



COMPANY LAW
(SPRING 2006 TO SPRING 2014)

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THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN

Intermediate Examinations Spring 2006



March 09, 2006

COMPANY LAW
Module D

(MARKS 100)
(3 hours)

- Q.1 Mr. Zuhair, holder of 9.5% shares in Zuhaib Company Limited, shifts to UK and intimates the company of his new registered address of the UK. After one year, he claimed on his return to Pakistan that he was not served with any notices from the company during that time despite having informed the company about change in his address. State with reasons whether this is a violation on the part of Zuhaib Company Limited of any of the provisions of the Companies Ordinance, 1984. (06)
- Q.2 On what grounds can the directors of a company refuse the transfer of shares? What is the time frame for notifying the refusal to the concerned member? (04)
- Q.3 (a) State the provisions of the Companies Ordinance, 1984 relating to the application of premium received on issue of share. (04)
- (b) Under what conditions, can a company issue shares at discount? (05)
- Q.4 Mr. Pervaiz Khan, chief accountant of a listed company purchased 1,000 shares of his own company on 26 October 2004 and sold 500 shares on 15 March 2005 with a gain of Rs. 6,000. He sold the balance on 20 October 2005 with a gain of Rs. 14,000. State the procedure that Mr. Pervaiz Khan has to follow as required under the Companies Ordinance, 1984. (06)
- Q.5 (a) A shareholder of the company wants to inspect the register of directors and officers of the company. The company charges a sum of Rs. 250 from him. Explain whether this is a violation of any provisions of the Companies Ordinance, 1984. (02)
- (b) You are the Chief Financial Officer of a company listed on the Karachi Stock Exchange having a share capital of Rs. 50 million. Mr. Wahid, who holds Rs. 5 million shares of the company, has sent a written request to review the cash book of the company. Explain whether you can refuse this request? (05)
- Q.6 What are the requirements of the Companies Ordinance, 1984 regarding the maintenance of minutes of proceedings of general meetings and directors? (05)

(2)

- Q.7 XYZ Limited is a listed company and is planning to invest Rs. 500 million in one of its associated undertaking. The Company has asked you to provide them a report explaining the :
- (a) requirements of the Companies Ordinance, 1984 with regard to the investment in an associated undertakings; and
 - (b) consequences, if the company fails to comply with these requirements. (06)
- Q.8 (a) What is a conclusive evidence of the fact that a company has been duly registered under the Companies Ordinance? (02)
- (b) Before confirming an alteration of memorandum of association the Commission must satisfy itself that certain conditions have been fulfilled. What are those conditions? (04)
- Q.9 Describe the provision of the Companies Ordinance, 1984 with respect to holding of Annual General Meeting by a Company listed on a Stock Exchange? (07)
- Q.10 State how can a Chief Executive be removed from office before expiration of his term of office? (03)
- Q.11 (a) State the powers of the directors that are required to be exercised by them by means of a resolution at their meeting. (10)
- (b) List down the matters which are required to be included in the Directors report. (10)
- (c) Explain the circumstances under which:
- (i) election of the directors may be declared invalid; and (03)
 - (ii) a director shall cease to hold office. (05)
- Q.12 (a) Jafer Limited acquired a property from M/s Ali & Sons which is subject to a charge, registered within Pakistan. You are required to advise the Company about the requirements of the Companies Ordinance, 1984, relating to the disclosure and registration of this charge to the registrar? (03)
- (b) Describe the mortgages and charges which if not registered shall be considered to be void. (08)
- Q.13 What is the difference between “prospectus” and “offer for sale”? (02)

(THE END)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN

Intermediate Examinations Autumn 2006



September 07, 2006

COMPANY LAW

(MARKS 100)

Module D

(3 hours)

- Q.1 (a) M/s Polo Enterprises has been a well established partnership firm which submitted its documents for registration as private limited company with the Registrar of Companies. The Registrar has refused to register the memorandum of association.
- You are required to explain to the management, the steps which they may take in such a situation. (02)
- (b) What are the pre-requisites for obtaining a license for an 'Association not for profit' which is to be incorporated as a limited company? (05)
- (c) The directors of M/s Soccer (Pvt.) Limited have decided to shift the registered office of the company from Lahore to Karachi. You are required to advise them about the procedures they will have to follow in this regard. (04)
- Q.2 (a) What are the provisions of the Companies Ordinance, 1984 regarding issuance of a notice for convening a general meeting? (04)
- (b) Tennis Limited is a listed company which holds 25% shares of another listed company Cricket Limited. You are required to explain how Tennis Limited would:
- (i) exercise its voting rights; and (02)
- (ii) get represented on the Board of Directors. (02)
- (c) The Secretary of Badminton (Pvt.) Limited which was incorporated 10 years ago, has informed you that they are planning to convert their company into a public company. You are required to advise them on the following:
- (i) time period for holding statutory meeting; and
- (ii) the date of commencement of business for the newly converted company. (03)
- (d) The directors of Hockey Limited which closes its accounts in June have decided in their meeting on August 2, 2005 to hold the annual general meeting (AGM) on October 25, 2005.
- On September 28, 2005, fire erupted in the accounts department which caused delay in the preparation of accounts. The Board of Directors has decided to extend the date of AGM from October 25, 2005 to November 30, 2005.
- Explain whether the decision of the Board of Directors to extend the date of AGM is in compliance with the Companies Ordinance, 1984. (04)
- Q.3 (a) What are the restrictions imposed by the Companies Ordinance 1984, regarding declaration / payment of dividend? (06)

(2)

- (b) When is a shareholder entitled to receive an interim dividend? (03)
- (c) Describe the provisions of Companies Ordinance, 1984 regarding closure of register of members by a listed company. (05)
- Q.4 (a) One of the directors of M/s Squash Limited is leaving for vacations on October 1, 2006 and intends to return to Pakistan on February 1, 2007.
Can the board of directors appoint another person in his place to act as director during his absence, and if so, under what conditions? (05)
- (b) A newly established listed company 'Snooker Limited' has approached you for advice. Being their legal advisor, you are required to inform them about:
(i) Quorum requirements in respect of meeting of the board of directors. (02)
(ii) Minimum number of directors' meetings to be held in a year. (02)
- Q.5 (a) State the legal requirements relating to payment of underwriting commission. (04)
- (b) Golf Limited is in the process of offering right shares to the existing shareholders. They have been informed by their Corporate Advisor that offer of right shares shall be accompanied by a circular.
You are required to explain the company about the requirements of the circular which will be annexed with the offer. (07)
- Q.6 (a) Narrate the provisions of the Companies Ordinance, 1984 regarding audit of cost accounts. (04)
- (b) On March 15, 2006, Karom Textile Limited received a notice from a shareholder of the company nominating another firm of Chartered Accountants as auditors in place of the existing auditors at the annual general meeting to be held on March 31, 2006.
Explain the conditions required to be fulfilled by a member of the company while making such nomination under the Companies Ordinance, 1984. Also describe the company's responsibilities on receiving such notice, towards other members and the existing auditors of the company. (05)
- Q.7 (a) What are the requirements which need to be fulfilled by a public company for obtaining the Certificate of Commencement of Business? (07)
- (b) One of your clients who holds majority shares in a company wishes to appoint nominees who shall be entitled to become the holder of shares in case of his death. You are required to advise him about relevant provisions contained in the Companies Ordinance, 1984. (09)
- Q.8 (a) State the requirements as contained in Companies Ordinance, 1984 in respect of application for allotment of shares. (03)
- (b) Under what conditions, allotment of shares made by a company is considered to be irregular? (06)
- (c) What do you understand by the doctrine of "ultra vires" in relation to a company? What are the implications of an ultra vires act done by a company? (06)

(THE END)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN



Intermediate Examinations Spring 2007

March 5, 2007

COMPANY LAW

(Marks 100)

Module D

(3 hours)

- Q.1 (a) A newly incorporated company has received a bill from a corporate lawyer for services relating to company's incorporation. The lawyer was hired by the promoters who have refused to make the payment.
- Explain whether the company is liable to pay this amount. (03)
- (b) Articles of association of JS Cement Limited, a listed company, includes a clause according to which, one member is prohibited from casting his vote in general meeting.
- Comment on the legality of the above clause. (02)
- (c) Under what conditions, the Companies Ordinance 1984 would override the memorandum of association of the company? (02)
- Q.2 Rajab Limited operates an approved employees' provident fund. The employer and employees contribute 8.33% of the basic salary every month.
- The annual accounts of the company for the year ended December 31, 2006, presented in the board meeting revealed that an amount of Rs. 3.5 million is payable to the fund by the company. It has been classified as a long term loan payable in installments up to December 31, 2010 at an interest of 15% per annum. This loan was obtained for the purpose of the company's business only. The company has paid the first installment due on December 31, 2006.
- You are required to:
- (a) Discuss the provisions of the Companies Ordinance, 1984 regarding collection and deposit of contributions relating to the provident fund; and (07)
- (b) Explain whether the loan obtained by Rajab Limited is in compliance with the requirements of the Companies Ordinance, 1984. (02)
- Q.3 (a) Muharram Limited, a listed company, has found out that one of its directors does not meet the eligibility criteria provided in the Companies Ordinance, 1984. The said director has already attended three meetings of the Board of Directors.
- Describe the impact of the above on the resolutions passed by the Board. Also explain whether the concerned director can attend future meetings of the Board. (03)
- (b) The election of directors of Ramadan Limited, a listed company, is due in March 2007. The directors of the company have decided that liability of one of the directors, to be appointed in March 2007, will be unlimited.
- Briefly describe the additional steps which the company is required to follow, with regards to appointment of a director with unlimited liability. (03)

(2)

- (c) The Board of directors of RS Limited wants to appoint Mr. Salahuddin, an employee of the company, as Chief Executive of the company. You are required to explain the following:
- (i) The minimum number of shares required to be acquired by Mr. Salahuddin.
 - (ii) The tenure of office for which Mr. Salahuddin may be appointed.
 - (iii) Will it be necessary to obtain members' approval of the terms and conditions being offered to him? (06)
- (d) The directors or promoters are responsible for any untrue statement contained in a prospectus. What are the grounds on the basis of which directors or promoters can escape such liability? (06)
- Q.4 (a) Safar Textile Limited was incorporated in December 2006. In February 2007, the company offered its shares to the general public. The offer has been fully subscribed.
- Explain the requirements of the Companies Ordinance, 1984 in respect of moneys received from share subscriptions and when the company would be able to utilize the subscription money. (05)
- (b) The board of directors of Shaban (Pvt.) Limited have approved a major expansion program for which they are planning to raise Rs 35 million from the general public. The current authorized and paid up capital of the company is Rs. 100 million and Rs. 65 million respectively.
- Advise the company about the changes required to be incorporated in the memorandum and articles of association, to make the company eligible for raising capital from the public. (05)
- (c) RA Limited is a public limited company. It has two **classes** of shares namely 'A' and 'B'. The directors of the company have decided to restrict the voting rights of Class 'A' shareholders. In lieu thereof, they shall be allowed to get preference in payment of dividend.
- State the procedures through which the decision of directors can be put into effect. (03)
- (d) Zilhaj Limited has been incurring losses since last many years. The directors have now decided to restructure the company's business. As part of the financial restructuring, one of the suggestion is to reduce the capital of the company which is not represented by available assets.
- State the procedures that the company has to follow for reduction of capital, under the Companies Ordinance, 1984. (07)
- Q.5 (a) The shareholders of Ramadan Limited holding 20% of the voting power submitted a requisition to hold an extraordinary general meeting (EOGM) to remove the auditor of the company. The company neither called the EOGM nor allowed them to hold the meeting at the company's registered office. The said meeting was then held at some other place and resolution for removal of the auditor was passed.
- Discuss the validity of the said meeting and resolution passed therein. (05)
- (b) (i) List down the type of companies who are not required to hold the statutory meeting. (02)
- (ii) State the provisions of the Companies Ordinance, 1984 regarding adjournment of statutory meeting. (02)

(3)

- Q.6 (a) The audited financial statements of Shawwal Limited for the year ended December 31, 2006 have been approved at the recently convened AGM. Now the directors have decided to change the company's financial year to June 30. They are evaluating the option of preparing 6 monthly accounts up to 30 June 2007 or accounts covering a period of 18 months i.e. up to June 30, 2008.
- Discuss both the above options and quote the relevant legal provisions in each case. (05)
- (b) Discuss the provisions of the Companies Ordinance, 1984 related to quarterly accounts of listed companies. (03)
- (c) Explain the relevant provisions relating to authentication of financial statements of a listed company in the absence of its chief executive. (05)
- Q.7 (a) In the context of mortgages and charges, what do you understand by the following terms enumerated in the Companies Ordinance, 1984?
- (i) modification of charge (02)
- (ii) satisfaction of charge (02)
- (b) An association, partnership, etc. consisting of more than twenty members and formed for the purpose of acquisition of gain is considered illegal, provided the same is registered under the Companies Ordinance, 1984.
- What are the exceptions to the above rule? (06)
- Q.8 (a) State the provisions of the Companies Ordinance, 1984 with respect to annual return required to be filed by a company. (08)
- (b) JA Sugar Mills Limited, an unlisted public company, has seven directors who are all members of the company. One of the directors, Mr. Nooruddin, plans to sell his shares in the company.
- You are required to explain whether the following are correct:
- He will cease to be the director of the company on the date he sells all the shares;
 - The company may appoint another person in his place for the next three years;
 - The company may continue to run the business with six directors till the next annual general meeting. (06)

(THE END)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN

Intermediate Examinations Autumn 2007



September 05, 2007

COMPANY LAW

(MARKS 100)

Module D

(3 hours)

- Q.1 (a) The directors of Afridi Cables Limited are facing difficulty in holding the board meetings due to the quorum requirements. According to the company's articles, quorum of the meeting shall be at least 7 directors present in person. They have now decided to restrict the quorum at 5 directors.
- Explain the procedures to be followed for alteration of the company's articles in order to restrict the quorum at 5. (04)
- (b) Describe the provisions of the Companies Ordinance, 1984 relating to serving of notice by a listed company, to its members. (03)
- (c) Distinguish between a 'shareholder' and a 'member'. (04)
- Q.2 (a) Khan Pipes Limited had obtained a credit facility of Rs. 500 million in 2005 which is payable in five years. In order to improve its debt equity ratio, the directors have requested the bank to accept Khan Pipes Limited's shares of Rs. 75 million, against the said credit.
- Comment on the legality of the above transaction from the company's point of view, under the Companies Ordinance, 1984. (06)
- (b) What are the permissible modes of redeeming the preference shares? (04)
- Q.3 (a) When a dividend has been declared, it is not lawful for the directors or the company to withhold or defer its payment. Any non compliance is punishable with imprisonment and a heavy fine.
- List down the situations under which delay in payment of dividend shall not be considered unlawful. (05)
- (b) The management of Umer Limited, a newly incorporated company having two branches outside Pakistan, has requested you to advise on the following matters:
- (i) Where are the company's books of account required to be kept, especially in view of the fact that the company has two overseas branches? (03)
- (ii) The minimum period for which the books of account are required to be retained. (03)
- (Do not write your name, roll number etc while giving the opinion)*
- (c) Akmal Travels (Private) Limited was incorporated on August 1, 2006. In a meeting held on August 1, 2007, the Chief Executive has informed the directors that due to certain problems being faced by the company, he is not in a position to hold the first annual general meeting at an early date.
- Identify the latest date by which the directors are required to hold the meeting, giving reasons with reference to the Companies Ordinance, 1984. (05)

(2)

- Q.4 (a) The directors of Haq Tractors Limited have decided to acquire the entire shareholding of Razzak Tractors Limited. However the object clause in the memorandum of association does not allow the company to carry out such a transaction.
- Prepare a summary of necessary steps which the company should take in order to alter the object clause. (05)
- (b) With reference to the Companies Ordinance, 1984, discuss the validity of directors' resolution passed through circulation. (03)
- Q.5 (a) A company has created a pari passu charge on August 27, 2007 over a series of debentures to the benefits of which the debenture-holders are entitled. What action would the company need to take for the registration of the above charge? (07)
- (b) Salman Engineering Limited, a listed company, wishes to purchase its own shares. Narrate the conditions to which the company should comply with and the procedure which should be followed in this regard. (09)
- Q.6 (a) Under the Companies Ordinance, 1984, every company shall keep a register of all contracts, arrangements or appointments in which directors or other officers are interested. List down the particulars to be entered in such register. (03)
- (b) Gul Systems (Pvt.) Limited has opened its first overseas branch in Sri Lanka. The newly appointed Branch Manager has requested the directors to provide him the common seal of the company. Advise the company's management in this regard by quoting the relevant provisions of the Companies Ordinance, 1984. (07)
- (Do not write your name, roll number etc while giving the opinion)*
- (c) Every company is required to maintain certain statutory books / registers in accordance with the requirements of the Companies Ordinance, 1984. Give the names of any six statutory books / registers. (06)
- Q.7 (a) Under the Companies Ordinance, 1984, no person shall be appointed as the director of a company if he is not a member of that company. What are the exceptions to this rule? (04)
- (b) At the annual general meeting of Asif Spinning Mills Limited, a listed company, the directors have proposed a special business i.e. increase in the remuneration paid to the chief executive. During the meeting, few minority shareholders challenged the authenticity of the vote count for this special business.
- Explain the following with reference to the above situation:
- (i) right of the dissenting shareholders; and
- (ii) the steps that the chairman of the meeting should need to take, to comply with the Companies Ordinance, 1984. (07)
- (c) Mr. Sami, the Chief Executive Officer of Malik Airways Limited, holds 9% shares of the company. He has now been offered to become the Chief Executive Officer of Akhtar IT Services (Pvt.) Ltd., a subsidiary of Yousuf Textile Mills Limited. Mr. Sami's spouse holds directorship in Yousuf Textiles Mills Limited.
- Explain whether Mr. Sami can accept this offer. (04)
- Q.8 (a) Any member of a company entitled to attend and vote at a meeting of the company is entitled to appoint another person as his proxy to attend and vote on his behalf. Discuss the rules relating to the appointment of a proxy under the Companies Ordinance, 1984. (07)
- (b) State the provisions of the Companies Ordinance, 1984 relating to authentication of Directors' Report. (04)

(THE END)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN

Intermediate Examinations Spring 2008



March 05, 2008

COMPANY LAW
Module D

(MARKS 100)
(3 hours)

- Q.1 (a) Mr. Shaikh is planning to submit an application for 500 shares in response to a public offer by a newly listed company at Karachi Stock Exchange. He heard from a stock analyst on TV that this public offer would be over-subscribed. Mr. Shaikh is now wondering whether his money would be returned soon and how he will be compensated if his funds remained blocked for a long time.
- Advise Mr. Shaikh in the light of provisions of the Companies Ordinance, 1984. (05)
- (b) The registrar shall not register a prospectus unless certain requirements of the Companies Ordinance, 1984 are complied with. You are required to list such requirements. (06)
- Q.2 (a) With proper reasoning, explain whether the following statements are in accordance with the Companies Ordinance, 1984:
- (i) A holding company, which is a public limited company, cannot hold shares in its subsidiary, in the name of its nominee.
- (ii) The director of a private limited company can participate or vote at the meeting of directors where a contract in which he is interested, is being discussed.
- (iii) All companies are required to have independent share registrar who should be a Chartered Accountant. (09)
- (b) What do you understand by the term "special resolution" as explained in the Companies Ordinance, 1984? (04)
- Q.3 (a) The board of directors of Shalimar Industries Limited has approved a loan of Rs 10 million for its associated undertaking. The loan will be repayable after two years and carry a mark up of 12% per annum.
- Discuss the requirements of the Companies Ordinance, 1984 which Shalimar Industries will have to comply with. (04)
- (b) Identify the situations in which a company shall be considered to be a subsidiary of another company, under the Companies Ordinance, 1984. (04)
- Q.4 (a) List down the contents of the memorandum of a listed company. (05)
- (b) The board of directors of Shahid Manufacturing Company (Pvt.) Limited has recently decided to convert the company into a public limited company (unlisted).
- List any five essential changes that would be required to be made in the articles of the company, before filing the necessary documents with the registrar. (05)
- (c) Shafeeq Refrigerators (Pvt.) Limited is engaged in the trading of refrigerators. It is now planning to start the business of air conditioners and therefore wants to change its name to Shafeeq Electronics (Pvt.) Limited. Describe the procedure that the company will be required to follow. (04)

(2)

- Q.5 (a) Mr. Shoaib acquired 9% shares of FU Limited, a listed company, on July 10, 2007. He further acquired 4% and 3% shares of FU Limited on February 15, 2008 and March 7, 2008 respectively.
- Explain the requirements related to submission of statements of beneficial ownership in the above case. Also identify the dates by which Mr. Shoaib has to file the statement of beneficial ownership, in respect of the above purchases. (08)
- (b) What documents are required to be submitted to the registrar while submitting the return of allotment in respect of shares issued otherwise than in cash? (04)
- Q.6 (a) Shiraz Limited holds 8% shares in Shafiq Limited. The Chief Executive has authorized the Company Secretary to represent Shiraz Limited in the extraordinary general meeting of Shafiq Limited. The Company Secretary does not hold any shares in Shafiq Limited.
- Comment on the legality of the above authorization. (03)
- (b) Notice of an extraordinary general meeting shall be sent to the members at least 21 days before the date of the meeting. How and under what conditions, can a company convene such a meeting at a shorter notice? (04)
- (c) The directors of a listed company are required to forward the statutory report to every member at least twenty-one days before the date of the statutory meeting.
- (i) Who is required to authenticate the statutory report on behalf of the company?
(ii) What particulars are required to be mentioned in the abstract of receipts and payments contained in the statutory report? (05)
- Q.7 (a) The directors of Shahzada Limited, a listed company, have offered Mr. Shams who is presently working as General Manager Operations, to become the Chief Executive of the company. Last year, Mr. Shams obtained a loan amounting to Rs 1.2 million in accordance with the company's employment rules, out of which Rs 0.8 million is still outstanding. Mr. Shams has agreed to take the position of Chief Executive but is not in a position to repay the loan immediately.
- Discuss the requirements of the Companies Ordinance, 1984 which Mr. Shams will need to comply with. (08)
- (b) State the provisions of the Companies Ordinance, 1984 relating to the execution of deeds by an attorney, on behalf of the company. (03)
- (c) Shan Limited, a listed company, has received a request from a shareholder who holds 5% shares of the company, to inspect the registers containing:
- (i) the minutes of proceedings of general meetings;
(ii) the minutes of proceedings of directors' meetings.
- Discuss the rights of the shareholder to inspect the above registers. (06)
- Q.8 (a) Narrate the circumstances in which SECP becomes empowered to appoint auditors under the Companies Ordinance, 1984. (06)
- (b) The directors of Sherwani Limited wish to increase the authorized capital of the company from Rs 100 million to Rs 200 million. You are required to inform them about the relevant provisions regarding increase in authorized capital, contained in the Companies Ordinance, 1984. (07)

(THE END)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN

Intermediate Examinations Autumn 2008



September 3, 2008

COMPANY LAW
Module D

(MARKS 100)
(3 hours)

- Q.1 The annual general meeting of Iqra Industries Limited (IQL) a listed company, is to be held on October 25, 2008. In addition to the normal businesses, the company is planning to discuss a strategic business plan for the approval of the share holders. Explain the requirements of Companies Ordinance, 1984 as regards the circulation of information/documents to various stake holders, prior to the above meeting. (11)
- Q.2 (a) The board of directors of Dinar Ltd, a listed company, had recommended a final dividend @ 100% for the year ended June 30, 2008. Just a week after the notice for AGM had been dispatched, the company suffered huge losses due to certain unanticipated events and incurred heavy liabilities. The company is now considering the following options:
- (i) Reducing the dividend to 25%.
- (ii) Deferring the payment of 75% of the dividend, for six months.
- Explain whether the company can exercise the above options, under the Companies Ordinance, 1984. (04)
- (b) List the type of mortgages and charges which must be registered under the Companies Ordinance, 1984. What will be the consequence of non registration? (06)
- Q.3 On April 30, 2008 the Board of Directors of MIL informed the CFO that it wishes to change the auditors of the company. The interim audit for the year ended June 30, 2008 is due to commence shortly.
- As the CFO of the company, advise the Board about the provisions contained in the Companies Ordinance, 1984 as regards:
- (a) change of auditors prior to the completion of their term. (02)
- (b) restrictions imposed on the appointment of certain persons as auditors of the company. (06)
- Q.4 Green Leaf Limited, a listed company, has sent a notice of the forth coming Annual General Meeting, to the Company Secretary of Red Rose Limited which is also a listed company. Red Rose Limited has recently acquired 100,000 shares in Green Leaf Limited and you are required to advise its directors about the following, in the light of Companies Ordinance, 1984:
- (a) Who can represent Red Rose Limited in the annual general meeting of Green Leaf Limited? (03)
- (b) What are the essential characteristics of an instrument of proxy to be submitted to Green Leaf Limited and what is the deadline for its submission? (04)

(2)

- Q.5 (a) Peach Panther Ltd (PPL) is planning to call an Extra Ordinary General Meeting (EOGM) to transact certain businesses due to an emergency faced by the company. You are required to answer the following:
- (i) Which meetings are called EOGM?
 - (ii) What is the minimum notice period for calling an EOGM? Can PPL hold such meeting on a shorter notice? (05)
- (b) Explain the term “special business” with reference to the Companies Ordinance, 1984. Give at least two examples. (06)
- Q.6 Shalimar Cement Limited is a listed company. Its customers mainly include dealers residing in various cities of the country. The company wants to introduce certain changes in the agreements with its dealers and other customers. Accordingly, the dealers will be required to keep a security deposit with the company. Other customers will have to pay an advance of 50%, 60 days before the cement is delivered.
- Briefly describe the provisions contained in the Companies Ordinance, 1984 pertaining to the above issues. (05)
- Q.7 Any association, partnership or company consisting of more than twenty persons, can not be formed for the purpose of carrying on any business for acquisition of gain unless it is registered as a company under the Companies Ordinance, 1984.
- You are required to list down the exceptions to the above rule. (07)
- Q.8 (a) A foreign company is in the process of selecting a name for its subsidiary which is being incorporated as a limited liability company in Pakistan. You are required to inform them about the prohibitions of certain names, under the Companies Ordinance, 1984. (03)
- (b) Specify the competent authorities who shall be required to grant their approval in the following situations:
- (i) Conversion of public limited company into private limited company.
 - (ii) Variation in the terms of a contract mentioned in the prospectus of the company.
 - (iii) Alteration of memorandum of association.
 - (iv) Change of name by a company.
 - (v) Investment in associated companies. (05)
- Q.9 Sunshine Oils Limited issued 50 million shares of Rs. 10/- each on March 20, 2007 and commenced its business on June 12, 2007. On April 7, 2008, the Board of Directors decided to issue further shares at a discount of Rs. 3/- per share.
- You are required to list the conditions specified under the Companies Ordinance, 1984 for the issuance of shares at discount. (09)
- Q.10 (a) Under what conditions can a listed company alter its memorandum of association in order to allow the cancellation of its shares? Would such cancellation be considered as reduction of share capital of the company? (05)
- (b) Narrate the provisions contained in the Companies Ordinance, 1984 as regards the reduction of share capital of a company limited by shares. (08)

(3)

Q.11 (a) Blue Berry Limited a public unlisted company has two business segments X & Y. A meeting of the Board of Directors of the company is planned to be held in the first week of the third quarter and the following issues are on the agenda:

- (i) A prospective buyer has made a very attractive offer for segment Y and there is a proposal from one of the directors that the offer may be accepted.
- (ii) New machinery with advanced technology has been introduced and there is a need to acquire it for the business. However, the new machinery is very costly and the finance department has informed that the old machinery will have to be sold at an amount which is considerably less than its book value.
- (iii) After physical stock taking, the internal audit department has recommended that there is a need to write off 30% of slow moving spare parts and loose tools. However, according to the technical department the spare parts are in good condition and there is no need for write off.

In the light of the provisions of the Companies Ordinance 1984, explain how the directors can take decision in respect of the above issues. (06)

(b) Khan (Pvt) Limited has eight shareholders each of whom is a director of the company. Their shareholding is as under:

- A & B hold 25% shares each.
- C, D, E & F hold 10% shares each.
- G & H hold 5% shares each.

A, B, C, D and E are not satisfied with the performance of the CEO of the company and want to remove him before the expiry of his term of office. A board meeting was called for this purpose. It was attended by the aggrieved directors only, who passed a resolution for removal of the CEO.

In the light of the relevant provisions of the Companies Ordinance, 1984, you are required to:

- (i) Explain whether the CEO can be removed in the manner as described above?
- (ii) Propose any other way to remove the CEO if F, G & H do not want to remove him. (05)

(THE END)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN

Intermediate Examinations Spring 2009



March 4, 2009

COMPANY LAW
Module D

(MARKS 100)
(3 hours)

- Q.1 A Malaysian company is interested in incorporating a limited liability company in Pakistan. Discuss provisions of the Companies Ordinance, 1984, relating to the following:
- (a) contents, printing and signature of the Articles of Association (05)
 - (b) registration of the Articles of Association (02)
 - (c) alteration of the Articles of Association after its registration (04)
- Q.2 (a) The EOGM of Neon Limited, a company listed on Karachi and Islamabad stock exchanges, was held on November 30, 2008. The company dispatched the notices of the meeting on November 06, 2008. However, due to postal strike in the country the notices could not be delivered to the members in time. You are required to comment on the following:
- (i) legality of service of the notice on members, under the above situation.
 - (ii) complaints of non-receipt of notices filed by:
 - a member residing abroad.
 - a joint shareholder. (08)
- (b) A member raised an objection that the common seal of the company had not been affixed on the copy of Special Resolution which was provided to him on his request, by the company secretary. Describe the relevant provisions contained in the Companies Ordinance, 1984 regarding the authentication of the above document. (03)
- Q.3 Board of Directors of Delta Limited is in the process of sending letters of right to the members entitled to receive right shares. In the light of the provisions of the Companies Ordinance, 1984 you are required to advise on the following:
- (a) other information required to be sent along with the letter of right? (05)
 - (b) time limit for issue of share certificates and notice thereof; after the allotment of shares. (02)
 - (c) conditions under which a duplicate share certificate may be issued and the procedure thereof. (04)
 - (d) steps to be followed by the company if it has to refuse an application for issuance of duplicate share certificates. (02)
- Q.4 (a) Deo Limited (DL) has published a prospectus on March 1, 2009. The subscription list is due to open on April 5, 2009. Explain whether the company is in compliance with the provisions of the Companies Ordinance, 1984 regarding the publication of its prospectus. What relaxation can DL avail, in this regard? (03)
- (b) Identify the places where DL is required to make available the copies of its prospectus. (02)
- Q.5 SKY (Private) Limited has acquired a piece of land worth Rs. 20 million from Mr. Ahmed against fully paid shares of the company. Describe the steps that the company shall be required to follow before proceeding to allot shares to Mr. Ahmed. (05)
- Q.6 The Board of Directors of PCL Limited, a public limited company, is in the process of making a report to be attached with the company's balance-sheet as at December 31, 2008. In view of the provisions of the Companies Ordinance, 1984, you are required to advise the directors about the contents of the report. (09)

(2)

- Q.7 Lubricant Oils Limited, a company listed on Karachi and Lahore stock exchanges, did not declare any dividend for the past three years on the grounds that the company is incurring continuous losses. Mr. Bilal, holding 26% voting rights and Mr. Raza, holding 18% voting rights made separate applications to the SECP, that the affairs of the company are not being run satisfactorily and requested for a special audit to be conducted.
- In view of the provisions of the Companies Ordinance, 1984 you are required to explain:
- (a) whether these shareholders are individually eligible to make such an application to the SECP? What are the SECP's rights in this regard? (05)
- (b) who would be responsible for the expenses incurred on the special audit when:
- (i) conducted on the member's request. (02)
- (ii) ordered by the SECP itself. (03)
- Q.8 Lalazar Limited, a public unlisted company has a paid up capital of Rs 100 million consisting of shares having face value of Rs 10 each. Last election of its Board of Directors was held on April 15, 2008 in which eight directors were elected. Four of the directors belonged to the same family. The remaining directors were Mr. Javed, Mr. Bader, Mr. Qasim and Mr. Dawood. They secured 600,000, 350,000, 480,000 and 220,000 votes respectively. The remaining votes were equally distributed among the four directors of the family. Mr. Javed died on May 30, 2008 and Mr. Aslam was appointed as a director on June 15, 2008 to fill in the casual vacancy.
- Explain the following in the light of the provisions of the Companies Ordinance, 1984:
- (a) Is Lalazar Limited in compliance with the requirements of minimum number of directors? Who shall fix the number of directors to be elected and by what time such number should be fixed? Is it possible for the company to change the number of directors once fixed? (04)
- (b) Who is responsible to fill the casual vacancy in the Board and when would Mr. Aslam's term of office be completed? (02)
- (c) The conditions required to be fulfilled if a person desires to remove the following directors :
- (i) Mr. Aslam (ii) Mr. Bader (05)
- Q.9 (a) Mr. Dinshaw holding 13.5% shares in ABC Limited, gave notice of a resolution to the company on May 17, 2008, proposing to appoint M & T Associates in place of the existing share registrar of the company. The resolution was to be considered at the annual general meeting scheduled for May 30, 2008. The company could not circulate the proposed resolution among its members.
- (i) Evaluate the above situation in the light of the provisions of the Companies Ordinance, 1984. (04)
- (ii) Explain whether Mr. Dinshaw is entitled to inspect and require the minutes of general meeting of the company. (04)
- (iii) In what manner are the proceedings of the directors or the general meetings required to be recorded and kept by ABC Limited? (04)
- (b) What is the legal status of a resolution passed at any adjourned meeting of the creditors of a company? (02)
- Q.10 (a) Mr. Azhar, the sole proprietor of Azhar & Co. Chartered Accountants, was appointed as the auditor of XYZ Limited, an unlisted public company, for the financial year ending June 30, 2009. Mr. Azhar married Miss Ismat, a director of XYZ Limited, on February 23, 2009. The company secretary of XYZ Limited wants to know whether the marriage would have any impact on the status of Mr. Azhar as the auditor of the company.
- Discuss the situation with reference to the relevant provisions of the Companies Ordinance, 1984. (08)
- (b) Discuss the provisions of the Companies Ordinance, 1984 related to the attendance of the auditors in the general meeting of the company. (03)

(THE END)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN

Intermediate Examinations Autumn 2009



September 9, 2009

COMPANY LAW

(MARKS 100)

Module D

(3 hours)

- Q.1 The Board of Directors of Sunrise Limited (SL), a listed company, intends to give a loan of ten million rupees to Moonlight (Private) Limited (MPL). The loan would be repayable in two years and would carry interest at the rate of twelve per cent per annum. The CEO of SL is also on the Board of Directors of MPL and is its major shareholder.
- Required:**
Describe the requirements of Companies Ordinance, 1984 that should be complied with by the Board of Directors of SL in respect of the proposed loan to MPL. (06)
- Q.2 Enumerate the requirements of Companies Ordinance, 1984 regarding investment of provident fund contribution of the employees as well as the company's contribution, in the following situations:
- (i) Where the provident fund **has been** constituted by the company. (09)
(ii) Where the provident fund **has not been** constituted by the company. (09)
- Q.3 Flash Limited is a company listed on the Lahore Stock Exchange. The Board of Directors of Flash Limited, in its meeting held on April 1, 2009, has recommended an interim cash dividend @ 25%. The Board has announced the dates of book closure from April 23 to April 30, 2009.
- (a) Describe the requirements of Companies Ordinance, 1984 in respect of payment of the above dividend. Also describe the consequences of non-payment of dividend within the specified time. (06)
(b) State the situations in which non-payment of dividend would not be treated as an offence, under the Companies Ordinance, 1984. (05)
- Q.4 Sahara Pakistan Limited (SPL) is a multinational company listed on the Karachi and Lahore Stock Exchanges. Mr. Brown, a major shareholder of the company, wants to appoint ABC & Company, Chartered Accountants, as the new auditors in place of the retiring auditors of SPL.
- Narrate the procedure that Mr Brown would have to follow and the responsibilities of the Company in the context of provisions of the Companies Ordinance, 1984 for change of auditors. (12)
- Q.5 (a) Explain the procedure described by the Companies Ordinance, 1984 for registration of payment or satisfaction of mortgage. (05)
(b) List the possible uses of the balance held in Share Premium Account. (05)
(c) Describe the term "associated undertaking" in accordance with the Companies Ordinance, 1984. (05)

(2)

Q.6 Faheem and Naeem are members as well as the directors on the Board of Saleem (Private) Limited and each of them hold 50% of the share capital. On August 28, 2008, Faheem died in an accident in London while he was on a business visit. However, Faheem's shareholdings could not be transferred to his nominated legal heirs as all of them were minors. Naeem continued to carry on the business of the company. In March 2009, the company incurred heavy losses and could not meet its debt obligations. Zaheer, a creditor of the company, intends to make Naeem personally responsible for the payment of the amount owed to him by Saleem (Private) Limited.

Required:

Narrate the provisions of the Companies Ordinance, 1984 which are relevant to the above issue and discuss the above situation in the context of those provisions. (06)

Q.7 The Board of Directors of Classic Paints Limited, a public listed company, has called an Extraordinary General Meeting on the requisition of the shareholders holding 10% of the voting power of the company. Approximately twenty minutes before the commencement of the meeting, the Chairman of the Board of Directors informed the Company Secretary of his inability to attend the meeting due to the death of a close relative.

Required:

- (a) What would be the quorum of the above meeting?
- (b) Mention the latest time by which the quorum of the meeting should be present. What would be the impact if quorum is not present within the prescribed time?
- (c) Who could chair the meeting in the above situation? (10)

Q.8 Alpha Technologies Limited (ATL) is in the process of being incorporated as a public limited company. Further, ATL has plans to have its stock listed on all the three stock exchanges in the country within a period of one year of its incorporation.

Required:

Write a letter to the promoters of ATL, on behalf of Best Financial Services who are their consultants, advising them about:

- (a) appointment authority and the terms of holding of office of the following:
 - (i) the first and subsequent directors.
 - (ii) the first and subsequent chief executive.
- (b) the period within which ATL is required to hold:
 - (i) Statutory Meeting.
 - (ii) First Annual General Meeting. (12)

Q.9 The management of Real World (Pvt.) Limited and Fantasy World (Pvt.) Limited intend to enter into a joint venture agreement under which they would implement a seaside holiday resort project. However, the Company Secretary has informed that the Memorandum of Association of Fantasy World (Pvt.) Limited does not authorise the Company to enter into a joint venture agreement.

Describe the procedure that would have to be followed by Fantasy World (Pvt.) Limited for making the necessary amendments in its Memorandum of Association. (09)

Q.10 MAO Traders is a partnership firm which has 22% shareholding in Sea Green Limited (SGL), a company listed on the Karachi Stock Exchange. The partners of MAO Traders propose to disinvest their shareholding in SGL.

Describe the necessary conditions which would have to be complied with by MAO Traders in order to dispose of its shareholding in SGL. (10)

(THE END)

COMPANY LAW

Suggested Answers

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Ans.1 Companies Ordinance does not allow a company to make any loan to a private company where any of its directors is also on a board of director of that company.

Therefore, in order to enable SL to provide loan to MPL, MPL shall be required to convert itself into a public company. However, even of it does so, the following conditions will need to be satisfied.

- Shareholding of CEO of SL in MPL should be less than 25%.
- The loan should be approved by way of a resolution passed in the meeting of Board of Directors of SL.

Moreover, CEO of SL being interested in such approval, shall not participate or vote at the meeting of the Board when the matter (loan agreement with MLP) is to be discussed/approved.

- A special resolution of the shareholders of SL shall be required;
- Return (interest) on the loan shall not be less than SL's borrowing cost.

Ans.2 Where a provident fund has been constituted by the company

Where a provident fund has been constituted by the company all moneys contributed by the company or by the employees, shall either:

- (i) be deposited
 - in a National Savings Scheme (DSC);
 - in a special account to be opened by the company, for the purpose, in a scheduled bank
- (ii) be invested in Government securities; or
- (iii) be invested in bonds, redeemable capital, debt securities or instruments issued by Pakistan Water and Power Development Authority and in listed securities subject to the conditions as may be prescribed by SECP.

Where provident fund has not been constituted by the company:

The company is required to deposit all moneys deposited with it by its employees in lieu of their contracts of service, within fifteen days from the date of deposit in a special account opened by the company in a scheduled bank or in the National Saving Schemes.

Further, no portion of such money shall be utilized by the company except in case of breach of the contract of service on the part of the employee as provided in the contract, but after giving notice to the employee.

Ans.3 (a) Requirement for payment of dividend

The company shall be responsible to make the payment within such time from the date of declaration as the SECP may from time to time specify.

Since it is an interim dividend, the dividend shall be deemed to have been declared on the date of commencement of closing of share transfer for determination of entitlement of dividend.

Consequence of non-payment

If the dividend is not paid within the period specified by SECP, the chief executive of the company shall be punishable with imprisonment for a term which may extend to two years and with fine which may extend to one million rupees.

The chief executive shall from the day of the conviction cease to hold the office of chief executive of the company and shall not, for a period of five years from that day, be eligible to be the chief executive or a director of that company or any other company.

COMPANY LAW
Suggested Answers
Intermediate Examinations – Autumn 2009

- (b) The situations in which non-payment of dividend shall not constitute an offence are as under:
- (i) where the dividend could not be paid by reason of the operation of any law;
 - (ii) where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with;
 - (iii) where there is a dispute regarding the right to receive the dividend;
 - (iv) where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or
 - (v) where, for any other reason, the failure to pay the dividend or to post the warrant within the period aforesaid was not due to any default on the part of the company;

Ans.4 Procedure for change of auditor and company's responsibilities

- (i) Mr. Brown (the proposer of the change) shall give a notice to SPL not less than fourteen days before the annual general meeting for passing a resolution at the company's annual general meeting for appointment of ABC & Co. Chartered Accountants as the auditor in place of the retiring auditor.
- (ii) The company shall forthwith send a copy of notice not less than seven days before the date fixed for the annual general meeting to the following:
 - retiring auditor
 - its members and
- (iii) being a listed company, SPL shall also publish notice at least in one issue each of a daily newspaper in English language and a daily newspaper in Urdu language having circulation in the Provinces (Sind & Punjab) in which the stock exchanges on which the company is listed are situated.
- (iv) Where retiring auditor makes with respect thereto a representation in writing to the company and requests its communication to the members of the company, the company shall,
 - in any notice of the resolution given to members of the company, state the fact of the representation having been made; and
 - send a copy of the representation to every member of the company to whom notice of the meeting is sent by the company and if copy is not sent as aforesaid because it was received too late or because of a company's default, the auditor may require that the representation shall be read out at the meeting.
- (v) The company shall, within fourteen days from the date of appointment of the auditor, send to the registrar the following:
 - intimation of such appointment,
 - consent in writing of the auditor concerned.
- (vi) The company shall, within fourteen days from the date of retirement of the previous auditor send intimation thereof to the registrar.

Ans.5 (a) Procedure for registration of the payment or satisfaction of mortgage

- (i) A company must give intimation to the registrar of the payment or satisfaction, in full, of any mortgage created by the company and requiring registration, within twenty-one days from the date of the payment or satisfaction, in full, thereof.
- (ii) The registrar, on receiving such intimation, will send a notice to the holder of the mortgage, calling upon him to show-cause, within fourteen days of the notice, as to why the payment or satisfaction of the charge or mortgage should not be recorded.

COMPANY LAW
Suggested Answers
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- (iii) If no objection is raised by the holder of the charge, the registrar shall order that a memorandum of satisfaction be entered in the register.
 - (iv) If any objection is received, the registrar shall record a note to that effect in the register, and shall inform the company about the same
- (b) The balance held in share premium account may be applied by a company in:
- (i) writing off the preliminary expenses of the company;
 - (ii) writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;
 - (iii) providing for the premium payable on the redemption of any redeemable preference shares or debentures of the company; or
 - (iv) paying up un-issued shares of the company to be issued to members of the company as fully paid bonus shares.
 - (v) Where own shares are purchased by a company on premium u/s 95A, in charging-off that premium.
- (c) "Associated undertakings" mean any two or more companies or undertakings, or a company and an undertaking, interconnected with each other in the following manner, namely: -
- (i) if a person who is the owner or a partner or director of a company or undertaking, or who, directly or indirectly, holds or controls shares carrying not less than twenty per cent of the voting power in such company or undertaking, is also the owner or partner or director of another company or undertaking, or, directly or indirectly, holds or controls shares carrying not less than twenty per cent of the voting power in that company or undertaking; or
 - (ii) if the companies or undertakings are under common management or control or one is the subsidiary of another; or
 - (iii) if the undertaking is a Moradaba managed by the company;

Ans.6 If at any time the number of members of a company is reduced, in the case of a private company below two (other than a single member company) and the company carries on business for more than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognizant of the fact that it is carrying on business with fewer than two members, shall be severally liable for the payment of the whole debts of the company contracted during that time.

Since the above referred period of six months have lapsed in March 2009, Naeem shall be personally liable to Zaheer in respect of debts contracted during the said period.

- Ans.7**
- (a) Being a public listed company, the quorum of the meeting is not less than 10 members present personally who represent not less than 25% of the total voting power, either of their own account or as proxies, unless the articles provide for a larger number.
 - (b) The quorum of the meeting should be present within half an hour from the time for the meeting otherwise the meeting shall be dissolved as it has been called on the requisition of members.
 - (c) Since chairman of the board of directors cannot attend the meeting therefore, any one of the

COMPANY LAW
Suggested Answers
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directors present may be elected to be chairman.

However, if none of the directors is present or is unwilling to act as chairman, the members present shall choose one of the members to be the chairman.

Ans.8 (a) First Directors

The names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum until so determined; all the subscribers of the memorandum shall be deemed to be the directors of the company.

The first directors shall hold office until the election of directors in the first annual general meeting.

Subsequent directors are elected in the first general meeting of the company. The directors so elected, hold office for a period of three years.

First Chief executive

The directors shall appoint any individual to be the chief executive of the Company who shall hold office up to the first annual general meeting of the company or, if a shorter period is fixed by the directors as the time of his appointment, for such period.

Subsequent Chief Executive

Subsequent CEO is also appointed by the Directors, but such appointment shall not be for a period exceeding three years from the date of appointment.

(b) Time for holding Statutory Meeting and First AGM of ATL

Statutory Meeting

ATL shall, within a period of not less than three months nor more than six months, from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called "the statutory meeting."

First AGM

The first annual general meeting should be held, within eighteen months from the date of ATL's incorporation.

Ans.9 In the given situation, management needs to alter the object clause of the memorandum.

The required procedure is as follows:

- (i) Pass a special resolution in a general meeting.
- (ii) File an application with SECP for confirmation of the alteration.
- (iii) The commission shall confirm the alteration only after it is satisfied as regards the following:
 - sufficient notice has been given by the company to every debenture holder of the company; and
 - sufficient notice has been given by the company to any person or class of persons whose interest will, in the opinion of the commission be affected by the alteration
 - with respect to every creditor who in the opinion of the Commission is entitled to object, and who signifies his objection in a prescribed manner then either his/her:
 - consent to the alteration has been obtained or
 - his debt or claim has been discharged
 - his debit/claim has been secured to the satisfaction of the Commission.

- (iv) After confirmation by SECP, a certified copy of the order along with the printed memorandum duly

COMPANY LAW
Suggested Answers
Intermediate Examinations – Autumn 2009

altered, within 90 days from the date of the order shall be submitted to the Registrar for registration.

Ans.10 As MAO Traders hold more than ten percent of the shares of SGL, they can only offer such shares for sale to the public subject to following conditions.

- (i) Prior approval of the Commission would be required.
- (ii) Any document by which an offer for sale to the public is made, shall be deemed to be a prospectus and therefore all enactments and rules of law as to contents, filing and registration of a prospectus, and as to the liability in respect of statements in and omissions from a prospectus, shall also apply to such document.
- (iii) Person making the offer shall be deemed to be a person named in a prospectus as director of a company for the purpose of approval, issue and registration of prospectus.
- (iv) As the person making an offer is a firm, it shall be sufficient if the document of offer is signed on behalf of firm by not less than one-half of the partners in the firm, and any such partner may sign by his agent authorized in writing.

(The End)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN

Intermediate Examinations Spring 2010



March 3, 2010

COMPANY LAW

(MARKS 100)

Module D

(3 hours)

- Q.1 On January 1, 2010 Star International Limited (SIL), a company incorporated in Italy, acquired majority shareholding in Beta Industries Limited, a company listed on the Karachi Stock Exchange.
- SIL wants to change the name of Beta Industries Limited to Star Industries Pakistan Limited, as it believes that on account of international reputation of Star International, the local sales will improve substantially.
- (a) Describe the procedure that would have to be followed to change the name of the company. (04)
- (b) Describe the conditions which the company would be required to comply with after the change of its name. (04)
- Q.2 Quite often, a prospectus inviting persons to subscribe for shares in a company contains a statement from person(s) who are experts in their respective fields.
- (a) Describe the term "Expert" as explained in Companies Ordinance, 1984 in the above context. (02)
- (b) Narrate the conditions that a company should comply with if its prospectus contains a statement by an expert. (03)
- Q.3 Explain whether or not the following statements are in accordance with the provisions of the Companies Ordinance, 1984 and support your answer with reasons:
- (a) A company limited by shares cannot issue securities outside Pakistan. (02)
- (b) All limited companies are required to hold statutory meeting within 6 months of incorporation. (03)
- (c) A person who holds shares in a company cannot be appointed as the auditor of such company (03)
- (d) Notice of an extraordinary general meeting should always be sent to the shareholders, at least 21 days before the date of the meeting. (03)
- (e) The first chief executive of the company retires on completion of one year. The subsequent chief executive must be appointed by the shareholders within 30 days from the date of retirement of the first chief executive. (05)
- Q.4 Shams Cement Limited is a company listed on Lahore Stock Exchange. Five of its directors belong to the same family. The remaining directors represent a financial institution and minority shareholders. The company has approached a bank for financing of its expansion project. Beside other collaterals, the bank is asking for making the liability of the directors unlimited.
- (a) Describe the procedure by which the liability of the directors can be made unlimited. (02)
- (b) The directors representing financial institution and minority shareholders have refused to accept the proposal. Explain whether the remaining directors can make the liability of the dissenting directors unlimited. (03)

(2)

- Q.5 Paragon Industries Limited, after passing a special resolution on October 15, 2009 filed a petition in the Court on October 20, 2009 to reduce its share capital. After being satisfied with respect to the creditors, the Court issued an order on November 30, 2009 confirming the reduction of share capital of the company.
- Describe the statutory formalities which the company is required to carry out after issuance of the court's order. (05)
- Q.6 (a) You have recently been appointed as the chief financial officer of a newly formed company engaged in manufacturing activities. Explain what type of accounting records would the company be required to maintain. (04)
- (b) List the particulars which are required to be entered in the register of contracts, arrangements and appointments in which directors, etc. are interested. (06)
- Q.7 (a) The annual general meeting of a company was held on October 31, 2009 but on account of certain disagreements, the members did not adopt the audited financial statements for the year ended June 30, 2009. In the above situation how would the company comply with the provisions of the Companies Ordinance, 1984 related to the filing of copies of annual accounts with the registrar of companies? (04)
- (b) Briefly describe the requirements related to preparation, submission and filing of quarterly financial statements by a listed company. (04)
- Q.8 (a) Mr. Javed wants to transfer the shares registered in the name of his deceased father to his own name. Describe the procedure specified under the Companies Ordinance, 1984 which he would be required to follow. (03)
- (b) "No company shall issue any debentures carrying voting rights". Explain the exceptions, to this general rule, specified under the Companies Ordinance, 1984. (03)
- Q.9 (a) XYZ Limited, a listed company, has decided to hold an extraordinary general meeting (EOGM) on April 30, 2010 for election of directors. The company has not yet determined the number of directors to be elected. Explain the relevant rules for fixing the number of directors to be elected, under the Companies Ordinance, 1984. (05)
- (b) The chief executive of Raza Enterprises Limited (REL), a listed company, is out of the country at the time of finalization of annual accounts. Explain the provisions related to signing and authentication of the annual accounts as contained in the Companies Ordinance, 1984 which REL would have to comply with, in the above situation. (03)
- Q.10 At the annual general meeting of Rahbar Refineries Limited (RRL), certain shareholders have raised objections on matters related to the use of the company's funds. In the opinion of those shareholders the directors have exceeded the authority vested upon them by the Companies Ordinance, 1984. Identify those powers of directors which the shareholders of RRL may be referring to. (05)
- Q.11 (a) What do you understand by the term "special business" as referred to in the Companies Ordinance, 1984? (04)
- (b) Narrate the information that is required to be annexed to the notice of a meeting in which any special business is to be transacted. (05)

(3)

Q.12 Mr. Aslam, a shareholder of ABC Limited, is not satisfied with the election of directors held last week in the Annual General Meeting of the company. He intends to file a petition in the court but is apprehensive that a delay in getting a decision from the court would cause financial losses to the company.

Explain the provisions prescribed in the Companies Ordinance, 1984 relating to:

- (a) filing of such application in the court, and (03)
- (b) the disposal of such application by the court in a timely manner. (04)

Q.13 Describe the provisions contained in the Companies Ordinance, 1984 relating to service of documents:

- (a) on a company. (02)
- (b) on the registrar. (02)
- (c) to a member who has no registered address in Pakistan. (04)

(THE END)

COMPANY LAW
Suggested Answers
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Ans.1 (a) The procedure for changing the name of the company is as follows:

- (i) Beta Industries should call a general meeting by giving 21 days notice and pass a special resolution in the meeting.
- (ii) Approval of the registrar signified in writing, should be obtained to change the name to Star Industries Pakistan Limited.
- (iii) The registrar shall enter the name SIPL on the register and shall issue an altered certificate of incorporation and on the issue of such a certificate the change of name shall be complete.

(b) Where a company changes its name it shall, for a period of one year from the date of issue of a certificate by the registrar, continue to mention its former name along with its new name on the outside of every office or place in which its business is carried on and in every document or notice.

The documents referred above include invoices, bills of exchange, receipts, letter of credit, cheques, promissory note and letterhead etc.

Ans.2 (a) "Expert" includes an engineer, a valuer, an accountant and every other person whose profession gives authority to a statement made by him.

(b) A prospectus which includes a statement made by an expert shall not be issued, unless:

- (i) The expert has given his written consent to the issue thereof with the statement included in the form and context in which it is included and has not withdrawn such consent before the delivery of a copy of the prospectus, for registration; and
- (ii) a statement that he has given and has not withdrawn his consent as aforesaid appears in the prospectus.

Ans.3 (a) The statement is incorrect because a company can issue securities outside Pakistan subject to prior approval of the Commission.

(b) The statement is incorrect because private companies are not required to hold statutory meeting. Moreover, the statutory meeting is to be held within a period of not less than three months, nor more than six months, from the date at which the company is entitled to commence business.

(c) The statement is correct however, if a person holds shares prior to his appointment as auditor, he can still be appointed as auditor provided he disinvests such shares within ninety days of his appointment.

(d) In the case of an emergency affecting the business of the company, the registrar may, on the application of the directors, authorize EOGM to be held at such shorter notice as he may specify.

(e) The statement is incorrect because the first chief executive, unless he earlier resigns or otherwise ceases to hold office holds office up to the first annual general meeting or for a shorter period if such shorter period is fixed by the directors at the time of his appointment. The subsequent Chief Executive is appointed by the Directors within fourteen days from the date of election of directors or the office of the chief executive falling vacant.

Ans.4 (a) The Company, if so authorized by its articles can make the liability of the directors unlimited. In order to do so, it shall have to pass a special resolution in a general meeting for altering the memorandum accordingly.

(b) The liability of the two dissenting directors cannot be made unlimited without their consent. However, once the memorandum is altered the liability of the directors elected or re-elected after

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such alteration shall be unlimited.

Ans.5 After receiving from the Court's order confirming the reduction of the share capital, the company should carry out the following statutory formalities:

- (a) Produce and file certified copy of the Order and minutes approved by the Court with the registrar, showing the alteration in the amount of the share capital, the number of shares into which it is to be divided, the amount of each share, and the amount, if any, at the date of the registration, deemed to be paid-up on each share.
- (b) Publication of the notice of the registration in the manner as the Court directs.
- (c) Obtain a certificate from the registrar certifying the registration of the order and the minute.
- (d) Add the words, 'and reduced' to its name.
- (e) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of the company and shall be embodied in every copy issued subsequent to its registration.
- (f) If required by the court, publish the reasons for the reduction and any other information specified.

Ans.6 (a) The accounting record shall include proper books of account with respect to:

- (i) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
- (ii) all sales and purchases of goods by the company;
- (iii) all assets of the company;
- (iv) all liabilities of the company; and
- (v) utilization of material or labour or to other inputs or items of cost as may be prescribed for such class of companies by the Commission.

(b) Particulars to be entered into Register of contracts, arrangements and appointments in which directors etc., are interested:

- (i) Date of the contract, arrangement or appointment.
- (ii) Names of the parties thereto.
- (iii) Principal terms and conditions thereof.
- (iv) Date on which it was placed before the directors.
- (v) Names of the directors voting for and against the contract, arrangement or appointment and the names of those remaining neutral.
- (vi) Name of the director or officer concerned or interested in the contract, arrangement or appointment and the extent or nature of his interest therein.

Ans.7 (a) Even if the financial statements are not approved by the shareholders, the company would still be required to file the financial statements with the registrar within 30 days of the annual general meeting. However, in such a situation a statement of the fact that the financial statements have not been adopted giving reasons thereof shall have to be attached while filing the financial statements.

(b) Quarterly accounts of listed companies

Every listed company shall within one month, of the close of first, second and third quarter, prepare and transmit to the members or through its corporate website and the stock exchange in which the shares of the company are listed a profit and loss account for, and balance-sheet as at the end of, that quarter, whether audited or otherwise. At the same time, the company shall file with the registrar and the Commission such number of copies thereof, not being less than three, as may

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be prescribed.

- Ans.8 (a)** The procedure for transfer of shares from a deceased member to his lawful nominee successor-in-interest is as follows:

Mr. Javed would have to submit application to the company, duly supported by a document evidencing nomination or lawful award of shares to him and thereupon he shall be entered as a member.

The company may, on furnishing of a suitable indemnity by Mr. Jawed, proceed to transfer the security in his name and enter him in the register of members.

- (b) Debentures not to carry voting rights.**

Debentures that are convertible into ordinary shares may, at the option of the company, carry voting right. However, such voting rights shall not be in excess of the voting rights attached to ordinary shares of equal paid-up value.

- Ans.9 (a)** The directors of XYZ Limited should fix the number of elected directors of the company not later than thirty five days before the convening of the extra ordinary general meeting at which the directors are to be elected.

Once the number is fixed in the Board meeting, it shall not be changed except with the prior approval of a general meeting of the company.

The notice of the meeting at which the directors are proposed to be elected shall among other matters state:

- (i) The number of elected directors fixed in the director's meeting.
- (ii) The names of the retiring directors.

- (b)** When the chief executive is for the time being not in Pakistan, then the balance-sheet and profit and loss account or income and expenditure account of the company shall be signed by not less than two directors for the time being in Pakistan, but in such a case there shall be subjoined to the balance-sheet and profit and loss account or income and expenditure account a statement signed by such directors explaining the reasons on account of which the accounts could not be signed by the Chief Executive.

Ans.10 Powers of Directors.

The shareholders seem to be referring to the following powers of the directors of RRL:

- (i) Make calls on shareholders in respect of moneys unpaid on their shares.
- (ii) Borrow moneys otherwise than on debentures.
- (iii) Invest the funds of the company.
- (iv) Make loans.
- (v) Incur capital expenditure on any single item or dispose of a fixed asset, in accordance with the limits prescribed.
- (vi) Undertake obligations under leasing contracts exceeding one million rupees.
- (vii) Issue shares
- (viii) Issue debentures or any other instrument in the nature of redeemable capital.
- (ix) Declare interim dividend
- (x) Write off bad debts, advances and receivables
- (xi) Write off inventories and other assets of the company
- (xii) To authorize sale, purchase or supply contracts with interested companies and firms
- (xiii) To approve annual, half yearly or other periodical accounts to be circulated to members.

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(xiv) To approve bonus to employees

Ans.11 (a) Special business means the business other than the consideration of accounts, balance sheets and the report of the directors and auditors, the declaration of a dividend, the appointment and fixation of remuneration of auditors, and the election or appointment of directors .

(b) A company is required to annex an explanatory statement to every notice of a meeting of the company at which special business is to be transacted.

This statement should include all material facts concerning special business. The nature and extent of the interest, if any, of the director, whether directly or indirectly.

Where an approval to any document is required from the meeting, the time and the place where the document may be inspected shall be specified in the statement.

Ans.12 (a) Mr. Aslam can file an application in the Court within thirty days of the date of election but he must be holding not less than 20% voting power, either individually or with other members, in the company. In order to avail the given option, it must be proved that there has been some material irregularity in the holding of the elections and matters incidental thereto.

(b) All the cases submitted before the court shall be disposed of and the judgment pronounced within 90 days from the date of application or petition and except for extraordinary circumstances and on grounds to be recorded, the court shall hear the case from day to day'

Moreover, the hearing of the cases shall not be adjourned except for sufficient cause to be recorded or for more than fourteen days at any one time or for more than thirty days in all.

Ans.13 (a) Service of documents on company:

A document may be served on a company or an officer thereof by sending it to the company or officer at the registered office of the company by post under a certificate of posting or by registered post, or by leaving it at the registered office of the company.

(b) Service of documents on registrar:

A document may be served on the registrar by sending it to him at his office by registered post, or by delivering it to him, or leaving it for him at his office, against an acknowledgement of receipt.

(c) Service of notice on members:

If a member has no registered address in Pakistan, and has not supplied to the company an address within Pakistan for the giving of notices to him, a notice addressed to him or to the shareholders generally and advertised in a newspaper circulating in the Province or the part of Pakistan not forming part of a Province in which the registered office of the company is situated shall be deemed to be duly given to him on the day on which the advertisement appears.

Provided that in the case of a listed company such notice shall in addition to its being published as aforesaid be also published at least in one issue each of a daily newspaper in English language and a daily newspaper in Urdu language having circulation in the Province in which the stock exchange on which the company is listed is situated'

(THE END)



The Institute of Chartered Accountants of Pakistan

Company Law

Intermediate Examinations – Autumn 2010
Module D

September 1, 2010
100 marks - 3 hours

Q.1 Telestar Limited holds 12% shares of Network Limited. Both companies are listed on Karachi Stock Exchange. In order to improve its liquidity, the Board of Directors of Telestar Limited intends to sell off its investment in Network Limited.

Describe the necessary conditions as specified in the Companies Ordinance, 1984 which Telestar Limited would be required to comply with in order to sell the above investment. *(08 marks)*

- Q.2 (a) List the different types of Redeemable capital as mentioned in the definition of the Redeemable capital in the Companies Ordinance, 1984. *(03 marks)*
(b) List down the reasons specified in the Companies Ordinance, 1984 because of which, a company may alter the object clause of its memorandum of association. *(07 marks)*
(c) The alteration in the memorandum shall not take effect until it is confirmed by the Commission. State the conditions a company is required to fulfill in order to obtain confirmation from the commission and the procedure to be followed on confirmation. *(04 marks)*

Q.3 No company shall appoint any managing agent, i.e. a person, firm or company entitled to the management of the affairs of a company, by virtue of an agreement or contract with the company.

Explain the exception to the above general rule as specified under the Companies Ordinance, 1984. *(06 marks)*

Q.4 Explain whether or not the following statements are in accordance with the provisions of the Companies Ordinance, 1984. Support your answer with reasons.

- (a) A company cannot vary the terms of the contract mentioned in the prospectus or statement in lieu of prospectus for a period of one year. *(02 marks)*
(b) There is no restriction on the declaration of dividend and the chief executive may declare dividend in the general meeting of the company out of any kind of profit. *(04 marks)*
(c) A chief executive, other than the first chief executive of the company, is appointed by the shareholders in the annual general meeting of the company, for a period up to the next annual general meeting. *(03 marks)*

Q.5 Explain the provisions of the Companies Ordinance, 1984 in respect of the following:

- (a) Reading and inspection of auditors' report. *(02 marks)*
(b) Signature on the audit report. *(03 marks)*

Q.6 On January 1, 2010 River Pakistan Limited became the holding company of Green Pakistan Limited by acquiring 51% shares. The financial year-end of River Pakistan Limited is 30th June and that of Green Pakistan Limited is 31st March.

Narrate the conditions as contained in the Companies Ordinance, 1984 relating to the financial year-end of the holding and the subsidiary companies and how the directors can fulfill their obligations in this regard. *(06 marks)*

(P.T.O.)

- Q.7 Discuss the provisions contained in the Companies Ordinance, 1984 relating to maintenance of minutes of the general meetings of the company. **(08 marks)**
- Q.8 Explain “Private Company” as specified in the Companies Ordinance, 1984. With reference to a private limited company, comment on the rule, “*The directors shall not refuse to transfer any fully paid shares unless the transfer deed is defective or invalid*”. **(06 marks)**
- Q.9 The Directors of Golden Leaf Limited, a listed company, plan to redeem 15% preference shares of the company. One of the directors has proposed that these should be redeemed out of the proceeds of the fresh issue of shares of the company.
- (a) What are the conditions that Golden Leaf Limited needs to comply with, if it redeems preference shares out of the proceeds of a fresh issue of shares? **(03 marks)**
- (b) Advise the directors about the other allowed modes of redemption of preference shares as specified in the Companies Ordinance, 1984. **(04 marks)**
- Q.10 Explain the conditions specified in the Companies Ordinance, 1984 under which a person may request a listed company to hold election of directors prior to the end of the term of the present board of directors. **(07 marks)**
- Q.11 Fashion Textiles Limited, whose 85 % of sales comprises of exports, has opened a branch office in South Africa. Mr. Asif, who is responsible for managing the branch office, has informed the company secretary that he needs company’s common seal that will be required while submitting various documents under the South African regulations.
- Advise how the company can authorize Mr. Asif to use the company’s common seal under the provisions of the Companies Ordinance, 1984. **(08 marks)**
- Q.12 Mr. Moeen, who is the company secretary of Palm Oils Limited, a listed company, made a gain of Rs. 5,000 on the sale of shares of the company which were purchased by him four months back.
- (a) Describe the responsibilities of Mr. Moeen in the above situation under the provisions of the Companies Ordinance, 1984. **(03 marks)**
- (b) Explain the consequences of Mr. Moeen’s failure to comply with the relevant provisions of the Companies Ordinance, 1984. **(04 marks)**
- Q.13 In view of the provisions of the Companies Ordinance, 1984 explain the conditions which are required to be complied with, if a company wishes to grant loan to its director. **(05 marks)**
- Q.14 Paradise Limited, upon passing a special resolution on August 20, 2010 made amendments in its Articles of Association affecting substantial rights associated with class “B” shares of the company. Few aggrieved shareholders having objection on the special resolution intend to file an application in the Court, for the cancellation of the above resolution.
- Discuss the relevant provisions of the Companies Ordinance, 1984 specifying the following:
- (a) The conditions which the aggrieved shareholders will have to comply with, to be eligible for filing an application in the court for the cancellation of the above resolution. **(02 marks)**
- (b) The matters which the Court would consider while making a decision on the above application. **(02 marks)**

(THE END)

COMPANY LAW
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- A.1 Since Telestar Limited holds more than 10% shares of Network Limited, therefore, it can sell them only by offering them to the general public after obtaining approval from the Commission.

Any document by which an offer for sale to the public is made by Telestar Limited shall, for all purposes, be deemed to be a prospectus, and all enactments and rules of law applicable to a prospectus shall apply thereon.

Being a company, Telestar Limited is required to have the above referred document signed on its behalf by two of its directors.

- A.2 (a) The different types of Redeemable Capital mentioned in the Companies Ordinance, 1984 are:

- (i) Participation Term Certificate (PTC),
- (ii) Musharika Certificate,
- (iii) Term Finance Certificate (TFC),
- (iv) Any other security or obligation not based on interest, other than an ordinary share of a company, evidencing investment of the holder in the capital of the company
- (v) Other certificates/ instruments specified by Federal Government.

- (b) A Company may alter the provisions of object clause of the memorandum of association, so far as may be required, to enable it to:

- (i) carry on its business more economically or more efficiently; or
- (ii) attain its main purpose by new or improved means; or
- (iii) enlarge or change the local area of its operations; or
- (iv) carry on some business, not being a business specified in its memorandum, which may conveniently or advantageously be combined with the business of the company; or
- (v) restrict or abandon any of the objects specified in the memorandum; or
- (vi) sell or dispose of the whole or any part of the undertaking of the company; or
- (vii) amalgamate with any other company or body of persons.

- (c) The commission may confirm the alteration in the memorandum of association of the company if it is satisfied that:

- (i) Sufficient notice has been given to every debenture holder of the company, and to any person or class of persons whose interest will, in the opinion of the Commission, be affected by the alteration; and
- (ii) With respect to every creditor who in the opinion of the Commission is entitled to object, and who signifies his objection in the manner directed by the Commission either his consent to the alteration has been obtained or his debt or claim has been discharged or determined, or has been secured to the satisfactions of the Commission.

On confirmation of the alteration in the memorandum, the company shall file with the registrar, a certified copy of the order confirming the alteration, together with a printed copy of the memorandum as altered, within ninety days, from the date of the order.

- A.3 The restriction on appointment of managing agent shall not apply to a company which is wholly owned or controlled by the Federal Government or Provincial Government.

The Federal Government may, by notification in the official Gazette, exempt the following agreements or contracts (relating to appointment of managing agents).

- (a) An agreement or contract with an investment adviser in relation to an investment company.
- (b) An agreement or contract, with a foreign collaborator in relation to a company which owns an hotel in Pakistan.

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- (c) An agreement or contract, in relation to a company formed for setting up an industrial undertaking, in collaboration with one or more public sector financial institutions.
- (d) An agreement or contract with an NBFC licensed to undertake asset management services in relation to an investment company.
- (e) An agreement or contract with an NBFC licensed as a venture capital company in relation to a fund.

A.4 (a) The statement is incorrect.

A company shall not at any time, vary the terms of contract referred to in the prospectus or a statement in lieu of prospectus except subject to approval of, or except on authority given by, the company in general meeting.

(b) The statement is incorrect and contains the following errors.

The chief executive of the company does not declare the dividend. He informs the shareholders about the percentage/amount of the dividend as recommended by the directors. The dividend is approved by the members but the dividend so approved shall not exceed the amount as recommended by the directors.

No dividend shall be declared or paid by a company out of the profits of the company made from the sale or disposal of any immovable property or assets of a capital nature comprised in the undertaking(s), unless the business of the company consists, whether wholly or partly, of selling and purchasing any such property or assets, except after such profits are set off or adjusted against losses arising from the sale of any such immovable property or assets of a capital nature.

No dividend shall be declared or paid out of unrealized gain on investment property credited to profit and loss account.

(c) The statement is incorrect.

Any chief executive (first or subsequent) is appointed by the directors within fourteen days from the date of their election or within fourteen days of the office of the chief executive falling vacant.

The chief executive, other than the first chief executive of the company, is appointed for a period not exceeding three years.

A.5 (a) The auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

(b) The auditor's report shall only be signed, by the person appointed as auditor of the company, or where a firm is so appointed, by the partner in the firm practicing in Pakistan.

The auditor's report shall be dated and indicate the place, at which it is signed.

A.6 The directors of a holding company shall ensure that the financial year of each of its subsidiaries coincides with the company's own financial year except where in their opinion there are good reasons against it.

The directors may apply to the commission to extend its financial year so that the subsidiary's financial year may end with that of the holding company.

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The commission may allow the company whose financial year is to be extended to postpone:

- the submission of the relevant accounts
- the holding of an annual general meeting
- the making of an annual return to the next calendar year.

A.7 Every company shall enter a fair and accurate summary of the minutes of all proceedings of general meetings in the properly maintained minute book along with the names of those participating in the meetings.

Minutes are required to be signed by the chairman of the general meeting or by the chairman of the next succeeding meeting, in order to be evidence of the proceedings. The books containing minutes of proceedings of the general meetings must be kept at the registered office of the company

The minute's book may be allowed/open for inspection of members without charge for not less than two business hours in each day Subject to reasonable restrictions imposed through its articles of association or in general meeting.

Any member shall at any time after seven days from the meeting be entitled to be furnished, with a certified copy of the minutes of any general meeting at such charge not exceeding the prescribed amount as may be fixed by the company.

The company shall provide, within seven days after member has made a request in this respect, a certified copy of the minutes.

A.8 "Private company" means a company which, by its articles:

- (a) restricts the right to transfer its shares, if any.
- (b) limits the number of its members to fifty not including persons who are in the employment of the company, and
- (c) prohibits any invitation to the public to subscribe for the shares or debentures of the company.

Provided that where two or more persons hold one or more shares in a company jointly, they shall be treated as a single member.

The general rule is also applicable to a private company but subject to such limitations and restrictions as may have been imposed by the articles of the company.

- A.9
- (a) Where preference shares are redeemed out of the proceeds of a fresh issue, the premium, if any, payable on redemption must have been provided for out of the profits of the company before the shares are redeemed or out of the share premium account
 - (b) Subject to the terms and manner prescribed by the articles of association, other modes of redemption of preference shares available with Golden Leaf Limited are as follows:
 - (i) out of profits of the company which would otherwise be available for dividend,
 - (ii) out of a sinking fund created for this purpose or
 - (iii) out of sale proceeds of any property of the company.

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- A.10 Any person who is holding not less than 12.5% voting shares of the company, in his own name, may apply to the Commission for requiring the company to hold fresh election of directors in accordance with the procedure laid down under the Companies Ordinance, 1984 in the forthcoming annual general meeting of the company.

The Commission may, if it deems appropriate in the interest of the company, its minority shareholders or the capital markets generally, direct the company to hold the election of directors in the manner provided under section 178, and the company shall comply with such direction. The person on whose request such elections are held, shall not sell or otherwise dispose of the shares acquired by him for at least one year from the date of election of directors.

- A.11 (a) Fashion Textiles Limited may, if authorized by its articles, have for use in any territory not situated in Pakistan, an official seal which shall be a facsimile of the common seal of the company, with the addition on its face of the name of territory where it is to be used, in this case South Africa.
- (b) The company may, by writing under its common seal, authorize Mr. Asif to affix such common seal to any deed or other document to which the company is party in South Africa.
- (c) The authority of Mr. Asif shall, as between the company and any person dealing with him, continue during the period, if any, mentioned in the instrument conferring the authority, or if no period is mentioned therein, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.
- (d) The company shall also instruct Mr. Asif that he will certify the date and place of affixing on the deed or other document to which the seal is affixed, by writing under his hand.

- A.12 (a) (i) Since Mr. Moeen, being the company secretary of a listed company, has made gain by the purchase and sale of shares of the company within a period of less than six months, therefore, he is required to make a report and tender the amount of gain to the company.
- (ii) He is also required to simultaneously send an intimation of the transaction to the registrar and the Commission.
- (b) In case of failure /neglect of Mr. Moeen to tender the gain to the company or if the company is unable to recover the gain within a period of six months after its accrual, or within sixty days of a demand, whichever is later, the gain will vest in the Commission and if the gain is not deposited in the prescribed account, the Commission may direct recovery of the same as an arrear of land revenue.

Mr. Moeen may also be liable to pay a fine.

- A.13 The company may grant loan to a director if he is in the whole time employment of the company. Such loan may be granted after getting prior approval from the Commission.

The purpose for which a company may grant the loan are as follows:

- (a) For acquisition or construction of a dwelling house or land therefore
 (b) For defraying the cost of any conveyance for personal use or household effects
 (c) For defraying any expense on his medical treatment or the medical treatment of any relative as are ordinarily made or provided by the company to its employees.

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- A.14 (a) Following conditions would have to be complied with by the aggrieved shareholders
- (i) Their holding should be at least ten per cent of the total class 'B' shares.
 - (ii) Application must be filed within thirty days of the date of passing of special resolution.
- (b) The Court shall pass an order for cancellation of the resolution only if it is satisfied that some facts having impact on the decision of the shareholders were withheld by the company in getting the special resolution passed or, the variation in rights would unfairly prejudice the shareholders of the class represented by the applicant.

(THE END)



The Institute of Chartered Accountants of Pakistan

Company Law

Intermediate Examination – Spring 2011
Module D

March 9, 2011
100 marks - 3 hours

Q.1 Zeeshan Pharma Limited (ZPL) commenced its business two years ago with a paid up capital consisting of 80 million ordinary shares of Rs. 10 each. On February 13, 2011 the board of directors decided to issue right shares at a discount of Rs. 1.50 per share.

Narrate the provisions contained in the Companies Ordinance, 1984 which ZPL would need to comply with for issuance of shares at discount. *(09 marks)*

Q.2 Mr. Shakeel has significant shareholdings in various public and private companies. He is not satisfied with some of the resolutions passed by such companies by show of hands. You are required to advise him as regards the following:

- (a) What conditions would he need to satisfy if Mr. Shakeel wishes to request for a poll? *(05 marks)*
- (b) Explain whether a company is required to oblige him if he wishes to satisfy himself about the validity of the results of voting by poll. *(02 marks)*

Q.3 Explain the exception to the following provisions as specified under the Companies Ordinance, 1984.

- (a) The Court having jurisdiction under the Companies Ordinance, 1984 shall be the High Court having jurisdiction in the place at which the registered office of the company is situated. *(03 marks)*
- (b) No association consisting of more than twenty persons shall be formed for the purpose of carrying on any business with an object for acquisition of gain, unless it is registered as a company under the Companies Ordinance, 1984. *(03 marks)*
- (c) Where a dividend is declared by a company but is not paid within the period specified in the Companies Ordinance, 1984, the chief executive of the company shall be punishable with imprisonment for a term which may extend to two years and with fine which may extend to one million rupees. *(05 marks)*
- (d) In a meeting of the board of directors, no director shall take any part in the discussion of, or vote on, any contract or arrangement entered into, or to be entered into, by or on behalf of the company, if he is in any way, whether directly or indirectly, concerned or interested in the contract or arrangement, nor shall his presence count for the purpose of forming a quorum at the time of any such discussion or vote; and if he does vote, his vote shall be void. *(04 marks)*

Q.4 State the provisions of the Companies Ordinance, 1984 with respect to carrying on business with less than the legal minimum number of members. *(06 marks)*

Q.5 Alfalah Associates is an association of persons. It wants to register itself as a limited company but does not wish to include the word "Limited" in its name.

In view of the provisions of the Companies Ordinance, 1984 you are required to explain the conditions:

- (a) that need to be satisfied before the Commission may issue it a licence and allow it to dispense with the word "Limited" from its name. *(07marks)*
- (b) under which the licence may be revoked and its consequences. *(04 marks)*

Q.6 Explain whether or not the following statements are in accordance with the provisions of the Companies Ordinance, 1984.

- (a) A company may change the number of directors to be elected at least 21 days before the date of general meeting at which the election is to be held. *(04 marks)*
- (b) A duplicate of a certificate of share or debenture shall be issued by the company within thirty five days from the date of loss of the original certificate. *(05 marks)*
- (c) Directors' remuneration for performance of extra services including the holding of office of the chairman or attending the board meeting is decided by the chief executive. *(04 marks)*
- (d) A director of a listed company cannot assign his office to another person under any circumstances. *(03 marks)*

Q.7 The directors of ABC Limited are considering to issue 50% right shares on premium. The issue would be underwritten and significant amount of commission would be paid to the underwriters. The directors are however concerned as to whether they are empowered to pay the commission.

Narrate the relevant provisions of the Companies Ordinance, 1984 regarding the payment of the commission and the directors' responsibility in the above situation. *(07 marks)*

Q.8 Narrate the responsibilities of a company or of its directors in the following circumstances:

- (a) Transfer of 5,000 shares held by the shareholder of a listed company to his sister who is the wife of a Director of the company. *(03 marks)*
- (b) A notice is given to a listed company by a member of the company, 17 days before the annual general meeting, proposing for a change in the auditors of the company. *(03 marks)*
- (c) An alteration in Articles of Association of the company is approved by passing a resolution in the annual general meeting. *(03 marks)*

Q.9 A professional valuer appointed by Metal Industries (Private) Limited (MIL) has reported that the value of company's fixed assets is substantially in excess of the book value of such assets. Consequently the board of directors has decided to record the surplus on fixed assets in the financial statements.

- (a) How should the surplus be disclosed in the financial statements? *(02 marks)*
- (b) Discuss the provisions of the Companies Ordinance, 1984 regarding the application of the amount of Surplus on Revaluation of Fixed Assets. *(06 marks)*

Q.10 Mr. Zafar a director of Hilltop Limited, a listed company, has received a notice making him responsible for incorrect information contained in the prospectus issued by the company and also on account of the company's failure to meet certain requirements related to the issue of prospectus.

You are required to list the relevant provisions of the Companies Ordinance, 1984 on the basis of which Mr. Zafar can claim relief from any liability. *(04 marks)*

Q.11 Explain the provisions contained in the Companies Ordinance, 1984 relating to a special audit and the expenses to be incurred in this regard. *(08 marks)*

(THE END)

COMPANY LAW
Suggested Answers
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- A.1 Zeeshan Pharma Limited may issue shares at a discount subject to the fulfillment of the following conditions:
- (a) It must be authorized by resolution passed in general meeting of the company and approved by the Commission.
 - (b) The resolution must specify the maximum rate of discount, at which shares are to be issued.
 - (c) At the date of issue, at least one year must have elapsed since the date on which the company was entitled to commence business.
 - (d) Such shares must be issued within sixty days after the date on which approval is granted by the Commission.
 - (e) Every prospectus relating to the issue of shares, and every balance sheet issued by the company after the issue of shares, must contain particulars of the discount allowed or of any discount that has not been written off at the date of the issue of the prospectus or balance sheet.
- A.2 (a) If Mr. Shakeel intends to make a request for a poll, the chairman of the meeting would be required to accept his request provided the request is supported:
- (i) in the case of a public company, by at least five members having the right to vote on the resolution and present in person or by proxy;
 - (ii) in the case of a private company, by one member having the right to vote on the resolution and present in person or by proxy if not more than seven such members are personally present, and by two such members present in person or by proxy if more than seven such members are personally present.
 - (iii) by any member or members present in person or by proxy and having not less than one-tenth of the total voting power in respect of the resolution.
 - (iv) by any member or members present in person or by proxy and holding shares in the company conferring a right to vote on the resolution, being shares on which an aggregate sum has been paid up which is not less than one-tenth of the total sum paid up on all the shares conferring that right.
- (b) When a poll is taken, the chairman or his nominee and a representative of the members demanding the poll i.e. Mr.Shakeel and members requesting the poll, shall scrutinize the votes given on the poll. However, the results of the poll shall be announced by the chairman of the meeting.
- A.3 (a) The Federal Government may, by notification in the Official Gazette and subject to such restrictions and conditions as it thinks fit, empower any civil court to exercise all or any of the jurisdiction by this Ordinance conferred upon the Court and in that case such court shall, as regards the jurisdiction so conferred, be the court in respect of companies having their registered office within the territorial jurisdiction of such court.
- (b) The condition of registration as a company is not applicable in the following cases :
- (i) any society, body or association, other than a partnership, formed or incorporated under any other Pakistan law; or
 - (ii) a joint family carrying on joint family business; or
 - (iii) a partnership of two or more joint families where the total number of members of such families, excluding the minor members, does not exceed twenty; or
 - (iv) a partnership formed to carry on practice as lawyers, accountants or any other profession where practice as a limited liability company is not permitted under the relevant laws or regulations for such practice.

COMPANY LAW
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- (c) The Chief Executive will not be punishable in the following cases:
- (i) where the dividend could not be paid by reason of the operation of any law.
 - (ii) where a shareholder has given directions to the company regarding the payment of the dividend and those directions could not be complied with.
 - (iii) where there is a dispute regarding the right to receive the dividend.
 - (iv) where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder.
 - (v) where for any other reason the failure to pay the dividend or to post the warrant within the period aforesaid was not due to any default on the part of the company.

And the commission has allowed the company to withhold or defer the payment of dividend against an application made by the company within 45 days from the date of declaration of dividend.

- (d) This rule is not applicable to:
- (i) a private company which is neither a subsidiary nor a holding company of a public company;
 - (ii) any contract of indemnity against any loss which the directors, or any one or more of them, may suffer by reason of becoming or being sureties or a surety for the company;
 - (iii) any contract or arrangement entered into or to be entered into with a public company, in which the interest of the director aforesaid consists solely in his being a director of such company and the holder of no more than such shares therein as are requisite to qualify him for appointment as a director thereof, he on being nominated as such director by the sending company.

A.4 A company may carry on business with less than the legal minimum number of members for a period of six months. However, if it carries on business for more than six months the following will be the consequences:

- every person who is a member of the company during the time that it so carries on business after those six months and is cognizant of the fact
- shall be severally liable for the payment of the whole debts of the company contracted during that time,
- and may be sued therefore without joinder in the suit of any other member.

- A.5 (a) The Commission may grant a licence and direct that the Alfalah Associates be registered as a company with limited liability, without the addition of the words "Limited", to its name, if Alfalah Associates satisfies the following conditions:
- (i) It should be capable of being formed as a limited company.
 - (ii) It should be formed for promoting commerce, art, science, religion, sports, social services, charity or any other useful object.
 - (iii) It applies or intends to apply its profits/income in promoting its objects.
 - (iv) It prohibits the payment of any dividend to its members.
 - (v) A licence may be granted on such conditions and regulations as the Commission thinks fit and those conditions and regulations shall be binding on the association and shall, if the Commission so directs, should be inserted in the memorandum and articles, or in one of those documents.

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- (b) The licence may be revoked at any time by the Commission after giving a notice in writing of its intention and shall afford Alfalah Associates an opportunity of submitting a representation in opposition to the revocation. On revocation of the licence, the registrar shall enter the word Limited at the end of the name of the Alfalah Associates in the register, and Alfalah Associates will be required to use the name as entered in the register.
- A.6 (a) The statement is not in accordance with the provisions of the Companies Ordinance 1984 because the directors shall fix the number of directors to be elected not later than thirty-five days before the convening of the general meeting at which directors are to be elected, and the number so fixed shall not be changed except with the prior approval of a general meeting of the company.
- (b) The statement is not in accordance with the provisions of the Companies Ordinance 1984 because the duplicate of a certificate of shares or debentures is required to be issued within forty-five days from the date of application if the original is proved to have been lost or destroyed, and also if having been defaced or mutilated or torn is surrendered to the company.
- (c) The statement is not in accordance with the provisions of the Companies Ordinance 1984. The directors' remuneration for performing extra services, including the holding of the office of chairman, is determined by the directors or the company in general meeting in accordance with the provisions in the articles of association of the company.
- (d) The statement is not in accordance with the provisions of the Companies Ordinance 1984. The assignment of office is possible provided it is allowed under the articles of association of the company and assignment is approved by a special resolution passed by the shareholders at the general meeting of the company.
- A.7 The directors of ABC Limited can pay a commission to any person in consideration of his subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in the company if -
- (a) the payment of the commission is authorized by the articles.
- (b) the commission paid or agreed to be paid does not exceed such rate percent of amount as may generally or in a particular case be fixed by the Commission and
- (c) the amount or rate percent of the commission paid or agreed to be paid is -
- (i) in the case of shares offered to the public for subscription, disclosed in the prospectus; or
- (ii) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and, where a circular or notice, not being a prospectus, inviting subscription for the shares is issued also disclosed in that circular or notice and
- (d) the number of shares which such persons have agreed for a commission to subscribe absolutely is disclosed in the manner aforesaid.

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- A.8 (a) The concerned director of the listed company, is required to submit to the registrar and the Commission a return in the prescribed form containing the prescribed particulars informing them about the change in his beneficial ownership due to transfer of 5,000 shares to his wife.
- (b) The Company shall forthwith send a copy of such notice to the retiring auditor and shall also give thereof to its members not less than seven days before the date fixed for the annual general meeting and shall also publish it at least in one issue each of a daily newspaper in English Language and a daily newspaper in Urdu Language having circulation in the Province in which the stock exchange on which the company is listed is situated.
- (c) The alteration of Articles of Association of the company is made by a special resolution and a printed or typed copy of every special resolution shall, within fifteen days from the passing thereof, be filed with the registrar duly authenticated by the chief executive or secretary of the company.

Where articles have been registered a copy of every special resolution for the time being in force shall be embodied in or annexed to every copy of the articles issued after the date of the resolution.

- A.9 (a) The surplus must be transferred to an account called "Surplus on Revaluation of Fixed Assets Account" and shown in the balance-sheet of the company after Capital and Reserves.
- (b) The Surplus on Revaluation of Fixed Assets cannot be utilised to set off or reduce any deficit or loss, whether past, current or future, except and to the extent actually realised on disposal of the assets which are re-valued. Further, it cannot be applied, adjusted or treated so as to add to the income, profit or surplus of the company, or utilised directly or indirectly by way of dividend or bonus.

However, the Surplus on Revaluation of Fixed Assets can be applied by the company in setting off or in diminution of any deficit arising from the revaluation of any other fixed asset of the company.

Further, the incremental depreciation arising out of Revaluation of Fixed Assets may be charged to Surplus on Revaluation of Fixed Assets account.

- A.10 Mr. Zafar shall not incur any liability by reason of any non-compliance with, or contravention of, any of the requirements of Companies Ordinance, 1984 related to the prospectus, if
- (a) he proves that he had no knowledge regarding the matter not disclosed.
- (b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or
- (c) that non-compliance or contravention was in respect of matters which, in the opinion of the registrar or officer dealing with the case, were immaterial, or was otherwise such as ought, in the opinion of that registrar or officer, as the case may be, having regard to all the circumstances of the case, reasonably to be excused.

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A.11 The following are the provisions related to the special audit and the expenses incurred for conducting such audit :

- (a) The Commission may on its own motion, or upon an application made by members holding not less than 20% voting rights in a company, order a special audit of the company and appoint an auditor to carry out detailed scrutiny of the affairs of the company.
- (b) The Commission may, during the course of the special audit, pass such interim orders and directions as may be deemed appropriate by the Commission.
- (c) On receipt of the special audit report, the Commission may issue such directions for immediate compliance to the company and its management as the Commission deems fit.
- (d) In case where the special audit has been ordered by the Commission on an application made by members of the company, one half of the expenses of the special audit shall be borne and paid in advance by such members, and the other half shall be borne by the company.
- (e) In case where the special audit has been ordered by the Commission on its own motion, the expenses of the special audit shall be payable by the company.
- (f) Where the expenses of the special audit are payable by the company, such expenses in the first instance may be defrayed by the Commission, and the company shall be liable to reimburse the Commission in respect of such expenses.
- (g) The amount of expenses liable to be paid by the company, the members or any other persons, as the case may be, shall be recoverable as arrears of land revenue.

(THE END)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN

EXAMINERS' COMMENTS

SUBJECT	SESSION
Company Law	Intermediate Examination - Spring 2011

General:

Overall the paper was quite easy. Most of the questions were taken from areas which were commonly tested in the previous attempts. Therefore, majority of the students secured good marks.

Question-wise comments are given below:

Q.1 Generally students got average marks in this question which required them to narrate the provisions for issuance of shares at discount. Some of the common mistakes were as follows:

- Many students mentioned about passing of special resolution for authorizing issue of shares at discount whereas ordinary resolution is required for this purpose.
- The company can issue shares at discount, one year after the date it becomes entitled to commence business but generally the candidates mentioned one year from the date of incorporation.
- Disclosure of particulars of discount and the amount of discount not written off, in Prospectus and Balance Sheet was not mentioned by the majority of the candidates.

Q.2 (a) Majority of the candidates got passing marks in this part of the question. The common mistakes were as follows:

- Very few students could mention correctly that in case of private company one member can demand poll when not more than seven members are personally present in the meeting and two candidates can demand a poll if more than 7 members are personally present.
- Most of the students mentioned that Mr. Shakeel must hold one-tenth of the shareholding, to demand a poll. This statement was only partially true, as Mr. Shakeel could also have demanded a poll if he had the support of other share holders holding 10% share in aggregate.

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- (b) Very few candidates could get good marks on this part of the question as most of them either described that decision of chairman shall be final or that the company can provide minutes of meeting to satisfy the member regarding validity of poll. As per Companies Ordinance, 1984 a representative of members, who had demanded the poll, alongwith chairman of the meeting, can scrutinize the votes to satisfy them about the validity of the results of the poll.
- Q.3 This was a very simple question which was well attempted by almost all the candidates. Those who failed to get good marks made following mistakes:
- Mentioned that Supreme Court, High Court or SECP can empower a civil court to have jurisdiction under Companies Ordinance, 1984. In fact, such a power rests with the Federal Government.
 - Incorrectly declared that the nominee directors of Federal or Provincial Government can participate and vote in meetings in respect of contract in which they are interested.
 - Failed to mention that the interested directors can participate and vote in respect of a contract of indemnity in which they can suffer loss for becoming sureties for the company.
- Q.4 This was a very simple question which was well attempted by most of the candidates. Those who got low marks either failed to correctly mention the minimum number of members or the period after which the members become liable for carrying business with less than minimum number of members. Some of the candidates were of the opinion that in such a situation the company shall be dissolved.
- Q.5 (a) Most of the candidates correctly described the conditions on the satisfaction of which Commission (SECP) may issue license to a company and allow it to dispense with the words "Limited" from its name. However, many students failed to mention that while issuing such license the commission may require the association (company) to fulfill certain conditions and regulations that shall be binding on the association (company) and the commission may also direct that such conditions and regulations be inserted in memorandum and articles of association.
- (b) Majority of candidates got average marks on this part of the question. However, some of the candidates incorrectly stated that on revocation of license the company shall loose **all the privileges of a limited company**.
- Q.6 Again a very simple question which was well attempted by almost all the candidates. Those who failed to get good marks made following mistakes:
- (a) Some of the candidates mentioned that number of directors can be changed by special resolution in the general meeting of the company, in which the directors are to be elected.

Examiners' comments on Company Law – Spring 2011

- (b) Period for issuance of duplicate certificate was mentioned as 30 days instead of 45 days. Further, it was mentioned that the number of days shall be counted from the date the original certificate was lost or destroyed instead of mentioning the date of application.
- (c) Some candidates mentioned that Directors are the approving authority for directors' remuneration while some of the candidates mentioned that company in general meeting is the approving authority. The correct answer is that either of them can be the approving authority, depending upon the provisions contained in the articles of association of the company.
- (d) This part was not attempted correctly by the majority as they mentioned unnecessary details with respect to assignment of office. The answer is simple i.e. the assignment is allowed if it is permissible under the articles of association and is approved by a special resolution.

Q.7 This was a very simple question requiring candidates to narrate the provisions of Companies Ordinance, 1984 regarding payment of commission to underwriters and directors' responsibility in this respect. However, most of the candidates failed to fully narrate the relevant provisions. Some of the students failed to understand the question and narrated the provisions regarding issue of shares at premium, which was not required. Other common mistakes were as follows:

- The fact that commission can be paid to any person for subscribing or procuring or agreeing to subscribe or procure the subscriptions, was not clearly mentioned by the majority. Many candidates mentioned various types of categories of individuals to whom commission can not be paid.
- Generally the students were not aware of the fact that commission can be paid even if shares are not offered to general public.

Q.8 (a) The performance of majority of candidates on this part of the question was very poor as they failed to understand the question. On transfer of shares to the wife of the director, he became the beneficial owner of the shares and therefore, was required to submit the statement of change in beneficial ownership, to the Commission and the Registrar. Instead, almost all the candidates explained that being an interested director, he should not participate in the meeting in which transfer of shares is approved. A large number of candidates mentioned the procedure for transfer of shares and the related time limit, which was not required.

(b) This part was well attempted by most of the students as they were well aware about the provisions of Companies Ordinance, 1984 regarding notice of change in auditors, received from the member. However, some of the candidates incorrectly mentioned that such notice should be received at least 21 days before meeting and therefore should be disregarded by the Company as the same was received 17 days before the annual general meeting.

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- (c) Generally candidates got average marks on this question. They failed to indicate that the special resolution filed with the registrar shall be authenticated by Chief Executive or Secretary of the Company.
- Q.9 (a) This part was well attempted by most of the candidates as they correctly explained disclosure of surplus on revaluation of fixed assets in the financial statements. However, some candidates were of the opinion that such surplus should be shown as part of equity whereas it has to be shown in the balance sheet of the company after Capital and Reserves.
- (b) Generally the candidates got average marks on this part of the question as they correctly explained the utilization of surplus on revaluation of fixed assets but failed to enumerate the purpose for which such surplus cannot be utilized.
- Q.10 Barring few, all the candidates got low marks on this question as they described the conditions in which a director is not liable for civil liability for mis-statement in prospectus, whereas, the question required the candidates to list the relevant provisions of Companies Ordinance on the basis of which a director can claim relief from any liability for incorrect information in the prospectus and failure to meet certain requirements related to the issue of prospectus. Only few candidates, who were well aware of provisions of section 53(7) of the Companies Ordinance, 1984, got good marks on this question.
- Q.11 This question was generally well attempted. However, the majority did not mention the point regarding Commission's right to pass such interim order and direction during the course of special audit as it deems necessary. Further, they also did not mention that on receipt of special audit report, Commission may issue such directions for immediate compliance by the company and its management as it may deem fit.

THE END



The Institute of Chartered Accountants of Pakistan

Company Law

Intermediate Examination
Autumn 2011
Module D

7 September 2011
100 marks – 3 hours
Additional reading time – 15 minutes

(All questions are compulsory)

- Q.1 (a) Briefly describe the provisions of Companies Ordinance, 1984 relating to alteration of the objects of a company. *(08 marks)*
- (b) In the annual general meeting of Paramount Limited, a shareholder objected to the shifting of the registered office from Multan to Lahore without obtaining confirmation from the Commission. Explain whether the objection is valid. *(02 marks)*
- (c) What is the required quorum for a board meeting of a listed company and who would be responsible if a meeting is held without the quorum? *(02 marks)*
- Q.2 Explain the provisions relating to redemption of preference shares as contained in the Companies Ordinance, 1984. *(05 marks)*
- Q.3 Briefly explain the exceptions to the following provisions as specified under the Companies Ordinance, 1984.
- (a) An annual general meeting shall, in the case of a listed company, be held in the town in which the registered office of the company is situated. *(02 marks)*
- (b) Notice of an extraordinary general meeting shall be sent to the members at least twenty-one days before the date of the meeting, and in the case of a listed company shall also be published in the prescribed manner. *(02 marks)*
- (c) No person shall be appointed as a director of a company if he is not a member. *(03 marks)*
- (d) If a copy of the representation received from the retiring auditor is not sent to every member of the company because it was received too late or because of the company's default, the auditor may, without prejudice to his right to be heard in person, require that the representation shall be read out at the meeting. *(03 marks)*
- (e) No director of a company shall, as a director, take any part in the discussion of, or vote on, any contract or arrangement entered into, or to be entered into, by or on behalf of the company, if he is in any way, whether directly or indirectly, concerned or interested in the contract or arrangement, nor shall his presence count for the purpose of forming a quorum at the time of any such discussion or vote; and if he does vote, his vote shall be void. *(04 marks)*
- Q.4 On 12 July 2011, JFK Limited issued a prospectus which stated that an application has been made for permission for the shares being offered, to be dealt on the Karachi Stock Exchange.
- Explain the responsibilities of the directors regarding the subscription money received and the consequences, if the Karachi Stock Exchange refuses to grant such permission. *(07 marks)*
- Q.5 Briefly describe the conditions specified in the Companies Ordinance 1984, which the High Court must adhere to, in order to ensure expeditious delivery of the final judgement. *(05 marks)*

- Q.6 On 15 August 2011 Ejaz lodged an instrument of transfer with Fast Technology Limited (FTL), a listed company, for transfer of 10,000 shares in the name of his son, Riaz.
- However, on 5 September 2011 the directors refused to transfer the shares by giving him notice in writing in this regard.
- Explain the recourse available to Ejaz. *(05 marks)*
- Q.7 Describe the term “associated company” in accordance with the Companies Ordinance, 1984. *(05 marks)*
- Q.8 (a) In a general meeting, ordinary as well as special businesses are put up for consideration of members. Distinguish between ordinary business as opposed to special business. *(03 marks)*
(b) State the requirements that a company needs to satisfy, as regards notice of the meeting, in case a special business is to be transacted at a general meeting of the company. *(03 marks)*
(c) Explain the provisions specified in the Companies Ordinance, 1984 relating to requirements to be completed before the commencement of business by a public company. *(06 marks)*
- Q.9 (a) Describe the formalities to be completed by an unlisted company, not being a private company having paid up capital of less than Rs. 7.5 million, before and after the annual general meeting, with respect to the annual audited accounts, under the Companies Ordinance, 1984. *(05 marks)*
(b) Describe the contents of the Directors’ Report to be attached with the balance sheet of a public company, as specified under Companies Ordinance, 1984. *(10 marks)*
- Q.10 State with reasons whether the following statements are in accordance with the provisions of the Companies Ordinance, 1984 :
- (a) A company has the power to deposit a portion of the employees provident fund contribution in any suitable investment that the directors of the company may deem fit. *(05 marks)*
(b) It is mandatory for all manufacturing companies to have their cost accounts audited by a cost and management accountant. *(02 marks)*
(c) The chief executive of a company can be removed by the shareholders, not more than one year before the expiration of his term of office. *(03 marks)*
- Q.11 (a) List the mortgages and charges which, if not registered by the company, shall be considered as void. *(06 marks)*
(b) Explain the circumstances under which the registrar has the power to make entries of satisfaction and release of charge, in the register of mortgages and charges, without intimation from the company. *(04 marks)*

(THE END)

COMPANY LAW
Suggested Answers
Intermediate Examinations – Autumn 2011

- A.1 (a) (i) According to the Companies Ordinance, 1984 a company may alter the memorandum with respect to the objects of the company so far as may be required to enable it to:
- carry on its business more economically or more efficiently; or
 - attain its main purpose by new or improved means; or
 - enlarge or change the local area of its operations; or
 - carry on some business, not being a business specified in its memorandum, which may conveniently or advantageously be combined with the business of the company; or
 - restrict or abandon any of the objects specified in the memorandum; or
 - sell or dispose of the whole or any part of the undertaking of the company; or
 - amalgamate with any other company or body of persons.
- (ii) A Special Resolution authorising the change has to be passed.
- (iii) The alteration shall not take effect until and except in so far as it is confirmed by the Commission.
- Before confirming the alteration, the Commission must be satisfied:
- that sufficient notice has been given to every holder of debentures of the company, and to any person or class of persons whose interest will, in the opinion of the Commission, be affected by the alteration; and
 - that, with respect to every creditor who in the opinion of the Commission is entitled to object and who signifies his objection in manner directed by the Commission, either his consent to the alteration has been obtained or his debt or claim has been discharged or determined, or has been secured to the satisfaction of the Commission.
- (iv) A certified copy of the order of the commission along with the altered memorandum, is required to be filed with the registrar, within 90 days of the order.
- (b) The shareholder's objection is not valid, because an alteration to change the place of registered office of a company from one city or town in a province to another does not require confirmation by the Commission.
- (c) The quorum for a meeting of directors of a listed company shall not be less than one-third of their number or four, whichever is greater.
- The Chairman of the directors and the directors themselves will be liable to pay a fine, if a meeting of directors is conducted in the absence of a quorum.

- A.2 A company limited by shares may redeem the preference shares issued by it, provided that:
- (a) no shares shall be redeemed except
- (i) out of profits of the company which would otherwise be available for dividend; or
 - (ii) from out of a sinking fund created for the purpose of dividend; or
 - (iii) out of the proceeds of a fresh issue of shares made for the purposes of the redemption; or
 - (iv) out of sale proceeds of any property of the company;
- (b) no such shares shall be redeemed unless they are fully paid.
- (c) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall be transferred to a reserve fund, to be called "the capital redemption reserve fund", a sum equal to the amount applied in redeeming the shares.

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- (d) where any such shares are redeemed out of the proceeds of a fresh issue, the premium payable on redemption must be provided for out of the profits of the company before the shares are redeemed or out of the share premium account.

A.3 The exception to the statements given in the question are as under:

- (a) The Commission for any special reason may on the application of such company allow the company to hold a particular meeting at any other places.
- (b) In the case of an emergency affecting the business of the company the registrar may on the application of the directors authorize such meeting to be held at such shorter notice as he may specify.
- (c) The following persons need not be a member for becoming a director.
- (i) A person representing the government or an institution or authority which is a member.
 - (ii) A whole-time director of the company who is an employee of the company.
 - (iii) A chief executive or
 - (iv) A person representing a creditor.
- (d) It shall not be necessary to read out the representation received from the retiring auditor, at the meeting if on the application either of the company or of any other aggrieved person the registrar is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter;
- (e) The restriction on directors, as regards voting on a decision involving a contract/arrangement in which they are interested, shall not apply in case of:
- (i) A private company which is neither a subsidiary nor a holding company of a public company;
 - (ii) Any contract of indemnity against any loss which the directors, or any one or more of them, may suffer by reason of becoming or being sureties or a surety for the company.
 - (iii) Any contract or arrangement entered into or to be entered into with a public company, in which the interest of the director aforesaid consists solely in his being a director of such company and in being the holder of no more than such shares therein as are required to qualify him for appointment as a director thereof.

A.4 If the permission has not been granted before the expiration of twenty-one days from the date of the closing of the subscription list or such longer period not exceeding forty-two days as may, within the said twenty-one days, be notified to the applicant for permission by or on behalf of the stock exchange allotment of shares made (if any) would be considered void.

The director's responsibility regarding the subscription money

- (a) The company shall repay without surcharge all money received from applicants within eight days and, if any such money is not repaid within eight days after the company becomes liable to repay it, the directors of the company, in addition to fines, shall be jointly and severally liable to repay that money from the expiration of the eighth day together with surcharge at the rate of one and a half per cent for every month or part thereof.
- (b) A director shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.
- (c) All moneys received as aforesaid shall be deposited and kept in a separate bank account in a scheduled bank so long as the company may become liable to repay it.

COMPANY LAW
Suggested Answers
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- A.5 According to the Companies Ordinance, 1984 the High Court must adhere to the following conditions in order to ensure expeditious delivery of the final judgment:
- (a) All the matters coming before the High Court shall be disposed of, and the final judgment pronounced as expeditiously as possible but not later than ninety days from the date of presentation of the petition or application to the court.
 - (b) Except in extraordinary circumstances and on grounds to be recorded, the High Court shall hear the case from day to day.
 - (c) The hearing of the matters shall not be adjourned except for sufficient cause to be recorded or for more than fourteen days at any one time or for more than thirty days in all.
- A.6
- (a) Ejaz can file an appeal with the SECP within two months of the receipt by him of the notice of refusal.
 - (b) The Commission shall, after causing reasonable notice to be given to the company and also to Ejaz as the case may require and giving them a reasonable opportunity to make their representation, may, by an order in writing, direct either that the transfer shall be registered by the company or that it need not be registered by it and in the former case, the company shall give effect to the decision within fifteen days of the receipt of the order.
- A.7 “Associated companies” mean any two or more companies or a company and an undertaking, interconnected with each other in the following manner, namely:
- (a) If a person who is the owner or a partner or director of a company or undertakings, or who, directly or indirectly, holds or controls shares carrying not less than twenty percent of the voting power in such company or undertaking, is also the owner or partner or director of another company or undertaking, or directly or indirectly, holds or controls shares carrying not less than twenty per cent of the voting power in that company or undertaking; or
 - (b) If the companies or undertakings are under common management or control or one is the subsidiary of another; or
 - (c) If the undertaking is a modaraba managed by the company; and a person who is the owner of or a partner or director in a company or undertaking or, who also holds or controls shares carrying not less than ten percent of the voting power in a company or undertakings, shall be deemed to be an “associated person” of every such other person and of the person who is the owner of or a partner or director in such other company or undertaking, or who so holds or controls such shares in such other company or undertaking.
- Provided that shares shall be deemed to be owned, held or controlled by a person if they are owned, held or controlled by that person or by the spouse or minor children of the person.
- Provided further that -
- (i) directorship of a person or persons by virtue of nomination by the Federal Government or a Provincial Government or a financial institution directly or indirectly owned or controlled by such Government; or
 - (ii) Shares owned by the National Investment Trust or the Investment Corporation of Pakistan or a financial institution directly or indirectly owned or controlled by the Federal Government or a Provincial Government or shares registered in the name of a central depository, where such shares are beneficially owned by the central depository;
- shall not be taken into account for determining the status of a company, undertaking or person as an associated company, associated undertaking or associated person.

<p>COMPANY LAW Suggested Answers Intermediate Examinations – Autumn 2011</p>

A.8 (a) The following businesses transacted at a general meeting are considered as ordinary businesses:

- (i) consideration of the accounts and balance-sheets
- (ii) The presentation of the reports of the directors and auditors,
- (iii) declaration of a dividend,
- (iv) appointment and fixation of remuneration of auditors
- (v) election or appointment of directors

Any business other than those specified above is termed as special business.

(b) Where any special business is to be transacted at a general meeting, a statement setting out all material facts concerning such business, including, the nature and extent of interest, whether directly or indirectly, therein of every director, must be annexed to the notice of the meeting.

Further, where any business transaction requires an approval to any document by the meeting, the time when and the place where the document may be inspected must be specified in the statement annexed to the notice.

(c) A company shall not commence any business or exercise any borrowing powers unless:

- (i) Shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription;
- (ii) Every director of the company has paid to the company full amount on each of the shares taken or contracted to be taken by him;
- (iii) No money is or may become liable to be repaid to applicants for any shares or debentures which have been offered for public subscription by reason of any failure to apply for or to obtain permission for the shares or debentures to be dealt in on any stock exchange.
- (iv) There has been filed with the registrar a duly verified declaration by the chief executive or one of the directors and the secretary in the prescribed form that the aforesaid conditions have been complied with and the registrar has issued a certificate of commencement of business; and
- (v) In the case of a company which has not issued a prospectus inviting the public to subscribe for its shares, a statement in lieu of prospectus has been filed with the registrar.

A.9 (a) An unlisted company not being a private company having a paid up capital of less than Rs. 7.5 million, must complete the following necessary formalities before and after the AGM:

- (i) **Before the AGM:**
Notice of an annual general meeting must be sent to every shareholder at least 21 days before the date of AGM along with a copy of such balance-sheet and profit and loss account so audited together with a copy of the auditor's report and the director's report and shall keep a copy at the registered office of the company for the inspection of the members of the company during a period of at least twenty-one days before that meeting.
- (ii) **After the AGM:**
The company must file with the registrar two copies of the balance-sheet and profit and loss account that have been laid before the company at the annual general meeting and signed by the chief executive, directors, chairman of directors or the auditors of the company in the prescribed manner, within thirty days from the date of AGM.

COMPANY LAW
Suggested Answers
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- (b) The contents of the directors' report of a public company, as specified in the Companies Ordinance, 1984 are as follows:
- (i) report on the company's affairs;
 - (ii) the amount of recommended dividend;
 - (iii) amount proposed to be carried to the Reserve Fund, General Reserve or Reserve Account;
 - (iv) disclosure of material changes and commitments affecting the financial position of the company since the end of the financial year to which the balance-sheet relates and the date of the report;
 - (v) any changes concerning the nature of the business of the company or of its subsidiaries, or in the classes of business in which the company has interest;
 - (vi) fullest information and explanation regarding any reservation, observation, qualification or adverse remarks contained in the auditor's report;
 - (vii) the pattern of share holding;
 - (viii) name and country of incorporation of its holding company, if any, where such holding company is established outside Pakistan;
 - (ix) earning per share;
 - (x) reasons for incurring loss and a reasonable indication of future prospects of profit, if any;
 - (xi) information about defaults in payment of debts, if any, and reasons thereof.
- A.10 (a) The statement is not true. All moneys contributed by the company or by the employees towards a provident fund constituted by a company for its employees must be deposited:
- (i) in a National Savings Scheme.
 - (ii) in a special account to be opened by the company for the purpose in a scheduled bank, or
 - (iii) where the company itself is a scheduled bank, deposited in a special account to be opened by the company for the purpose either in itself or in any other scheduled bank; or
 - (iv) invested in government securities; or
 - (v) in bonds, redeemable capital, debt securities or instruments issued by the Pakistan Water and Power Development Authority and in listed securities, subject to the conditions prescribed by the Commission.
- (b) Cost audit is mandatory only for those companies or class of companies which are specified for the purpose, by the Federal Government. Moreover, the cost audit may also be conducted by a chartered accountant.
- (c) The chief executive may be removed by the directors, any time, before the expiration of his term of office by a resolution passed in their meeting by not less than three-fourths of the total number of directors for the time being, or by the company by a special resolution, notwithstanding anything contained in the articles or in any agreement between the company and the chief executive.
- A.11 (a) The following mortgages and charges, if not registered, would be treated as void:
- (i) for the purpose of securing any issue of debentures.
 - (ii) on uncalled share capital of the company.
 - (iii) on any immovable property wherever situated, or any interest therein.
 - (iv) on any book debts of the company.
 - (v) on any movable property of the company (not being a pledge).
 - (vi) on a ship or any share in a ship.

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- (vii) on goodwill, on a patent or licence under a patent, on trade mark, or copyright or licence under a copyright.
 - (viii) or other interest based on agreement for the issue of any instrument in the nature of redeemable capital.
 - (ix) or other interest based on a Musharika agreement.
 - (x) or other interest based on a hire-purchase or leasing agreement for acquisition of fixed assets.
 - (xi) floating charge on the undertaking or property of the company, including stock-in-trade.
- (b) The registrar can enter in the register of mortgages and charges a memorandum of satisfaction or release of charge without receiving any intimation from the Company, on evidence being given to his satisfaction with respect to any registered charge, that the:
- (i) debt for which the charge was given has been paid or satisfied in whole or in part, or
 - (ii) part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking;

(THE END)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN

EXAMINERS' COMMENTS

SUBJECT	SESSION
Company Law	Intermediate Examination - Autumn 2011

General

The overall performance of the students was not up to the mark. They tended to write a lot of irrelevant details without considering as to what was required. Majority of the candidates seemed unable to distinguish between Federal Government, SECP and Registrar and frequently used one in place of the other. Questions requiring reproduction of the law were responded well as compared to questions requiring application or comments on practical situations.

- Q.1 (a) Most of the candidates could get average marks on this part of the question as they managed to mention the reasons for change in objects of the company but could not describe the conditions which must be satisfied before the alteration is confirmed by the SECP.
- (b) Almost all the candidates knew that shifting of registered office within the same province does not require confirmation from SECP.
- (c) This was a very simple question in which most of the candidates got high marks. However, some of the candidates described the requirement related to quorum of the AGM instead of board meeting.
- Q.2 The question was based on section 85(1) (a) to (d) and majority of the candidates performed well. The points related to creation of capital redemption reserve fund and premium payable on redemption were mostly missed out.
- Q.3 This simple question required the candidates to explain the exception to provisions of the Companies Ordinance, 1984 in respect of five statements given in the question. The performance of majority of the candidates was below average. Comments on each part of the answer are given below:
- (a) Instead of SECP, Registrar was mentioned as the authority which approves the holding of annual general meeting in a town other than in which the registered office of the company is situated. Few candidates were of the view that meeting can be held in the city in which the stock exchange on which company is listed is situated, without seeking any approval.
- (b) In this part, instead of Registrar, Commission was wrongly mentioned as the authority which can approve the holding of extra ordinary general meeting at less than 21 days notice.

Examiners' comments on Company Law – Autumn 2011

- (c) This part was well answered and a large number of students secured full marks.
 - (d) The question pertained to the retiring auditor's right to being represented at the AGM. The answer was based on section 253(3) of the Companies Ordinance, 1984 but only few candidates possessed the requisite knowledge whereas the majority relied on guess work.
 - (e) A director is restricted from taking part in discussion on a contract/arrangement in which he is interested. Very few students could narrate the exemptions as are provided in section 216(2) of the Companies Ordinance, 1984.
- Q.4 Majority of the candidates did not understand the question and generally explained the provisions regarding allotment of shares and refund of subscription money whereas the question required them to explain the responsibilities of directors if the Stock Exchange refuses to grant permission for listing. Those who understood the question failed to mention that if the permission is not granted by the stock exchange within the prescribed period, the allotment shall become void. Majority of the candidates also failed to mention the correct period for refunding the subscription money to the applicants. However, provisions regarding directors' liability for not making refund within prescribed time and deposit of subscription money in separate bank account with schedule bank were correctly mentioned by majority of the students.
- Q.5 About 25% of the students could not attempt this question probably because they didn't have any idea about the relevant provisions contained in Section 9 of the Companies Ordinance, 1984. However, most of those who did attempt secured high marks. Some students failed to understand the question and discussed the jurisdiction of the High Court instead of discussing the expeditious delivery of final judgment.
- Q.6 The candidates were required to explain the recourse available to a shareholder if directors refuse to transfer the shares. The performance of the majority of the candidates was below par. Most of the candidates were of the view that appeal shall be filed with the Court of Law whereas it is required to be filed with the Commission.
- Q.7 This was a simple question and was well attempted by most of the candidates as they correctly described the term 'Associated Company'. However, some of the candidates failed to mention the important conditions that the directorship of a person by virtue of nomination by Government etc. and shares held by NIT, ICP, Central Depository etc. would not be considered for determining whether the above relationship exists.
- Q.8 (a) This question was well attempted as most candidates correctly described the Ordinary and Special business. Some candidates got confused and tried to distinguish between Ordinary and Special business on the basis of notice period and number of votes required for passing the resolution.

Examiners' comments on Company Law – Autumn 2011

- (b) The requirement in respect of notice of meeting in which special business is to be transacted was correctly described. However, many candidates failed to mention that statement annexed to the notice shall also contain the nature and extent of interest of the directors.
- (c) The performance was good but some of the weaker candidates described the requirement related to incorporation of a company instead of the requirements related to commencement of business.
- Q.9 (a) Most of the candidates were able to enumerate the formalities to be completed by an unlisted company in respect of the annual audited accounts, before and after the annual general meeting. However, many candidates did not distinguish between formalities to be completed before and those required to be completed after the AGM.
- (b) This was a very simple question which was well attempted by most of the candidates as they were well versed with the contents of directors' report of a public company. However, it seemed that there were many students who had never seen a director's report. They included the following types of items in their answer:
- Minutes of the meetings;
 - Shares issued during the year;
 - Contracts in which directors are interested.
- Q.10 (a) Majority of the candidates scored average marks as they could only mention one or two schemes in which provident fund can make investments. Many students seemed careless, for example, instead of National Savings Scheme they mentioned Defence Savings Certificate.
- (b) Almost all the candidates correctly explained that cost audit can also be conducted by Chartered Accountants. However, only few could explain that cost audit is not mandatory for all the manufacturing companies. Many candidates declared that cost and management accountant can not carry out cost audit. Many students mentioned the types of companies where cost audit is mandatory like ghee, sugar, cement etc. The fact that Federal Government has the authority to specify the types of companies for whom cost audit is mandatory was not mentioned by the majority.
- (c) Although candidates were sure that chief executive can be removed before the expiration of his term but majority of them were not aware how can he be removed.
- Q.11 (a) This part of the question was well attempted by most of the candidates as they were well aware about mortgages and charges which are required to be registered under the Companies Ordinance, 1984. Some of the candidates could not understand the question and tried to explain the type of loan agreements against which mortgages and charges are required to be registered.

Examiners' comments on Company Law – Autumn 2011

- (b) Barring a few, all the candidates got low marks in this question as they failed to understand the question. Instead of mentioning the relevant provisions contained in section 133 of the Companies Ordinance, 1984, many candidates wrongly mentioned the following circumstances under which the registrar can release the charge without intimation from the company:
- i. Expiry of period of charge;
 - ii. Intimation by a Financial Institution;
 - iii. Charge created on assets located in foreign countries;
 - iv. Destruction of property on which charge was created.

THE END



The Institute of Chartered Accountants of Pakistan

Company Law

Intermediate Examination
Spring 2012
Module D

7 March 2012
100 marks - 3 hours
Additional reading time - 15 minutes

- Q.1 (a) Mr. Zameer is the first chief executive of Ryan Industries Limited, a public company. The directors of the company are not satisfied with his performance. In view of the provisions of the Companies Ordinance, 1984 specify the term of office of Mr. Zameer and explain how he can be removed before expiry of the above term. *(05 marks)*
- (b) Describe the provisions of the Companies Ordinance, 1984 which restrict the chief executive of a public company from carrying on any business competing with the company's business. *(03 marks)*
- Q.2 Abid, Qasim and Tariq were the only members of Alpha Securities Limited, a public company and were elected as directors on 30 June 2009. Qasim expired on 2 February 2012 in a road accident.
- (a) Briefly describe the provisions of the Companies Ordinance, 1984 relating to the casual vacancy as described above. *(05 marks)*
- (b) Discuss the consequences if Abid and Tariq failed to fill the above vacancy. *(05 marks)*
- Q.3 Narrate the provisions of the Companies Ordinance, 1984 relating to a private company in respect of:
- (a) Appointment of the first directors and their tenure. *(03 marks)*
- (b) Procedure for election of subsequent directors. *(09 marks)*
- Q.4 Explain the exceptions to the following provisions as specified under the Companies Ordinance, 1984:
- (a) Where the directors decide to increase the capital of a company by issuance of further shares, such shares shall be offered to the members in proportion to the existing shares held by each member. *(04 marks)*
- (b) Every company shall hold its annual general meeting within a period of four months following the close of its financial year and not more than fifteen months after the holding of its last preceding annual general meeting. *(03 marks)*
- Q.5 (a) On 5 March 2012 FMG Limited issued fully paid shares to Mehboob Engineering (Pvt.) Limited against supply of machinery.
- State the requirements of the Companies Ordinance, 1984 which FMG Limited is required to comply with, in this respect. *(05 marks)*
- (b) Explain the provisions relating to issuance of duplicate share certificates as specified in the Companies Ordinance, 1984. *(05 marks)*

- Q.6 (a) Describe the restrictions that have been mentioned in the Companies Ordinance, 1984 regarding selection of names of companies. *(06 marks)*
- (b) PQR Limited has received security deposits from its customers. Describe the provisions of the Companies Ordinance, 1984 which PQR Limited is required to comply with, in respect of such deposits. *(05 marks)*
- Q.7 SQL Plastics Limited is a wholly owned subsidiary of a foreign company and has its registered office in Karachi.
- (a) List the books of account the company is required to maintain. *(04 marks)*
- (b) State the conditions which the directors shall be required to comply with if they want to keep the books of account at SQL's factory located in Peshawar. *(02 marks)*
- Q.8 (a) Describe the restrictions that have been imposed by the Companies Ordinance, 1984 in respect of investment by a company in its associated undertaking. *(06 marks)*
- (b) Identify the situations specified under the Companies Ordinance, 1984 in which a company shall be considered to be a subsidiary of another company. *(04 marks)*
- Q.9 Explain the provisions of the Companies Ordinance, 1984 relating to the following:
- (a) Company's register of mortgages. *(04 marks)*
- (b) Right to inspect a company's register of mortgages. *(04 marks)*
- Q.10 Atif Industries Limited (AIL) intends to carry out a restructuring whereby its share capital would be reduced from Rs. 3 billion to Rs. 1.8 billion. However, two of its creditors have refused to give their consent for the reduction of the share capital.
- Explain what options are available to AIL under the provisions of the Companies Ordinance, 1984 in the above situation. *(06 marks)*
- Q.11 (a) Few shareholders of Nadeem Industries Limited (NIL) have lodged a complaint that they have not received notice of the last annual general meeting.
- To satisfy the above shareholders, you are required to describe the circumstances in which the notices sent to the members would be deemed to be duly served, in accordance with the provisions of the Companies Ordinance, 1984. *(07 marks)*
- (b) In the context of the provisions of the Companies Ordinance, 1984 state the reasons on account of which a company could declare the appointment of a proxy as invalid. *(05 marks)*

(THE END)

COMPANY LAW
Suggested Answers
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- A.1 (a) Mr. Zameer being appointed as the first chief executive of Ryan Industries Limited, will hold office up to the first annual general meeting of the company or if a shorter period is fixed by the directors at the time of his appointment, on expiry of such period unless he earlier resigns or ceases to hold office.

Since the directors are not satisfied with the performance of Mr. Zameer they can remove him by a resolution passed by not less than three-fourths of the total number of directors for the time being, or by passing a special resolution in the general meeting of the company, notwithstanding anything contained in the articles or in any agreement between the company and Mr. Zameer.

- (b) Chief executive of a public company shall not directly or indirectly engage in any business which is of the same nature as and directly competes with the business carried on by the company of which he is the chief executive or by a subsidiary of such company.

A business shall be deemed to be carried on indirectly by the chief executive if the same is carried on by his spouse or any of his minor children.

Every person who is appointed as chief executive of a public company shall forthwith on such appointment disclose to the company in writing the nature of such business and interest therein.

- A.2 (a) Alpha Securities Limited (ASL) is a public company and is required to have at least three members as well as three directors. On the death of Qasim, the number of members and directors of ASL has been reduced to two which is in contravention of the provisions of the Companies Ordinance 1984.

The casual vacancy arising due to the death of Qasim may be filled up by Abid and Tariq and the person so appointed would hold office for the remainder of the term of Qasim in whose place he is appointed.

- (b) If ASL continues to carry on business with reduced number of members for more than six months, every person who is a member of the ASL i.e. Abid and Tariq, after these six months and is cognizant of the fact, that the company is carrying on business with less than three members shall be severally liable for the payment of the whole debts of the ASL contracted during that time and may be sued therefor without joinder in the suit of any other member.

- A.3 (a) The number and names of the first directors of the company shall be determined in writing by the majority of subscribers of the memorandum of the company and until so determined, all the subscribers of the memorandum, who are natural persons, shall be deemed to be the directors of the company.

The first directors shall hold office until the election of directors in the first annual general meeting of the company.

- (b) The following procedure should be followed by a private company while holding its election of directors:
- (i) The existing directors of a company must fix the number of elected directors of the company at least thirty-five days before the convening of the general meeting at which directors are to be elected. The number of directors so fixed cannot be changed except, with the prior approval of a general meeting of the company.
 - (ii) The notice of the general meeting at which election of directors is to be held must state:
 - the number of elected directors fixed for election.
 - the names of the retiring directors.

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- (iii) The company must receive a notice of intention to offer themselves for election as a director, from the persons who seek to contest an election, whether they are a retiring director or otherwise, at least 14 days before the date of the general meeting at which elections are to be held.

Any such person may at any time before the holding of election withdraw such notice.

- (iv) All notices received by the company must be circulated among the members, not later than seven days before the date of the general meeting in the manner provided by the company for sending of a notice of general meeting.
- (v) The directors of the company having a share capital shall, unless the number of persons who offer themselves to be elected is not more than the number of directors fixed, be elected by the members of the company in general meeting in the following manner,
- A member shall have such number of votes as is equal to the product of the number of voting shares or securities held by him and the number of directors to be elected.
 - A member may give all his votes to a single candidate or divide them between more than one of the candidates in such manner as he may choose; and
 - The candidate who gets the highest number of votes shall be declared elected as director and then the candidate who gets the next highest number of votes shall be so declared and so on until the total number of directors to be elected has been so elected.

- A.4 (a) The above condition to offer shares to the members in equal proportion, irrespective of class, is not applicable in the following cases :

- (i) Where an application is made to the Federal Government by any public company on the basis of a special resolution passed by it and such company is allowed by the Federal Government to raise its further capital without issue of right shares.
- (ii) When a public company reserves a certain percentage of further issue for its employees under "Employees Stock Option Scheme" to be approved by the Commission in accordance with the rules made under the Companies Ordinance, 1984.

- (b) In the case of a listed company, the Commission and in any other case, the registrar, may for any special reason extend the time within which any annual general meeting, not being the first such meeting, shall be held, by a period not exceeding thirty days.

- A.5 (a) Within thirty days of allotment of shares, FMG should:

File with the registrar a return of allotment, stating the number and nominal amount of the shares comprised in the allotment and such particulars as may be prescribed, of each allottee, and the amount paid on each share; and

Produce for the inspection and examination of the registrar a contract in writing constituting the title of the allottee to the allotment together with contract of sale for the machinery, such contract being duly stamped, and file with the registrar copies verified in the prescribed manner of all such contract and return stating the number and nominal amount of shares so allotted, the amount to be treated as paid-up, and the consideration for which they have been allotted.

- (b) (i) A duplicate share certificate shall be issued by the company within forty-five days from the date of application if the original:
- is proved to have been lost or destroyed, or
 - having been defaced or mutilated or torn is surrendered to the company.

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Suggested Answers
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- (ii) The company, after making such inquiry as to the loss, destruction, defacement or mutilation of the original, as it may deem fit to make, shall, subject to such terms and conditions, if any, as it may consider necessary, issue the duplicate:

Provided that the company shall not charge fee exceeding the sum prescribed and the actual expenses incurred on such inquiry.

- (iii) If the company for any reasonable cause is unable to issue duplicate certificate, it shall notify this fact to the applicant, along with the reasons thereof, within thirty days from the date of the application.
- (iv) If default is made in complying with the requirements of this section, the company and every officer of the company who is knowingly a party to the default shall be liable to a fine.
- (v) If a company, with intent to defraud, renews a certificate or issues a duplicate thereof, the company and every officer of the company who is in default shall be punishable with fine.

- A.6 (a) The restrictions on the names of Companies, as mentioned in the Companies Ordinance, 1984 are as follows:

- (i) No company shall be registered by a name which in the opinion of the Commission is inappropriate or deceptive or is designed to exploit or offend the religious susceptibilities of the people.
- (ii) A company shall not be registered by a name identical with that by which a company in existence is already registered, or so nearly resembling that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the registrar requires.
- (iii) Except with the prior approval in writing of the Commission, no company shall be registered by a name which contains any words suggesting or calculated to suggest.
- The patronage of any, past or present, Pakistani or foreign, Head of state.
 - Any connection with the Federal Government or a Provincial Government or any department or authority of any such government;
 - Any connection with any corporation set up by or under any Federal or Provincial law; or
 - The patronage of or any connection with any foreign Government or any international organization.

- (b) PQR Limited shall comply with the following requirements:

PQR, and no officer of PQR, shall receive or utilize any money received as security or deposit, except in accordance with a contract in writing; and all moneys so received shall be kept or deposited by the company or the officer or agent concerned, as the case may be, in a special account with a scheduled bank:

Provided that this section shall not apply where the money received is in the nature of an advance payment for goods to be delivered or sold to an agent, dealer or sub-agent in accordance with a contract in writing.

- A.7 (a) SQL Plastic Limited must keep proper books of account with respect to:

- (i) all sums of money received and expended by the company;
- (ii) all sales and purchases of goods by the company;
- (iii) all assets of the company;
- (iv) all liabilities of the company; and

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- (v) in the case of a company engaged in production, processing, manufacturing or mining activities, such particulars relating to utilization of material or labour or other inputs or items of cost, or any other particulars as required by the Commission through a general or special order to be included in the books of accounts.
- (b) As the directors of SQL Plastic Limited intend to keep the books of account at a place other than the registered office, SQL Plastic Limited must file with the registrar a notice in writing within seven days of the decision, giving the full address of the other place.
- A.8 (a) A company shall not make any investment in any of its associated companies or associated undertakings except under the authority of a special resolution which shall indicate the nature, period and amount of investment and terms and conditions attached thereto.
- Provided that the return on investment in the form of loan shall not be less than the borrowing cost of investing company.
- No change in the nature of an investment or the terms and conditions attached thereto shall be made except under the authority of a special resolution.
- (b) A company shall be deemed to be a subsidiary of another when:
- (i) that other company directly or indirectly:
- owns or holds or control more than fifty per cent of its voting securities or
 - has power to elect and appoint more than fifty per cent of its directors: or
- (ii) the first mentioned company is a subsidiary of any company or body corporate which is that other's subsidiary
- A.9 (a) Every company shall keep a register of mortgages and enter therein all mortgages and charges specifically affecting property of the company and all floating charges on the undertaking or on any property of the company, giving in each case a short description of the property mortgaged or charged, the amount of the mortgage or charge and, except in the case of securities to bearer, the names of the mortgages or persons entitled thereto.
- If any officer of the company knowingly and willfully authorises or permits the omission of any required to be made in pursuance of sub-section (1), he shall be liable to a fine.
- (b) The register of mortgages and charges shall be open at all reasonable times to the inspection of any creditor or member of the company without fee, and the register of mortgages shall also be open to the inspection of any other person on payment of such fee, as the company may fix.
- If inspection of the said copies or register is refused, the company shall be liable to a fine and every officer of the company who knowingly authorises or permits the refusal shall incur the like penalty.
- A.10 Atif Textiles Limited (ATL) may apply to the court and if the court thinks fit, dispense with the consent of the creditors, on the company securing payment of their debt or claim by appropriating, as the Court may direct, the following amount,
- (a) If the company admits the full amount of his debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim; and
- (b) If the company does not admit or is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the Court after the like inquiry and adjudication as if the company were being wound up by the Court.

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- A.11 (a) (i) A notice may be given by a company to any member either personally or by sending it by post to him to his registered address or, if he has no registered address in Pakistan, to the address, if any, within Pakistan, supplied by him to the company for the giving of notices to him.
- (ii) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and, unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.
- (iii) If a member has no registered address in Pakistan, and has not supplied to the company an address within Pakistan for the giving of notices to him, a notice addressed to him or to the shareholders generally and advertised in a news paper circulating in the province or the part of Pakistan not forming part of a province in which the registered office of the company is situated shall be deemed to be duly given to him on the day on which the advertisement appears.
- (iv) A notice may be given by the company to the person entitled to a share in consequence of the death or insolvency of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title or representatives of the deceased, or assignees of the insolvent, or by any like description, at the address, if any, in Pakistan supplied for the purpose by the person claiming to be so entitled, or until such an address has been so supplied by giving the notice in any manner in which the same might have been given if the death of insolvency had not occurred.
- (v) A notice may be given by the company to the joint holders of a share by giving the notice to the joint-holder named first in the register in respect of the share.
- (vi) In the case of a listed company such notice shall be also published at least in one issue each of a daily newspaper in english language and a daily newspaper in a urdu language having circulation in the Province in which the stock exchange on which the company is listed is situate.
- (b) The company could render the appointment of a proxy invalid on account of the following reasons:
- (i) If a member appoints more than one proxy to attend any one meeting;
- (ii) The person nominated as proxy is not a member unless the articles of the company permit appointment of a non-member as proxy.
- (iii) When the instrument appointing a proxy -
- is not in writing; or
 - is not signed by the appointer or his attorney duly authorised in writing, or in the case of a body corporate , does not contain its seal or signed by a duly authorised officer or an attorney
- (iv) Proxy is not lodged with the company at least forty-eight hours before the time of the meeting.

(THE END)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN

EXAMINERS' COMMENTS

SUBJECT	SESSION
Company Law	Intermediate Examination - Spring 2012

General:

It was quite an easy paper and the overall result was satisfactory.

Question-wise comments are given below:

- Q.1 (a) The term of office of first chief executive is upto the first annual general meeting. Most students didn't seem to read the question carefully. Instead of the term of office of first chief executive they mentioned the term of office of subsequent chief executives which is three years. Moreover, only few good students specified the fact that a shorter period may also be fixed by the directors. The provisions related to chief executive's removal were mentioned correctly by the majority.
- (b) It was an easy question based on Section 203 of the Companies Ordinance, 1984. Almost all the students attempted this question well. The most common omission was the students' failure to mention that business carried out by the spouse or minor children would also be considered as being indirectly carried out by the chief executive.
- Q.2 (a) Most of the student failed to identify the fact that with the death of Qasim the number of members and directors of the company has reduced below the minimum number specified by Companies Ordinance, 1984. Some of the candidates were of the opinion that the casual vacancy would be filled by SECP. A vast majority mentioned incorrectly that the term of office of the new director shall be three years. According to the Companies Ordinance, 1984 the term of office of the new director in this case should end at the same time as that of the present directors.
- (b) This part of the question was well attempted by majority of the students as they correctly explained the liabilities of existing members if they continue to carry on business with less than minimum number of members for more than six months. Some students were confused as to the incidence of liability (after six months or during six months). Many students did not specify the fact that the liability would arise only if the members violation was carried out knowingly.

Examiners' comments on Company Law – Spring 2012

- Q.3 (a) This was a very easy question based on Section 176(1) & (2) of Companies Ordinance, 1984 and was well attempted by most of the candidates.
- (b) This part of the question based on Section 178 of the Companies Ordinance, 1984 was also well attempted by the majority. The most common mistake was the failure on the part of the students to consider the fact that the provisions pertaining to private companies were to be mentioned.
- Q.4 (a) Majority of the student were unable to explain the exception to the provision which requires a company to issue further shares to members in proportion to their existing holdings. Many students incorrectly enumerated the following exceptions:
- (i) Right shares offered to members which remain unsubscribed may be offered to others.
 - (ii) Issue of bonus shares
 - (iii) Disposal of fractional shares
- Only few students were aware about the exceptions as have been mentioned in Section 86 (1) of the Companies Ordinance, 1984.
- (b) This was a simple question regarding exception to the rule related to the period of holding annual general meeting. Most of the students attempted it well; however, some students were confused between a listed company and a public company.
- Q.5 (a) This question required the students to state the requirement to be complied with when a company issues fully paid shares against supply of machinery. Very few students could answer well as the majority did not know that the company is required to file a return of allotment with the registrar along with the prescribed documents, when shares are issued for consideration other than cash.
- (b) In this question the students were required to explain the provisions related to issuance of duplicate certificates. It was a low scoring question. Many answers were limited to stating that when a certificate is lost, a duplicate may be issued. The students are advised that in such general questions where the requirement is to mention the related provisions, they should mention all the directly related provisions. For example, in this question based on Section 75 of the Companies Ordinance, 1984, they should have stated the period allowed for issuance of duplicate certificate as well as the penal provisions. However, students also mentioned the CDC requirements, which were not relevant.
- Q.6 (a) This part of the question was very well attempted as most students were well aware of the restrictions imposed regarding selection of name of the company as have been described in Section 37 of the Companies Ordinance, 1984.

Examiners' comments on Company Law – Spring 2012

- (b) Most students did not read the question carefully. Consequently, they discussed the provisions regarding invitation of deposits instead of provisions related to the holding and utilization of the security deposits. Many of those who understood the question correctly were unaware of one or more of the following:
- Account in which the security deposits are kept, should be in a scheduled bank.
 - Deposits should not be received without a contract in writing
 - Deposits can be utilized as per agreement.
- Q.7 (a) This was an easy question but a significant number of students failed to perform well. Instead of mentioning the books of accounts that are required to be maintained under Companies Ordinance, 1984, they mentioned register of members, directors, mortgages and charges etc. Many students wasted time in mentioning the requirements related to preparation of financial statements.
- (b) Generally the question was well attempted. However, many students were confused whether the notice for keeping books at factory is to be sent to SECP or the Registrar. Some of them incorrectly mentioned that the factory management would need to send quarterly summaries to the registered office.
- Q.8 (a) Generally the students got good marks as they were well aware about the restriction regarding investment in associated undertaking. However, only few students could specify that the term investment also includes advances and loans.
- (b) This was a straightforward question requiring explanation of the term “subsidiary”. Majority of the students secured full marks. The most common error was on account of confusion between “50%” and “more than 50%”.
- Q.9 (a) Most of the students got low marks on this part of the question as they failed to explain the complete provisions in respect of Company’s register of mortgages specially the contents to be entered in the register. Some students got confused and wasted time in describing the various types of mortgages and charges, which were not required.
- (b) This part of the question based on Section 136 of the Companies Ordinance 1984 was generally well attempted. However, many students didn’t know that the register may be inspected by the Company’s creditors also and that it may also be inspected by any other person on payment of such fee as may be fixed by the Company.
- Q.10 Only few students were aware of the provisions of Section 100 of the Companies Ordinance, 1984, which pertains to a situation where some of the creditors do not consent to the company’s decision to reduce its capital. Most students described the general provisions related to the reduction in share capital, which were not required.

Examiners' comments on Company Law – Spring 2012

- Q.11 (a) Generally the performance in this question was good. The major error was the omission to mention the provisions regarding service of notice in case of death or insolvency of the member and service of notice in case of joint holders. Some students misunderstood the question and narrated the circumstances in which a company is not responsible for non-service of notice.
- (b) This was a straightforward question based on Section 161 of the Companies Ordinance, 1984 and was answered well by the majority.

THE END



Company Law

Intermediate Examinations
Autumn 2012
Module D

3 September 2012
100 marks - 3 hours
Reading time – 15 minutes

Q.1 UHY Limited intends to raise funds through issuance of shares to the public. Proceeds of the issue would be utilized for installation of a new plant. The directors plan to issue the prospectus on 10 September 2012. The subscription list will be opened in the second or the third week of October 2012. An expert opinion would also be required to be included in the prospectus.

You are required to advise the company, based on the provisions of the Companies Ordinance 1984, in respect of the following:

- (a) Date of publication of the prospectus and the opening of subscription list. *(04 marks)*
- (b) The places where UHY would be required to make available copies of its prospectus. *(02 marks)*
- (c) The conditions that UHY would be required to comply with in respect of the inclusion of the statement by the expert. *(03 marks)*

Q.2 Neptune Technologies Limited has recently established its branch office in Malaysia. Tariq, the Branch Manager for Malaysia, has requested the directors to provide him the common seal of the company that will be required to be affixed on certain documents.

State the conditions, specified under the provisions of the Companies Ordinance, 1984, which would be required to be fulfilled by Tariq while using the common seal of the company. *(07 marks)*

Q.3 (a) Describe the term “Member” in accordance with the Companies Ordinance, 1984. *(04 marks)*

(b) The board of directors of Sunrise (Private) Limited are planning to raise funds amounting to Rs. 80 million from the general public to meet the cost of expansion of its production capacity. The current authorized and paid up capital of the company is Rs. 200 million.

Advise the company about the changes that would be required to be incorporated in its memorandum and articles of association, to allow the company to raise capital from the public. *(04 marks)*

Q.4 The trading business of BR (Private) Limited (BRPL) has been growing significantly during the last few years. To cater to the needs of its expanding business, it has arranged a short term loan of Rs. 10 million which will be provided by XYZ Bank Limited on 1 October 2012 and would be secured by mortgage of factory building of the company. The entire amount of loan would be repaid on 1 May 2013.

In the context of provisions of the Companies Ordinance, 1984 discuss the following:

- (a) The responsibilities of BRPL relating to the registration of mortgages and matters related thereto. *(05 marks)*
- (b) Importance of registering the charge with the registrar of companies. *(03 marks)*

- Q.5 Discuss the following, in the light of provisions of the Companies Ordinance, 1984:
- Haris is director of ABC Limited. He intends to assign his office to his friend, Gibran, to act for him during his absence from Pakistan. **(03 marks)**
 - On 30 August 2012, Rafiq Nizami & Co. (RNC), Chartered Accountants, were appointed as auditors of Delton Tractors Limited (DTL), a listed company, for the year ending 30 June 2013. Zafar, a partner of RNC, holds 5,000 shares of DTL. **(03 marks)**
- Q.6 Explain whether or not the following statements are in accordance with the provisions of the Companies Ordinance, 1984.
- If the chairman of the Board of directors is not present within ten minutes after the time appointed for holding the general meeting, then the senior most member of the Board will preside as chairman of the meeting **(03 marks)**
 - The liability of a director is always limited, similar to the liability of a shareholder of a limited company. **(03 marks)**
 - A director shall, *ipso facto*, cease to hold office if he absents himself from any meeting of the directors. **(03 marks)**
 - All moneys deposited with a company by its employees in pursuance of their contract of service with the company may be utilized by the company. **(03 marks)**
- Q.7 (a) The Board of Directors of Kamran Limited, a listed company, declared interim dividend for the half year ended 30 June 2012. However, subsequently it was found that there was a defect in the appointment of Farhan, a director, who participated in the meeting in which the dividend was approved.
- Describe the impact of the defect in appointment of Farhan on the dividend declared by the company and the current status of Farhan. **(03 marks)**
- (b) Moonlight Limited has provided a copy of its board resolution to LMO Bank Limited for opening of a current account. However, the bank objected that the common seal of the company was not fixed on the copy of board resolution.
- Explain whether the objection raised by LMO Bank Limited is in accordance with the provisions of Companies Ordinance, 1984. **(03 marks)**
- Q.8 Jameel is a Director of FG Limited. He is indirectly interested in a contract for purchase of machinery by FG Limited. The contract is expected to be executed in due course.
- In view of the provisions of the Companies Ordinance, 1984, you are required to discuss:
- The manner and the period within which Jameel can disclose his interest and the validity of such disclosure. **(05 marks)**
 - The responsibility of FG Limited regarding keeping a record of the information provided by Jameel about his interest in the contract. **(06 marks)**
- Q.9 The Directors of Worldwide Motors Limited (WML) and its subsidiary Worldwide Autos (Private) Limited (WAPL) have decided in their respective board meetings to shift their registered offices to Landmark Centre, G.T. Road, Lahore.
- The present addresses of the registered offices are:
- Worldwide Motors Limited, 101, Hali Road, Lahore.
 - Worldwide Autos (Private) Limited, 2nd Floor, Modern Avenue, Peshawar.
- You are required to list the procedures to be followed by each company for shifting its registered office, as specified under the provisions of the Companies Ordinance, 1984. **(10 marks)**

Q.10 Narrate the provisions of the Companies Ordinance, 1984 related to the following:

- (a) Authentication of balance-sheet. *(04 marks)*
- (b) Quorum requirements of a general meeting. *(06 marks)*

Q.11 On 10 June 2012, Shakeel purchased 8% shares of TM Limited, a listed company. He acquired further 5% and 8% shares of TM Limited on 20 July 2012 and 31 August 2012 respectively.

In view of the provisions of the Companies Ordinance, 1984 you are required to discuss Shakeel's responsibility as regards submission of Statement of Beneficial Ownership along with the relevant dates. *(07 marks)*

Q.12 The Directors of Silver Limited, a listed company, plan to redeem 10% preference shares of the company.

In view of the provisions of the Companies Ordinance, 1984 you are required to:

- (a) Explain the conditions that Silver Limited needs to comply with, if it intends to redeem preference shares out of the proceeds of a fresh issue of shares. *(02 marks)*
- (b) Identify what other modes of redemption of preference shares are available to Silver Limited. *(04 marks)*

(THE END)

COMPANY LAW
Suggested Answers
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- A.1 (a) A prospectus is required to be dated and that date shall be considered the date of its publication. Therefore, the prospectus of UHY Limited should be dated September 10, 2012 as the management plans to publish on that date.
The advertisement of a prospectus is required to be published in a newspaper not less than seven days and not more than thirty days before the subscription list, is due to open.

As UHY Limited plans to publish the prospectus on 10 September 2012, it should open the subscription list within 30 days, that is by 10 October 2012 and not by mid of October.

However, in case UHY Limited wishes to open the subscription list in the second or the third week of October 2012, it would need to apply to the Commission and the Commission may for special reasons, allow the company to publish the prospectus more than thirty days before the subscription list is due to open.

- (b) UHY Limited is required to make available sufficient number of copies of its prospectus at the following places:
- (i) registered office of the company.
 - (ii) with the stock exchange at which the company is listed or proposed to be listed; and,
 - (iii) with the bankers to the issue,
- (c) A prospectus which includes a statement made by an expert shall not be issued, unless:
- (i) The expert is not involved in the formation, promotion or management of the company,
 - (ii) The expert has given his written consent to the issue thereof with the statement included in the form and context in which it is included and has not withdrawn such consent before the delivery of a copy of the prospectus. for registration; and
 - (iii) a statement that he has given and has not withdrawn his consent as aforesaid appears in the prospectus.

- A.2 Neptune Technologies Limited (NTL), may, if authorized by its articles, have for use in Malaysia, an official seal which shall be a facsimile of the common seal of the company, with the addition on its face, of the name of the country (Malaysia) where it is to be used.

NTL shall authorize Tariq, by writing under its common seal, to affix the same on any deed or the document to which NTL is a party in Malaysia.

Mr. Tariq affixing any such official seal shall certify on the agreement, to which the seal is affixed, the date and place of affixing the same by writing under his hand.

- A.3 (a) **Member**
Member means, in relation to a company having share capital, subscriber to the memorandum of the company and every person to whom is allotted, or who becomes the holder of, any share, scrip or other security which gives him a voting right in the company and whose name is entered in the register of members, and, in relation to a company not having a share capital, any person who has agreed to become a member of the company and whose name is so entered.

COMPANY LAW
Suggested Answers
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(b) Sunrise (Private) Limited should make the following changes in the Memorandum of Association:

- The company should remove the word (Private) from its name.
- Increase the authorized capital of the company by Rs.80 million or more.

Sunrise (Private) Limited should also change its Articles of Associations so as to remove:

- word (Private) from its name.
- restriction on transfer of shares;
- limitation on the number of its member;
- prohibition of any invitation to the public; and

A.4 (a) The duties of BRPL relating to the transactions are as follows:

- (i) BR (Private) Limited should file the prescribed particulars of the floating charge, along with a copy of the instrument by which the floating charge would be created or evidenced duly verified in the prescribed manner, with the registrar for registration within twenty-one days after the date of its creation.
- (ii) The company shall intimate to the registrar about the payment in full against the floating charge created by the company within twenty one days from the date of the payment i.e. on or before 22 May 2013.

It is also the responsibility of the company to pay the amount of registration fee while filing the prescribed particulars of mortgage or charge created by the company.

(b) If the charge created on BRPL's property is not registered in time, it shall be void against the liquidator and the creditor of the company but without prejudice to any contract or obligation for repayment of the money thereby secured and the money thereby secured shall immediately become payable.]

A.5 (a) Mr.Haris cannot assign his office to his friend, Gibran, unless:

- (i) There is a provision in the articles of the company; or
- (ii) There is an agreement between any person and the company for empowering a director of the company to assign his office to another person.

Any assignment of office made in accordance with the above, must be approved by a special resolution of the company.

(b) Mr. Zafar is required to disclose the fact that he holds shares in DTL, on the firm's appointment as auditor and Mr. Zafar shall disinvest such shares within ninety days of such appointment.

A.6 (a) The statement is not correct. If the chairman of the board of directors is not present within fifteen minutes after the time appointed for holding the meeting, any one of the directors present may be elected to be chairman, and if none of the directors is present or willing to act as chairman, the members present shall choose one of their number to be the chairman.

COMPANY LAW
Suggested Answers
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- (b) The statement is not correct. A limited company may, if so authorised by its articles, by special resolution, alter its memorandum so as to render unlimited the liability of its directors or of any director.

However, an alteration of the memorandum making the liability of any of the directors unlimited shall not apply, without his consent, to a director who was holding the office from before the date of the alteration, until the expiry of the term for which he was holding office, on that date.

- (c) The statement is not correct. A director shall ipso facto, cease to hold office if he absents himself from three consecutive meetings of the directors or from all the meetings of the directors for a continuous period of three months, whichever is the longer, without leave of absence from the directors.
- (d) The statement is not correct. Moneys or securities deposited with a company by its employees in pursuance of their contracts of service with the company may be utilized by the company in case of breach of the contract of service on the part of the employee as provided in the contract and after notice to the employee concerned.

- A.7 (a) The interim dividend approved in the Board meeting of the Kamran Limited shall not become invalid merely on the ground of any defect subsequently discovered in the appointment of Mr. Farhan.

However, subsequent to the discovery of defect, Mr. Farhan would not be permitted to act as a director until the defect has been rectified.

- (b) The objection raised by LMO Bank Limited is not justified as the copy of board resolution or any document or proceeding is taken as authenticated if signed by the chief executive or a director, secretary or other authorized officer of Moonlight Limited and need not be under its common seal.

- A.8 (a) Jameel shall make the disclosure at the meeting of the board of directors at which the question of entering into the contract is first taken into consideration.

Jameel can also serve a general notice to the other directors to the effect that he is interested in such a contract.

The general notice served to the directors shall be of no effect, unless Jameel takes reasonable steps to ensure that it is brought up and read at the first meeting of the directors after it is given.

Any such general notice shall expire at the end of the financial year in which it is given but may be renewed for further period of one financial year at a time, by a fresh notice given in the last month of the financial year in which it would otherwise expire.

- (b) FG Limited is responsible for keeping a record of the following information provided by Jameel in a register (Register of Contracts, Arrangements and Appointments in which directors etc. are interested):
- (i) The date of the contract.
 - (ii) The names of the parties thereto.
 - (iii) The principal terms and conditions thereof.

COMPANY LAW
Suggested Answers
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- (iv) The date on which it was placed before the directors.
- (v) The names of the directors voting for and against the contract and the names of those remaining neutral.
- (vi) The name of Mr. Jameel and the extent/ nature of his interest in the contract..

The above particulars shall be entered by FG Limited in the relevant register, within seven days of the meeting of the directors at which the contract is approved.

A.9 The procedure required to be followed by each company is different as the registered office of the holding company is being shifted from one place to another in the same city whereas the registered office of the subsidiary is being shifted from a city in the Province of KP to a city in the Province of Punjab.

(a) Procedure to be followed by Worldwide Motors Limited:

- (i) A resolution for shifting of registered office of Worldwide Motors Limited from one place to another within a city is required to be passed by the Board of Directors at their meeting, and this step has already been taken.
- (ii) The company will be required to file a notice of shifting the registered office within twenty-eight days of the change, to the registrar on the prescribed form.

(b) Procedure to be followed by Worldwide Autos (Private) Ltd:

- (i) Pass a Special Resolution in a general meeting of shareholders to alter the provisions of the memorandum of association of the company for shifting of registered office from KP to Punjab..
- (ii) A printed or typed copy of the special resolution shall, within fifteen days from the passing thereof, be filed with the registrar duly authenticated by the chief executive or secretary of the WAPL.
- (iii) Submit a petition for alteration to the Commission along with a copy of special resolution.
- (iv) The Commission will confirm the alteration in the memorandum of association related to registered address of the company on Petition, if it is satisfied that the WAPL has complied with the following:
 - Sufficient notice has been given to every debenture holder of the Company, and to any person or class of persons whose interest will, in the opinion of the Commission, be affected by the alteration; and
 - With respect to every creditor who in the opinion of the Commission is entitled to object, and who signifies his objection in the manner directed by the Commission either his consent to the alteration has been obtained or his debt or claim has been discharged or determined, or has been secured to the satisfaction of the Commission .
- (v) A certified copy of the Order confirming the alteration, together with a printed copy of the memorandum as altered will have to be filed by WAPL with the registrar within ninety days from the date of the Order.
- (vi) The registrar will register the memorandum and certify the registration under his hand, and the certificate shall be conclusive evidence that all the requirements of the Ordinance regarding alteration and confirmation have been complied with.

COMPANY LAW
Suggested Answers
Intermediate Examinations – Autumn 2012

A.10 (a) Authentication of balance-sheet:

- (i) The balance-sheet and profit and loss account or income and expenditure account shall be approved by the directors and shall be signed by the chief executive and at least one director.
- (ii) When the chief executive is for the time being not in Pakistan, then the balance-sheet and profit and loss account or income and expenditure account of the company shall be signed by not less than two directors for the time being in Pakistan, but in such a case there shall be subjoined to the balance-sheet and profit and loss account or income and expenditure account a statement signed by such directors explaining the reasons for non-compliance with the provision described in the preceding paragraph.
- (iii) If a company makes default in complying with the requirement of this section, the company and every officer of the company who is knowingly and willfully in default shall be liable to a fine not exceeding five thousand rupees.

(b) The Quorum requirements of a general meeting shall be:

- (i) In the case of a public listed company, unless the articles provide for a larger number, not less than ten members present personally who represent not less than twenty five per cent of the total voting power, either of their own account or as proxies;
- (ii) In the case of any other company, unless the articles provide for a larger number, two members present personally who represent not less than twenty-five per cent of the total voting power, either of their own account or as proxies:

However, if within half an hour from the time appointed for the meeting, a quorum is not present, the meeting, if called upon the requisition of the members, shall be dissolved; in any other case, it shall stand adjourned to the same day in the next week at the same time and place, and, if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present, being not less than two, shall be a quorum, unless the articles provide otherwise; and

- (iii) In the case of a single member company, single member present in person or by proxy.

A.11 Mr. Shakeel will be required to submit a statement of Beneficial Ownership to the Registrar and SECP when his shareholding exceeds 10% i.e. when he purchased the 5% shares on 20 July 2012.

The statement is required to be submitted within 30 days and hence he will have to submit the return on or before 19 August 2012.

Thereafter, he will be required to submit a similar statement within 15 days of any change in ownership. Hence, he shall submit a return as regards the purchase of 8% shares on 31 August 2012, on or before 15 September 2012.

COMPANY LAW
Suggested Answers
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- A.12 (a) To redeem preference shares out of the proceeds of a fresh issue, the premium, if any, payable on redemption must have been provided for out of the profits of the company before the shares are redeemed or out of the share premium account
- (b) Subject to the terms and manner prescribed by the articles of association, other modes of redemption of preference shares available to the Silver Limited are follows:
- (i) out of profits of the company which would otherwise be available for dividend,
 - (ii) out of a sinking fund created for this purpose, or
 - (iii) out of sale proceeds of any property of the company.

(THE END)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN	
EXAMINERS' COMMENTS	
SUBJECT Company Law	SESSION Intermediate Examination - Autumn 2012

General:

A reasonable performance was witnessed in this attempt. Approximately 34% examinees were able to pass this paper. The result could have been better had the students been a bit more careful and read and understood the questions well before starting to write their answers.

Question-wise comments are as under:

- Q.1 (a) A practical situation was given where a company was planning to issue the subscription list on a date which could be either a few days before or after 30 days of issuance of prospectus. Majority of the students were able to identify correctly that the subscription list should be opened not less than 7 days and not more than 30 days before the issuance of the prospectus. However, many of them did not specify as to what would the company be required to do if the date of opening of subscription list falls after 30 days of the issuance of prospectus. Many of them mentioned that in such case the company would have to apply to the Registrar instead of mentioning SECP.
- (b) This part related to submission of copies of prospectus. It was quite easy and even the weaker students were able to produce a large part of the correct answer on the basis of their general understanding of the law.
- (c) A significant number of students somehow explained the provisions regarding the qualification and independence of the expert instead of company's obligation of obtaining written consent of the expert and inclusion of a statement in this regard in the prospectus.
- Q.2 This was a simple question pertaining to the use of official seal of a company at its branch office in a foreign country and was well attempted by most of the students. The weaker students generally missed the following points:
- (i) Company must be authorized by its article to issue a separate seal.
- (ii) Branch manager shall certify on the agreement to which the seal is affixed, the date and place of affixing it.
- Some of the students failed to understand the question and explained irrelevant matters like the responsibilities of the branch manager regarding the safe custody and use of seal.
- Q.3 (a) Very few students were able to provide a proper definition of the term "Member" as has been provided under the Companies Ordinance, 1984. Most of them tried to guess the answer but were unable to cover more than one or two points.

Examiners' comments on Company Law – Autumn 2012

- (b) According to this part of the question a private company was planning to raise funds from the general public. The paid-up and the authorized capital of the company were the same. The candidates were required to advise the company about the changes that the company would be required to make in its memorandum and articles of association. A significant majority of the candidates were able to provide correct answers and many of them secured full marks. Some candidates failed to understand the question and made the following types of mistakes:
- (i) Explaining the detailed procedure for making such changes, which was not required.
 - (ii) Some students wrote the procedure for listing of a company with the stock exchange and increasing the number of directors to seven etc.
 - (iii) Some students went even further and discussed such things as issue of prospectus, issue of shares at a premium and bankers to the issue etc.
- Q.4 (a) This was an easy question pertaining to company's responsibility as regards registration of charge with the Registrar and matters related thereto. Questions from this area are quite frequently asked in the examination and the students seemed well prepared and performed really well. The only point which was often missed was the one related to the responsibility of the company regarding intimation to Registrar on repayment of loan.
- (b) Majority of the student correctly explained the impact of not registering the charge with the Registrar and secured high and even full marks.
- Q.5 (a) Generally the students explained the provisions regarding the appointment of alternate directors whereas they were required to explain the provisions regarding assignment of office by a director. Some students were too confused and offered provisions related to casual vacancy.
- (b) This was the easiest question based on section 254 (3f) of the Companies Ordinance, 1984 and was well attempted by majority of the students.
- Q.6 In this question, four statements were given and the candidates were required to comment on them in the light of Companies Ordinance, 1984. Students' response on each statement is discussed below:
- (a) Most students were aware that in the absence of the Chairman, any director may be chosen as the Chairman and it is not necessary that he should be the senior most member of the board. Majority of the students were also able to mention that the time period of 10 minutes was incorrect and that it should be 15 minutes. However, very few students could specify the 3rd point that if none of the directors is present or willing to be the Chairman, the members present may choose any one of them as the Chairman.

Examiners' comments on Company Law – Autumn 2012

- (b) Surprisingly, a large number of students mentioned that the liability of the directors is unlimited as they are involved in the management of the company. A good number of student also wasted their time by explaining the provisions of Companies Ordinance regarding the disclosure responsibility of the director/member, promoters and officers at the time of election of directors, if the liability of directors is unlimited. Only few students were able to mention correctly that the liability of directors may be unlimited and to discuss the relevant provisions under section 112.
 - (c) About 90% students performed well in this part by covering all the relevant points mentioned under section 188(b) of the Companies Ordinance, 1984.
 - (d) This part related to section 227(1) of the Ordinance. Most of the students could cover only one point i.e. that money deposited by the employees of the company cannot be utilized except in case of breach of the contract of service by the employee. Very few could explain any further. Some students went into unnecessary details as to where the money should be deposited.
- Q.7
- (a) Students were required to describe the impact on a Company's decision to declare dividend where a defect had been subsequently found in the appointment of one of its directors. Most of the students were aware that subsequent discovery of a defect in the appointment of a director does not affect the decisions taken in the meeting of board of director which were attended by such director. However, many students were of the opinion that the director ceases to hold office after discovery of defect in his appointment and therefore new director should be appointed in his place. The correct position is that such a person is not permitted to act as a director till the removal of such defect.
 - (b) This was a simple question but most of the students did not know that it is not necessary to affix common seal on the board resolution. Under section 51 of the Ordinance, a board resolution is considered authentic, if signed by the chief executive, or a director or secretary or an authorized officer of the company.
- Q.8
- (a) Apparently this question seemed difficult but the students managed to attempt it well. Significant mistakes were also seen and have been enumerated below:
 - (i) Some of the students mentioned that the concerned director shall give notice, declaring his interest in an agreement, in the annual general meeting whereas such notice is required to be given to the directors, prior to holding of directors meeting in which the question of entering into the contract is to be considered.
 - (ii) Some of the candidates mentioned that a person cannot continue to remain director of the company if he is interested in any contract and must immediately resign from the office of director.

Examiners' comments on Company Law – Autumn 2012

- (b) Almost all the students got high marks on this part of the question as they were well aware that the company is required to keep a register of contracts, arrangements and appointments in which directors are interested and the information which is required to be recorded in such register. Some students mentioned the provisions relating to the enclosure of a statement of material fact with the notice of general meeting of members which was entirely irrelevant.
- Q.9 This question contained a practical situation and required the students to specify the procedure to be followed for shifting the registered office of a holding company and its subsidiary. As the holding company was shifting the registered office within the same province, it was only required to intimate to the registrar in this respect. On the other hand, the subsidiary was shifting registered office from one province to another; therefore, it had to alter its memorandum of association. Very few students read the question carefully and narrated the same procedure i.e. that of alteration of memorandum, in each case. Many students mentioned procedure for alteration of object clause of the memorandum of association which was entirely irrelevant.
- Q.10 (a) Majority of the students were well versed with the provisions regarding authentication of balance sheet and got high marks. Those who failed to get good marks on this question made the following mistakes:
- (a) Failed to mention that the balance sheet (financial statements) are approved by the Board of directors.
 - (b) Some of the students were of the opinion that the financial statements are signed by the Chairman of the board of directors.
 - (c) Many students failed to mention that when the financial statements are signed by two directors, due to the absence of Chief Executive from Pakistan, a statement explaining the said reason should be subjoined to the accounts.
- (b) This part related to requirement of quorum for general meeting and was well attempted. Students generally covered all the points mentioned in section 162 (2) (a) to (c) of the Companies Ordinance, 1984 and gained full marks. The students need to be careful about the words they use in papers of law. An interesting point noted in many replies was that students mentioned “members representing 25% of the total voting power” instead of “members representing not less than twenty-five per cent of the total voting power”. There is a great difference between the two sentences. Although there was a minor penalty for such an error in this case, in many situations such a mistake could be too damaging.
- Q.11 This question was based on a practical situation whereby the responsibilities of a member having beneficial ownership in a company under section 222 of the Companies Ordinance, 1984 were to be discussed. Most of the students managed to produce correct and relevant answers and gained good marks. Some students mentioned the provisions from the ordinance but did not specify their practical implication in the given situation.

Examiners' comments on Company Law – Autumn 2012

Further, few students went into too much detail and wrote about the particulars of the prescribed forms and details of gain or losses made by Mr. Shakeel etc. This information was not relevant. The students must keep in mind the requirement of the question, in order to avoid wastage of time. The number of marks allocated to a question can also be used as a guide to assess the extent of detail that is required to be provided.

- Q.12 Both parts of the question were from section 85 of the Ordinance pertaining to Redemption of Preference Shares and were generally attempted well. However, in part (a) many students narrated the procedure for redemption of shares instead of the conditions which are required to be complied with by the company. In part (b) some students did not know the relevant provision and mentioned cash, ordinary shares, loan from bank etc., as the modes of redemption.

THE END



The Institute of Chartered Accountants of Pakistan

Company Law

Intermediate Examination
Spring 2013
Module D

4 March 2013
100 marks - 3 hours
Additional reading time - 15 minutes

- Q.1 Stars (Private) Limited (SPL) was incorporated in January 2012. Bilal owns 90% shares of SPL. The remaining 10% shares are owned by his wife. Bilal intends to convert the company into a public limited company (unlisted).
- (a) List down the necessary changes that SPL would have to make in its articles of association. (06)
- (b) Narrate the provisions of the Companies Ordinance, 1984 relating to the holding of statutory meeting and issuance of statutory report, which SPL would be required to comply with, after conversion into a public company. (08)
- Q.2 The Board of Directors of Nihal Trading Limited (NTL) plans to reduce NTL's share capital. You are required to advise the Board as regards:
- (a) Different modes of reduction of share capital as have been specified under the Companies Ordinance, 1984. (03)
- (b) Procedure that NTL would have to follow to reduce its share capital. (05)
- Q.3 (a) If a person who is directly or indirectly the beneficial owner of more than ten percent of a company's listed securities, makes any gain by the purchase and sale, or the sale and purchase, of any such security within a period of less than six months, such person is required to tender the amount of such gain to the company.
- Define the term "Beneficial Ownership of Securities" in the context of the above provision of the Companies Ordinance, 1984. (05)
- (b) On 1 July 2012, Faizan owned 9% shareholding in UG Limited, a listed company. On 25 January 2013, his wife also purchased 8% shareholding in UG Limited. On 3 March 2013, they transferred 40% of their shareholding to their son Naveed who is 24 years old. They also intend to sell the remaining shares held by them in due course.
- In view of the provisions of the Companies Ordinance, 1984, you are required to:
- (i) Describe the conditions which Faizan and his wife shall have to comply with in order to dispose of their shares in UG Limited. (06)
- (ii) Describe the requirements relating to submission of statements (including the dates of submission) of beneficial ownership in the above case. (08)
- Q.4 Explain the exceptions to the following provisions of the Companies Ordinance, 1984:
- (a) No person shall be appointed as a director of a company if he is not a member of that company. (03)
- (b) No company shall issue any debentures carrying voting rights at any meeting of the company. (03)
- (c) In a meeting of the board of directors, no director shall take any part in the discussion of, or vote on, any contract or arrangement entered into, or to be entered into, by or on behalf of the company, if he is in any way, whether directly or indirectly, concerned or interested in the contract or arrangement, nor shall his presence count for the purpose of forming a quorum at the time of any such discussion or vote; and if he does vote, his vote shall be void. (04)

Continued on next page.....

- Q.5 (a) Discuss the provisions contained in the Companies Ordinance, 1984 relating to:
- (i) Maintenance of minutes of the meeting of the Board of Directors of a company. **(05)**
 - (ii) The subscription money received by a company on account of issue of shares. **(05)**
- (b) Furqan owns 100,000 shares of Swift Limited. He wishes that after his death, his shareholding should be distributed among his wife, son, first cousin and his adopted child.
- In the light of the provisions of the Companies Ordinance, 1984, list the steps that Furqan needs to take in respect of the above. **(03)**
- Q.6 On 20 February 2013, the directors of FDA Limited, a listed company, had declared an interim dividend for the year ended 30 June 2013. Subsequently, the company has been awarded a major business contract for which the company needs funds immediately. Consequently, the management wishes to defer payment of the interim dividend.
- In view of the provisions of the Companies Ordinance, 1984 you are required to explain:
- (a) Whether FDA can defer the payment of interim dividend. **(02)**
 - (b) The consequences of failure to pay the dividend on time. **(05)**
 - (c) The situations under which delay in payment of dividend shall not be considered as unlawful. **(05)**
- Q.7 Zafar wants to appoint Zameer as his proxy for attending the annual general meeting of a listed company.
- In view of the provisions of the Companies Ordinance, 1984 you are required to describe:
- (a) The conditions, relating to the form and submission of the proxy, which Zafar would have to comply with in order to issue a valid proxy. **(04)**
 - (b) The rights of Zameer on being appointed as a proxy. **(04)**
- Q.8 A group of shareholders of AHK Paper Mills Limited is of the view that the management of the company is not carrying out its functions in accordance with the prudent commercial practices and if these affairs are allowed to continue the company's solvency would be endangered. They are of the opinion that a Special Audit should be conducted to investigate in the affairs of the company.
- In view of the provisions of the Companies Ordinance, 1984 you are required to explain:
- (a) The shareholders right to request for a special audit and how they should proceed. **(02)**
 - (b) What actions SECP can take in respect of the above. **(03)**
 - (c) The responsibility regarding expenses to be incurred on the Special Audit. **(02)**
- Q.9 (a) Sedan Limited (SL), a company limited by guarantee having a share capital, has been incurring losses for the last three years. Initially, SL had four directors (members) A, B, C and D. On 1 July 2012, C had transferred all his shares to D. On 1 March 2013 A, B and D decided to wind-up the company voluntarily.
- Explain the liability of A, B, C and D assuming that SL had adopted Table D of the First Schedule to the Companies Ordinance, 1984 as its memorandum of association. **(05)**
- (b) Shaban Enterprises (SE) is an association of persons. The directors propose to convert SE into a limited company. However, on account of the nature of SE's business activities they do not intend to include the word "Limited" in its name.
- Narrate the conditions that SE would be required to comply with, under the Companies Ordinance, 1984 in order to be able to achieve the above objective. **(04)**

(THE END)

COMPANY LAW
Suggested Answers
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- A.1 (a) In connection with conversion of status of the company, SPL would have to make the following changes in the articles of the company:
- (i) Remove the restriction on transfer of shares;
 - (ii) Remove the limit on maximum number of members;
 - (iii) Remove the restrictions to make public offer of shares or debentures;
 - (iv) Include the provision of holding the statutory meeting;
 - (v) Increase the minimum number of directors/members to three.
 - (vi) Remove the word (Private) from the name of the company.

- (b) The date of conversion is not provided, therefore, if the conversion into a public company takes place after one year of incorporation, then the company would not be required to hold the statutory meeting.

If the conversion takes place before one year of incorporation, SPL would be required to hold the statutory meeting of the company.

The responsibilities of the directors of SPL relating to the holding of statutory meeting and the issuance of the statutory report are as follows:

- (i) The directors of SPL shall, within a period of not less than three months, nor more than six months, from the date at which the company is converted into public company, hold the statutory meeting of the members of the company.
- (ii) The directors shall, at least twenty-one days before the date on which the meeting is held, forward the statutory report to every member.
- (iii) The statutory report shall be certified by not less than three directors, one of whom shall be the chief executive of the company. The statutory report shall contain all the required information.
- (iv) The statutory report shall, so far as it relates to the shares allotted by the company, the cash received in respect of such shares and to the receipts and payments of the company, be accompanied by a certificate of the auditors of the company as to correctness of such allotment, receipt of cash, receipts and payments.
- (v) The directors shall cause at least five copies of the statutory report, certified by auditors, to be delivered to the registrar for registration forthwith after sending the report to the members of the company.
- (vi) The directors shall cause a list showing the names, occupation, nationality and addresses of the members of the company, and the numbers of shares held by them respectively, to be produced at the commencement of the meeting and to remain open and accessible to any member of the company during the continuance of the meeting.

- A.2 (a) **Modes of reduction of share capital:**

Nihal Trading Limited, if authorized by its articles, can reduce its share capital by any one of the following modes:

- (i) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or
- (ii) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or
- (iii) either with or without extinguishing or reducing liability on any of its shares,

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pay off any paid-up share capital which is in excess of the needs of the company;

- (b) Nihal trading Limited shall follow the following procedures in order to reduce its share capital:

- (i) Convene a board of directors meeting for approval of the reduction.
- (ii) Pass special resolution for reducing share capital.
- (iii) File petition to the court for an order confirming the reduction.
- (iv) Add the words 'and reduced' as the last words to its name till such date as the Court may fix.
- (v) Obtain NOC (no objection certificate) from the creditors.
- (vi) Obtain order of the court confirming the reduction of the capital.
- (vii) Submit court order and minutes of reduction with the registrar for registration.
- (viii) Publish notice of the registration as the Court may direct.
- (ix) Obtain certificate of registration from the registrar.
- (x) Incorporate minutes of the general meeting in every copy of memorandum of association.

- A.3 (a) Beneficial ownership of securities of any person shall be deemed to include the securities beneficially owned, held or controlled by him or his spouse or by any of his dependent, lineal ascendants or descendants not being himself or herself a person who is required to furnish a return (statement of beneficial ownership) under the Companies Ordinance, 1984; and

- (i) in the case where such person is a partner in a firm, shall be deemed to include the securities beneficially held by such firm; and
- (ii) in the case where such person is a shareholder in a private company, shall be deemed to include the securities beneficially held by such company.

- (b) (i) After the acquisition of 8% shareholding by Faizan's wife, he became beneficial owner of more than 10% shares of the company, therefore, he can sell them only by offering them to the general public., after getting approval from SECP. The offer can only be made within sixty days after obtaining approval from the Commission.

Any document by which an offer for sale to the public is made by Faizan shall, for all purposes, be deemed to be a prospectus , and all enactments and rules of law applicable to a prospectus shall apply thereon. Faizan would also be required to sign the above referred document.

- (ii) Faizan would be required to submit a statement of beneficial ownership to the Registrar and SECP when his beneficial ownership exceeded 10% i.e. when his wife purchased 8% shares.

The statement is required to be submitted within 30 days and hence he was required to submit the return on or before 24 February 2013

On purchase of 8% shares of UG Limited, Mrs. Faizan would also become the beneficial owner of more than 10% shares, therefore, she would also be required to submit a statement of beneficial ownership to the Registrar and the Commission within 30 days thereof i.e. 24 February 2013.

They are required to submit a similar statement within 15 days of any change

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in ownership i-e when they transfer their shareholdings to their son Naveed. Hence, they shall submit the return again on or before 18 March 2013.

- A.4 (a) The following persons need not be a member for becoming a director.
- (i) A person representing the government or an institution or authority which is a member.
 - (ii) A whole-time director of the company who is an employee of the company.
 - (iii) A chief executive or
 - (iv) A person representing a creditor.
- (b) Debentures that are convertible into ordinary shares may, at the option of the company, carry voting rights. However, such voting rights shall not be in excess of the voting rights attached to ordinary shares of equal paid-up value.
- (c) This rule is not applicable to:
- (i) a private company which is neither a subsidiary nor a holding company of a public company;
 - (ii) any contract of indemnity against any loss which the directors, or any one or more of them, may suffer by reason of becoming or being sureties or a surety for the company;
 - (iii) any contract or arrangement entered into or to be entered into with a public company, in which the interest of the director aforesaid consists solely in his being a director of such company and the holder of no more than such shares therein as are requisite to qualify him for appointment as a director thereof.

- A.5 (a) (i) Every company shall enter a fair and accurate summary of the minutes of all proceedings of meetings of its directors in the properly maintained minute book along with the names of those participating in the meetings.

A copy of the minutes of meeting of the board of directors shall be furnished to every director within fourteen days of the date of the meeting.

Minutes are required to be signed by the chairman of the meeting or by the chairman of the next succeeding meeting, in order to be evidence of the proceedings.

The books containing minutes of proceedings of the meetings of the directors must be kept at the registered office of the company.

- (ii) All moneys received from applicants for shares shall be deposited and kept in a separate bank account in a scheduled bank.

Where a company issues any invitation to the public to subscribe for its shares, the company shall take a decision within ten days of the closure of the subscription lists as to what applications have been accepted or are successful and refund the money in the case of the unaccepted or unsuccessful applications within ten days of the date of such decisions.

If the refund required is not made within the time specified therein, the directors of the company shall be jointly and severally liable to repay that

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money with surcharge at the rate of one and a half percent for every month or part thereof from the expiration of the fifteenth day and, in addition, to a fine not exceeding five thousand rupees and in the case of a continuing offence to a further fine not exceeding one hundred rupees for every day after the said fifteenth day on which the default continues:

However, a director shall not be liable if he proves that the default in making the refund was not due to any misconduct or negligence on his part.

Any condition purporting to require or bind any applicant for shares or other securities to waive any requirement of this section shall be void.

- (b) Furqan can deposit with the company a nomination conferring on his wife, son and adopted child the right to acquire the shares owned by him in the event of his death. Since the term relatives include his wife, son and adopted child but does not include first cousin, therefore he cannot include his first cousin in the nomination.

Further, Furqan shall specify in the nomination the extent of right conferred upon each of the nominees.

- A.6 (a) FDA cannot defer the payment of the interim dividend beyond the time limit of 30 days as specified by the SECP.

The period of 30 days begins from the date of commencement of closing of share transfer books for purposes of determination of entitlement of dividend.

- (b) Where a dividend has been declared by a company but is not paid within the period specified by the Commission, the chief executive shall be punishable with imprisonment for a term which may extend to two years and with fine which may extend to one million rupees.

A chief executive convicted as above shall from the day of conviction cease to hold the office of chief executive of the company and shall not, for a period of five years from that day, be eligible to be the chief executive or a director of that company or any other company.

- (c) In the following situations, the chief executive cannot be held responsible for the non payment of the dividend:
- (i) Where the dividend could not be paid by reasons of the operation of any law;
 - (ii) Where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with;
 - (iii) Where there is a dispute regarding the right to receive the dividend;
 - (iv) Where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or
 - (v) Where, for any other reason, the failure to pay the dividend or to post the warrant within the period aforesaid was not due to any default on the part of the company.

- A.7 (a) According to the Companies Ordinance, 1984, Zafar would have to comply with the following conditions:

The instrument appointing Zameer shall be in writing under the hand of Zafar or of

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his attorney duly authorised in writing, Zameer would have to be a member unless otherwise provided by the Articles.

The instrument appointing a proxy shall be deposited with company not less than forty eight hours before the time for holding the meeting at which the person named in the instrument proposes to vote.

- (b) The rights of Zameer on being appointed as proxy are as follows:
- (i) The right to attend, speak and vote at the meeting as are available to a member.
 - (ii) Subject to the provisions of the Companies Ordinance, 1984, demand a poll on any question.
 - (iii) On a question before the meeting in which poll is demanded, to abstain from voting or not to exercise full voting rights.
- Any provision to the contrary in the company's articles shall be void.

- A.8 (a) If the group of shareholders holds not less than 20% voting rights in AHK Paper Mills Limited, it is eligible to make an application to the Commission for special audit.
- (b) The Commission may order a special audit of the company and appoint an auditor to carry out detailed scrutiny of the affairs of the company.

The Commission may, during the course of the special audit, pass such interim orders and directions as may be deemed appropriate by it.

On receiving the special audit report, the commission may issue such directions for immediate compliance to the company and its management as the Commission deems fit.

- (c) When the special audit has been ordered by the Commission on an application made by members of the company, one half of the expenses of the special audit shall be borne and paid in advance by such members, and the other half shall be borne by the company.

- A.9 (a) In view of the fact that SL has adopted Table " D " of the First Schedule as the memorandum of association, the members of SL are liable to contribute for
- (i) payment of the debts and liabilities of the company.
 - (ii) the cost, charges and expenses of winding-up.
 - (iii) adjustment of the rights of the contributories among themselves.

However, the amount shall not exceed the amount specified in the memorandum.

Although Mr. C left the company eight months before the decision of the winding-up was taken, however, he is liable within one year afterwards, for all the above and for payment of the debts and liabilities of the company contracted before he ceases to be a member.

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- (b) In order to convert itself as a company without using the word Limited, SE would need to satisfy to the Commission that:
- (i) It is capable of being formed as a limited company.
 - (ii) It is established for the promotions of any or all of the following objects:
 - Commerce
 - Art
 - Science
 - Religion
 - Sports
 - Social services
 - Charity
 - Any other useful object.
 - (iii) It applies or intends to apply its profit, if any, or other income, in promoting its objects.
 - (iv) It prohibits the payment of any dividend to its members.

(THE END)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN	
EXAMINERS' COMMENTS	
SUBJECT Company Law	SESSION Intermediate Examination - Spring 2013

General:

The performance in this attempt was quite good as compared to many previous attempts. It must be said that there were some very good performances indeed. However, there were also many poor performances, which indicated a lack, and in some cases a total lack of required knowledge.

Candidates need to realize that it is not possible to complete the examination in three hours if they set out to write everything they know about the given topic. They must resist extending their answers unnecessarily.

Several candidates answered some of the questions very poorly which is an indication that they resort to studies of selective topics. Candidates are encouraged to exert themselves on every area of the syllabus so that they can at least answer basic questions on each topic. It is often relatively easy to score the first three or four marks on a question, and these marks can be vitally important for marginal candidates.

Question-wise comments are given below:

Question 1 (a)

Generally the student got good marks on this part of the question as they covered almost all the requirements mentioned in section 2 (28) and 15 of the Ordinance, regarding changes required to be made in Articles of Association when a company is converting from private to public company. Those who failed to get high marks generally missed the following changes:

- Increase in minimum number of members and directors from two to three.
- Deletion of word 'private' from its name.
- Inclusion of provision regarding holding of statutory meeting.

Question 1 (b)

This simple question was well attempted by most of the students as they correctly narrated the provisions regarding holding of statutory meeting. The common omissions were as follows:

- Company will only be required to call a statutory meeting if the conversion takes place within one year of incorporation.
- A certificate from the auditors in respect of correctness of allotment and cash receipts and payments would be required.

Question 2 (a)

This was a simple question regarding modes of reduction of share capital and generally the performance was good. However, many students narrated the provisions regarding buy-back of shares by the company and lost all marks. While mentioning the provisions related to paying off any excess capital and cancelling paid-up capital not represented by available assets, many students used the word “cancel” instead of “pay off” and vice versa.

Some of the students used the term “authorized share capital” instead of “paid-up share capital” which changed the entire context.

Question 2 (b)

The requirement was to describe the procedure for reduction of capital. A mixed performance was seen. Generally, the candidates could only narrate the provisions relating to passing of special resolution, filing of petition to the court and submitting order of the court to Registrar. Other matters were quite often missed.

Question 3 (a)

This part of the question required the students to define the term “Beneficial ownership”. A large majority of candidates did not seem to be aware of it in terms of section 224 of the Companies Ordinance, 1984. Most of them listed down the persons who are required to file the statement of beneficial ownership to registrar and Commission. Many of them relied on guesswork and stated that shareholder becomes a beneficial owner when he gets a right to attend general meeting, to receive dividend and to participate in making business decisions.

Question 3 (b)

A practical situation was given where a person in combination with his spouse, had acquired more than 10% of a company's shares. The candidates were required to explain the conditions that they would have to comply with in order to dispose of their shares and the requirements related to submission of statements of beneficial ownership. A poor performance was witnessed as majority of the students could not fully comprehend the given situation or were ignorant of the relevant provisions of law. The common mistakes were as under:

- Many candidates did not know that both Mr. Faizan and his wife became beneficial ownership of more than 10% share-holding on January 25, 2013. Before that, Mr. Faizan had no obligation as he owned less than 10% shares.
- Most of the candidates were able to explain that being beneficial owner of more than 10% shares, Mr. Faizan can sell the shares by offering them to general public. However, only about 25% could specify that any document of public offer would be deemed to be a prospectus and all enactments and rules related to a prospectus shall apply thereon.

Examiners' comments on Company Law – Spring 2013

- While discussing the submission of return, most candidates restricted themselves to the filing of return after sale of shares. The requirement to file a return on acquisition of more than 10% beneficial ownership and the requirement to file a return on change of beneficial ownership i.e. at the time of transfer of shares to their son, were not mentioned by majority of the students.
- Many candidates did not specify the dates by which different statements would have to be submitted although it was specifically required in the question.
- Some of the students extended their answers unnecessarily and covered irrelevant material like method of calculation of capital gain.

Question 4

In this question, the candidates were required to explain the exceptions to the rules whereby:

- (a) Only members are allowed to become director of a company.
- (b) Debentures are not allowed to carry voting rights.
- (c) A director is not allowed to participate in or vote in a board meeting if he has an interest in a contract/arrangement which is being deliberated.

Most of the candidates performed well and even scored full marks in parts (a) and (b) as they were able to quote all relevant points from section 187(h) and section 122. However, very few could perform well in part (c) where most students could mention only one of the three points mentioned in section 173 i.e. that this rule is not applicable to a private company. But here also, many candidates failed to mention that the exception would not apply to a private company which is a subsidiary or holding company of a public company.

Question 5 (a) (i)

Most of the students were able to cover all the relevant points regarding maintenance of minutes of meeting of board of directors as have been specified in Section 173. However, the following mistakes were seen in quite a number of copies.

- The question related to “meetings of board of directors” only, but many candidates covered the provisions related to general meeting also, resulting in wastage of time.
- The term CEO was used instead of Chairman.
- It was stated that members/shareholders are allowed to take extracts of the minutes of the meeting of board of directors.

Question 5 (a) ii

A poor performance was observed on this part of the question where the candidates were required to narrate the provisions of Companies Ordinance, 1984 regarding subscription money received by the company. Majority of the students could mention one or two points only. Some of the student failed to understand the question and narrated the provisions of section 68 pertaining to the restriction as to Allotment of shares in case the minimum amount of subscription is not received.

Question 5 (b)

The requirement in this part was to explain in the light of Companies Ordinance, 1984 as to what should a person do if he wishes to distribute his shareholding among his relatives, after his death. Only about 25% students knew the relevant provisions contained in Section 80. They too missed an important point that first cousin is not included in the definition of relatives and therefore his name cannot be included in the nomination to be filed with the company. The remaining 75% of the students had no idea of the answer. Many of them resorted to guesswork by discussing other legal aspects whereas the question clearly stated that the answer should be given in the context of Companies Ordinance, 1984.

Question 6

The question had three parts and required the candidates to specify (a) whether payment of interim dividend can be deferred (b) consequences of not paying dividend on time and (c) situations where a delay in paying the dividend would not be considered unlawful. Only few could do well in part (a) as the students generally were of the opinion that payment of interim dividend can be deferred by passing special resolution or with the approval of the Commission. Part (b) was well attempted by most of the students as they explained that in case dividend is not paid within the time specified in the Ordinance, the chief executive shall be liable to a fine, imprisonment, vacation of office and may be disqualified from holding the office of director/chief executive for a period of five years. In part (c) almost all the candidates seemed well prepared and covered all five situations mentioned in Section 251(2) of the Ordinance.

Question 7

In part (a) of the question, the students were required to describe the conditions relating to the form and submission of the proxy, in order to issue a valid proxy and in part (b), the rights of a person appointed as a proxy were required. It was an easy question and well attempted by majority of the candidates. However, many candidates including those who secured full marks, also gave lots of unnecessary details in addition to what was actually required and thus wasted their precious time which could have been utilized in planning and better presentation of the remaining answers.

Question 8

This question related to the right of shareholders to request a special audit, the actions that SECP can take in this regard and the responsibility regarding cost incurred on the special audit. The question was based on Section 234(A) (1 to 3) of the Ordinance. An average performance was witnessed in this question as majority of the students produced many correct as well as incorrect points.

The common errors were as follows:

- Shareholders having 20% or more voting rights are entitled to apply for a special audit but some of the students mentioned 10% instead of 20%.

Examiners' comments on Company Law – Spring 2013

- Auditors are appointed by the Commission; however, some students were of the view that the company shall appoint the auditors on the instruction of the Commission.
- A large number of candidates did not know about the provisions related to incurring of expenses of special audit. Majority of the students failed to mention that shareholders who apply for special audit are required to make advance payment of the amount of expenses that they are liable to bear.

Question 9 (a)

In this part of the question, the candidates were required to discuss the liability of directors/members of a company limited by guarantee. The question was based on Section 17(a)(v) of the Ordinance. Since the question on companies limited by guarantee are seldom asked, a poor performance was observed. Specifically, very few students could point out that the director who had transferred his shares within one year of the winding up of the company would remain liable for payments of any debt and liabilities contracted before he ceased to be a director/member.

Question 9 (b)

The requirement was to explain the conditions applicable on an association of persons if it wishes to convert itself into a limited company but does not want to include the word “Limited” in its name. The question was based on Section 42 of the Companies Ordinance, 1984. Since this aspect has been tested frequently in the past, most of the candidates seemed well prepared and scored high marks.

THE END



The Institute of Chartered Accountants of Pakistan

Company Law

Intermediate Examination
Autumn 2013
Module D

2 September 2013
100 marks - 3 hours
Additional reading time - 15 minutes

- Q.1 (a) Describe the provisions as contained in the Companies Ordinance, 1984 which are aimed at ensuring expeditious disposal of matters referred to the High Court. (06)
- (b) State briefly the restrictive conditions under which a private company is incorporated. What are the consequences of not abiding by these conditions under the Companies Ordinance, 1984? (06)
- Q.2 The Sportsmen Foundation (Guarantee) Limited has resolved to increase the liability of its members from Rs. 50,000 to Rs. 500,000 by alteration of the liability clause of the Memorandum of Association.
- How would the above alteration in Memorandum of Association affect the existing members? Could it be made binding on them? (05)
- Q.3 In accordance with the regulations contained in Table A in the First Schedule to the Companies Ordinance, 1984, discuss the powers of the directors of a company to:
- (a) suspend the registration of transfer of shares for a specified period.
(b) decline to recognise an instrument of transfer. (05)
- Q.4 (a) An allottee of shares of a limited company has sought action against the directors in respect of false statements in the prospectus. The directors contend that the errors were not deliberate and were made inadvertently.
- Discuss the liability of the directors for the false statement in the prospectus in the above situation. (08)
- (b) Following the approval of prospectus of Top Engineering Limited, by the SECP on 31 August 2013, the directors have drawn up the following plan:
- (i) The prospectus would be published in an English newspaper on 25 October 2013.
(ii) 1000 copies of the prospectus would be printed.
(iii) The subscription list would remain open for two days on 10-11 November 2013.
(iv) The balloting for the successful applicants would be carried out on 25 November 2013.
- Discuss whether the above plan is in accordance with the provisions of the Companies Ordinance, 1984. (09)
- Q.5 Describe the provisions of the Companies Ordinance, 1984 relating to:
- (a) Issue of securities and redeemable capital not based on interest. (06)
(b) Repayment of subscription money to unsuccessful applicants. (06)

Continued on next page.....

- Q.6 The directors of City Motors Limited plan to issue right shares at a discount of Rs. 2 per share. Describe the relevant provisions of the Companies Ordinance, 1984 that the directors would need to comply with, for issuing of shares at a discount. **(06)**
- Q.7 (a) Apex Petroleum Limited, a listed company, has been incurring losses for the past few years. Some shareholders are of the view that the management is misusing the company's resources thereby endangering the solvency of the company. Consequently, they want to inspect the books of accounts and appoint an expert to help them in the review.
- Advise the aggrieved shareholders in respect of the above matters in the light of the Companies Ordinance, 1984. **(06)**
- (b) Explain the situation whereby a shareholder may call for fresh election of directors prior to the end of the term of the present board. **(05)**
- Q.8 (a) SS Technology Limited was incorporated as a public limited company on 1 February 2012. No General Meeting of the company has been held so far. Explain the provisions of the Companies Ordinance, 1984 regarding the holding of general meeting and the liability of the directors if any, in this regard. **(05)**
- (b) An examination of the financial statements of Toys Manufacturers Limited, an unlisted company, for the year ended 30 June 2013 showed that the company had increased the remuneration of its chief executive and had also granted extra perquisites to him.
- State the procedures that the company would be required to take in order to apprise the shareholders as regards the above change. **(04)**
- Q.9 Briefly discuss the mandatory information that has to be provided in the Directors' Report of a public company as per the provisions of the Companies Ordinance, 1984. **(09)**
- Q.10 State the powers of the registrar with respect to seizure of books and documents of a company as specified under the Companies Ordinance, 1984. **(08)**
- Q.11 An unlisted public company has six members all of whom are directors of the company and were elected on 1 January 2012. One of the directors wishes to sell all his shares.
- In the light of above explain whether or not the following are correct:
- (i) The director selling the shares will no longer remain the director of the company.
(ii) It will be necessary to appoint another person as director in his place for the next three years.
(iii) The company may continue its business with five directors until the next annual general meeting. **(06)**

(THE END)

COMPANY LAW
Suggested Answers
Intermediate Examinations – Autumn 2013

- A.1** (a) All matters coming before the High Court under the Companies Ordinance, 1984 shall be disposed of, and final judgment in writing pronounced, as expeditiously as possible, but not later than 90 days from the date of presentation of the petition or application to the Court.

Except in extraordinary circumstances and on grounds to be recorded, the Court shall hear the case from day to day.

The hearing of matters referred to above shall not be adjourned except for sufficient cause to be recorded or for more than 14 days at any one time or for more than 30 days in all.

In the exercise of its jurisdiction as aforesaid, the Court shall, in all matters before it, follow the summary procedure.

- (b) Following are the restrictive conditions on the basis of which a company may be incorporated as a private company under the provisions of the Companies Ordinance, 1984:
- (i) Restrictions on the right to transfer of shares.
 - (ii) Limitations on the number of members to 50 excluding employees who are members of the company.
 - (iii) Prohibition on inviting public to subscribe for any shares or debentures of the company.

If above conditions are not complied with, the company shall lose all the privileges and exemptions conferred on it by the Ordinance, and the provisions of the Ordinance shall apply to it as if it were not a private company.

However, the SECP may relieve the company from such a consequence if it is satisfied that the failure to comply was not deliberate but accidental or inadvertent or that on other grounds it is just and equitable to grant relief.

- A.2** No member of a company shall be bound by an alteration made in the Memorandum or Articles after the date on which he became a member, if such an alteration requires him to take or additional liability at the date of alteration or in any way increase his liability.

However, this condition will not apply where the member agrees in writing either before or after a particular alteration is made, so as to be bound by the alteration.

Hence, the existing members of the Sportsmen Foundation shall not be bound by any alteration made in the liability clause unless they have given their consent in writing.

- A.3** (a) **Suspension of registration of transfer of shares**
The directors may suspend the registration of transfers during the ten days immediately preceding a general meeting or prior to the determination of entitlement or rights of the shareholders by giving seven days' prior notice in the manner provided in the Ordinance.

COMPANY LAW
Suggested Answers
Intermediate Examinations – Autumn 2013

(b) **Decline to recognise the instrument of transfer**

The directors may decline to recognize any instrument of transfer unless:

- (i) a fee not exceeding twenty rupees as may be determined by the directors is paid to the company in respect thereof; and
- (ii) the duly stamped instrument of transfer is accompanied by the certificate of the shares to which it relates and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.

- A.4** (a) The errors appearing in the prospectus should have been rectified before publication. Hence, the reason given by the directors is not a valid ground for escaping the liability.

Directors are required to compensate every person who subscribes for purchase of any shares on the faith of the prospectus for any loss or damage the allottee may have suffered due to the errors in the prospectus.

The directors who signed or authorized the issue of the prospectus shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to ten thousand rupees, or with both, unless he proves either that the statement was immaterial or that he had reasonable ground to believe, and did up to the time of the issue of the prospectus believe, that the statement is true.

A director can escape liability for misstatements in a prospectus only on the following grounds:

- (i) He withdrew his consent to act as director before the issuance of the prospectus and it was issued without his authority or consent;
 - (ii) The issue was made without his knowledge or consent, and on becoming aware of the issue he gave reasonable public notice of that fact;
 - (iii) He withdrew his consent after the issue of the prospectus but before allotment and public notice was given;
 - (iv) He had reasonable ground to believe that the statements were true and believed them to be true; or
 - (v) The statement was a correct and fair summary or copy of an expert's report, or a statement made by an official or in an official document.
- (b) (i) TEL must issue, circulate or publish its prospectus within sixty days of the approval of the Commission. As the date of publication of prospectus is within two months of the approval date, the date of 25 October 2013 is valid.

However, the prospectus should not be published in only one newspaper. The prospectus in its full text or in an abridged form, must be published at least in one Urdu and one English daily newspaper.

- (ii) While deciding about the number of copies of prospectus, the directors of Top Engineering Limited (TEL) must print sufficient copies which are required to be made available at the registered office of the company, to the stock exchange at which the company is to be listed and to the bankers to the issue.
- (iii) The subscription list should open at least 7 days and not more than 30 days after the publication of the prospectus. As the prospectus publication date is 25 October 2013, the subscription list should open between 2nd and 23rd November 2013. Therefore, the suggested dates of 10 and 11 November 2013 are valid.

COMPANY LAW
Suggested Answers
Intermediate Examinations – Autumn 2013

- (iv) The balloting for successful applicants should be carried out within 10 days of the closing of the subscription list. The suggested date of 25 November 2013 is therefore not valid being 15 days beyond the closing of the subscription list.

A.5 (a) Issue of securities and redeemable capital not based on interest

A company may by public offer or upon other written terms and conditions issue to scheduled banks, financial institutions or such persons specified by the Federal Government, any instrument in the nature of redeemable capital in any of several forms.

Further, such agreement may provide for, adopt or include, in addition to others, all or any following matters, namely:

- (i) mode and basis of repayment by the company of the amount invested in redeemable capital within a certain period of time;
- (ii) arrangement for sharing of profit and loss;
- (iii) creation of a special reserve called the "participation reserve" for the issuance of participatory redeemable capital in which all providers of such capital shall participate for interim and final adjustment on the maturity date in accordance with the terms and conditions of such agreements; and
- (iv) in case of net loss on participatory redeemable capital on the date of maturity, the right of holders to convert the outstanding balance of such capital or part thereof as provided in the agreement into ordinary shares of the company at the break-up price calculated in the prescribed manner.

(b) Repayment of subscription money to unsuccessful applicants:

- (i) Company shall decide within 10 days of closure of subscription lists as to which applications have been accepted and are successful.
- (ii) Refund application money to unsuccessful applicants within 10 days of the above decision.
- (iii) When refund is not made within the specified time the directors shall jointly and severally be liable to repay money with surcharge @ 1.5% per month from expiration of 15 days.
- (iv) Directors shall also be liable to a fine upto Rs. 5,000 and in case of continued default to a further fine of Rs. 100 for each day of default.
- (v) All conditions which require an applicant to waive the aforesaid requirement are void.

A.6 For issuance of shares at discount, the directors of City Motors Limited must meet the following conditions :

- (i) At the date of issue not less than one year must have elapsed since the date on which the company was entitled to commence business.
- (ii) the issue of the shares at a discount must be authorised by resolution passed in general meeting of the company.
- (iii) the resolution must specify the maximum rate of discount at which shares are to be issued.
- (iv) after passing a resolution, the company must make an application to the Commission for an order sanctioning the issue at discount.
- (v) the shares to be issued at a discount must be issued within sixty days after the date on which the issue is sanctioned by the Commission or within such extended time as the Commission may allow.

COMPANY LAW
Suggested Answers
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- (vi) every prospectus relating to the issue of shares, and every balance-sheet issued by the company subsequent to the issue of shares, must contain particulars of the discount allowed on the issue of the shares or of any discount that has not been written off at the date of the issue of the prospectus or balance-sheet.
- (vii) the issue of shares at a discount shall not be considered to be as a reduction of capital.

- A.7** (a) As per the provisions of the Ordinance, the board shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulation, the accounts and books of the company, or any of them, shall be open to inspection of members not being directors.

Further, no member (not being a director) shall have any right to inspect any account or books or document of the company except as conferred by Companies Ordinance 1984 or authorized by the board or by the company in general meeting.

Therefore members of the company shall be able to inspect the books of account only if they are given such a right by a resolution of the members or if authorized by the board.

But even in such case they would have to exercise the right personally and not through a proxy/expert because the Companies Ordinance does not contain any provision regarding review of books of account by persons other than director and members of the company, in the given situation.

- (b) If a shareholder acquires 12.5% or more voting shares in his own name in a company, he may apply to the Commission for holding fresh election of directors in the forthcoming annual general meeting of the company.

The Commission may, if it deems appropriate in the interest of the company, its minority shareholders or the capital markets generally, direct the company to hold the election of directors in the manner provided under the Ordinance and the company must comply with such directions.

Further, the concerned shareholder(s) cannot sell or otherwise dispose of the shares acquired by him (them) for at least one year from the date of the election of directors.

- A.8** (a) APL was required to hold two general meetings during the period .A statutory meeting is required to be held within a period of not less 3 months and not more than 6 months from the date at which the company is entitled to commence business.

In case of default in holding statutory meeting the concerned directors/officer will be liable to a fine.

Annual General Meeting

According to the Companies Ordinance, 1984, every company shall hold its first annual general meeting within a period of 18 months from the date of incorporation.

Since the company was incorporated on 1 February 2012, the first annual general meeting of the company should have been held on or before

COMPANY LAW
Suggested Answers
Intermediate Examinations – Autumn 2013

31 July 2013.

Thus, the company and its directors shall be liable to pay a fine for not holding the annual general meeting within the time specified above.

- (b) Following are the procedures that company would be required to adopt in order to appraise the shareholders as regard the changes in terms of contract with chief executive:
1. If a company appoints or enters into a contract for the appointment of a chief executive of the company, or varies any such contract already in existence, the company shall send an abstract of the terms of the appointment or contract or variation to every member of the company within twenty-one days from the date of the appointment or of entering into the contract or varying of the contract.
 2. If any other director of the company is concerned or interested in the appointment or contract or variation, a Memorandum clearly specifying the nature of the concern or interest of such other director in the appointment of contract or variation shall also be sent to every member of the company with the abstract.

So the company should adopt the advised course of action otherwise the directors shall be liable to fine and penalties.

- A.9** (i) The directors shall make out a report with respect to the state of the company's affairs, the amount, if any, which they recommend should be paid by way of dividend and the amount, if any, which they propose to carry to the reserves.
- (ii) The report should also:
- disclose any material changes and commitments affecting the financial position of the company which have occurred between the date of balance-sheet and the date of the report;
 - Any material changes that have occurred during the financial year concerning the nature of the business of the company or of its subsidiaries, or in the classes of business of the company in which the company has interest.
 - contain the fullest information and explanation in regard to any reservation, observation, qualification or adverse remarks contained in the auditor's report;
 - fullest information about the pattern of holding of the shares;
 - state the name and country of incorporation of its holding company, if any, where such holding company is established outside Pakistan; and
 - state the earning per share;
 - give reasons for incurring loss; and
 - contain information about defaults in payment of debts, if any, and reason thereof;
- A.10** (i) The registrar may, after obtaining permission of the Magistrate of the first class or the Court, search and seize such books and papers. The registrar may also authorize any officer subordinate to him, not inferior in rank to an assistant registrar:
- to enter, with such assistance as may be required, the place where such books and papers are kept.
 - to search that place in the manner specified in the order.
 - to seize such books and papers as he considers necessary.

COMPANY LAW
Suggested Answers
Intermediate Examinations – Autumn 2013

- (ii) The registrar shall return the books and papers seized as soon as possible but in any case not later than the thirtieth day after such seizure, to the company or to the chief executive or any other person from whose custody or power they were seized, as the case may be.
 - (iii) The Commission may, after providing to the company an opportunity to show cause against the order proposed to be made by it, allow the registrar to retain any books and papers for a further period not exceeding thirty days.
 - (iv) Further, the registrar may, before returning books and papers, take copies of, or extracts from them or put such marks of identification thereon as he considers necessary.
- A.11**
- (i) No person can be appointed as a director unless he is the member of the company. As such, the director selling the shares cannot remain the director of the company.
 - (ii) The new director will not be appointed for 3 years. His term of office would end alongwith the term of the present directors, i.e. on 31 December 2014
 - (iii) The company can work with five directors unless the articles require higher number of directors. In such a case, the remaining directors would be required to fill the casual vacancy but no time in this regard has been mentioned in the Companies Ordinance, 1984.

(THE END)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN	
EXAMINERS' COMMENTS	
SUBJECT Company Law	SESSION Intermediate Examination - Autumn 2013

General:

It was not a difficult paper by any standards yet majority of the students could not do well. The major reason for the poor display was selective study and failure to understand the requirements of the question correctly. Consequently, the performance in question 3, 5, 7 and 8 was quite poor.

Question 1 (a)

The candidates were required to describe the provisions of Companies Ordinance, 1984 which are aimed at ensuring the expeditious disposal of cases referred to the High Court. The question was attempted well by majority of the students as they were able to mention most of the provisions contained in Section 9 of the Companies Ordinance, 1984.

Question 1 (b)

This part required the candidates to state the restrictive conditions under which a private company is incorporated and consequences of not abiding by these conditions. It was a very simple and easy question and well attempted by most of the candidates. A significant number of candidates gained full marks also. However, few students mentioned the procedure and documents involved in the incorporation of a private company which was entirely irrelevant. Many candidates could not mention the consequences of not abiding by its restrictive conditions which are explained in Section 46 of the Companies Ordinance, 1984.

Question 2

This was a scenario based question related to the effect of alteration in the liability clause of the memorandum of association of a non-for-profit company. Only about 20% students managed to present the relevant reply in accordance with Section 34 of the Companies Ordinance, 1984. Many students did not attempt the question altogether. Many among those who attempted, filled pages in describing in detail the requirement of filing a petition with the Commission for alteration of the memorandum of association of a company which was totally different from what had been asked for.

Question 3

Both Part (a) & (b) of the question were poorly attempted. The questions required discussion on the powers of directors of a company to (a) suspend the registration of transfer of shares for a specific period and (b) decline to recognize an instrument of transfer, in accordance with the Regulations contained in Table A in the First Schedule.

Question 3 (a)

Regarding suspension of registration of transfer of shares for a specific period, many candidates just mentioned that the transfer would be suspended for 10 days but did not specify as to when this period of 10 days shall commence i.e. immediately proceeding a general meeting.

Question 3 (b)

In this part very few candidates identified the reasons on account of which the directors may decline to recognize the instrument of transfer as have been specified in Regulation 10 of Table A. Many candidates explained the period in which transfer of shares should be affected by the company and in case of refusal of transfer the period in which company should notify to the shareholder, which was not required in this question.

Question 4 (a)

This part required students to explain the liabilities of directors for false statement in the prospectus. It was generally well attempted. Most of the candidates managed to correctly identify most of the civil liabilities for mis-statements in prospectus as have been specified in Section 59(2). However, some of them failed to mention the criminal liabilities defined in Section 60(1) of the Ordinance. Many students also failed to narrate the complete grounds on which a director can escape the liability for mis-statement in the prospectus.

Question 4 (b)

This part contained a plan for getting the prospectus approved by the SECP. The students were required to discuss whether or not the mentioned plan was in accordance with the provisions of the Companies Ordinance, 1984. In such questions, the students are expected to comment on both aspects i.e. on the information which is in accordance with the law as well as the information which does not fulfill the requirement of the law. However, many students did not mention about those aspects where the requirement of the Companies Ordinance was being complied with.

In step (i), most students commented correctly that the prospectus shall be published at least in one Urdu and one English daily newspaper. However, many students did not mention that the planned date of publication of prospectus was appropriate.

In step (ii), in place of the term “**sufficient number of copies of the prospectus**” as provided in section 53(1A), many candidates mentioned the number of copies like 3, 5 or 500, which has not been provided in the Ordinance.

In step (iii), many students could not justify that the dates mentioned, i.e. November 10 and 11, for subscription list to remain open were appropriate in the given situation. Many students thought that subscription list should remain open for more days. The ordinance does not impose any such requirement.

Examiners' comments on Company Law – Autumn 2013

In step (iv), many candidates gave incorrect answers as they were of the opinion that the balloting should take place within 30 days whereas as per Section 71(1) of the Ordinance, the balloting should take place within 10 days of closing of subscription list.

Question 5 (a)

This part was based on provisions of Section 120 which pertains to issuance of securities and redeemable capital not based on interest. The response was quite poor as it seemed that majority of the students had no knowledge of the related provisions and therefore they tried to take a chance by specifying whatever they could think of.

Even those who did well quite often missed the requirement related to creation of a special reserve called the “participation reserve”.

Question 5 (b)

This part was based on Section 71 of the Ordinance which pertains to repayment of money received for shares not allotted. Nearly all the students managed to give correct answer in this case.

Question 6

This was a very simple question which was well attempted by most of the students as they were fully aware about the provisions of Companies Ordinance regarding the issuance of shares on discount. Those who failed to get high marks on this question made following mistakes.

- Shares at discount can be issued after one year of date on which the company is entitled to commence business but many students mentioned that the shares at discount can be issued after one year of incorporation of the company.
- Ordinary resolution is required to be passed in the general meeting of the company for issuance of shares at discount but except few all the students mentioned that special resolution is required in this respect.
- Condition that shares must be issued within 60 days after the date on which approval is granted by the Commission was erroneously described as 60 days after the date on which approval is granted by board of directors.
- Approval of Commission was described as approval of Registrar.

Question 7 (a)

In this part of the question, the students were required to discuss the provisions of the Ordinance regarding inspection of the books of account of a listed company by its shareholders and their request for appointing an expert to help them in such a review.

Examiners' comments on Company Law – Autumn 2013

The answer should have been based on Section 230(5) of the Ordinance; according to which the directors have the powers to decide as to how, when and to what extent the books shall be open to the inspection of members not being directors and that no member other than a director can intervene in this regard. Most of the students were unaware of the above provision and quoted the provisions related to special audit carried out by the Commission on member's request. Many students were of the opinion that members can inspect books of account with such restrictions as are applicable with respect to the inspection of minutes of general meeting.

Question 7 (b)

This part of the question required explanation as regards a shareholder's right to demand for holding of election of directors prior to the end of the term of the board. Majority of the candidates performed well in this part which was based on Section 178A (1) to (3) of the Companies Ordinance, 1984.

Question 8 (a)

In this part a simple scenario was given whereby information about incorporation of a public company was given and the candidates were asked to discuss the situation whereby the company had failed to hold its Annual General Meeting. The candidates were expected to discuss the provisions of Section 157(1) & (11) and 158(1) and (4) related to the Statutory Meeting and AGM respectively and liabilities of directors in case of such default.

Most of the students did well; however, many students narrated the provisions regarding publication of notices, quorum, place of meeting etc., which was not required.

Question 8 (b)

Only few students secured good marks on this question. Most of them either failed to read the question carefully or decided to produce whatever they knew in the hope of securing some marks. They mostly discussed as to who is authorized to fix the remuneration of the chief executive, whereas the question required them to state the procedure to be followed by the company to communicate to its shareholder about the increase in the remuneration of the chief executive, which is discussed in Section 218 of the Ordinance.

Question 9

This question was quite straightforward as it required the mandatory information that has to be provided in the Directors' Report of a public company. The information is mentioned in Section 236 of the Ordinance. Generally the performance was quite good. Some of the common omissions were as follows:

- Some students quoted the contents of statutory report.
- The requirement related to disclosure of material changes in the nature of the business of the company were rarely mentioned.

Examiners' comments on Company Law – Autumn 2013

- Most of the students mentioned requirements of Code of Corporate Governance also which were not required.

Question 10

This question required the students to state the powers of registrar with respect to seizure of books and documents of a company. These are provided in Section 262(1) to (4) of the Ordinance. Majority of the students answered well and scored high marks and a number of them got full marks also. However, as a result of not reading the question properly, about 15% of the students narrated the provisions of Section 261(1) to 262(6) which pertain to the power of registrar to call for information or explanation from the company and its directors.

Question 11

The question was based on a brief scenario whereby an unlisted company had six members and all of them were directors whereas one of its directors intended to dispose of all his shares. Based on this situation three statements were given and candidates had to comment as to whether these statements were in accordance with the Companies Ordinance. The comments generally produced by the students in respect of each of the statement are discussed below:

- It was quite obvious that the director who sold all his shares would not remain a director and most of the students replied accordingly.
- Majority of the students correctly mentioned that the new director shall hold office for the remaining period and not for 3 further years.
- Majority of the students agreed that the company can continue with 5 directors but failed to mention that if the articles required higher number of directors then the casual vacancy would have to be filled by the remaining directors.

THE END



The Institute of Chartered Accountants of Pakistan

Company Law

Intermediate Examination
Spring 2014
Module D

3 March 2014
100 marks - 3 hours
Additional reading time - 15 minutes

Q.1 On 1 February 2014 Golden Silk Limited (GSL), a listed company, acquired 80% shares of White Silk Limited (WSL), an unlisted company. On acquisition of the controlling interest, the directors of GSL intend to:

- (i) appoint two nominee directors on the board of WSL which at present consists of four directors. The existing directors of WSL were elected in the last annual general meeting of the company.
- (ii) appoint a new Chief Executive.

However, the existing directors and the chief executive claim that they cannot be removed because they have been appointed for a period of three years. These individuals also state that the appointments are in accordance with the articles of the company.

In the light of the provisions of the Companies Ordinance, 1984 discuss whether GSL can appoint the new directors and replace the chief executive of WSL. (07)

Q.2 The **FIRST** annual general meeting of ABC Limited, a listed company, is scheduled to be held on 31 March 2014 at the company's factory premises in Bahawalpur. The registered office of the company is situated in Lahore.

In addition to the normal business, the directors also propose to place before the meeting a resolution to approve that the quarterly accounts of the company be transmitted to the members by placing the same on the website of the company instead of transmitting the accounts by post.

In the light of the provisions of Companies Ordinance, 1984 you are required to:

- (a) specify the various steps that ABC Limited would be required to undertake in order to convene the first annual general meeting of the company. (09)
- (b) list the businesses that need to be transacted in the first AGM of ABC Limited. (04)

Q.3 Khurram is the Chief Executive of MNO Limited, a listed company. Khurram has been appointed as the Chief Executive by virtue of his professional qualifications and holds the minimum qualification shares. MNO Limited plans to enter into a major contract with RST Limited. 30% of RST's shares are held by VWX Limited in which Khurram is also a director.

Explain the relevant provisions of the Companies Ordinance, 1984 which would be required to be complied with by Khurram in the above situation. (06)

Q.4 The business of a company shall be managed by the directors, who may pay all expenses incurred in promoting and registering the company, and may exercise all such powers of the company as are not by Ordinance, or by the articles, or by a special resolution, required to be exercised by the company in general meeting.

In the context of the above provision of the Companies Ordinance, 1984, list any *twelve* powers which can be exercised by the directors of a company. (09)

- Q.5 Describe the relevant provisions of the Companies Ordinance, 1984 that would be required to be complied with in the following circumstances:
- (a) On 1 March 2014 AB Limited, a listed company, received a notice from a member of the company proposing a change in the auditors of the company. The annual general meeting of AB Limited is scheduled to be held on 19 March 2014. **(03)**
 - (b) On 1 March 2014 AC Limited has created a provident fund for its employees. However, the directors of AC Limited do not intend to create a trust in this regard. **(05)**
 - (c) Furqan holds 5% shares in KR Limited. On 17 January 2014, he purchased 9% shares of KR Limited. He acquired further 8% shares of KR Limited on 20 February 2014. **(06)**
- Q.6 Explain the exceptions to the following provisions of the Companies Ordinance, 1984:
- (a) The companies are required to hold all their investments in their own name. **(06)**
 - (b) Companies are prohibited from purchasing their own shares or granting financial assistance for purchase of their shares or shares of their holding company. **(08)**
- Q.7 Explain the powers of investigating officer under the Securities and Exchange Commission of Pakistan Act, 1997. **(06)**
- Q.8 Yellow Limited after passing a special resolution, has applied to the Court for reduction of its share capital from Rs. 300 million to Rs. 120 million as it wants to pay off the amount which is in excess of the needs of the company. However, three creditors included in the list of creditors entitled to object, have not given consent for reduction of share capital and the matter is pending in the Court.
- Under the Companies Ordinance, 1984 describe how the Court can proceed in the above situation. **(05)**
- Q.9 Ashraf is the company secretary of ABC Limited and is preparing for the Annual General Meeting of the company. The following matters are under his consideration:
- (i) Three joint holders of 100,000 shares have asked about the procedures of casting votes by them and how their votes will be counted if each of them wishes to vote for a different candidate.
 - (ii) DEF Limited which holds 50,000 shares has appointed one of its ex-employees as its proxy. The proxy form is signed by the Company Secretary of DEF Limited.
 - (iii) The proxy form submitted by one of the shareholders is lodged one day before the meeting.
- Under the provisions of the Companies Ordinance, 1984 discuss how Ashraf would deal with the above situations. **(06)**
- Q.10 XYZ Limited has recently been incorporated as a public unquoted company. The directors intend to proceed with allotment of shares. They have not issued any invitation to the public for subscription of shares in the company and all share applications have been received from their family members and friends.
- What are the requirements of the Companies Ordinance, 1984 that XYZ needs to comply with, before allotment of shares? **(06)**

Q.11 Green Limited (GL) has passed a special resolution in an extraordinary general meeting, whereby all the preference shares issued by GL are to be converted into ordinary shares. Some preference shareholders are not satisfied with the said conversion and seek your advice with respect to the remedy available to the preference shareholders after the said conversion.

In the light of the Companies Ordinance, 1984:

- (a) Explain the conditions under which the aggrieved shareholders may approach the Court. **(03)**
- (b) What decision may be taken by the Court and what remedy is available to the aggrieved shareholders in case they are not satisfied with the decision of the Court? **(04)**

Q.12 Energy Petroleum Limited is presently involved in Oil Marketing Business. In order to expand the business, the directors have decided to establish an oil refinery. Financing for this project has been arranged from two different financial institutions.

Identify the changes that may be required in the memorandum of association of the company and the necessary steps to incorporate these changes. **(07)**

(THE END)

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Ans.1

The shareholders of the company may remove directors of WSL by passing a resolution in a general meeting. This casual vacancy created may be filled by two nominee directors of GSL.

The Chief Executive can be replaced before the expiration of his term of office either by:

- passing a Resolution by not less than three-fourths of the total number of directors for the time being; or
- passing a special resolution at a general meeting.

The above power of removal of Chief Executive can be exercised by GSL, notwithstanding anything contained

- in the articles,
- in any agreement between WSL and the existing chief executive.

Ans.2 (a) In order to convene the FIRST annual general meeting of ABC Limited, the company would be required to take the following steps.

A listed company is required to hold its annual general meeting (AGM) in the town in which the registered office of the company is situated i-e Lahore.

Since, ABC Limited intends to hold its first AGM at its factory premises; it has to obtain prior approval of the Commission through an application.

The application must contain **the special reason** due to which the company intends to hold its AGM at a place other than the registered office of the company.

The notice of an annual general meeting shall be sent to the shareholders at least twenty-one days before the date fixed for the AGM, specifying the place, day and time of the meeting along with a statement of the business to be transacted at the meeting and shall be sent to:

- (i) every member of the company,
- (ii) any person entitled to a share in consequence of death of a member if the interest of such person is known to the company,
- (iii) the auditor of the company.

The Notice of AGM, in addition to being dispatched in the normal course, shall also be published at least in one issue each of daily newspaper in English language and a daily newspaper in Urdu language having circulation in the province in which the Stock Exchange on which the Company is listed is situated.

As directors of ABC Limited plan to discuss a special business in the meeting i.e., transmission of quarterly accounts to members by placing on the website, instead of transmission by post, they will have to annex to the notice of the meeting a statement setting out all material facts concerning such business.

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- (b) The businesses that may be transacted at the first AGM of ABC Limited are as follows:
- (i) Consideration and approval of first audited balance-sheet and profit and loss account for the period since the incorporation of the company made up to a date not earlier than the date of the meeting by more than four months along with the Directors and auditor's reports thereon.
 - (ii) Hold election of directors as all directors of the company shall stand retired from office at the first annual general meeting.
 - (iii) Appointment and fixing of remuneration of auditor of the company.
 - (iv) Declaration of dividend, if any.
 - (v) Pass the following resolution as a special resolution;
 - that the quarterly accounts of the company be transmitted to the members by placing the same on the website of the company instead of transmitting the accounts by post.

Ans.3

According to the Companies Ordinance, 1984:

Khurram is indirectly interested in the contract as he is a director in VWX Limited which holds 30% shares in RST Limited.

Being a director of VWX Limited, Khurram is indirectly concerned in the contract to be entered into on behalf of RST Limited. Therefore, he shall be required to disclose the nature of his concern/ interest at the meeting of the directors at which the question of entering into the contract is first taken into consideration.

For the purpose of disclosure of concern/ interest as above, Khurram is required to give a general notice to the directors about his directorship in VWX Limited.

Khurram is required to give a fresh notice in the last month of the financial year, before the expiry of the original notice which is due at the financial year end.

Khurram, being an interested director, is not allowed to take part in the discussions or vote on the contract with RST.

Even his presence shall not be counted for the purpose of the quorum of such board meeting when such contract is being discussed.

Ans.4

The directors of a company shall exercise the following powers on behalf of the company, and shall do so by means of a resolution passed at their meeting, namely:

- (i) make calls on shareholders in respect of moneys unpaid on their shares;
- (ii) issue shares;
- (iii) issue debentures or any instrument in the nature of redeemable capital;
- (iv) borrow moneys otherwise than on debentures;
- (v) invest the funds of the company;
- (vi) make loans;
- (vii) authorise the following persons to enter into any contract with the company for making sale, purchase or supply of goods or rendering services with the company;
 - a director or
 - the firm of which he is a partner or any partner of such firm or
 - a private company of which he is a member or director.

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- (viii) approve annual or half-yearly or other periodical accounts as are required to be circulated to the members;
- (ix) approve bonus to employees;
- (x) incur capital expenditure on any single item or dispose of a fixed asset in accordance with the limits as prescribed by the Commission from time to time;
- (xi) undertake obligations under leasing contracts exceeding one million rupees;
- (xii) declare interim dividend; and
- (xiii) having regard to such amount as may be determined to be material by the Board:
 - to write off bad debts, advances and receivables;
 - to write off inventories and other assets of the company; and
 - to determine the terms of and the circumstances in which a law suit may be compromised and a claim or right in [favour of a company may be released, extinguished or relinquished.]

Ans.5 (a)

AB Limited shall forthwith send a copy of notice received from the shareholder for change in auditors, to the retiring auditor and shall also give a notice thereof to its members not less than seven days before the date fixed for the annual general meeting and shall also publish it at least in one issue each of a daily newspaper in English Language and a daily newspaper in Urdu Language having circulation in the Province in which the stock exchange on which the company is listed is situated.

(b)

Where a trust has not been created by a company with respect to the provident fund created, all moneys contributed to such fund, or received or accruing by way of interest, profit or otherwise, shall either:

- be deposited-
 - in a National Savings Scheme;
 - in a special account to be opened by the company for the purpose in a scheduled bank; or
 - where the company itself is a scheduled bank, in a special account to be opened by the company for the purpose either in itself or in any other scheduled bank; or
- be invested in Government securities
- in bonds, redeemable capital, debt securities or instruments issued by Pakistan Water and Power Development Authority and in listed securities subject to the conditions as may be prescribed by the Commission.

(c)

Furqan is required to submit a statement of Beneficial Ownership to the Registrar and SECP when his shareholding exceeds 10% i.e. when he purchased the 9% shares on 17 Jan 2014.

The statement is required to be submitted within 30 days from the date of acquisition and hence he was required to submit the return on or before 16 February 2014.

Thereafter, he will be required to submit a similar statement within 15 days of any change in ownership. Hence, he is required to submit a return as regards the purchase of 8% shares on 20 February 2014, on or before 07 March 2014.

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Ans.6 (a)

The following are the exceptions to the general rule regarding holding of investment in company's own name:

- (i) Where the company has to nominate any person as director of any other company, the shares in such company of an amount not exceeding the nominal value of the qualification shares which are required to be held by a director thereof, may be registered or held by such company in the name of such person (nominee) or in the joint names of the company and such person.
- (ii) A holding company may hold shares in its subsidiary company in the name of its nominees so far as it is necessary to ensure that the number of members of the subsidiary company is not reduced below the minimum number of such members as prescribed by the law.
- (iii) An investment made by an investment company, that is to say, a company whose principal business is the purchase and sale of securities.
- (iv) A Company may hold in the name of a scheduled bank or a financial institution approved by the commission shares or securities in order to facilitate the transfer thereof.
- (v) A company may hold shares in the name of a central depository.

(b)

Subsidiary can purchase shares of the holding company if:

- Subsidiary is acting as a trustee provided that its holding company is not beneficially interested under the trust.
- The subsidiary company carries on a bonafide business of brokerage and subsidiary deals in the shares of holding company in the ordinary course of its business.

A private company not being a subsidiary of a public company, can provide financial assistance for the purpose of or in connection with purchase made or to be made by any person of any shares in the company or where the company is a subsidiary company, in its holding company.

A company can advance or secure an advance to any of its salaried employees excluding directors but including a chief executive who, was not a director of the company, before his appointment, for purchase of shares of the company or its holding company, if such advance is part of the contract of service of such employee.

A company can redeem any shares or any other redeemable security issued in accordance with the provisions of this Ordinance; and

A listed company can purchase its own shares in accordance with the provisions of this Ordinance.

Ans.7

An investigating officer carrying out an investigation or inspection may, only after the written order of the Commission signed by any two Commissioners, enter any place or building:

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- (i) To inspect and make copies of or take extracts from any book, minute book, register or document; and
- (ii) Where he has reason to believe that an offence has been committed under this Act or the Ordinance or any other law in respect of which the Commission has power to make investigation or inspection, to search for, seize, take possession of and detain any object, article, material, thing, accounts book or other document, including any travel or other personnel document which may be used as evidence.
- (iii) An investigating officer may by notice in writing, require any person to produce before him such books, registers or documents as are in the custody or under the control of that person.

Ans.8

Where a creditor entered on the list of creditors whose debt or claim is not discharged or determined does not consent to the reduction, the Court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt by appropriating, as the Court may direct, the following amount that is to say:

- (i) If the company admits the full amount of his debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim; and
- (ii) If the company does not admit or is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the Court after the like inquiry, and adjudication as if the company were being wound up by the Court.

Ans.9

- (i) The situation will be dealt in accordance with the guidance provided in Articles of Association of the Company. In case the Articles do not provide any guidance then the Guidance provided in Table "A" will be followed, which provides as under:

The vote tendered by the senior member, whether in person or by proxy, shall be accepted and other joint holder's vote will be excluded.

Seniority shall be determined by the order in which the names stand in the register of members.

- (ii) The appointment of proxy by the Company Secretary shall be valid, if the same is duly authorized by the Board of Directors of the authorizing company.
- (iii) The proxy form submitted by a shareholder is not valid as the proxy should have been lodged with the company not later than forty-eight hours before the time of the meeting.

Ans.10

XYZ Limited shall not make any allotment unless the minimum subscription, that is to say:

- (a) The amount, if any, fixed by the memorandum or articles and specified in the statement in lieu of prospectus as the minimum subscription upon which the directors may proceed to allotment; or
- (b) If no amount is so fixed and specified, the whole amount of the share capital other than that issued or agreed to be issued as paid up otherwise than in cash;

has been subscribed and the full nominal amount of each share payable in cash has been

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paid to and received by the company.

Ans.11 (a)

Aggrieved preference shareholders holding not less than ten per cent of the preference shares may, within thirty days of the date of the resolution varying their rights, apply to the Court for an order cancelling the resolution:

- (b) The court may reverse the decision of the company if it is shown to its satisfaction that some facts which would have had a bearing on the decision of the shareholders were withheld by the company in getting the aforesaid resolution passed or, having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant.

The decision of the Court on any such application shall be final.

Ans.12 The object clause of the Memorandum of Association is required to be amended in order to incorporate the refinery business in the object clause of the memorandum of association.

Step wise procedures for alteration of memorandum are as follows:

- (i) Obtain the approval of board of directors;
- (ii) Pass a special resolution;
- (iii) Obtain the consent of all creditors including debenture holders;
- (iv) Obtain confirmation from the Commission;
- (v) File a certified copy of the order of the Commission along with altered memorandum with the Registrar within 90 days of the order;
- (vi) Attach a copy of the certificate issued by the Registrar with each copy of memorandum, issued thereafter.

(THE END)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN	
EXAMINERS' COMMENTS	
SUBJECT Company Law	SESSION Intermediate Examination - Spring 2014

General:

The result this time was better than the previous attempt. However, some weaknesses were observed which are commonly reported in all comments. Study of laws including company law is different from many other areas as its terminologies, words and even its punctuation like commas and full stop have significance and any misuse can change the meaning of the law entirely. Those students who give due importance to these matters are able to pass easily.

Question 1

The question related to mid-term appointment of two directors and the chief executive by removing the earlier ones appointed for a term of three years. The answer was to be based on Sections 181 and 202 of the Companies Ordinance, 1984 relating to removal of directors and removal of chief executive respectively.

Generally, the students got high marks as they correctly described that the directors can be removed by passing a resolution in the general meeting. Majority of the students were also aware about the provisions of Companies Ordinance, 1984 regarding removal of Chief Executive. However, most of them did not address the issue raised by the existing directors regarding the period of their appointment as per articles of association of the company. Many students also gave detailed procedure about sending notices to the shareholders and in the newspapers which extended the answer unnecessarily.

Some students failed to understand the question and described provisions of Section 178A which pertains to holding of fresh election of directors on the request of a person who acquires 12.5% or more shareholding in the company.

Question 2(a)

Most of the students were well versed with the steps required to be undertaken by a listed company for convening the first annual general meeting and got high marks. Those who could not do well, generally failed to enumerate the following steps:

- Since the company was not holding the meeting in the town in which its registered office was situated, it required permission from SECP. Many students mentioned about taking permission from the Registrar, instead of SECP.
- Since special business was planned to be discussed in the meeting, statement of material facts related thereto were required to be annexed with the notice.
- Some of the students failed to mention about dispatch of notice to the auditors.

Question 2(b)

This part of the question required candidates to list the businesses that need to be transacted in first AGM of a company. Most of the candidates attempted it well on the basis of Section 158 of the Companies Ordinance, 1984.

Question 3

Majority of the students analyzed the given situation correctly and identified that the CEO is indirectly interested in the contract and therefore, should disclose his interest in compliance with the provisions of Companies Ordinance, 1984. However, only few students were able to cover all the relevant points. Most of them gave incomplete answers where important provisions were missing.

Many candidates mentioned the provisions contained in Section 218 of the Ordinance, which pertains to disclosure of director's interest in contract appointing chief executive, managing agent, whole time director or secretary; and accordingly, could not secure any mark.

A number of candidates gave very general answers which only talked about restriction on taking part in the discussions with very little or no further details.

Question 4

This was a straightforward question requiring the candidates to list any twelve powers which can be exercised by the directors of a company. Nearly all candidates succeeded in gaining high marks. Still, there were some who added incorrect or inappropriate points like appointment of auditors, issuance of right and bonus shares, authorization of increments etc.

Question 5

The question contained three parts. In each case, the candidates were required to narrate the relevant provisions of the Companies Ordinance, 1984 which would have to be complied with in the given scenario. Each case is discussed below:

- (a) **Situation:** The Company has received notice from a member proposing a change in the auditors of the Company.

Majority of the students described the company's responsibility of sending a copy of notice received from the shareholder to the retiring auditor and to the members but failed to mention the responsibility relating to publishing of notice in the newspaper.

- (b) **Situation:** A provident fund had been created by the Company but the directors did not intend to create a trust.

A large number of students declared that creation of a trust is necessary which is not correct. Majority of the students who gave the required explanation in terms of Section 227 (2) of the Companies Ordinance, 1984 also covered provisions of Section 227(1) and (3) which were irrelevant to the question as these pertain to money or security deposited by employees of the company in pursuance of their contract of service.

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- (c) **Situation:** A shareholder who held 5% shareholding in a company purchased 9% more shares and a further 8% shares subsequently.

This question was to be answered in the context of Section 222 which pertains to the submission of statement of beneficial ownership. The overall performance was good. However, in this case also, some students incorrectly mentioned the provisions of Section 178A regarding request to SECP for holding of fresh elections on acquiring substantial shareholding.

Question 6(a)

Majority of the students got high marks on this part of the question as they correctly narrated the exception to the general rule regarding holding of investment in company's own name in accordance with Section 209 of the Companies Ordinance. The important point that majority of the students missed was that an investment company is also included in the list of exceptions.

Question 6(b)

This part of the question required candidates to list the exceptions to the rule which prohibit a company from purchasing its own shares or from granting of financial assistance by a company for purchase of its own or its holding company's shares. The question was based on Section 95(1) and (2) of the Companies Ordinance, 1984. The students managed to cover most of the relevant parts of the Section; however, some of them failed to mention the following important provisions:

- A subsidiary can deal in shares of its holding company in the ordinary course of its business.
- A private company, not being a subsidiary of a public company, can provide financial assistance for the purpose of purchase to be made by any person of any shares in the company.

Question 7

This was a straightforward and scoring question for those candidates who have properly read and understood Section 30 (1) and (2) of the Securities and Exchange Commission of Pakistan Act, 1997. However, it was noticed that only few candidates have studied this Act properly. As a result, the performance was highly unsatisfactory. Most common mistake was that many candidates narrated the power of seizure of documents by registrar under Section 262 of the Companies Ordinance, 1984 instead of the relevant provisions of SECP Act, 1997.

Question 8

It was a scenario based question from Section 100 of the Ordinance. The requirement was to describe how the Court can proceed on an application made for reduction of share capital, when certain creditors have not given their consent for such reduction.

The overall performance was below average as most of the candidates gave incomplete answers covering one or two points only. A significant number of students mentioned incorrectly that in the absence of consent from the three creditors the court shall reject the application.

Question 9

In this question, three situations were given and the candidates were required to explain how the company's secretary would handle them. Performance in each situation is discussed below:

Situation (i)

100,000 shares were held by three joint holders. Each of them wanted to vote for a different candidate. In such situations guidance is sought from the Articles of Association of the company and in the absence of any guidance, the provisions of Regulation 35 of Table A have to be followed. Very few students could produce correct answers and most students replied incorrectly that the votes would be shared equally.

Situation (ii)

A company has appointed its ex-employee as its proxy and the Proxy Form was signed by the company's secretary. Only few students could produce the correct answer that the Proxy would be considered valid if the appointment as a proxy has been approved by the Board of Directors. Various types of mistakes were observed as most candidates gave one of the following types of responses:

- Proxy appointed by the company should be a member.
- Proxy would be valid if common seal is affixed on it.
- Non-member can be appointed a proxy only if it is allowed by the Articles of Association of the company.

Section (iii)

A shareholder had lodged proxy form one day before the AGM. This was easy and almost all candidates got the right answer.

Question 10

In this question, the candidates were asked about the requirements of Companies Ordinance, 1984 that need to be complied with by an unlisted public company, before proceeding to allot shares. Majority of the students failed to understand the question and narrated the procedure of public subscription like issuance, submission of application, balloting etc. Many students narrated the provisions of Section 73 which pertains to the "Return as to Allotment".

Question 11(a)

According to the situation given in this part of question, a company had decided to convert all its preference shares into ordinary shares. The candidates were required to explain the conditions under which certain preference shareholders aggrieved with the above decision may approach the Court.

The question was based on Section 108 (2) of the Companies Ordinance 1984. Generally the performance was good but some students explained the reasons for which court may reverse the decision, which was not required in this part of the question.

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Question 11(b)

This part pertained to the same situation as is mentioned in case of part (a) above. In this part most of the students failed to describe what decision can be taken by the court on application filed by the aggrieved shareholders. However, they explained correctly that no further remedy would be available to the aggrieved shareholders against the decision of the court as it shall be final.

Question 12

According to the situation given in the question, an oil marketing company intended to establish an oil refinery and therefore needed to amend its Memorandum of Association.

Generally, the students did well in this question. However, a number of students failed to understand that the change would be required in the object clause. They also discussed changes in Name and Place clauses which were not relevant. Moreover, without taking into consideration that it was only a 7-mark question, many candidates unnecessarily filled pages by narrating detailed procedure for calling a general meeting for the purpose of alteration of the memorandum of association.

THE END