) The power to convert shares into stock and reconvert stock into shares is conferred on a company by —
 - (a) Section 91
 - (b) Section 92
 - (c) Section 93
 - (d) Section 94
 - (v) A person who is a company secretary and director of a company is —
 - (a) Employee director

- (b) *Non-executive director*
(c) *Executive Director*
(d) *Independent Director*
- (vi) *The satisfaction of charge is required to notified to the Registrar of Companies in —*
(a) *E-Form 8*
(b) *E-Form 17*
(c) *E-Form 21*
(d) *E-Form 23* (1 mark each)
- (b) *Re-write the following sentences after filling in the blank spaces with appropriate word(s)/figure(s):*
- (i) *A Government Company cannot accept deposits in excess of _____ of the aggregate of the paid-up capital and free reserves of the company.*
- (ii) *Each transaction under e-filing is uniquely identified by a _____.*
- (iii) *_____ means a company formed and registered under the Companies Act, 1956 and which has been granted a certificate of registration under sub-section (1A) of section 12 of the Securities and Exchange Board of India (SEBI) Act, 1992.*
- (iv) *The amount of dividend shall be deposited in a separate Bank account within _____ days from the date of declaration.*
- (v) *Section 560 prescribes the procedure for _____ the name of defunct companies who are not carrying any business, from register of companies maintained by Registrar.*
- (vi) *Section _____ of the Companies Act, 1956 provides for Cost Audit.* (1 mark each)
- (c) *Write a short note on issue of shares at Premium.* (4 marks)

Answer to Question No. 2(a)(i)

- (b) 3 Directors

Answer to Question No. 2(a)(ii)

- (a) Board Meeting

Answer to Question No. 2(a)(iii)

- (a) Company in general meeting by ordinary resolution.

Answer to Question No. 2(a)(iv)

- (d) Section 94

Answer to Question No. 2(a)(v)

- (c) Executive Director

Answer to Question No. 2(a)(vi)

- (b) E-Form 17

Answer to Question No. 2(b)

- (i) A Government Company cannot accept deposits in excess of **35%** of the aggregate of the paid-up capital and free reserves of the company.
- (ii) Each transaction under e-filing is uniquely identified by a **Service Request Number (SRN)**.
- (iii) **Depository** means a company formed and registered under the Companies Act, 1956 and which has been granted a certificate of registration under sub-section (1A) of section 12 of the Securities and Exchange Board of India (SEBI) Act, 1992.
- (iv) The amount of dividend shall be deposited in a separate Bank account within **five** days from the date of declaration.
- (v) Section 560 prescribes the procedure for **striking off** the name of defunct companies who are not carrying any business, from register of companies maintained by Registrar.
- (vi) Section **233B** of the Companies Act, 1956 provides for Cost Audit.

Answer to Question No. 2(c)**Issue of Shares at Premium**

When shares are issued by a company at a price above their face value (nominal or par value) then the shares are said to have been issued at a 'premium'. Premium is the difference between the price at which a company issues a share and the face value of a share.

A company is free to issue shares at a premium as Section 78 does not impose any condition for such issues. In accordance with sub-section (1) of section 78, where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premium on those shares shall be transferred to an account, to be called "the securities premium account". This section specifies the items where the amount received as share premium on issue of shares may be applied. The premium credited to 'Securities Premium Account' can only be used for –

1. Issue of bonus shares (fully paid).
2. Writing off preliminary expenses.
3. Writing off the expenses and discount on issue of shares/debentures.
4. Providing premium on redemption of preference shares/debentures of the company.

If the company is a listed company then the company must follow the provisions of SEBI (ICDR) Regulations, 2009.

Question No. 3

- (a) *Distinguish between the following:*
- (i) *Voidable allotment and void allotment*
 - (ii) *Director and deemed director*
 - (iii) *Public trust and private trust* (2 marks each)
- (b) *State, with reasons in brief, whether the following statements are correct or incorrect:*
- (i) *A company can increase the authorized share capital by passing an ordinary resolution.*
 - (ii) *Right shares means shares which are issued by newly formed company.*
 - (iii) *A fresh notice of every adjourned meeting is necessary.*
 - (iv) *The declaration of bonus issue in lieu of dividend is not permitted.*
 - (v) *Provisions of Section 372A do not apply in case of loan/guarantee by a company to another company in which it is holding 90% of the paid-up capital.* (2 marks each)

Answer to Question No. 3(a)(i)**Voidable allotment**

In the event of non-compliance with the provisions of Section 69 and Section 70 viz. allotment without raising minimum subscription or without either collecting application money or collecting less than 5 percent as application money or failure to deliver a copy of statement in lieu of prospectus at least three days before allotment, the allotment is rendered voidable at the option of the applicant.

Void Allotment

According to Sub-section (1A) of Section 73, where a prospectus states that an application has been made for permission for the shares or debentures offered thereby to be dealt in one or more designated stock exchanges, such prospectus shall state the name(s) of the stock exchange(s) and any allotment made on an application in pursuance of such prospectus shall, whenever made, be void if the permission has not been granted by the stock exchange or each such stock exchange, as the case may be, before the expiry of ten weeks from the date of the closing of the subscription list.

However, where an appeal against the decision of any stock exchange refusing permission for the shares or debentures to be dealt in on that stock exchange has been preferred to Securities Appellate Tribunal under Section 22A of the Securities Contracts (Regulation) Act, 1956, such allotment shall not be void until the dismissal of the appeal.

Answer to Question No. 3(a)(ii)**Distinction between Director and deemed director**

Section 2(13) of the Companies Act, 1956 defines the term 'director' in an inclusive manner. It states that a director is a person occupying the position of a director by whatever name he is called. The Act does not contain any definition of 'deemed director'. The definition of director places reliance on functions that a person is discharging in a

company rather than a particular position held by him. The meaning of director in the Act has to be understood in a generic sense as a person having the power to direct. Besides, the Act has specified in many places the duties and functions of directors e.g. section 292.

As regards deemed directors, one has to refer to section 5 and 7 of the Act. Under these sections, even though one does not carry the designation of director or does not perform as a director in a company but he can be treated as a director for certain purposes of the Act. Generally, if he is a person whose directions determine the performance of the directors, he will be treated as a director. Such a person wields actual powers without coming to the surface. However, he is not entitled to exercise any statutory right and power of a director. A deemed director need not necessarily be an individual whereas a director will have to be an individual.

Answer to Question No. 3(a)(iii)

'Public trust' and 'private trust'

In a public trust, the beneficiary is the general public or a specified section of it. In a private trust the beneficiaries are defined and ascertained individuals. In a public trust the beneficial interest is vested in an uncertain and fluctuating body of persons. The nature of the trust may be proved by the evidence of dedication or by user and conduct of parties. Where a trust is created for the benefit of the members of the settlor's family, it is a private trust and not a public trust. Every charitable trust is only a public trust as benefit to the community at large or to a section of the community is of the essence of a valid charitable trust. But a religious trust need not necessarily be a public trust as there can be a private religious trust also.

Answer to Question No. 3(b)(i)

Correct

Section 94 of the Companies Act, 1956 provides that a company may, if so authorized by its articles, increase its share capital by such amount as it thinks expedient by issuing new shares.

As per Article 44 of Articles of Association as contained in Schedule I of Table A of the Act, increase in authorised share capital of the company requires shareholders approval by way of ordinary resolution.

Answer to Question No. 3(b)(ii)

Incorrect

Section 81 of the Companies Act, 1956 provides for the provisions on Right shares. According to it, in case of further issue of share capital, existing shareholders has the statutory right to have offered the new shares. Thus, company's existing shareholders have the pre-emptive right to get further shares.

Answer to Question No. 3(b)(iii)

False

An adjourned meeting is merely the continuation of the original meeting and unless

the Articles of Association of a company provide otherwise, a fresh notice of the adjourned meeting is not necessary. If, however, the meeting is adjourned *sine die*, a fresh notice must be given.

Answer to Question No. 3(b)(iv)

Correct

The declaration of bonus issue in lieu of dividend is not permitted. Under SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, a listed company is prohibited from issuing bonus shares in lieu of dividend.

Answer to Question No. 3(b)(v)

False

Section 372A(8)(c) of the Companies Act, 1956 specifically provides that nothing contained in section 372A shall apply to any loan made by a holding company to its wholly owned subsidiary. Further, sub-section 8(d) of section 372A of the Act provides that nothing contained in this section shall apply to any guarantee given or any security provided by a holding company in respect of loan made to its wholly owned subsidiary. Therefore, the provisions of section 372A of the Companies Act, 1956 will apply in the case of loan/guarantee by a company to another company in which it is holding 90% of the paid-up capital.

Question No. 4

- (a) *Discuss the procedure for removal of a director by Central Government.*
(4 marks)
- (b) *Draft a Resolution authorizing a Company Secretary to issue notice of the extraordinary general meeting.*
(4 marks)
- (c) *What type of information shall be mandatorily reviewed by the Audit Committee?*
(4 marks)
- (d) *Discuss the procedure for appointment of Whole-time Director ?* (4 marks)

Answer to Question No. 4(a)

Procedure for removal of a director by the Central Government

The Central Government shall, by order, remove from office any director concerned in the conduct and management of the affairs of a company, against whom there is a decision of the Company Law Board under Section 388D of the Act (Section 388E).

The decision of the Company Law Board is given on a reference made by the Central Government under Section 388B of the Act.

Where in the opinion of the Central Government there are circumstances suggesting:

- (a) that any person concerned in the conduct and management of the affairs of a company is or has been, in connection therewith, guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law, or breach of trust; or

- (b) the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices; or
- (c) the business of a company is or has been conducted and managed by such person in a manner which is likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or
- (d) the business of a company is or has been conducted and managed by such person with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest;

the Central Government may state a case against the person aforesaid and refer the same to the Company Law Board with a request that the Company Law Board may inquire into the case and record a decision as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company

Answer to Question No. 4(b)

Board Resolution Authorising the Company Secretary to Issue Notice of the Extraordinary General Meeting

“RESOLVED THAT Shri, the Company Secretary, be and is hereby authorised to issue, on behalf of the Board of directors of the company, the notice and the explanatory statement required to be annexed to the notice under section 173(2) of the Companies Act, 1956, as approved by the Board, of the extraordinary general meeting of the company to be held atHrs. on.....(date).....(month) 200..... for passing the special resolution under Section 146(2) of the Companies Act, 1956 for shifting the registered office of the company from its present situation to a place of falling under the jurisdiction of..... police station which is outside the local limits of the city where it is presently situated.”

Answer to Question No. 4(c)

In accordance with Section 292A of the Companies Act, 1956, the Audit Committee shall review the half-yearly and annual financial statements before submission to the Board.

In accordance with the clause 49 of the listing agreement, the Audit Committee shall mandatorily review the following information:

1. Management discussion and analysis of financial condition and results of operations;
2. Statement of significant related party transactions (as defined by the audit committee), submitted by management;
3. Management letters/letters of internal control weaknesses issued by the statutory auditors;

4. Internal audit reports relating to internal control weaknesses; and
5. The appointment, removal and terms of remuneration of the Chief internal auditor.

Answer to Question No. 4(d)

A company is required to take the following procedural steps for the appointment of a whole-time director:

- (1) It must ensure compliance with the provisions of Section 269 and Schedule XIII to the Act. Otherwise the appointment will be subject to the approval of the Central Government.
- (2) Convene and hold a Board meeting after giving to all the directors due notice as required under Section 286 of the Companies Act, 1956 to –
 - (a) take a decision about the person to be appointed as whole-time director;
 - (b) approve the draft agreement to be signed and executed by and between the company and the proposed whole-time director (it is not mandatory);
 - (c) fix time, date and venue for holding a general meeting of the company;
 - (d) approve notice of the general meeting along with the explanatory statement as required by Section 173(2) of the Act; and
 - (e) authorise company secretary to issue notice on behalf of the Board.
- (3) Send three copies of the notice to the stock exchanges on which the securities of the company are listed as per the Listing Agreement entered with them.
- (4) Hold the general meeting and get the resolution passed approving the appointment of the whole-time director.
- (5) In case the appointment of the whole-time director is not according to Schedule XIII of the Act, the company is required to obtain approval of the Central Government as per Section 269(2) of the Act. In order to obtain the approval of the Central Government, the company should make an application in e-form No. 25A to the Central Government, within ninety days of the appointment, and also ensure that the prescribed enclosures are attached to the application. The company is required to comply with the provisions of section 640B and Rule 20A of the Companies (Central Government's) General Rules and Forms, 1956. Details of proposal need to be entered alongwith the prescribed attachments.
- (6) Execute the agreement, as approved by the Board with the whole time director.
- (7) To obtain from the whole-time director notice in Form No. 24AA regarding disclosure of interest in other companies. Make necessary entries in the register of directors and other records/ registers of the company.
- (8) File the following documents with the ROC:
 - (a) return of appointment of the whole-time director in e-form 25C, within ninety days of appointment duly certified by the auditors of the company or the company secretary or a secretary in whole-time practice.

- (b) e-form 32 in duplicate within thirty days of the appointment.
- (9) Submit to the stock exchanges, proceedings of the general meeting & inform them of the appointment of the whole-time director.

Question No. 5

- (a) *Enumerate the procedure for conversion of a public company into a private company. (8 marks)*
- (b) *Discuss the procedure for changing the Financial Year of the Company. (8 marks)*

Answer to Question No. 5(a)

1. Hold a meeting of the Board of directors to consider and approve the proposal for conversion of public company into a private company.
The following resolutions must be passed at the board meeting:
 - (i) To approve the proposal and fix time, date and venue for holding an extraordinary general meeting of the company.
 - (ii) To authorize the company secretary or some competent officer to issue the notice of the general meeting on behalf of the Board.
2. Hold general meeting and have the special resolutions passed.
3. Within thirty days of passing of the special resolutions, file e-form 23 to the Registrar of Companies.
4. If the number of members of the company is above fifty, appropriate steps should be taken to reduce the number to fifty or below.
5. Send six copies including one certified copy of the amendments to the stock exchanges where the securities of the company are listed.
6. An application in e-form 1B along with the minutes of the members' meeting and prescribed application fee will have to be made, within three months from the date of passing of the special resolution for alteration of the articles, for obtaining the Central Government's approval to the alteration of the articles of the company.
7. If the Registrar of Companies so directs, publish a notice in newspaper(s) as per his direction.
8. Send to the stock exchanges where the securities of the company are listed, three copies of proceedings of the general meeting.
9. After the alteration of the articles has been approved by the Central Government, a printed copy of the altered articles of the company should be filed with the concerned Registrar of Companies in e-form 62 within one month of the date of receipt of the order of approval.
10. Surrender to the Registrar, the Certificate of Incorporation of the company in order to obtain fresh Certificate of Incorporation.
11. Change the name of the company in all copies of the memorandum and articles

of association, letter heads, invoice forms, receipt forms, all other stationery items, common seal of the company, sign boards and at every other place where the name of the company appears.

12. Issue a general notice in newspapers informing members and public at large that the company has been converted into a private limited company.

Answer to Question No. 5(b)

The term “financial year” has been defined in Section 2(17) of the Companies Act, 1956. It says “financial year” means, in relation to any body corporate, the period in respect of which any profit and loss account of the body corporate laid before it in annual general meeting is made up, whether that period is a year or not.

Section 210(4) of the Act lays down that the period to which the account aforesaid relates is referred to in this Act as a “financial year”; and it may be less or more than a calendar year, but it shall not exceed fifteen months. Beyond 15 months and up to 18 months, it can be extended with the special permission of the Registrar of Companies.

The determination of financial year of a company and its alteration thereafter at any point of time is not a matter which is required to be exercised or done by the company in general meeting.

Procedure for Changing the Financial Year of the Company

- (1) Convene a Board meeting after giving notice of the meeting in writing to every director of the company for the time being in India and at his usual address in India to every other director [section 286 of the Act].
- (2) The notice must contain time, date and venue for the meeting and detailed agenda of the business to be transacted thereat. Among other items of business proposed to be transacted at the meeting, the chairman and/or the managing director must give in precise terms the proposal for changing the period of the financial year giving reasons for the change.
- (3) Hold the Board meeting and get the required resolution passed.
- (4) If the financial year is extended beyond a period of twelve calendar months and the company requires more time to finalise the accounts, the company should apply to the Registrar of Companies for obtaining extension of time for holding the annual general meeting of the company, pursuant to the second proviso to Sub-section (1) of Section 166 of the Companies Act, 1956.
- (5) The application should be made in e-form 61 along with board resolution, reasons for extension of financial year, period for which extension is required, detailed application.
- (6) The consent of the Assessing Officer of the Income Tax department is also required to be obtained by the company.
- (7) Due information to all concerned is also required to be given by the company.

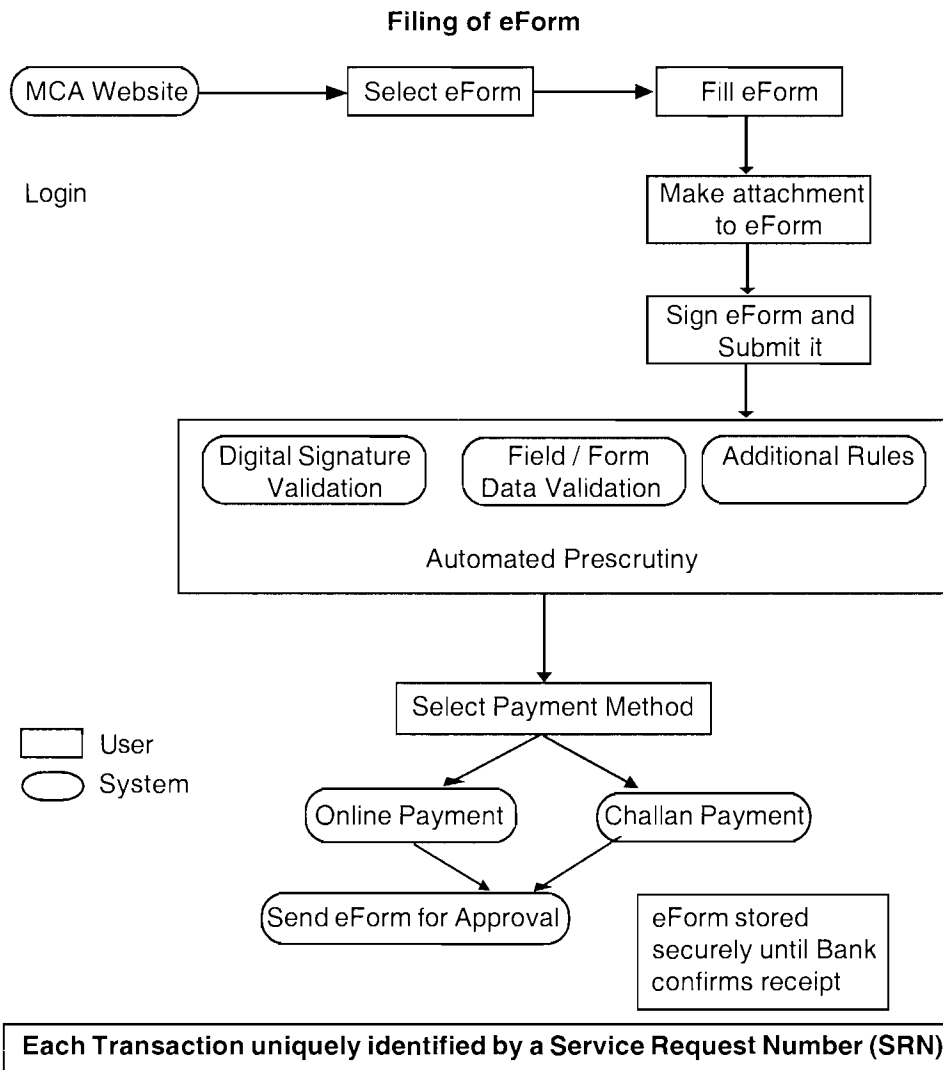
Question No. 6

- (a) *Explain e-filing process and general structure of an e-form.* (8 marks)
- (b) *Discuss the following keeping in view the provisions of the UK Companies Act, 2006:*
- (i) *Approval and Signing of Accounts*
- (ii) *Secretary* (4 marks each)

Answer to Question No. 6(a)**General Structure of an E-Form and E-Filing Process**

An e-Form contains certain standardized features. Each e-Form contains the form reference and the description as well as the particular section of the Companies Act or the relevant rules or regulations under which it is required to be submitted. It starts with the Corporate Identity Number (CIN), which is an identification number of a company. By entering the number, the company details to the extent these are available in the database of MCA, are automatically filled in by using the pre-fill functionality.

- The e-Form contains a number of mandatory fields which are required to be filled-in. Certain other fields are non-mandatory in nature which may be filled-in as may be relevant in any particular case.
- An e-Form contains tool tips for context-sensitive help.
- An instruction kit is available for each e-Form, which contains details of the instructions for properly filling the e-Form.
- An e-Form may be filled in either online or offline. Online filling implies that the e-Form is filled while being still connected to MyMCA portal through the Internet. Offline filling denotes that the e-Form is downloaded into the user's computer and filled later without being connected to the Internet.
- An e-Form may require certain mandatory attachments to be filed along with it. Optional attachments may also be filed with an e-Form. The list of such attachments is displayed in the e-Form.
- Next to attachment, there is a declaration that is sought from the person filing the e-Form to the effect that the information given in the e-Form and the attachments are correct and complete.
- Most of the e-Forms require the digital signature of the Managing Director or Director, Manager or Secretary of the company for successful filing/ submission.
- Further, the digital signature of a third party may also be required in certain cases. In the case of an e-Form for creation or modification of charges, such digital signature is also required from the Bank or Financial Institution.
- In certain cases, a certificate from the Chartered Accountant or Cost Accountant or Company Secretary in whole-time practice is also required to authenticate the particulars contained in the e-Form. For example, this requirement is mandatory in the case of an e-Form for creation or modification of charges.



Source : MCA Website

Answer to Question No. 6(b)(i)

Approval and signing of accounts

Section 414 of the UK Companies Act, 2006 provides the provisions for Approval and signing of accounts.

A company's annual accounts must be approved by the board of directors and signed on behalf of the board by a director of the company.

The signature must be on the company's balance sheet.

If the accounts are prepared in accordance with the provisions applicable to companies subject to the small companies regime, the balance sheet must contain a statement to that effect in a prominent position above the signature.

Every copy of the balance sheet which is laid before the company in general meeting or which otherwise circulated, published or issued, shall state the name of the person who signed the balance sheet on behalf of the Board. The copy of the company's balance sheet which is delivered to the Registrar shall be signed on behalf of the Board by a director of the company.

If annual accounts are approved that do not comply with the requirements of this Act, every director of the company who—

- (a) knew that they did not comply, or was reckless as to whether they complied, and
- (b) failed to take reasonable steps to secure compliance with those requirements or, as the case may be, to prevent the accounts from being approved, commits an offence.

A person guilty of an offence under this section is liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

Answer to Question No. 6(b)(ii)

Secretary

Section 271, 273 of the UK Companies Act, 2006 provides the provisions for Secretary. A private company is not required to have a Secretary. A public Company shall have a secretary.

It is the duty of the directors of a public company to take all reasonable steps to secure that the secretary (or each joint secretary) of the company—

- (a) is a person who appears to them to have the requisite knowledge and experience to discharge the functions of secretary of the company, and
 - (b) has one or more of the following qualifications:-
 1. that he has held the office of secretary of a public company for at least three of the five years immediately preceding his appointment as secretary;
 2. that he is a member of any of the bodies specified as below—
 - (i) the Institute of Chartered Accountants in England and Wales;
 - (ii) the Institute of Chartered Accountants of Scotland;
 - (iii) the Association of Chartered Certified Accountants;
 - (iv) the Institute of Chartered Accountants in Ireland;
 - (v) the Institute of Chartered Secretaries and Administrators;
 - (vi) the Chartered Institute of Management Accountants;
 - (vii) the Chartered Institute of Public Finance and Accountancy.
 3. that he is a barrister, advocate or solicitor called or admitted in any part of the United Kingdom;
 4. that he is a person who, by virtue of his holding or having held any other position or his being a member of any other body, appears to the directors to be capable of discharging the functions of secretary of the company.
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TEST PAPER 2/2013
(This Test Paper is based on entire Study Material)

Time allowed : 3 hours

Max. Marks : 100

Attempt All Questions

Question No. 1

Draft the following:

- (i) *Resolution to be passed at a general meeting of a listed company for approval to issue of bonus shares.*
- (ii) *Specimen of ordinary resolution for increasing the authorized share capital of company.*
- (iii) *Resolution to alter articles of association of the company to provide for employees stock option.*
- (iv) *A letter returning share transfer deeds.* *(5 marks each)*

Answer to Question No. 1(i)

Resolution to be passed at a General Meeting of a Listed Company for approval to bonus issue

Subject to the guidelines issued by the Securities and Exchange Board of India and subject to the Foreign Exchange Management Act, 1999 for allotment and issue of new equity shares to the non-resident members and subject to the consents of financial institutions, as may be applicable, and also subject to such terms, conditions, alterations, modifications, changes and variations as may be specified while according such approval which the Board of Directors of the company ("the Board"), is authorised to accept, if it thinks fit, the Company approves capitalization the entire amount standing to the credit of General Reserve and Reserve and part of the amount standing to the credit of Share Premium Account in the books of the company as on for an aggregate amount of Rs. and such sum be set free for distribution among the holders of existing fully paid equity shares of Rs. 10 each of the company, whose names will appear in the register of members of the company on a date to be decided by the Board in that behalf as Record Date, as an increase of the amount of share capital of the company held by each such member and not as income or in lieu of dividend credited as..... fully paid-up equity shares as bonus shares in the proportion of... new equity shares for every.... existing fully paid equity shares held, subject to the following terms and conditions:

- (a) The new equity shares to be allotted as bonus shares will be allotted subject to the terms of the Memorandum and Articles of Association of the company;
- (b) The new equity shares shall rank *pari passu* in all respects with and carry the same rights as the existing fully paid-up equity shares of the company and

notwithstanding the date or dates of allotment thereof shall be entitled to participate in full in any dividend to be declared in respect of the financial year in which the allotment of the new equity shares pursuant to this Resolution is made;

- (c) No letter of allotment will be issued by the company in respect of the new equity shares. However, the equity share certificates in respect thereof will be ready for delivery to the allottees within 3 months from the date of allotment thereof;
- (d) If as a result of implementation of this resolution, any member becomes entitled to a fraction of new equity shares to be allotted as bonus shares the company shall not issue any certificate or coupon in respect of such fractional shares but the total number of such new equity shares representing such fractions shall be allotted by the Board to a nominee to be selected by the Board who would hold them as trustee for the equity shareholders who would have been entitled to such fractions, in case the same were issued. Such nominee will as soon as possible sell such equity shares allotted to him at the prevailing market rate and the net sale proceeds of such shares after adjusting the cost and expenses in respect thereof be distributed among such members who are entitled to such fractions in the proportion of their respective holding and allotment of fractions thereof; and
- (e) No allotment of bonus shares or distribution of proceeds in respect of fractions to the non-resident Indian members unless the provisions of the Foreign Exchange Management Act, 1999 have been complied by the company.

The Company authorizes, for the purpose of giving effect to this resolution, the Board:

- (a) to do all such acts, matters and things whatsoever including settling any question, doubt or difficulty that may arise with regard to or in relation to the issue or allotment of the bonus shares;
- (b) to accept on behalf of the company any conditions, modifications relating to the issue of bonus shares prescribed by the Reserve Bank of India or any other authority and which the Board in its discretion thinks fit and proper.

Answer to Question No. 1(ii)

Ordinary Resolution for Increasing the Authorised Share Capital of the Company

“RESOLVED THAT pursuant to Section 94 and other applicable provisions, if any, of the Companies Act, 1956 and Article ... of the Articles of Association of the company, the Authorised Share capital of the company be and is hereby increased from Rs. 50,00,000 (Rupees fifty lakh) divided into 5,00,000 (five lakh) equity shares of Rs.10 each to Rs.5,00,00,000/- (Rupees five crore) divided into 50,00,000 (fifty lakh) equity shares of Rs. 10 (Rupees ten) each by creation of 45,00,000 equity shares of Rs.10 each ranking pari passu in all respect with the existing equity shares.”

Answer to Question No. 1(iii)

Special Resolution to alter Articles of Association of the Company to provide for Employees Stock Option

“RESOLVED THAT pursuant to section 31 and other applicable provisions, if any,

of the Companies Act, 1956, the Articles of Association of the Company be and are hereby altered in the following manner:

That the following new Article be immediately after Article

Provisions for Employees' Stock Option:

Subject to the provisions of section 81(1A) and other applicable provisions, if any, of the Act and subject to the Articles of Association, the Board may, from time to time, create, offer and issue to or for the benefit of the Company's employees including the Executive chairman, the Managing Directors and the Whole time Directors such number of equity shares of the Company of the face value of Rs.10 each not exceeding in number at any time in the aggregate % of the capital after expansion, for subscription on such terms and conditions as may be determined by the Board prior to the issue and offer, in consultation with the authorities concerned and in accordance with such guidelines or other provisions of law as may be prevalent at that time but ranking *pari passu* with the existing equity shares of the Company:

1. The issue price of such shares shall be determined by the Board in accordance with the laws prevalent at the time of the issue.
2. In the alternative to equity shares, mentioned hereinabove, the Board may also issue bonds, equity warrants or other securities convertible or non-convertible into equity shares, as may be permitted in law, from time to time.

All such issues as above are to be made in pursuance of Employees' Stock Option (ESOP) Scheme to be drawn up and approved by the Board."

Answer to Question No. 1(iv)

Letter Returning Share Transfer Deeds

.....XYZ CO. LTD.

.....

Ref. No.....

Dated.....

Sub. :

.....

.....

Dear Sir/Madam,

Please refer to your letter No.....dated.....enclosing.....transfer deed(s) along with the relevant share certificate(s).

We are returning..... share transfer deed(s) along with the relevant share certificate(s) for the reason(s) ticked below :

1. The share transfer deed(s) is/are invalid as it/they has/have not been delivered to the company before the date on which the Register of Members is closed or written 12 months from the date of presentation of deed of the prescribed authority or within two months from the date stamped thereon, i.e. as required

under Section 108(1A) of the Companies Act, 1956. Therefore, the share transfer deed(s) will have to be either revalidated by the Registrar of Companies, or replaced by fresh transfer deed(s).

2. The date of execution of the transfer deed(s) precede(s) the date stamped on the share transfer deed(s) by the prescribed authority.
3. The date of execution of the transfer deed(s) has/have not been mentioned.
4. Signature(s) of the transferor(s) differ from his/her/their specimen signatures with the Company. The signature(s), therefore, requires/require attestation.
5. Transferor(s) and transferee(s) signature(s) is/are in a language other than English and Hindi or has/have affixed his/her/their thumb impression. Therefore, it/they requires/require attestation.
6. Transferor(s)/transferee(s) has/have not signed the transfer deed(s).
7. Signature(s) of the transferor(s)/transferee(s) is/are not witnessed.
8. Transfer deed(s) is/are unstamped/under-stamped. The rate of stamp duty is 50 paise for the value of Rs. 100/- or part thereof on the market value of the shares as on the date of execution of the deed(s).
9. Corrections/alterations made in the transfer deed(s) must be authenticated both by the transferor(s) and the transferee(s).
10. The power of attorney executed by transferor(s)/transferee(s) is not registered with the company.

We request you to re-lodge the transfer deed(s) after removing the ticked deficiency (ies) or to lodge fresh transfer deed(s) at an early date to enable us to proceed in the matter.

Yours faithfully,
for.....Ltd.

XYZ
COMPANY SECRETARY

Note : Attestation of signature/thumb impression should be done by a First Class Magistrate or a Notary Public or a Justice of Peace, under their respective official seals and in the case of Notary under appropriate notarial stamps.

Question No. 2

- (a) Choose the most appropriate answer from the given options in respect of the following :
- (i) Application form for DIN is available on MCA portal on the link —
- (a) DIN Application Site

- (b) *MCA-SRN*
 - (c) *Apply for DIN*
 - (d) *DIN-1Form*
 - (ii) *As per listing agreement, a listed company has to appoint the company secretary to act as a compliance officer who will be responsible for reporting to the Board in each meeting under clause –*
 - (a) *Clause 47 (a)*
 - (b) *Clause 49*
 - (c) *Clause 47 (c)*
 - (d) *Clause 46*
 - (iii) *No person shall hold the office at the same time as a small share shareholders' director in more than —*
 - (a) *1 company*
 - (b) *2 companies*
 - (c) *3 companies*
 - (d) *4 companies*
 - (iv) *A company in which 50.25% of shares are held by one State government while the rest of the shares are held by private sector companies and by retail shareholders, i.e., members of public, is a —*
 - (a) *Government company*
 - (b) *Public company*
 - (c) *Corporation*
 - (d) *Private sector company*
 - (v) *The maximum age limit of directors in case of private companies is —*
 - (a) *65 years*
 - (b) *70 years*
 - (c) *75 years*
 - (d) *None of the above*
 - (vi) *Which section of the Companies Act, 1956 defines 'debenture' —*
 - (a) *Section 2 (12)*
 - (b) *Section 2 (13)*
 - (c) *Section 117*
 - (d) *Section 120*
- (1 mark each)*
- (b) *Re-write the following sentences after filling in the blank spaces with appropriate word(s)/figure(s):*
- (i) *"Certifying authority" means a person who has been granted a licence to issue a _____ under Section 24 of the Information Technology Act, 2000.*

- (ii) As per regulation _____ of SEBI Insider Trading Regulations, 1992, any person who holds more than _____ shares or voting rights in any listed company shall disclose in the prescribed form to the company, the number of shares or voting rights held by such person, on becoming such holder.
- (iii) Secretarial standard (SS-3) relates to _____.
- (iv) E-Form _____ is a return in respect of Buy-back of Securities.
- (v) _____ is a conclusive evidence in case of a company that the statutory requirements have been complied with.
- (vi) According to sub-section 5(b) of section 233B of the Companies Act, the _____ of a company shall not be appointed or re-appointed for conducting audit of the cost accounts of the company. (1 mark each)
- (c) Enumerate the charges registrable under the Companies Act, 1956. (4 marks)

Answer to Question No. 2(a)(i)

- (d) DIN-1 Form

Answer to Question No. 2(a)(ii)

- (c) Clause 47 (c)

Answer to Question No. 2(a)(iii)

- (b) 2 companies

Answer to Question No. 2(a)(iv)

- (b) Public company.

Answer to Question No. 2(a)(v)

- (d) None of the above

Answer to Question No. 2(a)(vi)

- (a) Section 2 (12)

Answer to Question No. 2(b)

- (i) "Certifying authority" means a person who has been granted a licence to issue a **digital signature certificate** under Section 24 of the Information Technology Act, 2000.
- (ii) As per regulation **13(1)**, of SEBI Insider Trading Regulations, 1992, any person who holds more than 5% shares or voting rights in any listed company shall disclose in the prescribed form to the company, the number of shares or voting rights held by such person, on becoming such holder.
- (iii) Secretarial standard (SS-3) relates to **Dividend**.
- (iv) E-Form **4C** is a return in respect of Buy-back of Securities.

- (v) **Certificate of Incorporation** is a conclusive evidence in case of a company that the statutory requirements have been complied with.
- (vi) According to sub-section 5(b) of section 233B of the Companies Act, the **auditor** of a company shall not be appointed or re-appointed for conducting audit of the cost accounts of the company.

Answer to Question No. 2(c)

Section 125(4) lays down that the following nine types of charges are registrable under the Companies Act:-

1. a charge for the purpose of securing any issue of debentures;
2. a floating charge on the undertaking or any property of the company including stock in trade;
3. a charge on uncalled share capital;
4. a charge on calls made but not paid;
5. a charge on any immovable property, wherever situated, or any interest therein;
6. a charge on a ship or any share in a ship;
7. a charge on any book debt of the company;
8. a charge on goodwill, on a patent or a licence under a patent, on a trade mark or on a copyright or a licence under a copyright; and
9. a charge, not being a pledge, on any movable property of the company.

Question No. 3

- (a) Give salient features of the following e-Forms :
- (i) E-Form 66
 - (ii) E-Form 24AAA
 - (iii) E-Form 2 (3 marks each)
- (b) What are the rights of the person aggrieved by the company having been struck off the register of companies? (7 marks)

Answer to Question No. 3(a)(i)**Salient features of e-Form 66**

This form is used for submission of Compliance Certificate with the Registrar of Companies. This is required to be filed pursuant to Section 383A of the Companies Act, 1956 and rule 3(2) of the Companies (Compliance Certificate) Rules, 2001.

The important particulars required to be filled in the form are :

- Corporate identity number (CIN) of company
- Name of the company
- Address of the registered office of the company
- E-mail ID of the company
- Financial year to which the compliance certificate relates

- Whether annual general meeting (AGM) held? If yes, date of AGM and Due date of AGM.
- Whether any extension for financial year of AGM granted? If yes, due date of AGM after grant of extension.
- The following attachments are required to be filed with the form:
- Compliance certificate pursuant to rule 3 of the Companies (Compliance Certificate) Rules, 2001
- Optional attachment(s) – if any
- The form should be digitally signed by:
- Managing Director or Director or Manager or Secretary of the company.
- The form does not required pre-certification.

Answer to Question No. 3(a)(ii)**Salient features of e-Form 24AAA**

This form is used for filing petitions to the Central Government (Regional Director). This is required to be filed pursuant to section 17, 18, 19, 141 and 188 of the Companies Act, 1956.

- The important particulars required to be filled in the form are :
- Category of the applicant i.e. whether company, foreign company or others – Corporate identity number (CIN) of company or Foreign Company Registration number.
- Name of the company, address of the registered office of the company & email id of the company.
- In case the category of the applicant is others then enter details of the applicant i.e. name, address & e-mail id.
- Purpose of the application i.e. whether petition for shifting of registered office of the company from one State to another under section 17 or petition under section 18 or petition under section 19 or Petition for condonation of delay in filing charge forms under section 141 or petition under section 188.
- Mention the SRN of relevant form 8, 10, 17 or any other form, if applicable.
- In case of Petition under section 141, it is mandatory to enter the Charge details if condonation of delay in filing charge forms is in respect of charge modification or charge satisfaction. Enter the charge ID.
- Details of petition.

Answer to Question No. 3(a)(iii)**Salient features of e-Form 2**

This form is used for filing return of allotment with the Registrar of Companies. This form is required to be filed pursuant to section 75(1) of the Companies Act, 1956.

- The important particulars required to be filled in the form are :
- CIN of the company.

- Name of the company, Address of the registered office of the company & e-mail of the company.
- Shares allotted payable in cash.
- Shares allotted for consideration otherwise than in cash.
- Bonus shares issued.
- Capital structure of the company after taking into consideration the above allotment(s).
- Date of passing the special resolution authorising issue under section 81 and service request number of Form 23.
- State whether complete list of allottees has been enclosed as attachment. In case no, then submit the details of all the allottees in a CD separately.
- The following attachments are required to be filed with form:
- Copy of the resolution authorising the issue of bonus shares.
- List of allottees.
- Copy of the resolution for the issue of shares at a discount with a copy of the order of the Central Government.
- Copy of the contract or agreement, if any, for allotment of shares for consideration otherwise than in cash.
- Copy of Board or shareholders' resolution.
- Optional attachment(s) - if any.
- The form should be digitally signed by Managing Director or director or Manager or Secretary of the company.
- The form needs to be pre-certified by Chartered accountant (in whole-time practice) or Cost accountant (in whole-time practice) or Company secretary (in whole-time practice).

Answer to Question No. 3(b)

The company having been struck off the register or any member or creditor of such company or the company itself may make an application under sub-section (6) of section 560 to the Court if the company or the member or creditor feels aggrieved by the company having been struck off, for the restoration of the company to the register. Such an application must be made before the expiry of 20 years from the publication in the Official Gazette of the notice of the striking-off.

The Court may order the name of the company to be restored to the register, if it is satisfied that-

- the company was, at the time of the striking off, carrying on business or in operation; or
- that it is just that the company be restored to the register.

One of the reasons for exercising the Court's direction in favour of restoring a company must be that after restoration the company will be in a position to carry on the business of the company. Court would not exercise discretion when there is no evidence of substantial benefit to member or creditors.

In such a case the court may, by the order, give such directions and make such provision as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

The company must file electronically with the Registrar a certified true copy of the order passed by the Court, along with e-form No. 21. Upon a certified copy of the order under section 560(6) being delivered to the Registrar for registration, the company shall be deemed to have continued in existence as if its name had not been struck off.

Question No. 4

(a) Write short notes on :

(i) *Structure and functions of the Board under the Australian Corporations Act, 2001*

(ii) *Producer Company* (4 marks each)

(b) State with reasons in brief whether the following statements are correct or incorrect:

(i) *A proxy shall not be entitled to vote on show of hands in a general meeting.*

(ii) *Resignation of a whole time director shall take effect once it is tendered.*

(iii) *Every public company is required to have a minimum of two directors.*

(iv) *A listed company cannot issue sweat equity shares to its promoters.*
(2 marks each)

Answer to Question No. 4(a)(i)

Structure of Board under the Australian Corporations Act, 2001

A proprietary company must have at least one director. That director must ordinarily reside in Australia. For this purpose, a proprietary company is a company that is registered as, or converts to, a proprietary company under this Act.

A proprietary company must:

- be limited by shares or be an unlimited company with a share capital
- have no more than 50 non-employee shareholders
- not do anything that would require disclosure to investors under the Chapter of the Act (except in limited circumstances).

Further a public company must have at least 3 directors (not counting alternate directors). At least 2 directors must ordinarily reside in Australia. Only an individual who is at least 18 may be appointed as a director of a company. A person who is disqualified from managing corporations may only be appointed as director of a company if the appointment is made with permission granted by Australian Securities and Investments Commission under the leave granted by the Court.

Functions of Board

The business of a company is to be managed by or under the direction of the directors. The directors may exercise all the powers of the company except any powers

that this Act or the company's constitution (if any) requires the company to exercise in general meeting. For example, the directors may issue shares, borrow money and issue debentures. The directors of a company may confer on a managing director any of the powers that the directors can exercise. The directors may revoke or vary a conferral of powers on the managing director.

The director of a proprietary company who is its only director and only shareholder may exercise all the powers of the company except any powers that this Act or the company's constitution (if any) requires the company to exercise in general meeting.

Answer to Question No. 4(a)(ii)

Producer company

The Companies (Amendment) Act, 2002 vide Notification No. S.O. 135(E) dated 5.02.02 has inserted Part IX-A to the Companies Act, 1956 and introduced the concept of Producer Companies.

Section 581A(6) has defined a producer company as a body corporate having objects or activities specified in section 581B and registered as producer company. The term 'producer' has been defined as "any person engaged in any activity connected with or relating to any primary produce" which in turn encompasses agricultural and farm activities resulting in production or in aid of production produce of cottage industries, handloom, handicraft etc.

Section 581C of the Act provides that, any ten or more individuals, each of them being a producer or two or more producer institutions or a combination of ten or more individuals and producer institutions, desirous of forming a producer company may form an incorporated company as such having its objects, specified in Section 581B as producer company under this Act after complying with the requirements and the provisions of the Act in respect of registration.

The Registrar on being satisfied that all requirements relating to registration and incidental matters have been complied with shall register the memorandum, articles and other documents and issue a certificate of incorporation within 30 days of the receipt of the documents for registration.

On registration, the Producer Company shall be deemed to be a private company limited by shares without any limit on the number of members.

Answer to Question No. 4(b)(i)

Correct

A proxy shall not be entitled to vote on show of hands in a general meeting unless the Articles of Association of the company provide otherwise. A proxy is entitled to vote only on a poll. Further, a proxy does not have any right to speak at a meeting (vide section 176).

Answer to Question No. 4(b)(ii)

Incorrect

The resignation of a whole-time director before the expiry of his terms of office

becomes effective only when it is accepted by the company, as he is bound by the terms and conditions of his appointment.

Answer to Question No. 4(b)(iii)

Incorrect

Every public company must have at least three directors. Every other company must have at least two directors. Articles of Association of companies usually provide for the minimum and maximum number of directors for its Board.

Section 258 of the Act lays down that a company in general meeting may by ordinary resolution, increase or reduce the number of its directors within the limits fixed in that behalf by its articles. However, this is subject to the provisions of Sections 252, 255 and 259 of the Act.

Answer to Question No. 4(b)(iv)

Incorrect

As per section 79A(1)(d) of the Companies Act, 1956, the sweat equity shares of a company whose equity shares are listed on a recognized stock exchange, are to be issued in accordance with the regulations made by the Securities and Exchange Board of India in this behalf. Under regulation 6 of SEBI (Issue of Sweat Equity) Regulations, 2002, a listed company can issue sweat equity shares to its promoters.

Question No. 5

As a Company Secretary of Vishal Enterprises Ltd., how would you tackle the following situations:

- (a) A director of the company remained absent, without notice, for 6 meetings during the first quarter of 2010.*
- (b) Quorum was present at the beginning of a Board meeting. However, after one hour, one director had to leave for certain emergency and the presence of directors in the meeting fell below the minimum required for quorum. There were two matters remaining to be considered as per the agenda.*
- (c) A person informs you in writing that he is not a member of your company, yet he has received a notice for the Annual General Meeting as a member.*
- (d) The Union Bank of India has given a loan of Rs. 25 crore for the company's new project and as per one of the terms of sanction it wants to nominate its Chief Manager, Paras on the Board. (4 marks each)*

Answer to Question No. 5(a)

As per section 283(1)(g) of the Companies Act, 1956, the office of a director shall become vacant if he absents himself from three consecutive meetings of the board of directors, or from all meeting of the Board for a continuous period of three months, whichever is longer, without obtaining leave of absence from the Board. In the present case, the director remained absent from all meetings held in the first quarter of 2010, without notice i.e. without obtaining leave of absence. Therefore, he should vacate the office in terms of section 283 of the Act.

Also, the company will be required to file e-form No. 32 after his vacation from the office of the director.

Answer to Question No. 5(b)

As per section 287 of the Companies Act, 1956 quorum for the meeting of the Board of directors of a company shall be one-third of its total strength or two directors, whichever is higher. Also, it is necessary that the minimum quorum at the meeting should be present at all time and not only at the beginning of the meeting. It was held in the case of *Balakrishna v. Balu Subudhi* AIR 1949 Pat 184 that the quorum of the Board is required at every stage of the meeting and unless a quorum is present at every stage, the business transacted is void.

Therefore, the board is advised that the remaining businesses should not be taken up and meeting must be adjourned or terminated. The remaining subjects could be taken up in adjourned meeting or in a fresh meeting. If the remaining items are not covered by section 292, the same may also be taken up by way of resolution by circulation.

Answer to Question No. 5(c)

According to section 111(4) of the Companies Act, 1956, if the name of any person is, without sufficient cause, entered in the register of members of a company, the aggrieved person may apply to the Company Law Board for rectification of the Register.

Any entry made in the register of members, if required to be altered or removed requires approval of the Company Law Board, except any apparent clerical mistake. In the present case, a person has informed the company that he is not a member of the company.

Therefore, first of all, it should be verified whether the mistake was a clerical one that would be rectified by intimating to the company. If the mistake was not a clerical one, an application to the Company Law Board is required.

Answer to Question No. 5(d)

One of the modes of appointment of a director on the board of a company is by "third party". A person so appointed is known as Nominee Director. He is not liable to retire by rotation and considered as permanent director till the pleasure of their nominating agencies.

He will vacate the office automatically on liquidation of the loan or other credit facilities. However, the Articles of Association of a company must contain an Article enabling such appointment of Nominee Director.

In the given case, Union Bank of India could nominate its representative on the Board. However, it must be ensured that the Articles of Association of the Company contain provision for the appointment of a nominee director. Otherwise, the Articles have to be altered by passing a special resolution in the general meeting. Further, the appointment of nominee director should fall within the maximum number of directors stipulated in the Articles.

Question No. 6

(a) *Distinguish between the following:*

(i) *'Rights Issue' and 'Bonus Issue'.*

(ii) 'Reduction of Share Capital' and 'Buy-back of Shares'. (4 marks each)

(b) Write Short Notes on :

(i) CAG Audit.

(ii) Corporate Social Responsibility. (4 marks each)

Answer to Question No. 6(a)(i)

Rights issue and Bonus issue

Right issue

Shares offered to the existing shareholders of a company are called 'rights shares'. Rights shares are issued to existing shareholders who have the privilege to buy a specified number of new shares from the firm at a specified price within a specified time. A company can opt for a rights issue to raise capital under secondary market offering.

Section 81 of the Companies Act contains provisions on "further issue of capital", and it gives the pre-emptive rights of shareholders of a company to subscribe to new shares of the company.

Rights issue shall be kept open for at least 30 days and not more than 60 days.

The abridged letter of offer, along with application form, shall be dispatched through registered post or speed post to all the existing shareholders at least three days before the date of opening of the issue

No issuer shall make a rights issue of equity shares if it has outstanding fully or partly convertible debt instruments at the time of making rights issue, unless it has made reservation of equity shares of the same class in favour of the holders of such outstanding convertible debt instruments in proportion to the convertible part thereof

Bonus Issue

Bonus issues are shares issued free of charge to shareholders. When a company accumulates a large fund from profits, much beyond its needs, the directors may decide to distribute a part of it among the shareholders in the form of bonus. Once a bonus is issued, the price of the shares is likely to drop as the value of the company's assets is now spread over a larger number of shares.

A company may, if its Articles provide, capitalize its profits by issuing fully-paid bonus shares.

A company which announces bonus issue after the approval of board of directors and does not require shareholders' approval for capitalisation of profits or reserves for making bonus issue. As per the Articles of Association, the company shall implement bonus issue within fifteen days from the date of approval of the issue by the board of directors of the company and shall not have the option of changing the decision.

The company which has made default in payment of interest or principal in respect of fixed deposits and interest on existing debentures or principal on redemption thereof, and has sufficient reason to believe that it has defaulted in respect of the payment of statutory dues of the employees such as contribution to provident fund, gratuity, bonus, etc, cannot make a bonus issue.

If there are any partly paid-up shares, these shares should be made fully paid-up before the bonus issue is made.

Answer to Question No. 6(a)(ii)

Reduction of share capital and buy-back of shares

Reduction of Share Capital (paid up) is governed by the provisions of section 100 of the Companies Act, 1956 whereas the Buy-Back of Shares is permitted under section 77A of the said Act. Reduction of capital requires passing of special resolution, obtaining consent of all the creditors of the company. Further, High Court's confirmation is required which is a cumbersome and time taking procedure. Power to enforce buy-back is vested in the Board of Directors subject to maximum of 10% of the paid up capital. If the buy-back exceeds this limit then approval of the Members by special resolution is required.

In buy-back, shares bought back has to be extinguished and the share certificates are required to be destroyed whereas in case of the Reduction, there is no such requirement, though the company has to add the words 'and reduced' at the end of its name for a period specified in the court order confirming reduction. In reduction of capital, every shareholder whose shares are subject to reduction is to adhere to the court order but in buy-back, each shareholder has the option not to sell back his shares to the company.

Answer to Question No. 6(b)(i)

CAG Audit

A Company, which is a Government Company under Section 617 of the Companies Act, the following provisions shall apply, notwithstanding anything contained in Section 224 to 233 of the Companies Act. The auditor of a Government Company shall be appointed or re-appointed by the Comptroller and Auditor-General of India. Provided that the limits specified in sub-section (1B) and (1C) of section 224 shall apply in relation to the appointment or re-appointment of an auditor under this Section

The Comptroller and Auditor General of India shall have power –

- (a) to direct the manner in which the Company's accounts shall be audited by the auditor appointed in pursuance of sub-section (2) and to give such auditor instructions in regard to any matter relating to the performance of his functions as such;
- (b) to conduct a supplementary or test audit of the Company's accounts by such person or persons as he may authorize in this behalf; and for the purposes of such audit, to require information or additional information to be furnished to any person or persons, so authorized, on such matters by such person or persons, and in such form, as the Comptroller and Auditor-general of India may, by general or special order direct.

The Auditor aforesaid shall submit a copy of his audit report to the Comptroller and Auditor General of India who shall have the right to comment upon, or supplement, the audit report in such manner as he may think fit. Any such comments upon or supplement to the audit report shall be placed before the Annual General Meeting in such manner as the Audit Report.

Answer to Question No. 6(b)(ii)**Corporate Social Responsibility**

The subject of Corporate Social Responsibility (CSR) has evolved during the last few decades from simple philanthropic activities to integrating the interest of the business with that of the communities in which it operates. Although we have seen a period of sustained economic growth in the current decade, we still continue to face major challenges on the human side in India. The problems like poverty, illiteracy, malnutrition etc. have resulted in a large section of the population remaining as un included from the mainstream. We need to address these challenges through suitable efforts and intervention in which all the state and non-state sectors need to partner together to find and implement innovative solutions.

The CSR policy should invariably cover: care for all stakeholders; ethical functioning; respect for workers' rights and welfare, respect for human rights, respect for environment and activities for social and inclusive development.

At present, the Ministry of Corporate Affairs (MCA) is looking forward to more and more business communities coming forward and adopting the CSR Voluntary Guidelines issued by it. The MCA has also prescribed a form for filling up of the same on voluntary basis to report on CSR.

The Companies Bill, 2012* has also introduced the concept of CSR in India by insertion of new clause 135 in the Bill.

* The Companies Bill, 2012 has been passed by the Parliament of India. It received the assent of the President of India on August 29, 2013 and finally became the Companies Act, 2013. It was notified in the Gazette of India on August 30, 2013.

TEST PAPER 3/2013
(This Test Paper is based on entire Study Material)

Time allowed : 3 hours

Max. Marks : 100

Attempt All Questions

Question No. 1

Draft the following resolutions stating the authority which can pass them and also the type of Resolution :

- (i) Resolution authorizing the Board to borrow for company's business upto a limit beyond the company's paid-up capital and free reserves.*
- (ii) Resolution for change of Registered Office outside the local limits of city, town or village from the jurisdiction of one Registrar to another within same state.*
- (iii) Resolution for forfeiture of shares on non-payment of allotment money as per final notice.*
- (iv) Resolution for the appointment of first auditor. (5 marks each)*

Answer to Question No. 1(i)

Type of meeting : General Meeting

Kind of resolution : Ordinary Resolution

Ordinary resolution under Section 293 (1) (d) authorising the Board to borrow for company's business upto a limit beyond paid up capital and free reserves

Ordinary resolution

"RESOLVED THAT pursuant to the provisions of Section 293(1)(d) and other applicable provisions, if any, of the Companies Act, 1956, and subject to such approvals as may be necessary, consent of the company be and is hereby accorded to the Board of directors of the company for borrowing, from time to time, such sums of money as the Board may deem fit for the purpose of the business of the company, notwithstanding that the moneys to be borrowed together with the monies already borrowed (apart from temporary loans obtained from the company's bankers in the ordinary course of business) will exceed the aggregate of the paid-up capital of the company and its free reserves, that is to say, the reserves not set apart for any specific purpose, provided that the total amount upto which the monies may be borrowed by the Board of directors of the company shall not exceed the aggregate of the paid-up capital and free reserves of the company by more than the sum of Rs. (Rupees.....) at any one time."

Explanatory Statement

The shareholders of the company had, at the extraordinary general meeting of the company held on, passed a resolution under Section 293(1)(d) fixing

the maximum amount of rupees twenty crore, upto which the Board of directors of the company could borrow funds from financial institutions and banks in excess of the company's paid up capital and free reserves. However, in view of the increased business activities of the company, the said ceiling of rupees twenty crore has been found to be inadequate. Your directors are of the opinion that the ceiling of borrowings by the Board be raised to rupees one hundred crore.

Hence the proposed resolution for consideration and approval by the members of the company.

None of the directors is concerned or interested in the proposed resolution.

Answer to Question No. 1(ii)

Type of meeting : General Meeting

Kind of resolution : Special Resolution

Special Resolution for Change of Registered Office outside Local Limits of City, Town or Village from the Jurisdiction of one Registrar to Another within the same State

“RESOLVED THAT the Registered Office of the Company be and is hereby shifted from..... to..... which is outside the local limits of city, town or village but from the jurisdiction of one registrar to another within the same state where the company's registered office is presently situated with effect from subject to confirmation by the Regional Director.”

Explanatory Statement

The registered office of the company is situated at..... while the administrative office is situated atFor administrative convenience and better control over the operations it is proposed to shift the Registered office from..... to Since the new place is within the jurisdiction of another Registrar of Companies, this requires prior approval of the Regional Director. Hence it is proposed to pass a special resolution for this purpose. No Director is interested or concerned in this resolution.

Answer to Question No. 1(iii)

Type of meeting : Board Meeting

Kind of resolution : Board Resolution

Board Resolution for Forfeiture of Shares on Non-Payment of Allotment Money as per Final Notice

“RESOLVED THAT pursuant to the provisions of Article 66 of the Articles of Association of the Company and consequent upon the shareholders having not complied with the requirements of the Final Notice for Payment of Allotment Money dated 21.10.2012 sent under registered post i.e. not remitted the Allotment Money due on such equity shares together with interest on or before 21.11.2009, the last date fixed for payment, the 69,032 equity shares of Rs. 10/- each allotted on 23rd July, 2010 and 23rd January, 2011 on conversion of 14% Secured Fully Convertible Debentures of Rs. 120/- each in terms of the prospectus dated 28.10.2012 and the 5,45,589 equity shares of Rs. 10/-

each allotted on 23.7.2010 on Rights basis in terms of the Letter of Offer dated 29.4.2009 as per particulars whereof contained in the two lists placed on the table, be and are hereby forfeited.

RESOLVED FURTHER THAT necessary entry, as required under Article 67 of the Articles of Association of the Company be made in the Register of members and the notice of this resolution of forfeiture be sent to the such members individually under registered post and be notified to the Stock Exchanges at Mumbai, Kolkata, Delhi and Kanpur where the equity shares of the company are listed and that Mr., President (Finance) and Mr., Company Secretary be and are hereby authorised severally to sign and send requisite notice and to do all acts, deeds and things in connection therewith or incidental thereto.”

Answer to Question No. 1(iv)

Type of meeting : *Board Meeting*

Kind of resolution : *Board Resolution*

Board Resolution for the appointment of first auditors

“RESOLVED THAT the consent of the Board of directors be and is hereby given to the appointment of M/s ABC and Co., Chartered Accountants, as First Auditors of the Company to hold office up to the conclusion of the First Annual General Meeting of the company at a remuneration of Rs. in addition to the out of pocket expenses incurred by them in connection with audit of company accounts.

RESOLVED FURTHER THAT the Secretary of the company be and is hereby directed to give intimation of the appointment to the Auditors so appointed within seven days of the date of the resolution.”

Question No. 2

(a) *Re-write the following sentences after filling in the blank spaces with appropriate word(s)/figure(s):*

- (i) *The director appointed by the principle of _____ holds office for _____ and cannot be removed by the company in general meeting under Section 284.*
- (ii) *Section 117C of the Act requires every company to create a _____ to which adequate amount shall be _____ out of its profit every year.*
- (iii) *E-Form _____ relates to notice of situation or change of situation of Registered Office of the Company.*
- (iv) *When a company fails to receive minimum subscription of _____ in respect of a rights issue, the entire subscription will have to be refunded to the applicants within _____ from the date of closure of the issue.*
- (v) *No dividend can be paid by company except in _____.*
- (vi) *Global Location Number is allotted to _____ companies.*

(1 mark each)

(b) State with reason in brief, whether the following statements are correct or incorrect:

- (i) Since a producer company is an innovation, it does not need the word limited, at the end of its name.
- (ii) Buy-back of securities should be physically destroyed within seven days.
- (iii) Under Societies Registration Act, 1860, a society can be registered by a minimum of ten individuals.
- (iv) Shares offered to the existing shareholders of a company are called bonus shares.
- (v) The total number of directors and additional directors can exceed the maximum strength of Directors fixed for the Board by the articles of the company. (2 marks each)

Answer to Question No. 2(a)

- (i) The directors appointed by the principle of **proportional representation** hold office for **three years** and cannot be removed by the company in general meeting under Section 284.
- (ii) Section 117C of the Act requires every company to create a **Debenture Redemption Reserve** to which adequate amount shall be **credited** out of its profits every year.
- (iii) E-Form **18** relates to notice of situation or change of situation of Registered Office of the Company.
- (iv) When a company fails to receive minimum subscription of **ninety percent** in respect of a rights issue, the entire subscription will have to be refunded to the applicants within **seventy days*** from the date of closure of the issue.
- (v) No dividend can be paid by company except in **cash**.
- (vi) Global Location Number (GLN) is allotted to **foreign** companies.

Answer to Question No. 2(b)(i)

Incorrect

Section 581C of the Companies Act, 1956 mandates the use of the word 'limited' after the name of a producer company.

Answer to Question No. 2(b)(ii)

Correct

As per section 77A(7) of the Companies Act, 1956, company has to extinguish and physically destroy the securities bought back within seven days of the last date of completion of buy-back.

* Note : It is presumed that it is an underwritten issue. Students may write fifteen days, in case of a non-underwritten issue.

Answer to Question No. 2(b)(iii)**Incorrect**

A society can be registered by minimum of seven individuals which may include foreigners, or registered society for the promotion of literature, science or fine arts or diffusion of useful knowledge and political education or charitable purposes.

Answer to Question No. 2(b)(iv)**Incorrect**

Shares offered to the existing shareholder of a company are called as right shares as per section 81 of the Companies Act, 1956. It provides the principle of pre-emptive rights of shareholders of a company to subscribe to new shares of the company.

Answer to Question No. 2(b)(v)**Incorrect**

According to second proviso to section 260 of the Companies Act, 1956, the total strength of directors and additional directors shall not exceed the maximum strength of directors fixed for the Board by the articles of the company.

Question No. 3

- (a) Choose the most appropriate answer, from the given options in respect of the following:
- (i) A company can issue a redeemable preference shares with a tenure of not exceeding —
 - (a) 5 years
 - (b) 10 years
 - (c) 15 years
 - (d) 20 years
 - (ii) The Central Government may exempt any class of companies from complying with the provisions of Schedule VI of the Companies Act, 1956, if it is necessary for —
 - (a) National Interest
 - (b) Public Interest
 - (c) Social Interest
 - (d) Company's Interest
 - (iii) Which company is not allowed to raise a deposit from public other than from its members, directors or their relatives —
 - (a) Public company
 - (b) Private company
 - (c) Foreign company
 - (d) Unlimited company

- (iv) Which of the following is correct in respect of public limited company in India —
- (a) Business can commence immediately on incorporation
 - (b) No need to have more than two directors
 - (c) There is no restriction on remuneration payable to directors
 - (d) There is no limit on the number of members
- (v) Annual return of a company not having a share capital is to be filed with Registrar of Companies in —
- (a) E-Form 20B
 - (b) E-Form 21A
 - (c) E-Form 66
 - (d) E-Form 23AC
- (vi) Section 2(27) excludes a bearer of a share warrant of the company to be a—
- (a) Member
 - (b) Shareholder
 - (c) Director
 - (d) None of the above. (1 mark each)
- (b) You are the Company Secretary of Bigsize Containers Ltd., a listed company, and the Managing Director of your company wants to know the procedure for changing the name of the company. Prepare a note for him. (10 marks)

Answer to Question No. 3(a)(i)

- (d) 20 years

Answer to Question No. 3(a)(ii)

- (b) Public Interest

Answer to Question No. 3(a)(iii)

- (b) Private Company

Answer to Question No. 3(a)(iv)

- (d) There is no limit on the number of members

Answer to Question No. 3(a)(v)

- (b) E-form 21 A

Answer to Question No. 3(a)(vi)

(a) Member

Answer to Question No. 3(b)

To,

The Managing Director
Bigsize Containers Ltd.

Sub : Procedure regarding change of name of the company

A company has to take the following procedural steps for changing the name of company are-

1. Issue notice in writing to every director of the company as per the provisions of Section 286 of the Act. The notice must contain time, date and venue for the meeting and detailed agenda of the business to be transacted thereat.
2. Hold the Board meeting to —
 - (i) consider and approve the proposed name by passing a resolution. Considering that the proposed name may not be made available by the concerned Registrar of Companies (ROC), the Board must consider and decide at least five more names in order of their preference. These names are required to be given in e-form 1A.
 - (ii) to authorise the Company Secretary/Director to make the required application to the Registrar of Companies in e-form 1A and pay the prescribed application fee of Rs. 500/-.
3. The application in e-Form 1A should have the following documents as attachment:
 - Copy of Board resolution of the existing company or foreign holding company as a proof of no objection;
 - Copy of approval from Central Government as a proof of no objection;
 - Trademark or authorisation to use trade mark, if the name of the company is based on trade mark or application for deed of assignment;
 - In case of change of name of an existing company, a copy of Board resolution;
 - If change is due to a direction received from the Central Government, then a copy of such direction;
 - Optional attachment(s) - if any.

On filing e-form 1A, the system will process and generate a Service Request Number (SRN) which shall be used for tracking the status of name clearance.

4. On receipt of approval of name, the Company Secretary/Director must, in consultation with the Chairman of the Board meetings, fix time, date and venue for holding another Board meeting for transacting the following business:
 - (i) To take note of the approval received from the ROC.

- (ii) To fix time, date and venue for holding a general meeting (annual or extraordinary) of the shareholders of the company—
 - (a) for passing a special resolution required under Section 21 of the Act for changing the name of the company; and
 - (b) for passing another special resolution under Section 16 of the Act for altering clause I (name clause) in the memorandum of association of the company in accordance with Section 16 of the Act.
 - (iii) To approve notice of the general meeting and the explanatory statement to be annexed to the notice under Section 173(2) of the Act for the general meeting and to authorise the Company Secretary/Director to issue the notice on behalf of the Board.
5. Issue notice of the general meeting to all the members of the company, its directors and the auditors.
 6. In the case of listed companies, send three copies of the notice to stock exchange (Clause 31 of the Listing Agreement).
 7. A general notice of the general meeting may also be published in newspapers.
 8. Hold the general meeting and pass the resolutions as contained in the notice.
 9. Send to each stock exchange, six copies of the alterations of the memorandum (one of them must be certified) soon after the conclusion of the general meeting, in case shares of the company are listed.
 10. Send to each stock exchanges, a copy of the proceedings of the general meeting in case shares of the company are listed (Clause 33 of the Listing Agreement).
 11. File with the ROC e-form 23 with a certified true copy of each special resolution passed at the general meeting along with the explanatory statement under Section 173 and altered copy of Memorandum of Association and Articles of Association and prescribed filing fee.
 12. Make an application to the concerned Registrar of Companies alongwith the prescribed application fee, for obtaining Central Government's approval to the change of name of the company. New e-form 1B has been prescribed for this purpose. The attachments with e-form 1B are as below:
 - (i) Minutes of the members' meeting;
 - (ii) Certified copy of the order for condonation of delay;
 - (iii) Optional attachment(s) - if any.
- Note : Following particulars will be filled up in the form itself:*
- (a) Reasons for change of name.
 - (b) Particulars of filing e-form 23.
 - (c) Name of the Company at the time of Incorporation.
 - (d) Number of members present, numbers voted in favour and number voted against.

13. On receipt of the Central Government's approval to the change of name, the company should surrender to the ROC, the existing Certificate of Incorporation with a request for the issue of a Fresh Certificate of Incorporation consequent upon change of name of the company.
14. Issue a general notice in newspapers informing all concerned, about the change of name of the company.
15. Inform all concerned persons/authorities about the changed name of the Company.
16. Arrange for a new Common Seal and have the same adopted at a meeting of the Board of directors and keep both the old and the new Common Seals under lock and key.
17. Get stationery printed with the new name and/or affix rubber stamp of the new name on all the existing stationery including the blank share certificates.
18. Get the new name of the Company painted on all the signboards wherever they are displayed.
19. Correct all records, registers including the Register of Members, share certificates, every copy of Memorandum and Articles of Association.

Yours truly,
PQR

Company Secretary.

Question No. 4

(a) *The articles of association of a company incorporated in 2008 provided that a director should hold 3000 shares of the value of Rs. 10 each as qualification shares. At the Annual General Meeting held in September, 2010, an ordinary resolution was passed increasing the share qualification of directors to 8,000 shares. The company then issued notice to the directors who did not hold 8000 shares to acquire additional qualification shares within one month. Ashok, a director who was asked to acquire additional qualification shares, received the notice. He seeks your advice. What advice would you give him? (5 marks)*

(b) *Your company has total twelve directors as under :*

<i>Non-retiring Directors</i>	<i>3</i>
<i>Retiring Directors</i>	<i>5</i>
<i>Additional Directors</i>	<i>4</i>

State the number of directors liable to retire by rotation at the Annual General Meeting and the total number of directors who shall vacate the office at the Annual General Meeting. (5 marks)

(c) *Briefly outline the provisions of the Companies Act, 1956 in regard to Postal Ballot. (6 marks)*

Answer to Question No. 4(a)

There is no statutory requirement that a director must hold qualification shares in the company in which he is a director. Section 270 of the Companies Act, 1956 lays down that if the articles of a company provide for share qualification, each director must

obtain his qualification shares within two months after his appointment as director and the nominal value of the qualification shares shall not exceed Rs. 5,000 or the nominal value of the one share where it exceeds five thousand rupees.

In the present case, two aspects are covered. One is that the special resolution necessary to alter the articles of association of a company was not passed. Secondly, the provisions of Section 270 were violated. In 2008, when the company was incorporated, the minimum limit for holding of qualification shares was fixed at Rs. 30,000. Further, the company increased the limit for holding of qualification shares at Rs. 80,000 in September, 2010 which is clearly a violation of Section 270 of the Act. Therefore, Madhok is advised not to proceed for taking the additional shares and approach the company on the above mentioned lines.

Answer to Question No. 4(b)

Section 255 of the Companies Act, 1956 provides that unless the articles provide for retirement of all the directors at every annual general meeting not less than two-third of the total number of directors shall be persons whose period of office shall be liable to determination by retirement of directors by rotation.

In the given problem, the total number of directors excluding the additional directors is 8. Therefore, not less than $\frac{2}{3}$ rd of 8 directors shall be persons liable to retire by rotation. $\frac{2}{3}$ rd of 8 comes to 5.33. As the provision provides for the term 'not less than two-third', so 6 directors shall be the directors whose period of office shall be liable to retire by rotation at the AGM.

Further in terms of section 256 one-third of the directors liable to retire by rotation shall retire at the AGM. Therefore, $\frac{1}{3}$ rd of 6 i.e. 2 shall retire from office.

In terms of section 260 the additional directors hold office till the next AGM. So 4 additional directors shall vacate the office at AGM.

Thus, total number of directors who shall vacate office at the AGM shall be 6 i.e. 2 retiring directors plus 4 additional directors.

Answer to Question No. 4(c)

Section 192A of the Companies Act, 1956 provides for passing of resolution by postal ballot. Some of the provisions are as under:

- (i) This facility is available only to listed companies;
- (ii) Notice of the proposed resolution is to be sent to every shareholder by registered post acknowledgement due or such other mode as may be prescribed by the Central Government;
- (iii) A postage prepaid envelope shall accompany the notice to enable the shareholder to send their reply;
- (iv) A shareholder is required to send his assent or dissent to the resolution within a period of thirty days from the date of posting of letter;
- (v) Upon receiving the replies (within the stated time), the assents and dissents are counted. If the total of assents reaches the required majority, the resolution shall be deemed to be duly passed.

Question No. 5

- (a) *The Board of Directors of Jetmax Ltd., constituted an Audit Committee comprising six members but did not fix the quorum. Can two members of the Committee present at a duly convened meeting validly transact the business? (6 marks)*
- (b) *State the items to be covered under Directors' Responsibility Statement prepared under Section 217(2AA) of the Companies Act, 1956 ? (10 marks)*

Answer to Question No. 5(a)**Composition of the Audit Committee**

As per clause 49 of the Listing Agreement, the audit committee shall have minimum three directors as members. Two third of the members of audit committee shall be independent directors. All the members of the audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise. By implication, audit committee can to the extent of one-third of the strength comprise of non-independent directors including executive directors.

As per section 292A of the Companies Act, 1956, not less than three directors or such higher number of the directors as the Board may determine of which two third of the total number of directors shall be a directors other than MD or WTD.

Quorum for Audit Committee Meeting

As per clause 49 of the listing agreement, the quorum for audit committee shall be either two members or one third of the members, whichever, is greater, but there should be a minimum of two independent members present.

Section 292A of the Act is silent with regard to the quorum for the audit committee meeting. Though not specifically provided, in such circumstances section 287 may be applicable.

Therefore in the present case, assuming that Jetmax Ltd. is a listed company, two members of the audit commit present at duly convened meeting can validly transact the business provided both the directors are independent.

Answer to Question No. 5(b)

Sub-section (2AA) of Section 217 of the Companies Act, 1956 provides that the Board's report shall also include a Directors' Responsibility Statement, indicating therein,—

- (i) that in the preparation of the annual accounts, the applicable accounting standards have been followed along with proper explanation relating to material departures.
- (ii) that the directors had selected such accounting policies and applied them consistently and made judgements and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the Company at the end of the financial year and of the profit or loss of the Company for that period.
- (iii) that the Directors have taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for

safeguarding the assets of the Company and for preventing and detecting fraud and other irregularities.

- (iv) that the Directors have prepared the annual accounts on a going concern basis.

The responsibilities of directors have been increased. They should ensure the compliance of the accounting standards, selection and application of reasonable and prudent accounting policies, taking of proper and sufficient care for maintenance of adequate accounting records in accordance with the provisions of the Companies Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities and preparation of annual accounts on a going concern basis.

Question No. 6

- (a) Describe the procedure for registration of transfer of shares. (8 marks)
- (b) What is the procedure to obtain an order of the Central Government for extension of time or exemption under Section 58A(8) of the Act ? (8 marks)

Answer to Question No. 6(a)

Procedure for transfer of shares is as under :

If the shares are held in physical form:-

1. The Share Certificate(s), along with the duly completed and stamped Share Transfer Form(s), should be sent to Registrar and Transfer Agent (RTA) of the Company.
Share transfer stamps at the prescribed rate should be affixed on the reverse of the Share Transfer Form at the place provided. The stamps should be duly cancelled. As on March 1, 2007 the rate of stamp duty is 25 paise per hundred Rupees or part thereof, of the value of shares. For this purpose, the value of the shares may be ascertained on the basis of the rate of the share on the stock exchange on the date of execution of the transfer deed.
However, latest stamp duty rate may be ascertained.
2. In case Power of Attorney holder (POA holder) signs on behalf of the transferor, he should quote POA registration number as registered with the RTA, on the transfer deed or else, the transferee should request the transferor, before approaching for transfer, to have the POA registered with the RTA.
3. In case the transferee has an existing folio number, he should quote the existing folio number on transfer deed to enable registration of new shares in the same folio number.
4. If all the documents are in order, the shares will be duly transferred and the certificates will be returned to you duly endorsing your name, normally within a fortnight from the receipt of document(s).
5. In case the share certificate(s) do not reach you within 30 days from the date of lodging the same, you may please contact the RTA.

Note:

1. It is advisable that photocopies of the share certificate(s) and the transfer deed(s) sent for transfer are retained by the transferee.

2. No transfer of shares is effected during the Book Closure period of the Company.

If the shares are held in dematerialized form:-

In respect of shares held in demat form, transfers are effected electronically through the NSDL / CDSL system. Transfer of shares held in dematerialize form is much simpler. The investor instead of surrendering physical share certificates gives instructions to the broker regarding sale. The procedure for sale of shares held in demat form is as under:-

- (i) Sale shall be made through a broker who is a member of National Stock Exchange;
- (ii) Shareholder i.e. the beneficial owner (BO) will give delivery instruction through Delivery Instruction Slip (DIS) to depository participant (DP) to debit his account and credit the broker's account. Such instruction should reach the DP's office at least 24 hours before the pay-in, failing which, DP will accept the instruction only at the BO's risk;
- (iii) The broker shall give instructions to his DP for delivery to clearing corporation of the concerned stock exchange and receive payment from clearing corporation;
- (iv) The broker shall make payment to the investor in physical form.

The procedure for purchase of securities held in demat form is as under:-

- (i) broker will receive the securities in his account on the payout day;
- (ii) broker will give instruction to its depository participant to debit his account and credit beneficial owner's account;
- (iii) BO will give 'Receipt Instruction' to DP for receiving credit by filling appropriate form.

However, BO can give standing instruction for credit to his account that will obviate the need of giving Receipt Instruction every time.

No stamp duty is levied on transfer of securities held in demat form. Any number of securities can be transferred/delivered with one delivery instruction. Therefore, the paperwork and signing of multiple transfer forms is done away with.

Answer to Question No. 6(b)

Procedure to obtain an order of the Central Government for extension of time or exemption under Section 58A(8) of the Act

1. Convene a Board meeting after giving notice to all the directors of the company as per section 286 and take the decision approving the proposal of the company whether to ask for an extension of time or exemption by passing a resolution.
2. Before making the application, publish a general notice in Form No. 2 of the Companies (Application for Extension of Time or Exemption under sub-section (8) of section 58A) Rules, 1979, for the members of the public at least once in English language and once in vernacular language in newspapers of these two languages having wide circulation in the region in which the registered office of the company is situated.
3. Apply to the Central Government in e-form No. 65 and see that the said e-form is filed in electronic mode and file with it as an attachment the detailed application

in Form No.1 of the Companies (Application for Extension of Time or Exemption under sub-section (8) of section 58A) Rules, 1979.

4. Ensure that the said e-form is digitally signed by the managing director or director or manager or secretary of the company duly authorized by the Board of directors.
 5. Also attach with the application the following documents:-
 - (i) A copy of the Articles of association of the company
 - (ii) A copy of the audited accounts of the company for last three years
 - (iii) A copy of directors' report and auditor's report for the last three years
 - (iv) Certified copy of Resolution of the Board of Directors approving the proposal of the company.
 - (v) A copy of each quarterly, half yearly or other pro forma account of the company subsequent to the latest audited accounts
 - (vi) Original newspaper clippings of the public notices published in English and vernacular language of the region in which registered office of the company is situated in the manner specified in Form 2 appended to the Rules.
 - (vii) One copy each of the advertisement issued in newspapers pursuant to Rule 4 of the Companies (Acceptance of Deposits) Rules, 1975.
 - (viii) Copy of previous approval/order, if any, obtained under Section 58(A) from the Central Government granting exemption/extension of time during last ten years.
 - (ix) Certificates from the statutory Auditors:
 - (a) to the effect that the company has not contravened any other provisions of Section 58A of the Companies Act, 1956 and the Companies (Acceptance of Deposits) Rules, 1975 except those for which the application is submitted;
 - (b) to the effect that the deposits held by the company are within limits and that no contravention of the provisions of Section 58A of the Companies Act, 1956 and the Companies (Acceptance of Deposits) Rules, 1975 exists at present.
 - (x) Deposit position of the company as at 31st March during the current year and the past two years showing the prescribed details.
 6. Payment of requisite fee prescribed under the Companies (Fees on Application) Rules, 1999 has to be made. If fee is paid on-line then application fee as prescribed should be paid by credit card or through internet banking.
 7. If the fee is paid by a demand draft then draw the demand draft in favour of "Pay and Accounts Officer, Ministry of Corporate Affairs, New Delhi" payable at New Delhi. The said demand draft shall also be attached with the application.
 8. Deliver simultaneously a copy of the application along with a copy of each of the documents annexed to the application to the ROC.
 9. Forward promptly to the stock exchange with which the company is listed three copies of the notice published in the newspapers a mentioned under item no. 2 above.
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