

Corporate Laws (S-15)

(Suggested Solution)

Q.1(a) According to the provisions of Companies Ordinance 1984, the register of mortgages and charges can be rectified by the Commission in the following circumstances:

- a) If there has been omission to register a mortgage or charge within 21 days of its creation;
- b) If there has been omission or misstatement of any particular with respect to any such mortgage or charge;
- c) If there has been an, accidental or due to inadvertence or some other sufficient cause; omission to give intimation to the registrar about the payment or satisfaction of a debt for which a mortgage or a charge was created;
- d) If rectification is not of a nature to prejudice the position of creditors or shareholders of the company; and
- e) If there is any other ground just and equitable to grant relief.

In the light of the above provisions, there has been misstatement of particular with respect to mortgage, Company shall file an application with Commission by providing all relevant documents and get an order of Commission in such matter. Commission may require additional information and explanations. A certified copy of the order of the Commission requiring rectification shall be filed with registrar by the company within 21 days from such order.

(b) Under the provisions of listing regulations of Karachi Stock Exchange:

- a) Company shall advise the stock exchange about the decision of the BOD regarding dividends, rights bonus etc. or any other price sensitive information. Immediately before sending this information to any other person including media.
- b) Company shall keep proper care that any news/rumor wherever published or broad casted in media is capable of affecting the price/trading volume of the company's listed securities, is addressed i.e. confirmed or denied along with proper justifications to stock exchange within one day of the publication /broadcasting etc. of the news or rumor etc.
- c) Also company shall promptly respond to the exchange regarding any query of the exchange pertaining the unusual share prices or volumes of trade of company's securities.

In the light of above provisions, Sucrets Sciences Limited shall promptly respond to the stock exchange regarding the query of exchange pertaining to the abrupt increase in the trading volume of the shares of the company that it is due to the possible impact of joint venture with another Company. Company may also be required to explain as to why such information was not disseminated to stock exchange on an earlier date.

[c] Account holders are allowed to keep their beneficially owned securities in CDS in the accounts opened in their name for this purpose and they are also allowed to handle these securities present in their accounts Whereas, sub accounts are opened through a participant and the sub-account holders are not allowed to handle these securities themselves rather they are required to contact the particular participant for handling these securities.

Q.2 According to the Companies Ordinance 1984, provisions with respect to the filing to annual of list members are as follows:

- i. Company not having share capital shall file annual list of members and debenture holders on Form B.
- ii. Particulars of members as on the date of Annual General Meeting shall be filed within
 - 45 days from the date of Annual General Meeting in case of Listed company
 - 30 days from the date of Annual general Meeting in case of other company

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- iii. In case where the annual general meeting is not held or, is held but is not concluded, the particulars of the members and of debenture-holders as on the last date of calendar year shall be filed within
- 45 days from the date of end of calendar year in case of Listed company
 - 30 days from the date of end of calendar year in case of other company
- iv. In case of listed companies, the extension of 15 days may be granted by the Registrar if any special cause is shown

As per listing regulations of Karachi Stock Exchange, The Company Is required to furnish a complete list of all of its security holders as at 31st December in each calendar year duly affirmed to be correct as and up to that date within 30 days thereof.

- (a) According to the Code of Corporate Governance, the pattern of shareholding shall be reported in the Director's report to disclose the aggregate number of shares (along with name wise details where stated below) held by:
- associated companies, undertakings and related parties (name wise details);
 - mutual funds (name wise details);
 - directors and their spouse(s) and minor children (name wise details);
 - executives;
 - public sector companies and corporations;
 - banks, development finance institutions, non-banking finance companies, insurance companies, takaful, modarabas and pension funds; and
 - Shareholders holding five percent or more voting rights in the listed company (name wise details).
- (b) Under the Code of Corporate Governance, the persons covered under the term "executive" includes the CEO, COO, CFO, Head of Internal Audit and Company Secretary by whatever name called, and other employees of the company for whom the board of directors will set the threshold to be reviewed on an annual basis and disclosed in the annual report.

Q.3 (1) Under the requirements of Listed Companies Substantial Acquisition of Voting Shares and Take over Ordinance 2002, Mr. Hussain shall disclose the fact of his acquiring the shares of the Jibran Limited when he acquires voting shares of 50 million from stock market which would entitle him to more than ten per cent voting shares in a listed company.

(2) Minimum number of shares that can be offered:

Total shares	100%
Shares already held (50+50+5+50+200)/1000	(35.5%)
Remaining share capital	$\frac{64.5\%}{100} \times 50\% = 32.25\%$
Minimum number of shares that should be offered	= 1 billion x 32.25% = 322.5 million shares
Minimum level of acceptance	= 64.5% x 35% = 22.58% i.e. 225.8 million shares

Minimum purchase price that can be offered:

Mr. Zaidi	5 million shares x 25	= 125 million
Mr. Naqvi	50 million shares x 24.5	= 1,225 million
Mr. Kazmi	<u>200 million shares</u> x 24	= <u>4,800 million</u>
	255 million	6,150 million

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Weighted average price = $6150/255 = \text{Rs. } 24.12 / \text{share}$
Actual purchase during last six months price = $24 / \text{share}$

Minimum purchase price that can be offered is **Rs. 24.12 / share**

(3) As there is a withdrawal of public offer and the acquirer has crossed the twenty-five percent threshold as a consequence of acquiring voting shares pursuant to an agreement, such acquirer shall immediately reduce the number of voting shares held by the acquirer to less than twenty-five percent;

Q.4 (A) Where a company has been privatized by the Federal Government or a Provincial Government, the new management shall not offer shares to the public for a period of three years from the date of privatization at a price higher than the purchase price per share adjusted by right or bonus issue or any other distribution made out of the pre-acquisition reserves.

In the light of the above mentioned provision, the maximum price that Goethe Limited can charge against sale of ABC Limited is calculated as follows:

Purchase price	750,000,000	Number of shares	50,000,000
Dividend	<u>(108,000,000)</u>	Bonus issue	<u>12,500,000</u>
	<u>642,000,000</u>		<u>62,500,000</u>

Maximum sale price = $642,000,000/62,500,000 = \text{Rs. } 10.27 / \text{share}$

(B) In determining a person's competence and capability for appointment as a Chief Executive, the following shall be considered:

- the directors should be individuals having management or business experience of at least five years at a senior level;
- the directors shall have experience and knowledge in any profession such as banking, Collective Investment Scheme, accounting, law, internal audit or information technology etc.;
- the chief executive should have a minimum experience of seven to ten years in a senior management position, preferably in the regulated financial services sector;
- the chief executive should have a minimum experience of seven to ten years in a senior management position, preferably in the regulated financial services sector and
- the chief executive should have demonstrated, through his qualification and experience, the capacity to successfully undertake the cognate responsibilities of the position.

[C] Outstanding balance	10,000,000
Liquid assets	(2,000,000)
Adjusted FSV of mortgage @ 50%	<u>(4,000,000)</u>
Amount of provision	<u>4,000,000</u> x 25% = 1,000,000

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XYZ Limited:

Outstanding balance	15,000,000
Adjusted FSV of mortgage @ 80%	<u>(24,000,000)</u>
Equitable mortgage value available	24,000,000/2=12,000,000
Amount of EXPOSURE	15 m- 12 m= 3M
Amount of provision	3*50%=1.5 Million

TUV Limited

Outstanding balance	10,000,000
Liquid assets	(5,000,000)
Floating charge	-
Amount of provision	<u>5,000,000</u> x 25% = 1,250,000

- Q.5a)** Company cannot buy its own shares, however, a listed company may, subject to the provisions of Companies Ordinance 1984 and the rules framed by the Commission in this behalf may purchase its own shares. The purchase shall be authorized by a special resolution which shall indicate maximum number of shares to be purchased, the maximum price at which the shares may be purchased; and the period within which the purchase is to be made.

Company cannot buy its own shares nor can it buy the shares of its holding company.

- However a subsidiary company can act as a trustee for keeping securities in trust but holding company should not be beneficially interested in the trust
- If subsidiary carries on a bona fide business of brokerage, then company can deal in the shares of its holding company but shall not exercise voting rights on the shares held by it.

The provisions of this section do not restrict:

- a listed company from buying back its shares in accordance with the Ordinance and rules
- any company from redeeming its fully paid bonus shares.

(B) Where either a receiver is appointed on behalf of the holders of any debentures of a company secured by a floating charge, or possession is taken by or on behalf of these debenture holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts which in every winding up are under the provisions of Part XI relating to preferential payments to be paid in priority to all other debts, shall be paid forthwith out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.

In a winding up, there shall be paid in priority to all other debts-among other matters

- a) All revenues, taxes, cesses and rates due to the Government or to a local authority having become due and payable within the twelve months next before the relevant date;
- b) All wages or salary of any employee due for a period not exceeding four months within the next twelve months, and any compensation payable to any workman under any law for the time being in force, but no such payment shall exceed Rs. 2000/- per employee

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however if the part of wages is accrued for any employee to be payable at the end of the year then the limit of 2000 shall not apply.

In the light of above mentioned provisions, the entitlement of MC Bank Limited is computed below:

	Rs.
Amount recovered from sale of inventories	40,000,000
Payable income tax authorities	(5,000,000)
Wages to employees	<u>(500,000)</u>
Entitlement of MC Bank Limited	<u>34,500,000</u>

For the rest of money MC bank limited has to take other actions against the company

[C] Implications Companies Ordinance 1984

- a) Director of a listed company cannot borrow funds from company but a director of a private company can borrow funds as there is no restriction on such borrowing
- b) Director of a listed company is required to file a statement of beneficial ownership every time he purchases or sells any shares of the company within 15 days of such transaction and within 30 days of the day initially becoming liable to file such a statement.
- c) Director of a public listed company is required to tender gains made on sale and purchase or purchase and sale of the shares of the company within a period of six months.
- d) Directors of a listed company are required to update the company about their shareholding to get it entered in the register of director's shareholding every time when he makes a purchase or sale transaction
- e) The director of a listed company cannot engage in brokerage business parallel to the directorship in a listed company. They further cannot become director in a corporate brokerage house.
- f) In case of a defaulter of a bank loan exceeding Rupees One Million, they cannot remain a director of a listed company.

Implications Under Other different laws and regulations.

- a) As per code of corporate governance the directors need to attend orientation courses if they have not got at least 14 years of education and at least 15 years of work experience.
- b) As per code of corporate governance, the directors need to observe the closed period as and when applied by the company.
- c) As per code of corporate governance, directors of a listed company, directors need to add various matters other than routine matters of a director's report.
- d) As per code of corporate governance, a person can be director in not more than 7 listed companies
- e) As per Securities and exchange ordinance the director is considered as an Insider and his trading may be declared as an insider trading if so found,.

- Q.6a) (1)** Is a person appointed to carry out winding up of the company in case the company has decided to be wound up voluntarily.
- (2)** Is a person appointed to carry out winding up of the company in case the company has been order to be wound up by the court.
- (3)** Is a person appointed by court if the petition of the winding up has been filed but the order of winding up not yet issued, then court if thinks appropriate shall appoint some person as a provisional manager in place of the directors of the company.

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- (4) Is a person appointed by the Commission on application of competent person (a creditor holding interest in the company equivalent to 60% or more of the share capital of the company) if the financial or operational situations of the company have gone materially wrong.
- b) No listed company shall circulate its financial statements unless the CEO and the CFO present the financial statements, duly endorsed under their respective signatures, for consideration and approval of the Board of Directors.
- It shall be mandatory for the CEO and CFO to have the second quarterly and annual accounts (both separate and consolidated where applicable) initialed by the external auditors before presenting it to the audit committee and the Board of Directors for approval.
- c)
- a) Special audit is a power exercised by Commission for carrying out audit of the company while investigation is a detailed scrutiny of the affairs of the company.
 - b) Audit usually refers to the financial matters of the company while the investigation may be regarding any aspect of the business of the company.
 - c) Person appointed under investigation is called an inspector while the persons appointed under the audit are called auditors.
 - d) The inspector have got powers of court for certain matters however the auditors have got no such powers.
 - e) Investigation may be started by Commission on application of people having 10% right in the share capital of the company but a special audit requires application of at least 20% of the total voting powers request.

- Q.7a)** If a declaration of solvency is prepared then the winding up is called members voluntary winding up otherwise it is called creditors voluntary winding up.

WINDING UP SUBJECT TO SUPERVISION OF COURT

1. When a company has passed a resolution for voluntary winding up, the Court may of its own motion or on the application of any person entitled to apply to the Court for winding up a company, make an order that the voluntary winding up shall continue, but subject to such supervision of the Court, as the Court thinks just.
2. Such petition shall be considered as a petition for winding up of the company.
3. The court shall, along with the order for winding up under the supervision of the court shall appoint an official liquidator by removing any person already appointed as liquidator. Further if in future the winding up under supervision of the court is transferred to winding up by court, the court shall by an order appoint the same person as official liquidator and may appoint some other person along with him to take up the winding up.

Effects of Supervision Order

The winding up of the company shall continue in the same manner as it were a voluntary winding up with the addition that the court shall be empowered in all matter to take action and make calls etc. as if the company is being wound up by the court.

- b) The directors shall provide for the safe custody of the seal and the seal shall not be affixed to any instrument except by the authority of a resolution of the board directors or by a committee of directors authorized in that behalf by the directors and the presence of at least two directors and of

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the secretary or such other person as the directors may appoint for the purpose; and those two directors and secretary or other person as aforesaid shall sign every instrument to which the seal of the company is affixed in their presence.

- c) According to the Second Schedule to the Companies Ordinance 1984, following shall be the reports to be set out in the prospectus:
1. Report of the auditors of the company regarding
 - a) Assets and Liabilities at the last date when accounts were prepared and P&L of the company along with any unusual or extraordinary, non-recurring item
 - b) Dividends paid by the company during last five financial years
 - c) If the accounts were not prepared for any part during preceding 5 years then the statement to the effect shall be given.
 2. If the company has got subsidiaries the auditor's report shall deal with the profit/loss and assets/liabilities of the subsidiaries.
 3. If the proceeds of the issue shall be used for the acquisition of any business or any interest therein then the auditors shall report separately on
 - a) Last five year's profits/losses of that business or company
 - b) And assets and liabilities of that business or company at a date not earlier than 120 days of the prospectus
 - c) Further if that other business or company has subsidiaries, the report shall include the performance and assets liabilities of that business as well.

(The End)