

**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN**

**EXAMINERS' COMMENTS**

<b>SUBJECT</b>	<b>SESSION</b>
Company Law	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.

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.

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.

- 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*