



**CORPORATE LAWS
(SUMMER 2006 TO SUMMER
2016)**

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THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN

Final Examinations Summer 2006



June 07, 2006

CORPORATE LAWS

(MARKS 100)
(3 hours)

- Q.1 (a) On the request of a group of shareholders holding 12% voting shares in a company, SECP appointed inspectors to investigate into the affairs of that company and the inspectors have submitted a report to the SECP.

Advise the group of shareholders on the following:

- (i) Whether they have a right to receive a copy of inspector's report from SECP. (02)
- (ii) What action SECP could take on receipt of the inspector's report and what are the powers of the Court in such situation? (08)
- (b) CMD Limited (CMD) incorporated in UK earned a contract for construction of major infrastructure project in Pakistan under an international tender. The contract was assigned by WAPDA on behalf of Government of Pakistan.

CMD commenced operation in Pakistan on January 1, 2006 however it failed to submit the required documents to the Registrar as required under section 451 of the Companies Ordinance, 1984. Soon after commencement of work, differences developed between CMD and WAPDA and both sued each other.

Explain the effect of non-filing of the above documents on the following:

- (i) Validity of the contract. (05)
- (ii) Right of each party to sue each other. (05)
- (c) What is the status of a company, its chief executive and its directors which has commenced winding up proceedings? (03)

- Q.2 (a) Mr. Inzamam holds 60% shares of a listed company 'Cal Ltd.' and Mr. Haq holds 65% shares of another listed company 'CD Ltd.' Both the shareholders have signed a memorandum of understanding under which Mr. Inzamam will acquire the entire holding of Mr. Haq in CD Ltd. at a price to be determined through an independent valuation expert. Mr. Inzamam will thus become the majority shareholder in CD Ltd.

He is now planning to advertise in newspapers a public announcement of offer to acquire shares in CD Ltd.

Advise Mr. Inzamam about the Corporate Law provisions that are required to be followed regarding issuance of public announcement for the acquisition of the majority shareholding in CD Ltd. (10)

(2)

- (b) A strategic investor has acquired management control of a company through the privatization program. The directors of the company were elected only a year ago and still have an unexpired term of 2 years.

Outline the process under which the strategic investors will induct their own directors on the Board of the company. (03)

Q.3 (a) What do you understand by the term “Green-shoe Option”? (02)

- (b) An unlisted company wants to issue shares to a machinery supplier as consideration for supply of the plant for its expansion program.

What are the key requirements under the Companies Ordinance 1984 and Companies (Issue of Capital) Rules 1996 that the company must fulfill in this regard? (08)

Q.4 (a) A general meeting of a listed company was adjourned by the chairman for want of quorum. Fresh notice was not served for the adjourned meeting.

You are required to explain the following:

- Whether a notice is required to be served for the adjourned meeting.
- The minimum number of members required to be present in a general meeting.
- What shall be the requirement in case of an adjourned meeting? (06)

(b) Describe the requirements of Companies (Appointment of Legal Advisers) Act, 1974, regarding eligibility for the appointment as legal adviser? (04)

Q.5 A large group of companies is planning a buy back of shares in some of its companies. The Group Management Committee (GMC) has various alternatives and options for buying back of shares by considering the group’s future strategies. After a detail review the GMC has informed the Group Company Secretary as under:

- (a) NA Soft (Private) Limited is a very well known software house and has a paid up share capital of Rs. 100 million. The company would like to buy back 25% of its paid up capital. The debt equity ratio of the company is 75:25 and the current ratio is 1:1.
- (b) ASL Ltd., a pharmaceutical company, is listed on Karachi Stock Exchange. It has a share capital of Rs. 500 million and retained earnings of Rs. 100 million. The board of directors of the company has decided in their meeting to buy back shares of Rs. 200 million. The company has sufficient cash resources for purchase of shares.
- (c) CLS Textile Mills Ltd., is a listed company having a registered office in the province of Punjab. Mr. Ali, a holder of 20% shares, has shown his interest in selling his holding directly to the company. The management of the company is willing to accept his proposal.

As a Group Company Secretary, you are required to advise the GMC on the legality of transactions which the group is planning to undertake. (10)

(3)

- Q.6 (a) Annual General Meeting of a Public Company was scheduled to be held on March 15, 2006. Mr. A, a shareholder, issued two Proxies in respect of the shares held by him in favor of Mr. 'X' and Mr. 'Y'. The proxy in favor of 'X' was lodged on March 12, 2006 and the one in favor of Mr. 'Y' was lodged on March 15, 2006. The company rejected the proxy in favor of Mr. 'Y' and accepted the one in favor of Mr. 'X'.

Explain whether the rejection by the company is in order? (07)

- (b) A group of investors want to incorporate a company which will be engaged in leasing and venture capital business. You are required to explain the minimum capital requirement of running these businesses under NBFC Rules 2003. (03)
- (c) What restrictions have been placed on the scope of business activities of a leasing company under the NBFC Rules 2003? (06)

- Q.7 DOS Limited is a listed company engaged in providing LDI services to its customers. As a Chief Financial Officer you informed the board of directors that during the 2nd and 3rd quarter of year 2006-2007, the company will require short term financing in order to meet the liquidity shortfall. One of the directors has proposed that the company should raise finance through Commercial Paper.

You as a CFO are required to explain:

- the eligibility condition that have been specified by the SECP for a company that wishes to raise finance by issuing 3-6 months Commercial Paper.
- the prospective investors in Commercial Paper? (10)

- Q.8 (a) Del Ltd., having a 75% foreign shareholding, is under negotiation with its parent company to obtain a foreign currency unsecured loan to meet its working capital requirements. The proposed tenure of the loan is 7 years and the rate of interest is LIBOR plus 2%. Principal amount of the loan will be paid in 14 equal semi-annual installments and interest will be paid annually.

You, being the Corporate Consultant, have been asked to prepare a checklist containing the requirements of Foreign Exchange Regulations. Also fill the checklist to ascertain that the company complies with regulations. (10)

- (b) Directors of a public unlisted company had fixed the number of directors for election at eight. The present directors being eligible had offered themselves for re-election at the same board meeting. Considering the fact that there has been no change in the structure of shareholding, the Board of Directors passed a resolution appointing them as directors.

Comment on the above corporate action with reference to the provisions of the Companies Ordinance, 1984. (03)

(THE END)



CORPORATE LAWS
Module E

(MARKS 100)
(3 hours)

- Q.1 (a) A prospective individual sponsor has requested your advice whether company law permits an individual to incorporate a wholly owned company. Briefly describe the relevant legal provisions. (05)
- (b) Explain whether a non-member can become the director of a company. (02)
- Q.2 A member of a company seeks your guidance regarding the procedure for inspection of the minutes book of the general meetings. Discuss the requirements relating to the maintenance of minutes and its inspection by the members. (06)
- Q.3 As used in the context of winding up of companies, discuss when a company is deemed unable to pay its debts? (05)
- Q.4 The Directors of Genetics (Pvt.) Ltd. had started voluntary winding up proceedings by filing a declaration of solvency about 15 months ago. The company still owes substantial amount to the financial institutions. The Directors have assured the financial institutions that their debts would be settled within the next 6 months and have filed another declaration of solvency with the Registrar and copied it to the financial institutions. What are the legal implications if any, on the company or its directors for:
- (i) default in payment.
(ii) issue of second declaration of solvency.
- Also explain what remedy is available to the financial institutions in case of default by the directors. (07)
- Q.5 Miller and Company Limited, a foreign company incorporated in New Zealand, wishes to open a branch / liaison office in Pakistan. You are required to advise them on the following:
- (a) Obtaining permission for opening and maintaining its branch / liaison office in Pakistan. (04)
- (b) Statutory obligations under the Companies Ordinance, 1984 other than those relating to the filing of forms and accounts. (05)
- Q.6 Jehangir Limited a public listed company have incurred losses during the past two years, as a result of which, 17% of their equity has been wiped out. The board of directors wants to issue shares worth Rs. 100 million, being 25% of the present share capital at a discount of 20%. You are required to advise them on the matters which the SECP may consider before granting approval for issue of shares. (06)

(2)

- Q.7 The management of a listed company wants to implement an employee share option scheme. The Directors representing majority shareholding of 51% however have concerns that their majority holding might get diluted to below 50% in the long run. In terms of the prevalent corporate laws, suggest an alternative solution that could address the concern of the majority shareholders. Also explain the conditions required to be complied with and the various options available to the directors. (09)
- Q.8 (a) PQR Limited, an NBFC, has a license to undertake Investment Financial Services. List some of the services that it may perform while carrying out:
 - Project financing.
 - Corporate finance services. (10)
- (b) State the conditions which PQR Limited shall have to comply with, if it desires to issue Certificates of Deposits worth Rs. 100 million. (04)
- Q.9 (a) Write short notes on the provisions of the Code of Corporate Governance in respect of the following:
 (i) Frequency of board meetings, notice of meetings and the chairman of a meeting.
 (ii) Dissenting vote of a director.
 (iii) Persons allowed to attend Board meetings other than the directors of the company and the type of voting rights such persons can exercise? (09)
- (b) Members of XYZ limited holding 20% of the voting power submitted a requisition to hold an extraordinary general meeting of the company to remove the auditor of the company. The company did not call the extra ordinary general meeting and also did not allow the holding of the meeting at the registered office of the company. The said meeting was held at some other place and resolution for the removal of the auditor was passed. Examine the requirements and discuss the validity of the said meeting and resolution passed. (10)
- Q.10 Your friend, a non-resident, intends to trade in shares of companies listed in Pakistan. Briefly discuss the requirements / restrictions, if any, under the applicable laws. (08)
- Q.11 “Once a company’s shares are declared eligible securities with the Central Depository System and a shareholder registers his or her physical scripts with the CDS, the shareholder will stop receiving notices for company meetings as the CDC will be the registered holder of shares in the company’s register of members.”
 Comment on the above statement. (03)
- Q.12 The Cosmopolitan Modaraba was floated with a modaraba fund of Rs. 300 million. A spate of development projects have placed a severe liquidity crunch on the modaraba’s finances and the management company’s Board of Directors has sought your opinion on whether a modaraba can raise further capital through rights issue.
 Briefly describe the significant corporate requirements that must be complied with, prior to raising the capital. (07)

(THE END)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN

Final Examinations Summer 2007



June 6, 2007

CORPORATE LAWS

(MARKS 100)
(3 hours)

- Q.1 RBC Limited and KBC Limited are associated companies having share capital of Rs 60.0 million and Rs 15.0 million respectively. The companies' reserves equal 10% of their share capital. RBC Limited produces and supplies a component 'X' to KBC Limited. KBC Limited has been facing liquidity problems as a result of which its production and sales had been suffering. Consequently, there has been a significant decline in the sale of component 'X' by RBC Limited. The directors of RBC Limited wish to support KBC Limited by way of the following:
- Advancing loan of Rs 5.0 million at an annual interest of 8%.
 - Increasing the limit of trade credit from Rs 1.0 million to Rs 3.0 million.
- (a) Briefly state the conditions required to be fulfilled by the two companies while carrying out the above transactions. (08)
- (b) What consequences may be faced by the directors of RBC Limited in case they fail to comply with the above requirements? (03)
- Q.2 XYZ Limited, a listed company, has issued ten million shares of classes 'A' and 'B' each. The company passed a special resolution to alter some of the rights associated with class 'B' shares, which has aggrieved some of the shareholders.
- Explain to the shareholders, aggrieved with the above changes, on the following:
- (a) What remedy is available to the aggrieved shareholders? (03)
- (b) Under what conditions can the decision of the company be cancelled? (04)
- Q.3 On a petition filed by affected minority shareholders, the court has directed a company to be wound up and has also appointed a liquidator. The existing management comprising the chief executive and other board members, is resisting the move and is expected to create hurdles in the winding up proceedings including refusal to hand over custody of books and records and properties to the liquidator. Narrate the powers conferred on the liquidator and the court, in the above situation and what actions can be taken to proceed with the winding up. (06)
- Q.4 (a) Mr. Luqman, a Senior Director of STQ Limited, a non-banking financial institution (NBFC), wishes to retire and wants his son to be appointed in his place. As the company secretary of STQ Limited, advise him about the conditions specified in NBFC Rules 2003, which his son must satisfy to be eligible for appointment as the Director of STQ Limited. (07)
- (b) Briefly describe the terms and conditions of operation of a venture capital fund as laid down under the NBFC Rules, 2003. (06)

(2)

- Q.5 (a) Mr. Pang and his wife jointly acquired 23% shares in Sunshine Limited. The company is listed on the Lahore Stock Exchange. The transfer deeds lodged by Mr. Pang did not mention his address and this was also not noted by the corporate affairs department while dealing with the registration of transfer. At the time of giving notice to members for annual general meeting where election of directors are also scheduled to be held, the fact came to light and now the Chief Executive is worried as to how the notice may be served, to avoid any litigation which may be initiated by Mr. Pang, due to non service of notice.
- As the secretary of the company, advise the chief executive as to how the company should deal with the above situation. (03)
- (b) A company has revised its marketing strategy and instead of having its wholesale delivery points, it has appointed 20 dealers throughout Pakistan. The management intends to take deposits for security purposes from each dealer. The aggregate amount of such deposits will be around Rs 200 million. Being the head of finance, advise the management about the relevant provisions contained in the Companies Ordinance, 1984, dealing with the issue of deposits and any restrictions or conditions imposed therein. (05)
- (c) Mr. Ibrahim is the Chief Executive of LMN Limited, a listed company. He has requested the company for a loan of Rs 30.0 million. His annual remuneration is Rs 28 million. State the conditions mentioned in the Companies Ordinance, 1984, under which such a loan may be advanced by the company. (06)
- Q.6 The third Annual General Meeting (AGM) of ABC Limited, an unlisted public company, is to be held on 31 July 2007. However, in the third week of May, a considerable portion of the accounting record of the company was destroyed by fire. As a result, the CFO concluded that the audited financial statements pertaining to the year ended March 31, 2007 would not be ready to be laid before the AGM.
- Describe the suitable course available to the company and the relevant provisions of the law applicable thereto.
- Also, briefly discuss the consequences if the accounts are not adopted by the members of the company due to any reason, at a duly convened annual general meeting. (09)
- Q.7 (a) ABC Limited, a listed company, is entering into a contract to purchase machinery worth Rs. 50 million from XYZ (Private) Limited, where the spouse of the chief executive of ABC limited is also a director. The contract for purchase of said machinery is to be placed before the board of directors of the company for approval.
- State the relevant rules as given in the Companies Ordinance, 1984 and describe the procedure which ABC Limited should follow while entering into the contract. (08)
- (b) Explain whether XYZ (Private) Limited will have to follow and comply with the same rules as are applicable to ABC Limited. (02)
- Q.8 A resolution was put before the members in an Annual General Meeting, for voting on a show of hands. Before the announcement of the result, Mr. Shahab Khan, a share holder, demanded a poll, which was refused by the Chairman.
- Discuss the legality of the chairman's decision in the light of the Companies Ordinance, 1984. (05)

(3)

- Q.9 (a) “An executive director cannot become the Chairman of the audit committee”. Do you agree with the statement? Explain. (03)
- (b) Explain the provisions of the Code of Corporate Governance relating to audit committee in respect of following:
- Holding of meetings
 - Attendance at meetings (07)
- Q.10 Mr. Abbasi is a director of Bright Limited, a listed company. His nephew wants to purchase shares of Bright Limited. Part of the funds required to make the investment shall be provided by Mr. Abbasi at a profit of 3% per annum.
- Describe the actions which Mr. Abbasi should take to ensure that he complies with the relevant provisions contained in the Companies Ordinance, 1984 and the Code of Corporate Governance. (06)
- Q.11 In respect of each of the following transactions, explain whether the same will result in creation of unreasonable monopoly power under the Monopolies and Restrictive Trade Practices (Control And Preventions) Ordinance, 1970.
- (a) Red Limited purchased 17% shares of Blue Limited. Both the companies are operating cement plants and have a combined market share of about 48%.
 - (b) DX Limited entered into a contract to purchase 47% of the total production of DY Limited. The combined production of both the companies is approximately 40% of the total production of the whole industry.
 - (c) XYZ Bank Limited, a non-listed commercial bank has extended a loan of Rs 1.0 billion to ABC Limited, a leasing company, at a profit of 7% per annum. The average rate of profit charged by the bank in similar types of loans is 12%. The bank holds 24% of the total ordinary shares of ABC Limited. (09)

(THE END)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN

Final Examinations Winter 2007



December 5, 2007

CORPORATE LAWS

(MARKS 100)
(3 hours)

- Q.1 Blossom Textiles Limited, a listed company, is in urgent need of increasing its paid up capital to improve balance sheet ratio and satisfy their bankers. The response from the existing shareholders and the underwriters is quite discouraging.
- (a) Mr. Majeed, an existing shareholder has shown his intention to purchase the whole issue at par. Describe the steps that the company will need to take if it wants to accept the offer by Mr. Majeed.
- (b) Assuming that Mr. Majeed's holding after the above purchase would exceed 10% of the company's total shareholding, what additional formalities would have to be completed by him? (07)
- Q.2 The CFO of ABC Limited realized on 23rd October that particulars of charge created on 13th October in favour of a bank were not filed with the Registrar of Companies for registration. Describe the procedure the company should follow to get the charge registered with the Registrar of Companies. Would the procedure be different if the charge was created on 29th September? (06)
- Q.3 A director of a listed company has proposed to nominate another person to act in his place as he would be going to Japan to undertake a technical training course. You are required to state the requirements to be complied with under the Companies Ordinance, 1984. (06)
- Q.4 A group of shareholders holding 24% shares in RST Limited, a listed company, wishes to file a petition with the Court against the management of the company and the majority shareholders, on the following grounds:
- (i) Loss of confidence in management.
- (ii) Continuous losses being made by the company.
- (iii) Failure to pay dividend.
- (iv) Insider trading.
- Quote the relevant provisions of the Companies Ordinance, 1984 and comment on the advisability of the petition in each of the above case. (09)
- Q.5 Synthetic Holdings Limited wishes to close down one of its subsidiary companies listed on the Lahore Stock Exchange, as it is no more a viable unit. Their legal counsel has advised the preparation of a Declaration of Solvency as a starting point to wind up the subsidiary. In this context, you are required to explain:
- (a) What is a declaration of solvency and what must it contain? (03)
- (b) When is it made and what is its purpose? (02)
- (c) What consequences may follow if the declaration is subsequently found to be incorrect? (02)

(2)

Q.6 The members of XYZ (Private) Limited have resolved to make certain amendments in the object clause of its memorandum of association to enable it to expand its scope of activities.

- (a) Explain the procedure that the company will have to follow. (03)
(b) List the information which will be required to be submitted in the application to the concerned authority. (07)

Q.7 FGH is a listed company and has not declared any dividend or bonus shares during the past few years. The board of directors is now considering distribution of bonus shares.

The Balance Sheet of the company prior to the issuance of bonus shares depicts the following position:

	Rs. in million
Share Capital (6.0 million shares of Rs. 10 each)	60
General Reserves	40
Share Premium	30
Revaluation Reserves	20
Intangible Assets	10
Tangible Assets	200

- (a) Advise the company whether it can issue 25% bonus shares out of the General Reserves, a part of which was accumulated in prior years. (04)
(b) Can the bonus issue be made out of Share Premium account? (04)

Q.8 A large group based in Dubai wishes to set up a company for carrying out a vast spectrum of investment-related activities in Pakistan.

- (a) You are required to advise them on the various forms of investment related businesses referred to in section 282A of the Companies Ordinance, 1984.
(b) List the activities that may be carried out under each of the above forms of businesses as specified in NBFC Rules 2003. (12)

Q.9 The board of directors of a listed textile weaving unit (KW Weaving Mills Limited) has approved a scheme of amalgamation with its fully owned subsidiary, KD Dyeing Mills Limited. The merger will result in economies of scale which would eventually increase the profitability of the company in the coming years. You are required to draft the relevant resolutions necessary to carry out the merger. (06)

Q.10 First Cosmopolitan Modaraba, having multipurpose objectives, is incurring losses for the past three years. Its accumulated losses as at June 30, 2007 were Rs. 4.5 million as compared to the present paid up capital of Rs. 6.0 million. You are required to explain:

- The basis on which a winding up application may be filed against the Modaraba in the above situation.
- Who can file such an application and the relevant authority with whom the application may be filed? (06)

(3)

Q.11 You have been appointed as the Chief Financial Officer of Shahbaz Insurance Limited, an unquoted company, which was incorporated on 10th November 2007. You are required to prepare a note for the forthcoming meeting of the Board of Directors, containing the following information:

- (a) The Committees which are to be established to meet the requirements of Code of Corporate Governance and the scope of activities of each Committee. (10)
- (b) Requirements as regards their composition and the frequency of the meetings. (03)

Q.12 Company A is in the process of being wound up. The following is a list of amounts payable by it:

	(Rs.000s)
Salaries and wages (staff strength 97; payable for last six months)	3,000
Utility bills	200
Property taxes (payable to City Government)	150
Fuel expenses payable to employees	150
Legal and professional fees	250
Sales tax payable	500
Penalty payable under the Income Tax Act 2001	100
Contributions to employees provident fund	200
Leave encashment	200
Disability insurance received from insurance company and payable to staff	100
Secured loan payable to National Bank of Pakistan - Principal	1,200
- Interest	250
Secured trade creditors	400
Unsecured trade creditors	1000

In the light of winding up provisions contained in the Companies Ordinance, 1984, how would the above amounts be ranked for payment? Assuming that the funds available with the company are Rs. 1.75 million only, how would the distribution take place? (10)

(THE END)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN

Final Examinations Summer 2008



June 4, 2008

CORPORATE LAWS

(MARKS 100)
(3 hours)

Q.1 During the past 12 months Mr. Sohail's holding in shares of ABC Ltd (a listed company) has increased to 13%. Recently, he has written a letter to the company seeking appointment on its Board of Directors. The company secretary had advised that since the election of directors was held in the preceding annual general meeting, he cannot be admitted on the board till the next elections become due. Mr. Sohail is not satisfied with the response and has sought your advice on the matter. You are required to briefly discuss what course of action is available to him. (07)

Q.2 (a) Arif & Co., Chartered Accountants were to be re-appointed as auditors at the Annual General Meeting of Rose Limited, an unlisted company. The meeting was held on October 31, 2007 but stood adjourned without discussing the appointment of auditors. Explain the legal position of the auditors in such a situation. (02)

(b) An equity investment of Rs. 275 million has been offered by KA group of companies to Rose Limited. In order to expand the business activities of the company, the management is inclined to accept the proposal. However, the shares to be issued would not rank pari passu with the current shares and shall be termed as Class "B" shares.

The current position of the company's capital and reserves is as under:

	Rupees (in million)
Share Capital:	
Authorized	500
Issued, subscribed & paid up	330
Capital Reserves:	
Share premium account	45
Revenue Reserves:	
Un-appropriated profit	20

Identify the relevant provisions which Rose Limited will have to comply with and describe briefly the steps it would need to take, for issuance of shares. (10)

Q.3 (a) Pioneer Services Inc., a branch office of a US company engaged in software business has decided to wind-up its operations in Pakistan. You are requested to guide the management about the necessary formalities to be carried out under the Companies Ordinance, 1984. (04)

(b) What requirements would have to be complied with, by a foreign company having a branch office in Pakistan, if the company goes into liquidation in the country of its incorporation? (06)

(2)

- Q.4 In its meeting held on October 10, 2007 the Board of Directors of Snow White Limited, a listed company, decided to offer a 60% right issue at par value. You are required to explain:
- (a) The conditions that the Board will have to comply with in this regard. (07)
 - (b) The additional conditions which the Board will have to comply under each of the following situations:
 - (i) If the company's shares have been traded below par value during the past one year.
 - (ii) If the shares are to be issued at a premium of Rs. 5 per share. (03)
- Q.5 (a) Certain persons have been restricted from being appointed as legal adviser of a public limited company. Specify the restrictions imposed in this regard under Appointment of Legal Advisor's Rules 1975. (02)
- (b) State the particulars which are required to be specified in the Register of Legal Advisers. (03)
- Q.6 Explain the term "Foreign Controlled Company" as referred to in the Foreign Exchange Regulations. (06)
- Q.7 The Board of Directors of Iqra Industries Limited, a newly incorporated listed company, is in the process of formulating significant policies to govern the operations of the company. As a member of the Board, identify the significant policies which should be formulated, as advised under the Code of Corporate Governance. (06)
- Q.8 Mr. Overtaker has issued a public offer for the acquisition of M/s Undertaker Limited, a company listed on the Karachi and Lahore Stock Exchanges, at a price of Rs. 55 per share. The offer has not fetched results and Mr. Overtaker is worried that the offer will lapse without much success. Narrate the conditions he will have to comply with if he wishes to revise the offer upwards. (05)
- Q.9 (a) Express Limited, a company listed on the Karachi Stock Exchange has a paid-up capital of Rs. 100 million divided into 10 million shares of Rs. 10 each. The Board of Directors have approved the purchase of 100,000 treasury stocks at Rs. 15 each within 30 days, by a tender. As the Company Secretary, what procedure would you follow in this regard? (11)
- (b) The Board of Directors of Ghareeb Limited has decided to contribute a fixed amount every year to a charitable organization. The company secretary notified that a clause needs to be inserted in the object clause of the Memorandum of Association for the same. Draft a clause to be included in the Memorandum covering the permissibility of the proposed activity. (02)
- Q.10 A group of shareholders of Sky Blue Limited believes that certain business activities carried on by the company are prima facie against the interest of the company and its members. They have approached your firm and seek your guidance for applying to the SECP to carry out the investigation against the directors of the company. You are required to identify the conditions under which such an application may be filed and the procedure that will have to be followed in this regard. (05)

(3)

Q.11 (a) Explain the term “Participant” as defined under Central Depository Act, 1997. (02)

(b) The Securities of Shalimar Investment Company Limited (SICL) are registered in the name of Central Depository Company (CDC). List the steps which the CDC will have to take where a bonus issue is declared by SICL? (05)

Q.12 (a) See-green Limited, a public limited company, had convened a general meeting at 9:00 a.m. on March 25, 2008 to consider and if deemed fit, pass a special resolution approving the disposal of a part of the company’s undertaking.

The meeting commenced at 9:16 a.m. as the quorum was not present at the scheduled time and was attended by 100 members (including 10 members represented through proxies) holding 1,000,000 shares in aggregate.

After a heated debate, voting was held through show of hands and the chairman declared the resolution successful as 78 votes were casted in favour of the resolution.

On March 31, 2008, the shareholders who gave a dissenting vote in the meeting, lodged a protest with the company claiming that the resolution was invalid on account of the following reasons:

- (i) Mr. A who voted for the resolution was represented through a proxy which was deposited at 5:01 p.m. i.e. after office hours on March 22, 2008. Moreover, since March 23rd was a public holiday, the condition of depositing the proxy atleast 48 hours before the meeting, could not be met.
- (ii) Mr. B a shareholder with a holding of 50,000 shares was represented by two proxies i.e. Mr. C (30,000 shares) & Mr. D (20,000 shares). Both proxies were counted for the purpose of voting.
- (iii) JK (Pvt) Limited holding 20,000 shares of the company, were represented by Mr Sameer, who is neither the director nor the employee of the company. He also voted in favour of the resolution.
- (iv) The shareholders who lodged the protest hold 300,000 shares and therefore the resolution was approved by shareholders holding 70% voting rights only.
- (v) Since the meeting could not be held on time, it became invalid and should be called again.

Discuss the validity of the resolution under the Companies Ordinance 1984, in view of the complaint lodged by the dissenting shareholders. (10)

(b) In the first meeting of Board of Directors of Alif Cement Ltd a public listed company, Mr. Raof proposed the name of Mr. Haseeb for appointment as chief executive of the Company. Mr. Zahid opposed the proposal on the following grounds:

- (i) Mr. Haseeb is also the Chief Executive of Bay Cement (Pvt) Limited which holds 15% shares in Alif Limited.
- (ii) he is involved in the business of stock brokerage.

Comment on the statement of Mr Zahid in the light of the provisions of the Companies Ordinance, 1984. (04)

(THE END)

Ans. 1 Under the Companies Ordinance, 1984 the tenure of the BOD is 3 years.
Before expiry of the term a person can only be admitted to fill in the casual vacancy.

However, according to the Companies' Ordinance, 1984 if a person acquires 12.5% or more voting shares in a listed company in his own name, he may apply to the Commission to direct the company to hold 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 as above and the company shall comply with such direction.

However, in case the election is held as above, Mr. Sohail shall be restricted from selling or disposing of the shares for at least one year from the date of election of Directors of the company.

Ans. 2 (a) The appointment of auditor is made at every annual general meeting of the company to hold office from the conclusion of that meeting until the conclusion of the next AGM. Since the AGM was adjourned without discussing the re-appointment of Arif & Co., they will continue to hold office till the conclusion of the adjourned AGM.

(b) Rose Ltd. Should have to comply with the following provisions:

1. Alter the Memorandum of Associations and Articles of Association in order to:

- Increase the authorized capital and
- provide for (if not already provided for) issuance of different kinds of shares permitted under the Companies Share Capital (Variation in Rights and Privileges) Rules, 2000.

The main steps which the company needs to take for issuance of shares, are as follows:

1. A special Resolution will have to be passed by the shareholders at the General Meeting of the Company.
2. On the basis of the special Resolution, an application will have to be made to the Federal Government, to allow the company to raise its capital further, without issuance of right shares.

Ans. 3 (a) Following necessary formalities need to be carried out by the foreign company.

Notice of closure of business

Give a notice of closing the business and ceasing to have any place of business in Pakistan to the Registrar at least thirty days before closing of the business along with the prescribed fee.

Publication of Notice in Newspaper

Publish a notice of such intention at least in two daily newspapers circulating in the Province in which such place of business is situated at least thirty days before the closing of the business.

(b) The branch of the foreign company is required to:

- give notice to the Registrar concerned within 30 days;
- simultaneously publish a notice at least in two daily newspapers circulating in the province(s) in which its place(s) of business is situated;
- furnish to the Registrar concerned all returns and account relating to the liquidation in respect of its business in Pakistan, within 30 days of the conclusion of the liquidation

- proceedings; and
- Publish a statement on every invoice, order, letter paper, bill head, notice or other publications in Pakistan that the company is being wound up in the country of its incorporation.

Ans.4 (a) The Board of Directors of Snow White Limited will have to comply with the following conditions:

- (i) The company may only make a right issue if at least one year has passed since the last issue of capital to the public.
- (ii) While announcing right issue, the company shall clearly state:
 - The purpose of the right issue.
 - Benefits to the company.
 - Use of funds.
 - Financial projections for the next three years.
- (iii) The financial projections shall be signed by all the directors who were present in the meeting in which the right issue was approved.
- (iv) The decision to issue right shares will have to be communicated to the Commission and the stock exchanges(s) on the day of decision.
- (v) The book closure will have to be made within forty-five days of the announcement of the right issue.

- (b) (i) If market share price during the past one year (preceding six months as per Rule 5) has remained below par value, the right issue will have to be fully and firmly underwritten.
- (ii) The company may charge premium on right shares up to the free reserves per shares as certified by the company's auditors. The auditors' certificate has to be furnished to the Commission and the stock exchange(s) along with an intimation of the proposed right issue.

In case a company proposes to charge premium on right shares above the free reserves per share, it shall be required to fulfill to following requirements as well:

- (a) at least 40% of all the share holders undertake to subscribe their portion of right issue; and
- (b) the remaining amount shall be underwritten by at least two financial institutions not being the associated company and the underwriters shall give full justification of the amount of premium in their independent due diligence report.

Ans.5 (a) An advocate or a registered firm cannot be appointed as legal adviser of a company, if upon appointment, the number of companies of which such advocate or firm is a legal adviser exceeds:

- (i) Three, in case of an advocate.
- (ii) The product of three and total number of partners of the firm, in case of a firm.

(b) Following particulars are required to be specified in the register of legal advisers.

- (i) Name of the legal adviser or name of the firm
- (ii) Number of partners, in case of a firm.
- (iii) Remuneration
- (iv) Address
- (v) Date of appointment
- (vi) Date of termination of appointment

Ans.6 “Foreign Controlled Company” is any company, not being a banking company, which is controlled, whether directly or indirectly, by person’s resident outside Pakistan.

A company/firm / branch or office of a company or firm, is deemed to be controlled directly or indirectly by persons resident outside Pakistan, if:

- (i) it is a branch office of a company incorporated outside Pakistan , or
- (ii) in the case of partnership, if:
 - (a) 50% or more of the capital of the partnership is owned by foreign nationals, or
 - (b) The majority of the partners are foreign nationals, and
- (iii) in the case of companies incorporated in Pakistan, if:
 - (a) 50% of the shares or more are subscribed by foreign nationals, or
 - (b) 50% of the Directors or more are foreign nationals.

In the case of equal share-holding, a company is deemed to be a Pakistan controlled company, if it’s Chief Executive is a Pakistani National.

Ans.7 Under the Code of Corporate Governance, The Board of Directors of Iqra Industries Limited should formulate the following significant policies:

- (i) Risk management.
- (ii) Human Resource Management including preparation of the succession plan.
- (iii) Procurement of goods and services.
- (iv) Marketing.
- (v) Determination of terms of credit and discounts to customers.
- (vi) Write-off of bad/doubtful debts, advances and receivables.
- (vii) Acquisition / disposal of fixed assets.
- (viii) Investments.
- (ix) Borrowing of money and the amount in excess of which borrowings shall be sanctioned / ratified by a general meetings of shareholders.
- (x) Donations and charities.
- (xi) Determination and delegation of financial powers.
- (xii) Transactions or contracts with associated companies and related parties.
- (xiii) Health, safety and environment.

Ans.8 Mr. Overtaker can make an upward revision in his offer price at any time up to seven working days prior to the date on which the offer is to lapse.

However, when making such upward revision, the following conditions shall apply:

- (a) A public announcement shall be made in all the newspapers in which the earlier public announcement was made.
- (b) SECP, Karachi Stock Exchange, Lahore Stock Exchange and M/s Undertaker Limited (at its

- registered office) shall be informed of such upward revision.
 (c) Furnish any additional security as may be required, in order to meet his obligations.

Ans.9 (a) Express Limited will have to carry out the following procedures for the purpose of buy back of shares.

- (i) The decision of the directors for the purchase shall be communicated to the Commission and the respective stock exchanges on the day of the decision.
- (ii) Convene a general meeting for passing the special resolutions by giving notice to all members at least 21 days before the meeting.
- (iii) Statement of material facts shall be sent along with the above notice, which shall contain:
 - Justification for the purchase.
 - Source of funding.
 - Effects on the financial position of the company.
 - Nature and extent of interest of every director.
- (iv) Notice shall be published in at least two newspapers circulating in the provinces in which the stock exchange on which the company is listed exists.
- (v) Copies of the resolution shall be filed with the Registrar within 15 days of the passing of the resolution.
- (vi) A tender shall be given in the newspaper for purchase of the shares.
- (vii) The purchase of the shares shall be recorded in the register maintained for such purchase.
- (viii) Register of members and other registers shall be amended accordingly.
- (ix) A return with the declaration of solvency shall be filed with the Registrar and Commission within 30 days of the date of purchase.

(b) Suggested draft of the Clause to be included in the Memorandum is as follows:

“To grant relief donation for and during calamities, undertake charitable activities which in the opinion of the company would assist and benefit mankind and to establish, maintain, run, manage and administer charity programs, providing relief and to help the needy and poor” .

OR

“To subscribe, donate money for any national, charitable, benevolent, public, general or useful object including any educational institution, hospital, flood or famine relief fund and other institution or fund established for religious or charitable purpose”.

Ans.10 An application for investigation against the directors may only be filed by members having not less than one tenth of the total voting power.

The significant steps need to be taken in this regard are as follows:

- (i) An application shall be filed with the SECP which among other information, shall also include the following:
 - Names and addresses of the applicants.
 - Precise and specific reasons for requesting the investigation with particulars of alleged irregularities.
 - Documentary evidence to support the claim of alleged irregularities.
- (ii) The statements made by the applicants should be duly supported by an affidavit.

- (iii) The Commission may, before passing any order on the application, require the applicants or any one or more of them to produce such further documentary or other evidence as the Commission may consider necessary

Ans.11 (a) “Participant” means

- (i) an account-holder who is a member of a stock exchange; and
- (ii) any other account-holder who meets the qualifications of a participant prescribed in the CDC Regulations.

(b) CDC will have to take the followign steps when a bonus is declared by SICL:

- (i) Such bonus securities entitlement shall be allotted to the Central Depository.
- (ii) On the day beofre book closure, CDC shall determine the entitlement of each account holder and sub-account holder.
- (iii) CDC shall enter the book-entry securities in the relevant accounts and sub-accounts in accordance with the determined entitlements.
- (iv) Fractional entitlements to book entry securities, relating to the bonus securities, shall not be credited by cental depository to the relevant accounts and sub-accounts but shall be consolidated and dealth with in accordance with the regualtion.

Ans.12 (a) The various situations given in the question are discussed hereunder:

- (i) Since the proxy was lodged after office hours on 22nd March. It would be deemed to have been lodged on 23rd March 2008. Hence, the condition of depositing the proxy 48 hours before the meeting could be met and the vote caste on the basis of such proxy should be considered as valid.
- (ii) As per the Ordinance a member shall not be entitled to appoint more than one proxy to attend any one meeting. If any member appoints more than one proxy for any one meeting and more than one instrument of proxy are deposited with the company, all such instruments of proxy shall be rendered invalid.

Accordingly, votes caste by Mr. C and D as proxies would be invalid.

- (iii) As per the Ordinance, a company which is a member of another company may, by resolution of the directors, authorize any of its officials or any other person to act as its representative at any meeting of that other company.

Therefore Mr. Sameer’s vote is valid.

- (iv) As per the ordinance, at any general meeting, a resolution put to the vote of the meeting shall be decided on show of hands, unless a poll is demanded.

The concerned shareholders should have demanded a poll before or on the declaration of the result of the voting by show of hands and not after the meeting is concluded. Therefore the shareholder’s protest is not valid.

- (v) As per the Ordinance, if within half an hour from the time appointed for the meeting, a quorum is not present, the meeting, may either be dissolved or adjourned. since the quorum was present with in 30 minutes, the meeting is valid.

Conclusion:

In view of the above the resolution would be deemed to have been duly passed even after if the proxies lodged by the members who were represented by Mr. B and C are considered invalid as 75% valid votes were cast.

- (b) (i) As per the Ordinance, a 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.
- (ii) Moreover, no person shall be appointed as chief executive of a company if he is a member of a stock exchange engaged in the business of brokerage.

Therefore Mr. Zahid's contention is correct.

(THE END)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN

Final Examinations Winter 2008



December 3, 2008

CORPORATE LAWS

(MARKS 100)
(3 hours)

- Q.1 Friends Textiles Limited has suffered heavy losses and has almost ceased its operations due to global recession. The directors foresee no improvement in the company's financial health and are of the opinion that the company should be liquidated now, as otherwise, in view of the deepening economic crises, it would be difficult for the company to fetch a good value for its assets.
- Required:**
- (a) Narrate the circumstances in which a company may be wound up voluntarily? (03)
- (b) Advise the directors of the company about the steps that need to be taken to wind up the company voluntarily. (10)
- (c) State the requirements and the procedure to be followed for making a Declaration of Solvency under members' voluntary winding up. (05)
- Q.2 The Board of Directors of ABC Limited, a company listed on Karachi and Lahore Stock Exchanges, has resolved to transmit its quarterly financial statements to the members of the company through its corporate website. You are required to discuss the requirements of Companies Ordinance, 1984 regarding placement of the quarterly accounts on the web. (07)
- Q.3 (a) List the types of businesses that NBFCs are permitted to carry out under the relevant provisions of Companies Ordinance 1984. (03)
- (b) In order to reap benefits of large scale operations, the Board of Directors of Moonlight Leasing Limited and Dream Leasing Limited intend to amalgamate the operations of the two companies.
- State the procedure which should be followed for the merger of the two companies and the approvals required to be obtained for this purpose, under the provisions relating to establishment and regulation of NBFCs. (08)
- Q.4 Mr. Khan, chief executive of Prosperous Engineering Limited, is assessing the possibility of setting up a new project in Gwadar in collaboration with a prospective foreign investor. He is confident that the proposed project will reap significant benefits to the company. Since he does not wish to dilute his holding and voting rights, he is planning to issue class B shares to the investor along with 16% TFCs with a floating charge on the book debts of the company and a fixed charge on its machinery in the manufacturing department. He wants to have your advice on the issue.
- Required:**
- (a) Explain to Mr. Khan various rights and privileges which shareholders may have in case of more than one class of share capital, under the Companies Share Capital (Variation in Rights and Privileges) Rules, 2000. (06)
- (b) Explain the important characteristics of a fixed charge and floating charge and their registration requirements. (05)

(2)

Q.5 GP Pharma Limited, a family owned company with zero debt, has witnessed rapid growth during the past 5 years. In order to carry on the successful growth pattern and fulfill the ever increasing customers demand, the board of directors of the company is planning to establish another manufacturing facility at a cost of Rs. 200 million. To meet the cost of the project, the company needs to raise capital and therefore has decided to go public.

Required:

Advise the Board about the conditions to be complied with for the issuance of capital under the Companies (Issue of Capital) Rules, 1996. (09)

Q.6 Fiber Leasing Limited has recently lost one of its Directors and the Chief Executive in a tragic car accident. The company wants to appoint Mr. Big and Mr. Smart in place of its late director and chief executive respectively. With reference to NBFC and Notified Entities Regulations, 2007, state the considerations which SECP would take into account while assessing their competence and capability as Director and Chief Executive. (09)

Q.7 Mega Projects Limited is presently facing financial crunch. In order to overcome this crisis and to improve profitability, the Board of Directors is considering to raise funds through capital injection. The existing shareholders and the potential investors may not be willing to invest at par value which is Rs.10 per share. However, it is estimated that the company could get just about Rs. 7 per share. The directors have therefore decided to issue shares at discount.

Being a Company Secretary, you are required to advise the directors about the procedure to be followed in this regard, under the Companies Ordinance, 1984. (10)

Q.8 (a) In view of large decline in the value of shares in Asian markets, a group of US investors believe that now is the opportune time to invest in such markets as they have almost reached their lowest limits. One such investor, Mr. NR is interested in buying securities listed on Karachi Stock Exchange.

With reference to relevant provisions of Foreign Exchange Manual, you are required to advise Mr. NR on the following:

- (i) The procedure to be followed in order to trade in listed shares in Pakistan.
- (ii) Whether Mr. NR would be entitled to receive dividends on such securities and are there any restrictions on repatriation of funds outside Pakistan? (09)

(b) Explain the meaning of "a person resident outside Pakistan" as referred to in the Foreign Exchange Regulations. (03)

Q.9 Sigma Industries Limited is a company listed on Karachi Stock Exchange. Its financial year ends on December 31. The final dividend for the year 2007 was approved in the AGM held on March 31, 2008. To maintain its good payout ratio, the company declared two interim dividends of 10% and 12% in January and February 2008 respectively. The books were closed for a period of 12 days and 18 days respectively. The directors of Sigma Industries Limited have now proposed a final dividend of 20% which is to be approved in the forthcoming AGM of the company. The directors intend to close the share transfer register from March 25, 2009 for determining shareholders entitlement for the purpose of dividend, meeting, etc.

In the light of Companies Ordinance, 1984 you are required to advise the directors as regards the following :

- (a) The maximum period for which the books of Sigma Industries Limited can be closed and the procedure that should be followed in this regard. (05)
- (b) The last date up to which Sigma Industries Limited can hold its AGM. (03)
- (c) The procedure relating to sending of notices, annual report and audited accounts to the members and concerned authorities. (05)

(THE END)

CORPORATE LAWS
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Ans.1 (a) Circumstances in which a company may be wound up voluntarily

A company may be wound up voluntarily, under the following circumstances:

- (i) On expiration of the period fixed for its duration or on occurrence of the event on the occurrence of which the company is to be dissolved under the articles of association and the company has passed a resolution in the general meeting for it to be wound up voluntarily;
- (ii) If a special resolution is passed that the company be wound up voluntarily;

(b) The management is required to take the following steps for Members' voluntary winding up under the Provisions of the Companies Ordinance, 1984.

- (i) Directors may make a declaration of solvency duly supported by an auditors report to be filed with the registrar within five weeks immediately preceding the date of passing of winding up resolution. They, then, call a general meeting of the members.
- (ii) The company, on the recommendations of directors, passes a Special Resolution for winding up in the general meeting of the members.
- (iii) Notice of resolution shall be given by the company in the Official Gazette within 10 days and also published in the newspapers, with a copy of it is to be filed with Registrar.
- (iv) The company shall appoint a liquidator in the general meeting of the company. On appointment of the liquidator, all the powers (with certain exceptions) of the Directors, chief executive and other officers shall ceases to exist.
- (v) Consent of the Liquidator and notice of his appointment is filed with the Registrar.
- (vi) Liquidator shall realize the assets of the company and pay the claims of the creditors. After adjustment of all claims and rights, surplus shall be distributed to the contributories on pro rata basis.
- (vii) Liquidator prepares the accounts and final report, get the accounts audited, and presents the same in the general meeting of the contributories (members).
- (viii) A notice of such meeting of contributories shall be published in the Gazette and newspapers at least 10 days before the date of meeting.
- (ix) Liquidator shall file the accounts, final report and a return of holding the meeting along with minutes thereof, with the registrar, within one week after the meeting.
- (x) On the expiration of three months from registration of the above, the company shall be deemed to be dissolved.

(c) Requirements and the procedure to be followed for making a Declaration of Solvency under members' voluntary winding

In case of Members voluntary winding-up:

- (a) All directors, including the chief executive and if the number of directors is more than three, majority of these directors are required to make a declaration of solvency.
- (b) A declaration of solvency is a declaration by the directors that in their opinion the company shall be able to pay all its debts in full within the period specified in the declaration but not exceeding twelve months from the commencement of the winding-up.
- (c) The declaration of solvency is required to be filed with the registrar within 5 weeks immediately preceding the date of passing winding up resolution.
- (d) Following are enclosed with the declaration of solvency:
 - (i) A copy of the report of the auditors.
 - (ii) The profit and loss account of the company, prepared for the period commencing from the date of last such accounts to the date as close as possible to the date of making such declaration.
 - (iii) The balance-sheet of the company as on the above date.
 - (iv) A statement of the company's assets and liabilities as at that date.

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Ans.2 A listed company may place its quarterly accounts on its website, subject to fulfillment of the following conditions:

- (i) Seek the consent of its shareholders in a General Meeting.
- (ii) Consult the respective stock exchanges.
- (iii) Seek prior permission of the Commission.
- (iv) The application for this purpose shall indicate its website address.
- (v) The company, after obtaining the requisite permission, shall inform its shareholders through an advertisement in the Press that the subsequent quarterly accounts would be transmitted to them through the company website.
- (vi) The respective Stock Exchanges and the Commission shall be informed in writing, by post.
- (vii) The requirement of filing the prescribed number of copies of periodical accounts with the Commission and the Stock Exchange(s) by post shall be fulfilled, in addition to the transmission of the same through the website of the Commission and the Stock Exchange(s).
- (viii) The company will also provide a copy of quarterly accounts, free of cost, to any shareholder, on demand.
- (ix) Transmit periodical accounts electronically to the concerned stock exchange(s) so as to place the same on their website.
- (x) A group of companies under the same management may maintain a single website instead of having an independent website for each company.
- (xi) The listed companies shall also be required to intimate to the Commission through e-mail that quarterly accounts have been placed on their websites, on the due date.

Ans.3 (a) Following are the businesses which may be carried out by NBFCs:

- (i) Investment Finance Services;
- (ii) Leasing;
- (iii) Housing Finance Services;
- (iv) Venture Capital Investment;
- (v) Discounting Services;
- (vi) Investment Advisory Services;
- (vii) Asset Management Services; and
- (viii) Any other form of business which the Federal Government may specify, by notification in the Official Gazette, from time to time.

- (b) (i) A scheme shall be prepared in draft containing the terms of the amalgamation.
- (ii) Notice of meetings to sanction the scheme shall be given to the shareholders of both companies.
- (iii) These notices shall also be published at least once a week for three consecutive weeks in at least two newspapers which circulate in the locality where the registered offices of both the NBFCs are situated.
- (iv) One such newspaper should be in the language commonly understood in the locality(ies).
- (v) In these meetings, the shareholders, either present in person or by proxy, of both the companies shall give approval to the scheme by a resolution passed by two-third majority.
- (vi) Upon approval by the requisite majority of shareholders, the scheme shall be submitted to the Commission for its sanction.
- (vii) The Commission's written approval of the scheme shall be binding on both the NBFCs and also on all its shareholders.
- (viii) Upon its sanction by the Commission any dissenting shareholder(s) shall be entitled to claim, from Moonlight Leasing Limited and Dream Leasing Limited, the value of their share as determined by the Commission while sanctioning the scheme.
- (ix) The determination of the value of shares by SECP shall be final for all purposes.

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- Ans.4 (a)** If allowed by its Memorandum and Articles a company may have more than one class of shares. Each class of shares may have different rights and privileges, which shall also be as provided in the articles.

The rights and privileges of the shareholders may differ in respect of the following:

- (i) different voting rights; voting rights disproportionate to the paid up value of shares held; voting rights for specific purposes only; or no voting rights at all;
- (ii) different rights for entitlement of dividend, right shares or bonus shares or entitlement to receive the notices and to attend the general meetings; and
- (iii) rights and privileges for indefinite period, for a limited specified period or for such periods as may from time to time be determined by the members through special resolution.

- (b)** A **fixed or specific charge** attaches to the specific, clearly identifiable and defined asset of the company as soon as it is created. From then on the company cannot transfer or dispose of such property.

A floating charge does not attach to any specific property of the company until the company commits some act or default (i.e. charge crystallizes). It is free to dispose of the property unencumbered.

A fixed charge takes priority over a floating charge.

All charges, both fixed and floating have to be registered with the Registrar within 21 days of their creation.

If such registration is not affected, the charge created by the company becomes void against any liquidator or other creditor.

- Ans.5** A company which owns an equity-based project and proposes to raise capital through public offer for the first time shall comply with the following conditions, namely:

- (i) The fixed capital expenditure shall be entirely financed by equity.
- (ii) The project shall be appraised by a financial institution or a commercial bank or an investment bank.
- (iii) The appraisal report shall be accompanied by Auditor's certificate confirming that:-
 - (a) The capital allocated to sponsors, foreign and local investors, if any, has been fully paid; and
 - (b) The land for the project has been acquired, letters of credit have been established and shipment schedule of plant and machinery has been finalized by the suppliers.
- (iv) The issue shall be fully underwritten and the underwriters, not being the associated companies, shall include at least two financial institutions, including commercial banks and investments banks and the underwriters shall evaluate the project in their independent due diligence report.
- (v) The sponsors shall retain at least twenty-five per cent of the capital of the company for a period of five years from the date of public subscription.

- Ans.6 Competence and Capability**

Director:

While assessing the competence and capability of the proposed Directors on the Board of an NBFC, the Commission shall take into account all the relevant considerations including, but not limited to:

- (i) should be individuals having management/business experience of at least five years at a senior level in an active capacity;

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- (ii) should be professionally qualified and have demonstrated knowledge in the field of banking, mutual funds, accounting, internal audit, law and Information Technology, etc;
- (iii) should not be minors or of unsound mind; and
- (iv) should have their names borne on the register of national tax payers except where such person is a non-resident.

Chief Executive

The CE must demonstrate his competence and ability to understand the technical requirements of the business, inherent risks and management processes required to conduct its operations effectively, with due regard to the interests of all stakeholders.

In determining competence, and capability of the CE, the Commission shall take into account all relevant considerations, including but not limited to:

- (i) should have a minimum experience of seven to ten years in a senior management position, preferably in the regulated financial services sector;
- (ii) should have demonstrated, through his qualifications and experience, the capacity to successfully undertake the cognate responsibilities of the position;
- (iii) should have never been diagnosed as being mentally ill or unstable;
- (iv) should have a sound knowledge of the business and responsibilities he/she will be called upon to shoulder.

- Ans.7**
- (i) Mega Projects Limited can issue shares at discount after one year of commencement of business.
 - (ii) The directors should pass a resolution to issue shares at discount, specifically mentioning the discount rate and price, reason for the discount and possible effects of the discount on the company and its existing shareholders.
 - (iii) Notice should be issued to members with statement of material facts along with copy of the proposed resolution at least 21 days before the date of the general meeting.
 - (iv) The shareholders should pass a special resolution to that effect with atleast 3/4th majority.
 - (v) A copy of the special resolution should be filed with the Registrar concerned within 15 days of the date of the resolution.
 - (vi) An application should be furnished to the SECP for sanctioning the issue with a copy to the Registrar.
 - (vii) The shares should be issued within 60 days of the approval from Commission.
 - (viii) Return of allotment of shares should be filed with the Registrar within 30 days of the date of allotment.
 - (ix) Every prospectus and Balance Sheet issued thereafter should contain particulars of discount allowed and amount not amortized, if any, at the balance sheet date.

- Ans.8**
- (a) (i)
 - Mr. NR will be required to open a “Special Convertible Rupee Account” with any authorized dealer.
 - Such account can be fed by:
 - remittances from abroad
 - transfer from a foreign currency account maintained in Pakistan by Mr. NR.
 - Mr. NR shall be allowed to trade freely in any shares quoted on any Stock Exchange in Pakistan from this account.
 - Payment from such purchases may be debited to the account on production of stock broker’s memo.
 - Disinvestment proceeds may be credited to the account on provision of stock broker’s memo.
 - Transfers from one such account to another may also be made in case of transfer of shares between the two account holders.
 - (ii) Yes, Mr. NR is entitled to receive dividends which shall also be credited into special convertible rupee account.

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There are no restrictions on repatriation of funds outside Pakistan and the funds available in such special accounts can be transferred outside Pakistan or credited to a Foreign Currency Account maintained in Pakistan at any time without prior approval of the State Bank of Pakistan.

- (b) "A person resident outside Pakistan" covers a foreign national including a foreign national of Indo-Pakistan origin as also a Pakistani holding dual nationality for the time being resident in Pakistan and a company registered in Pakistan which is controlled directly or indirectly by a person resident outside Pakistan.

- Ans.9** (a) Sigma Industries can close its books for a maximum of 15 days i.e. from March 25, 2009 to April 8, 2009. This is also in line with the listing regulations of onetime closure of 7-15 days.

Following procedure is to be followed for closing the register of members and the share transfer register.

- (i) The company shall give 21 days notice of book closure to Karachi Stock Exchange.
 - (ii) At least seven days before the book closure a notice of book closure shall also be published in a newspaper having circulation in the province(s) in which the stock exchange on which the company is listed is situated and also in the province in which the registered office of the company exists.
 - (iii) The total period of book closure should not to exceed 45 days in a year and the period of one time closure shall not exceed 30 days.
- (b) The law requires that all subsequent Annual General Meetings (AGMs) should be held once in each calendar year; within 4 months of the close of the financial year but not exceeding 15 months from the conclusion of last AGM. So, Sigma Industries Limited can hold the AGM up to April 30th, 2009.
- (c) (i) The notice of AGM along with the copy of annual report and audited accounts would be send to all the members at their registered address at least 21 days before the meeting.
 - (ii) Simultaneously with the dispatch of notice, five copies each of the annual report and audited accounts, one duly signed by the auditors and CEO/Director would be send to the Commission, Stock Exchange and the Registrar.
 - (iii) The notice of meeting shall be published at least 21 days before the meeting in two daily newspapers one English and one Urdu circulating in the province in which the stock Exchange(s) on which the company is listed exist.
 - (iv) The copy of the notice of AGM shall be faxed to the Commission on the day of its publication.
 - (v) A copy of the newspaper shall also be sent to the Commission on the day of its publication.

(THE END)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN

Final Examinations Summer 2009



June 3, 2009

CORPORATE LAWS

(MARKS 100)
(3 hours)

Q.1 Marhaba Engineering (Pvt.) Limited (MEPL), holds 15% voting shares in Pasban Engineering Limited (PEL), a company listed on Karachi Stock Exchange. MEPL intends to increase its holding to 29.5% by acquiring additional voting shares in PEL through public offer and has made a public announcement of its intentions. However, the financial due diligence of PEL revealed that the company is facing financial difficulties and it is anticipated that the directors may sell a sizeable business segment of the company.

In the light of the provisions of the Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Regulations, 2008 you are required to advise the board of directors of MEPL as regards the following:

- (a) The circumstances under which a public announcement of intention can be withdrawn and the procedure to be followed in this regard. (05)
- (b) The restrictions which will apply on PEL after making the public announcement of its intentions. (03)

Q.2 Cannon Industries Limited, a listed company, wishes to change its name to Reliance Foods Limited because the management feels that the change in name would help in re-branding and rebuilding the image of the company and in attracting more customers.

You are required to explain the requirements of the Companies Ordinance, 1984 which the company is required to comply with, in this regard. Also describe the effect of such change on the rights and obligations of the company. (09)

Q.3 Tasty Foods (Pvt.) Limited (TFPL) has been incorporated with the objective of taking over entire business assets and liabilities of Tasty Biscuits, a partnership firm, at an agreed cut off date i.e. December 31, 2008. The partners in the firm are also the directors in the newly incorporated company. Pursuant to an agreement executed between the company and the partnership firm all the assets and liabilities were transferred to the company on the agreed date. 7.8 million shares of the company were allotted to the partners in consideration of the transfer of firm's property. This allotment however, was made by the directors without considering the requirements of the Companies (Issue of Capital) Rules, 1996 on the contention that these Rules are applicable to the listed companies only.

Comment on the decision of the directors and state the conditions specified (if any), under the Companies Ordinance, 1984 and Companies (Issue of Capital) Rules, 1996, related to the issuance of shares as mentioned in the above situation. (10)

(2)

- Q.4 (a) The Securities and Exchange Commission of Pakistan (SECP), on its own motion, is contemplating appointment of an Inspector to investigate the affairs of Crown Properties Limited and has issued a notice for the same narrating the reasons thereof. The directors of the company are contending that the said action is without any justified cause. You are required to narrate the circumstances specified in the Companies Ordinance, 1984 wherein the SECP may appoint an Inspector. (07)
- (b) Assuming that after necessary opportunity afforded by the SECP, Crown Properties Limited is subjected to the Investigation, describe the powers that the Inspector can exercise under the Companies Ordinance 1984, while investigating affairs of the company. (05)

Q.5 In order to protect general public, depositors and other stakeholders, Khyber Steel Mills Limited has been declared as a sick unit by the Federal Government which has appointed Mr. Sohail Hamdani to prepare a rehabilitation plan for the re-organization of the company.

You are required to discuss the following:

- (a) The measures which Mr. Sohail is empowered to propose as part of the rehabilitation plan.
- (b) If the rehabilitation plan is approved by the Federal Government, what impact would it have on the rights and liabilities of various stake-holders? (12)

Q.6 Pills Limited is an unlisted public company. It intends to appoint MM Associates, a registered firm of lawyers with two partners, as its legal advisers. MM Associates are already the legal advisors of the following 6 companies:

- (i) ABC Limited and XYZ Limited having share capital of less than Rs. 500,000.
- (ii) Rose Limited and Bee Limited having share capital of more than Rs. 500,000 but less than Rs. 1 million.
- (iii) Crown (Pvt.) Limited with share capital of Rs 1.2 million; and,
- (iv) Dice (Guarantee) Limited with a share capital of Rs. 1.5 million.

Based on the requirements of the Companies (Appointment of Legal Advisers) Act, 1974, explain whether MM Associates can be appointed as the legal advisors of Pills Limited. (05)

Q.7 The balance sheet of Montana Textile Mills Limited for the year ended June 30, 2008 shows the non-current liabilities as under :

Non-current liabilities	Rupees
Long term finance from Sponsors / Directors	61,000,000
Long term finance from related party	150,000,000
Long term finance from Banks	572,000,000
	783,000,000

To improve the debt equity ratio, the company wants to convert all non-current liabilities into equity by the issuance of ordinary shares.

Required:

- (a) Discuss the provisions contained in the Companies Ordinance, 1984 under which the company may proceed to issue shares against the above non-current liabilities.
- (b) With reference to the above provisions, advise the extent to which the above liabilities may be converted into equity. (07)

(3)

- Q.8 The association of leading fertilizer manufacturing companies in their 21st annual general meeting reached an understanding to control the prices of fertilizers and their respective market shares by territories, in order to save the local industry from growing dominance of foreign suppliers. This understanding however, is not intended to be enforced by legal proceedings and has not been put into writing.

You are required to state whether such verbal understanding can be regarded as an agreement under the relevant provisions of the Competition Ordinance, 2007 and whether such an agreement is in violation of the provisions of the Ordinance. Also list down some of the agreements which are prohibited under the said Ordinance.

(07)

- Q.9 PQR holds more than ten percent of the shares of Rahat Technologies Limited (RTL), a company listed on Lahore Stock Exchange. The company intends to dilute its investment in RTL by offering such shares for sale to the public. In the light of the provisions of the Companies (Issue of Capital) Rules, 1996, describe the conditions which must be fulfilled by PQR before such a sale may be made.

(05)

- Q.10 National Travels Limited (NTA), is a listed company, and operates throughout Pakistan. In order to finalize a running finance arrangement with a bank, it requires a copy of the board resolution approving the terms of financing. Since five out of eight directors are currently out of the city, it is not possible for the secretary to convene the meeting of the board of directors.

In light of the provisions of Companies Ordinance, 1984 you are required to state, whether the above resolution can be passed by circulation and the steps required to be taken to pass such a resolution.

(08)

- Q.11 (a) Under the Companies Ordinance, 1984 describe the circumstances in which proceedings of a general meeting may be declared invalid by the court. Who is eligible to make petition in this regard.

(03)

- (b) Explain the provisions of the Companies Ordinance, 1984 with regard to the quorum of a general meeting of a company listed on stock exchange.

(03)

- Q.12 (a) MZE Limited, an NBFC engaged in leasing business, is currently facing serious financial crisis. SECP is not satisfied with the financial management of the company and has ordered a special audit of the company. In the light of the relevant provisions of the Companies Ordinance, 1984 relating to NBFCs you are required to explain whether the Commission is empowered to make such an order. Also describe the rights of the Commission in this regard?

(06)

- (b) Describe the conditions applicable to a NBFC relating to the appointment of internal auditor, under the NBFCs (Establishment And Regulation) Rules, 2003.

(05)

(THE END)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN

Final Examinations Winter 2009



December 9, 2009

CORPORATE LAWS

(MARKS 100)
(3 hours)

- Q.1 The prospectus of FC Textiles Limited included a statement which was misleading in its form and content. On the faith of the prospectus and believing it to be true, Asif subscribed for shares and sustained losses. Can Asif file a suit for compensation of the loss incurred by him? If so, who may be sued for such a loss? (06)
- Q.2 There are allegations in the press and serious charges have been levelled against STR Petroleum Limited about misuse of public funds by the management. Zafar, a director of the company wants to inspect the books of account, in order to ascertain whether the allegations are true. As Zafar does not have adequate knowledge of accounting, he intends to examine the books of account in the presence of his friend Arif, who is a chartered accountant.
- You are required to advise the company in respect of the above matter under the provisions of the Companies Ordinance, 1984. (05)
- Q.3 (a) After incurring continuous losses Shaheen Private Limited had decided to go into members' voluntary winding up. Mr. Sajjad was appointed as a liquidator on a remuneration of Rs. 200,000 of which 25% was paid at the time of his appointment. However, in June 2009, Mr. Sajjad tendered his resignation as a liquidator.
- In the light of the provisions contained in the Companies Ordinance, 1984 explain the rights and liabilities of Mr. Sajjad, in the above situation. (05)
- (b) Identify the persons who are eligible to file a petition for winding up of a limited company in the Court. (04)
- Q.4 Mr. Waleed has acquired 3 million ordinary shares of Acquired Limited whose paid up share capital consists of 22 million ordinary shares of Rs. 10 each. The election of the directors of the company has recently been concluded. Mr. Waleed, being confident of holding a sufficient number of shares to be elected as a director, has requested the management to arrange a fresh election.
- Based on the provisions contained in the Companies Ordinance, 1984 explain whether and under what conditions a fresh election of the directors may be held. (08)
- Q.5 ABZ Limited, a company incorporated in a foreign country, has established an office in Pakistan by the name of Search International. You are required to explain the requirements of the Companies Ordinance, 1984 as regards filing of the annual balance sheet and profit and loss account of ABZ Limited and Search International. (10)
- Q.6 The annual general meeting (AGM) of Nizam Industries Limited was held on November 16, 2009. Some of the shareholders are not satisfied with the decisions taken at the meeting and are of the opinion that the directors have manipulated the situation in order to obtain certain approvals in the annual general meeting.
- You are required to explain how and under what conditions can the proceedings of the AGM be declared as invalid. (05)

(2)

Q.7 Explain the provisions contained in the Code of Corporate Governance as regards the appointment of external auditors. (05)

Q.8 MP Pakistan is a branch of MPGH (a company registered in Germany) and is engaged in the software export business. It requires working capital finance to support its operations and intends to borrow funds from its head office i.e. MPGH on a repatriable basis.

You are required to briefly explain the conditions which MP Pakistan would have to comply with under the Foreign Exchange Regulations of the State Bank of Pakistan. (09)

Q.9 (a) The following statements may contain certain discrepancies with respect to issuance of right shares by a listed company. You are required to identify the discrepancies, if any, and specify the correct position.

- (i) A listed company cannot issue right shares within two years of its incorporation.
- (ii) Where a company wishes to charge premium on a right issue in excess of 50% of the face value of shares, it shall require an approval from the Commission and the stock exchange on which the company is listed.
- (iii) A company which incurred a loss during its last financial year or a company whose market price is below its par value cannot issue right shares.
- (iv) If a company announces a right issue as well as a bonus issue at the same time, the right shares shall also be entitled to the bonus. (12)

(b) The board of directors of Munawwar Industries Limited, a listed entity, is considering the issuance of bonus shares. You are required to explain (i) the term 'Free Reserves'; and (ii) the conditions related to maintenance of free reserves for issuance of bonus shares; as contained in the Companies (Issue of Capital) Rules, 1996. (08)

Q.10 (a) Explain the terms 'asset management services' and 'investment finance services' as included in the NBFC Rules, 2003. (04)

- (b) Briefly explain the restrictions that have been placed on the NBFCs under the NBFC Rules, 2003 in respect of the following:
- (i) appointment of directors from the same family;
 - (ii) transfer of ownership of controlling shares; and
 - (iii) employing a person as a broker. (07)

Q.11 In the annual general meeting of Sabzazar Limited held on September 29, 2009 some of the shareholders have raised the following objections:

- (a) Notice of the annual general meeting was not received by them although they are resident in Pakistan and their registered addresses have also been provided to the company.
- (b) The company has issued shares to a scheduled bank against a part of the outstanding balance of a loan without offering them to the shareholders by way of a right issue.
- (c) Shareholders were not allowed to make extracts from the register of members on the day on which the election of directors was held.
- (d) 10,000 shares of a subsidiary, which are the property of the company, are held in the name of a director of the company.
- (e) The surplus on revaluation of fixed assets was credited to the reserves of the company and later used to pay dividend.
- (f) One of the directors is not a member of the company.

You are required to satisfy the shareholders by explaining the relevant provisions, if any, as contained in the Companies Ordinance, 1984.
(You may make appropriate assumptions in your answer to clarify the company's position.) (12)

(THE END)

CORPORATE LAWS
Suggested Answers
Final Examinations – Winter 2009

A.1 Civil liability for mis-statements in prospectus

Yes, Asif can sue for compensation of loss. Section 59 of the Companies Ordinance provides that an allottee is entitled to claim compensation for damages sustained by reason of any untrue statement contained in this prospectus from the following persons:

- (i) Every person who is a director of the Company at the time of issue of prospectus.
- (ii) Every person who has authorized himself to be named and is named in the prospectus either as a director, or as having agreed to become a director, either immediately or after an interval of time;
- (iii) Every person who is a promoter of the Company; and
- (iv) Every person who is an expert and has given his written consent to include a statement issued by him.
- (v) Auditor, legal advisor, attorney, solicitor, banker or broker, being the member of a stock exchange of the company and the prospectus is accompanied by their written consent to act in that capacity.

A.2 Books of Accounts

As a director, Zafar is entitled to inspect the books of account during office hours.

However, there is no law that would allow Mr. Zafar to allow his friend to inspect the books of accounts of the company.

A.3 (a) Remuneration of Official Liquidator

If Mr. Sajjad resigns before conclusion of the winding up of the company, he shall not be entitled to any remuneration and the remuneration already received by him, shall be refunded to the company.

Resignation of Official Liquidator

He cannot resign or quit his office as liquidator before conclusion of the winding up proceedings except for reasons of personal disability to the satisfaction of the Court. In any case, Mr. Sajjad cannot quit his responsibilities before his replacement is appointed by the court.

(b) Petition for Winding up

An application/petition for winding up of a company can be presented in the Court by the following:

- (i) The company itself.
- (ii) Any creditor(s) (*including any contingent or prospective creditor*).
- (iii) Contributory(ies).
- (iv) Registrar of Companies.
- (v) The Commission or by a person authorized by the Commission.

A.4 Fresh election of directors

Mr. Waleed has acquired more than 12.5% ($\frac{3}{Rs. 22} = 13.64\%$) shares in the company. Assuming that the company is listed, he may apply to the Commission for requiring the company to hold 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 section 178, and the company shall comply with such directions.

If fresh elections are held on the directions of the Commission, Mr. Waleed shall not sell or dispose of his shares for at least one year from the date of election of directors.

However, if the company is not listed, then no such option would be available to Mr. Waleed.

CORPORATE LAWS
Suggested Answers
Final Examinations – Winter 2009

A.5 Accounts of foreign companies

ABZ Limited, being a foreign company and having a place of business in Pakistan, is required to comply with the following requirements as regards filing of balance sheet and profit and loss account.

- (i) Not less than three copies of balance sheet and profit and loss account as may be prescribed, in respect of its operations in Pakistan (i.e. of Search International) prepared as near as possible in the same manner as it would have done, if it were a public company incorporated under the Companies Ordinance, 1984 shall be filed with the registrar.
- (ii) In case ABZ Limited is required to file its Balance Sheet and Profit and Loss Account in the country of its incorporation, not less than three copies of such Balance Sheet and Profit and Loss Account, shall also be filed with the registrar.
- (iii) In case ABZ Limited is not required to file the Balance Sheet and Profit and Loss Account to authorities in the country of its incorporation, it would have to file its Balance Sheet and Profit and Loss Account alongwith auditors report and the Balance Sheet and Profit and Loss Account, not less than three copies, shall be in the same form as it would have been required to be under the Companies Ordinance, 1984 as if it were a public company.
- (iv) The period during which the above are required to be filed shall be as under:
 - within 45 days of submission of the accounts in the country of incorporation; or
 - within six months of the date upto which the accounts are made up.
 - whichever is earlier.

A.6 Circumstances in which proceedings of a general meeting may be declared invalid

The Court may, on a petition by members having not less than ten percent of the voting power in the company, that the proceedings of a general meeting be declared invalid by reason of any material defect or omission in the notice or irregularity in the proceedings of the meeting which prevented the members from using effectively their rights, declare such proceedings or part thereof invalid and direct holding of a fresh general meeting. Provided that the petition shall be made within thirty days of the impugned meeting.

A.7 Appointment of external auditor - Code of Corporate Governance

- (i) The Board of Directors of a listed company shall recommend appointment of external auditors for a year, as suggested by the Audit Committee. The recommendations of the Audit Committee for appointment of retiring auditors or otherwise shall be included in the directors' Report.
- (ii) No listed company shall appoint as external auditors a firm of auditors which has not been given a satisfactory rating under the Quality Control Review programme of the Institute of Chartered Accountants of Pakistan.
- (iii) No listed company shall appoint as external auditors a firm of auditors which firm or a partner of which firm is non-compliant with the International Federation of Accountants' (IFAC) Guidelines on Code of Ethics, as adopted by the Institute of Chartered Accountants of Pakistan.
- (iv) All listed companies in the financial sector are required to change their external auditors every five years. All listed companies other than those in the financial sector shall, at a minimum, rotate the engagement partner after every five years.

A.8 Repatriable Foreign Currency Loans by Foreign Controlled Companies

Foreign controlled companies are permitted to contract foreign currency loans from their Head Offices for meeting their working capital requirements on the following conditions:

- The repayment period should not exceed twelve months
- The rate of interest should not exceed 1% over LIBOR. Such loans can however be rolled over for further periods not exceeding twelve months each.
- They may approach their bankers (Authorized Dealers), who will satisfy themselves that the applicant is a foreign controlled company. Once such a confirmation is obtained, the concerned company may contract the loan and repatriate the amount for credit to their Rupee account with the Authorized Dealer.

CORPORATE LAWS
Suggested Answers
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- The concerned Authorized Dealer will issue a proceeds realization certificate, and record the particulars of the loan. On maturity, the Authorized Dealer having received the inward remittance, will allow payment of interest minus taxes and repayment of principal. While reporting remittance of interest, a certificate confirming the applicable LIBOR and a certificate confirming payment of income tax will be attached with the Form 'M'. If tax is not payable, a copy of the exemption certificate issued by the Revenue authorities will be submitted. While reporting repayment of the principal, a copy of the proceeds realization certificate will be attached with the Form 'M'.
- Branches in Pakistan of foreign companies are not allowed to pay interest on such loans.

A.9 (a) Issue of Right Shares by a listed company

- (i) The listed company shall not make a right issue within one year of the first issue of capital to the public or within one year of any further issue of capital through right issue.
- (ii) The approval from the commission and the stock exchange is not required for the issuance of right shares at premium. However, the decision of the company to issue right shares shall be communicated to the Commission and the respective stock exchange on the day of the decision.
The maximum amount of premium that a company can charge shall be limited to the extent of the free reserves.

If the company wishes to charge premium above the free reserves at least 40% of all the shareholders should undertake to subscribe their portion of right issue and the remaining right issue shall be fully underwritten. The underwriters, not being associated companies, shall include at least two financial institutions. In addition, the underwriters shall also give full justification of the amount of premium in their independent due diligence report.

- (iii) A loss making company or a company whose market share price during the preceding six months has remained below par can issue right shares provided the issue is fully and firmly underwritten.
- (iv) If the announcement of bonus and right issue is made simultaneously, resolution of the board of directors shall specify whether the bonus shares covered by the announcement qualify for right entitlement.

- (b) Free reserves" includes any amount which, having been set aside out of revenue or other surpluses after adjustment of all intangible or fictitious assets, is free in that it is not retained to meet any diminution in value of assets, specific liability, contingency or commitment known to exist at the date of the balance sheet, but does not include:
 - (i) reserves created as a result of re-evaluation of fixed assets;
 - (ii) goodwill reserve;
 - (iii) depreciation reserve to the extent of ordinary depreciation including allowance for extra shifts admissible under the Income Tax Ordinance, 1979;
 - (iv) development allowance reserve created under the provisions of the Income Tax Law.
 - (v) workers welfare fund;
 - (vi) Provisions for taxation to the extent of the deferred or current liability of the company; and
 - (vii) Capital redemption reserve.

The free reserves of the company, shall be sufficient to issue the bonus shares after retaining reserves of twenty-five percent of the capital as increased by the proposed bonus shares;

A certificate from the auditors shall be obtained to the effect that the free reserves and surpluses retained after the issue of the bonus shares will not be less than twenty-five percent of the increased capital.

CORPORATE LAWS
Suggested Answers
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- A.10 (a) **Asset management services** means the services provided for management of collective investment schemes.

Investment finance services include money market activities, capital market activities, project finance activities, corporate finance services and general services as specified by the Commission by notification in the official Gazette.

- (b) (i) No restriction
- (ii) A NBFC shall not sell or transfer ownership of shares in subsidiary or associated company, merge with, acquire or takeover any other company unless it has obtained prior approval of the Commission in writing to such sale or transfer or scheme of merger, acquisition or takeover.
- (iii) A NBFC shall not enter into transactions with any broker which exceed ten percent of the total brokerage expense of the NBFC in any one accounting year.

Provided that the NBFC shall not have a common director or officer or employee with the broker.

- A.11 (a) **Service of notice on members**
The notices of the Annual General Meeting were sent to all the shareholders by post at their registered addresses.

According to law when 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.

- (b) **Issue of shares in lieu of outstanding balance of any loans, etc.**
The company issued shares without making a right issue because Companies Ordinance, 1984 allows the issuance of such shares to the extent of 20% of the outstanding balance of a loan from a schedule bank if the rate of return, in any two of the preceding three years after expiry of two years from the date of commencement of commercial production, has fallen below the minimum rate of return laid down by the State Bank of Pakistan.
- (c) **Inspection of registers**
The company is required to keep open the register, except when closed under the provisions of the Companies Ordinance, 1984, subject to reasonable restriction as imposed by the company in its general meeting so that not less than 2 hours in each day will be allowed for inspection.
- (d) **Investments of company to be held in its own name**
The shares of subsidiary are rightly held in the name of the director because they are the qualification shares which are required to be held to become the director of that company.
- (e) **Treatment of surplus arising out of revaluation of fixed assets**
The amount in the surplus revaluation account can be transferred to the reserve account provided the amount is the actual amount that has been realized on disposal of the asset which were in accordance with the law and hence the proceeds can be utilized for payment of dividend.
- (f) A non-member is allowed to become the director of the company in the following situations:
- (i) Persons representing the Government or an institution or Commission which is a member;
 - (ii) Whole-time director who is an employee of the company;
 - (iii) Chief executive;
 - (iv) Person representing a creditor.

(THE END)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN

Final Examinations Summer 2010



June 9, 2010

CORPORATE LAWS

(MARKS 100)

(3 hours)

Q.1 An equitable mortgage was created on the factory building of Asif Textile Mills Limited, a listed company, to secure a long term loan obtained from Mrs. Wasif, who is the spouse of a director of the company. All the eight directors of the company were informally aware about Mr. Wasif's interest in the transaction. The board of directors approved the transaction in their meeting which was attended by five directors.

Upon inspection of the register of contracts in which directors are interested, a member of the company filed an appeal with the SECP, claiming that the mortgage is invalid because Mr. Wasif, who is an interested director, had also voted on the matter and therefore the contract is void.

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

- (a) Evaluate the above situation and comment thereon in the light of the provisions of the Companies Ordinance, 1984. (07)
- (b) Explain the manner in which a general notice, regarding disclosure of interest in a contract, may be given by directors of a company. (05)

Q.2 A foreign investor had acquired majority shares in Marine Steel Services Limited (MSSL) in the year 2006. Due to global recession, MSSL has incurred heavy losses and a major portion of its equity has been wiped out. Consequently, the investor intends to wind up the operations of the company voluntarily.

- (a) In the light of the Companies Ordinance, 1984, advise the management as regards the following:
 - (i) When would the voluntary winding up process be deemed to commence and what would be its effect on the operations of MSSL. (03)
 - (ii) How could the directors ensure that the requirements of making a declaration of solvency have been complied with? (06)
- (b) In order to minimize the winding up expenses, the Board wants to appoint one of the directors as the liquidator, on a monthly remuneration of Rs. 50,000. Advise the Board as regards the requirements of Companies Ordinance, 1984 with respect to the appointment and remuneration of liquidator, in the above situation. (04)

Q.3 List the circumstances, as referred to in the Listing Regulations of the Karachi Stock Exchange (Guarantee) Limited, under which a listed company may be placed in:

- (a) Defaulter's segment. (07)
- (b) Non-Compliant segment. (03)

(2)

Q.4 An Extraordinary General Meeting of Mastermind Technologies Limited (MTL), a listed company, was scheduled to be held on October 31, 2009. The directors adjourned the meeting for the next week as the quorum was not present within fifteen minutes of the scheduled time.

Based on the provisions of the Companies Ordinance, 1984, you are required to comment on the following:

- (a) The decision of the directors to adjourn the meeting, assuming:
 - (i) the meeting was called upon the requisition of the members. (03)
 - (ii) the meeting was called by the directors. (03)
- (b) The impact of the adjournment on the validity and rights of proxies which were deposited with the company before adjournment. (02)
- (c) The validity of the resolution passed at the adjourned meeting. (02)

Q.5 Karachi Telecommunication (Private) Limited (KTL) was incorporated on 1st March, 2009 under the Companies Ordinance, 1984. Its directors have decided to hold the first Annual General Meeting (AGM) of the company on August 10, 2010, for placing the first audited financial statements for the period ended March 31, 2010, for approval.

Comment on the decision of the directors, in the light of provisions contained in the Companies Ordinance, 1984. (05)

- Q.6 (a) The Board of Directors of Pioneer Leasing Limited is in the process of appointing a new Head of Investment. List down the criteria specified in the Non-Banking Finance Companies and Notified Entities Regulations, 2008 for assessing the person being appointed with respect to:
 - (i) Integrity and track record (06)
 - (ii) Financial soundness (06)
- (b) Explain the term “Independent Director” and narrate the provisions related to appointment of such directors, as specified under NBFC (Establishment and Regulation) Rules, 2003. (06)

Q.7 Explain the provisions of the Code of Corporate Governance in respect of the following:

- (a) Appointment of the chairman of the company. (02)
- (b) Meeting of the board of directors and minutes thereof. (06)

Q.8 The company secretary of Nayar Textiles Limited, a listed company, has resigned. The directors are in the process of appointing a new secretary and few candidates with varied backgrounds have been short listed for the position.

Advise the directors as regards their responsibility while appointing the Company Secretary, in the light of the provisions of the Companies (General Provisions and Forms) Rules 1985. (04)

(3)

Q.9 FM Textiles Limited is a company listed on the Karachi Stock Exchange. Its directors have decided that the company would buy back 20% of its shares.

List down the steps to be taken for the buy-back of shares as specified in the Companies (Buy-back of shares) Rules, 1999. (10)

Q.10 ABC Limited is a major supplier of furnace oil to SUB Power Limited which is facing financial crunch and has been unable to make timely payments to ABC Limited.

The directors of ABC Limited intend to request the SECP for appointment of an Administrator to manage the affairs of SUB Power Limited.

In the light of provisions of the Companies Ordinance, 1984 describe the conditions under which ABC Limited may request the SECP to appoint the Administrator. (08)

Q.11 Mr. Yaqoob is a nominee of Foundation Bank Limited on the Board of Saad Textile Mills Limited (STML). In a meeting of the board of directors of STML, the company secretary was not able to offer satisfactory clarifications in respect of the following matters:

(a) STML had received a loan of Rs. 1.5 billion from Trust Bank Limited which was secured by a first mortgage on the company's fixed assets. The company had repaid the loan to the extent of Rs. 250 million but did not send any intimation to the registrar as regards the partial re-payment of the loan. (02)

(b) A foreign currency loan of US \$ 75 million was obtained from Apex Bank Limited which was secured by a first mortgage on company's fixed assets ranking pari passu with the charge created in favour of Trust Bank Limited. The foreign currency loan has been paid in full but the company has not approached the registrar for vacating the charge because confirmation of repayment has not been received from Apex Bank Limited. (03)

On behalf of Mr.Yaqoob advise the company in the context of Companies Ordinance 1984.

(THE END)

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- A.1 (a) Mr. Wasif should have disclosed the nature of his interest in the contract in the meeting of the board of directors at which the question of entering into the contract was first taken up for consideration.

Mr. Wasif should not have participated in the discussions of approving the contract and his presence would not have been considered for the purpose of forming a quorum or vote and if he had voted, his vote should have been void.

However, the contract may not become void merely on the ground of non-disclosure of interest by Mr. Wasif unless with the absence of his vote, there would be no quorum.

- (b) A director shall give a general notice to the effect that he is a director or a member of a specified body corporate or a member of a specified firm and is to be regarded as concerned or interested in any contract which may after the date of the notice be entered into with body corporate or firm.

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.

No such general notice and no renewal thereof shall be of effect unless either it is given at a meeting of the directors or the directors concerned take reasonable steps to ensure that it is brought up and read at the first meeting of the directors after it is given.

- A.2 (a) (i) The voluntary winding up is deemed to commence at the time of the passing of the special resolution in this regard by the company.

As soon as the special resolution is passed, Marine Steels Services Limited(MSSL) will cease to carry on its business, except so far as may be required for the beneficial winding up thereof.

However, the corporate state and powers of the company shall continue until it is dissolved, notwithstanding anything to the contrary in its articles of association.

- (ii) The directors of MSSL must ensure that the declaration of solvency made by them is :

- Made in their meeting which is attended by a majority of the directors of the company including the chief executive.
- Verified by an affidavit to the effect that they have made a full inquiry into the affairs of the company.
- Based on their opinion that the company has no debts; or
- The company will be able to pay its debts in full within such period not exceeding twelve months from the commencement of the winding up.
- Made within five weeks preceding the date of the passing of the special resolution for winding up of the company.
- Delivered to the registrar for registration.
- Accompanied by a copy of the auditors' report on the profit & loss account for the period commencing from the date up to which the last such account was made and ending on a date immediately before the making of the declaration and Balance Sheet of the company as on the last mentioned date
- Accompanied a statement of the company's assets and liabilities.

- (b) The liquidator cannot be appointed by the directors as he/she is required to be appointed by the company in its general meeting.

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The liquidator's remuneration shall also be fixed in the general meeting by way of percentage of the amount realized by him by disposal of assets or otherwise having regard to the amount and nature of the work to be done and subject to prescribed limits. The remuneration of liquidator when fixed shall not be enhanced subsequently but may be reduced by the court at any time.

In addition to the remuneration, a liquidator may be paid a monthly allowance for meeting the expenses of the winding up a period not exceeding twelve months from the date of the commencement of winding up.

If the liquidator resigns, is removed from office or otherwise ceases to hold office before conclusion of winding up, he shall not be entitled to any remuneration and remuneration already received by him, if any, shall be refunded by him to the company.

No remuneration shall be payable to a liquidator who fails to complete the winding up proceedings within the prescribed period.

- A.3 (a) A listed company may be placed on the Defaulters' Segment, for any of the following reasons:-
- (i) if its securities are quoted below 50 per cent of face value for a continuous period of three years. Provided that if the shares of the company quoted at 50 percent or above of their face value then such a rate is maintained for a continuous period of thirty working days.
 - (ii) if from three years of the date of formal listing, it has not started commercial production in the case of a manufacturing company or has not commenced business in the case of any other company.
 - (iii) if it has failed to hold its annual general meeting for a continuous period of three years.
 - (iv) if it has gone into liquidation either voluntarily or under court order.
 - (v) if it has failed to pay the annual listing fees as prescribed in listing regulations for a period of 2 years.
 - (vi) if it has failed to comply with the requirements of any of the listing regulations.
 - (vii) if for any reasons whatsoever it refuses to join the Central Depository System (CDS) after its securities has been declared eligible securities by the Central Depository Company (CDC).
- (b) A listed company may be placed in the non-complaint segment if it has failed to declare dividend or bonus:
- (i) for five years from the date of declaration of last dividend or bonus; or
 - (ii) in the case of manufacturing companies, for five years from the date of commencement of production; and
 - (iii) for five years from the date of commencement of business in all other cases.
- A.4 (a) The directors of the company should have waited for half an hour. The directors of the company may adjourn the general meeting of the company if within half an hour from the time appointed for the meeting the quorum is not present and shall
- (i) Direct to dissolve the meeting, if the meeting is called upon the requisition of the member.
 - (ii) Adjourn the meeting to the same day in the next week at the same time and place, if meeting is called by the directors.
- (b) The proxies deposited before adjournment of the meeting shall stand valid for the adjourned meeting A proxy shall be entitled to attend and vote instead of member appointing him and have such rights in respect of speaking and voting at the adjourned meeting as are available to a member'
- (c) A resolution passed at an adjourned meeting shall for all purpose, be treated as having been passed on the date on which it was in fact passed and shall not be deemed to have been passed on any earlier date.

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A.5 The decision of the directors of KTL contravenes various provisions of the Companies Ordinance, 1984 as discussed below:

- (a) The accounts are being prepared for a 13 month period. For preparation of accounts for a period exceeding twelve months, prior permission of the Registrar shall be required.
- (b) The accounts are made up to a date earlier than the date of the meeting by more than four months (or hold its first AGM on or before July 31, 2010). As per the Companies Ordinance 1984 the accounts shall be made up to a date not earlier than the date of the meeting by more than four months.

A.6 (a) (i) In assessing the Integrity of the person, it should be considered whether or not he/she:

- has been convicted of an offence involving moral turpitude;
- has been involved in the mismanagement of investments, financial or business misconduct, fraud, etc.;
- has been the subject to adverse findings, in an inquiry conducted by the Commission or any other regulatory or professional body or government agency;
- has been actively involved in the management of a company or firm whose registration or license has been revoked or cancelled or which has gone into liquidation or other similar proceedings due to mismanagement of affairs, financial misconduct or malpractices;
- is ineligible, under the Companies Ordinance, 1984 or any other legislation or regulation, from acting as a director or serving in a managerial capacity of an NBFC or a company;
- has entered into a plea bargain arrangement with the National Accountability Bureau;

(ii) **Financial Soundness**

In assessing the financial soundness of the person, it should be considered whether or not:

- such person's financial statements or record including wealth statements or income tax returns or assessment orders are available;
 - such person has been declared by a court of competent jurisdiction as defaulter in repayment of loan to a financial institution exceeding Rupees one million;
 - the latest Credit Information Bureau report of the person shows overdue payments or default to a financial institution;
 - the person has applied to be adjudicated as an insolvent.
 - the person is an un-discharged insolvent.
 - the person has been declared a defaulter by a stock exchange.
- (b) The expression "Independent director" means a director who is not connected with the company or its promoters or directors on the basis of family relationship and who does not have any other relationship, whether pecuniary or otherwise, with the company, its associated companies, directors, executives or related parties.

The test of independence principally emanates from the fact whether such person can be reasonably perceived as being able to exercise independent business judgment without being subservient to any apparent form of interference.

At least one third of an NBFC's directors shall be independent directors.

At least two of its directors, excluding the chief executive officer, shall have relevant experience of at least five years at a senior management level in the financial sector.

The Commission shall be the final authority to determine the status of a director as independent or otherwise.

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A.7 (a) The chairman of a listed company shall preferably be elected from among the non executive directors. The board of directors shall clearly define the respective roles and responsibilities of the chairman, and also decide whether the Chairman and Chief Executive shall be separate individuals or the same individual.

(b) The board of directors of a listed company shall meet at least once in every quarter. Written notices (including agenda) of meetings shall be circulate not less than seven days before the meetings except in the case of emergency meetings, where the notice period may be reduced or waived.

The chairman of a listed company shall ensure that minutes of meetings of the board of directors are appropriately recorded. The minutes of meetings shall be circulated to directors and officers entitled to attend board meetings within 14 or 30 days of the date of the meeting.

If the director of a listed company is of the view that his dissenting note has not been satisfactorily recorded in the minutes, he may refer the matter to the company secretary. The director may require the note to be appended to the minutes, failing which he may file an objection with the Securities and Exchange Commission of Pakistan in the form of a statement to that effect.

A.8 The directors of Nayar Textiles Limited shall take reasonable steps to ensure that the company secretary is a person who appears to them to have the requisite knowledge and experience to discharge his functions as company secretary and who is -

- (a) A member of -
 - a recognized body of professional accountants; or
 - a recognized body of corporate or chartered secretaries; or
- (b) A person holding a master degree in business administration or commerce or being a law graduate from a university recognized by the Higher Education Commission and having at least two years' relevant experience.

A.9 (a) the number of shares to be purchased and price thereof shall be approved in the Board Meeting.
 (b) the above decision shall then be confirmed by passing special resolution.
 (c) the decision of the directors for the purchase shall be communicated to the SECP and the respective stock exchange on the day of the decision.
 (d) the tender notice for the purchase shall contain:

- (i) The maximum number of shares to be purchased by the company;
- (ii) The manner in which the offer shall be communicated;
- (iii) The last day by which the offer to sell the shares shall be made; and
- (iv) The name and the address of the designated branches of the authorized bank.

(e) A share holder, interested to sell his shares to the company shall make the offer in writing through the designated branches of an authorized bank, providing the following information, namely:

- (i) Name of the shareholder;
- (ii) His father's name and in the case of a married woman or a widow, her husband's name;
- (iii) National Identity Card No.;
- (iv) Address of the shareholder registered with the company;
- (v) Number of shares offered for repurchase by the company;
- (vi) Distinctive numbers of share certificates (if not in the Central Depository);
- (vii) Folio No. (if not in the Central Depository); and
- (viii) Sub-account number with the Central Depository, if any.

(f) The company shall take a decision on the offers received within ten days of the closing date of the receipt of offers.

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- (g) In case, offers received in response to tender notice exceed the requisite purchase, the acceptance thereof shall be on pro-rata basis in lots of five hundreds shares.
- (h) The acceptance of the offer shall be communicated within seven days of the decision.
- (i) The shareholder, whose offer has been accepted, shall submit the share certificates along with the transfer deed duly signed, verified and witnessed to the company through designated branches of the bank within seven days for the receipt of acceptance of the offer.
- (j) Where the shares are on the Central Depository System a confirmation from the Central Depository, about the availability of the shares along with authorization to transfer shall be sent to the designated branches of the bank within seven days of the receipt of acceptance of the offer.
- (k) In case of non-compliance with sub-rules (i) and (j), the acceptance of the offer shall be deemed to have been revoked.
- (l) The company shall pay the price of the purchased shares through 'bank draft'/'pay order' immediately on receipt of the share certificates and transfer deed or the authority to transfer the shares from the Central Depository as the case may be, but not later than seven days.

A.10 The directors of ABC Limited, if the amount of their debt is equal to 60% of the paid up capital of the SUB Power Limited either individually or in combination with other creditors may request the SECP to appoint an Administrator to manage the affairs of the company, on the following grounds:

- (a) the affairs or business of the company are or is being or have or has been conducted or managed:
 - (i) in a manner likely to be prejudicial to the interest of the company, its members or creditors, or any director of the company or person concerned with the management of the company is or has been guilty of breach of trust, misfeasance or other misconduct towards any of its members or creditors or directors.
 - (ii) with intent to defraud its members or creditors or any other person or for a fraudulent or unlawful purpose or
 - (iii) in a manner oppressive of any of such persons or for purposes as aforesaid or
 - (iv) as to deprive the members thereof of a reasonable return or
- (b) any industrial project or unit to be set up or belonging to the company has not been completed or has not commenced operations or has not been operating smoothly or its production or performance has so deteriorated that:
 - (i) the market value of its shares as quoted on the stock exchange or the net worth of its shares has fallen by more than seventy-five per cent of its par value or
 - (ii) debt equity ratio has deteriorated beyond 9:1 or
 - (iii) current ratio has deteriorated beyond 0.5:1 or
- (c) any industrial unit owned by the company is not in operation for over a period of two years or has been in operation intermittently or partially during the preceding two years. or
- (d) the accumulated losses of the company exceed sixty percent of its paid-up capital.

A.11 (a) Saad Textile Mills Limited (STML) should have intimated, about the partial re-payment of Rs. 250 million, to the registrar, who would enter, in the register of mortgages and charges, a memorandum of satisfaction that a part of the fixed assets of the company has been released from the charge.

- (b) Despite the fact that confirmation has not been received from Apex Bank Limited, Saad Textile Mills Limited (STML) should have intimated to the registrar within 21 days of the date of the re-payment of the loan. The Registrar shall issue a notice to Apex Bank Limited to show cause within a time limit not exceeding 14 days to be fixed in such notice why the re-payment or satisfaction of the charge or mortgage should not be recorded. If no cause is shown by Apex Bank Ltd, the Registrar shall order that a Memorandum of Satisfaction be entered in the register.

(THE END)



The Institute of Chartered Accountants of Pakistan

Corporate Laws

Final Examinations – Winter 2010
Module E

December 8, 2010
100 marks - 3 hours

- Q.1 (a) Belfast Pakistan Limited (BPL), engaged in real estate business, is a wholly owned subsidiary of Belfast International (BI). The company was incorporated in April 2007 with a paid-up capital of Rs. 100 million. After first three years of unsuccessful operations, BPL has accumulated losses to the tune of Rs. 34 million.

In order to revive the company, management intends to venture into a new business and wants to cancel its existing paid-up share capital which has been lost or unrepresented by available assets.

Under the provisions of the Companies Ordinance, 1984 state the steps that need to be taken for reducing the share capital of the company. *(12 marks)*

- (b) On submission of the report by the inspector appointed by SECP to investigate the affairs of XYZ Limited, SECP is of the opinion that the financial position of the company is such that it endangers its solvency and as such has filed a petition in the Court for taking necessary action against the management of the company.

Under the provisions of Companies Ordinance, 1984 describe various actions which the Court may order against the management of XYZ Limited. *(04 marks)*

- Q.2 Mr. Hameed, who is a director in ABC Limited, a listed company, is planning to move to Europe for one year to set up his own business. In the light of Companies Ordinance, 1984 you are required to:

- (a) Respond to his request for advice, as regards his responsibilities, under the Companies Ordinance 1984, in respect of:
- (i) attending the annual general meeting of the company. *(02 marks)*
 - (ii) attending the board meetings of the company. *(04 marks)*
- (b) Discuss the conditions under which he may be allowed to assign his office to another person. *(04 marks)*
- (c) State the procedure and the conditions to be complied with if the company wants to remove Mr. Hameed from the directorship of the company, under each of the following assumptions:
- (i) He was elected as a director of the company.
 - (ii) He became the director of the company by subscribing to the memorandum of association of the company. *(06 marks)*

- Q.3 (a) Western Cement Limited (WCL) has recently formed a provident fund for the benefit of its employees.

In view of the provisions contained in the Companies Ordinance, 1984 you are required to advise (i) the directors of WCL and (ii) the trustees of Provident Fund about their responsibilities with respect to the amount to be contributed to the fund and investment thereof. *(09 marks)*

- (b) State the provisions contained in the appointment of Legal Advisers Act, 1974 relating to the eligibility for appointment as legal advisers. *(03 marks)*

Q.4 The paid-up capital of Jupiter Technologies Limited consists of 100 million ordinary shares of Rs. 10 each. The directors are now planning to issue two classes of preference shares to the existing shareholders, for Rs. 100 million.

In the light of the provisions of the Companies Share Capital (Variation in Rights and Privileges) Rules, 2000 you are required to advise the directors, as regards the following:

- (a) The conditions which must be complied with, for issuing different classes of preference shares.
- (b) The nature of variation in rights and privileges that can be associated with different classes of shares. *(11 marks)*

Q.5 EFL has recently been incorporated as a non-banking financial institution and plans to carry out more than one form of business. You are required to advise it in respect of the following:

- (a) Any eight conditions specified under the NBFC rules 2003 for the grant of licence. *(08 marks)*
- (b) The provisions as regards validity and renewal of licence granted to the NBFC. *(04 marks)*

Q.6 Narrate the provisions contained in the Code of Corporate Governance relating to:

- (a) Orientation Courses / Directors Educational Program. *(03 marks)*
- (b) The responsibility of CEO and CFO of a listed company as regards endorsement and approval of financial statements prior to their circulation. *(03 marks)*
- (c) Secretarial Compliance Certificate. *(03 marks)*

Q.7 Yasir (Private) Limited is part of a large group of companies including listed as well as unlisted entities. It is considering to get itself listed on the Karachi Stock Exchange. As the CFO of the Company, you are cognizant of the fact that the responsibilities of the company would increase significantly after it gets itself listed. Consequently, you are required to make a report for presentation to the directors as regards the following:

- (a) Conditions required to be complied with by Yasir (Private) Limited under the listing regulations of the Karachi Stock Exchange, to be eligible for listing. *(08 marks)*
- (b) Additional information to be disclosed in the Directors' report of a listed company. *(08 marks)*
- (c) Circulation of quarterly accounts. *(04 marks)*

Q.8 The Board of Directors of Modern Textile Mills Limited (MTML) recommended the issue of 20% bonus shares for the year ended September 30, 2010. The register of members for determining the entitlements was closed from October 22, 2010 to October 29, 2010 (both days inclusive). The company is listed on Karachi and Lahore Stock Exchanges and its securities are entered in the Central Depository System.

State the responsibility of MTML and the Central Depository upon issuance of bonus shares under the Central Depositories Act, 1997. *(04 marks)*

(THE END)

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A.1 (a) **Procedure for Reduction in Paid Up Capital**

If allowed under the Articles of Association of the company, Belfast Pakistan Limited may reduce its share capital as follows:

- (i) Pass a resolution for reduction in share capital in the meeting of the directors.
- (ii) Send notice with statement of material facts under provision of the Companies Ordinance 1984 and copy of the proposed special resolution for reduction in capital to the shareholders convening the extra ordinary general meeting at least 21 days before the date of general meeting and pass the special resolution in the meeting.
- (iii) File copy of the Special Resolution with the Registrar within 15 days from the date of passing of special resolution.
- (iv) Obtain NOC from creditors, if any.
- (v) File Petition before the Court for confirmation of the reduction in share capital.
- (vi) Submit a copy of court's confirmation order for reduction of the capital, with the Registrar.
- (vii) Comply with the Court order for publication of reason for reduction of share capital in the newspapers.

(b) **Power of Commission to initiate action against management**

Various actions, which the Court may order against the management of XYZ Limited, are as follows:

- (i) Remove from office any director including the chief executive, managing agent or other officer of the company;

Any director including a chief executive, managing agent or other officer who is removed from office shall not be a director, chief executive, managing agent or officer of any company for a period of five years from the date of his removal unless the court specifies a lesser period.

- (ii) Direct that the directors of the company should carry out such changes in the management or in the accounting policies of the company as may be specified in the order; or
- (iii) Direct the company to call a meeting of its members to consider such matters as may be specified in the order and to take appropriate remedial action; or
- (iv) Direct that any existing contract which is to the detriment of the company or its members or is intended to or does benefit any officer or director shall be annulled or modified to the extent specified in the order.

Provided that no such order shall be made so as to have effect from any date preceding the date of the order.

A.2 (a) (i) **Director's attendance at Annual general Meeting.**

It is not mandatory for a director to attend the annual general meeting of the company and there are no consequences of not attending it under the Company's Ordinance, 1984.

(ii) **Director's attendance at Board Meeting.**

If Mr. Hameed does not attend, without leave of absence from directors, three consecutive board meetings or all the board meetings for a continuous period of three months whichever is longer he shall *ipso facto* cease to hold office.

(b) **Restriction on assignment of office of directors**

Mr. Hameed can assign his office to another person, if he is allowed by the articles or by any agreement, between him and the company empowering him to assign his office to another person, duly approved by a special resolution of the company.

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(c) **Removal of directors**

In either case, the company may remove Mr. Hameed from the directorship by passing a resolution in general meeting.

(i) **If Mr.Hameed was appointed by the election of directors of the company.**

Mr. Hameed shall be removed if votes cast against the resolution for removal are less than the minimum number of votes that were cast for the election of director at the immediately preceding election of directors.

(ii) **If Mr.Hameed was appointed by the subscribers to the memorandum of association of the company.**

Mr. Hameed shall be removed if votes cast against the resolution for removal are less than the total number of votes for the time being computed as a product of number of shares held by voter and number of director elected at the time of his appointment divided by the number of directors for the time being.

- A.3 (a) The Directors of the company are responsible to collect the contribution of the employees and pay such contributions as well as the company's contributions, to the trustees of the provident fund within fifteen days from the date of collection and thereupon the obligations laid on the company shall devolve on the trustees and shall be discharged by them instead of the company.

The directors shall make sure that no portion of the contribution is utilized by the company except for the breach of the contract of service by the employee, subject to giving prior notice to the employee concerned.

It is the responsibility of the trustees to ensure that all the money deposited with a company by its employees, contribution by the company or received or accruing by way of interest, profit or otherwise from the date of the contribution, receipt or accrual, shall either be deposited:

- (i) in the National Saving Scheme;
 - (ii) in a special account opened by the company for the purpose in a scheduled bank or
 - (iii) 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
 - (iv) be invested in Government securities; or
 - (v) in bonds, redeemable capital, debt securities or instruments issued by the Pakistan Water and Power Development Authority; or
 - (vi) in listed securities subject to the conditions as prescribed by the SECP.
- (b) The Legal Advisor shall be an advocate or a registered firm of advocates.

The number of companies of which such advocate or firm is a Legal Advisor (including the current appointment) shall not exceed:

- (i) in the case of an advocate, three; or
- (ii) in the case of a firm, the product of three and the total number of partners of the firm.

- A.4 (a) The following pre-requisites must be complied with before issuance of various classes of shares by a company limited by shares :

- (i) The issuance of such shares shall be in accordance with the memorandum and articles of association of the company.

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- (ii) No company shall issue further share capital of any kind or class carrying different rights and privileges except with prior approval of the Commission to be obtained on the basis of special resolution.
 - (iii) Offer of further share capital of any kind or class carrying different rights and privileges shall be made to each existing shareholder proportionately without any discrimination.
 - (iv) If any of the existing shareholder declines to accept the offer, the shares so declined shall be disposed of by the directors in such manner as may be provided in the articles or in accordance with the special resolution passed by the shareholders.
 - (v) The fact that the company has different classes of shares with different rights and privileges, shall be distinctly mentioned in the offering document and the difference in the rights and privileges of any class of share capital shall be conspicuously mentioned in the offering document or prospectus etc.
- (b) The directors of Jupiter Technologies Limited may offer the following types of variation in rights and privileges with the different kinds of preference shares provided such variation is allowed under the articles of association of the company :
- (i) different voting rights, voting rights disproportionate to the paid up value of shares held, voting rights for specific purposes only or no voting rights
 - (ii) different rights for entitlements of dividend, right shares or bonus shares or entitlement to receive the notices and to attend general meetings.
 - (iii) rights and privileges for indefinite period, for a limited specified period or for such period as may be determined by the members through special resolution.
- A.5 (a) Under the NBFC rules 2003, the Commission has specified the following conditions to be complied prior to grant of license for carrying out more than one form of business:
- (i) EFL must be a public limited company incorporated under the Ordinance or any other form of company as may be specified by the Commission through official Gazette.
 - (ii) EFL must not be a part of a group of companies already holding a licence for the same form of business under NBFC Rules.
 - (iii) EFL's equity should be equal to or in excess of the minimum equity as may be specified by the Commission by notification in the official gazette in respect of each form of business.
 - (iv) EFL must have allotted at least twenty five percent of the paid up share capital to the promoters.
 - (v) EFL's promoters or majority shareholders and directors should have deposited their shares with Central Depository Company of Pakistan Limited in an account marked as "Blocked" and such shares shall not be sold or transferred without prior approval of the Commission.
 - (vi) The promoters or majority shareholders and directors shall undertake that they would not enter into any agreement for sale or transfer of their shares in any manner without prior approval of the Commission.
 - (vii) EFL shall appoint a chief executive who shall not hold such office in any other company except for an investment company being managed by the said company, provided that prior approval of the commission has been obtained in this regard.
 - (viii) EFL shall give an undertaking that no change in the Memorandum of Association, other than increase in the authorized capital, shall be made without prior approval of the Commission.
 - (ix) EFL shall give an undertaking to comply with the rules, regulations or directions given by the Commission.

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- (x) EFL shall give an undertaking that within ninety days of the Certificate of Registration, it shall provide evidence to the Commission that the personnel employed by it for executive positions, research or other related functions, possess sufficient educational qualifications and professional experience to undertake the asset management business.
- (b) An NBFC should commence business within one year of the issuance of license and if it fails, the license shall be deemed to be cancelled or otherwise as specified by the commission by notification in the official gazette.

The license granted to the NBFC shall be valid for three years from the date of its issuance and shall be renewable upon expiry of the three years as by making an application at least one month prior to expiry.

The Commission may after making such inquiry and after obtaining such further information as it may consider necessary renew the license of NBFC for three years on such conditions as it may deem necessary.

Provided that till such time the license is renewed the existing license shall be deemed valid for the purposes of these rules and the regulations unless the company fails to apply and fulfills all the requirements to the satisfaction of the commission for the grant of the license.

A.6 (a) Orientation Courses / Directors Educational Programme

All listed companies shall make appropriate arrangements to carry out orientation courses for their directors to acquaint them with their duties and responsibilities and enable them to manage the business affairs of the company on behalf of shareholders.

It will be mandatory for all directors of listed companies to have certification under "The Board Development Series" program offered by the Pakistan Institute of Corporate Governance.

Provided that at least one director shall be required to have such certification up to June 30, 2011 and thereafter, every following year minimum one director on the Board shall acquire the said certification under this program.

(b) Responsibility of CEO & CFO as regards financial statements

No listed company shall circulate its financial statements unless the CEO and the CFO present the financial statements, duly endorsed under their respective signatures, for consideration and approval of the Board of Directors and the Board, after consideration and approval, authorize the signing of financial statements for issuance and circulation.

(c) Secretarial Compliance Certificate

The Company Secretary of a listed company shall furnish a Secretarial Compliance Certificate, in the prescribed form, as part of the annual return filed with the Registrar of Companies to certify that the secretarial and corporate requirements of the Companies Ordinance, 1984 have been duly complied with.

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A.7 (a) Yasir (Private) Limited must meet the following criteria for being eligible for listing on the Karachi stock exchange(KSE):

- (i) The company must first be converted from private limited company to public limited company.
- (ii) The paid up capital (including public offer) shall not be less than Rs 200 million.
- (iii) A running company for one full year or more, reflecting losses in their last audited accounts shall not qualify for listing if its equity is eroded by 40% or more.
- (iv) Public issue should at least be subscribed by 500 applicants.
- (v) The promoters/ sponsors / controlling directors who are also promoters /sponsors /controlling directors in other listed companies should not be in default of any Listing Regulation.
- (vi) The company should not be a wholly owned subsidiary of any other listed company which has violated Listing Regulations and which is still in default of any Listing Regulation.
- (vii) The company should not be an associated company of any other listed company which has violated Listing Regulations and which is still in default.
- (viii) The Chief Executive should not previously been a chief executive of any other listed company which had violated the Listing Regulations.
- (ix) Promoters / sponsors / controlling directors should not be in the defaulter's list of the State Bank of Pakistan either in their individual capacity or in the capacity of directors of other companies. However, this will not apply to nominee directors of the Government and Financial Institutions.
- (x) The company should provide an undertaking to abide by all the Listing Regulations.

(b) **Additional information to be disclosed in the Director's Report.**

The following additional information is required to be disclosed in the directors report of a listed company under the provisions of the Companies Ordinance, 1984:

- (i) Material changes that have occurred during the financial year concerning the nature of the business of the company or of its subsidiaries in the classes of business in which the company has interest whether as a member of another company or otherwise unless the commission exempts any company from making such disclosure on the ground that such disclosures would be prejudicial to the business of the company.
- (ii) Material changes and commitments affecting the financial position of the company occurred after close of the financial year and before preparation of the report.
- (iii) Information and explanation in regard to any reservation, observation, qualification or adverse remarks, contained in the auditor's report.
- (iv) Pattern of shares holdings.
- (v) In case of subsidiary company, the name of its holding company, and country of incorporation, if it is established outside Pakistan.
- (vi) Earnings per share.
- (vii) Reasons for incurring loss and a reasonable indication of future prospects of profit, if any.
- (viii) Information about defaults in payment of debts, if any, and reasons thereof.

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(c) **Circulation of quarterly accounts of Listed Companies.**

Every listed company shall:

- (i) Within one month of the close of the first, second and third quarter of its year of account, prepare and transmit to the members 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; and
- (ii) Simultaneously with the transmission of the quarterly profit and loss account and balance-sheet to the members and the stock exchange, file with the registrar and the commission such number of copies thereof, not being less than three, as may be prescribed.
- (iii) 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
- (iv) A listed company may place its quarterly accounts on its website which will be treated compliance of the provisions of the Companies Ordinance, 1984.

If a company fails to comply with any of the requirements of this section, every director including chief executive and chief accountant of the company who has knowingly by his act or omission been the cause of such default shall be liable to a fine of not exceeding one hundred thousand rupees and a further fine of one thousand rupees for every day during which the default continues.

A.8 Issuance of Bonus Shares

Upon announcement of bonus issue, the securities to be issued on the number of securities of the company registered in the name of Central Depository shall be allotted by Modern Textile Mills Limited (MTML) to the central depository.

The Central Depository upon allotment will determine the entitlements of the respective account holders and sub account holders of the company in proportion to the securities standing in their accounts and sub accounts as of the close of business hours of the central depository on the day before the first day of the period of closure of the register of members and credit these in the relevant accounts and sub accounts.

(THE END)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN
EXAMINERS' COMMENTS

SUBJECT	SESSION
Corporate Law	Winter 2010

It has been very prominent to note that even the students who knew the correct reply have added unnecessary material and filled pages for the question, the answer of which could be covered in few lines. It is very important to note the marks allocated to the respective question, which they simply fail to understand. In spite of continuous emphasise on the need of developing the skill of analysing the requirement of the question, the students seem to have ignored the comment and have criminally wasted their precious time. What is the idea or concept behind their writing irrelevant answer is beyond the examiners' understanding.

Further, at this final stage also the situation based questions seem to confuse the students. Direct questions are more easily replied than practical questions. Overall the paper, though easy, has been badly attempted by large percentage, resulting in failure of most of the students in this paper. At this final level, it is felt that there is dire need for understanding the precise requirement before attempting the question by the students.

Q.1 (a) This part of the question required the steps involved in the reduction of paid up capital of a company. Though many students identified most of the steps but the majority failed to mention the following important points:

- Articles of Association must allow the reduction of paid up capital.
- Copy of the Special Resolution shall be filed with the Registrar within 15 days from the date of passing of special resolution along with the prescribed fee.

(b) In this part, the students were required to specify power of Commission to initiate action against the management of XYZ Limited, which has been fairly attempted by the students. However, one mistake which most of the students committed is instead of writing as per law that "the Court directs the directors to carry out changes in the management and accounting policies", they wrote that "the Court orders the management to change the Board of Directors and financial policies of the company". Many students who tried to reproduce the law in their own words, totally changed the meaning thereof. It must be emphasised that although it is not necessary to reproduce the exact law, but while interpreting, the meaning should not change.

Q.2 (a) Though quite an easy question yet many students got confused in replying to it. Many students wrote that "the director should appoint proxy to attend AGM in his absence". Whereas, there is no section under the Companies Ordinance which binds the director to attend the AGM and there are no consequences for not attending.

Students covered all points while replying to Part (a)(ii) and gained full marks.

Examiners' Comments on Corporate Law – Winter 2010 Examination

- (b) In this part pertaining to assignment of office of directors, many students were not clear between assignment of office and appointment of alternate director.
 - (c) Although majority of the candidates correctly stated that the director can be removed by passing a resolution in the members meeting but most of them could not correctly state the number of votes required for such removal, especially in case of removal if a person has become the director of the company by subscribing to the memorandum of association of the company.
- Q.3
- (a) The question required the candidates to advise directors and trustees regarding their responsibilities in respect of contribution to provident fund and investment thereof but almost all of them mixed up the responsibilities of directors and trustees. Generally trustees' responsibilities with respect to investment were included in the directors' responsibilities and the trustees' responsibilities were wrongly restricted to overseeing the directors for fulfilling their responsibilities. Baring few, all the candidates got low marks on this part of the question.
 - (b) This was a very simple question regarding the provisions relating to eligibility for appointment of legal advisor which was well attempted by most of the candidates.
- Q.4
- (a) Majority of the candidates got average marks on this part of the question as they failed to mention many conditions contained in Companies' Share Capital (Variation in Rights and Privileges) Rules 2000. Generally the candidates failed to state the following points:
 - (i) The issuance of such shares shall be in accordance with the memorandum and articles of association of the company.
 - (ii) No company shall issue further share capital of any kind or class carrying different rights and privileges except with prior approval of the Commission to be obtained on the basis of special resolution.
 - (iii) The fact that the company has different classes of shares with different rights and privileges and the difference in the rights and privileges, shall be conspicuously mentioned in the offering document or prospectus etc.
 - (b) Most of the candidates correctly stated the nature of variation in rights and privileges associated with the different classes of shares and thus got good marks. Some of them narrated the different kinds of preference shares i.e., cumulative, non-cumulative, redeemable, non redeemable which was not required.
- Q.5
- (a) This simple question regarding conditions specified under the NBFC rules 2003 for grant of licence was well attempted by most of the students as they were well versed with these conditions. Some students narrated the qualifications of sponsors, directors etc., which was not required.

Examiners' Comments on Corporate Law – Winter 2010 Examination

- (b) Majority of the candidates got low marks on this part of the question. The licence is valid for three years but baring few, all the candidates mentioned that the licence is valid for one year. Most of the candidates also failed to mention the conditions on which the licence shall be renewed and validity of licence during the period from the date of application of renewal to the date of renewal.
- Q.6 (a) Majority of the student correctly described the purpose of Orientation Courses/Directors Educational Program but they failed to mention the provisions regarding mandatory certification under “The Board Development Series” program offered by the Pakistan Institute of Corporate Governance.
- (b) This part of the question was well attempted by most of the students as they correctly described the provisions contained in the code of Corporate Governance relating to responsibilities of CEO and CFO as regards financial statements.
- (c) Instead of narrating provisions related to Secretarial Compliance Certificate which is required to be filed with the Registrar by the Secretary of the listed company, most of the candidates discussed the Statement of Compliance with the best practices of Code of Corporate Governance and auditors review thereon. Many students mentioned that the Certificate would either be issued by external auditors or in some cases they mentioned that this would be obtained from SECP.
- Q.7 (a) Baring few all the candidates got low marks on this part of the question as instead of describing the conditions mentioned in Appendix 2 of the listing regulations of Karachi Stock Exchange almost all candidates narrated the procedure in respect of prospectus, procedure for making applications for shares and balloting etc.
- (b) The students generally secured good marks in this part of the question.
- (c) Very few candidates could provide a complete answer as the following points were generally missed:
- (i) Option to place quarterly accounts on website.
 - (ii) Filing of accounts with Registrar and Commission.
- Q.8 Almost all the candidates failed to secure good marks on this question as they were unaware about the relevant provisions of Central Depository Act 1997, Sec. 10(1) & (2). It was a clear case of selective studies which unfortunately most candidates seem to have resorted to.

(THE END)



The Institute of Chartered Accountants of Pakistan

Corporate Laws

Final Examination
Module E – Summer 2011

Reading time – 15 minutes

June 8, 2011
100 marks – 3 hours

- Q.1 As on April 1, 2010 Mr. Faisal owned one million shares in Delton Chemicals Limited (DCL), a listed company. He has made the following transactions in the shares of DCL during the year ended March 31, 2011:

S. No.	Date	Addition/(Deletion) No. of shares (in million)	Remarks
1.	31.05.2010	45	Purchased from the market
2.	15.07.2010	15	Purchased from the market
3.	30.08.2010	(5)	Sold in the market at a profit
4.	15.09.2010	(1)*	Sold in the market at a profit
5.	20.11.2010	5	Bonus shares

*These shares were acquired on March 15, 2010 in good faith from Mr. Yaseen in satisfaction of a debt.

The paid-up capital of DCL is 500 million shares.

Required:

- (a) Discuss Mr. Faisal's responsibilities under the Companies Ordinance, 1984 in respect of the above transactions. *(08 marks)*
- (b) Briefly discuss the powers of the SECP in case Mr. Faisal fails to carry out his responsibilities as referred to in (a) above. *(04 marks)*
- Q.2 Substantial operating losses sustained by Legend Ceramics Limited (LCL) have forced its directors to proceed for company's voluntary winding up. Accordingly, a general meeting of LCL was held on July 1, 2010 and Mr. Ateeq was appointed as the Liquidator.
- In the context of the provisions contained in the Companies Ordinance, 1984 you are required to explain the following:
- (a) The steps that Mr. Ateeq should take if the winding up is not completed till June 30, 2011. *(05 marks)*
- (b) Mr. Ateeq's responsibilities as regards final meeting and dissolution of the company. *(05 marks)*
- Q.3 On January 1, 2011 Landmark Limited (LML), a company incorporated in Mauritius, established a branch office in Pakistan and commenced its business with the permission of the Board of Investment, Pakistan.
- On February 10, 2011 LML received a notice from the registrar's office for non-filing of certain documents.
- In the light of the provisions contained in the Companies Ordinance 1984, you are required to:
- (a) give a list of the documents that LML was required to submit to the Registrar before completion of 30 days from the date of establishment of the branch. *(05 marks)*
- (b) explain the effect of non-filing of these documents on the validity of the agreements or contracts entered into by LML during the above period and on the rights of the respective parties to initiate legal proceedings against each other. *(04 marks)*
- Q.4 Briefly explain the term 'dominant position' and list the practices which constitute an abuse of dominant position, under the provisions of the Competition Act, 2010. *(09 marks)*

Q.5 RK Limited (RKL), a listed company, holds 6.3 million ordinary shares of TK (Private) Limited (TKPL) whose paid-up capital consists of 10 million ordinary shares of Rs. 10 each. The remaining shares are held by Mr. Adnan and his family. The Board of TKPL consists of eight directors of which five directors represent RKL while the remaining three directors, including the chief executive, are representatives of Mr. Adnan and his family.

RKL is presently considering the following proposals:

- (a) to appoint one of the directors representing RKL, as the chief executive of TKPL, in place of the existing chief executive. *(05 marks)*
- (b) to appoint BL & Co., Chartered Accountants, as auditors of TKPL in the forthcoming annual general meeting. The spouse of one of the partners of BL Associates holds one hundred thousand shares in TKPL. *(03 marks)*
- (c) to pledge TKPL's inventories as security against a loan to be obtained by an associated company of TKPL. *(03 marks)*

Comment on the above proposals in the light of provisions contained in the Companies Ordinance, 1984.

Q.6 The board of directors of EFI Textile Mills Limited, a listed company, plans to buy-back 10% shares of the company. In the light of the provisions contained in the Companies (Buy-back of Shares) Rules, 1999, specify the conditions that the company should be in compliance with, before it proceeds to buy-back the shares. *(04 marks)*

Q.7 The Directors of SQL Limited, a listed company, has decided to issue 50% right shares.

You are required to explain the conditions that SQL will have to comply with, in each of the following situations if:

- (a) the shares are to be issued at a premium of Rs. 6 per share. *(08 marks)*
- (b) the employees of SQL Limited are also holding shares on account of preferential allocation. *(04 marks)*

Q.8 (a) XYZ Limited, an NBFC, is in the process of classification and provisioning of its non-performing assets. You are required to advise the company about the criteria for determining the realizable value of mortgaged, pledged, leased or collaterally held assets in the light of provisions contained in Non-Banking Finance Companies and Notified Entities Regulations, 2008. *(07 marks)*

(b) Explain the terms Open-end Scheme and Close-end Scheme as included in the NBFC Rules, 2003. *(05 marks)*

Q.9 On May 21, 2011, Mr. Salman made a public announcement of his offer to acquire 45% voting shares of Intiaz Industries Limited (IIL) from Mr. Kalam. On May 31, 2011 Mr. Sadiq also made a public announcement of his offer to Mr. Kalam for the acquisition of the same number of shares at a higher price. Both, Mr. Salman as well as Mr. Sadiq already own more than 10% shares in IIL.

In the light of the provisions of the Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Regulations, 2008 you are required to advise Mr. Salman about the course of action which he would have to follow if he still wants to acquire the shares owned by Mr. Kalam. *(05 marks)*

Q.10 State the conditions specified under the listing regulations in respect of each of the following:

- (a) Declaration of financial results and announcement of dividend. *(06 marks)*
- (b) Issuance and despatch of dividend warrants and payment of dividend. *(06 marks)*

Q.11 Under the Code of Corporate Governance, what are the conditions under which a person becomes ineligible to be appointed as the director of a listed company? *(04 marks)*

(THE END)

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- A.1 (a) (i) **May 31, 2010**
Mr. Faisal was not required to file any return with the registrar as his holding was less than 10% of the shares of the company even after taking opening balance of one million shares.
- (ii) **July 15, 2010**
Since the shareholding of Mr. Faisal had crossed the level of 10% shares of the company, he had to inform the company and file a return, within 30 days from the date of the transaction, containing particulars of his shareholdings in Delton Chemicals Limited (DCL) with the Registrar and the Commission.
- (iii) **August 30, 2010**
Since Mr. Faisal had made a gain by purchase and sale within a period of less than six months, he was required to make a report and tender the amount of such gain to the company and simultaneously send intimation to this effect to the Registrar and the Commission within 15 days from the date of the transaction.
- (iv) **September 15, 2010**
Mr. Faisal was not required to make a report and tender the gain and send intimation to this effect to the Registrar and the Commission as the concerned rule discussed in (iii) above, is not applicable to such transactions i.e. when shares have been acquired in good faith, in satisfaction of a debt.
- (v) **November 20, 2010**
On receipt of bonus shares, there is a change in his beneficial ownership of DCL, he would therefore be required to inform the company and file a return with the Registrar and the Commission within 15 days from the date of the receipt of bonus shares.
- (b) If Mr. Faisal knowingly and willfully contravenes or otherwise fails to comply with any provision of Company Law related to above, he shall be liable to pay a fine.

If Mr. Faisal fails or neglects to tender the amount of the gain or the company fails to recover any gain such gain shall vest in the Commission and unless such gain is deposited in the prescribed account, the Commission may direct recovery of the same as an arrear of land revenue.

- A.2 (a) If the affairs of the LCL are not wound up till June 30, 2011, Mr. Ateeq shall be responsible to take the following steps:
- (i) Summon a general meeting of the company at the end of the first year from the date of commencement of the winding up and, if extension is granted by court, within thirty days of such extended period;
- (ii) Present in the meeting an audited account of receipts and payments and acts and dealings and of the conduct of the winding up during the preceding year together with a statement in a prescribed form containing the prescribed particulars with respect to the proceedings in and position of the liquidation, including:
- Reasons for the delay in finalization of the winding up proceedings.
 - steps taken to expedite the winding up proceedings.
 - further time required for the purpose.

CORPORATE LAWS
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- (iii) Forward by post to every contributory, a copy of the account and statement together with the auditor's report and notice of the meeting at least ten days before the meeting.
 - (iv) File with the registrar, a return of convening of each general meeting, together with a copy of the notice, account, statement and minutes of the meeting, within ten days of the date of the meeting.
- (b) (i) As soon as the affairs of the company are fully wound up, Mr. Ateeq would be responsible to
- make a report and account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of and such other particulars as may be prescribed; and
 - call a general meeting of the company for the purpose of laying the report and account before it and giving any explanation thereof.
- (ii) The account shall be audited and a copy thereof together with a copy of the auditor's report and notice of meeting shall be sent by post to each contributory of the company at least ten days before the meeting required to be held under this section.
- (iii) The notice of the meeting specifying the time, place and object of the meeting shall also be published at least ten days before the date of the meeting.
- (iv) Within one week after the meeting, the Liquidator shall send to the registrar a copy of his report and account, and shall file a return with him of the holding of the meeting along with the minutes of the meeting in the prescribed manner.
- (v) If a quorum is not present at the meeting, the Liquidator shall, in lieu of the return referred to in sub-section (4), file a return that the meeting was duly summoned and that no quorum was present there at, and upon such return being made within one week after the date fixed for the meeting along with a copy of his report and account in the prescribed manner, the provisions of sub-section (4) as to the making of the return shall be deemed to have been complied with.
- A.3 (a) Landmark Limited was required to file the following documents with the registrar within thirty days of the establishment of the place of business in Pakistan.
- (i) A certified copy of the charter, statute or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company, and if the instrument is not written in English or Urdu language, a certified translation thereof in English or Urdu language.
 - (ii) The full address of the registered or principal office of the company.
 - (iii) A list of the directors, chief executives and secretaries (if any) of the company.
 - (iv) A return showing the full present and former names and surnames, father's name or, in the case of a married woman or widow, the name of her husband or deceased husband, present and former nationality, designation and full address in Pakistan of the principal officer of the company in Pakistan by whatever name called.
 - (v) The full present and former names and surnames, father's name or, in case of married woman or widow, the name of her husband or deceased husband, present and former nationality, occupation and full addresses of one or more persons resident in Pakistan authorized to accept on behalf of the company

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- service of process and any notice or other document required to be served on the company together with his consent to do so; and
- (vi) The full address of that office of the company in Pakistan which is to be deemed as the principal place of business in Pakistan of the company.
- (b) (i) Any failure by a foreign company in submitting the prescribed documents with the Registrar shall not affect the validity of any contract, dealing or transaction entered into by the company or its liability to be sued in respect thereof.
- (ii) The Foreign company shall not be entitled to bring any suit, claim any set off, or make any counter-claim in respect of any such contract, dealing or transaction, until it has submitted the required documents with the registrar of companies.

- A.4 “Dominant position” of one undertaking or several undertakings in a relevant market shall be deemed to exist if such undertaking or undertakings have the ability to behave to an appreciable extent independently of competitors, customers, consumers and suppliers and the position of an undertaking shall be presumed to be dominant if its share of the relevant market exceeds forty per cent.

The expression “practices” shall include, but is not limited to:

- (i) limiting production, sales and unreasonable increases in price or other unfair trading conditions;
- (ii) price discrimination by charging different prices for the same goods or services from different customers in the absence of objective justifications that may justify different prices;
- (iii) tie-ins, where the sale of goods or services is made conditional on the purchase of other goods or services;
- (iv) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which by their nature or according to commercial usage, have no connection with the subject of the contracts;
- (v) applying dissimilar conditions to equivalent transactions on other parties, placing them at a competitive disadvantage;
- (vi) predatory pricing, driving competitors out of a market, preventing new entry and monopolizing the market;
- (vii) boycotting or excluding any other undertaking from the production, distribution or sale of any goods or the provision of any service; or
- (viii) refusing to deal.
- A.5 (a) The directors of a company by resolution passed by not less than three-fourths of the total number of directors for the time being, or the company by a special resolution, may remove a chief executive before the expiration of his term of office.

Therefore, the Chief Executive of TKPL can be removed only if the proposal is supported by either of the following:

- (i) at least 6 directors of the TKPL or
- (ii) by 3/4th majority of the members present in person or proxy.

RKL cannot therefore remove the current Chief Executive of TKPL until the expiry of his term, unless the move is supported by at least one director from the Adnan family or RKL can get support of 3/4th of shareholders present in the person or by proxy in the general meeting.

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- (b) BL & Co., Chartered Accountants, cannot be appointed as auditors of TKPL because the spouse of one of the partners of BL & Co. holds shares in TKPL.

However, the appointment of BL & Co. may be valid if the concerned partner discloses the fact on his appointment as auditor and gives an undertaking that these shares would be disinvested, within 90 days of his appointment.

- (c) TKPL would not be authorized to provide any security in connection with a loan obtained by its associated company as it is a subsidiary of public company, if:
- (i) The associated company is a private company of which any such director is a director or a member.
 - (ii) The associated company is a public company and 25% or more of its voting power is controlled by the director(s) of TKPL; or
 - (iii) Both the companies (TKPL as well as the associated company) are under common control or management.

- A.6 The company should comply with following conditions before it proceeds to buy-back the shares:

- (a) The company shall have debt-equity and current ratios as under, namely:
- (i) Debt-equity ratio 75:25
 - (ii) Current ratio 1:1

Provided that the Commission on application of a company may allow it to purchase its own shares even if the company has a higher debt-equity ratio if in the opinion of the Commission it is in the interest of the company and the capital market.

- (b) Debt-equity and current ratios shall be indicated in the explanatory statement to be circulated to the members along with the notice of the meeting in which the proposed purchase is to be considered.
- (c) The company shall have sufficient cash (resources) available with it for the buy back.

- A.7 (a) SQL Battery Ltd. will have to comply with the following conditions if it issues right shares at a premium of Rs. 6 per share:

- (i) The company shall not make a right issue within one year of the first issue of capital to the public or further issue of capital through right issue;
- (ii) The company, while announcing right issue, shall clearly state the purpose of the right issue, benefits to the company, use of funds and financial projections for three years.
- (iii) The financial plan and projections shall be signed by all the directors who were present in the meeting in which the right issue was approved;
- (iv) The decision of the company to issue right shares shall be communicated to the Commission and the respective stock exchange on the day of the decision;
- (v) The company may charge premium on right shares up to the free reserves per share as certified by the company's auditors and the certificate of the auditors shall be furnished to the Commission and the respective stock exchange alongwith intimation of the proposed right issue:

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Provided that where a company proposes to charge premium on right issue above the free reserves per share it shall be required to fulfill the following requirements, namely:-

- At least forty per cent of all the shareholders undertake to subscribe their portion of right issue; and
 - The remaining right issue shall be fully underwritten and the underwriters, not being associated companies, shall include at least two financial institutions including commercial banks and investment banks and the underwriters shall give full justification of the amount of premium in their independent due diligence reports;
- (vi) Right issue of a loss making company or a company whose market share price during the preceding six months has remained below par value shall be fully and firmly underwritten;
- (vii) Book closure shall be made within forty-five days of the announcement of the right issue and the payment and renunciation date once announced for the letter of right shall not be extended except with the permission of the respective stock exchange under special circumstances;
- (b) (i) The employees of the company getting preferential allocation if any, shall be charged premium at the same rate as the public.
- (ii) No other restriction would be applicable on the right shares issued to employee.
- A.8 (a) XYZ Limited shall observe the following criteria for determining the realizable value of mortgaged, pledged, leased or collaterally held assets:
- (i) Only assets having registered mortgage, equitable mortgage (where NOC for creating further charge has not been issued by NBFC) and pledged or collaterally held assets shall be considered;
 - (ii) Assets having pari-passu charge shall be considered on proportionate basis;
 - (iii) Hypothecated assets and assets with second charge or floating charge shall not be considered;
 - (iv) Valuations shall be carried out by an independent professional valuer listed on the panel of valuers maintained by the Pakistan Banks Association or the Leasing Association of Pakistan;
 - (v) The valuers while assigning any values to the mortgaged, pledged, leased or collaterally held assets, shall take into account all relevant factors affecting the salability of such assets including any difficulty in obtaining their possession, their location; their condition; and the prevailing economic conditions in the relevant sector, business or industry.
 - (vi) In determining the realizable value of mortgaged, pledged, leased or collaterally held assets, the valuers must take into account the amount that can be realized from the asset if sold in a forced or distressed sale condition;
 - (vii) The valuers shall in their report explain the assumptions, calculations, formula and method adopted in determination of the realizable values;
- (b) **Close-end Scheme** means a scheme constituted by way of trust to raise funds through issue of certificates to the public for investing in securities including money market instruments for a definite or indefinite period but which does not continuously offer certificates, neither does it entitle the holder of such certificates, to receive, on demand, their proportionate share of the net assets of the closed-end scheme;

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Open-end Scheme means a scheme constituted by way of a trust deed that continuously offers for sale its units as specified in the constitutive document that entitle the holder of such units on demand to receive his proportionate share of the net assets for the scheme less any applicable charges.

- A.9 If Mr. Salman still wishes to acquire Mr. Kalam's shares he shall have to announce an upward revision of his public offer in respect of the price and the number of voting shares to be obtained, at least seven days prior to the date of closure of the public offer made by Mr. Sadiq.

In addition to the above Mr. Salman will also have to comply with the following conditions:

- (i) The public announcement of the upward revision and all respective amendments shall be announced in all the newspapers in which the earlier public announcement was made;
- (ii) The information regarding the announcement shall be provided to SECP, the stock exchanges on which the voting shares of the target company are listed and the target company at its registered office, simultaneously with the issue of public announcement; and
- (iii) He shall have to make an appropriate increase in the value of the security that he had provided at the time of making the original offer.

- A.10 (a) (i) Every listed company shall send to the Exchange its quarterly and annual financial results.
- (ii) The company shall send to the Exchange such number of copies of annual report and audited accounts as prescribed by the Exchange not later than 21 days before a meeting of the shareholders is held to consider the same.
- (iii) The company shall send to the Exchange copies of all notices as well as resolutions prior to their publication and dispatch to the shareholders and also file with the Exchange certified copies of all such resolutions as soon as these have been adopted and become effective.
- (iv) The company shall send to the Exchange such number of copies of its quarterly accounts as prescribed by the Exchange.
- (v) Every listed company and issuer of a listed security shall advise and keep advised to the Exchange all decisions of its Board of Directors relating to cash dividend, bonus issue, right issue or any other entitlement or corporate action and any other price sensitive information. The said information is required to be communicated to the Exchange prior to its release to any other person or print/electronic media.
- (vi) Intimation of dividend and of all other entitlements shall be sent to the Exchange not later than 14 days prior to commencement of the book closure.
- (b) Every listed company shall:
- (i) dispatch interim dividend warrants to the shareholders concerned within 30 days from the date of commencement of closing of share transfer register for purpose of determination of entitlement of dividend.
 - (ii) dispatch the final dividend warrants to the shareholders concerned within 30 days from the date of General Meeting in which the same has been approved;
 - (iii) intimate the Exchange immediately as soon as all the dividend warrants are posted to the shareholders;
 - (iv) dispatch interim and final dividend warrants to the shareholders by registered post unless those entitled to receive the dividend require otherwise in writing.

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- (v) All dividend warrants, in addition to the place of the Registered Office of the issuing companies, shall be encashable at Karachi, Hyderabad, Sukkur, Quetta, Multan, Lahore, Faisalabad, Islamabad, Rawalpindi and Peshawar* for a period of three months from the date of issue.

A.11 Under the Code Of Corporate Governance a person becomes ineligible to be appointed as the director of a listed company, if:

- (a) he is serving as a director of ten other listed companies; or
- (b) his name is not borne on the register of National Tax Payers except where such person is a non-resident; or
- (c) he has been convicted by a court of competent jurisdiction as a defaulter in payment of any loan to a banking company, a Development Financial Institution or a Non-Banking Financial Institution or
- (d) he, being a member of a stock exchange, has been declared as a defaulter by such stock exchange; or
- (e) he or his spouse is engaged in the business of stock brokerage (unless specifically exempted by the Securities and Exchange Commission of Pakistan).

(THE END)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN
EXAMINERS' COMMENTS

SUBJECT	SESSION
Corporate Laws	Summer 2011

General:

The examination of the copies revealed that a large number of students were not adequately prepared for the examination. The answers of a significant number of students were out of context. The students are advised to read the questions carefully and figure out their requirements, before attempting to answer them.

It has again been observed that students are simply unable to attempt practical / situation based questions, as compared to direct questions. They must realize that at this level, the expectations are much higher than the intermediate level. They are expected to be in a position to apply their knowledge of law to various practical situations.

It has also been observed that the same mistakes are repeated in every attempt. It seems that the students do not give due importance to the examiners comments. If they focus on the comments, they would be able to prepare themselves in a better way.

Q.1 (a) This part of the question was based on a practical situation related to the responsibilities of a person holding beneficial ownership in a company and as usual, most of the students could not assess the situation properly. They simply quoted Section 222 and 224 of the Companies Ordinance, 1984 without discussing the transactions separately.

The individual transactions were important. For example, it should have been quoted that after the first transaction, the shareholder was not required to file any return because at that moment his shareholding in the company was less than 10%. Similarly, specific comments were required in respect of other transactions also.

(b) This part was quite simple as it simply needed quoting the relevant provisions from the Companies Ordinance, 1984. As has been discussed in the general comments, such types of questions are usually answered well, as was the case here also but still, about 25% of the students could not produce appropriate replies.

Q.2 The question was based on the topic of voluntary winding up. The student were required to specify the actions that needed to be taken by the liquidator if the winding up is not completed in one year, and the liquidator's responsibility regarding final meeting and dissolution of the company. Most of the students were able to secure good marks; however the performance could have been better, had the students been able to write the procedures in proper sequence. The command on the English language, particularly the legal terms, was found to be weak. Some students missed out certain important steps such as sending of notice for the meetings of the contributories and the time period during which such notice should be issued.

- Q.3 (a) This part was attempted fairly well by a large number of students as most of them were able to list down the documents that are required to be submitted by a foreign company within 30 days of establishment of a branch. However, some candidates filled pages by quoting all sorts of documents, both relevant as well as irrelevant. This approach led to loss of precious time which could have been better utilized elsewhere. Some of the students were rather careless in the use of appropriate terms. For example, they used the terms branch office instead of head office and CEO in place of principal officer.
- (b) This part was generally attempted well although a significant number of students were not clear about the fact that only the foreign company that had defaulted in filing the documents would not be entitled to file a suit or lodge a claim. The other party's right to file a suit would not be affected.

- Q.4 This was a direct question from the Competition Act, 2010 but was attempted by 25% students only. It strengthens the view that a vast majority of students resort to selective studies which is a major cause of failure of many students. Majority of those who attempted the question, performed really well and were able to list all the eight practices which constitute an abuse of dominant position, according to Competition Act, 2010.

It was however observed that some students who replied in their own words did not succeed in getting good marks because at times, the sentences formed by them did not make any sense. This was probably due to lack of English writing skills. Some students were rather careless in forming the answers. For example, while explaining the term 'dominant position' they used the term "40%" instead of "in excess of 40". Such types of discrepancies do matter a lot, specially in papers of law.

- Q.5 This question was based on a practical scenario. The students were required to give their recommendations on three different matters as discussed below:
- (a) Majority of the candidates correctly narrated the provisions of Companies Ordinance, 1984 regarding removal of Chief Executive before the end of his three year term. However, they could not comment on the ability of the holding company to remove and appoint their representative as the Chief Executive.
- (b) This part of the question was well attempted by most of the candidates as they correctly pointed out that auditor holding shares in a company on his appointment should disclose the fact and undertake to disinvest the shares within 90 days of appointment.
- (c) This part of the question was based on Section 195 of the Companies Ordinance, 1984. However, many candidates got confused. They considered the transaction as investment in associated company and tried to explain the provisions contained in Section 208 of the Companies Ordinance, 1984.

Q.6 This was a very straight forward question from the Companies (Buy-back of Shares) Rules, 1999. It required listing of conditions to be complied with before a company proceeds to buy-back its shares. Instead of restricting themselves to the exact requirement of the question, a significant number of candidates wrote detailed procedure of buy back of shares. They filled pages without realizing that it was just a 4 marks question.

An important point that was missed by some of the good students also was that the Commission may allow the company to purchase shares in case of higher debt equity ratio, if it is of the opinion that it is in the best interest of the company and the capital market.

Q.7 This very simple question was well attempted by most of the candidates as they correctly described the conditions which are required to be complied with for issuance of shares at a premium. However, the students generally failed to cover the following issues:

- (a) Statement by the company regarding the purpose of the right issue, benefits to the company, use of funds and financial projections for three years.
- (b) Provisions relating to book closure and payment/renunciation dates.
- (c) Conditions required to be fulfilled if the amount of premium exceeded the free reserves.

Q.8 (a) Generally the candidates failed to understand the question and therefore, instead of enumerating the criteria for determining the realizable value of mortgage, pledged, leased or collaterally held assets, they described the procedure for determining the amount of provision required to be made against loans and advances.

- (b) Majority of the candidates tried to explain the close-end and open-end schemes on the basis of their general knowledge. Most of them mentioned that in case of close-end schemes, the certificate issued are traded on stock exchanges while units issued by open-end scheme are purchased and redeemed through the Assets Management Company. Very few candidates were able to mention the important distinguishing features as have been enumerated in the NBFC Rules, 2003.

Q.9 Most of the candidates secured average marks on this question which required them to enumerate the conditions which a person has to comply with if he intends to revise his bid in response to a competitive bid made by another person, under Listed Companies (Substantial Acquisition of Voting Shares and Takeover) Regulations, 2008. Generally the candidates lost marks due to their failure to mention the following requirements:

- (a) If Mr. Salman wished to acquire Mr. Kalam's shares he was required to announce upward revision of his original public offer, at least 7 days before the date of close of public offer by Mr. Sadiq.

- (b) Public announcement in all newspapers in which earlier public announcement was made.
- (c) Reporting of information to the Commission, stock exchange on which shares of target company are listed and the target company, simultaneously with the issue of public announcement.

Q.10 Majority of the students failed to perform well in this question as they seemed to suffer on account of inadequate preparation, selective studies and the tendency to start answering the question without understanding its requirements. Most of them seemed to lack the knowledge of listing regulations and knowingly or unknowingly, they preferred to narrate the provisions contained in the Companies Ordinance, 1984.

Q.11 An average performance was witnessed in this question. As in question 10, a sizeable number of candidates tried to list down some of the provisions contained in the Companies Ordinance, 1984 instead of the Code of Corporate Governance. Some of the candidates who seemed to possess the related knowledge, lost marks mainly because they failed to appreciate some of the finer points as have been enumerated below:

- (i) Instead of mentioning that a person is not eligible to serve as a director of more than ten listed companies, many used the words ten other companies.
- (ii) If a member of stock exchange is declared as a defaulter by the stock exchange, he becomes ineligible to be appointed as director of listed companies. Instead, many students simply wrote that members of stock exchange are not eligible for being appointed as directors of listed companies.

(THE END)



The Institute of Chartered Accountants of Pakistan

Corporate Laws

Final Examination
Winter 2011
Module E

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

- Q.1 As a result of an application filed by the members of MMB Limited, its affairs are under investigation by the Securities and Exchange Commission of Pakistan (SECP). The members claim that the company had allotted shares to an investor against inadequate consideration and that they had not received the notice of meeting in which the decision was approved. They have requested SECP to restrict the transfer of these shares till such time that the investigation is in process.

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

- (a) Whether and under what conditions the SECP may impose restrictions on the transfer of shares? *(04 marks)*
(b) What would be the effects of such restrictions on the company and the concerned investors? *(06 marks)*

- Q.2 Mr. Asif is a director of Arif Textiles Limited (ATL), a listed company. He has entered into the following transactions in the shares of ATL:

S.#	Date	Purchases/(Sales) No. of shares	Purchase/Sale price per share(Rs.)	Remarks
1.	15.01.2011	5000	18	Purchased from the market
2.	25.02.2011	2000	21	Purchased from the market
3.	26.02.2011	3000	20	Purchased from the market
4.	27.02.2011	1000	-	Bonus shares received
5.	30.04.2011	(2000)	22	Sold in the market
6.	21.05.2011	(5000)	24	Sold in the market
7.	30.06.2011	(1000)	23	Sold in the market
8.	01.09.2011	(2000)	25	Sold in the market

In the light of the provisions of the Companies (General Provisions and Forms) Rules 1985, you are required to:

- (a) Compute the amount of gain or loss to be tendered to the company by Mr. Asif. *(06 marks)*
(b) The treatment of the amount paid by Mr. Asif on account of brokerage, stamp duty etc. *(02 marks)*
- Q.3 ABC Limited has appointed Mr. Saleem as a trustee, under a trust deed, for securing an issue of debentures. Subsequent to his appointment, Mr. Saleem is of the opinion that ABC Limited has failed to meet its obligations under the trust deed, whereas the management denies any wrong doings. Consequently, Mr. Saleem intends to take appropriate action against the company.
- Narrate the circumstances specified under the Companies Ordinance, 1984 on account of which Mr. Saleem may initiate legal action against the company. *(06 marks)*

- Q.4 Based on the provisions of the Central Depositories Act, 1997:
- (a) Briefly explain the term "Participant". *(03 marks)*
(b) Identify the purposes for which issuer of a security may request the Central Depository Company to provide a list of the names and other relevant details of the account holders and sub-account holders of its securities. *(06 marks)*

- Q.5 Nihal Associates is an association of persons and is involved in charitable and other social activities for the welfare of the general public. It intends to register itself as a limited company but does not want to include the word "Limited" in its name.

In view of the provisions of the Companies (General Provisions and Forms) Rules 1985, you are required to identify the conditions that Nihal Associates would need to fulfill in order to get the required permission from the Securities and Exchange Commission of Pakistan. *(06 marks)*

- Q.6 A number of shareholders of Nazeer Industries Limited want to hold an extraordinary general meeting to discuss an important matter relating to the company.

In view of the provisions contained in the Companies Ordinance, 1984 explain:

- (a) The conditions under which it would become mandatory for the company to convene the meeting. *(03 marks)*
(b) The rights of the concerned shareholders in case the company fails to convene the meeting. *(05 marks)*

- Q.7 Ryan Industries Limited (RIL) has been incurring losses for the last few years and has therefore not declared any dividends. Consequently, the market price of its shares has declined and this has also adversely affected the prices of shares of other group companies. The directors of RIL have therefore decided to opt for voluntary de-listing of the shares of RIL and to offer the purchase of shares from the market.

Who will determine the offer price and what would be the basis for determination of the offer price under the listing regulations? *(05 marks)*

- Q.8 (a) Al-Faizan Investment Limited (AFIL), is a non banking financial institution (NBFC) listed on the Lahore Stock Exchange. It intends to make investment in unquoted shares of Folks Resorts (Pvt) Limited.

Narrate the conditions that AFIL would need to comply with under the NBFC Rules, 2003 while making the above investment. *(05 marks)*

- (b) With reference to Non- Banking Finance Companies and Notified Entities Regulations, 2008:
(i) List the persons who are included in the definition of Key Executive. *(06 marks)*
(ii) Identify the circumstances under which a Director is considered to have a Conflict of Interest. *(06 marks)*

- Q.9 The Board of Directors of Ujala Industries Limited, a recently incorporated listed company, intends to hold a meeting of the Directors for approval of the annual accounts, declaration of dividend and to make other important decisions relating to the company.

At the request of the directors, you being the company secretary, are required to explain the provisions of the Securities and Exchange Ordinance, 1969 as to what constitutes:

- (a) Inside information *(04 marks)*
(b) Insider trading *(05 marks)*

- Q.10 Bilal Garments Limited (BGL) has recently been incorporated in Pakistan. However, prior to obtaining the certificate of commencement of business, BGL has entered into an agreement with Taqi Engineering Limited (TEL) for the supply and installation of machinery at its factory. BGL has also signed an agreement with a commercial bank for a short term finance facility for payment of advance to TEL.

In the light of the provisions of the Companies Ordinance, 1984 comment on the legality and the implication of entering into the above agreements. *(05 marks)*

Q.11 A group of creditors of XYZ Limited has lodged a complaint with the Registrar of Companies on the ground that the management is indulging in destruction and falsification of the accounting records of the company. The complainants have requested the Registrar to take immediate steps in this regard.

In the light of the provisions of the Companies Ordinance, 1984 explain the powers and responsibilities of the Registrar in the above circumstances. *(08 marks)*

Q.12 (a) Mr. Babar is currently working as a Marketing Manager in ST Limited (STL). The management intends to appoint him as the Chief Executive of the company. He is willing to accept the offer and has requested for a loan of Rs. 10 million. Moreover, he had also taken a loan in 2009, of which Rs.1 million is still outstanding.

State the conditions as specified in the Companies Ordinance, 1984 which STL would need to comply with, in respect of the above loans. *(05 marks)*

(b) "All investment made by a company on its own behalf shall be made and held by it in its own name." Explain the exceptions to this general rule, under the Companies Ordinance, 1984. *(04 marks)*

(THE END)

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- A.1 (a) Where it appears to the Commission while investigating the affairs of MMB Limited that there is good reason to find out the relevant facts about any shares, and the Commission is of the opinion that such facts cannot be found out unless the restrictions on that transfer are imposed, the Commission may direct that the shares shall be subject to the restriction for a specified period but not exceeding one year.

Before making an order, the Commission shall provide an opportunity of showing cause against the proposed action to the company and the persons likely to be affected by the restriction.

- (b) The effects of restrictions imposed by the Commission may be:
- (i) any transfer of those shares shall be void;
 - (ii) no voting right shall be exercisable in respect of those shares;
 - (iii) no further shares shall be issued in right of those shares or in pursuance of any offer made to the holder thereof; and any issue of such shares shall be void;
 - (iv) except in a liquidation, no payment shall be made of any sums due from the company on those shares, whether in respect of dividend, capital or otherwise; and
 - (v) no change other than a change by operation of law shall be made in the directors, chief executive or the managing agent.

- A.2 (a) Computation of the gain to be tendered to the company by Mr. Asif

Date	Quantity	Sale/Purchase price per share	Total	
Shares sold				
30.04.2011	2000	22	44,000	
21.05.2011	5000	24	120,000	
30.06.2011	1000	23	23,000	
01.09.2011 (Note below)	2000	25	-	
				187,000
Less: purchases (lowest price comes first)				
15.01.2011	5000	18	90,000	
26.02.2011	3,000	20	60,000	
				150,000
Amount of gain to be tendered to the company by Mr. Asif				37,000

Note: No gain or loss as shares sold after six months.

The distribution of bonus shares by a listed company to an existing shareholder on the basis of his entitlement shall not constitute a purchase.

- (b) The amount of brokerage, stamp duty etc. actually paid in making the gain may be deducted by the person by whom it is to be reported or tendered subject to production of such documentary evidence in support of the payment having been made as may be acceptable to the company.

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A.3 Mr. Saleem, if empowered by the trust deed under which he is appointed, can file a suit against the company for all redemption monies and interest thereon on the following grounds.

- (a) where the issuer of the debentures as mortgagor binds himself to repay the debenture loan or pay the accrued interest thereon, or both to repay the loan and pay the interest thereon, in the manner provided on the due date;
- (b) where by any cause other than the wrongful act or default of the issuer the mortgaged property is wholly or partially destroyed or the security is rendered insufficient and the trustee has given the issuer a reasonable opportunity of providing further security adequate to render the whole security sufficient and the issuer has failed to do so;
- (c) where the trustee is deprived of the whole or part of the security by or in consequence of any wrongful act or default on the part of the issuer; and
- (d) where the trustee is entitled to take possession of the mortgaged property and the issuer fails to deliver the same to him or to secure the possession thereof without disturbance by the issuer or any person claiming under a title superior to that of the issuer.

A.4 (a) Participant means

- (i) an account-holder who is a member of a stock exchange; and
- (ii) any other account-holder who meets the qualifications of a participant prescribed in the regulations

Provided that such account holders

- (i) perform services for sub-account holders in accordance with the terms of an agreement entered into between the Central Depository Company and each of the participants;
 - (ii) transfer any securities to the Central Depository Company to the credit of any sub-accounts under their respective accounts; and
 - (iii) handle, on behalf of sub-account holders, the book-entry securities in the sub-accounts under their respective accounts;
- (b) The issuer of a security may request the CDC for a list of names and other relevant details of shareholders on account of the following:
- (i) For sending notices to any account holders and sub-account holders of general meetings of the holders of any securities of the issuer;
 - (ii) For sending any other notices or documents to any account holders and sub-account holders which are required to be sent by the issuer to holders of any securities of the issuer;
 - (iii) For the purpose of allowing any account holders and sub-account holders to attend general meetings of any holders of securities of the issuer or to appoint proxies for this purpose;
 - (iv) For dispatching dividend or other warrants to any account holders and sub-account holders;
 - (v) For dispatching to any account holders and sub-account holders any other payments or benefits paid by the issuer; or
 - (vi) For dispatching to any account holders and sub-account holders formal offers for subscription of securities of the issuer

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A.5 Nihal Associates would have to fulfill the following conditions:

- (a) The association shall be formed as a public company.
- (b) Payment of remuneration for services or otherwise to its members, whether holding an office in the company or not, shall be prohibited.
- (c) No change in the memorandum and the articles shall be made except with the prior approval of the Commission.
- (d) The limit of liability of its members shall not be less than a reasonable amount having regard to all the circumstances of the case.
- (e) Patronage of any government or authority, express or implied, shall not be claimed unless such government or authority has signified its consent thereto in writing.

The Commission may also direct to include the above conditions in the memorandum of association of the company.

A.6 (a) It would be mandatory for Nazeer Industries Limited to convene the meeting if the concerned shareholders representing not less than one-tenth of the voting power, deposit a requisition, duly signed by them, at the registered office of the company.

- (b) If the directors of Nazeer Industries Limited do not proceed within twenty-one days from the date of the requisitionists being so deposited to cause a meeting to be called the requisitionists or a majority of them in value, may themselves call the meeting, but in either case any meeting so called shall be held within three months from the date of the deposit of the requisition.

Any meeting called by the requisitionists shall be called in the same manner, as nearly as possible, as that in which meetings are to be called by directors.

The meeting called in the manner stated above is valid and the resolutions passed are binding on the company.

Any reasonable expenses incurred by the requisitionist by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionist by the company.

A.7 Since Ryan Industries Limited (RIL) intending to seek voluntary de-listing from the Exchange, they shall intimate to the stock exchange the proposed minimum price at which the securities are to be purchased.

The final minimum purchase price of the securities to be de-listed shall be fixed with the approval of the Stock Exchange.

The minimum purchase price proposed by RIL will be the highest of the benchmark price based on the following:

- (a) Current Market Price as of the date the exchange receives the sponsors/majority security holder's intimation.
- (b) Average Market Price (Annualized).
- (c) Intrinsic value per share (estimated net realizable value of assets of the company).
- (d) Earnings Multiplier approach (for profitable companies).
- (e) The maximum price at which the sponsors had purchased these shares from the open market in the preceding one year.

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A.8 (a) Al- Faizan Investment Limited(AFIL) shall:

- (i) not make an investment in unquoted shares of any company in excess of twenty percent of its equity.
- (ii) ensure that the investment is approved in a board meeting after carefully analyzing the merits and financial impact of the investment and recording the decision in detail in minutes of the meeting and such decisions shall be communicated to the Commission within fourteen days of the board meeting along with copy of the minutes.

Provided that an investment by AFIL out of its surplus equity (i.e. over and above the minimum specified regulatory requirement for the licenses held by the NBFC) in its wholly owned subsidiaries, for undertaking a form of business, shall not be taken into account for calculating the limit for unquoted shares.

- (b) (i) "Key Executive" includes, inter alia, the persons discharging the following functional responsibilities, -
 - Any executive, including the chief executive or any officer acting as second to chief executive officer including chief operating officer or by whatever name called;
 - chief financial officer, head of accounts or head of finance;
 - head of internal audit;
 - head of information technology;
 - head of credit or risk management;
 - head of human resource;
 - head of operations;
 - head of marketing;
 - head of research;
 - head of treasury or chief investment officer;
 - head of law, company secretary or compliance officer
 - investment analyst;
 - fund manager; and
 - any other functional responsibility which the Commission may include.
- (ii) The director is considered to have Conflict of Interest if he is:
 - a director in any other NBFC engaged in a similar business in Pakistan. Provided that this condition shall not apply to nominees of the Federal or Provincial Governments on the board of any NBFC;
 - a director, chief executive, chief financial officer, chief internal auditor, research analyst or a trader by whatever name or designation called in a stock brokerage house or in any company or entity owned and controlled by a member of a stock exchange; and
 - a member of a stock exchange engaged in the business of brokerage or is a spouse of such member or in control of more than 20% shareholding, directly or indirectly through his close relatives.

A.9 (a) Inside information

- (i) Information which has not been made public relating directly or indirectly, to listed securities or one or more issuers and which, if it were made public, would

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be likely to have an effect on the prices of those listed securities or on the price of related securities;

- (ii) In relation to derivatives on commodities or information which has not been made public, relating, directly or indirectly, to one or more such derivatives and which are traded in accordance with accepted market practices on those markets; or
- (iii) In relation to persons responsible for the execution of orders concerning listed securities, information which is conveyed by a client to such person and related to the client's pending orders.

(b) Insider trading shall include

- (i) An insider person transacting any deal, directly or indirectly, using inside information involving listed securities to which the inside information pertains, or using others to transact such deals;
- (ii) Any other person to whom inside information has been passed or disclosed by an insider person transacting any deal, directly or indirectly, using inside information involving listed securities to which the inside information pertains, or using others to transact such deals;
- (iii) Transaction by any person as specified in clauses (i) and (ii), or any other person who knows, or ought to have known under normal and reasonable circumstances, that the information possessed and used for transacting any deal is inside information;
- (iv) An insider person suggesting or recommending to another person to engage in dealing in any listed securities to which the inside information possessed by the insider person pertains, without the inside information being disclosed to the person who has dealt in such securities.

A.10 The agreement signed between Bilal Garments Limited and the TEL Engineering Limited shall be provisional only till BGL is entitled to commence business and will not be binding on the company. The agreement will become binding on that date when the BGL obtains the Certificate for Commencement of Business from the registrar.

The short term finance (exercising of borrowing powers) prior to the issue of commencement of certificate of business obtained by the company is in contravention of the Companies Ordinance, 1984 and every officer and other person, who is responsible for arranging the credit facility, will be liable to fine.

A.11 (a) Where the registrar has reasonable ground to believe that books and papers of, or relating to, any company may be destroyed, mutilated, altered, falsified or secreted, the registrar may, after obtaining permission of the Magistrate of the first class or the Court, search and seize such books and papers.

(b) The registrar may, after he has obtained the permission of the Magistrate or Court under that sub-section, also authorize any officer subordinate to him, not inferior in rank to an assistant registrar.

- (i) to enter, with such assistance as may be required, the place where such books and papers are kept;
- (ii) to search that place in the manner specified in the order; and
- (iii) to seize such books and papers as he considers necessary.

(c) The registrar shall return the books and papers seized under this section as soon as

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may be and in any case not later than the thirtieth day after such seizure, to the company or, as the case may be, to the chief executive or any other person from whose custody or power they were seized:

Provided that 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:

Provided further that the registrar may, before returning books and papers as aforesaid, take copies of, or extracts from them or put such marks of identification thereon as he considers necessary.

- (d) Save as otherwise provided in this section, every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal procedure, 1898 (Act V of 1898), relating to searches or seizures made under that code.

A.12 (a) The STL must comply with the following conditions before granting loan to Mr. Babar

- (i) Approval from SECP will be required for the loan.
- (ii) The loan has been taken for any of the following purposes:
- Acquisition or construction of a dwelling house or land there for
 - Defraying the cost of any conveyance of personal use or household effects
 - 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
- (iii) Mr. Babar within fourteen days of his appointment as chief executive must file with the registrar the particulars of any loan taken, prior to his becoming chief executive of the STL which could not have been obtained without the prior approval of the Commission had he at the time of taking the loan been the chief executive of the company.

(b) The following are the exceptions to the general rule:

- (i) Where the company has a right to appoint or get elected any person as a director of any other company and a nominee of the company in the exercise of such right has been so appointed or elected, the shares in such other 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 jointly in its own name and in the name of such person or nominee, or in the name of such person or nominee alone.
- (ii) A holding company may hold any shares in its subsidiary company in the name of its nominee or nominees if and in so far as it is necessary so to do for ensuring that the number of members of the subsidiary company is not reduced below seven in case it is a public company, or below two in case it is a private company.
- (iii) An investment made by an investment company, that is to say, a company whose principal business is the purchase and sale of securities.

(THE END)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN
EXAMINERS' COMMENTS

SUBJECT Corporate Laws	SESSION Final Examination Winter 2011
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Although it was an easy paper but the overall performance of the students was very poor, which in our opinion was mainly due to selective study. The examination of the copies revealed that a large number of students were not adequately prepared for the examination. The answers of a significant number of students were out of context. The students are advised to read the questions carefully and figure out its requirements, before attempting to answer. They are also advised to refrain from writing unnecessary details. Another major problem which was noted generally during the examination of the copies was lack of expression power and language skills.

Question-wise comments:

- Q.1 (a) This part of the question was related to Section 279 (1) of the Companies Ordinance, 1984 and the students were required to state the conditions under which the SECP may impose restriction on transfer of shares. A significant majority scored well. However, many students, mentioned the provisions relating to investigation which was totally irrelevant.
- (b) This part of the question was based on Section 279 (2) of the Companies Ordinance, 1984 and was well attempted by most of the students.
- Q.2 (a) This was a practical question and barring a few, the students failed to get good marks in this part as they failed to correctly calculate the amount of gain to be tendered to the company. The general mistakes were as follows;
- Gain was also calculated on shares which were sold six months after the date of purchase.
 - Value of bonus shares was calculated at the highest selling price and was considered as gain.
 - Gain was calculated by multiplying the total number of shares sold with the difference of lowest purchase price and highest selling price.
- (b) In this part, majority of the students correctly explained that amount of brokerage and commission can be deducted from the gain to be tendered. However, very few candidates mentioned the condition related to production of documentary evidence in support of such payments. Some students incorrectly mentioned that brokerage @ 1% shall be allowed.
- Q.3 Majority of the students got good marks in this question which was based on Section 119 of the Companies Ordinance, 1984. However, some of the students enumerated the provisions of Section 290 of the Companies Ordinance which was entirely irrelevant.

Examiners' Comments on Corporate Laws – Final Examination Winter 2011

- Q.4 (a) Generally the students failed to explain the term “Participant”. Many of them were of the opinion that any person who has an account with CDC is a Participant. Some of them were of the opinion that the companies whose shares are dealt with by CDC are called Participants.
- (b) Only few students got high marks in this part of the question which was based on Section 9 of the Central Depositories Act, 1997. Lack of preparation was obvious and it seemed that the students had ignored this area on account of selective study.

Q.5 The question required the students to identify the conditions required to be fulfilled as per Companies (General Provisions and Forms) Rules 1985 for registering as an association not for profit. Only two conditions as mentioned below, were narrated by majority of the students:

- It must be incorporated as a public limited company.
- No change in the Memorandum and Articles be made without prior approval of the Commission.

Besides the above, most candidates gave irrelevant details which mainly included long list of documents that are required to be submitted to the SECP for the incorporation of a company.

Q.6 Generally the students got average marks in this question in which they were required to state as to how the shareholders can convene an extra-ordinary general meeting in case the company fails to meet its obligation in this regard. The question was based on Section 159 of the Companies Ordinance, 1984. Most candidates failed to mention the following points:

- The requisition is required to be submitted at the registered office of the company.
- The requisitionists can convene the meeting within three months.
- The meeting shall be called in the same manner or as nearly as possible, as that called by the directors.

Many students also explained the provisions regarding quorum and voting in respect of such meeting, which were not relevant.

Q.7 Most of the students were not aware that in case of voluntary delisting, the offer price is proposed by the company and final price is fixed with the approval of Stock Exchange. However, most of them correctly mentioned the basis for determination of price. The overall performance was average.

Q.8 (a) Instead of narrating the conditions which should be complied with under the NBFC Rules, 2003 for making investment in unquoted shares, many candidates explained the provisions of Companies Ordinance, 1984 regarding making of investment in associated company. Some of the students were of the opinion that an NBFC cannot make investment in unquoted shares.

- (b) This was a very simple question in which the students were required to identify the persons who are included in the definition of Key Executives, under Non-Banking Finance Companies and Notified Entities Regulation, 2008. However, only few students could secure full marks. Most of the students seemed to rely on guesswork. Some of them were of the opinion that directors, sponsors and shareholder holding more than 10% equity are classified as Key Executives. Some students were of the opinion that those persons who receive a salary of more than Rs. 500,000 are termed as Key Executives.
- (c) Majority of the students got high marks in this part of the question as they were well aware about the circumstances in which a director is considered to have a conflict of interest.

Q.9 This question relating to Inside Information and Insider Trading was based on Section 15 A and B of the Securities and Exchange Ordinance, 1969. It was quite evident that most of the students had not even read this Ordinance. Most of them relied on guesswork and only secured 1 or 2 marks.

Q.10 This simple question required the students to comment on the legality and implication of two contracts which were signed by a public company after incorporation but before obtaining the certificate of commencement of business. Most students were of the opinion that both the agreements are provisional and shall become binding on the company after obtaining certificate of commencement of business. Only few students correctly identified that the agreement for short term borrowings was in contravention of the Companies Ordinance, 1984.

Q.11 The question required the students to explain the powers and responsibilities of registrar when a complaint is lodged against the management of a company for destroying and falsifying the accounting records. Most of the students failed to understand the question and instead of explaining the power of registrar regarding seizure of documents, they explained the powers of registrar to call for information or explanation under Section 261 or provisions regarding investigation of affairs of the company.

Q.12 (a) Generally the students correctly enumerated the purpose for which loan can be granted to Chief Executive but failed to mention the condition regarding approval of SECP. Most of the students failed to correctly mention the conditions to be complied with regarding the loan that had already been taken by the Chief Executive as has been mentioned in Section 195 (4) of the Companies Ordinance, 1984. Majority of the student were of the opinion that such loan shall have to be repaid. Surprisingly, many students declared that the Chief Executive should inform the company/directors about the loan without realizing that the company itself has granted the loan.

(b) Instead of mentioning the exception to the rule that all investments made by the company shall be made and held in its own name, as has been specified in Section 209 (2 to 4), of the Companies Ordinance, 1984, most students narrated the provisions related to deposit and transfer of shares and securities by the company in the name of its bankers, CDC etc.

(THE END)



The Institute of Chartered Accountants of Pakistan

Corporate Laws

Final Examination
Summer 2012
Module E

6 June 2012
100 marks - 3 hours
Additional reading time - 15 minutes

Q.1 On 29 April 2012, a memorandum of association of AB Limited was filed for registration in the office of Registrar. However, on 25 May 2012, a letter from the registrar office was received by the subscribers to the memorandum in which the registration was refused on the ground that the objects stated in the memorandum were inappropriate.

Describe what course of action is available to AB Limited in the above situation, according to the Companies Ordinance, 1984. *(05 marks)*

Q.2 The Company Secretary of AQ Limited realized on 29 May 2012 that particulars of charge created on the Company's properties in favour of AK Bank Limited on 2 May 2012 have not been filed for registration with the Registrar of Companies.

Explain the procedure that would be required to be followed by AQ Limited in the above situation, for registration of charge with the Registrar of Companies. *(06 marks)*

Q.3 List the conditions specified under the Companies Ordinance, 1984 which a listed company is required to comply with before placement of its quarterly accounts on its website. *(07 marks)*

Q.4 The Board of Directors of KG Limited have decided to buy-back one million of its ordinary shares.

You are required to describe the procedure to be followed by KG Limited to buy-back its shares in view of the provisions of the Companies Ordinance, 1984 and the Companies (Buy-back of Shares) Rules, 1999. *(07 marks)*

Q.5 The Directors of BD Limited intend to wind up the company's business voluntarily. In the context of the Companies Ordinance, 1984 you are required to explain the following:

- (a) The requirement to file a declaration of solvency. *(08 marks)*
- (b) The contents of declaration of solvency. *(02 marks)*

Q.6 Based on the Listing Regulations of the Karachi Stock Exchange, state the following:

- (a) Whether an audit firm may be appointed as the auditor of a listed company, if one of its partners is found guilty of professional misconduct? *(04 marks)*
- (b) Regulations relating to transfer of shares and closure of share transfer books. *(05 marks)*

Q.7 Kevin Jason is a UK national but is residing in Australia. He intends to invest in securities listed at Karachi Stock Exchange. In the context of the provisions of Foreign Exchange Regulations, advise him in respect of the procedure to be followed for purchase and sale of shares of companies listed in Pakistan. *(06 marks)*

Q.8 According to the Competition Ordinance, 2010:

- (a) No undertaking shall enter into deceptive marketing practices.

List the practices which are deemed to fall under the purview of deceptive marketing practices. (03 marks)

- (b) No undertaking or association of undertakings shall enter into any agreement which have the object or effect of preventing, restricting or reducing competition within the relevant market.

Explain how and under what circumstances an undertaking may claim exemption from the application of the above provision. (07 marks)

Q.9 Apprehensions are widespread in the stock market that the affairs of JK Limited are being conducted in a manner which is prejudicial to the interest of the stakeholders. In the context of the provisions of the Companies Ordinance, 1984 you are required to explain the following :

- (a) Identify the persons who may file a suit in the Court with a request to intervene in the business of the company. (05 marks)
 (b) Decisions that the court may take in the above circumstances. (04 marks)

Q.10 (a) An open-end fund is being managed by LM Limited which is an NBFC.

List the persons who would be termed as “connected person” in relation to the above open-end fund. (08 marks)

- (b) Describe the provisions contained in the NBFC Rules, 2003 in respect of the following:
 (i) Credit rating. (03 marks)
 (ii) Appointment of internal auditor. (04 marks)
 (iii) Sale or purchase transaction between an NBFC and any of its directors. (03 marks)

Q.11 The Board of Directors of YZ Limited, a listed company, intends to issue 50% right shares.

Advise the directors about the conditions required to be complied with, for the issuance of right shares under the Companies (Issue of Capital) Rules, 1996. (07 marks)

Q.12 The general meeting of VX Limited, a listed company, was convened on 30 May 2012. However, only four shareholders turned up to attend the meeting.

Explain how VX Limited should deal with the above situation in the light of Companies Ordinance, 1984. (06 marks)

(THE END)

CORPORATE LAWS
Suggested Answers
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- A.1 The subscribers of the memorandum of association of AB Limited or any one of them, authorised by them in writing, may either supply the deficiency and remove the defect pointed out, or within thirty days of the order of refusal prefer an appeal
- (i) where the order of refusal has been passed by an additional registrar, a joint registrar, a deputy registrar or an assistant registrar, to the registrar; and
 - (ii) where the order of refusal has been passed, or up-held in appeal, by the registrar, to the Commission.

An order of the Commission shall be final and shall not be called in question before any Court or other authority.

- A.2 The time limit of 21 days has expired therefore AQ Limited will have to apply to the Commission for extension of time for the registration of the charge in accordance with the provisions of the Companies Ordinance, 1984.

The company must satisfy the Commission that:

- (i) The omission was accidental or due to inadvertence or due to some other sufficient cause.
- (ii) It would not be of a nature to prejudice the position of creditors or shareholders of the company.
- (iii) On any other grounds it is just and equitable to grant relief.

On satisfaction the Commission may extend the time for registration of charge on such terms and conditions as seem to the Commission just and expedient, and order that the time for registration be extended, or, as the case may be, that the omission or mis-statement be rectified, and may make such order as to the costs of the application as it thinks fit.

A certified copy of the order of the Commission, passed on the basis of the application, shall be filed with the registrar within twenty-one days of the date of such order by the company.

- A.3 A listed company may place its quarterly accounts on its website, subject to fulfillment of the following conditions:
- (i) Seek the consent of its shareholders in a General Meeting.
 - (ii) Consult the respective stock exchanges.
 - (iii) Seek prior permission of the Commission.
 - (iv) The application for this purpose shall indicate the company's website address.
 - (v) The Enforcement department would grant permission after visiting the website and finding it in order.
 - (vi) The website address shall not be changed except with the approval of the Commission.
 - (vii) The company, after obtaining the requisite permission, shall inform its shareholders through an advertisement in the Press that the subsequent quarterly accounts would be transmitted to them through the company website.
 - (viii) The respective Stock Exchanges and the Commission shall be informed in writing, by post.
 - (ix) Transmit periodical accounts electronically to the concerned stock exchange(s) so as to place the same on their website.

CORPORATE LAWS
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A.4 The purchase procedure to be followed by KG limited is as follows:

- (i) The number of shares to be purchased and price thereof shall be approved in the Board Meeting.
- (ii) The purchase shall also be authorised by a special resolution which shall indicate the maximum number of shares to be purchased; the maximum price at which the shares may be purchased; and the period within which the purchase is to be made.
- (iii) The notice of the meeting in which the special resolution authorizing the purchase of shares is proposed to be moved shall be accompanied by an explanatory statement containing all material facts including the following:-
 - Justification for the purchase;
 - Source of funding;
 - Effect on the financial position of the company; and
 - Nature and extent of the interest, if any, of every director, whether directly or indirectly
- (iv) The purchase shall always be in cash and shall be out of the distributable profits.
- (v) The purchase shall be made through a tender system and the mode of tender shall be decided by the company in general meeting through a special resolution.
- (vi) The tender notice for the purchase shall contain
 - The maximum number of shares to be purchased by the company.
 - The manner in which the offer shall be communicated.
 - The last day by which the offer to sell the shares shall be made; and
 - The name and the address of the designated branches of the authorized bank.
- (vii) The decision of the directors for the purchase shall be communicated to the SECP and the respective stock exchange on the day of the decision.
- (viii) The company shall take a decision on the offers received, within ten days of the closing date of the receipt of offers.
- (ix) In case the offers received in response to the tender notice exceed the requisite purchase the acceptance thereof shall be on pro-rata basis in lots of five hundreds shares.
- (x) The acceptance of the offer shall be communicated within seven days of the decision.
- (xi) The shareholder, whose offer has been accepted, shall submit the share certificate along with the transfer deed duly signed, verified and witnessed, to the company through designated branches of the bank within seven days of the receipt of acceptance of the offer.
- (xii) Where the shares are on the Central Depository System a confirmation from the Central Depository, about the availability of the shares along with authorization to transfer, shall be sent to the designated branches of the bank within seven days of the receipt of acceptance of the offer.

A.5 (a) Since it is proposed by the directors of BD Limited to wind up the company voluntarily all its directors and in case the company has more than three directors, the majority of the directors, including the chief executive, may, at a meeting of the board of directors make a declaration verified by an affidavit

A declaration made as aforesaid shall have no effect for the purposes of this Ordinance, unless-

- (i) It is made within the five weeks immediately preceding the date of the passing of the resolution for winding up and is delivered to the registrar for registration before that date; and

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- (ii) It is accompanied by a copy of the report of the auditors of the company, prepared, so far as the circumstances admit, in accordance with the provisions of this Ordinance, on the profit and loss account of the company for the period commencing from the date up to which the last such account was prepared and ending with the latest practicable date immediately before the making of the declaration and the balance sheet of the company made out as on the last mentioned date and also embodies a statement of the company's assets and liabilities as at that date.
- (b) In a declaration of solvency the directors declare that they have made a full inquiry into the affairs of the company, and that having done so, they have formed the opinion that the company has no debts, or that it will be able to pay all its debts in full within such period not exceeding twelve months from the commencement of the winding up, as may be specified in the declaration.
- A.6 (a) The firm shall only be eligible for appointment as an auditor provided a written confirmation is given by the firm to all the stock exchanges of the country and the Commission with a copy to ICAP to the effect that such a partner shall not be engaged in the audit of any listed company for the specified period.
- (b) (i) The company shall complete shares transfer and have ready for delivery the share certificates lodged for registration of transfer within 45 days of the application for such transfer and its registration.
- (ii) The companies quoted on the Future Counter shall intimate to the Exchange the dates of book closure and corporate actions, if any, on or before 20th day of the month with a notice period of at least 21 days after the said 20th day for commencement of book closure.
- (iii) The company shall give a minimum of 14 days notice to the Exchange prior to closure of share transfer books for any purpose.
- (iv) The company shall treat the date of posting as the date of lodgments of shares for the purpose for which shares transfer register is closed, provided that the posted documents are received by the company before relevant action has been taken by the company.
- (v) The company shall issue transfer receipts immediately on receiving the shares for transfer.
- (vi) The company shall not charge any transfer fee for transfer of shares.
- (vii) The company shall provide a minimum period of 7 days but not exceeding 15 days at a time for closure of share transfer register, for any purpose, not exceeding 45 days in a year in the whole.
- (viii) No listed company shall exercise any lien whatsoever on fully paid shares and nor shall there be any restriction on transfer of fully paid shares.

A.7 Trading of Quoted Shares by Non-Residents.

- (i) Mr. Kevin Jason would be required to open "Special Convertible Rupee Account" with any Authorised Dealer in Pakistan.
- (ii) He may remit funds from abroad into the special account or by transfer from a foreign currency account maintained by him in Pakistan.
- (iii) Payment for such purchase of shares may be debited to the account on production of stock broker's memo showing sale of shares to the account holder.
- (iv) Disinvestment proceeds may be credited provided evidence of the sale price in the shape of stock broker's memo is produced.

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- (v) The fund available in such special account can be transferred outside Pakistan or credited to a foreign currency account maintained in Pakistan at any time without prior approval of the State Bank.
- (vi) Dividend income can also be credited to the above accounts.
- A.8 (a) The deceptive marketing practices shall be deemed to have been resorted to or continued if an Undertaking resort to-
- (i) The distribution of false or misleading information that is capable of harming the business interests of another undertaking;
 - (ii) The distribution of false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the price, character, method or place of production, properties, suitability for use, or quality of goods;
 - (iii) False or misleading comparison of goods in the process of advertising; or
 - (iv) Fraudulent use of another's trademark, firm name, or product labeling or packaging.
- (b) (i) The Commission may grant an exemption from the application of the provisions of Competition Act, 2010 with respect to a particular practice or agreement from being considered as preventing, restricting or reducing competition, if a request for individual or block exemption has been made to it by a party to the agreement or practice and the agreement is one which substantially contributes to the following:
- Improving production or distribution;
 - Promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit; or
 - The benefits thereof clearly outweigh the adverse effects of absence or lessening of competition.
- (ii) The exemption may be granted subject to such conditions as the Commission considers appropriate to impose and is effective for such period as the Commission considers appropriate.
 - (iii) That period must be specified in the grant of the exemption.
 - (iv) An individual exemption may be granted so as to have effect from a date earlier than that on which it is granted.
- A.9 (a) The court may intervene in the affairs of JK Limited on the complaint by:
- (i) a member or members holding not less than twenty percent of the issued share capital of a company, or
 - (ii) a creditor or creditors having interest equivalent in amount to not less than twenty percent of the paid up capital of the company,
 - (iii) the registrar, if he is of the opinion, that the affairs of the company are being conducted or are likely to be conducted, in an unlawful or fraudulent manner, or in a manner not provided for in the company's memorandum, or in a manner oppressive to the member or any of the members or the creditors or any of the creditors or are being conducted in a manner prejudicial to the public interest, such member or members or, the creditor or creditors, as the case may be, the registrar may make an application to the Court by petition.

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- (b) If, on any such petition, the Court is of the opinion-
- (i) That the company's affairs are being conducted, or are likely to be conducted, as mentioned in the application and
 - (ii) That to wind-up the company would unfairly prejudice the members or creditors;

The Court may, with a view to bringing to an end the matters complained of, make such order as it thinks fit, whether for regulating the conduct of the company's affairs in future, or for the purchase of the shares of any members of the company by the other members of the company or by the company and, in the case of purchase by the company, for the reduction accordingly of the company's capital, or otherwise.

- A.10 (a) "connected person" in relation to an NBFC or a collective investment scheme, means,-
- (i) any person or trust beneficially owning, directly or indirectly, ten percent or more of capital of the NBFC or the collective investment scheme;
 - (ii) any person able to exercise, directly or indirectly, ten percent or more of the total voting power in that NBFC or the collective investment scheme;
 - (iii) a collective investment scheme being managed by an NBFC;
 - (iv) the NBFC managing a collective investment scheme;
 - (v) a trustee or custodian of the collective investment scheme;
 - (vi) any person or trust controlled by a person who or which meets the descriptions given in sub-clause (i) to (v);
 - (vii) any member of the group of which that person, or trust forms part; and
 - (viii) any director or officer of that NBFC or the investment company being managed by that NBFC or of any of their connected persons as specified above

(b) **(i) Credit rating**

An NBFC shall obtain credit rating wherever applicable as and when it becomes eligible for rating as per the rating criteria of a rating agency registered with the Commission, and such rating shall be updated at least once every financial year:

Provided that the NBFC shall within one year of the decrease in its rating from the grade specified by the Commission by notification in the official Gazette, obtain a fresh rating and during the period that its rating is below the grade so specified, the NBFC may be allowed by the Commission continue its operation on such conditions as are deemed to appropriate by the Commission;

(i) **(ii) Appointment of internal auditor.**

An NBFC may appoint the following, as its internal auditor:

- a) A person having minimum three years experience as internal auditor who is -
 - (i) A chartered accountant; or
 - (ii) A cost and management accountant; or a certified internal auditor; or
 - (iii) A certified information system auditor; or
 - (iv) A member of a recognized foreign accountancy organization; or
 - (v) An individual having master's degree in commerce or business administration with specialization in finance; or

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- b) A chartered accountant firm having satisfactory Quality Control Review (QCR) and not being the statutory auditors to whom this function is outsourced;

(iii) **Sale or purchase transaction between an NBFC and any of its director.**

An NBFC shall not purchase anything from or sell anything to any director of the NBFC.

This restriction is not applicable to such NBFCs that have a policy to this effect duly approved by their board of directors.

In case of any sale and purchase to the directors, prior approval in writing of the board, excluding the participation of the beneficiary directors is required.

A.11 YZ Limited may issue rights shares subject to following conditions, namely:-

- (i) The company shall not make a right issue within one year of the first issue of capital to the public or further issue of capital through right issue.
- (ii) The company, while announcing right issue, shall clearly state the purpose of the right issue, benefits to the company, use of funds and financial projections for three years. The financial plan and projections shall be signed by all the directors who were present in the meeting in which the right issue was approved.
- (iii) The decision of the company to issue right shares shall be communicated to the Authority and the respective stock exchange on the day of the decision.
- (iv) The company may charge premium on right shares up to the free reserves per share as certified by the company's auditors and the certificate of the auditors shall be furnished to the Authority and the respective stock exchange alongwith intimation of the proposed right issue.
- (v) Right issue of a loss making company or a company whose market share price during the preceding six months has remained below par value shall be fully and firmly underwritten;
- (vi) Book closure shall be made within forty-five days of the announcement of the right issue and the payment and renunciation date once announced for the letter of right shall not be extended except with the permission of the respective stock exchange under special circumstances; and
- (vii) If the announcement of bonus and right issue is made simultaneously, resolution of the board of directors shall specify whether the bonus shares covered by the announcement qualify for right entitlement.

A.12 Since VX Limited is a listed company, unless the articles provide for a larger number the quorum of a general meeting shall not be less than ten members present personally, who represent not less than twenty-five percent of the total voting power, either of their own account or as proxies.

In VX limited only four shareholders turned up to attend the meeting and therefore the quorum were not formed. If the quorum is not present within half an hour from the time appointed for the meeting, the Chairman shall adjourn the meeting and the meeting shall stand adjourned to the same day in the next week at the same time and place.

At the adjourned meeting if 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.

(THE END)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN
EXAMINERS' COMMENTS

SUBJECT Corporate Laws	SESSION Final Examination Summer 2012
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General:

The examination of the copies revealed that a large number of students were not adequately prepared for the examination. The answers of a significant number of students were out of context. The students are advised to read each question carefully and figure out its requirements, before attempting to answer it. For this purpose, the students have also been provided 15 minutes extra reading time. They are also advised to refrain from writing unnecessary details. Some of the students are under the impression that they will get more and more marks, if they write more details, which is not correct. The details should be provided only to the extent that these have been asked for; anything extra is just a waste of time. Moreover, some students believe that if they do not know the specific answers, they narrate lengthy details of everything they know about the topic. They must understand that this approach would not allow them any additional mark.

Another important point is that the students must improve their vocabulary and spellings. It is not necessary to reproduce exact language of the law but appropriate words must be used to present the correct meaning.

Question-wise comments are as under:

Q.1 The requirement was to describe the course of action available to a company if registration of the memorandum of association is refused. The overall performance in the question was just average.

Many students filled pages by writing detailed procedure for alteration of object clauses of the memorandum of association by passing a special resolution and filing of petition under section 21 of the Companies Ordinance, 1984, which was totally irrelevant because alteration can only be carried out after a memorandum has been registered. The options available were to remove the deficiency in the draft memorandum, which was rarely mentioned, or to file an appeal with the Securities and Exchange Commission of Pakistan. While discussing the option to appeal, most of the candidates did not specify that the decision of the Commission shall be final and cannot be challenged in any court or authority.

Q.2 In this question a situation was given whereby a company had failed to register the charge on the company's properties. Very few students knew that in such situation the company will have to apply to the Commission for extension of time for the registration of the charge. Many students did not realize that the prescribed time period of 21 days for filing particular of charges has elapsed and they simply mentioned the standard procedures for registration of charges. Most of the candidates wrote entirely incorrect or incomplete answers such as the following:

- The company should apply for registration of charge to registrar along with the late submission fee.
- The company should apply to registrar for extension of time.
- The company should check with the bank in whose favour the charge was required to be registered as to whether they have registered the charge.

Q.3 In this question the students were required to quote the conditions for placement of quarterly accounts on the website of a company. Most of the students did well in this question.

Q.4 This was a simple question regarding procedure to be followed by a company to buy-back its own shares in the light of provisions of Companies Ordinance, 1984 and Companies (Buy-back of Shares) Rules, 1999 which was well attempted by most of the students. A large number of students could secure full marks. However, the following mistakes were also observed in many scripts:

- Approval of shareholders by special resolution was not mentioned.
- Requirement to communicate the decision to various authorities such as stock exchanges and commission was not mentioned.

Q.5 (a) The candidates were asked to explain the requirement to file a declaration of solvency when a company decides to wind up the business voluntarily. The overall performance in the question was average as most of the students could not mention all the related provisions. The common mistakes were as follows:

- The correct number of directors who should make the declaration was not mentioned.
- The period when such declaration should be made was not correct.
- The audited accounts to be accompanied with the declaration were not mentioned or the period covered by such accounts was incorrect.
- Some students assumed the situation as creditors winding up although the question clearly mentioned that the Board of Directors intended to wind up the company voluntarily.

(b) The performance in this part was good as most of the students managed to describe the contents of declaration of solvency as mentioned in section 362 of the Companies Ordinance, 1984.

Q.6 (a) Very few students gave correct answer to this question which was based on listing regulations. Most of the students were under the impression that a firm would not be eligible for appointment as auditor of a listed company if any of its partners has been found guilty of professional misconduct, as such firm would not be given satisfactory Quality Control rating by the Institute of Chartered Accountants of Pakistan.

In fact, the listing regulations allows such firm to be appointed as auditor on provision of a confirmation to the Stock Exchange and SECP with a copy to ICAP by such firm, that such partner shall not be involved in the audit of any listed company.

(b) The requirement was to quote provisions of listed regulations related to transfer of shares and closure of share transfer books. The performance of most of the students in this simple question was below par as they only quoted provisions regarding the number of days in which a transfer shall be made by the company and number of days for which the company can close its share transfer register. In most cases, other related provisions could not be mentioned.

- Q.7 This question was from Regulation 9(a)(ii) of Chapter XX of the Foreign Exchange Regulations and was not attempted by the majority, probably because they have not gone through the Foreign Exchange Regulations. However, those who were well versed with the relevant provisions of Foreign Exchange Regulation found the question easy and secured high marks. The overall performance of many students could have been much better had they studied this part of the syllabus also.
- Q.8 (a) Most of the students failed to understand the question and therefore, instead of listing deceptive marketing practices, they narrated the prohibited agreements described in section 4 of the Competition Ordinance, 2010. Effect of selective studies was quite visible on the performance in this question also as many students tried to give the answer based on their general perception about the meaning of the word “deceptive”.
- (b) Generally the students had no clue as to how and under what circumstances an undertaking may claim exemption for entering into any agreement which have the object or effect of preventing, restricting or reducing competition within the relevant market. Many students tried to explain the terms “individual exemption” and “block exemption”, which was not required.
- Q.9 (a) This part of the question was based on the provisions of section 290 of the Companies Ordinance, 1984. Many candidates got mixed up and quoted other provisions which apply to different situations. Many students correctly mentioned that the court may intervene into the affairs of the company on application from members, auditor and registrar but did not mention the condition related to 20% holding by the concerned member (s) or equivalent interest in the case of creditors. Overall, the question was easy and a large number of students secured full marks also.
- (b) Here again, a significant number of students did not know exactly as to what actions can the court take in such circumstances and quoted the provisions related to appointment of administrator.
- Q.10 (a) Very few students could describe the term “connected persons” as mentioned in Rule 2(xv) of the Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003. Those who did attempt, gave a general reply, by listing all sorts of officers like directors, chief executives, auditors, key executives, audit committee members, legal ascendants and descendants etc. A significant number of candidates could not secure any marks. Since the answer was quite straightforward, the performance again showed that the majority of students had not studied this topic altogether.
- (b) Generally this part of the question regarding credit rating, appointment of internal auditor and sale and purchase transactions between NBFC and any of its directors was attempted in a much better way as compared to part (a). Some of the common mistakes are mentioned below:
- (i) Credit rating is required to be obtained from rating agencies registered with the Commission but many students mentioned that the rating agency should be registered with State Bank of Pakistan.

- (ii) Some of the students explained the benefits of credit rating which was not required while others were of the opinion that credit rating is required to be obtained by the customers of NBFC, in order to become eligible for taking loan from NBFC.
- (iii) Many students narrated the provisions regarding restriction on selling of director's holding in NBFCs whereas the requirement was to narrate the provisions regarding sale and purchase transactions between NBFC and its directors.

Q.11 The requirement was to specify conditions required to be complied with, for the issuance of right shares. The answer was based on Rule 5 of the Capital (Buy-back of Shares) Rules 1996. This proved to be an easy question as it has been repeated quite a few times in the past.

Q.12 This was again a very simple question based on Section 160 of the Companies Ordinance, relating to the requirement of quorum in case of a general meeting. Most of the students secured high marks. However, many students quoted the entire provisions without clarifying as to how would they apply to the given situation. At least at this level, full marks can only be achieved if the answer is phrased in such a manner as to address the issues that have been referred to in the given situation.

(THE END)



The Institute of Chartered Accountants of Pakistan

Corporate Laws

Final Examination
Winter 2012
Module E

5 December 2012
100 marks - 3 hours
Additional reading time - 15 minutes

- Q.1 The Secretary of ABC Limited is in the process of preparing the prospectus for public issue. The company has obtained loans from two financial institutions and has granted option to these institutions to convert up to 20% of the outstanding balance of the loans into ordinary shares.
- State the information required to be disclosed in the prospectus under the Companies Ordinance, 1984 regarding the option given to the financial institutions. **(05)**
- Q.2 (a) In the first meeting of Board of Directors of Hamid Textile Mills Limited (HTML), a listed company, the name of Mr. Imran was proposed for appointment as chief executive of the Company. Mr. Jamal opposed the proposal on the following grounds:
- (i) Mrs. Imran is the Chief Executive Officer of Fahad Textile Mills (Private) Limited.
 - (ii) Mr. Imran is involved in the business of stock brokerage.
 - (iii) Mr. Imran is not a member of HTML.
- Comment on the objections raised by Mr. Jamal in the light of the provisions of the Companies Ordinance, 1984. **(05)**
- (b) XY Limited (XYL) has recently commenced business. The company has appointed various distributors for the supply of its products. The distributors have placed amounts ranging between Rs. 2 - 5 million with XYL as security deposits.
- Briefly describe the relevant provisions of the Companies Ordinance 1984, which XYL would have to comply with. **(03)**
- Q.3 Mr. Bilal is the chief executive of Power Shipping Limited (PSL), a listed company. He has agreed to provide a personal loan of Rs. 5 million to his cousin for purchase of PSL's shares. The loan will be repaid after two years and would carry a mark-up of 5% per annum.
- Suggest the actions which Mr. Bilal should take to ensure that the provisions of the Companies Ordinance, 1984 and the Code of Corporate Governance, 2012 are complied with. **(07)**
- Q.4 The members of Tajamul Private Limited (TPL) have decided to go into voluntary winding-up.
- Advise TPL about the provisions of the Companies Ordinance, 1984 pertaining to:
- (a) Fixation of the remuneration to be paid to the liquidator. **(04)**
 - (b) Filling of vacancy in the event of resignation of the liquidator. **(04)**
- Q.5 (a) Nihal Limited (NL) is a listed company. Narrate the conditions which a director of NL would be required to comply with under the Companies Ordinance, 1984 in case he/she makes a gain on the sale of company's shares. **(03)**
- (b) Identify the persons other than the directors, to whom the above provisions are also applicable. **(03)**

- Q.6 New Chemicals Limited (NCL) is a listed company. The company is in the process of finalization of a financing facility with a bank. The bank requires a copy of the board resolution for approval of the terms of the financing. Since five out of seven directors of the company are currently out of the country, it is not possible for the secretary to convene the meeting of the board of directors.
- (a) In the light of the provisions of the Companies Ordinance, 1984 explain what alternative course of action is available to the company. (03)
- (b) List the steps that NCL would be required to take, if nothing in this regard is stated in the Articles of Association of the Company. (03)
- Q.7 The Annual General Meeting of Trade Limited was held at 9:15 a.m on 31 October 2012. Certain shareholders of the company have lodged following complaints with the company's secretary.
- (i) Since the meeting could not commence at the scheduled time i.e. 9:00 a.m; it became invalid and should be called again.
- (ii) A resolution passed in the meeting was approved by a show of hands. However, a poll should have been carried out.
- (iii) Mr. A who voted for a resolution was represented through a proxy which was deposited at 5:01 p.m. i.e. after office hours on 29 October 2012. Further, since 30 October 2012 was a public holiday, the condition of depositing the proxy at least 48 hours before the commencement of the meeting, was not met.
- (iv) Mr. G who holds 50,000 shares was represented by two proxies i.e. Mr. C (30,000 shares) & Mr. D (20,000 shares). Only proxy with 30,000 shares was counted for the purpose of voting.
- (v) JKM Limited holding 20,000 shares of the company was represented by Mr Waheed, who is neither a director nor an employee of JKM Limited.
- (a) Comment on the validity of each of the above complaints in the light of Companies Ordinance, 1984. (07)
- (b) Describe the circumstances under which a court may declare the resolution passed in the above meeting or the entire proceedings of the meeting as invalid under the Companies Ordinance, 1984. (04)
- Q.8 (a) Describe the requirements to be fulfilled by a company under the Companies (Appointment of Legal Advisers) Act, 1974 as regards the appointment of legal advisers. (03)
- (b) On 01 December 2012, Delta Cotton Mills Limited (DCML) appointed Mehtab & Co. as legal adviser of the company in place of Dilawer & Co. Explain the legal formalities which DCML would be required to comply with under the Companies (Appointment of Legal Advisers) Rules, 1975. (04)
- Q.9 Global Industries Limited (GIL) is a listed company which has a paid-up share capital consisting of 100 million shares of Rs. 10 each.
- GIL is planning to purchase heavy equipment costing Rs. 250 million from World Machineries Limited (WML) for its new project. In a meeting of GIL's Board of Directors, it was proposed to finance the cost of the equipment by issuing 20 million shares to WML at a premium of Rs. 2.50 per share. However, since a number of directors were of the opinion that the issuance of shares would enable WML to exercise significant influence on GIL's policies, the Board advised the CEO to look into the possibility of issuing non-voting ordinary shares.
- Required:**
In your capacity as Corporate Consultant of the company, advise the Board of Directors of GIL as regards the requirements of the Companies' Share Capital (Variation in Rights and Privileges) Rules, 2000 and Companies (Issue of Capital) Rules, 1996 which GIL needs to comply with, in relation to the issuance of non-voting ordinary shares to WML. (10)

- Q.10 Al-Rehman group comprises of the following companies:
- (i) Al-Rehman Leasing Company Limited
 - (ii) Al-Rehman Investment Finance Services Limited
 - (iii) Al-Rehman Housing Finance Services Limited

The majority shareholders/directors of the group have decided to merge all the above companies and bring them under the umbrella of a single corporate entity. It is envisaged that the decision to merge the individual companies into a single entity would help to achieve synergies, cost efficiencies and better utilization of the resources.

You are required to list the steps that would be required to merge all the companies into a single entity. (09)

- Q.11 Under the provisions of the Central Depository Act, 1997 no director or officer of a central depository shall disclose any information or document relating to the affairs of any of the account-holders to any other person.

List the exceptions to the above provision of the Central Depository Act, 1997. (09)

- Q.12 The meeting of the Board of Directors of AMZ Limited would be held on 25 January 2013 to consider declaration of final cash dividend. The Annual General Meeting in which the cash dividend is to be approved would be held on 04 March 2013.

List the information which AMZ would be required to provide to the concerned stock exchange(s) in Pakistan as regards the above meetings, and the timings thereof, according to the Listing Regulations. (06)

- Q.13 Discuss the provisions of the Code of Corporate Governance, 2012 in respect of:

- Frequency of meetings of the audit committee (04)
- Attendance in the above meetings (04)

(THE END)

CORPORATE LAWS
Suggested Answers
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- A.1 ABC Limited shall disclose the substance of the contract or arrangement whereby option has been given to the financial institutions to convert up to 20% of the outstanding balance of loan into ordinary shares., giving the number, description and amount of such shares including the following particulars of the option:
- (a) the period during which the option is exercisable;
 - (b) the price to be paid for shares subscribed for under the option;
 - (c) the consideration, if any, given or to be given for the option;
 - (d) the names, addresses, descriptions and occupations of the persons (in this case the financial institutions) to whom the option has been given.
 - (e) any other material fact or circumstances relevant to the grant of the option.
- A.2 (a) (i) As per the Ordinance, a 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. Since Mr. Imran's wife is the Chief Executive of FT MPL, he cannot be appointed as CEO of HTML.
- (ii) Moreover, no person shall be appointed as director of a listed company if engaged in the business of stock brokerage and any person who cannot be a director cannot become chief executive. Therefore, Mr. Imran is not eligible for becoming the CEO of HTML.
- (iii) A person can be appointed as chief executive even if he is not the member of the company.
- (b) XY Limited shall receive security deposits from distributors in accordance with a contract in writing and all moneys so received shall be kept or deposited by the company in a special account with a schedule bank.
- A.3 Purchase of shares by Mr. Bilal's cousin may be construed as an indirect purchase of shares by Mr. Bilal, because part of the funds was provided by Mr. Bilal on fairly soft terms.
- He shall take the following steps to comply with the relevant provisions of Companies Ordinance, 1984 and the Code of Corporate Governance:
- (i) Submit to the registrar and SECP a return in the prescribed form containing prescribed particulars within 15 days of his cousin buying the shares.
 - (ii) Immediately notify in writing to the company secretary about the intended purchase as soon as his cousin decides to purchase the shares.
 - (iii) Notify and deliver to the Secretary a written record of the price, number of shares, form of share certificates and nature of transactions within four days of affecting the transaction.
- A.4 (a) (i) The liquidator shall be entitled to such remuneration by way of percentage of the amount realized by him or by disposal of assets or otherwise, as TPL in general meeting may fix having regard to the amount and nature of the work to be done and subject to the prescribed limits. However, different percentage rates may be fixed for different types of assets and items.

CORPORATE LAWS
Suggested Answers
Final Examination - Winter 2012

- (ii) In addition to the remuneration, the TPL in general meeting may authorize payment of a monthly allowance to the liquidator for meeting the expenses of the winding up for a period not exceeding twelve months from the date of the commencement of winding up.
 - (iii) The remuneration fixed as aforesaid shall not be enhanced subsequently but may be reduced by the Court at any time.
 - (iv) If the liquidator resigns, or is removed from office or otherwise ceases to hold office before conclusion of winding up, he shall not be entitled to any remuneration and remuneration received by him, if any, shall be refunded by him to the company.
- (b)
- (i) If a vacancy occurs, by reason of resignation, in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy by appointing a person who has given his written consent to act as liquidator.
 - (ii) For that purpose a general meeting shall be convened by the outgoing liquidator before he ceases to act as liquidator, failing that may be convened by any contributory or by the Court on the application of the registrar or any person interested in the winding up of the company.
 - (iii) The meeting shall be held in the manner provided by the Companies Ordinance, 1984 or by the articles or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the Court.
- A.5
- (a) Since Nihal Limited is a listed company, if its director makes any gain by the purchase and sale, or the sale and purchase, of its shares within a period of less than six months, such director shall make a report and tender the amount of such gain to the company and simultaneously send a intimation to this effect to the registrar and the Commission.
 - (b) Following persons other than the director's are required to comply with the above provisions
 - (i) Chief executive
 - (ii) Managing agent
 - (iii) Chief accountant/CFO/Director Finance
 - (iv) Secretary
 - (v) Auditor
 - (vi) Any other person, who is directly or indirectly, the beneficial owner of more than 10% securities.
- A.6
- (a) A resolution in writing signed by all the directors for the time being entitled to receive notice of a meeting of the directors shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held. It shall not be necessary to give notice of a meeting of directors to any director for the time being absent from Pakistan.
- Therefore, since the matter is of urgent nature (or even otherwise) the required resolution may be passed by way of a circular resolution, subject to the provisions of the articles of association of the company.
- (b) Since nothing is given in the Articles of Association, the matters described in Table A shall become applicable. The steps required for passing the circulation resolution would be as follows:
 - (i) The proposed resolution shall be circulated in draft along with all the other necessary documents, if any, to all the directors entitled to receive the notice of the meeting.

CORPORATE LAWS
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- (ii) The resolution will become valid if the same is approved by all the directors entitled to vote on the resolution or such numbers of directors as may be specified in the Articles of Association.
- A.7 (a) (i) As per the Ordinance, if within half an hour from the time appointed for the meeting, a quorum is not present, the meeting may either be dissolved or adjourned. Since the quorum was present within 30 minutes, the meeting is valid.
- (ii) As per the ordinance, at any general meeting, a resolution put to the vote of the meeting shall be decided on show of hands, unless a poll is demanded. The concerned shareholders should have demanded a poll on or before the declaration of the result of the voting by show of hands and not after the meeting is concluded. Therefore the shareholder's protest is not valid.
- (iii) Since 48 hours has not been completed, therefore proxy is not valid.
- (iv) A member shall not be entitled to appoint more than one proxy to attend any one meeting. In this case, Mr. G had appointed more than one proxy for the meeting and more than one instrument of proxy was deposited with the company, all such instruments of proxy would therefore be rendered invalid.
- (v) As per the Ordinance, a company which is a member of another company may, by resolution of the directors, authorize any of its officials or any other person to act as its representative at any meeting of that other company.
Therefore, Mr. Waheed's vote is valid.
- (b) The court may, on a petition by members having not less than ten per cent of the voting power in the company, that the proceedings of a general meeting be declared invalid by reason of any material defect or omission in the notice or irregularity in the proceedings of the meeting which prevented members from using effectively their rights, declare such proceedings or part thereof invalid and direct holding of fresh general meeting:

However, the petition shall be made within thirty days of the impugned meeting.
- A.8 (a) The condition required to be fulfilled under Companies (Appointment of Legal Advisers) Act, 1974 as regards the appointment of legal advisers.
- (i) Every company shall appoint at least one legal adviser on retainerhip.
- (ii) No person other than an advocate or a registered firm shall be appointed as the legal adviser.
- (iii) The number of companies of which such advocate or firm is a Legal Adviser (including the current appointment) shall not exceed:
- in the case of an advocate, three; or
 - in the case of a firm, the product of three and the total number of partners of the firm.
- (b) Delta Cotton Mills Limited should comply with the following requirements of the Legal Adviser Rules:
- (i) Enter the particulars of the new legal adviser in the register of legal adviser

CORPORATE LAWS
Suggested Answers
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- maintained at its registered office, in the form set out in Schedule I.
- (ii) Obtain a certificate in the form set out in Schedule II from its newly appointed legal adviser.
- (iii) Submit full particulars of the previous and newly appointed legal adviser with the Registrar on the prescribed form including their name (names of the partners in case of a firm), address and remuneration, within 15 days of the appointment of new legal adviser.

A.9 Since GIL is a company which is limited by shares, it can issue shares which do not contain any voting rights. However, it has to comply with following other conditions:

- (i) Such provision should be specified in the memorandum and articles of association.
- (ii) Approval of the shareholders should be obtained by way of a Special Resolution.
- (iii) Obtain approval of the SECP on the basis of the Special Resolution.
- (iv) The fact that shares are issued with no voting rights should be specified in the offering document.

GIL can issue shares for consideration otherwise than cash, subject to the following conditions:

- (i) Since the shares are not being offered to the existing shareholders, GIL should obtain approval of the Federal Government to raise further share capital without issue of right shares.
- (ii) The value of the assets shall be determined by a consulting engineer registered with Pakistan Engineering Council and borne on the panel of at least two financial institutions as a valuers.
- (iii) The value of assets taken over shall be reduced by depreciation charged on consistent basis.
- (iv) The goodwill and other intangible assets shall be excluded from the consideration.
- (v) Certificate from practicing Chartered Accountant shall be obtained to the effect that the above mentioned conditions have been complied with.

A.10 All companies mentioned in the question are non-banking finance companies [NBFCs], The steps involved in the merger of these companies are as follows:

- (i) A scheme of amalgamation shall be approved by a majority number representing two thirds in value of the shareholders of each NBFC, by way of resolution, present either in person or by proxy, at a meeting called for the purpose.
- (ii) Notice of every such meeting shall be given to all shareholders of each NBFC indicating the time, place and object of the meeting.
- (iii) The notice shall be published at least once a week for three consecutive weeks in not less than two newspapers which circulate in the localities where the registered offices of the NBFCs are situated, one of such newspapers being in a language commonly understood in the locality.
- (iv) If the scheme is approved by the shareholders, it shall be submitted to the Securities and Exchange Commission of Pakistan for sanction.
- (v) When the scheme of amalgamation is sanctioned by the Commission, the merged entity shall transmit a copy of such order to the registrar and registrar shall strike off the names of amalgamated NBFCs.
- (vi) The property and liabilities of the amalgamated NBFCs shall, by virtue of sanction order, be transferred to the merged NBFC.
- (vii) The Commission while sanctioning the scheme shall determine the value to be paid to

CORPORATE LAWS
Suggested Answers
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- shareholders dissenting from the scheme.
- A.11 The exception to the provision are as follows:
- (a) where an account-holder has authorised the disclosures in writing to disclose;
 - (b) where an account-holder is declared bankrupt;
 - (c) where the account-holder is a body corporate and has been wound-up within or outside Pakistan;
 - (d) In the case of any litigation or other legal proceedings;
 - (e) Any person duly authorized by a competent court, the Authority or the State Bank of Pakistan to investigate into any offence under any law for the time being in force;
 - (f) The purpose of enabling or assisting the Authority to exercise any power conferred on it by this Act or by any other law for the time being in force;
 - (g) The purpose of enabling or assisting the State Bank of Pakistan to exercise any power conferred on it by any other law for the time being in force;
 - (h) The purpose of enabling or assisting a stock exchange or clearing house of a stock exchange to discharge its functions;
 - (i) The purpose of enabling or assisting auditors of a central depository or participant to discharge their functions; or
 - (j) The Authority if the disclosure is required in the interest of investors or in the public interest.
- A.12 Following are the provisions of the Listing Regulations with regard to convening the meeting of the Board of Directors and Annual General Meeting for approval of Final Cash Dividend:
- (a) AMZ shall notify to the Exchange at least one week in advance the date, time and place of its board meeting.
 - (b) AMZ would advise to the Exchange, decision of the Board relating to the cash dividend and approval of the audited accounts immediately after the meeting. The information is required to be communicated to the Exchange prior to its release to any other person or print/ electronic media.
 - (c) Intimation of dividend shall be sent to the Exchange not later than 14 days prior to the commencement of the book closure.
 - (d) AMZ shall send to the Exchange such number of copies of its annual report and audited accounts as may be prescribed by the Exchange not later than 21 days before a meeting of shareholders is held to consider the same.
 - (e) AMZ shall obtain prior approval of the exchange in respect of the date and time of holding of its annual general meeting.
 - (f) AMZ shall furnish certified true copies of minutes of its annual general meeting within 60 days of such meeting.
- A.13
- (i) The Audit Committee shall meet at least once in each quarter.
 - (ii) A meeting must be held prior to the approval of interim results of the listed company by its Board of Directors and before and after completion of external audit.
 - (iii) A meeting of the Audit Committee shall also be held, if requested by the external auditors or the head of internal audit.
 - (iv) CFO, the head of internal audit and the external auditors represented by the engagement partner shall attend meetings of the Audit Committee at which issues relating to accounts and audit are discussed.
 - (v) At least once a year, the Audit Committee shall meet the external auditors without the CFO and the head of internal audit being present.
 - (vi) At least once a year, the Audit Committee shall meet the head of internal audit and other members of the internal audit function without the CFO and the external auditors being present.

CORPORATE LAWS
Suggested Answers
Final Examination - Winter 2012

(THE END)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN

EXAMINERS' COMMENTS

<p>SUBJECT Corporate Laws</p>	<p>SESSION Final Examination Winter 2012</p>
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General:

The examination of the copies revealed that a large number of students were not adequately prepared for the examination. They also got confused while responding to situation-based questions. The answers in a number of cases were out of context.

It was also observed that the performance was poor where a new area was tested or when a topic was being tested after a long time. It was a clear indication of selective studies. The students are advised to carry out a thorough study of all the topics as in every session, 2 to 3 new areas are usually tested. Those who resort to selective studies perform poorly in these areas and are mostly unable to cover up this deficiency in the remaining questions.

The students are also advised to read a question carefully and figure out its requirements, before attempting to answer it. For this purpose, 15 extra minutes, are now provided. They are also advised to refrain from writing irrelevant material. No matter how well they write about something which has not been asked for, they would not get any additional marks. The past question papers and suggested answers are available on ICAP's website. It is strongly suggested that the students should carefully go through these suggested answers in order to know, how to answer the questions and secure maximum marks.

Question-wise comments are as under:

Question 1

The question was based on Second Schedule of the Companies Ordinance, 1984 and was very poorly attempted by most of the students. The requirement was to mention the information that is to be disclosed in the prospectus of a company about a contract whereby two financial institutions have been provided the option to convert 20% of the loans granted by them into equity. Most of the students relied on guesswork as they mentioned all sorts of information that they could think of. Consequently, they could secure 1 or 2 marks here and there after consuming a lot of their precious time. Only about 5% of the students produced precise and to the point answers.

Question 2 (a)

In this part of the question the candidates were required to comment on three different situations as regards the appointment of Chief Executive of a company, in the light of Companies Ordinance, 1984. Although the performance remained better in this question; however, many students made simple mistakes which could have been avoided. These are enumerated below:

- Many students did not read this portion carefully and presumed that Mr. Imran was being proposed for appointment as Chief Executive of both the companies whereas according to the question, Mr. Imran was proposed to be appointed as the CEO of a textile mill whereas Mrs Imran was the CEO of the other textile mill.

Examiners' Comments on Corporate Law – Final Examination Winter 2012

- Some of the students were of the view that only members of the stock exchange are restrained from becoming the Chief Executive Officer of a listed company. In fact, the restriction applies to all persons who are engaged in the business of brokerage.
- A significant number of students held the incorrect view that only a member of the company can become its CEO.

Many students gave the final decisions but did not support them with logical reasoning.

Question 2 (b)

In this part the candidates were required to specify the conditions that a company is required to comply with, if it accepts security deposits. Majority of the students covered the point relating to depositing such money in a Scheduled Bank. However, the condition that security deposit can not be received except under a contract in writing, was rarely mentioned.

Question 3

A very simple and short scenario was given in the question whereby the CEO of a company had provided loan to his first cousin for purchase of the Company's shares.

Probably in a hurry or because they did not know the answer to the actual question, many students presumed that the company was providing loan to the CEO and thereby narrated the provisions contained in Section 195 of the Companies Ordinance, 1984.

Many students presumed that the loan was being provided by the company to the CEO's cousin and therefore enumerated the provisions of Companies Ordinance, 1984 regarding disclosure of nature of interest by the Chief Executive/Director in contract or arrangement in which they are interested.

Many of those who otherwise understood the question, completely ignored the information that the loan was given on soft terms (5% interest only) and therefore, it may be construed as an indirect purchase of shares.

Question 4

Part (a) of the question pertained to a liquidator's remuneration whereas part (b) related to casual vacancy on resignation of a liquidator.

The question began with the word 'members' clearly indicating that the question pertained to members voluntary winding up. However, many students filled pages writing about the provisions related to creditors' voluntary winding up and winding up through Court.

Other common mistakes were as follows:

- In the given situation the remuneration was to be fixed by the members in general meeting. Many candidates mentioned that it shall be fixed by SECP or by the Registrar.

Examiners' Comments on Corporate Law – Final Examination Winter 2012

- Many students mentioned that the remuneration may be reduced but failed to mention that it can be reduced by the court only.
- Provisions regarding monthly allowance to liquidator were mostly ignored.
- Many students did not mention as to who shall convene a meeting for filling the casual vacancy.

Question 5 (a)

This part of the question required the conditions which the director of a company is required to comply with if he makes a gain on sale of the company's shares. The overall performance in this question was good. However, many students listed the various conditions correctly but did not specify that these conditions would apply where the sale has been made within a period of six months. Such students could not secure any marks because none of these conditions apply if the sale is made after six months. Moreover, besides giving the relevant answer, many students also wrote provisions of Section 224 (a) related to consequences of failure to tender the gain. This was not relevant as it was beyond the requirements of the question.

Question 5 (b)

In this part of the question, the candidates were required to identify the persons, other than directors, to whom the above provisions i.e. those related to making a gain by selling company's shares, shall also apply. Most of the students were able to secure full marks. But even in this easy question, some candidates used guesswork and incorrectly mentioned persons such as the directors' spouse and their lineal ascendants and descendants, the company's legal advisors and stock brokers.

Question 6

This question was about alternative course of action available in case all the directors of the company are out of country and it is not possible to convene a board meeting for an urgent resolution to be passed. In part (a) the candidates were required to explain the alternative course of action whereas in part (b) they were required to list the steps that would be needed, to carry out the alternative course of action.

A large number of students probably did not notice that the question clearly indicated that "it is not possible for the secretary to convene the meeting of the board of directors" and they kept on mentioning the option of holding a meeting through video conferencing and mentioning its requirements etc. which obviously did not give them any marks. The available option was to obtain the approval through circular resolution.

Question 7 (a)

The question required the students to comment on five different complaints lodged by the shareholders of a company. Majority of the students provided appropriate comments. The errors noted were as follows:

- The proxy was deposited less than 48 hours before the meeting and therefore was invalid. Many students were of the opinion that it is required to be filed within 48 hours of the meeting and therefore considered it as valid.
- Some of the students were of the opinion that both the proxies should be counted for

Examiners' Comments on Corporate Law – Final Examination Winter 2012

voting. In fact, if a member appoints more than one proxy then all such proxies become invalid.

- About 50% of the students did not know that the Board of Directors can appoint any person to represent the company in another company's meetings, irrespective of whether he is a member or not.

Question 7 (b)

This was a simple question based on Section 160 of the Companies Ordinance, relating to the circumstances under which a Court may declare the resolution or entire proceedings of an AGM as invalid. Most of the students produced correct answers and many of them secured full marks.

Question 8

This was a simple question regarding appointment of legal advisors and was based on the Companies (Appointment of Legal Advisors) Act, 1974 and the related Rules. The question was performed well by those who had gone through this small but important law. However, due to selective studies, many students were totally ignorant of this law. Consequently, many students got zero marks. Many students gave almost the same answers in respect of both the parts without realizing that part (a) was based on the Act whereas part (b) was based on the relevant rules.

Question 9

In this question a scenario was given which revolved around the following three issues:

- Issue of shares carrying no voting right.
- Issue of capital without right issue.
- Issue of shares for consideration other than cash.

The question was based on the requirements of the Companies Share Capital (Variation in Rights and Privileges) Rules, 2000 and the Companies (Issue of Capital) Rules, 1996 related to issuance of non-voting shares at premium.

However, majority of the students wasted their time by quoting the provisions of Companies (Issue of Capital Rules) 1996 regarding issue of shares at premium without realizing the fact that the rule pertains to issue of capital at premium to general public. Some of the students also quoted the provisions applicable for raising capital through public offer for the first time which was totally irrelevant. Further, many students filled pages in elaborating various kinds of shares that are permitted to be issued under the Rules.

Question 10

The question required listing of steps to merge three NBFCs into a single entity. Very few students managed to give a complete reply in accordance with Section 282 L of the Companies Ordinance, 1984.

The common mistakes were as follows:

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- It was stated that the scheme of amalgamation shall be approved by special resolution whereas the same is required to be approved by two third in value of shareholders.
- Students mentioned that the notice shall be published in two newspapers but did not mention that one of the newspapers should be in a language which is commonly understood in the locality in which the registered office of the NBFC is situated and that the advertisement shall be published once a week for three consecutive weeks.
- Some students mentioned that merger would require approval of the Competition Commission of Pakistan (CCP).

Question 11

A poorly attempted question, which was the result of selective studies by the students as it appears that the students had overlooked the Central Depository Act. Majority of the students did not or rather did not understand the requirement of the question. Whereas the requirement was in respect of disclosure of information related to a particular account holder, the students mentioned the various situations in which information is to be disclosed to the companies whose shares are lodged with the Central Depository Company. Moreover, most of the students who adopted the correct approach, could only mention 3 or 4 points on the average. The exceptions are mentioned in Section 21 of the Central Depository Act, 1997.

Question 12

The students were required to list down the information and timing thereof, which a company is required to provide to the stock exchange, in respect of its Annual General Meeting and the meeting of its Board of Directors. Majority of the students secured passing marks in this question but could have scored even better. The points that were generally missed were as follows:

- At least one week in advance the company shall notify to the Exchange the date, time and place of its board meeting.
- The information relating to cash dividend and approval of audited accounts shall be provided to the Stock Exchange immediately after the meeting. The information must be communicated to the Exchange prior to its release to any print/electronic media.

Besides the above, some of the students listed entirely irrelevant information like dispatch of dividend warrants, publication of notice of meeting in newspaper etc. Many students focused on requirements of the Companies Ordinance regarding timely payment of cash dividend and procedure of payment or highlighted the procedure of approval of the dividend in the Annual General Meeting.

Question 13

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This was a simple question in which the students succeeded in gaining high marks by specifying relevant Regulations (xxvii) and (xxviii) of the Code of Corporate Governance, 2012 related to the frequency of meetings of the audit committee and its attendance.

(THE END)



The Institute of Chartered Accountants of Pakistan

Corporate Laws

Final Examination
Summer 2013
Module E

5 June 2013
100 marks - 3 hours
Additional reading time - 15 minutes

- Q.1 (a) AVZ Limited has recently been converted into a listed company. Mr. Haq, representing minority shareholders, has submitted his papers to contest the election of the directors to be held after 30 days.
- Based on the regulations of the Code of Corporate Governance, 2012 you are required to advise the company in respect of:
- (i) Composition of the Board. (05)
 - (ii) Steps that the company should take with regard to the request submitted by Mr. Haq. (03)
- (b) State the circumstances specified under the Code of Corporate Governance, 2012 in which a director is not considered as an independent director. (04)
- Q.2 Al-Saad Investment Limited (ASIL) is a non-banking financial company (NBFC) listed on all the stock exchanges in Pakistan. ASIL has been incurring substantial losses and its shareholders, not being satisfied with the performance of the Chief Executive, have referred the matter to the Commission for removal of the Chief Executive. Moreover, the shareholders have also expressed the apprehension that the time required to comply with the necessary procedures would delay the matter which would be detrimental to their interests.
- In the light of Companies Ordinance, 1984 you are required to state:
- (a) The grounds on which the Commission may order removal of the Chief Executive. (04)
 - (b) The course of action available to the Commission if it wants to address the shareholders' apprehension regarding procedural delays. (04)
- Q.3 (a) Explain the terms "Book building process" and "Free float" as defined in the Listing Regulations of the Karachi Stock Exchange (Guarantee) Limited. (04)
- (b) Explain the following under the Listing Regulations of the Karachi Stock Exchange:
- (i) Issue of bonus shares (05)
 - (ii) Sale or purchase of the company's shares by its chief executive. (03)
- Q.4 On 11 April 2013, Naveed had made a public announcement of his offer to acquire 10% voting shares of Seldom Industries Limited, a listed company, from Maqbool. Arshad is also desirous of making a competitive bid for purchase of shares to Maqbool.
- In the light of the provisions of the Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Ordinance, 2002:
- (a) State the conditions which Arshad would need to comply with while making a competitive bid. (03)
 - (b) What would be the status of the offer made earlier by Naveed and the rights available to Naveed, if Arshad makes a valid competitive bid? (05)

Q.5 Briefly explain the restrictions imposed under NBFC Rules, 2003 as regards:

- (a) Purchase or sale transaction with a director.
- (b) Sale or transfer of ownership of shares in subsidiary or associated company.
- (c) Investment in subsidiary.
- (d) Transactions with a broker.

(08)

Q.6 Planet International (PI), a listed company, has planned to buy-back 10% of PI's outstanding shares from its minority shareholders. The board of directors has approved the buy-back of shares at a premium of 10 per cent above the current market price of Rs. 40 per share.

The summarized statement of financial position as on 31 March 2013 is as follows:

	2013	2012		2013	2012
	Rs. in million			Rs. in million	
Share capital (Rs. 10 each)	11,500	11,500	Non-current assets	35,195	34,486
Accumulated profit	10,960	4,899	Current assets	40,990	28,124
	22,460	16,399			
Long term liabilities	20,428	19,292			
Current liabilities	33,297	26,919			
	76,185	62,610		76,185	62,610

Required:

In the context of Companies (Buy-back of shares) Rules, 1999 and Companies Ordinance, 1984:

- (a) Evaluate and explain whether Planet International is eligible to buy-back the shares held by the minority shareholders. (05)
- (b) State the requirements with regard to auditor's certification in the above situation. (03)

Q.7 For the last three months, ANF Limited (ANFL) has been experiencing liquidity crisis and is unable to meet its financial obligations within the due date.

In the light of Companies Ordinance, 1984 narrate the circumstances under which ANFL would be deemed to be unable to pay its debts. (05)

Q.8 (a) SECP has the powers to appoint one or more persons as inspector(s) to investigate the affairs of a company. Such investigation may be initiated on receiving a request from any concerned person(s) or by the SECP on its own motion.

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

- (i) List the parties on whose request SECP may appoint a person as inspector to investigate the affairs. (03)
- (ii) Narrate the circumstances in which SECP may appoint an inspector on its own motion. (07)

(b) Mr. Jameel was appointed as an inspector to carry out the investigation into the affairs of AM Limited. After preliminary investigations, Mr. Jameel is of the view that in order to verify certain related matters, it is necessary to extend the scope of investigation into the affairs of certain other related entities/persons.

In the light of Companies Ordinance, 1984 identify the entities or the individuals whom the inspector may include in his investigations and what measures would be required to be taken prior to issuance of notices in this regard. (05)

Q.9 On declaration of the result of voting in the Annual General Meeting (AGM) by the chairman of AS Limited, a public company, few shareholders demanded a poll. The chairman refused to hold the poll and declared the result of voting on show of hands.

In the light of Companies Ordinance, 1984,

(a) How would you assess whether or not the Chairman's decision of not holding a poll was valid? **(04)**

(b) Explain whether the Chairman can delay the holding of poll to a date subsequent to the date of AGM. **(03)**

Q.10 The election of directors of Nihal Motors Limited (NML), a listed company, was held at the Extraordinary General Meeting where seven out of nine candidates were to be elected as directors. After the meeting was over, an email was received at NML that Mr. Nihal had expired in a hospital in England. However, the time of Mr. Nihal's death was not mentioned. The result of the meeting shows that Mr. Nihal had received the sixth highest number of votes in the election.

In the light of Companies Ordinance, 1984 state how the directors should deal with the above situation **(06)**

Q.11 State the criteria which the Key Executives of Non-Banking Finance Companies are required to fulfill under the Notified Entities Regulations, 2008 with regard to:

(a) Competence and capability. **(05)**

(b) Conflict of interest. **(06)**

(THE END)

CORPORATE LAWS
Suggested Answers
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- A.1 (a) (i)** Under the Code of Corporate Governance, 2012, the board of directors is encouraged to have a balance of executive and non-executive directors, including independent directors and those representing minority interests with the requisite skills, competence, knowledge and experience so that the board as a group includes core competencies and diversity, including gender, considered relevant in the context of the company's operations.

Being a listed company AVZL should have:

- at least one and preferably one third of the total members of the board as independent directors.
 - Executive directors, i.e., paid executives of the company from among senior management, which shall not be more than one third of the elected directors, including the Chief Executive
 - Representation of minority shareholders is encouraged
- (ii) The minority shareholders as a class are required to be facilitated to contest the election of directors by proxy solicitation. Therefore, with regard to the request submitted by Mr. Haq representing minority shareholders, AVZ Limited shall:
- Annex with the notice issued in respect of election of directors, a statement by Mr. Haq including his profile.
 - Provide information regarding members and shareholding structure to Mr. Haq ; and
 - On a request by Mr. Haq, annex to the notice issued in respect of election of directors, an additional copy of proxy form duly filled by Mr. Haq, at the company's cost.
- (b) A director shall not be considered as independent, if one or more of the following circumstances exist:
- (i) He/she has been an employee of the company, any of its subsidiaries or holding company within the last three years;
 - (ii) He/she is or has been the CEO of subsidiaries, associated company, associated undertaking or holding company in the last three years;
 - (iii) He/she has, or has had within the last three years, a material business relationship with the company either directly or indirectly as a partner, major shareholder or director of a body that has such a relationship with the company. The major shareholder means a person who, individually or in connection with his family or as part of a group, holds 10% or more shares having voting rights in the paid up capital of the company.
 - (iv) He/she has received remuneration in the three years preceding his/her appointment as a director or receives additional remuneration, excluding retirement benefits from the company apart from a director's fee or has participated in the company's share option or a performance-related pay scheme;
 - (v) He/she is a close relative of the company's promoters, directors or major shareholders:
Close relative means spouse(s) , lineal ascendants and descendants and siblings;
 - (vi) He/she holds cross-directorships or has significant links with other directors through involvement in other companies or bodies;
 - (vii) He/she has served on the board for more than three consecutive terms from the date of his first appointment provided that such person shall be deemed "independent director" after a lapse of one term.
 - (viii) He/she is nominated as director by the company's creditors or other special

CORPORATE LAWS

Suggested Answers

Final Examination - Summer 2013

- interest by virtue of contractual agreements.
- (ix) He/she is nominated as a director by the corporation/company who has made investment or otherwise extended facilities.
 - (x) He/she is nominated as a director by Federal Government, Provincial Government, Commission, foreign equity holders on the board of PICIC or any other company set up under a regional co-operation.

A.2 (a) The Commission may remove the chief executive of ASIL on any one of the following grounds:

- (i) continued association of the chief executive is or is likely to be detrimental to the interests of NBFC or its shareholders or persons whose interest is likely to be affected; or
- (ii) the public interest so demands; or
- (iii) to prevent the affairs of NBFC being conducted in a manner detrimental to the interest of its shareholders or in a manner prejudicial to the interests of NBFC; or
- (iv) If it is necessary to secure a proper management of the NBFC.

(b) If in the opinion of the Commission, any delay in the removal of CEO would be detrimental to the public interest or the interest of its shareholders, the Commission may, at the time of giving the opportunity aforesaid or as any time thereafter and pending the consideration of the representation aforesaid , if any, by order direct that:

- (i) the chief executive shall not, with effect from the date of the order:
 - act as chief executive of the NBFC; or
 - in any way, whether directly, or indirectly, be concerned with, or take part in the management of the NBFC;
- (ii) any person authorized by the Commission in this behalf shall act as such chief executive of the NBFC till another person is elected in a general meeting or a board meeting, as may be directed by the Commission, to fill in the vacancy.

Any person appointed as chief executive shall

- (i) hold office during the pleasure of the Commission subject to such conditions as may be specified in the order of his appointment and, subject thereto, for such period, not exceeding three years as the Commission may specify; and
- (ii) not incur any obligation or liability for anything which is done or intended to be done in his capacity as chief executive.

A.3 (a) "**Book Building Process**", means a mechanism of price determination through which indication of interest for investment in the shares offered by an issuer/offeror is collected from Institutional Investors and High Net Worth Individual Investor (HNWI) and a book is built which gives a picture of demand for the shares at different price levels. The strike price is determined based on the price at which demand for the share at the end of book building period is sufficient to raise the minimum capital required;

CORPORATE LAWS
Suggested Answers
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“**Free-float**” means the proportion of total shares issued by a company that are readily available for trading at the Stock Exchange. It generally excludes the shares held by controlling directors / sponsors / promoters, government and other locked-in shares not available for trading in the normal course.

- (b) (i) A listed company shall immediately advise the stock exchanges regarding the issuance of bonus shares.

A listed company shall issue bonus shares certificates within a period of 30 days from the date of re-opening of the share transfer register closed for the purpose.

The bonus shares shall be credited into the respective CDS Accounts of shareholders maintained with the CDC or dispatched to the shareholders concerned by registered post unless those entitled to receive the bonus share certificates require otherwise in writing;

The exchange shall be immediately intimated as soon as the bonus shares are credited / dispatched to the shareholders;

A company which makes a default in complying with the requirements of this Regulation shall be liable to pay penalty @Rs.5000 per day until the default continues and the Exchange may also take action of suspension of trading or de-listing of the company;

Provided that in case of eligible securities deposited into the CDS, in addition to the above, procedure as prescribed by the CDC shall also be complied with.

- (ii) Where any chief executive officer sells, buys or takes any beneficial position, whether directly or indirectly, in shares of the listed company of which he is the chief executive officer, he
- shall immediately notify in writing to the company secretary;
 - shall also deliver a written record of the price, number of shares, form of share certificate, (i.e., whether physical or electronic within the Central Depository System) and nature of transaction to the company secretary within four days of effecting the transaction ;
 - The company secretary shall immediately forward the same to the exchange for its dissemination to all concerned.

- A.4** (a) Mr. Arshad has to comply with the following conditions while making a competitive bid:

- (i) He shall make a public announcement of his offer (competitive bid) for acquisition of the same voting shares of SIL within twenty-one days of the public announcement of the offer made by Mr. Naveed.
- (ii) He must offer a higher purchase price in order to make a valid competitive bid.
- (iii) A competitive bid shall not be for less than the number of voting shares for which the earlier public offer has been made.
- (iv) All other provisions of the Ordinance related to a public announcement apply to the competitive bid.

- (b) The status of the offer earlier made by Mr. Naveed and the rights available to him are as follows:

CORPORATE LAWS
Suggested Answers
Final Examination - Summer 2013

- (i) Upon the public announcement of a competitive bid, Mr. Naveed would have the option to make another announcement:
- Revising his earlier public offer; or
 - Withdrawing the public offer with the prior approval of the Commission: Provided that if no such announcement is made within ten days of the public announcement of the competitive bid, the earlier offer on the original terms shall continue to be valid and binding on Mr. Naveed except as regards the date of closing of such public offer.
- (ii) Having made a public announcement and provided he has not withdrawn his public offer as above, Mr. Naveed shall have the option to make an upward revision of his offer in respect of the price and the number of voting shares to be acquired at any time within seven working days prior to the date of closure of the last subsisting public offer without changing any other terms and conditions of the said public offer.

A.5 (a) Purchase or sale transaction with a director.

A NBFC shall not purchase anything from, or sell anything to any director of the NBFC.

This restriction shall not apply to such NBFCs that have a policy to this effect duly approved by their board of directors:

In case of any sale and purchase to the directors the prior approval in writing of the board, excluding the participation of the beneficiary directors, is required;

- (b) **Sell or transfer of ownership of shares in subsidiary or associated company.**
A NBFC shall not sell or transfer ownership of shares in subsidiary or associated company, unless it has obtained prior approval of the Commission in writing to such sale or takeover.
- (c) **Investment in subsidiary**
A NBFC shall not make investment in its subsidiary except out of its surplus equity (i.e. over and above the specified minimum equity requirement for the licences held by such NBFC;)
- (d) **Transaction with a broker**
A NBFC shall not enter into transactions with any broker which exceed ten percent of the total brokerage expense of the NBFC in any one accounting year.
NBFC shall not have a common director or officer or employee with the broker.

A.6 (a) Planet International is eligible to buy back its shares as it complies with the relevant conditions as discussed below:

- (i) PI is a listed company.
- (ii) The company shall have sufficient cash available with it for the purchase.

PI has excess liquidity and it is confirmed from its current ratio which has improved from 1.04:1 in 2012 to 1.23:1 in 2013.

CORPORATE LAWS
Suggested Answers
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(iii) The buy-back of shares shall be out of distributable profits.

PI is planning to buy-back 10% of its shares i.e. 115 million shares which would require an expected outflow of Rs. 5,060 million. PI's distributable profit is sufficient to meet this outflow.

(iv) The company which is buying back its shares, shall have debt equity ratio of 75:25 and current ratio of 1:1 or better.

PI meets this requirement as its debt equity ratio is 48:52 and current ratio is 1.23:1.

(b) PI shall require auditor's certificate relating to the following matter on a date not earlier than thirty days immediately preceding the date of passing the special resolution for the buy-back:

- debt equity ratio is (within the limit) of 75:25.
- The current ratio is 1:1 (or better)
- The company has sufficient cash for buying back of its shares.

A.7 Under the following circumstances, ANF Limited would be deemed unable to pay its debts:

- (i) if a creditor, by assignment or otherwise, to whom the company is to pay a sum exceeding one per cent of its paid-up capital or fifty thousand rupees, whichever is less, has served a demand under his hand, delivered by registered post or otherwise, at ANFL's registered office, requiring ANFL to pay the sum and the company has for thirty days thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor.
- (ii) if a decree or order of any court or any other competent authority in favour of a creditor of the company is returned unsatisfied in whole or in part.
- (iii) if it is proved to the satisfaction of the Court that the company is unable to pay its debts, and while determining this fact, the Court shall take into account the contingent and prospective liabilities of the company.

A.8 (a) (i) SECP may appoint one or more competent person as inspectors to investigate the affairs of a company, in the following cases:

- In the case of company having a share capital, on the application of members holding not less than one-tenth of the total voting powers therein;
- In the case of any company not having a share capital, on the application of not less than one-tenth in number of the persons entered on the company's register of members;
- In the case of any company, on receipt of a report from:
 - An inspector who has carried out an inspection of the books of account of the company on the instruction from SECP.
 - A Registrar as regards that any information, explanation or document required by the registrar has not been furnished within the specified time.
- Where a resolution is passed in the general meeting of the company., or
- By order of the Court.

(ii) SECP may appoint an Inspector if in its opinion there are circumstances suggesting that:

CORPORATE LAWS

Suggested Answers

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- The business of the company is being or has been conducted with an intent to defraud its creditors, members or any other person or for a fraudulent or unlawful purpose, or in a manner oppressive of any of its members or that the company was formed for any fraudulent or unlawful purpose.
- The sponsors or management have been guilty of fraud, misfeasance, breach of trust or other misconduct towards the company or its members or have been carrying on unauthorized business.
- The affairs of the company have been conducted so as to deprive the shareholders of a reasonable return.
- The shareholders have not been given all the information with respect to its affairs which they might reasonably expect.
- Any shares of the company have been allotted for inadequate consideration.
- The affairs of the company have not been managed in accordance with sound business principles or prudent commercial practices.
- The financial position of the company is such as to endanger its solvency.

(b) Mr. Jameel can bring the following entities or the persons into his investigation:

- Any other body corporate which is, or has at any relevant time been, the company's associated company or its subsidiary or holding company, or a subsidiary of its holding company, or a holding company of its subsidiary;
- Any other body corporate which is, or has at any relevant time been, managed as chief executive by any person who is or was at the relevant time the chief executive of the company;
- Any person who is or has at any relevant time been the company's chief executive or managing agent or an associate of such chief executive or managing agent;

In order to widen his investigation to the above companies, Mr. Jameel would be required to obtain permission from the Commission through a duly verified application containing the facts in detail and the grounds for seeking such approval.

A.9 (a) The chairman is required to hold a poll in case the same is demanded by

- (i) at least five members having the right to vote on the resolution and present in person or by proxy; or
- (ii) 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; or
- (iii) 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.

If the shareholder who demanded the poll meets any one of the condition as mentioned above, the decision of the Chairman of not holding the poll would be invalid.

(b) The Chairman can delay the poll up to fourteen days from the day on which it is demanded for all matters except the following:

- (i) On the election of a chairman, the poll shall be taken forthwith.
- (ii) On a question of adjournment, the poll shall be taken forthwith.

CORPORATE LAWS
Suggested Answers
Final Examination - Summer 2013

A.10 Since the e-mail was received after the meeting and Mr. Nihal had obtained sixth highest number of votes in the election, the status of Mr. Nihal would depend on whether the results of the election had been declared before his expiry or not.

If Mr. Nihal had expired prior to the declaration of the result of election of directors, the candidate who had secured the highest votes at the 8th position in order will be declared as elected, being the 7th Director.

If Mr. Nihal had expired after the declaration of the election results, Mr. Nihal would have become a part of the board of directors. In this situation, a casual vacancy would have arisen, on the death of Mr. Nihal. The directors of NML would be required to fill up this casual vacancy at the earliest but not later than 90 days from the date of the occurrence of the vacancy. The person so appointed shall hold office for the remainder of the term of Mr. Nihal.

A.11 (a) Competence and Capability

In determining a person's competence and capability the following shall be considered:

- (i) the directors should be individuals having management or business experience of at least five years at a senior level;
- (ii) the directors shall have experience and knowledge in any profession such as banking, Collective Investment Schemes, accounting, law, internal audit or information technology etc;
- (iii) the chief executive should have a minimum experience of seven to ten years in a senior management position, preferably in the regulated financial services sector;
- (iv) the chief executive should have demonstrated, through his qualification and experience, the capacity to successfully undertake the cognate responsibilities of the position; and
- (v) the key executives must be qualified professionals possessing relevant experience and certification relating to the job or assignment.

(b) Conflict of interest

The directors or chief executive of NBFC shall not

- (i) be a director in any other NBFC engaged in a similar business in Pakistan. Provided that the condition shall not apply to nominees of the Federal or Provincial Governments on the board of any NBFC;
- (ii) be a director, chief executive, chief financial officer, chief internal auditor, research analyst or a trader (by whatever name or designation called) in a stock brokerage house or in any company or entity owned and controlled by a member of a stock exchange; and
- (iii) be a member of a stock exchange engaged in the business of brokerage or a spouse of such member or in control of more than 20% shareholding, directly or indirectly through his close relatives. In case of Key Executives, the NBFCs must ensure that no Key Executives shall head more than one functional area that gives rise to conflict of interest within the organization.
- (iv) hold directorship in his or her personal capacity:
 - in a business concern which is also a client of the NBFC, and
 - in any other financial institution.

(THE END)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN

EXAMINERS' COMMENTS

SUBJECT Corporate Laws	SESSION Final Examination Summer 2013
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General:

The overall performance was better than the performance in the previous attempt. A positive change was that majority of the students tended to provide “to the point” answers instead of lengthy and irrelevant ones. Those who are still in a habit of writing long answers must understand that unnecessary elaboration of matters that do not form part of the requirement of the question, does not add marks and results in wastage of their valuable time. Use of selective studies and poor presentation of the answers seemed to be the main causes of the failure of the students.

Question-wise comments are as under:

Question 1

This part of the question required the students to advise a company regarding the composition of its Board of Directors in the light of Code of Corporate Governance. Most of the students seemed prepared on this topic. However, many students lost marks because they were not very particular in the use of correct terms. For example, many of them used the words “total number of directors” instead of “total number of elected directors”. Similarly, the code requires that at least one and preferably one third of the total members of the board should be independent directors but most of the students did not mention the word “preferably” which was important.

Question 2 (a)

This part was from section 282E of the Companies Ordinance, 1984 regarding grounds on which the Securities and Exchange Commission may order removal of the chief executive of an NBFC. The performance remained average. Some students mentioned the way in which a CEO can be removed by directors/shareholders instead of mentioning grounds on which the Commission may remove the CEO. Further, many students listed the parties on whose request Commission may appoint an inspector to investigate the affairs of the company. Some students enumerated the rules pertaining to removal of CEO of Non-NBFC companies.

Question 2 (b)

The students did not read this part of the question carefully as they generally mentioned Commission’s power regarding removal of CEO after completion of enquiry whereas the question pertained to Commission’s power for passing an interim order as has been discussed in sub-section-2 of section 282 E.

Question 3 (a)

This part required the students to explain the terms “Book Building Process” and “Free Float” under the Listing Regulations. The performance remained mixed. Those who had studied Listing Regulations were able to answer correctly. However, most of the students relied on guesswork, which badly failed. For “Book Building Process” they mostly wrote that “it is a process of listing of shares on a stock exchange” whereas “Free Float” was explained as “the shares which are sold on daily basis on the stock exchange”. Some of them even discussed Floating Charge.

Question 3 [b (i)]

A significant number of students produced irrelevant answers as instead of stating the requirement of the Listing Regulations related to the issue of bonus shares, they stated the requirements of the companies (Issue of Capital) Rules, 1996. Some of them described the procedure for transmission of bonus shares with the CDC. Some students displayed utter lack of knowledge as according to them, general meeting was required to be held for the approval and declaration of bonus shares.

Question 3 [b (ii)]

The requirement in this sub-part was to explain the provisions of the Listing Regulations related to sale or purchase of a company’s shares by its chief executive. Instead, many students wrote about the provisions of section 224 of the Companies Ordinance, 1984 regarding trading by directors, officers etc. which was entirely irrelevant.

Question 4

It was a situation based question from the Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Ordinance, 2002 about (a) the conditions required to comply with while making a competitive bid and (b) status of offer made earlier by one person and the rights available to him, in case another person makes a valid competitive bid.

Although the requirements were quite lengthy yet a vast majority of the students managed to cover most of the related information from Regulations 16 and 17 of the Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Ordinance, 2002 and gained good marks.

Question 5

It was a direct and easy question from NBFC Rules , 2003 regarding restrictions imposed on (a) Purchase or sale transaction with a director, (b) Sale or transfer of ownership of shares in subsidiary or associated company, (c) Investment in subsidiary, and (d) Transaction with a broker.

Almost all the students gained good marks by giving relevant and to the point answers from Rule 7(2) of NBFC Rules, 2003. A common omissions in part (a) was that many students failed to mention that the given restriction would not apply to an NBFC if a policy in this respect is approved by the NBFC’s Board of Directors.

Question 6 (a)

It was a situation based question from the Companies (Buy-back of Shares) Rules, 1999 in which summarized statement of financial position of a company was given and the candidates were required to evaluate and explain whether the company was eligible to buy-back the shares held by the minority shareholders. The performance remained above average as the students were generally able to mention the requirements correctly. However, many of them could not calculate the correct current ratio and debt equity ratio of the company, based on the given financial data. Some students extended their answers unnecessarily and narrated the entire procedure for buy back of shares resulting in loss of valuable time without any addition in marks.

Question 6 (b)

The performance remained mixed as many students mentioned incorrectly that auditor's certification would be required in respect of verification of the accounts and declaration of solvency. Surprisingly, some students stated that no such certification requirement exists. It is surprising as to how they believed that 03 marks would be awarded for making the above statement only.

Question 7

In this question the requirement was to narrate the circumstances under which a company is deemed to be unable to pay its debts. Most of the students gave satisfactory answer covering the relevant provisions specified in section 306 of the Companies Ordinance, 1984. The most common mistake was that in one of the provisions instead of mentioning "sum exceeding one per cent of paid-up capital or fifty thousand rupees, whichever is less", many students wrote "and" in place of "or" and "whichever is greater" in place of "whichever is less" which changed the entire meaning of the statement.

Question 8 (a)

In this part the students were required to identify the parties on whose request SECP may initiate investigation proceedings against a company and the circumstances under which the SECP may initiate investigation proceedings on its own motion. The question was based on section 263 and 265 of the Companies Ordinance. A mixed performance was witnessed as only about half the students had prepared for such a question. Many others tried to rely on guesswork and gave long answers which mostly contained one or two correct points only.

Question 8 (b)

The requirement was to identify the entities and individuals which an inspector can include in his investigation while investigating the affairs of a company and what measures the inspector would have to take in this regard.

Majority of the students tried to list as many parties as they could think of which showed complete lack of knowledge and confidence. Such an approach cannot work in professional examinations.

Question 9

This was a simple question from sections 167 & 168 of the Companies Ordinance pertaining to (a) validity of Chairman's decision of not holding a poll and (b) powers of Chairman to delay the holding of poll in the given situation. Though most of the students gained good marks in both the parts, however, many students stated incorrectly that chairman's decision of not holding the poll was final. Similarly, many students held the incorrect view that under all circumstances, the poll shall be taken forthwith.

Question 10

It was a situation based question which required good in-depth knowledge of matters related to election of directors. According to the given situation, a person who was to be elected as director of a company had died but it was not clear whether the death had occurred prior to or after the declaration of the results of voting. The students were expected to decide the course of action under either assumption. However, most of the students solved the question only on the assumption that the death occurred after the election. The other possibility was ignored.

Question 11

This question from NBFC Regulations, 2008 required the students to specify the criteria that the Key Executives are required to fulfill with regard to (a) Competence and capability and (b) Conflict of interest. The performance remained mixed as many students could not differentiate between the requirements related to Directors, CEO and other key executives.

(THE END)



The Institute of Chartered Accountants of Pakistan

Corporate Laws

Final Examination
Winter 2013
Module E

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

- Q.1 Details of loans obtained by Al-Hamd Engineering Limited (AHEL) from commercial banks are as follows:

Name of bank	Date of borrowing	Amount borrowed	Security
Alpha Bank Limited	1 July 2010	Rs. 80 million	Hypothecation charge on stock in trade and receivables
Beta Bank Limited	15 May 2012	Rs. 45 million	Hypothecation charge on stock in trade and receivables

In August 2013, AHEL defaulted on its loan repayment obligations towards both banks.

It has now been discovered by Alpha Bank Limited that the Bank's legal adviser who had been assigned to register the charge had failed to deposit the required documents, which were duly signed by both the parties, with the Registrar of Companies.

The charge in favour of Beta Bank Limited was duly registered.

Under the provisions of the Companies Ordinance, 1984:

- (a) Advise Alpha Bank Limited about the effect of non-submission of the charge documents with the registrar and how would it affect its position vis-a-vis Beta Bank Limited. (05)
- (b) Explain whether Alpha Bank Limited can now register the charge with the Registrar of Companies. (04)
- Q.2 Family Supermarket (Private) Limited (FSPL) is a successful family owned company and has seven members. Due to personal reasons, one of its members, Hamid, who holds 20% shares, wants to move abroad and sell all his shareholdings in FSPL. He has received an attractive offer from a member of the company. However, Hamid believes that he would obtain a higher price if he sells the shares to the general public.

State the conditions which Hamid would need to comply with under the provision of the Companies (Issue of Capital) Rules, 1996 if he decides to sell his shareholdings to the general public. (06)

- Q.3 ABX Limited is a listed company. In its annual general meeting, ABX Limited announced the distribution of shares of its unlisted subsidiary company in the form of specie dividend and applied for registration of shares of the subsidiary at the Karachi Stock Exchange (KSE). However, the application was refused by KSE.

Describe the responsibility of ABX Limited in the above situation, in view of Listing Regulations of the Karachi Stock Exchange and the consequences of non-compliance thereof. (06)

Q.4 Haris holds 3% shares in BYZ Limited whose shares are listed on the Lahore Stock Exchange. He has a plan to acquire substantial shareholding of BYZ Limited as follows:

S.#	Tentative date	% of shareholding to be acquired
1	15 January 2014	5
2	15 February 2014	5
3	31 January 2015	10
4	15 March 2015	10

Advise Haris about the conditions to be complied with in respect of each of the above acquisitions, under the Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Ordinance, 2002. (08)

Q.5 The Board of Directors of Star Limited (SL) has decided to appoint SKF Associates as legal advisers of all its group companies.

SKF Associates has two partners and are currently the legal adviser of the following entities:

- (i) Wise (Guarantee) Limited (WGL) whose members have undertaken to contribute Rs. 0.6 million each, in the event of company's winding up. However, WGL does not have a share capital.
- (ii) Nasir & Yasir, a partnership firm registered under the Partnership Act, 1932. The total capital of the firm is Rs. 5 million.
- (iii) Faraz Art Museum which is registered under the Societies Act, 1860.
- (iv) Nice (Pvt.) Limited having a share capital of Rs. 1.2 million.
- (v) Listed companies, A Limited, B Limited, C Limited and D Limited having share capital of Rs. 800,000, Rs. 600,000, Rs.400,000 and Rs. 200,000 respectively.

SL's group companies include two subsidiaries each having a share capital of Rs. 2 million and an associated company with a share capital of Rs. 600,000. The share capital of SL is Rs. 10 million.

Based on the requirements of the Companies (Appointment of Legal Advisers) Act, 1974, explain whether SKF Associates can be appointed as the legal adviser of SL and its group companies. (07)

Q.6 Explain the terms 'Asset Management Services', 'Collective Investment Schemes' and 'Connected Persons' as referred to in the NBFC (Establishment and Regulations) Rules, 2003. (05)

Q.7 Mars Investment Finance Limited (MIFL) is in the process of making provisions against non-performing loans. The loans provided by MIFL are secured against the following categories of assets:

Category A	Assets secured by registered mortgage
Category B	Assets secured by equitable mortgage
Category C	Stock pledged with MIFL
Category D	Assets having pari-passu charge
Category E	Assets which carries a floating charge over the stock-in-trade

MIFL has issued NOCs to some of its borrowers for creating further charge(s) on assets falling under Category B.

Discuss the matters that should be considered in determining the realizable value of the above assets, while making a provision against non-performing loans under the Non-Banking Finance Companies and Notified Entities Regulations, 2008. (06)

- Q.8 Kamran is the director of Amazing Paper Limited (APL) and Super Glue Limited (SGL). In a meeting, the board of directors of APL approved a contract for the purchase of Glue from SGL. Kamran voted in favour of the resolution. A shareholder of APL has objected that Kamran has unlawfully influenced the transaction to benefit SGL.

Advise Kamran on the validity of the shareholder's objections, and the consequences which Kamran may face under the Companies Ordinance, 1984. **(07)**

- Q.9 Beta Foods Limited, a listed company, has a paid up share capital of Rs. 20 million divided into two different classes of shares 'A' and 'B'. Class B shares do not have voting rights. In a recent general meeting of the company, a special resolution has been duly passed, to alter some of the rights associated with class B shares, which has aggrieved some of the class B shareholders.

Under the Companies Ordinance, 1984 explain to the holders of class B shares, as regard the following:

- (a) Remedy available to them. **(03)**
(b) The conditions under which the decision of the company may be reversed. **(03)**

- Q.10 Paramount Limited (PL) is incorporated in United Kingdom and is listed on London Stock Exchange. In order to penetrate into Pakistan market, the company has recently established a branch office in Karachi. The company has duly complied with all the statutory requirements necessary for local registration.

Under the provisions of Companies Ordinance, 1984, briefly describe the obligations which PL is required to fulfil after establishing its business in Pakistan with respect to the following:

- (a) Maintenance of Register of Pakistani members, directors and officers **(02)**
(b) Disclosure of name of the company and the country in which the company is incorporated, on companies' documents and at its places of business in Pakistan. **(04)**
(c) Preparation of balance sheet and profit and loss account with regard to its operations in Pakistan. **(03)**

- Q.11 Strong Industries Limited (SIL) is a listed company and is engaged in the manufacturing of SIL cement. SIL's market share is around 23%. SIL's plans for the next year include the following:

- (a) Entering into negotiations for the merger of the company with Hard Industries Limited.
(b) Launching a vigorous advertisement campaign which would involve television advertisements highlighting some of the unique features of SIL cement and how it is superior to the cement manufactured by other competitors.

Describe the steps that SIL should take and the matters that should be considered, in respect of the above, in order to ensure compliance with the provisions of Competition Act, 2010. **(11)**

- Q.12 Recently, the company secretary of Al-Falah Sugar Mill Limited (ASML) has received a letter from Ghalib, a shareholder whose holdings in the company's shares has increased to 14% during the year 2013, to seek appointment on ASML's board of directors. The company secretary has informed him that he cannot be admitted on the board till the next elections become due.

Not being satisfied with the response, Ghalib has asked you to advise on the above matter and explain the course of action available to him under the Companies Ordinance, 1984. **(05)**

Q.13 (a) State the situations under which a company may be wound-up voluntarily. **(03)**

(b) After incurring continuous losses, Hashim Cotton Mills Limited had decided to go into members' voluntary winding-up. Accordingly, a general meeting of the company was held on 1 December 2012 and Ahmed was appointed as the Liquidator on a remuneration of Rs. 500,000 of which 50% was paid at the time of his appointment. On 20 November 2013, while the process of winding-up was still in process, Ahmed received a lucrative offer of employment and is considering to resign as the liquidator of the company.

In the context of the provisions contained in the Companies Ordinance, 1984, you are required to explain the following:

- (i) The steps that Ahmed should take at the end of first year from the commencement of the winding-up. **(07)**
- (ii) The responsibilities of Ahmed, if he decides to resign. **(05)**

(THE END)

CORPORATE LAWS
Suggested Answers
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- Ans.1** (a) According to the Companies Ordinance, 1984 every mortgage, charge or other interest created by a company shall be void against any creditors of the company, unless the prescribed particulars of the mortgage or charge, together with a copy of the instrument, if any, are filed with the registrar for registration in the required manner within 21 days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured. And, when a mortgage or charge becomes void the money secured thereby shall immediately become payable.

Based on the above, although the charge creating documents were signed by AHEL and submitted to legal advisor of Alpha Bank Limited, however, the charge in favour of ABL is void. The bank can not avail the security purported to be created through this hypothecation charge and is in the position of an unsecured creditor.

In view of the above provision of law, the amount borrowed by AHEL has become payable immediately to ABL although ABL would stand in the position of an unsecured creditor.

On the other hand, charge of Beta Bank Limited is duly registered and hence it enjoys the position of a secured creditor.

- (b) The Commission may on the application of ABL and on being satisfied that the omission to register a mortgage or charge within the stipulated time as required by Companies Ordinance, 1984 was accidental or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or that on other grounds it is just and equitable to grant relief, and, on such terms and conditions as seem to the Commission just and expedient, order that the time for registration be extended and the charge be registered.

However, even if the charge is registered, Beta Bank Limited would have the first charge on the assets.

- Ans.2** Hamid is not satisfied with the offer made by the existing member of the company and wants to obtain a higher price which, we assume, the existing members have refused to pay. Therefore, in view of the articles of association of the company, Hamid after taking prior approval of the board of directors may sell/transfer his shares in the company to any other person.

Moreover, since Hamid who holds more than ten percent of the shares of FSPL, may offer such shares for sale to the public subject to the following conditions, namely:

- (i) The size of the capital to be offered to public through offer for sale shall not be less than one hundred million rupees or twenty-five per cent of the capital, whichever is less;
- (ii) no premium shall be charged unless the company has profitable operational record for at least one year;
- (iii) in case a premium is to be charged on the sale of shares, the offer shall be fully underwritten and the underwriters, not being the associated companies, shall include at least two financial institutions including commercial banks and investment banks and the underwriters shall give full justification of the amount of premium in their independent due diligence reports;
- (iv) due diligence reports of the underwriters shall form part of the material contracts;
- (v) full justification for the premium shall be disclosed in the offer for sale.

- Ans.3** If the application for listing of shares of subsidiary is refused, ABXL would be required to encash the shares of the subsidiary company at the option of the recipients at a price not less than the current break-up value, or face value, whichever is higher, within 30 days after the expiry of 120 days from the date of the application for listing or from the date of refusal of listing whichever is earlier. In the event of default, the trading in the shares of ABXL may be suspended by the KSE or the company may be de-listed.

CORPORATE LAWS
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Ans.4 15th January 2014

Haris would not be required to meet any condition at the time of purchase of 5 % shares on 15 January 2014 , as his total voting shares on this date would not exceed 10%.

15th February 2014

On the purchases of 5% more shares, Haris's total shareholding would be 13% i.e. in excess of 10 % and he would be required to disclose the aggregate of his shareholding to BYZ Limited and to the Lahore Stock Exchange within two working days of the acquisition of voting shares.

31st January 2015

On the purchase of 10% more shares, his total shareholding would be 23% and he would not be required to make any disclosure as the Listed Companies (Substantial Acquisition of Voting Shares and Takeover) Ordinance, 2002 does not require any further disclosure/communication on acquisition of additional voting shares in a period of twelve months after crossing the FIRST threshold of 10% unless his total shareholding in aggregate exceeds twenty five per cent.

15th March 2015

On purchases of 10% more shares, his total shareholding would be 33% that crosses the SECOND threshold of 25% and before acquiring such shares Haris should:

- (i) Make a public announcement of offer to acquire these voting shares.
- (ii) Before making the public announcement, Haris would also be required to make disclosure as made by him on 15 February 2014.

Ans.5 The number of companies, of which a registered firm can be appointed as the legal advisor, is the product of three and the total number of partners of the firm.

Accordingly, SKF Associates can be appointed as legal advisors of 6 companies (i.e. 2x3) However, the definition of a company given under the Companies (Appointment of Legal Advisers) Act, 1974 specifically excludes:

- (i) a company which has a share capital of less than Rs. 500,000
- (ii) a company limited by guarantee

Similarly a society and a Partnership also do not form part of the definition of Companies.

In view of the above, SKF Associates are currently the legal advisors of i.e. Nice (Pvt.) Limited, A Limited and B Limited.

Hence, SKF Associates can be appointed as the legal advisors of three out of four companies belonging to SL group.

Ans.6 **Asset Management services** means the services provided for management of collective investment scheme;

Collective Investment Schemes means a close-end fund and an open-end fund.

Connected Persons in relation to an NBFC or a collective investment scheme, means:-

- (a) any person or trust beneficially owning, directly or indirectly, ten percent or more of capital of the NBFC or the collective investment scheme;
- (b) any person able to exercise, directly or indirectly, ten percent or more of the total voting

CORPORATE LAWS

Suggested Answers

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- power in that NBFC or the collective investment scheme;
- (c) a collective investment scheme being managed by the NBFC;
 - (d) the NBFC managing a collective investment scheme;
 - (e) a trustee or custodian of the collective investment scheme;
 - (f) any person or trust controlled by a person who or which meets the descriptions given in sub-clause (a) to (e);
 - (g) any member of the group of which that person, or trust forms part; and
 - (h) any director or officer of that NBFC or the investment company being managed by that NBFC or of any of their connected persons as specified in sub-clauses (a) to (g);]

Ans.7 Mars Investment Finance Limited (MIFL) shall observe the following criteria for determining the realizable value of mortgaged, pledged, leased or collaterally held assets:

- (i) Only assets having registered mortgage, equitable mortgage (where NOC for creating further charge has not been issued by NBFC) and pledged or collaterally held assets shall be considered;
- (ii) Assets having pari-passu charge shall be considered on proportionate basis;
- (iii) Hypothecated assets and assets with second charge or floating charge shall not be considered;
- (iv) Valuations shall be carried out by an independent professional valuer listed on the panel of valuer maintained by the Pakistan Banks Association or the Leasing Association of Pakistan;
- (v) The valuer while assigning any values to the mortgaged, pledged, leased or collaterally held assets, shall take into account all relevant factors affecting the salability of such assets including any difficulty in obtaining their possession, their location; their condition; and the prevailing economic conditions in the relevant sector, business or industry.
- (vi) In determining the realizable value of mortgaged, pledged, leased or collaterally held assets, the valuers must take into account the amount that can be realized from the asset if sold in a forced or distressed sale condition;
- (vii) The valuers shall in their report explain the assumptions, calculations, formula and method adopted in determination of the realizable values;

Ans.8 Every director of a company who is in any way interested in any contract or arrangement entered into, on behalf of the company shall disclose the nature of his interest at a meeting of the directors or through a general notice.

Furthermore, 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, by or on behalf of the company, if he is in any way interested in the contract or arrangement and if he does vote, his vote shall be void.

In view of the above provisions of the C.O.1984, Kamran may have to face the following consequences:

- (i) Since Kamran is directly interested in the contract for purchase of glue, his failure to disclose his interest to the directors shall constitute a violation and he shall be liable to a penalty of Rs. 5,000.
- (ii) Karman's participation and voting on the proposed contract is also a breach of the above provisions of the Companies Ordinance, 1984, and accordingly he shall be liable to a further fine of Rs. 5,000.
- (iii) Moreover, the court may, on a petition by members/shareholders having not less than ten percent of the voting power in the APL, declare such proceedings or part thereof invalid on account of irregularity in the proceeding of the meeting.
- (iv) The Court may also declare Kamran as ineligible on account of lacking fiduciary behavior after giving him an opportunity of showing cause against the proposed action. If such

CORPORATE LAWS
Suggested Answers
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declaration is given, Kamran would be rendered ineligible for appointment as director; and, shall, ipso facto, cease to hold office.

- Ans.9** (a) Persons holding not less than ten per cent of the Class B shares may, within thirty days of the date of the resolution varying their rights, apply to the Court in the form of a petition for an order cancelling the resolution.
- (b) The Court shall cancel the decision of the company if it is shown to its satisfaction that:
- (i) Some important facts were withheld by the company in getting the resolution passed or,
 - (ii) Variation would unfairly prejudice such class of shareholders.

Ans.10 The obligation which Paramount Limited, being a foreign company and having a place of business in Pakistan, would be required to fulfill are as follows:

- (a) PL shall maintain at its principal place of business in Pakistan, or, if it has only one place of business in Pakistan, in that place of business, a register of Pakistani members, directors and officers, which shall be open to inspection and copies thereof supplied as in the case of similar registers maintained by a company under the Companies Ordinance, 1984;
- (b) PL shall:
 - conspicuously exhibit on the outside of every place where it carries on business in Pakistan the name of the company and the country in which the company is incorporated in letter easily legible in English or Urdu characters and also, if any place where it carries on business is beyond the local limits of the ordinary original civil jurisdiction of a High Court, in the characters of one of the vernacular language used in that place;
 - cause the name of the company and of the country in which the company is incorporated mentioned in legible English or Urdu characters in all bill-heads and letter papers, and in all notices, advertisements, documents and other official publications of the company;
- (c) PL shall prepare a balance sheet and profit and loss account, audited by such person, containing such particulars and including or having annexed or attached thereto such documents (including, in particular, documents relating to every subsidiary of the company) as nearly as may be under the provisions of the Companies Ordinance, 1984 as if it were a public company formed and registered under the Companies Ordinance, 1984 in respect of the company's operations in Pakistan as if such operations conducted by a separate public company formed and registered under this Ordinance.

- (d)
- Ans.11** (a) **Merger of SIL and HIL**
After merger of two companies, the merged company shall be presumed to be in a dominant position within the meaning of the Competition Commission Act, 2010.

Therefore, SIL shall follow the following steps before the merger:

First phase

- (i) SIL and HIL shall submit a pre-merger application to the Commission as soon as they agree in principle or sign a non-binding letter of intent to proceed with the merger.
- (ii) The above application shall be in the prescribed form and accompanied by a prescribed processing fee.
- (iii) After receiving of clearance from the Commission that the merger meets the

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Suggested Answers
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threshold and the presumption of dominance, SIL and HIL shall proceed with the intended merger. If the Commission fails to make a determination within the prescribed time of 30 days for the first review phase, it shall be deemed to mean that the Commission has no objection to the intended merger.

Second phase

- (iv) SIL and HIL shall be required to provide such information to the Commission as the Commission may consider necessary to enable it to make the necessary determination.
- (v) After assessing whether the merger substantially lessens competition, the Commission shall give its decision on the proposed transaction within 90 days of the receipt of the above information (refer point no. iv). If Commission fails to render a decision within 90 days, it shall be deemed to mean that the Commission has no objection to the intended merger.

(b) **Launching advertisement campaign**

Before launching the advertisement campaign, SIL shall ensure that its marketing campaign shall not resort to:

- (i) the distribution of false or misleading information that is capable of harming the business interests of another undertaking;
- (ii) the distribution of false or misleading information to consumers, including information lacking a reasonable basis, related to the price, character, method, or place of production, properties, suitability for use, or quality of goods;
- (iii) false or misleading comparison of goods in the process of advertisement.

Ans.12 Under the Companies Ordinance, 1984 the tenure of the BOD is 3 years.

Before expiry of the term a person can only be admitted to fill in the casual vacancy.

However, according to the Companies' Ordinance, 1984 if a person acquires 12.5% or more voting shares in a listed company in his own name, he may apply to the Commission to direct the company to hold 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 as above and the company shall comply with such direction.

However, in case the election is held as above, Ghalib shall be restricted from selling or disposing of his shares for at least one year from the date of election of Directors of the company.

Ans.13 (a) A company may be wound up voluntarily when:

- (i) the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs, on the occurrence of which the articles provide that the company is to be dissolved and the company in general meeting passes a resolution requiring the company to be wound up voluntarily.
 - (ii) When the company resolves by special resolution that the company be wound up voluntarily.
- (b) (i) If the affairs of the HCML are not wound up in one year, Mr. Ahmed shall be responsible to take the following steps:
- Apply to the court for extension of period by six months.
 - Summon a general meeting of the company at the end of the first year from the date of commencement of the winding up and if extension is granted by

CORPORATE LAWS

Suggested Answers

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- court, within thirty days of such extended period;
- Present in the meeting an audited account of receipts and payments and acts and dealings and of the conduct of the winding up during the preceding year together with a statement in the prescribed form containing the prescribed particulars with respect to the proceedings in and position of the liquidation, including:
 - Reasons for the delay in finalization of the winding up proceedings.
 - steps taken to expedite the winding up proceedings.
 - further time required for the purpose.
 - Forward by post to every contributory, a copy of the account and statement together with the auditor's report and notice of the meeting at least ten days before the meeting.
 - File with the registrar, a return of convening of each general meeting, together with a copy of the notice, account, statement and minutes of the meeting, within ten days of the date of the meeting.

Appointment of Liquidators.

- (ii) He cannot resign or quit his office as liquidator before conclusion of the winding up proceedings except for reasons of personal disability to the satisfaction of the Court. In any case, Mr. Sajjad cannot quit his responsibilities before his replacement is appointed by the court.

If Mr. Ahmed resigns before conclusion of the winding up of the company, he shall not be entitled to any remuneration and 50% of the remuneration already received by him, shall be refunded to the company.

(THE END)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN
EXAMINERS' COMMENTS

SUBJECT Corporate Laws	SESSION Final Examination Winter 2013
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General:

The examination of the copies revealed that a large number of students were not adequately prepared for the examination. The answers of a significant number of students were out of context. The students are advised to read the questions carefully and figure out their requirements, before attempting to answer them. For this purpose students are also provided extra 15 minutes at the beginning of the paper, so that they can read the questions carefully and figure out their requirements.

The students are also advised to refrain from writing unnecessary details. Some students seem to be under the impression that they will get more and more marks if they write more. Writing unnecessary details result in sheer wastage of time and nothing else. The past question papers and ICAP's suggested answers are available on its website. It is strongly suggested that the students should study them carefully to understand how the questions should be answered.

It has also been noted that many students try to answer the questions on the basis of their general perception and by applying their own logics which are quite often different from what the law says. Another common error is that students get confused between the various authorities such as the court, SECP and registrar etc.

Question-wise comments:

Question 1 (a)

The performance of most of the students was below par as they failed to explain the effect of non-submission of charge documents with the registrar. Only a few students correctly identified that as a result of non-registration of charge with the registrar, the borrowed amount becomes immediately repayable and the charge becomes void.

Question 1 (b)

In this part the candidates were required to inform whether charge can now be registered i.e. after the prescribed time of 15 days have passed. Most of the students gave partly correct answers as they made one or more of the following mistakes:

- Instead of mentioning that now the bank may apply to the Commission for the registration of charge, it was stated that the bank should apply to court or registrar for registration of charge.
- Certain reasons have been specified under the Companies Ordinance on the basis of which the Commission allows the charge to be registered in the case of delay. Many students did not explain these.
- Many students did not specify that while allowing the charge to be registered, the Commission may impose such conditions as it may deem necessary.

Question 2

The question required the procedure that has to be followed under Companies (Issue of Capital) Rules, 1996 if a shareholder holding more than 10% shares in a company wants to dispose them of to the general public. The performance was generally good as similar questions have been asked frequently in the past. However, some of the students ignored the important requirement that the answer was to be based on the provisions of Companies (Issue of Capital) Rules, 1996 and instead narrated the procedure for conversion of private limited company into a public limited company.

Question 3

This question was based on a scenario whereby a listed company had announced the distribution of shares of its unlisted subsidiary as specie dividend but application for registration of shares of the subsidiary was refused by the Karachi Stock Exchange (KSE).

The question had to be answered in the light of Regulation 25(2) of the listing regulations. The performance was poor as most of the students were unaware of the requirements.

Even those who seemed to have studied this aspect mostly gave partly correct answers. Most of them did not know the basis at which the shares of subsidiary had to be encashed. Many students also seemed to be confused as regards suspension of trading of shares and called it placement of shares on Defaulter's Counter.

Some students misunderstood the question and narrated the procedure for issue of shares.

Question 4

A practical situation was given in this question according to which an individual holding 3% shares in a company, planned to acquire substantial number of shares at four different dates. The percentages of shares to be acquired on each date were given.

The candidates were required to specify the conditions that the individual was required to comply with in respect of each acquisition and the question had to be answered in the light of Section 4 & 5 of the Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Ordinance, 2002.

Majority of the students appeared well prepared as this was also a frequently tested topic. However, despite the fact that it was clearly mentioned in the question that conditions to be complied with under Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Ordinance, 2002 had to be specified, about 25% of the students mentioned the provisions of Sections 222 and 224 of the Companies Ordinance, 1984.

Some students did not give their answers in proper chronological order. As a result their answers were somewhat haphazard and they also missed out some important points. A common mistake was that on purchase of shares on January 31, 2015 no disclosure was required but the students mentioned various types of conditions to be complied with. Few students correctly mentioned that no disclosure was required but did not justify their answer.

Question 5

This question was also based on a practical situation and had to be answered in the light of Companies (Appointment of Legal Advisers), Act, 1974. Details of clients of a legal firm was provided in the question and the students were required to ascertain whether the firm can be appointed as the legal advisor of a group consisting of a parent company, two subsidiaries and an associated company.

Majority of the students were able to identify the primary condition that the number of companies of which a registered firm can be appointed as the legal advisor, is the product of three and the total number of partners of the firm, though some students replaced the word 'firm' with the word 'companies'. However, many students did not know the exact criteria which needed to be considered in determining the total number of companies. Moreover, many students were of the view that the whole group would be considered as one company in determining the specified limit.

Question 6

This was a direct question from NBFC (Establishment and Regulations) Rules, 2003 requiring explanation of the terms (a) Asset Management Services (b) Collective Investment Scheme, and (c) Connected Person. Only about half the students seemed to know the right answers. While explaining the term 'Connected Person', many candidates explained the terms associated companies and associated person as given in Companies Ordinance, 1984.

Question 7

This question was based on Regulation 25(9) of the Non-Banking Finance Companies and Notified Entities Regulations, 2008 related to the classification and provisioning for non-performing assets. The students were required to discuss the matters that should be considered in determining the realizable value of the various categories of assets while making a provision against non-performing loans.

A below-average response was seen. Most of the students could only mention whether the value of the assets mentioned in the question should be considered while making provision against non-performing loans or not. They failed to mention other important factors like salability of assets, their forced sales values, requirements for carrying out valuations and requirements relating to such valuations etc. Some students also mentioned percentage of provisioning which was not required.

Question 8

According to the question, Kamran held directorship in two companies APL and SGL. APL awarded a contract to SGL and Kamran voted in favour of the board resolution. An objection had been raised in this regard and the candidates were required to discuss whether Kamran had unlawfully influenced the transaction and the consequences he may face under the Companies Ordinance, 1984.

Most of the students gave appropriate comments as regards breach of the provisions of the Companies Ordinance, 1984 related to participation and voting on the contract; however quite a few deficiencies were noted in answers related to consequences of the breach. An important point that Kamran may be declared ineligible on account of lacking fiduciary behavior was missed by many candidates.

Question 9

Both parts (a) and (b) of the question were from Section 108(2) of the Companies Ordinance, 1984 related to variation of shareholder's rights.

According to the given situation, a company had approved certain variations in the rights of its Class B shareholders. Some shareholders were aggrieved by this decision and the candidates were required to advise the remedy available to them and how the decision may be reversed.

Generally the performance was good. The most common mistake was that it was advised that an application has to be moved to the Commission/Registrar whereas such application has to be filed with the court. A significant number of candidates were also unable to specify the conditions under which the court may reverse the decision.

Question 10

This question related to a foreign company having a place of business in Pakistan. The question had three parts as discussed below:

Question 10(a)

The requirement related to the maintenance of register of Pakistani members, directors and officers. Although the obvious thing that such register should be kept at principal place of business was mostly mentioned but mention about inspection and supply of copies of such register was missing.

Question 10(b)

The requirements relating to disclosure of company's name and country of incorporation on the company's documents and place of business were to be discussed. Most of the students performed well as the answer was somewhat obvious.

Question 10(c)

In this part the students were required to explain the conditions related to preparation of balance sheet and profit and loss account with regard to the company's operations in Pakistan. Most of the students were unaware of the requirements and could only specify the provision regarding submission of accounts while the question required them to describe the obligations regarding preparation of balance sheet and profit and loss account.

Question 11

This question was from Competition Act, 2010. According to the situation given in the question, a company having 23% market share planned to merge with another company and to launch a vigorous advertisement campaign in which the superior quality of its cement as compared to its competitors was to be highlighted. The students were required to describe the steps and matters to be considered by the company under the provisions of the Competition Act, 2010.

The performance remained below average. It appeared that the students had not studied the Competition Act, 2010 thoroughly. They seemed to possess adequate knowledge of the concept of deceptive marketing practices and therefore the performance in the area related to advertisement campaign was good but most of them failed to offer proper answers in respect of the planned merger. Some of them were totally ignorant and omitted this part altogether. Some students preferred to describe the provisions of Companies Ordinance, 1984 regarding merger of two companies which was a sheer waste of time. Most of those who seemed to have gone through the related provisions also made various mistakes and omitted some important points.

A common mistake was that a pre-merger application is required to be made to the Competition Commission, whereas, large number of students mentioned about filing of such application either with the “SECP” or the “Court”. Many students mentioned about filing of application after the merger.

Question 12

According to the situation given in this question, a shareholder had acquired 14% shareholding in a company and wanted to be elected as a director but his request was refused by the company on the grounds that he cannot be elected on the board till the end of the term of the present board of directors. The students were required to advise the shareholder in accordance with the provisions of Companies Ordinance, 1984.

The question was well attempted by majority of the candidates and many of them also secured full marks. The mistakes noted in some of the scripts were as follows:

- Procedure for election of directors under normal situation was mentioned which was totally different from the requirements of the question.
- Instead of mentioning about the approval of SECP, approval of Court was mentioned.

Question 13

In part (a) of the question the students were required to state the situations under which a company may be wound up voluntarily as has been mentioned under Section 358(a) and (b) of the Companies Ordinance, 1984. The candidates generally performed well but some students, without understanding the question, specified provisions of section 362 (1) related to declaration of solvency.

In sub part (i) of Part (b) the students were required to explain the steps to be taken by the liquidator at the end of first year from the commencement of winding up and sub part (ii) required the responsibilities of the liquidator if he decides to resign prior to completion of the liquidation process.

Sub part (i) was to be answered in the light of provisions of Section 369 and 387 of the Companies Ordinance, 1984. Very few students were able to give a complete answer as in most cases comprehensive knowledge was lacking. Some students gave irrelevant information like procedure for creditors winding up / court winding up etc.

Sub part (ii) was based on Section 364 (5) and (7) of the Ordinance and was answered in a much better way.

(THE END)



The Institute of Chartered Accountants of Pakistan

Corporate Laws

Final Examination
Summer 2014
Module E

4 June 2014
100 marks - 3 hours
Additional reading time - 15 minutes

Q.1 ABC Limited and its subsidiary are unlisted companies. ABC Limited holds 60% shares in the subsidiary. The subsidiary is involved in the research and development of a new product for which it needs funded and non-funded financing facilities. The directors of ABC Limited are considering to facilitate the subsidiary in this regard through one of the following options:

Option I Making an equity investment amounting to Rs. 20 million; or

Option II Facilitating the subsidiary in the following manner:

- Granting loan of Rs. 15 million which would be repayable in ten equal instalments over a period of six years. The mark-up shall be chargeable at KIBOR plus 1 % per annum payable on quarterly basis. A grace period of one year would be allowed during which only 50% mark-up would be charged.
- Furnishing a guarantee of Rs 5 million to the subsidiary's bankers against LC facility.

ABC Limited is availing financing facilities from conventional banks.

In the light of provisions of Companies (Investment in Associated Companies or Associated Undertakings) Regulations, 2012 advise the directors of ABC Limited regarding the conditions to be complied with under each of the above options. (11)

Q.2 A group of shareholders of RAK Limited holding 13% of the voting power are of the view that the company is being mismanaged by the directors. Consequently, the company is incurring losses and that the company had never declared any dividend even when the profits were available in the past years. Majority of the directors have been nominated by its parent company which holds 82% of the voting power.

Being a Corporate Consultant of the group of shareholders, you are required to advise on the following in light of the provisions of the Companies Ordinance, 1984:

- (a) The authority with whom the shareholders may lodge their complaint and the action which that authority may take in respect thereof. (04)
- (b) The possible consequences for the management of RAK Limited in the above situation. (04)

Q.3 A shareholder who holds 500 shares of a listed company intends to propose XY & Company, Chartered Accountants as the new auditors in place of present auditors of the company.

In light of the provisions of the Companies Ordinance, 1984 explain:

- (a) Whether the shareholder can propose a change of the auditors of the company and the procedure that is required to be followed in this regard. (03)
- (b) The responsibility of the company if a change of auditors is proposed. (07)

Q.4 Name the authorities who can file a petition for winding up of a company. Narrate the conditions required to be complied with in this regard. **(10)**

Q.5 Suleman is the Senior Manager Marketing of Premier Textile Limited (PTL), a listed company. He purchased 100,000 shares of PTL 30 days prior to the close of financial year and sold them 15 days after the declaration of annual results at a profit of Rs. 1.2 million.

An increase of 15% in the share price of PTL has been noted within 7 days of the announcement of the annual results.

In light of the provisions of the Securities and Exchange Ordinance, 1969:

- (a) Explain how you would evaluate whether the above transaction falls in the ambit of insider trading. **(06)**
- (b) State the possible consequences if Suleman is found involved in insider trading. **(03)**

Q.6 In light of the provisions of the Companies Ordinance, 1984 advise the directors of KM Limited on the following matters:

- (a) Faisal, one of the directors, wishes to assign his office to Saeed as Faisal is going abroad for personal work. **(04)**
- (b) The CEO has refused the personal loan application of Y, who is also employed as a technical director, on the premise that grant of any loan to directors is prohibited under the law. **(04)**

Q.7 The alteration in the memorandum of association shall not take effect until and except in so far as it is confirmed by the Commission on petition. The petition shall be submitted and signed by a responsible officer not later than sixty days from the date on which the special resolution was passed.

In light of the provisions of the Companies (General provisions and forms) Rules, 1985 identify:

- (a) The persons who are covered under the definition of responsible officer. **(03)**
- (b) Documents to be attached with the petition. **(05)**

Q.8 Narrate the provisions contained in the Companies Ordinance, 1984 and the Listing Regulations in respect of each of the following:

- (a) Announcement of dividend. **(03)**
- (b) Payment of dividend including issuance of dividend warrants. **(06)**

Q.9 (a) Farid is a shareholder of a listed company. He intends to contest the upcoming election of the directors. Before filing his application with the company he has requested for inspection of the register of directors' shareholdings.

In light of the provisions of the Companies Ordinance, 1984 explain his right to inspect the register. **(04)**

- (b) State the provisions contained in the Companies Ordinance, 1984 under which a member may give notice of a resolution and what steps would the member be required to take in this regard. **(04)**

Q.10 A company is planning to register as a non-banking finance company. It has provided you the following information:

- (i) It wants to carry out the following businesses:
 - investment advisory business
 - investment finance services
 - asset management services
 - housing finance services.
- (ii) Its paid up capital is Rs.80 million out of which Rs. 16 million is held by promoters of the company.
- (iii) The promoters have pledged their shares with a scheduled bank to obtain a loan for its associated company.
- (iv) A change in the memorandum of association is due to be made within the next six months.
- (v) The company is a member of AL-Shaban Group of Companies.
- (vi) Mr. X is to be appointed as chief executive who was employed as a CFO in another NBFC owned by the group in 2008 and is presently a director in that NBFC.
- (vii) It is expected that the company would start its business from the next financial year.

In light of the provisions of the NBFC Rules, 2003 evaluate whether the company may apply to the Commission for granting of licence to carry on the NBFC business. **(12)**

Q.11 A listed company is considering the issue of 100% right shares at a premium of 20%.

Advise the directors of the company about the conditions required to be complied with, for the issuance of right shares under the Companies (Issue of Capital) Rules, 1996. **(07)**

(THE END)

CORPORATE LAWS

Suggested Answers

Final Examination – Summer 2014

Ans.1 ABC Limited will have to comply with the following conditions while making any investments in the subsidiary.

General conditions to be complied with under each options

- (i) Pass a special resolution in the general meeting of the company.
- (ii) The investment shall be made within a period of twelve months from the date of passing of special resolution.
- (iii) The investment in the subsidiary(associated company) cannot be made if:
 - any previous investment to the subsidiary has been written off; or
 - The subsidiary is already indebted to ABC Limited and has failed to repay the loan or advance including mark up thereon or has failed to comply with any of the terms and conditions of the agreement in this regard, unless such loan has been rescheduled under approval of special resolution of the members of ABC Limited.

Conditions to be complied with in the case of option I (equity investment)

- (i) Since subsidiary is an unlisted company, the fair value of its shares shall be determined based on generally accepted valuation techniques and latest audited financial statements of the subsidiary by;
 - A chartered accountant firm, having a satisfactory rating under the Quality Control Review Program of Institute of Chartered Accountants of Pakistan; or
 - A Non-banking finance company licensed by the Commission to carry out the business of investment finance services which has been assigned a minimum rating of “A+” or equivalent by a credit rating company registered with the Commission, and has been in operation for at least five years.
- (ii) In case the price to be paid is different from the fair value as determined above, an explanation along with justification, reasons and basis of determination of price shall be disclosed to the members.
- (iii) Share deposit money shall be transferred for equity investment only after announcement of the offer for issue of shares by its associated company and in case shares are not issued within ninety days of the transfer of share deposit money such share deposit money shall be treated as loan and interest/mark up thereon shall be charged from the date of transfer of funds.

Conditions to be complied with in the case of Option II (funded and non-funded facilities)

- (i) The company shall not invest in its associated company by way of loans or advances except in accordance with an agreement in writing and in accordance with the approval of the members in the general meeting;
- (ii) ABC Limited shall charge and recover interest in line with the standard terms applied by the commercial banks on similar facilities. Mark-up for the grace period is being charged at 50% less than the normal which seems not in accordance with the standard terms normally applied. It should be re-considered by ABC Limited.
- (iii) ABC Limited shall not extend to its subsidiary any loan for a period beyond one year provided that members may approve renewal of such loan.
- (iv) In case of unfunded facilities (i.e. for a guarantee), rate of return shall be determined based on the rate of commission charged by commercial banks on similar unfunded facilities.

CORPORATE LAWS
Suggested Answers
Final Examination – Summer 2014

- Ans.2** (a) The group of shareholders of RAK Limited can file an appeal with the Securities and Exchange Commission of Pakistan (SECP) as they hold more than 10% voting power in the company.

Subsequently, the SECP may appoint an inspector to investigate the affairs of the company.

On the report of the investigator, if SECP finds it appropriate, it may refer the matter to the Court.

- (b) When the case would be referred to the court, the court may:
- (i) remove from office any director including the chief executive or other officer of the company; or
 - (ii) direct that the directors of the company should carry out such changes in the management or in the accounting policies of the company as may be specified in the order; or
 - (iii) direct the company to call a meeting of its members to consider such matters as may be specified in the order and to take appropriate remedial actions; or
 - (iv) direct that any existing contract which is to the detriment of the company or its members or is intended to or does benefit any officer or director shall be annulled or modified to the extent specified in the order:

- Ans.3** (a) Any shareholder may recommend a change in the auditors, irrespective of his shareholding in the company. He should give a notice to the company for a resolution at its annual general meeting appointing XY & Company, Chartered Accountant as new auditor of the company other than a retiring auditor. The notice should be served to the company not less than fourteen days before the date of the annual general meeting.

- (b) On receipt of notice, the company shall forthwith send a copy of such notice to the retiring auditor and shall also give notice thereof to its members not less than seven days before the date fixed for the annual general meeting.

The company shall also publish the 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 Province in which the stock exchange on which the company is listed is situate.

The company shall, on the receipt of a representation in writing made by the retiring auditor and on his requests for its communication to the members of the company unless the representation is received by it too late for it to do so,-

- state the fact of the representation having been made, in any notice of the resolution given to members of the company; and
- send a copy of the representation to every member of the company to whom notice of the meeting is sent whether before or after receipt of the representation by the company;

If a copy of the representation is not sent as aforesaid because it was received too late or because of the company default, the retiring auditor may, without prejudice to his right to be heard in person, require that the representation shall be read out at the meeting:

CORPORATE LAWS
Suggested Answers
Final Examination – Summer 2014

Ans.4 Following authorities can file a petition for the winding up of a company subject to the following conditions:

- (i) A contributory may file a petition for the winding up when:
 - the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven; or
 - the shares in respect of which he is a contributory or some of them either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have or devolved on him through the death of a former shareholder.
- (ii) The registrar may file a petition for the winding up with a prior permission of the Commission.
- (iii) The Commission may file a winding up petition when an investigation into the affairs of the company has revealed that:
 - it was formed for any fraudulent or unlawful purpose, or
 - it is carrying on a business not authorised by its memorandum, or
 - its business is being conducted in a manner oppressive to any of its members or persons concerned in the formation of the company, or
 - its management has been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members.
- (iv) A Creditor including contingent or prospective creditor may file a petition for winding up:
 - when security for costs has been given as the Court thinks reasonable.
 - when prima facie case for winding up has been established to the satisfaction of the Court.
- (v) A company may file a petition for winding up.

Ans.5 (a) According to the Securities and Exchange Ordinance, 1969:

“**Insider**” includes any person obtaining inside information as part of his employment or when discharging his usual duties in an official capacity or in any other way relating to work performed under contract of employment or otherwise”.
and

“**Inside information**” means information which has not been made public relating, directly or indirectly, to listed securities and which if it were made public, would be likely to have an effect on the prices of listed securities”.

From the above definition, it is established that Suleman is an insider person as he is in employment of the PTL and possess inside information as he is a senior manager marketing and full knowledge of sales of PTL.

Whether the transaction falls in the ambit of insider trading or not, it depends upon:

- Whether the sudden increase in prices of shares was on account of any information that had not been disclosed to the public prior to the declaration of results.
- Whether Mr. Suleman possessed the above information when he purchased the shares.

CORPORATE LAWS
Suggested Answers
Final Examination – Summer 2014

- (b) If Mr. Suleman is found in contravention of the provisions of the law then he is liable to pay a fine which may extend to Rs. 10 million or three times the amount of gain made or loss avoided whichever amount is higher.

In addition to the fine imposed as above, the Commission may:

- (i) direct Suleman to surrender to the Commission, an amount equivalent to the gain made by them.
- (ii) direct Suleman to pay any other person who has suffered a loss, an amount equivalent to the loss so suffered by such person.
- (iii) Direct PTL to remove Suleman from his office/services.

Ans.6 (a) Faisal can assign his office to Saeed if:

- (i) there is a provision in the articles of KM Limited allowing such assignment or there is an agreement between any person and the company for empowering a director of KML to assign his office as such to another person.
- (ii) The assignment of office is approved by a special resolution of the company.

The directors have also an option to appoint alternate or substitute director if Mr. Faisal is going abroad for a period not less than three months. However, Saeed shall vacate the office when Faisal returns to Pakistan.

- (b) KML may with the prior permission of the Commission make a loan to the technical director who is in full time employment: for
- (i) the purpose of acquisition or construction of a dwelling house or land therefore;
 - (ii) defraying the cost of any conveyance for personal use or household effects;
 - (iii) defraying any expense on his medical treatment;
 - (iv) the medical treatment of any relative as are ordinarily made or provided by the company to its employees.

Ans.7 (a) "Responsible officer" in relation to a company, means—

- (i) the chief executive of the company;
- (ii) a director of the company;
- (iii) the secretary of the company;
- (iv) any other officer of the company who is declared by the Commission in writing as a responsible officer of the company for the purposes of these rules;
- (v) an administrator who has been appointed under the provisions of the Companies Ordinance, 1984, the administrator of such company; or
- (vi) the liquidator of company which is in process of liquidation

- (b) The following documents immediately preceding the day of the passing of the special resolution and certified by a responsible officer shall be submitted along with the application:

- (i) a copy of the memorandum and the articles;
- (ii) a copy of the special resolution;
- (iii) minutes of the meeting at which the special resolution was adopted;
- (iv) particulars of dissenting shareholders or creditors together with their objections.'

CORPORATE LAWS

Suggested Answers

Final Examination – Summer 2014

- (v) statement in comparative form showing the existing provisions of the memorandum as are proposed to be altered and the provisions as would appear after the proposed alterations have been made, indicating the object clause under which each alteration is considered permissible by the company along with brief reasons explaining how it considers it permissible;
- (vi) pattern of holding of its shares;
- (vii) names and addresses of each of its creditors to whom an amount exceeding Rs. 50,000 is due with the amount mentioned against each along with their consent to the alteration; and
- (viii) names and addresses of the persons likely to be affected along with their consent to the alteration.

Ans.8 Announcement of dividend

- (a)
 - (i) The dividend shall be deemed to have been declared on the date of general meeting in case of a dividend declared or approved in the general meeting and on the date of the commencement of closing of share transfer, for the purpose of entitlement of dividend in the case of interim dividend and where register of members is not closed for such purpose, on the date on which such dividend is approved by the directors.
 - (ii) No dividend shall exceed the amount recommended by the directors.
 - (iii) Every listed company shall advise and keep advised to the Exchange all decisions of its Board of directors relating to dividend in the manner notified by the Exchange from time to time.
 - (iv) The above said information is required to be communicated to the Exchange prior to its release to any other person or print/electronic media.
 - (v) Intimation of dividend shall be sent to the Exchange not later than 14 days prior to the commencement of the book closure.
- (b)
 - (i) When a dividend has been declared, it shall not be lawful for the directors or the company to with-hold or defer its payment.
 - (ii) The chief executive of the company shall be responsible to make the payment in the manner provided in the Companies Ordinance, 1984 within such time as the Commission may, from time to time, by notification in the official Gazette, specify.
 - (iii) where a dividend has been declared but is not paid within the period specified as above, the chief executive of the company shall be punishable.
 - (iv) dispatch dividend warrants to the shareholders concerned within 30 days
 - In case of interim dividend, from the date of commencement of closing of share transfer register for purpose of determination of entitlement of dividend.
 - In case of final dividend, from the date of General Meeting in which the dividend has been approved;
 - (v) intimate the Exchange immediately as soon as all the dividend warrants are posted to the shareholders;
 - (vi) dispatch interim and final dividend warrants to the shareholders by registered post unless those entitled to receive the dividend require otherwise in writing.
 - (vii) All dividend warrants, in addition to the place of the Registered Office of the issuing companies, shall be encashable at Karachi, Hyderabad, Sukkur, Quetta, Multan, Lahore, Faisalabad, Islamabad, Rawalpindi and Peshawar* for a period of three months from the date of issue.

CORPORATE LAWS
Suggested Answers
Final Examination – Summer 2014

Ans.9 (a) Subject to restrictions imposed by company's articles or in the general meeting, Farid has a right to inspect the register of director's shareholding during the:

- period beginning fourteen days before the date of the annual general meeting of the company and ending three day after the date of its conclusion. The register shall remain open for not less than 2 business hours during each day.
- annual general meeting of the company.

(b) The members having not less than ten percent voting power in the company may give notice of a resolution and such resolution together with the supporting statement, if any, which they propose to be considered at the meeting, shall be forwarded so as to reach the company-

- (i) In the case of a meeting requisitioned by the members, together with the requisition for the meeting;
- (ii) In any other case, at least fifteen days before the meeting;

The company shall forthwith circulate such resolution to all the members.

Ans.10 (a) In the light of the provisions of the NBFC Rules, 2003 ,the company has to consider the following factors before applying to the Commission for grant of licence of a business:

- (i) The company may carry on stated businesses in the following manner:
 - Any of the business given in the question.
 - Investment advisory services and asset management services together; or
 - Investment finance services and housing finance services together.
- (ii)
 - The equity of the company should be equal to or in excess of the minimum equity as may be specified by the Commission.
 - At least twenty five percent of the paid up share capital should be held by the promoters whereas at present only 20% is held by the promoters of the company.
- (iii)
 - The directors would have to get release their shares from the schedule bank and shall have to deposit their shares with Central Depository Company of Pakistan Limited in an account marked as "Blocked" and such shares shall not be sold or transferred without prior approval of the Commission.
 - The directors and majority shareholders of the company shall undertake that they would not enter into any agreement for sale or transfer of their shares in any manner without prior approval of the Commission.
- (iv) The company should get changes in the memorandum before applying for the license as in order to get a licence, the company has to give an undertaking that no change in the Memorandum of Association, other than increase in the authorized capital, would be made without prior approval of the Commission.
- (v) Any company in the Al-Shaban group of companies shall not already hold a licence for the same form of business.
- (vi) The company can appoint X as chief executive of the company with the prior permission of the Commission, however, he has to fulfill the following conditions.
 - Gain one more year experience as the minimum experience requirement is seven to ten years whereas he has an experience of six years.
 - Resign from the directorship of another NBFC where he is a director

CORPORATE LAWS

Suggested Answers

Final Examination – Summer 2014

- (vii) The company has a plan to commence business from the start of the next financial year but it must be noted that the licence would be valid for a period of one year from the date of its issuance and if it fails, the licence shall be deemed to be cancelled or otherwise as specified by the commission by notification in the official gazette.

Ans.11 A listed company may issue rights shares subject to following conditions,

- (i) The company shall not make a right issue within one year of the first issue of capital to the public or further issue of capital through right issue.
- (ii) the company, while announcing right issue, shall clearly state the purpose of the right issue, benefits to the company, use of funds and financial projections for three years. The financial plan and projections shall be signed by all the directors who were present in the meeting in which the right issue was approved.
- (iii) the decision of the company to issue right shares shall be communicated to the Authority and the respective stock exchange on the day of the decision.
- (iv) the company may charge premium on right shares up to the free reserves per share as certified by the company's auditors and the certificate of the auditors shall be furnished to the Authority and the respective stock exchange along with intimation of the proposed right issue.

Provided that where a company proposes to charge premium on right issue above the free reserves per share it shall be required to fulfill the following requirements, namely:-

- At least forty percent of all the shareholders undertake to subscribe their portion of right issue; and
 - The remaining right issue shall be fully underwritten and the underwriters, not being associated companies, shall include at least two financial institutions including commercial banks and investment banks and the underwriters shall give full justification of the amount of premium in their independent due diligence reports.
- (v) right issue of a loss making company or a company whose market share price during the preceding six months has remained below par value shall be fully and firmly underwritten;
 - (vi) book closure shall be made within forty-five days of the announcement of the right issue and the payment and renunciation date once announced for the letter of right shall not be extended except with the permission of the respective stock exchange under special circumstances; and
 - (vii) if the announcement of bonus and right issue is made simultaneously, resolution of the board of directors shall specify whether the bonus shares covered by the announcement qualify for right entitlement.

(THE END)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN

EXAMINERS' COMMENTS

SUBJECT Corporate Laws	SESSION Final Examination Summer 2014
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General:

The performance in this attempt was much below the performance witnessed in the last two attempts. One of the major reasons for poor performance seemed to be selective studies because generally the students could not do well in questions based on those areas which are less frequently tested such as questions # 1 and 5. Moreover, many students did well in some of the questions but relied on guesswork in the other questions.

Question-wise comments are as under:

Question 1

This question was based on Regulations 6, 7 and 8 of (Investment in Associated Companies or Associated Undertakings) Regulations 2012. The question required candidates to advise the directors of a parent company regarding the conditions to be complied with while investing in a subsidiary by way of (i) equity investment (ii) providing funded and non-funded facilities. The performance was quite poor as most of the candidates did not know the exact requirements. Since it is common knowledge that in such situations a special resolution is required, most students wrote detailed answers highlighting each and every aspect of a special resolution, stressing on the requirement to give 21 days notice and the information that is to be provided along with the notice. They knew very little about the other conditions that are required to be complied with in such situations.

Question 2

This question was based on Section 271 of the Companies Ordinance 1984 and required the candidates to name the authority to which complaint regarding mismanagement in a company may be lodged and what action that authority might take and the possible consequences for such a company. Generally the question was well attempted. The commonly observed errors were as follows:

- (i) A number of students did not know that on the report of the investigator the Commission may refer the matter to the court. Rather many candidates mixed up the functions of SECP and Court.
- (ii) Many candidates incorrectly mentioned that the investigator appointed by the Commission shall have the authority to appoint administrators.

Question 3

This question pertained to the change in auditors, the procedure to be followed by a shareholder who wants a change in the auditor and the company's responsibility in this regard.

This was a favourite question of the students and most of them performed well. Some of the errors that were observed were as follows:

- The proposal was to be sent at least 14 days before the AGM; however, many students mentioned 21 days, 15 days etc.
- Reference to Audit Committee/Board was not required as the question was about the change of auditors in the AGM.
- Some of the students were of the opinion that change can only be proposed by shareholders having a specific percentage of shareholding.
- Responsibility to send notice to the retiring auditor was not mentioned by most of the students.

Question 4

This was a straightforward question requiring candidates to name the authorities who can file a petition for winding up of a company and also to narrate conditions required to be complied with in this regard as required under Section 309 of the Companies Ordinance 1984. Majority of the candidates attempted it well but only a few could secure full marks as many important conditions were missed. A common mistake was that many candidates did not know that a contingent or prospective creditor may also file such a petition.

Question 5

The question related to Regulations 15A, 15C and 15E of the Securities and Exchange Ordinance, 1969. This question was hardly answered well by any of the students, which in our opinion was due to selective study.

Question 5(a)

In this part the students were required to evaluate whether the situation narrated in the question falls within the ambit of insider trading. However, instead of evaluating the situation most of the students explained the meaning of insider trading.

Question 5(b)

In this part also most of the students had very little idea of the relevant provisions and tried to guess the answers with little success.

Question 6(a)

This question was based on Section 192 of the Companies Ordinance, 1984 and pertained to assignment of office by a director. The performance remained average. The most common mistake was that students mixed-up assignment of office by a director with appointment of an alternate director or substitute director.

Question 6(b)

This question based on Section 195 of the Companies Ordinance 1984 relating to loan to director etc. was one of the most well attempted question and a large number of students scored full marks also. Some students wasted their time by giving additional irrelevant details such as the persons to whom loan cannot be given. The most common mistake was that many students did not state that prior permission of SECP is also required.

Question 7

This was a straight question requiring the candidates to identify the persons (responsible officers) who may file a petition for alteration of the memorandum of association and the documents which are to be provided to the Commission in this regard.

It was an easy question in the sense that passing marks were easily obtained even by those who seemed to rely on guesswork. However, only few could obtain high marks as most students missed the following:

- “Responsible officer” also include an administrator, a liquidator and any other officer of the company declared by the Commission for such purposes.
- Documents to be provided to the Commission also include particulars of dissenting shareholders, pattern of holding and names and addresses of persons likely to be affected along with their consent for alteration.

Question 8

This was again a straight question where the candidates were required to list the relevant provisions of Companies Ordinance, 1984 and Listing Regulations as regards announcement and payment of dividend and issuance of dividend warrants.

Question 8(a)

Most of the students secured low marks in this part of the question as they narrated the provisions regarding payment of dividend instead of announcement of dividend.

Question 8(b)

This part was well attempted. Those who failed to score high marks generally made the following mistakes:

- Failed to mention that the Chief Executive is responsible for payment of dividend.
- It was stated that dividend is to be paid within 45 days whereas the requirement is that dividend warrant is to be issued within 30 days. Further, it was not mentioned as from when the period of 30 days shall be counted i.e. from the date of announcement or book closures or AGM.

Question 9(a)

According to the given situation, a shareholder who intended to contest the election of directors, wanted to inspect the register of director's shareholdings. The requirement was to explain his right of inspection. Majority of the candidates performed well but somehow quite a few candidates got mixed up and mentioned the requirements to contest the elections of directors.

Question 9(b)

The requirement was to mention the provisions of Companies Ordinance, 1984 whereby a member may give notice of a resolution and the procedure which such member has to follow in this regard. The question was based on Section 164 of the Companies Ordinance 1984 and generally the candidates performed well. However, there were some students who instead of giving the steps for filing a notice of a resolution to be considered in the shareholders meeting, gave the procedures for calling a general meeting.

Question 10

This question was a small case study whereby certain information was provided about a company which was planning to register as a non-banking finance company. Students were required to evaluate the information in the light of relevant provisions and assess whether the company could apply for a license to operate as an NBFC.

In a large number of cases students lost marks because they simply reproduced the legal requirements but did not give any opinion with reference to the given information. However, generally the performance was good. The major issues in the answers were as follows:

- Very few candidates could identify that the company cannot enter into all the businesses and explain the choices that were available to the company.
- The company was required to start business within one year from date of issuance of license; however, some students mentioned the period as 6 months.

Question 11

In this question the candidates were required to quote the conditions required to be complied with for issuance of right shares at a premium of 20% under Rule 5 of the Companies (Issue of Capital) Rules 1996. Generally the performance was good. However, some students restricted themselves to providing the requirement relating to issuance of right shares at a premium. All other provisions were ignored. Interestingly, a mistake in the Ordinance where 'quality for right entitlement' has been written instead of 'qualify for right entitlement' was repeated by many candidates which indicated rote learning and lack of conceptual understanding.

(THE END)



Corporate Laws

- Q.1 Rex Global Corporation (RGC), a foreign company, has branch offices in Islamabad and Lahore. In November 2014, the entire shareholdings of RGC were acquired by Markers Global Corporation (MGC). MGC has decided to appoint Qamar as the new Principal Officer/authorised representative for the Islamabad office and close the Lahore office within few weeks.

In the light of the provisions of the Companies Ordinance, 1984 you are required to list the requirements to be complied with by Rex Global Corporation. (08)

- Q.2 In May 2014, Metro Limited (ML) acquired majority shareholding in Metro Securities (Private) Limited (MSPL). ML and MSPL close their books of account on 31 December and 30 June respectively. The financial statements of ML for the year ending 31 December 2014 will be presented to the shareholders in upcoming annual general meeting of the company.

State the responsibilities of ML as a holding company and MSPL as its subsidiary, under the provisions of the Companies Ordinance, 1984 in respect of preparation of consolidated financial statements. (09)

- Q.3 Bubble Textiles Limited, a listed company, is examining a proposal to issue right shares to finance the acquisition of a plant. Since the company has incurred losses during the past two years, the directors are apprehensive about the response from the existing shareholders. They are therefore considering the following options for issuance of shares:

- To ABC Limited against supply of plant and machinery. The plant would be supplied within three months after signing the agreement.
- To Faraz, an existing shareholder, who has expressed his willingness to purchase shares amounting to Rs. 90 million which is equivalent to 90% of the value of the plant.
- To employees of the company.

In the light of provisions of the Companies Ordinance, 1984 and Companies (Issue of Capital) Rules, 1996, explain the matters that the company would be required to consider in the above situation and briefly describe the conditions that are required to be complied with under each of the above options. (10)

- Q.4 (a) Draft a special resolution, regarding voluntary winding up of a listed company for approval in the general meeting of the company. *You may assume any necessary information.* (03)

- (b) Explain the important characteristics of a fixed charge and floating charge and their registration requirements. (05)

Q.5 Carrot Limited (CL) was formed for a period of three years. The period of three years is due to complete on 31 December 2014. However, the project which the company had undertaken is still in progress.

You are required to discuss the following:

- (a) Legal status of CL on completion of three years while work on the project is not yet complete. (07)
- (b) Contents of declaration of solvency and its filing requirements for CL. (03)

Q.6 (a) Explain the meaning of the term Fit and Proper Criteria under the provisions contained in the NBFC and Notified Entities Regulations, 2008. (06)

(b) Saleem has expressed his intention to be appointed as director of an NBFC. Identify the conditions which may render him incompetent for such an appointment due to conflict of interest under the provisions of NBFC and Notified Entities Regulations, 2008. (06)

(c) Describe the provisions contained in the NBFC Rules, 2003 in respect of the Appointment of Chief Operating Officer and Internal Auditor. (03)

Q.7 The directors of Abacus Limited (AL) intend to issue ordinary shares amounting to Rs. 200 million to a local investor. However, since the directors would prefer not to dilute their shareholdings, they are considering issuance of shares with restricted rights.

Advise the directors as regards the following, based on the provisions contained in the Companies Share Capital (Variation in Rights and Privileges) Rules, 2000:

- (a) The kind and classes of shares that AL can issue. (02)
- (b) The rights and privileges that may be attached with different classes of shares. (05)

Q.8 Faizan Associates is an association of persons and is engaged in activities involving welfare of the general public. Faizan Associates intends to register itself as a limited company and would prefer that the word "Limited" is not included in its name.

In view of the provisions of the Companies Ordinance, 1984 and the related rules there under, you are required to identify the conditions that Faizan Associates would need to comply with in order to get the required permission from the Securities and Exchange Commission of Pakistan. (08)

Q.9 (a) Chief Executive of Fast Food Limited (FFL) has received a notice from Karachi Stock Exchange (KSE) stating that the name of the company has been placed on defaulter segment due to non-payment of listing fees. It was further stated in the notice that in the event the default is not rectified action would be taken against the company in accordance with the listing regulations of the KSE.

The Chief Executive of FFL has sought your advice regarding validity of the action taken by KSE and the possible action(s) that KSE can take if the default is not rectified. (10)

(b) The Karachi Stock Exchange has recently outperformed several regional stock exchanges and yielded consistently high rates of returns on the investments by the domestic and international investors. John Secada, a US citizen, has shown interest in share trading activities in Pakistan.

In the context of the provisions of Foreign Exchange Regulations, advise John Secada the procedure to be followed for purchase/sale of shares of listed companies by foreign investors in Pakistan. (07)

- Q.10 Mr. Wahid has acquired 3 million ordinary shares of Wheel Limited, a listed company, whose paid up share capital consists of 20 million ordinary shares of Rs. 10 each. The election of directors of the company has recently been concluded. Mr. Wahid, being confident of holding a sufficient number of shares to be elected as a director, has requested the management to arrange a fresh election.

Based on the provisions contained in the Companies Ordinance, 1984 explain whether and under what conditions a fresh election of the directors may be held. **(08)**

(THE END)

Corporate Laws
Suggested Answers
Final Examination – Winter 2014

Ans.1 Rex Global Corporation shall, within thirty days of the taking over deliver to the registrar for registration a return containing the prescribed particulars of:

- (i) alteration in the charter, statute or memorandum and articles of Rex Global or any such instrument due to takeover of the company.
- (ii) changes in the name of the directors, chief executive or secretaries along with their particulars.
- (iii) appointment of Mr. Qamar as a principal officer along with his consent.
- (iv) change in the name, address and other particulars of the person authorised to accept service of process, notices and other documents on behalf of the company along with his consent to do so.

As the company intends to close Lahore office, it shall thirty days before the close of Lahore office

- (i) give a notice of such intention to the registrar;
- (ii) publish a notice of such intention at least in two daily newspapers circulating in the province of punjab.

Ans.2 Responsibilities of Metro Limited (ML)

- (i) The director of ML shall ensure that, except where in their opinion there are good reasons against it, the financial year of MSPL coincides with the ML's own financial year.
- (ii) ML is required to attach to its financial statements for the year ending 31 December 2014, consolidated financial statements of the group presented as those of a single enterprise.
- (iii) Consolidated financial statements shall comply with the disclosure requirement of the Fourth Schedule of the Companies Ordinance, 1984 and International Accounting Standards
- (iv) The auditor of ML shall also report on consolidated financial statements.
- (v) The consolidated financial statement shall be signed by the same person by whom the individual balance sheet and the profit and loss account of the holding company are required to be signed.
- (vi) The consolidated financial statements shall disclose:
 - any qualifications contained in the auditors' reports on the accounts of MSPL for the financial year ending with or during the financial year of ML.
 - any note or saving contained in such accounts to call attention to a matter which would properly have been referred to in such a qualification, in so far the matter which is the subject of the qualification or note is not covered by ML's own accounts and is material from the point of view of its members.

Responsibilities of Metro Securities (Private) Limited (MSPL)

- (i) As the financial year of MSPL precedes the day on which the ML financial year ends by more than three months, MSPL is required to make an interim closing on the day on which ML's financial year ends i.e. December 31, 2014 and prepare financial statements for consolidation purposes.
- (ii) MSPL would also be required to have these interim financial statements reviewed by its statutory auditors who shall issue a review report thereon.

Corporate Laws
Suggested Answers
Final Examination – Winter 2014

Ans.3 According to the Companies Ordinance, 1984 BTL would require to consider the following matters in the given situation:

- (a) As the directors of BTL have decided to increase the capital, in spite of their apprehension, they have to offer such shares to the members in proportion to the existing shares held by each member and such offer shall be made by notice specifying the number of shares to which the member is entitled and limiting a time, within which the offer, if not accepted, will be deemed to be declined.
- (b) In case, the company intends to raise further capital without issuance of right shares, it will follow the following procedures:
 - The directors shall apply to the Federal Government for their approval to raise its further capital without issue of right shares.
 - A special resolution shall be passed by the members in the general meeting of the company should be accompanied with the application.

Conditions to be complied with in each option, considering by the directors.

- *In the case of issuance of shares to ABC Limited:*
 - (i) Condition mentioned in (b) above
 - (ii) The value of plant and machinery shall be determined by a consulting engineer registered with Pakistan Engineering Council and borne on the panel of at least two financial institutions as a valuer ;
 - (iii) the value of assets taken over shall be reduced by depreciation charged on consistent basis;
 - (iv) the goodwill and other intangible assets shall be excluded from the consideration; and
 - (v) certificate from a practicing Chartered Accountant shall be obtained to the effect that the above mentioned conditions have been complied with.
- *In the case of issuance of shares to Faraz*
Conditions mentioned in (b) above would only be required to comply with.
- *In the case of issuance of shares to employees of the company*
BTL may issue a certain percentage of further issue to its employees under “Employees Stock Option Scheme” to be approved by the Commission.

Ans.4 (a) To consider and pass the following special resolution with or without modification:

Resolved that approval of the members of the Company be and is hereby accorded to recommend winding up of the company, through voluntary winding up, as may be deemed expedient, immediately.

Resolved further that the Chief Executive Officer and Company Secretary be and are hereby authorized to take any/all action (s) as may be required for the execution / implementation of the above resolution on behalf of the Company.

- (b) A **fixed or specific charge** attaches to the specific, clearly identifiable and defined asset of the company as soon as it is created. From then, the company cannot transfer or dispose of such property.

A floating charge does not attach to any specific property of the company until the company commits some act or default (i.e. charge crystallizes). It is free to dispose of the property unencumbered.

A fixed charge takes priority over a floating charge.

All charges, both fixed and floating have to be registered with the Registrar within 21 days of their creation.

If such charge is not registered, the charge created by the company becomes void against any liquidator or other creditor.

Corporate Laws
Suggested Answers
Final Examination – Winter 2014

- Ans.5 (a)** Though CL was formed for a period of three years a winding up would not commence unless a resolution in this regard has been passed. Therefore, it would be necessary for the directors of CL to have a resolution passed in the general meeting of the company.

Under the provisions of the Companies Ordinance, 1984 the company shall from the commencement of winding up cease to carry on its business except so far as may be required for the beneficial winding up thereof.

In view of the above provision of law, CL may continue its activities even after commencement of winding up so far as it is necessary for completing the project.

Moreover, since it is a members' voluntary winding up, the corporate state and the powers of CL shall continue until it is dissolved notwithstanding anything to the contrary in its articles.

However, it would not be advisable to commence winding up before the completion of the project as it may not be possible for the company to sell its assets and pay off its liabilities prior to completion of the project.

Therefore director of CL should extend the period fixed for the duration of the company by making necessary amendments in the article of association of the company.

- (b) Declaration of solvency must contain the following:
- That the company will be able to pay its debts in full within a period not exceeding twelve months from the commencement of the voluntary winding up.
 - A statement of the company's assets and liabilities/profit and loss account and balance sheet at the latest practicable date before the declaration.

A declaration is required to be made within five weeks immediately preceding the date of passing of the resolution for winding up and is delivered to the registrar before the date.

- Ans.6 (a)**
- (i) Fit and proper criteria refer to the conditions which certain key individuals associated with an NBFC are required to comply with.
 - (ii) This Criteria is applicable on the following persons:
 - Promoters and major shareholders of the NBFC;
 - Director of the NBFC;
 - Chief executive of the NBFC;
 - Key executives of the NBFC;
 - (iii) The fitness and propriety of a director shall be assessed by taking into account all the relevant factors including but not limited to the following:
 - Integrity and track record of such person;
 - Financial soundness of such a person;
 - Competence and capability of the person; and
 - Conflict of interest of such person with the business of the NBFC.
 - (iv) The Fit and Proper Criteria is perpetual in nature and an NBFC shall always ensure compliance with the provisions of Fit and Proper Criteria.

Corporate Laws
Suggested Answers
Final Examination – Winter 2014

- (b) Saleem shall not be considered as eligible for appointment as director of an NBFC if he is:
- (i) a director in any other NBFC engaged in a similar business in Pakistan.
 - (ii) a director, chief executive, chief financial officer, chief internal auditor, research analyst or a trader (by whatever name or designation called) in a stock brokerage house or in any company or entity owned and controlled by a member of a stock exchange; and
 - (iii) a member of a stock exchange engaged in the business of brokerage or is a spouse of such member or in control of more than 20% shareholding, directly or indirectly through his close relatives.
- (c) The NBFC rules refer to fit and proper criteria notified by SECP that are applicable on all key executives. The same criteria shall also be applicable on COO.

However, for the appointment of internal auditor, following rules shall be followed.

- Appoint a person having minimum three years experience as internal auditor who is:
 - a chartered accountant; or
 - a cost and management accountant; or
 - a certified internal auditor; or
 - a certified information system auditor; or
 - a member of a recognized foreign accountancy organization; or
 - An individual having master's degree in commerce or business administration with specialization in finance; or
- Appoint a chartered accountancy firm having satisfactory Quality Control review and not being the statutory auditors to whom this function is outsourced.

Ans.7 Under the provisions of Companies' Share Capital (Variation in Rights and Privileges) Rules , 2000

- (a) AL may issue more than one kind of share capital which may have different classes of share under each kind.
- (b) AL may issue the shares to a local investor with the following right and privileges:
 - (i) Different voting rights; voting rights disproportionate to the paid up value of share held; voting rights for specific purposes only; or no voting rights at all;
 - (ii) Different rights for entitlement of dividend, right shares or bonus shares or entitlement to receive the notices and to attend the general meetings; and
 - (iii) Rights and privileges for indefinite period, for a limited specified period or for such periods as may from time to time be determined by the members through special resolution.

Ans.8 Faizan Associates (FA) may get required permission on fulfillment of the following conditions:

- (i) FA shall prove to the satisfaction of the Commission that
 - It is capable of being formed as public limited company.
 - The company will promote commerce, art, science, religion, sports, social services, charity or any other useful objects.
 - It intends to apply its profits or other income for promoting its objects.
 - It prohibits the payment of any dividend to its members.

Corporate Laws
Suggested Answers
Final Examination – Winter 2014

- (ii) Payment of remuneration for services or otherwise to its members, whether holding an office in the company or not, shall be prohibited.
- (iii) No change in the memorandum and the articles shall be made except with the prior approval of the Commission.
- (iv) The limit of liability of its members shall not be less than a reasonable amount having regard to all the circumstances of the case.
- (v) Patronage of any government or authority, express or implied, shall not be claimed unless such government or authority has signified its consent thereto in writing.
- (vi) The Commission may also direct to include the above conditions in the memorandum of association of the company.

- Ans.9** (a) (i) Under the listing regulations of Karachi Stock Exchange, if a company does not pay listing fees for a period of two years, the Exchange can place the company on defaulters segment. However, a period of ninety days is given to the company to rectify the default before taking any further action.

Hence the action taken by the Exchange is valid if the time period of two years has lapsed.

- (ii) If FFL fails to pay listing fees within the period of ninety days, the Exchange shall immediately suspend trading in shares of the company and simultaneously issue compulsory buy-back directions to the majority shareholders having control of FFL to provide all the shareholders an option for selling their shares to the majority shareholders and the shares tendered by the shareholders shall be purchased by the majority shareholders

The price for such buy-back of shares shall be fixed by the Exchange in accordance with listing regulations.

Upon completion of the compulsory buy-back of shares by majority shareholder or failure of the company to comply with the compulsory buy-back directions within such reasonable time as may be specified by the Exchange in its notice, but not exceeding 90 days in total from the date of such directions, the name of FFL shall be delisted through a notice in writing by the Exchange under intimation to the Commission.

In case FFL is also listed on another stock exchange in Pakistan but not in similar default at such other stock exchange, the Exchange shall not issue any directions for compulsory buy-back of its shares and shall delist the company.

If FFL is in default at all the stock exchanges where it is listed, the compulsory buy-back directions shall be issued by all the stock exchanges in coordination with each other.

- (b) (i) John Secada would be required to open “Special Convertible Rupee Account” with any Authorised Dealer in Pakistan.
- (ii) He may remit funds from abroad or by transfer from a foreign currency account maintained by him in Pakistan. The balance available therein can be used for purchase of any share quoted on the Stock Exchange.
- (iii) Payment for such purchase of shares may be debited to the account on production of stock broker’s memo showing sale of shares to the account holder.

Corporate Laws

Suggested Answers

Final Examination – Winter 2014

- (iv) Disinvestment proceeds may be credited provided evidence of the sale price in the shape of stock broker's memo is produced.
- (v) The fund available in such special account can be transferred outside Pakistan or credited to a foreign currency account maintained in Pakistan at any time without prior approval of the State Bank.
- (vi) Dividend income can also be credited to the above accounts.
- (vii) Transfers from one such account may also be made to special account of another person, in case of transfer of shares between the two account-holders.

Ans.10 Fresh election of directors

Mr. Wahid has acquired more than 12.5% ($3/20 = 15\%$) shares in the company. Therefore, he may apply to the Commission for requiring the company to hold 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 in Companies Ordinance 1984, and the company shall comply with such directions.

If fresh elections are held on the directions of the Commission, Mr. Wahid shall not sell or dispose of his shares for at least one year from the date of election of directors.

(The End)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN

EXAMINERS' COMMENTS

SUBJECT Corporate Laws	SESSION Final Examination Winter 2014
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General:

The overall performance was much better in this attempt. Significant improvement was observed in the preparation of laws other than the Companies Ordinance, 1984, which is a good sign.

It was good to observe that many students gave precise and to the point answers, which ultimately benefitted them in saving time and concentrate on all the questions properly. However, significant improvement is still required in the use of appropriate English as quite often it becomes difficult to understand what the student is trying to write.

Question-wise comments are as under:

Question 1

This question from Section 452 and 458 of the Companies Ordinance, 1984 required the candidates to list the requirements to be complied with by a branch office in Pakistan of a foreign company, where the company has been acquired by another foreign company and has changed its Principal Officer in Pakistan and had also closed one of its branches.

Most of the students could get good marks; however, the following mistakes were observed:

- Many students wrote that the notice for closure of office is to be published in two newspapers circulating in the city where the branch office that was closed was located, whereas the requirement is for publication in two newspapers circulating in the concerned province.
- A return is required to be delivered to the "Registrar"; whereas, many students mentioned "Commission" instead of registrar.
- A larger number of students did not read the question carefully and mentioned the requirement that a foreign company needs to follow while establishing a new place of business in Pakistan.
- Many students narrated the requirements which are to be fulfilled when a foreign company is closing its operations in Pakistan.

Question 2

The requirement was to state the responsibilities of a Holding Company and its subsidiary company in respect to the preparation of consolidated financial statements as are specified in Sections 237(1), (2), (5a) and 238(1).

The performance remained mixed. A significant number of students were unable to note that year ends of both the companies were different and hence the related requirements were ignored.

Question 3

According to the situation given in the question, a company needed funds for the acquisition of a plant and intended to issue right shares. In this regard, it had three options i.e. (i) issue shares to the supplier of the plant. (ii) issue shares to an existing shareholder who had offered to purchase shares worth 90% of the cost of plant (iii) issue of shares to the employees of the company.

The students were required to explain the matters to be considered and conditions to be complied with under the provisions of the Companies Ordinance, 1984 and the Companies (Issue of Capital) Rules, 1996, in each case.

Most of the students succeeded in scoring good marks by writing majority of the provisions and rules. However, a number of students wasted a lot of time by mentioning other things which were not required such as procedure for issue of right shares and requirements for issuance of shares at premium and underwriting requirements for issuance of right shares by a loss making company. Some of the other mistakes were as under:

- In case shares are to be issued other than to the existing shareholders, an application is required to be made to the “Federal Government” but many students wrote “Commission” or “Court”.
- Instead of “Special Resolution”, many students wrote “Resolution”.
- Instead of “Pakistan Engineering Council” many students mentioned “Pakistan Banking Council”.
- In the case of issuance of shares to employees under “Employees Stock Option Scheme”, many students failed to mention that the scheme is to be approved by the Commission.

Question 4(a)

The requirement was to draft Special Resolution regarding the voluntary winding up of a listed company for approval at the general meeting.

It was really disappointing to see the drafting of the students at the final level. Most of them were totally unable to present the required resolution due to poor English as well as lack of understanding of the contents of such a resolution. Despite the fact that all students must have seen various types of resolutions during the practical training and also while going through annual reports, newspapers etc., most of them did not even know the format of the resolution. Different variations were presented such as in the form of a letter, notice of the meeting etc. Some of the students did not understand the requirement in the question and wrote the procedure of voluntary winding up.

Question 4(b)

This part required explanation of the important characteristics of fixed charge, floating charge and their registration requirements. Very few students could properly differentiate between both the charges. However, they correctly wrote about its registration formalities as per section 121 of the Companies Ordinance, 1984.

Some students unnecessarily wrote provisions related to charges registered outside Pakistan, which was totally irrelevant to the question and a waste of time.

Question 5(a)

This part of the question pertained to a company which had been formed for a period of 3 years but the project undertaken by the company was still in progress, on completion of the above time period. Only few students presented good answers whereas the majority had very little idea of the related provisions contained in sections 358, 360 and 362 of the Companies Ordinance, 1984. Consequently, the following types of mistakes were observed:

- Only about 50% of the students knew that it was not mandatory for the company to commence winding up and that it could extend the period by bringing appropriate change in the Articles.
- Very few students knew that even in the given situation, the company would require a resolution in the general meeting before commencing winding up proceedings.
- Some students narrated the procedure of members' voluntary winding up which was totally irrelevant.

Question 5(b)

This part required contents of declaration of solvency and its filing requirements under the Companies Ordinance, 1984. It was well attempted as in most cases all relevant points specified u/s 362(2) of the Ordinance were covered. However, many students wasted precious time in writing extra details e.g. the circumstances in which the declaration is required and who is responsible for its preparation. Other common mistake was that they did not state that a statement of the company's assets and liabilities/profit and loss account and Balance Sheet at the latest practicable date should be attached with the Declaration.

Question 6(a)

The requirement was to explain the meaning of Fit & Proper Criteria as is defined under Schedule IX of the Non-Banking Finance Companies and Notified Entities Regulations, 2008. Most of the students achieved good marks by identifying the persons who are required to fit the criteria and the related factors/conditions. However, without considering the exact requirement of the question and the marks allocated, many students filled pages in describing each condition separately and wasted time which could have been better utilized in improving the presentation of the other answers.

Question 6(b)

In this part the candidates were required to identify the conditions which may render a person incompetent to be appointed as the director of an NBFC, because of conflict of interest under the provisions contained in Schedule IX of the NBFC and Notified Entities Regulations, 2008.

Majority of the candidates answered well. The most common mistake was that instead of mentioning 'a member of a stock exchange engaged in the business of brokerage' many candidates wrote 'a member of stock brokerage house'.

Question 6(c)

Majority of the students correctly mentioned the provisions relating to appointment of Internal Auditor. However, very few students knew that NBFC rules do not specify any criteria for the appointment of Chief Operating Officer. Many students repeated the same criteria for COO as was mentioned in case of internal auditor. Many candidates specified the criteria relating to the Chief Executive Officer.

Question 7

In this question the candidates were required to specify the kind and classes of shares that a limited company may issue and the rights and privileges that may be attached with different classes of shares. The question was based on Rule 3 and 4 of the Company's Share Capital (Variation in Rights and Privileges) Rules, 2000.

The question was well answered by majority of the students. However, many candidates wrote that "a company may have different kinds and classes of shares capital" whereas, the correct Rule is that "a company limited by shares may have more than one kind of share capital and may have different classes of shares under each kind".

Question 8

The requirement in this question was to identify the conditions that are to be complied with to obtain permission from the SECP to register a Not-for-Profit company. The performance was good as the candidates were generally able to quote the relevant requirements as are given in Section 42 of the Companies Ordinance, 1984 and Rule 6 of the Companies (General Provisions and Forms) Rules 1985. Many candidates mentioned the documents to be accompanied with the application which was not relevant. Some students gave the detailed procedure for the formation of such a company which was not required either.

Question 9(a)

According to the question, a company had received a notice from the Stock Exchange informing the company that its name has been placed on the defaulters segment due to non-payment of listing fee. The candidates were required to comment on the validity of the notice and the possible action that can be taken if default is not rectified.

The overall performance was below average as the candidates lacked knowledge of the relevant listing regulations 30(e) (2a to 2c) and in many cases gave irrelevant replies.

Many students discussed the requirement for holding of AGM which was totally irrelevant as the reason for placing on defaulter segment was mentioned in the question itself.

Some of them wrote regulations related to cases where company is under winding up by Court which was also irrelevant.

Question 9(b)

The question required the procedure to be followed by a foreign investor for purchase / sale of shares of listed companies in Pakistan under the Foreign Exchange Regulations.

The performance was good as majority of the students managed to give correct answer as per Regulation 9(a)(ii) of Chapter XX of the said Foreign Exchange Regulations. A common mistake was that instead of mentioning "Special Convertible Rupee Account" many students wrote opening of "Separate Rupee Account".

Question 10

This question was based on a situation whereby a person had purchased 15% shares in a listed company and requested for holding fresh election of directors. It was based on Section 178 of the Companies Ordinance, 1984. This area has been tested in past few attempts and majority of the students performed well.

(THE END)



Corporate Laws

- Q.1 (a) The Board of Directors of HAQ Limited (HL), a listed company, has decided to buy-back its ordinary shares through a tender process.
- Draft a special resolution for the proposed buy-back of shares of HL. You may assume any information you may consider necessary. **(04)**
- (b) Assume that HL has received an overwhelming response against the tender. Zakir is one of the respondents and has holdings of one million shares. He has expressed his interest to sell these shares to HL.
- Describe the provisions contained in the Companies (Buy-back of Shares) Rules, 1999 whose compliance would be necessary for HL prior to making payment to Zakir. **(04)**
- (c) Assume that HL has accepted Zakir's offer and has purchased all the shares at the price approved by the board of directors and the shareholders.
- Advise HL about the information that it would be required to disclose in its financial statements in respect of the above and the documents to be submitted to the authorities as specified in the Companies (Buy-back of Shares) Rules, 1999. **(04)**
- Q.2 Jaffrey Pharma Limited is currently involved in creditors' voluntary winding-up proceedings. At a meeting of the creditors, seven creditors with aggregate outstanding balance of Rs. 20 million, approved Wasif as the liquidator whereas twelve creditors with aggregate outstanding balance of Rs. 8 million wanted to appoint Asim as the liquidator. The members in their meeting also voted to appoint Asim as the liquidator.
- In the context of the provisions contained in the Companies Ordinance, 1984 you are required to explain the following:
- (a) Who would be considered as the liquidator of the company and what course of action is available to those who do not agree to such an appointment? **(06)**
- (b) Powers of the duly appointed liquidator. **(06)**
- Q.3 (a) Save Foundry Limited (SFL) has recently obtained a certificate of incorporation from SECP and has applied for certificate for the commencement of business. Meanwhile, SFL has entered into an agreement with Feroz Engineering Limited (FEL) for the supply and installation of machinery at its factory. SFL has also signed an agreement with a commercial bank for a short-term finance facility for advance payment to FEL.
- In the light of the Companies Ordinance, 1984 analyse above situation and comment on its legality and the implications of entering into the above agreements. **(05)**
- (b) Adnan is a director of Star Limited (SL), a listed company. During the preceding quarter he had purchased and sold shares of SL.
- Under the provisions of Companies Ordinance, 1984 narrate the conditions which Adnan would be required to comply with in respect of the above transactions. **(03)**

- Q.4 In the light of the Companies Ordinance, 1984 describe the circumstances under which:
- (a) Auditors of a company may be appointed by person(s) other than the shareholders of the company. (06)
 - (b) Investments by a company may not be made and held by it in its own name. (06)

- Q.5 Saad holds 10% voting shares in Strong Machine Limited (SML), a company listed on Karachi Stock Exchange. Saad intends to acquire 16% additional voting shares in SML. In this respect he has made a public announcement of the offer to acquire voting shares in SML and has also sent a copy of the public announcement to SML.

In the light of the provisions of the Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Ordinance, 2002 you are required to explain:

- (a) The term 'offer period' and the obligations of the board of directors of SML during the offer period. (07)
 - (b) The condition(s) under which Saad would be entitled to have a representation on the Board of SML. (02)
- Q.6 Based on the provisions of the Central Depository Act, 1997:
- (a) Briefly explain the term "Participant" and state the services performed by a Participant. (03)
 - (b) Identify the circumstances in which Central Depository Company may disclose information or documents to any person. (06)

- Q.7 Hyper (Pvt.) Limited (HPL) has two shareholders. All the directors of the company are nominees of these two shareholders. The details are as follows.

Name of shareholders	No. of shares	Nominee directors
Western Cement Limited (WCL) - listed company	8,040,000	5
Furqan	3,960,000	*3
	12,000,000	8

** including chief executive*

WCL is presently considering to appoint one of its directors as the chief executive of HPL to replace the existing chief executive.

Comment on the above proposal in the light of the provisions contained in the Companies Ordinance, 1984. (04)

- Q.8 The meeting of Board of Directors of Duck Limited (DL) would be held on 20 June 2015 to consider declaration of 20% final cash dividend. The directors intend to close the share transfer register from 2 July 2015 for determining shareholders entitlement for the purpose of dividend, meeting, etc. The AGM is to be held on 15 July 2015.

In the light of the listing regulations you are required to advise the directors as regards the following :

- (a) The information which DL would be required to provide to the concerned stock exchange(s) in Pakistan in respect of the above matter and the timing thereof. (05)
 - (b) Possible dates for commencement of book closure. (02)
- Q.9 (a) List the criteria which an NBFC should observe for determining the realizable value of mortgaged, pledged, leased or collaterally held assets under the NBFC and Notified Entities Regulations, 2008. (04)

- (b) Shams Housing Finance Company Limited (SHFCL) was incorporated on 1 January 2008 under the NBFC Rules, 2003 as a housing finance company.

A statement of account receivables (age-wise) and forced sale values of mortgaged properties held by SHFCL as at 31 March 2015 is presented below:

Ageing	Rental receivables			Forced-sale value of mortgaged properties
	Principal	Mark-up	Total	
----- Rs. in million -----				
Less than 30 days	596	169	765	328
30 days but less than 90 days	203	57	260	112
90 days but less than 180 days	113	51	164	62
180 days but less than 1 year (Note 1)	90	49	139	50
1 year but less than 2 years	56	38	94	31
2 years but less than 3 years	45	34	79	25
More than 3 years	23	25	48	13
	1,126	423	1,549	

Note 1: It includes principal amount of Rs. 20 million and mark-up thereon amounting to Rs. 5 million which are secured by a guarantee furnished by the Government of Sindh.

In accordance with the requirements of the NBFC and Notified Entities Regulations, 2008 you are required to:

- (i) Classify the non-performing receivables in their defined categories. (02)
- (ii) Determine the required amount of provision against non-performing receivables and explain the treatment of mark-up income in the books of SHFCL. (08)

Q.10 Zahid, a recently appointed director on the board of Zodiac Limited, a listed company, has sought your help in resolving the following issues which he observed while reviewing the working papers of the board meeting:

- (a) The CEO is the chairman of Human Resource and Remuneration Committee which includes two members, the CFO and the company secretary. (03)
- (b) Certain transactions with related parties which were not executed on arm's length basis are not shown in the working papers. (03)
- (c) The pattern of shareholdings presented in the note does not disclose the necessary details. (04)
- (d) After the death of the Chairman, the CEO has assumed the charge of the chairman of the company. (03)

As a consultant, you are required to write a letter advising Zahid about the requirements of the Code of Corporate Governance, 2012, in respect of the above matters.

(THE END)

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Ans.1 (a) Special resolution passed in the extraordinary general meeting of the shareholders Haq Limited.

“RESOLVED THAT the company be and is hereby authorized, under and pursuant to the provisions of Section 95A of the Companies Ordinance, 1984 and the Companies (Buy-Back of Shares) Rules, 1999, to buy back / purchase, in accordance with the provisions of the said Section and Rules, upto maximum of 20,000,000 its own issued ordinary shares of the nominal value of Rs. 10/- each at a purchase price of Rs. 20/- per share within a period of sixty days from the date on which this resolution is passed.”

“FUTHER RESOLVED THAT the ordinary shares purchased pursuant to the above resolution will be cancelled and issued share capital will be reduced by an amount equal to the aggregate nominal value of the cancelled shares.”

FUTHER RESOVLED THAT the purchased aforesaid by the Company of its own issued ordinary share shall be made through a tender offer and by notices to the Members of the Company individually.

“FUTHER RESOLVED THAT the Chief Executive Officer/Company Secretary be and is/are hereby authorized to take all necessary steps in respect of the above buy-back.”

- (b) Before making any payment to Zakir, HL would be required to ensure that:
- (i) The acceptance of the offer shall be on pro-rata basis in lots of five hundred shares as the offers received exceed the quantity to be purchased.
 - (ii) Communicate to Zakir the acceptance of the offer within seven days of the decision.
 - (iii) Receive the share certificates from Zakir, along with the transfer deed duly signed, verified and witnessed, in the company through designated branches of the bank within seven days of the receipt of acceptance by Zakir from the company.
 - (iv) If the shares are on CDC, receive a confirmation from CDC that shares are available and they have necessary authorization to transfer them.
- (c) HL would be required to:
- (i) disclose in its financial statements:
 - the purchase (buy-back) of shares as reduction of share capital.
 - other necessary details including the mode and purchase price.
 - (ii) Submit to the Commission and the registrar concerned a return and a declaration of solvency within thirty days of the purchase in the prescribed manner.

Ans.2 (a) In a creditor's voluntary winding up, if the creditors and company nominate different persons, the persons nominated by the creditors shall be liquidator.

As name of Wasif is proposed by the creditors with an outstanding balance of Rs.20 million (though the creditors in number were seven) shall be the liquidator of Jaffrey Pharma Limited.

The directors and creditors who voted for Asim to be appointed as liquidator of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the Court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors or appointing some other person to be liquidator instead of the person appointed by the creditors.

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- (b) The liquidator shall have the following powers:
- (i) to institute or defend any suit, action, prosecution or other legal proceeding, civil or criminal, in the name and on behalf of the company;
 - (ii) to carry on the business of the company so far as may be necessary for the beneficial winding up thereof;
 - (iii) to pay any classes of creditors in full;
 - (iv) to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;
 - (v) to compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such calls, debt, liability or claim and give a complete discharge in respect thereof;
 - (vi) to sell the movable and immovable property and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company or to sell the same in parcels.
 - (vii) exercise the power of the Court under this Ordinance of settling a list of contributories, which shall be *prima facie* evidence of the liabilities of the persons named therein to be contributories;
 - (viii) exercise the power of the Court of making calls;
 - (ix) summon general meeting of the company and creditors for the purpose of obtaining the sanction of the company by special resolution or for any other purpose he may think fit.

- Ans.3** (a) The agreement signed between SFL and the FEL shall be provisional only till SFL is entitled to commence business and will not be binding on SFL. The agreement will become binding on that date when SFL obtains the certificate of commencement of business from the registrar.

The exercising of borrowing powers by SFL by way of obtaining a short term finance from a bank prior to the issue of certificate of commencement of business is in contravention of the Companies Ordinance, 1984 and every officer and other person, who is responsible for arranging the credit facility, shall be liable to a fine.

- (b) Star Limited is a listed company. If its director(s) makes any gain by the purchase and sale, or the sale and purchase of its shares within a period of less than six months, they shall tender the amount of gain to the company such director shall make a report and simultaneously send an intimation to this effect to the registrar and the commission.

- Ans.4** (a) In the following circumstances, the auditors may be appointed by the person (SECP) other than the shareholder of the company:

- (i) where the first auditors are not appointed by the directors within sixty days of the date of incorporation of the company and the company also fails to appoint the auditors in the first annual general meeting of the company within one hundred and twenty days of date of incorporation of the company.

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- (ii) where at an annual general meeting no auditors of the company are appointed,
 - (iii) where the auditors appointed are unwilling to act as auditors of the company,
 - (iv) where a casual vacancy in the office of an auditor is not filled within thirty days after the occurrence of the vacancy.
 - (v) where auditors are removed by the company.
- (b) In the following cases, investment may not be made and held by the company in its own name:
- (i) where the company has a right to appoint or get elected any person as a director of any other company and a nominee of the company in the exercise of such right has been so appointed or elected, the shares in such other 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 jointly in its own name and in the name of such person or nominee, or in the name of such person or nominee alone.
 - (ii) holding company may hold any shares in its subsidiary company in the name of its nominee or nominees if and in so far as it is necessary so to do for ensuring that the number of member of the subsidiary company is not reduced below seven in case it is a public company, or below two in case it is a private company.
 - (iii) investment made by an investment company, that is to say, a company whose principal business is the purchase and sale of securities.

Nothing shall be deemed to prevent a company from:

- (iv) depositing with a bank, being the banker of the company, any shares or securities for the collection of any dividend or interest payable thereon; or
- (v) depositing with or transferring to or holding 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.
- (vi) depositing with or transferring to any person any shares or securities, by way of security for the repayment of any loan advanced to the company or the performance of any obligation undertaken by it.
- (vii) depositing with, or transferring to, or holding, or registering in the name of a central depository any shares or securities.

- Ans.5** (a) Offer period means the period from the date of public announcement of public offer to the date of closure of public offer or earlier withdrawal thereof.

Obligations of the Board of Directors of SML during the offer period:

- (i) The board of directors of SML shall not:
 - sell, transfer, or otherwise dispose of or enter into an agreement for sale, transfer, or for disposal of the undertaking or a sizeable part thereof, not being sale or disposal of assets in the ordinary course of business of the company or its subsidiaries
 - encumber any asset of the company or its subsidiary
 - issue any right or bonus voting shares during the offer period or
 - enter into any material contract.

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- (ii) Once the public announcement has been made, the board of directors of SML shall not appoint an additional director or fill in any casual vacancy on the board of directors, by any person representing or having interest in the acquirer till the date of certification by the manager to the offer.
 - (iii) The board of directors of the target company may, if it so desires, send its unbiased comments and recommendations on the public offer to the shareholders:
 - (iv) The board of directors of the target company shall facilitate the acquirer in verification of securities tendered for acceptance.
 - (v) Upon fulfillment of all obligations under the Companies Ordinance, 1984 as certified by the manager to the offer, the board of directors of the target company shall transfer the securities acquired by the acquirer, in the name of the acquirer.
- (b) If an investor wants a representation on the board, he has to acquire at least thirty per cent of the voting shares of target company. Then he would be entitled to a proportionate representation on the board of directors of the target company.

By considering the above provision of law, Saad would be entitled to have a representation on the board of directors of SML, if he acquires further 4% shares of SML.

Ans.6 (a) Participant means:

- (i) an account-holder who is a member of a stock exchange; and
- (ii) any other account-holder who meets the qualifications of a participant prescribed in the regulations.

Provided that such account holders:

- (i) perform services for sub-account holders in accordance with the terms of an agreement entered into between the CDC and each of the participants.
 - (ii) transfer any securities to the CDC to the credit of any sub-accounts under their respective accounts and
 - (iii) handle, on behalf of sub-account holders, the book-entry securities in the sub-accounts under their respective accounts.
- (b) The CDC may provide information to any person to:
- (i) which an account-holder or a sub-account holder has authorised in writing to disclose;
 - (ii) in a case where an account-holder or a sub-account holder is declared a bankrupt, or, if the account-holder or sub-account holder, as the case may be, is a company or body corporate and is being or, has been, wound up within or outside Pakistan;
 - (iii) in the case of any litigation or other legal proceedings;
 - (iv) to any person duly authorised by a competent court, the Authority or the State Bank of Pakistan to investigate into any offence under any law for the time being in force;
 - (v) for the purpose of enabling or assisting the Authority to exercise any power conferred on it by this Act or by any other law for the time being in force;
 - (vi) for the purpose of enabling or assisting the State Bank of Pakistan to exercise any power conferred on it by any other law for the time being in force;
 - (vii) for the purpose of enabling or assisting a stock exchange or clearing house of a stock exchange to discharge its functions;

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- (viii) for the purpose of enabling or assisting auditors of a central depository or participant to discharge their functions; or
- (ix) to the Authority if the disclosure is required in the interest of investors or in the public interest.

Ans.7 The directors of a company by a resolution passed by not less than three-fourths of the total number of directors for the time being, or the company by a special resolution, may remove a chief executive before the expiration of his term of office.

Therefore, the Chief Executive of HPL can be removed only if the proposal is supported by:

- (i) at least 6 directors of the HPL, or
- (ii) by 3/4th majority of the members in the general meeting either present in person or by way of proxy.

Since WCL has only 5 nominee directors on the board of HPL and has 67% shareholdings, it cannot remove the existing chief executive without the support of Furqan or his nominee directors.

Ans.8 (a) The company would be required to provide the following information to the Stock Exchange:

- (i) Date, time and place of its board meeting at least one week in advance.
- (ii) Decision of the Board about cash dividend and approval of the audited accounts immediately after the meeting. The information is required to be communicated to the Exchange prior to its release to any other person or print/ electronic media.
- (iii) DL shall send to the Exchange such number of copies of its annual report and audited accounts as may be prescribed by the Exchange not later than 21 days before a meeting of shareholders is held to consider the same.
- (iv) DL shall furnish certified true copies of minutes of its annual general meeting within 60 days of such meeting.

(b) As DL plan to hold its AGM by 15 July 2015, the notice of AGM should be sent at least 21, days before the meeting i.e. latest by 24 June 2015.

It can close its books for a period of 7-15 days and that period should fall between 30 June 2015 to 14 July 2015.

Further, DL is also required to give minimum of 14 days notice to the KSE prior to closure of share transfer books, therefore, this aspect should also be considered by the directors in deciding the dates of book closure.

Ans.9 (a) An NBFCs shall observe the following criteria for determining the realizable value of mortgaged, pledged, leased or collaterally held assets, namely:-

- (i) only assets having registered mortgage, equitable mortgage and pledged or collaterally held assets shall be considered;
- (ii) assets having pari-passu charge shall be considered on proportionate basis;
- (iii) hypothecated assets and assets with second charge or floating charge shall not be considered;

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- (iv) valuations shall be carried out by an independent professional valuer listed on the panel of valuers maintained by the Pakistan Banks Association / the Leasing Association of Pakistan;
- (v) the valuers while assigning any values to the mortgaged, pledged, leased or collaterally held assets, shall take into account all relevant factors affecting the salability of such assets including any difficulty in obtaining their possession, their location, their condition and the prevailing economic conditions in the relevant sector, business or industry;
- (vi) the realizable value of mortgaged, pledged, leased or collaterally held assets determined by the valuers must take into account the amount that can be realized from the asset if sold in a forced or distressed sale condition;
- (vii) valuations shall be conducted at least once in three years:
Provided that, except for a Housing Finance Company, if a valuation is older than three years, a fresh re-valuation shall be done failing which the valuation shall be taken as nil.

(b) *Rs. in million*

Classification	Aging	Rental receivables			FSV	Adjustment factor (70%)	Government guarantees	Adjusted Amount	Provision %	Amount to be provided
		Principle	Mark up	Total						
		A		B						
Substandard	Between 180 days to 1-year	90	49	139	50	35	20	35	25%	9
Doubtful	Between 1-year to 2-years	56	38	94	31	22		34	50%	17
Loss	Between 2-years to 3-years	45	34	79	25	18		27		
	Over 3-years	23	25	48	13	9		14		
		68	59	127	38	27	-	41	100%	41
			146							67

Mark-up receivable on non-performing loans i.e. Rs. 146 million should be put in suspense account and not to be credited to income account except when realized in cash.

Ans.10 1 June 2015

Mr. Zahid
Director
Zodiac Limited

Subject: Requirement of Code of Corporate Governance

Dear Sir,

The requirements of the Code of Corporate Governance in respect of the matter quoted in your letter are as follows:

- (a) The CEO cannot become the chairman of Human Resource and Remuneration (HR&R) committee; however, he may be included as a member of the committee. The HR&R committee should consist of at least of three members comprising a majority of non-executive directors, including preferably an independent director. The CEO, if he is a member of HR&R committee shall not participate in the proceedings of the committee on matters that directly relate to his performance and compensation.

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- (b) The details of all related party transactions shall be placed before the Board whether they are on arm's length basis or not. The related party transactions which are not executed at arm's length price shall also be placed separately at each board meeting along with necessary justification for consideration and approval of the board on recommendations of the Audit Committee.
- (c) The pattern of shareholding should be prepared in such a way showing aggregate number of shares held by:
- (i) associated companies, undertakings and related parties (name wise details);
 - (ii) mutual funds (name wise details);
 - (iii) directors and their spouse(s) and minor children (name wise details);
 - (iv) executives;
 - (v) public sector companies and corporations;
 - (vi) banks, development finance institutions, non-banking finance companies, insurance companies, takaful, modaraba and pension funds; and
 - (vii) shareholders holding five percent or more voting rights in the listed company (name wise details).
- (d) On the death of the chairman, the chief executive officer (CEO) cannot become the chairman of the company. As the chairman and CEO shall not be the same person except where provided for under any other law. The chairman shall be elected from among the non-executive directors.

Yours sincerely,

— Sd —

Consultant name

(The End)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN

EXAMINERS' COMMENTS

SUBJECT Corporate Laws	SESSION Final Examination Summer 2015
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General:

Although it was an easy paper, the overall performance of the students was average, which in our opinion was mainly due to lack of complete knowledge. Almost in all questions a vast majority of students got between 30 to 70% marks. On the other hand, on average, in each question about 20% students got 0 to 1 mark. It shows that most of the students had read the relevant provisions but lacked comprehensive understanding thereof.

Question 1(a)

This question was not answered well by majority of the students, as they were not able to properly draft the special resolution for the proposed buy-back of shares. Majority of the students drafted this resolution from their general perception, without taking into account the important legal points which should form a part of this resolution. For example, hardly any student mentioned that the company is authorized to buy back/purchase these shares u/s 95A of the Companies Ordinance, 1984 and the Companies (Buy-Back of Shares) Rules, 1999, and that the shares purchased will be cancelled and the issued share capital will be reduced by the nominal value of these shares.

Question 1(b)

This question from Rule # 5 of Companies (Buy back of shares) Rules, 1999 and was answered well by about 50% of the students. However, very few students stated an important rule that the acceptance of the offer shall be on pro-rata basis in lots of 500 shares. Further, many students stated that HL should take the decision about acceptance of the offer within 10 days instead of 7 days.

Question 1(c)

This question from Rule # 6 of Companies (Buy back of shares) Rules, 1999 was quite straight forward. Majority of the students knew the relevant requirements and got high marks.

Question 2(a)

This question pertained to creditors' voluntary winding up and was based on Section 375 of the Companies Ordinance, 1984.

According to the scenario given in the question, there was a difference of opinion between the creditors on the appointment of liquidator. Students knew in most of the cases that in the above situation, the view of creditors who are more in value will prevail. However, various errors were observed in the explanation of the course of action available to those who do not agree to such appointment. Majority of the students did not know that directors may also appeal against the appointment as they were of the view that only creditor(s) may file such an appeal. Further, many students suggested that an application in this regard should be filed with Commission/Registrar, instead of the court.

Question 2(b)

This question, from Section 333(1) & 387 of the Companies Ordinance, 1984, was an easy and scoring question and was answered well by majority of the students.

However, in many cases, the students specified the duties and responsibilities of a liquidator instead of mentioning powers of liquidator.

Question 3(a)

This question tested students' knowledge with regard to two issues i.e. signing agreement for supply of machinery and exercising borrowing power before obtaining certificate for the commencement of business.

A significant number of the students gave the same opinion in either case i.e. many of them were of the view that both agreements would be void and some of them stated that they would become valid on the date of the certificate of commencement of business. Only about 20% of the candidates knew that the borrowing agreement is in contravention of the Companies Ordinance, 1984 and the directors shall be liable to a fine.

Question 3(b)

In this question the candidates were required to narrate the conditions specified under the Companies Ordinance, 1984 which the director of a listed company has to fulfill if he engages in the trading of that company's shares.

It was an easy question and was answered well by majority of the students. However, a number of students didn't mention the most important point i.e. that these conditions would apply if the sale and the purchase is carried out within a period of six months. Further, many students also mentioned the procedures for computation of gain and reporting for beneficial ownership etc. which was not required.

Question 4(a)

This question was based on Section 252(3) & (6) of the Companies Ordinance, 1984 and the candidates were required to describe the circumstances when auditor of a company is appointed by a person other than the company's members.

This was one of the best attempted question and majority of the students got good/high marks.

Question 4(b)

This question was based on Section 209(2) to (6) of the Companies Ordinance, 1984 and the candidates were required to describe the circumstances when investments by a company may not be made and held by it in its own name. It was also an easy and scoring question and was answered well by most of the students.

Question 5(a)

This question was based on Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Ordinance, 2002. According to the scenario, a shareholder who already held 10% voting shares in a company had made a public announcement for purchase of a further 16% shares. The requirement was to explain the term 'offer period' and to specify the obligation of the board during the offer period. The overall performance was below average. A significant number of students knew two obligations i.e. that the board should refrain from selling a sizeable part of the assets of the company and from issuance of right/bonus shares.

A lot of confusion was observed with regard to the directors' responsibility of assisting the acquirer in verification of securities tendered for acceptance and with regard to transfer of such securities. Instead of the above, majority of the candidates wrote that the Board should provide a list of shareholders to the acquirer. Further, restriction on entering into material contract and restriction on filling any casual vacancy on the board were mentioned by few students only.

Further, most of the students could not define the term "offer period". Most of them used 30, 45 and 60 days from the offer to describe that period. Proper definition is given in section 2(g) of the Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Ordinance, 2002.

Question 5(b)

In this part the candidates were required to explain the conditions under which the acquirer would be entitled to have a representation on the board. The required condition is obtaining a minimum of 30% interest. Majority of the students mixed-up the situation whereby fresh election may be held in case a person acquires 12.5% interest or representation on the board if someone acquires 25% voting powers.

Question 6(a)

This question was from Section 2(17) of Central Depository Act, 1997 and was not answered well by majority of the students.

Most of the students were not aware of the term "Participant" and confused it with sub-account holders. Quite obviously, all such students were also unable to specify the services performed by a participant.

Question 6(b)

This was an easy and scoring question and was answered well by about 50% of the students. Many students narrated the provisions regarding supply of list of beneficial owners, by CDC, to the companies for issuance of notices, dividend warrant etc., which was totally irrelevant.

Question 7

In this short question, a scenario was given whereby a company had only two shareholders. One of them was a listed company (WCL) with 67% shareholding whereas the other was an individual (Furqan) with a 33% shareholding. There were 8 directors on the board, five of whom were nominees of WCL whereas three were nominees of Furqan including the Chief Executive.

The candidates were required to assess whether WCL was in a position to replace the existing CEO. However, the performance was very poor as very few students could provide appropriate comments. The students are advised to seek guidance from ICAP's suggested answer.

Question 8

This question was from Rules 13, 16, 18, 21, and 29 of the Listing Regulations. Both parts (a) and (b) of this question were not answered well by majority of the students.

Question 8(a)

In this part the students were required to give the information that a company is required to provide to the stock exchange with respect to declaration of dividend by the board and intimation of book closure and the date of AGM. Majority of the students did not read the question carefully and only mentioned about the responsibility of the company to provide immediate information regarding declaration of dividend and book closure but missed the provisions related to AGM whereby the company is also required to submit copies of annual report and audited accounts and certified copies of minutes of AGM.

Further, many students discussed a lot of irrelevant things such as approval for AGM, dispatch of dividend warrants, CEO's liability for payment of dividend, etc.

Question 8(b)

Although the students correctly mentioned that the share transfer register can be closed for 7-15 days but failed to advise the correct possible dates for book closure, in the light of the given scenario.

Question 9(a)

This question was based on Rule 25(9) of NBFC & Notified Entities Regulations 2008. The requirement was to list the criteria which an NBFC should observe for determining the realizable value of mortgaged, pledged or collaterally held assets and was answered well by majority of the students.

Question 9(b)

This was a very practical scenario based question in which the candidates were provided with age-analysis of the receivables of an NBFC. The candidates were required to classify the non-performing receivables according to categories defined in Sch XI of NBFC & Notified Entities Regulations 2008, determine the required amount of provision and explain the treatment of mark-up.

The question was not answered well by majority of the students. The major errors were as follows:

- Many students did not know the proper classification i.e. Sub-standard, Doubtful and Loss. Many students used guesswork and categorized these as good, doubtful and bad whereas many students considered the ageing as the required classification.
- Many students did not know that an adjustment factor of 70% has to be applied on Forced Sale Values (FSV).

- Majority of the students did not know that the receivables secured by Government guarantees are not subject to provisioning.
- Provision was calculated on the total outstanding i.e. principal plus mark-up.
- Mostly students mentioned that the amount of markup should be put in suspense account but did not explain further that it will only be transferred to income account when it is recovered in cash.

Question 10

The question mentioned four situations on which comments were required in the light of Code of Corporate Governance, 2012. The performance in each case is discussed below:

Question 10(a)

Most of the students have correctly identified that the CEO cannot be the chairman of the HR&R committee but many of them failed to mention that he can become a member. Most of the students also wrongly mentioned that the committee should consist of non-executive directors only and they also did not mention that preferably the committee should also have an independent director also.

Question 10(b)

Almost all students could easily answer that related party transactions which are not at arm's length should be placed before the Board of Directors. However, the important thing i.e. their justification should also be tabled and discussed was not mentioned by majority of the students.

Question 10(c)

Most of the students failed to present the pattern of shareholding and those who presented the pattern of shareholding also failed to mention many classifications like executives, mutual funds. Majority of the students also wrongly mentioned that the list of shareholder having 10% or more voting rights should be disclosed, whereas, such information is required in respect of shareholders having 5% or more voting rights. Further, instead of giving the pattern of shareholder many students gave shareholders' information which is mentioned in the members' register.

Question 10(d)

Most of the students explained correctly that Chairman and CEO cannot be the same person, however, numerous students did not elaborate further that the above condition may not apply where any other law allows the same person to be the Chairman and the CEO.

(THE END)



The Institute of
Chartered Accountants
of Pakistan

Final Examinations

Module E
7 December 2015
3 hours – 100 marks
Additional reading time – 15 minutes

Corporate Laws

- Q.1 Following are the extracts from the audited financial statements of Moon Limited (ML), a listed company, for the year ended 30 September 2015:

	Rs. in million
Ordinary share capital (Rs. 10 each)	100
General reserves	105
Surplus on revaluation of fixed assets	15
Intangible assets	12
Tangible assets	200
Deferred taxation (debit balance)	15
Contingent liabilities as shown in the financial statements	18

Subsequent to the finalization of audited accounts, a claim of Rs. 5 million was filed against ML by its customers. ML's legal adviser is of the view that the expected liability in this case is Rs. 2 million.

ML is planning to issue 60% right shares at a premium of Rs. 4 per share in January 2016. In a board meeting, the CFO has provided a list of conditions that the company would be required to meet in this regard. However, two directors are of the opinion that in view of the sound financial position of the company the right issue should be at a premium of Rs. 10 per share.

In the light of the provisions of the Companies (Issue of Capital) Rules, 1996 and the Companies Ordinance, 1984:

- (a) What additional conditions ML would be required to meet in case of issuance of right shares at premium of Rs. 10. (07)
- (b) Assume that subsequent to the issuance of right shares at premium of Rs. 10, ML wants to issue bonus shares. Compute the maximum amount of bonus shares that can be issued. (05)

- Q.2 William Garments plc. (WG), a UK based company, has a branch office in Pakistan. WG has filed a petition in the UK for winding up of the company and liquidation proceedings had started on 20 November 2015. WG has also decided to discontinue its business in Pakistan by 31 December 2015.

In the light of the provisions of the Companies Ordinance, 1984, advise the management about the necessary formalities to be carried out under the Companies Ordinance, 1984. (07)

- Q.3 Haider Limited (HL), a listed company, is in the process of finalization of a financing facility with a bank. The bank requires a copy of the board resolution for approval of the terms of the financing. However, no board meeting is planned in the near future and few directors are out of the country.

In the light of the provisions of the Companies Ordinance, 1984 explain what alternative course of action is available to HL and the steps it would be required to take assuming that nothing in this regard is stated in the articles of association of the company. (05)

- Q.4 An abstract from the statement of financial position as on 30 September 2015 of Sami Industries Limited (SIL) is as follows:

	Rs. in billion
Issued, subscribed and paid up capital	15.00
Undistributed profit	0.52
Capital redemption reserve fund	1.50
Redeemable preference shares – unsecured	10.00
Current maturity of redeemable preference shares	2.50

In order to pay the current maturity of the preference shares and to improve its liquidity, the board is considering to borrow funds from a commercial bank by way of equitable mortgage of SIL's plant and machinery.

In the context of the provisions contained in the Companies Ordinance, 1984, advise the directors regarding the redemption of preference shares. (05)

- Q.5 A major contract of Bolan Sugar Limited (BSL), a listed company, has been cancelled. BSL used to purchase raw material for this contract from KBL which is also a listed company and a subsidiary of BSL

The CFO of BSL wants to publish the above information whereas the management of KBL wants to delay it as it may have an adverse impact on a financing arrangements currently being negotiated by KBL.

In the light of the provisions of the Securities Act, 2015:

- (a) Advise BSL on the above issue. (07)
 (b) Assuming that BSL decides to publish the information, discuss what matters should be kept in perspective in order to ensure that the responsibilities of the directors are fulfilled. (03)

- Q.6 The audit of Metal Corporation Limited (MCL), a public unlisted company, for the year ended 30 June 2015, is in progress. The auditor is not satisfied on certain issues and is adopting alternative procedures for verification. The management of MCL fears that this will delay the audit and consequently, financial statements would not be available in time for the upcoming annual general meeting. Therefore, the directors are considering to apply for extension in the date of holding the AGM.

In the light of the provisions contained in the Companies Ordinance, 1984 and related Rules made thereunder, you are required to:

- (a) Discuss the possibility of making such an application by MCL. (03)
 (b) List the information/documents to be submitted alongwith such an application. (05)

- Q.7 The Annual General Meeting of Nihal Limited (NL) would be held in the first week of January 2016. During the year NL had paid Rs. 80 million as advance to Yasir Limited, its associated undertaking. This is in accordance with the approval of Rs. 100 million granted by the shareholders in NL's last annual general meeting.

In the light of the Companies (Investment in Associated Companies or Undertakings) Regulations, 2012, explain what information should be provided to the shareholders in respect of the above. (06)

Q.8 The directors of Landmark Group are considering to merge the following NBFCs:

- Landmark Asset Management Limited
- Landmark Leasing Limited
- Landmark Investment Advisory Limited
- Landmark Investment Finance Limited
- Landmark Housing Finance Services Limited

In the light of the provisions contained in the Companies Ordinance, 1984 and the NBFC Rules, 2003 discuss:

- (a) the possibility of the merger of the above companies. **(03)**
 (b) the procedures to be followed by the companies for the proposed merger. Also explain how the dissenting shareholders (if any) would be dealt with. **(06)**

Q.9 Due to a dispute among the directors of Sun Limited, a listed company, all the directors want to remove Faheem from the directorship of the company prior to the completion of his term.

Explain the conditions which must be met in order to remove Faheem from the Directorship under the provisions of the Companies Ordinance, 1984. **(05)**

Q.10 A listed non-banking financial company (NBFC) intends to make investment in the shares of a private limited company.

List the conditions which the NBFC would need to comply with under the NBFC Rules, 2003 while making the investment. **(05)**

Q.11 Aftab holds 22% shares in TUF Limited, a listed company. He intends to file a petition with the Court against the management of the company, on the following grounds:

- (i) Failure to pay dividend
- (ii) Continuous losses being made by the company
- (iii) Conduct of the business in unlawful manner.

With reference to the provisions of the Companies Ordinance, 1984 comment on the admissibility of the petition in each of the above cases. **(05)**

Q.12 The Annual General Meeting of Trade Limited was held at 11:25 a.m. on 10 November 2015. Certain shareholders have lodged following complaints with the company secretary:

- (i) Notice of the annual general meeting was not received by them although they are resident in Pakistan and their registered addresses have also been provided to the company.
- (ii) Since the meeting could not commence at the scheduled time i.e. 11:00 a.m., it became invalid and should be called again.
- (iii) A resolution passed in the meeting was approved by a show of hands. However, a poll should have been carried out.
- (iv) Mr. Hamid who voted for a resolution was represented through a proxy which was deposited at 5:01 p.m. i.e. after office hours on 8 November 2015. Since 9 November 2015 was a public holiday, the condition of depositing the proxy at least 48 hours before the commencement of the meeting, was not met.
- (v) Mr. Ghulam who holds 100,000 shares was represented by two proxies i.e. Mr. Cassim (75,000 shares) & Mr. Danish (25,000 shares). Only proxy with 75,000 shares was counted for the purpose of voting.

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

- (a) Comment on the validity of each of the above complaints. **(07)**
 (b) Describe the circumstances under which a court may declare the resolution(s) passed in the above meeting or the entire proceedings of the meeting as invalid. **(04)**

Q.13 No undertaking shall enter into a merger which substantially lessens competition by creating or strengthening a dominant position in the relevant market.

Under the provisions of the Competition Act, 2010 and the Competition (Merger Control) Regulations, 2007:

- (a) Explain the term dominant position. (02)
- (b) Identify the factors which the Competition Commission shall consider in determining whether or not the merger situation is likely to substantially prevent or lessen competition in the market. (06)
- (c) List any three situations under which the Competition Commission may allow merger of companies even if it determines that intended merger substantially lessens competition by creating or strengthening a dominant position. (04)

(THE END)

Corporate Laws
Suggested Answers
Final Examination – Winter 2015

Ans.1 (a)

Issue of Right Shares

ML may charge premium on right shares up to the free reserve per share. The free reserves available to ML as on 30 September 2015 are as follows:

	Rs. in million	
General reserves		105
Deferred taxation (debit balance)	15	
Intangible assets	12	
Contingencies as shown in the financial statements	18	
Claim by customers (subsequent event)	02	47
Free reserves available		58

In case, ML issues right shares at a premium of Rs. 4 per share, required free reserves i.e. Rs. 24 (6×4) are lesser than available reserve. However, if ML wishes to issue right shares at a premium of Rs. 10 per share, it has to fulfill the additional conditions because the amount of required free reserves i.e. Rs. 60 (10×6) is greater than available reserve.

The additional conditions require to be complied with are as follows:

- (i) At least forty percent of all the shareholders undertake to subscribe their portion of right issue; and
- (ii) The remaining right issue shall be fully underwritten and the underwriters, not being associated companies, shall include at least two financial institutions including commercial banks and investment banks;
- (iii) The underwriters shall give full justification of the amount of premium in their independent due diligence report;

(b)

Issue of Bonus Shares

Under the Companies (Issue of Capital) Rules, 1996, a listed company must retain in the free reserves twenty-five percent of the capital after bonus shares. Further, under the Companies Ordinance 1984, the share premium account may be applied in issuance of fully paid bonus shares.

Since the objective is to issue maximum bonus shares, the company would first utilize share premium account in issuance of bonus shares and then utilize general (free) reserves, to an extent available. The maximum amount of bonus may be computed as follows:

	Rs. in million
Share capital after issuance of right share ($100+60$)	160
Bonus that can be issued by utilizing share premium account)	60
Amount of share capital after issue of bonus share from share premium account	220
Amount of equity if premium is utilized fully plus general (free) reserves ($220 + 58$ as computed above)	278
Amount of share capital if general (free) reserves is fully utilized ($278 \div 125 \times 100$)	222.4
Amount that can be issued out of general (free) reserves to issue bonus shares	2.4
Maximum bonus that can be issued ($60 + 2.4$)	62.4

Corporate Laws
Suggested Answers
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Ans.2

Formalities to be carried out in respect of WG’s liquidation in the UK

WG would be required to:

- give notice of liquidation on or before 20 December 2015 to the registrar;
- furnish all returns and accounts relating to the liquidation in respect of its business in Pakistan, within 30 days of the conclusion of the liquidation proceedings to the Registrar; and
- Publish a statement on every invoice, order, letter paper, bill head, notice or other publications in Pakistan that the company is being wound up in the country of its incorporation.

Formalities to be carried out in respect of closure of business in Pakistan

Branch office must give a notice, on or before 1 December 2015, about closing the business and ceasing to have any place of business in Pakistan to the Registrar along with the prescribed fee.

Publication of Notice in Newspaper

In both cases WG and its branch office will have to publish a notice of such intention at least in two daily newspapers circulating in the Province in which such place of business is situated at least thirty days before the closing of the business.

Ans.3

Alternative course of action available to HL

Since nothing is given in the Articles of Association, the matters described in Table A shall become applicable. Therefore, resolution in writing signed by all the directors for the time being entitled to receive notice of a meeting of the directors shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

The required resolution may be passed by way of a circular resolution. However, if one-third of the total numbers of directors of HL require that the resolution under circular resolution must be decided at a board meeting in person, the resolution would have to be decided at a meeting of the board.

Steps required for passing a resolution by circulation

- (i) The proposed resolution shall be circulated in draft along with other necessary documents, if any, to all the directors entitled to receive the notice of the meeting.
- (ii) The resolution will become valid if the same is approved by all the directors entitled to vote on the resolution.

Ans.4

The company has to pay Rs. 2.5 billion against the redemption of preference shares whereas capital redemption reserve fund shows a balance of Rs. 1.5 billion.

SIL can pay up to Rs. 1.5 billion from the capital redemption reserve fund as it is allowed under the Companies Ordinance, 1984.

For the balance amount of Rs. 1 billion, SIL has to arrange funds from one of the following sources:

- (i) out of profits of the company which would otherwise be available for dividend; or
- (ii) out of the proceeds of a fresh issue of shares made for the purposes of the redemptions; or
- (iii) out of sale proceeds of any property of the company.

Borrowing from commercial bank/financial institution for redemption of preference shares is not permissible.

Corporate Laws
Suggested Answers
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Ans.5

- (a) According to the Securities Act, 2015, it is the responsibility of the Directors of BSL to disclose to the public forthwith any price sensitive information relating to the company or its subsidiaries which has come to the company's knowledge and which would be material to an investor's investment decision.

Further, an information is required to be disclosed if it:

- is necessary to enable the public to appraise the position of the company and its subsidiaries;
- is necessary to avoid the creation or continuation of a false market in the securities of the company (false market being defined as an uninformed market or one which is based on incomplete information); or
- might reasonably be expected to materially affect the market activity and the price of its securities.

However, on the request of KBL the directors of BSL, under their own responsibility, may delay the public disclosure of price sensitive information such as not to prejudice its legitimate interests, if:

- (i) such delay would not be likely to mislead public investors
 - (ii) BSL is able to ensure the confidentiality of that information.
- (b) In order to fulfill their responsibility relating to publishing the information, the directors of BSL must ensure that:
- (i) when disclosing the above information, the means they use for disseminating information are such that they equally, timely and effectively provide access to such information by the holders of the securities of the company and investors.
 - (ii) the information that affects the market or a sector of the market generally is made public in a manner that would be likely to bring it to the attention of persons who commonly invest in securities of a kind whose price or value might be affected by the information.

Ans.6 (a)

MCL may apply to the concerned Registrar for grant of an extension in the time for holding any annual general meeting and laying before the AGM a balance-sheet and profit and loss account, not less than thirty days before the last date on which such AGM is required to be held. Accordingly, the application should have been made by September 30, 2015.

However, if the application is made in the first week of October, which is less than thirty days before the last date, the concerned Registrar may for special reasons to be recorded, may grant an extension for holding the annual general meeting.

(b)

The application for grant of extension in holding the AGM must be submitted alongwith the following information documents:

- (i) Registration number, name and address of the company.
- (ii) Date on which the last general meeting was held and the financial year for which the balance-sheet, profit and loss account and other statements and reports relating to accounts were laid at such meeting.
- (iii) Date up to which the annual general meeting is required to be held under and for the purposes of the relevant sections of the Ordinance and the date up to which the balance-sheet, profit and loss account and other statements and reports relating to accounts are required to be laid therein.
- (iv) Reasons for not being able to hold the annual general meeting or laying the balance-

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- sheet and profit and loss account at the general meeting by the date mentioned in clause (iii) and justification or extension in the period to the extent applied for.
- (v) When the delay is attributed to non-completion of books of accounts or non-finalization of audit, the exact state of books of accounts with reasons for non-completion of such books or for non-finalization of the audit.
 - (vi) In case of non finalization of the audit, such information being accompanied by a certificate of the company's auditors as to the state of its accounts, reasons for delay in completion of audit and the minimum time required for the purpose;
 - (vii) Accompanied by a copy of the last audited balance sheet and profit and loss account.

Ans.7

Since decision to make investment of Rs. 100 million approved by the shareholders of Nihal Limited in their last annual general meeting has not been fully implemented, Nihal Limited shall annex to the notice of the annual general meeting a statement explaining the status of the decision along with the following details:

- (i) total investment approved i.e. Rs.100 million.
- (ii) amount of investment made to date i.e. Rs. 80 million.
- (iii) reasons for not making complete investment so far where resolution required it to be implemented in specified time; and
- (iv) material change (if any) in financial statements of associated company or associated undertaking since date of the resolution passed for approval of investment in such company.

Latest audited annual financial statements of Yasir Limited along with the latest reviewed financial statements, if any, shall be made available for inspection of the members of NL in its general meeting.

Ans.8 (a)

Landmark group cannot merge all of the NBFC businesses in one group as there is a restriction in the NBFC, Rules 2003 to carry on certain businesses under the same NBFC together. However, the following businesses may be combined:

- Land Investment Advisory Limited and Landmark Asset Management Limited;
- Landmark Investment Finance Services, Landmark Housing Finance Limited, and Landmark Leasing Limited.

(b)

The steps involved in the merger of these companies are as follows:

- (i) A scheme of amalgamation shall be approved by a majority number representing two thirds in value of the shareholders of each NBFC, by way of a resolution, at a meeting called for the purpose.
- (ii) Notice of every such meeting shall be given to all shareholders of each NBFC indicating the time, place and object of the meeting.
- (iii) The notice shall be published at least once a week for three consecutive weeks in not less than two newspapers which circulate in the localities (province) where the registered offices of the NBFCs are situated; one such newspapers being in a language commonly understood in the locality.
- (iv) If the scheme is approved by the shareholders, it shall be submitted to the Commission for sanction.
- (v) When the scheme of amalgamation is sanctioned by the Commission, the merged entity shall transmit a copy of such order to the registrar.
- (vi) The property and liabilities of the amalgamated NBFCs shall, by virtue of sanction order, be transferred to the merged NBFC.

Dissenting shareholders (if any) will be entitled to claim from the NBFC concerned the value of their shares as may be determined by the Commission when sanctioning the scheme.

Corporate Laws
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Ans.9

The directors of Sun Limited may remove Faheem from the directorship by passing a resolution in general meeting subject to the following conditions:

If Faheem was appointed by the members of the company the resolution for removing Faheem shall not be deemed to have been passed if the number of votes cast against the resolution is equal to or exceeds the minimum number of votes that were cast for the election of director at the immediately preceding election of directors.

If Faheem was appointed by the subscribers to the memorandum of association of the company or to fill a casual vacancy the resolution for removing him shall not be deemed to have been passed if the number of votes cast against such resolution is equal to or exceeds the total number of votes for the time being computed in the prescribed manner (at the time of his appointment) divided by the number of directors for the time being.

Ans.10

The conditions that need to be satisfied are as follows:

- (i) The investment in unquoted shares of any company is not in excess of twenty percent of NBFC's equity.
- (ii) The investment should be approved in a board meeting after carefully analyzing the merits and financial impact of the investment and recording the decision in detail in minutes of the meeting and such decision shall be communicated to the Commission within fourteen days of the board meeting along with copy of the minutes.

However, an investment by NBFC out of its surplus equity (i.e. over and above the minimum specified regulatory requirement for the licenses held by the NBFC) in its wholly owned subsidiaries, for undertaking a form of business, shall not be taken into account for calculating the limit for unquoted shares.

Ans.11

According to the Companies Ordinance, 1984 if any member holding not less than 20% of the issued share capital of the company, is of the view that the affairs of the company are being conducted:

- (i) in an unlawful or fraudulent manner;
- (ii) in a manner not provided for in its memorandum;
- (iii) in a manner oppressive to the member or any of the members or the creditor or any of the creditors;
- (iv) in a manner prejudicial to the public interest;

such a member, may make an application to the Court by petition for an order.

However, the following do not constitute mismanagement/oppression:

- (i) Continuous losses being made by company.
- (ii) Failure to pay dividend or low payment of dividend.

By considering the above, as Aftab holds 22% shares, he can file a petition to the court on the ground of conduct of business in unlawful manner.

Corporate Laws
Suggested Answers
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Ans.12

- (a) (i) Where a notice is sent by post at the registered addresses of the shareholders, 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.

By considering the above provisions of law, if Trade Limited has sent a notices after meeting the above requirement of the law, the shareholders' complaint is not valid.

- (ii) As per the Ordinance, if within half an hour from the time appointed for the meeting, a quorum is not present, the meeting may either be dissolved or adjourned. Since the quorum was present within 30 minutes, the meeting is valid.
- (iii) As per the Ordinance, at any general meeting, a resolution put to the vote of the meeting shall be decided on show of hands, unless a poll is demanded. The concerned shareholders should have demanded a poll on or before the declaration of the result of the voting by show of hands and not after the meeting is concluded. Therefore the shareholder's protest is not valid.
- (iv) Proxy is not valid as it was not deposited 48 hours before the meeting.
- (v) A member shall not be entitled to appoint more than one proxy to attend any one meeting. In this case, Mr. Ghulam had appointed more than one proxy for the meeting and more than one instrument of proxy was deposited with the company, therefore both the instruments of proxy would be rendered invalid.

(b)

The court may, on a petition by members having not less than ten per cent of the voting power in the company, that the proceedings of a general meeting be declared invalid by reason of any material defect or omission in the notice or irregularity in the proceedings of the meeting which prevented members from using effectively their rights, declare such proceedings or part thereof invalid and direct holding of fresh general meeting:

However, the petition shall be made within thirty days of the impugned meeting.

Ans.13 (a)

"dominant position" of one undertaking or several undertakings in a relevant market shall be deemed to exist if:

- such undertaking or undertakings have the ability to behave to an appreciable extent independently of competitors, customers, consumers and suppliers; and
- its share of the relevant market exceeds forty per cent;

(b)

When determining whether or not the merger situation is likely to substantially prevent or lessen competition, the Commission shall:

- (i) assess the strength of competition in the relevant market,
- (ii) assess the probability that the merger parties in the market after the merger will behave competitively or co-operatively,
- (iii) take into account any factor that is relevant to competition in that market, including

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but not limited to:

- the actual and potential level of import competition in the market;
- the ease of entry into the market, including tariff and regulatory barriers;
- the level and trends of concentration, and history of collusion, in the market;
- the degree of countervailing power in the market;
- the dynamic characteristics of the market, including growth, innovation and product differentiation;
- the nature and extent of vertical integration in the market;
- whether the business or part of the business of a merger party or merger has failed or is likely to fail; and
- whether the merger situation will result in the removal of an effective competitor.

(c)

If the Commission determines that the intended merger substantially lessens competition by creating or strengthening a dominant position, it may nonetheless approve the transaction, if it is shown that:

- it contributes substantially to the efficiency of the production or distribution of goods or to the provision of services;
- such efficiency could not reasonably be achieved by a less restrictive means of competition;
- the benefits of such efficiency clearly outweigh the adverse effect of the absence or lessening of competition; or
- it is the least anti-competitive option for the failing undertaking's assets, when one of the undertakings is faced with actual or imminent financial failure;

(The End)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN

EXAMINERS' COMMENTS

SUBJECT Corporate Laws	SESSION Final Examination Winter 2015
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General:

The examination of the copies revealed that a large number of students were not adequately prepared for the examination. It was observed that many students fared very well in some of the questions especially those pertaining to Companies Ordinance, 1984 but performed poorly in other areas. This was a clear indication of selective studies. The failure to understand the requirement was another major issue. Further, most of the students mixed up the provision of one question or law with those of the other. Another common issue was the difficulty faced by the students in dealing with scenario based questions. It has been observed that in situation based questions, students either mention the relevant law only and do not relate their answers with the specific situations given in the question or they analyze the given situation but do not discuss the relevant law. Ideally the students should explain the situation with appropriate reference to the applicable legal provisions.

Question-wise comments

Question 1(a)

According to the scenario given in this question, a company was considering two options with regard to premium on issuance of right shares i.e. charging premium of Rs. 4 or Rs. 10 per share. The candidates were required to narrate what additional conditions the company would be required to fulfill if it charges premium of Rs. 10 per share. A significant number of candidates were unable to understand the requirement and did not even display their understanding about what difference would it make if premium of Rs. 10 is charged instead of Rs. 4. Some such students wrote a very lengthy answer and mentioned all the conditions for issuance of right shares and wasted lot of time.

Among those who at least adopted the right approach, a number of mistakes were observed in the calculation of free reserves especially with regard to the treatment of deferred taxation, intangible asset and claim filed by the customer, subsequent to the finalization of audited accounts.

Question 1(b)

This was another simple question requiring the determination of the maximum amount of bonus shares that the company might issue subsequent to the right issue. It was also answered poorly by majority of the students as they could not understand or properly deal with the given situation and made the following mistakes:

- Did not take into account that after the issuance of right shares, the share capital would increase and a share premium amounting to Rs. 60 million would also be received which can be used for the issuance of bonus shares.

- Were unable to work back the amount so that the remaining reserves should be equal to 25% of the share capital after issuance of bonus shares. They calculated the amount of bonus shares by deducting 25% of the existing share capital before issuance of bonus shares, from the total reserves.
- Some of the students explained the relevant rule or produced the formula instead of making the actual calculations.

Question 2

This question required listing down of formalities to be carried out by a Pakistan branch office of a UK based company which has decided to wind up in UK and also cease operations in Pakistan. The question was based on Sections 458 and 465 of the Companies Ordinance, 1984.

A large number of candidates seemed to ignore that two events were to take place i.e. winding up of the UK based company and discontinuance of business of Pakistani branch and separate dates were mentioned for each. Most such students mentioned the liquidation process of a Pakistani company which was totally irrelevant. Some of the candidates narrated the procedure for obtaining declaration of solvency from directors, which had also not been asked for.

Question 3

This was a simple question pertaining to circular resolutions. Although a good performance was expected because such questions have been tested frequently in the past, the overall performance was just average. The common mistakes were as follows:

- Many candidates only mentioned that a circular resolution may be approved but did not mention the other conditions.
- Many candidates mentioned some or all the conditions but did not state the source of such conditions i.e. Table A.
- Many candidates mentioned the option of holding a meeting through video conference without realizing that such meeting also required notices to the directors and fulfillment of various other formalities.
- Many students mentioned about calling Extra Ordinary General Meeting which was totally incorrect.

Question 4

This question contained a scenario and was based on Section 85 of the Companies Ordinance, 1984. The overall performance was average. The most common mistakes made by the candidates were that instead of stating that Preference shares can be redeemed out of "Capital redemption reserve fund", they stated "Sinking fund" and instead of stating, out of sale proceeds of "any property", they stated, "immovable property". Besides, very few students stated categorically that borrowing from banks is not permissible for the purpose of redemption of preference shares. In most of the cases the students simply ignored this information in the question and did not cover this aspect in their answers.

Question 5

This was a scenario based question and the requirement pertained to Section 96(1) and (4) of Securities Act, 2015. This was one of the worst attempted question as both parts (a) and (b) of this question were not answered well by majority of the students. Most probably because of selective study they did not seem to have much idea of the related provisions and relied on guesswork.

The question was about disclosure of price sensitive information whereas the students mixed it up with insider trading. In part (a) very few students discussed the most important issue i.e. the possibility of delaying the public disclosure of information. Similarly in part (b), very few students were aware of the necessary requirements and most students relied on guesswork.

Question 6(a)

Most of the students got low marks on this part of the question as they failed to mention the last date by which application for extension in the date of AGM can be made to the registrar. The students also failed to specify that even if the application to registrar is not made within the prescribed time, the Registrar for special reasons to be recorded in writing, may allow such extension. Many students mentioned incorrectly that the application has to be made to the SECP. It must be noted that MCL was a public unlisted company and therefore the application was required to be made to the Registrar and not to the Commission.

Question 6(b)

Most of the students got high marks in this part of the question as they correctly mentioned the information/documents which are required to be submitted to registrar along with the application for grant of extension in holding of AGM.

Question 7

This question was based on Regulation 4(2) and 5 of Companies (Investment in associated companies and associated undertakings) Regulations, 2012. The performance remained below average as a large number of students did not seem to read the question carefully. They did not notice that the approval for making the investment in the associated undertaking had already been given in the last AGM but the full approved amount has not been released and therefore the requirement was to update the shareholders on the issue such as reasons for short payment and material changes in the financial statement of the associated undertaking. Instead, they narrated the requirements for making investment in an associated undertaking which was not relevant at all.

Question 8

This was a scenario based question relating to Rule 5(2) and (4) of the NBFC Rules, 2003 and Section 282L of the Companies Ordinance, 1984. Both parts of this question were answered well by majority of the students.

Question 9

This was a straightforward question from Section 181 of the Companies Ordinance, 1984 regarding removal of director of a listed company prior to completion of the tenure. The performance remained mixed. The good students were able to distinguish between two possibilities i.e. (i) whether Faheem was elected in the normal course or (ii) whether he was the first director or was appointed to fill a casual vacancy and mentioned the conditions relevant in each case. Quite obviously, those students who did not make this distinction, gave wayward answers and could not secure any mark.

Question 10

This was a straightforward question from Para 7(2)(h) of NBFC Rules, 2003 where the requirement was to list the conditions which an NBFC would have to comply with while investing in shares of a private limited company and was answered well by majority of the students. The most common mistake was that exception allowed under the said rule was not mentioned i.e. that an investment by NBFC out of its surplus equity, in its wholly owned subsidiaries, for undertaking a form of business, shall not be taken into account for calculating the limit for unquoted shares.

Question 11

According to the question, a shareholder having 22% shares wanted to file a petition in the court against the company's management on three different grounds. The candidates were required to comment on the admissibility of such a petition. The question was based on Section 290 of the Companies Ordinance, 1984 and the candidates were expected to point out that continuous losses and failure to pay dividend do not constitute a valid ground for filing such petition with the court. However, majority of the students did not seem to possess the requisite knowledge. A large number of students narrated the provisions of Section 290 correctly but did not offer any comment on the grounds mentioned in the question. On the other hand, many students discussed the requirement for minimum shareholding correctly but considered all the three reasons mentioned in the question as admissible grounds for filing the petition. Many candidates specified 10% shareholding as the minimum required to file a petition, instead of 20%.

Question 12(a)

In this part of the question, five different complaints lodged by the shareholders were mentioned, which pertained to proceedings of AGM of a company. The candidates were required to discuss the validity of each complaint. The overall performance was quite good. However, some candidates discussed the validity of the meeting and the decisions taken instead of discussing the validity of the complaint.

Question 12(b)

This part was well attempted by the most of the students.

Question 13

This was a straightforward question relating to Competition Act, 2010 and the Competition (Merger Control) Regulations, 2007. It had three parts. Part (a) requiring explanation of the term 'dominant position' was generally answered well by majority of the students. In part (b) most of the students failed to secure good marks as they narrated the situations which are considered abuse of dominant position, whereas the question required them to identify the factors which shall be considered in determining whether or not the merger situation is likely to substantially prevent or lessen the competition in the market. Performance in part (c) was mixed. A large number of candidates secured full marks but an even greater number of candidates had no clue whatsoever and could not secure any mark.

(THE END)

CORPORATE LAWS
Summary of Marking Key
Final Examination – Winter 2015

Note regarding marking scheme:

The marking scheme is given as a guide. However, markers also award marks for alternative approaches to a question and relevant/well-reasoned comments/explanations.

A.1	(a)		Mark(s)	
		▪	Computation of free reserve available to ML	3.0
		▪	Explanation of the reason because of which ML would need to comply with the additional conditions	1.0
		▪	01 mark for each additional condition that ML would be required to meet	3.0
	(b)		Mark(s)	
	▪	Determination of:		
	–	amount of bonus shares that can be issued by utilizing the share premium account	1.5	
	–	amount of bonus shares that can be issued out of general (free) reserve	3.0	
	–	maximum bonus shares that can be issued	0.5	
A.2			Mark(s)	
	▪	Formalities to be carried out in respect of:		
	–	WG's liquidation in the UK	3.5	
	–	closure of business in Pakistan	3.5	
A.3			Mark(s)	
	▪	Explanation of alternative course of action available to HL	4.0	
	▪	Explanation of steps required to take by HL	1.0	
A.4			Mark(s)	
	▪	01 mark for identifying each available source through which SIL can redeem the preference shares.	4.0	
	▪	Conclusion that borrowing for the purpose of redemption of preference shares is not permissible	1.0	
A.5	(a)		Mark(s)	
		▪	The responsibility of the directors relating to disclosure of price sensitive information	2.0
		▪	01 mark for each type of information required to be disclosed	3.0
	▪	Explanation of the situation under which the directors may delay the public disclosure	2.0	
	(b)		Mark(s)	
	▪	Discussion on matters that should be kept in perspective regarding fulfilment of directors' responsibilities	3.0	
A.6			Mark(s)	
	(a)	▪	Discussion on possibility of making an application for extension of holding the AGM	3.0

CORPORATE LAWS
Summary of Marking Key
Final Examination – Winter 2015

(b)		Mark(s)
	▪ 01 mark for each information / document to be submitted along with the application for extension in holding the AGM	5.0

A.7		Mark(s)
	▪ Describing the need to annex a statement explaining the status of the decision taken in last AGM, along with the notice of this year AGM	1.0
	▪ Details of information to be provided in the statement	3.0
	▪ Specifying the conditions for making available the last financial statements of the associated undertaking	2.0

A.8		Mark(s)
(a)	▪ Discussion on the possibility of merger of all companies of Landmark Group	1.0
	▪ 01 mark for identifying each permissible combination of NBFCs that can be merged	2.0

(b)		Mark(s)
	▪ Up to 01 mark for each procedure to be followed for the proposed merger	4.0
	▪ Explanation of the procedure to be followed with regard to dissenting shareholders	2.0

A.9		Mark(s)
	▪ Explanation of the conditions to be met for removal of a director if he was appointed by:	
	– the members of the company	2.5
	– the subscribers to the memorandum of association or to fill a casual vacancy	2.5

A.10		Mark(s)
	▪ List of the conditions required to be fulfilled for making investment in unquoted shares.	3.5
	▪ Discussion on the exception available in case of investment in unquoted shares of wholly owned subsidiaries	1.5

A.11		Mark(s)
	▪ Brief description of the applicable legal requirement	2.5
	▪ Comment on the admissibility of the petition in each case	2.5

A.12 (a)		Mark(s)
	▪ Up to 1.5 marks for discussing the validity of each complaint	7.0

(b)		Mark(s)
	▪ Explanation of the circumstances under which a court may declare a meeting /entire proceedings of the meeting as invalid	4.0

<p>CORPORATE LAWS Summary of Marking Key Final Examination – Winter 2015</p>

A.13	(a)		Mark(s)
		▪ Explanation of the term 'Dominant position'	2.0
	(b)		Mark(s)
		▪ Up to 1.0 mark for identification of each factor	6.0
	(c)		Mark(s)
		▪ Up to 1.5 marks for listing of each situation	4.0

(THE END)



Corporate Laws

- Q.1** Sun Energy Limited (SEL) was incorporated on 1 January 2016. The statutory meeting of SEL is scheduled to be held on 9 June 2016. The statutory report to be presented to the shareholders has been signed by the CFO, the CEO and a non-executive director of the company on 20 May 2016. However, the auditors of the company have refused to verify the statement of receipt and payments on the grounds that a payment of Rs. 12 million dated 12 May 2016 has not been included in it. The CFO contends that the payment had not been included because the contract against which the cheque was issued has been cancelled with mutual consent and the party has returned the payment by way of a pay-order dated 20 May 2016.

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

- (a) comment on the observations of the auditors and the contention of the CFO. **(03)**
(b) identify the non-compliances by SEL in the above circumstances. **(05)**

- Q.2** Abid Brothers Limited (ABL) owns two industrial undertakings, one in Peshawar and the other in Karachi. ABL has decided to go into member's voluntary winding-up. Accordingly, an extraordinary general meeting of ABL was held on 1 December 2015 in which Akber and Farid were appointed as the Liquidators. Akbar was responsible for disposing of the Peshawar factory whereas disposal of Karachi factory was assigned to Farid.

On 1 June 2016 Farid resigned without assigning any reason. He has written a letter claiming 20% of the agreed remuneration after deduction of the amount already advanced to him. According to him, he has completed 20% of the work assigned to him.

Akber has held negotiations with Hercules Limited (HL), a listed company, who has offered one million shares as purchase consideration for Peshawar factory. However, he expressed his concerns about the time involved in the liquidation process and has requested for reconsideration of his remuneration.

In context of the provisions of the Companies Ordinance, 1984 you are required to explain the following:

- (a) Whether ABL can accept Farid's resignation and his request for payment of remuneration? **(03)**
(b) Whether Akber's request for increase in remuneration may be accepted? **(02)**
(c) What conditions would have to be complied with if Peshawar factory is sold to HL as per their offer? Describe Akbar's response if some shareholders of ABL do not agree to the terms of sale of Peshawar factory. **(06)**

- Q.3** Latif held more than 13% voting shares in Clovers Limited (CL), a listed company, throughout the year 2015-16. During the year, he made number of sale and purchase transactions in CL's shares and earned substantial amount of gain.

You are required to discuss Latif's responsibilities under the Securities Act, 2015 in respect of the above transactions. **(08)**

Q.4 Rahat Mills Limited (RML) and Global Limited (GL) are listed companies and their financial years end on 30 June.

RML has been purchasing its raw material from Beta Limited (BL) for the last five years under an agreement. The purchase prices are reviewed by the Board of Directors of RML after every six months.

Nadir, who is an elected director in RML, acquired 5% shares in BL on 15 January 2016. On the same day, he served a general notice to the directors of RML about his interest in BL.

Nadir's wife Shehla was appointed as a director in GL on 1 March 2016 as a nominee of Zahid and Zubair Limited (ZZL). GL is a major customer of RML. However, Shehla has not intimated the Board of Directors of GL about her interest because of being the wife of the director (Nadir) of RML.

In the light of the provisions of the Companies Ordinance, 1984 explain the responsibilities of Nadir and Shehla during the period from 1 March 2016 to 30 June 2016. (09)

Q.5 Following are the details of matters related to investment by Sparrow Limited (SL) in its associated unlisted companies i.e. Duck Limited (DL) and Tiger Limited (TL):

- (i) SL is planning to acquire 1.0 million ordinary shares in DL from a shareholder of DL at Rs. 25 per share. The face value of the shares is Rs. 10 each.
- (ii) On 1 September 2015 SL had paid Rs. 10.0 million to TL for purchase of 0.5 million right shares at 100% premium. However, due to a legal dispute, TL is unable to issue the right shares. TL is hopeful that the matter would be resolved by 30 June 2016.

Required:

- (a) Advise the Directors of SL regarding the conditions to be complied with in respect of the purchase of shares of DL, from the shareholder, under the Companies (Investment in Associated Companies or Associated Undertakings) Regulations, 2012. (06)
- (b) In light of the provision of Companies Ordinance, 1984 and Companies (Investment in Associated Companies or Associated Undertakings) Regulations, 2012, explain the rights of SL in (ii) above. (03)

Q.6 An abstract from the statement of financial position as on 31 March 2016 of Ryan Limited (RL) is as follows:

	Rs. in million
Authorized share capital	
100 million ordinary shares of Rs. 10 each	1,000
Issued, subscribed and paid up capital	
50 million ordinary shares of Rs. 10 each	500
Share premium account	50
	550

RL is planning to get listed on the Pakistan Stock Exchange by selling 8 million shares to the general public at a premium of Rs. 15 each. Out of 8 million shares, RL plans to offer 1 million shares to its employees and 3 million shares to overseas Pakistanis.

You are required to advise the Directors of RL regarding the conditions to be complied by them for issue of capital in the above circumstances under the Listing Regulations. (10)

- Q.7 (a) Junaid wishes to acquire 14% voting shares of Calico Limited. In this respect he wants to appoint “Manager to the offer”.

State who can be appointed as “Manager to the offer” under the provisions of the Securities Act, 2015. (03)

- (b) Assuming that Junaid becomes insolvent after the public offer was made by him and withdraws the public offer.

State the responsibilities of the manager to the offer under the provisions of the Listed Companies (Substantial Acquisition of Voting Shares & Takeovers) Regulations, 2008. (03)

- Q.8 Annual general meeting of Fusion Enamels Limited was held on 31 May 2016 to transact the following agenda items:

- (i) Approval of the minutes.
- (ii) To discuss and approve annual audited accounts.
- (iii) To approve the dividend as recommended by the directors in their meeting.
- (iv) To appoint auditors for the forthcoming year.

The meeting commenced at 10.30 a.m. However, soon after the minutes were approved i.e. at 11.15 am, Farhan, the chairman, left the meeting due to misbehaviour of few shareholders. One of the shareholders, Saleem, took the chair to conduct the meeting. The dividend as recommended by the directors and the audited financial statements were approved by the shareholders. Later, the meeting was adjourned to 18 June 2016 without the appointment of auditors.

Farhan wants to pass a resolution regarding approval of loan to an associated undertaking at the adjourned meeting.

In view of the provisions of the Companies Ordinance, 1984, and the regulations in Table A you are required to comment on the following:

- (a) Validity of the decisions taken at the meeting when it was chaired by Saleem. (04)
- (b) Assuming that the meeting as chaired by Saleem was valid, what conditions would have to be complied with for holding the adjourned meeting and for passing the resolution as desired by Farhan. (04)

- Q.9 Lucky Garments Limited (LGL) is being wound up by the Court. The Official Liquidator after realization of the assets, has an amount of Rs. 5,600,000 available for payment to the creditors. Details of creditors are as follows:

	Rupees
Salam Bank Limited (Note 1)	4,000,000
Wages and salaries (100 employees; payable for three months)	1,000,000
Income tax payable	500,000
Unsecured creditors (Note 2)	8,100,000

Note 1:

LGL had created a charge on all the assets of the company in favour of Salam Bank Limited.

Note 2:

Unsecured creditors are, Amin, Waseem and Kashif. The amounts payable to them are Rs. 2,025,000, Rs. 4,293,000 and Rs. 1,782,000 respectively.

Required:

Under the provisions of the Companies Ordinance, 1984 show how the available funds would be applied by the Liquidator under the above circumstances. (05)

- Q.10 State the requirements of the Code of Corporate Governance, 2012 relating to the following:
- (a) Certification of companies' directors under Directors' Training Program (03)
 - (b) Composition of audit committee (03)
- Q.11 (a) Under the NBFC (Establishment and Regulation) Rules, 2003 subordinated loans are regarded as part of equity. State the conditions which must be complied with, for a loan to be classified as subordinated loan. (07)
- (b) State the conditions pertaining to Fit and Proper Criteria for appointment of Chief Executive of an Investment Company which is registered under NBFC and Notified Entities Regulations, 2008. Also state the conditions that would have to be complied with at the end of each calendar year after appointment. (07)
- Q.12 The Experts Education Foundation (EEF) is a public company registered under section 42 of the Companies Ordinance, 1984. The directors have requested for your advice relating to renewal of its licence. The following information has been made available to you in this regard:
- (a) The company was registered on 1 October 2011. (02)
 - (b) The company receives local grant of funds on monthly basis and foreign donations once in a year. (02)
 - (c) A director has not paid his utility bill amounting to Rs. 500,000. The due date of the bill was 2 April 2016. (02)

(THE END)

Corporate Laws
Suggested Answers
Final Examination – Summer 2016

Ans.1 (a) Comments on the observation of auditors and contention of the CFO

According to CO-1984, an abstract of the receipts of the company and of the payments made up to a date within seven days of the date of the statutory report is to be included in statutory report. Since the statutory report is signed by the chief executive on 20 May 2016 and the amount was paid on 12 May 2016, therefore, the payment of Rs. 12 million should have been included in the receipts and payments. Hence, the auditor is correct.

CFO's contention is not correct as the requirement is to include all payments up to seven days of the date of signing irrespective of its subsequent status.

(b) The following non-compliances have been noted from the stated situation:

- (i) The directors are required to send the statutory report to every member at least twenty-one days before the date on which the statutory meeting is held.

In this situation, statutory meeting was to be held on 9 June 2016 and the statutory report of SEL had been certified by CEO on 20 May 2016 which confirms that there would be a delay in circulation of the report among the members as the 21 days requirement could not have been fulfilled.

- (ii) The statutory report is required to be certified by not less than three directors, one of whom shall be the chief executive of the company, but in the given situation, the statutory report had been signed by the CEO, a non-executive director and the CFO which is a non-compliance under the provisions of the Companies Ordinance, 1984 unless the CFO was also a director of the company.

Ans.2 (a) Farid cannot resign or quit his office before conclusion of the winding up proceedings except for reasons of personal disability to the satisfaction of the Court.

Farid has resigned from the office before conclusion of winding up, therefore, no remuneration may be paid to him and advance already paid to him, shall be refunded by him to the company.

- (b)** Akber's request for re-consideration of the remuneration cannot be accepted as the remuneration fixed in the general meeting shall not be enhanced subsequently but may be reduced by the Court. However, ABL with the approval in general meeting may allow him a monthly allowance for meeting the expenses of the winding up for a period not exceeding twelve months from the date of commencement of winding up.

- (c)** If Peshawar factory is sold to HL, Akber will have to obtain permission of the shareholders of ABL through special resolution conferring on Akber the authority to dispose of the Peshawar factory as above.

If one or more shareholders disagree with the proposal, Akber shall be required to do either of the following:

- Abstain from carrying the resolution into effect; or
- Purchase the interest of the dissenting shareholder(s) at a price to be determined by agreement or by arbitration.

If Akber elects to purchase the member's interest, the purchase money shall be paid before ABL is dissolved and be raised by Akber in such manner as may be determined by special resolution.

Corporate Laws
Suggested Answers
Final Examination – Summer 2016

Ans.3 Latif is a substantial shareholder as he holds more than ten percent voting shares in Clovers Limited, which is a listed company. Latif is therefore required to report to:

- **the company and the Commission** in writing, within seven days about any change in beneficial ownership. The notice given to the company shall state the number, amount and description of securities involved and any gain made from the sale or purchase of shares within a period of less than six months.
- **the Commission** before the expiration of a period of seven days beginning with the day on which the gain accrues from the purchase and sale, or sale and purchase of CL's shares within a period of less than six months, and to tender the gain to the commission within the period of six months of the accrual of the gain. The gain shall be tendered after deduction of the stamp duty, brokerage and other expenditure actually paid or incurred in making the gain subject to the production of documentary evidence in support of payment.

Ans.4 Responsibilities of Shehla

As a nominee Director on the Board of GL, Shehla should disclose to the Directors of GL that her spouse is a director in RML therefore she will be considered as indirectly interested. The disclosure may be made on or before the date of a meeting of the directors at which any matter related to the purchases from RML is to be discussed.

Shehla shall not take any part in the discussion of the Board meeting where contract with RML is being discussed and her presence shall not be counted for the purpose of forming a quorum at the time of any such discussion or vote and if he does vote her vote shall be void.

Responsibilities of Nadir

Conditions as mentioned in Shehla's responsibilities would also apply to Nadir as regards his involvement in discussion by RML as regards GL and BL.

According to law, any general notice given to the directors regarding the interest of directors shall expire at the end of the financial year in which it is given.

Therefore, the notice given by Nadir on 15 January 2016 expired on 30 June 2016 as it is the end of financial year of RML.

Nadir is required to renew the general notice for the financial year 2017 for which he has to serve a fresh notice in the month of June 2016.

Further, Nadir has to either give the notice in the meeting of director of RML or take reasonable steps to ensure that the notice is brought up and read in the first meeting of the directors after it is given; otherwise the notice would be of no effect.

Ans.5 (a) SL will have to consider the following points before buying shares of DL, an associated unlisted company.

- (i) The fair value of the securities of DL shall be determined based on generally accepted valuation techniques and latest audited financial statements of DL by
 - A chartered accountant firm, which must have been given a satisfactory rating under the Quality Control Review Program of Institute of Chartered Accountants of Pakistan; or
 - A Non-banking finance company licensed by the Commission to carry out the business of investment finance services which has been assigned a minimum rating of "A+" or equivalent by a credit rating company registered with the Commission and has been in operation for at least five years.

Corporate Laws
Suggested Answers
Final Examination – Summer 2016

- (ii) In case the price to be paid for DL is different from the fair value as determined above, an explanation along with justification, and basis of determination of price shall be disclosed to the members.
- (b) According to the Associated Companies Regulations, 2012, the rights of SL are as under:
 - (i) Since shares are not issued within ninety days from the transfer of the funds into share deposit money, the amount paid by SL on 1 September 2015 would be considered as loan.
 - (ii) Interest/markup thereon shall be charged for the period from 1 September till the date when shares would be issued in accordance with the provisions of CO-1984.

Ans.6 RL has to comply with the following conditions relating to the issue of shares to general public, employees and overseas Pakistanis:

- (i) Since the post issue paid-up capital of RL is above Rs. 500 million, the allocation of capital to the general public excluding the premium amount shall be at least Rs. 125 million or 12.5% of the post-issue paid up capital (i.e. Rs. 62.5 million), whichever is higher. Therefore, RL will have to offer at least 12.5 million shares to the general public.
- (ii) RL will also be required to subsequently enhance the quantum of public shareholding to 25% within next four years of its listing through any means mentioned in the Listing Regulations or approved by the Commission.
- (iii) RL may allocate share capital up to 20% of the public offer to overseas Pakistanis. By considering this regulation, maximum offer of RL to overseas Pakistanis could be 2.5 million shares (12,500,000 × 20%). Further, the amount should be subscribed through proper banking channel.
- (iv) RL may allocate share capital up to five percent of the public offer to employees of the company. This regulation allows the company to offer up to 625,000 shares (12,500,000 × 5%).
- (v) In case of under subscription in either of the categories i.e. the quota allocated to resident or non-resident Pakistanis, the unsubscribed portion will be allocated to the applicants of other category.
- (vi) The allocation of shares to Sponsors in excess of 25% and allocation of shares under Pre-IPO placement including employees of the company/group companies shall not be saleable for a period of six months from the date of public subscription.

Ans.7 (a) “Manager to the offer” means a bank, securities broker or an investment bank licensed by the Commission, who shall not be an associate, or a group company, of Junaid or Calico Limited.

- (b) Upon withdrawal of public offer by Junaid, the manager to the offer will have to return the shares to the respective shareholders of CL within a period of three working days from the date of the public announcement of withdrawal in the newspapers.

Thereafter, release the security amount deposited by Junaid to the Court because of bankruptcy of the acquirer.

Corporate Laws
Suggested Answers
Final Examination – Summer 2016

- Ans.8 (a)** In accordance with the provisions of the Companies Ordinance, 1984 the chairman of the board of directors shall preside as chairman of the meeting and if he is unwilling to act as the chairman, any one of the directors present may be elected to be chairman, and if none of the directors is present or is unwilling to act as chairman the members present shall choose one of their member to be the chairman.

Therefore, the meeting under Saleem's chairmanship would only be considered valid if no other directors showed his willingness to act as the chairman.

- (b)** If AGM is adjourned for ten days or more, notice of the adjourned meeting shall be given, as in the case of an original meeting, otherwise, it shall not be necessary for the company to give any notice of an adjournment or of the business to be transacted at an adjourned meeting. Therefore, if adjourned meeting is held on 18 June 2016, FEL would have to give notice of the adjourned meeting as in the case of original meeting.

Further, no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. Therefore, FEL may appoint auditors of the company but resolution regarding approval of the loan to associated undertaking cannot be discussed and approved.

- Ans.9** Under the Companies Ordinance, 1984 Official Liquidator shall make the payment in the following order:

Payment order	Payment details	Rupees
1	Income tax payable	500,000
2	Wages and salaries (100 × 2,000)	200,000
3	Salam Bank Limited	4,000,000
		4,700,000
4	Amount available to unsecured creditor (0.9 = 5.6 – 4.7)	
	Amin (900 × 25%)	225,000
	Wasim (900 × 53%)	477,000
	Kashif (900 × 22%)	198,000
		5,600,000

- Ans.10 (a)** It shall be mandatory for all the directors of the listed companies to have certification under any directors' training program offered by institutions – local or foreign – that meet the criteria specified by the SECP:

Provided that from 30 June 2012 to 30 June 2016 every year, a minimum of one director on the board shall acquire the said certification under this program each year and thereafter all directors shall obtain it:

Provided further that individuals with a minimum of 14 years of education and 15 years of experience on the board of a listed company – local and/or foreign – shall be exempted from the directors' training program.

- (b)** The board of directors of every listed company shall establish an Audit Committee consisting of at least three members comprising of non-executive directors and at least one independent director. The chairman of the committee shall preferably be an independent director who shall not be the chairman of the board. The board shall satisfy itself such that at least one member of the audit committee has relevant financial skills/expertise and experience.

Corporate Laws
Suggested Answers
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- Ans.11 (a)** According to the NBFC, Rules 2003, following conditions must be complied with for a loan to be classified as a subordinated loan:
- (i) The loan from sponsor will be considered as subordinated loan.
 - (ii) Rate of profit, if any, shall be decided by NBFC subject to the clearance of the Commission;
 - (iii) Neither the interest nor the principal shall be paid even at maturity if such payment would result in non-compliance with the equity or capital adequacy requirements;
 - (iv) It shall be un-secured and sub-ordinate to all other indebtedness including deposits.
 - (v) It shall be in the form of cash or liquid assets only;
 - (vi) Auditor certificates evidencing injection of funds into NBFC as subordinated loan;
 - (vii) Minimum tenor of the loan shall be specifically mentioned;
 - (viii) Prior approval of the Commission shall be required for repayment of the loan.
- (b)** Conditions pertaining to Fit and Proper criteria for the appointment of chief executive are as follows:
- (i) A chief executive of Investment Company shall not assume the charge of office until their appointment has been approved by the Commission.
 - (ii) The application for seeking approval of the Commission shall be submitted by Investment Company along with the requisite information and an Affidavit.
 - (iii) The fitness and propriety criteria shall be considered by taking into account the following:
 - Integrity and track record of such person.
 - Financial soundness of such person.
 - Competence and capability of such person.
 - Conflict of interest of such person.

Conditions to be complied with at the end of each calendar year

The investment company shall within 30 days of the close of each calendar year submit the following documents with regard to its chief executive:

- Updated resume
- CIB reports of the chief executive and the companies, firms, sole proprietorship, etc. where he is acting as director, partner or owner; and
- Latest tax returns

Ans.12 For renewal of its license, EEF has to consider the following:

- (a) The license is issued for a period of five years. EEF will complete its five year period on 30 September 2016, therefore it has to apply to SECP for renewal of its license. The application for renewal can be made three months before the expiration of period of license i.e. by 1 July 2016.
- (b) The foundation is required to maintain a record of all local and foreign donations and grants irrespective of its amount. A certificate from a Chartered Accountant would be required that all funds have been received through banking channel and are in conformity with the books of account of the foundation.
- (c) The director would not be allowed to act as director if the CIB report shows an overdue amount exceeding Rs. 500,000 Non-payment of bills does not appear on CIB report and will not affect his eligibility.

(The End)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN	
EXAMINERS' COMMENTS	
SUBJECT Corporate Laws	SESSION Final Examination - Summer 2016

General:

Overall performance in this paper was below average. It was observed that many students performed well in questions pertaining to Companies Ordinance, 1984 but performance in other areas was rather poor. This was a clear indication of selective studies.

Many students seemed to be under the impression that they would earn more marks if they wrote lengthy answers. Writing unnecessary details is absolute wastage of time and therefore students are advised to refrain from writing unnecessary details. The past question papers and suggested answers are available on ICAP's website. It is suggested that the students should study them carefully to understand how the answers should be framed.

Question wise Comments:

Question 1(a)

An average performance was seen in this scenario based question pertaining to statutory meeting and statutory report, based on section 157 of the Companies Ordinance, 1984. The requirement was to comment on the observation of the auditors and contention of the CFO as mentioned in the scenario.

A number of students did not know the requirements of law, whereas many students who were able to state the correct provision of law did not offer any comments on the contention of the CFO and observations of the auditors.

Question 1(b)

In this part, students were required to identify the non-compliances by the company under the given situation. Overall performance was average. Many students did not identify that if CFO is not the director of the company, then the company will be in non-compliance with the law which requires that the statutory report must be signed by three directors, one of whom shall be the chief executive of the company. Further, some students explained various requirements of holding statutory meetings which was not required.

Question 2(a)

This question regarding tendering of resignation by the liquidator and requesting for payment of remuneration [Section 364(5) and (7)] of the Companies Ordinance, 1984 was answered well by majority of the students.

Question 2(b)

This question regarding request for increase in remuneration by a liquidator was based on section 364(3) & (4) of the Companies Ordinance, 1984. An average performance was witnessed. Majority of the students were able to clarify that once approved in the general meeting, the remuneration cannot be increased. However, most of them were unable to explain

Examiners' Comments on Corporate Laws – Final Examination Summer 2016

the other aspect of the situation, i.e. that the company subject to the approval in general meeting may allow liquidator a monthly allowance for meeting the expenses of the winding-up for a period not exceeding twelve months from the date of commencement of the winding up proceedings.

Question 2(c)

An average performance was observed in this question which was based on section 367 (3) & (4) of the Companies Ordinance, 1984. Commonly observed errors were as follows:

- Many students were confused over the powers of liquidator where some of the shareholders did not agree to his decision of sale of the Peshawar factory. They stated that in such situation, the liquidator shall submit the proposal for approval/guidance of the Court. Some of the students mentioned that the shareholders should file complaint with the SECP, which was totally irrelevant.
- The students generally failed to mention that the liquidator may purchase the shares of the dissenting shareholders. Those students who correctly mentioned this provision failed to mention the manner in which the price will be determined and how funds may be raised for payment.

Question 3

The question was based on Sections 101 to 105 of the Securities Act, 2015 relating to reporting requirements to be complied with by a substantial shareholder.

Although most of the students correctly explained about tendering of gain earned by the substantial shareholder on sales and purchase of shares, to the Commission, within a period of less than six months, they failed to mention that such shareholders should also report to the Commission and company about the change in beneficial ownership within seven days of the change.

Few students mixed up the concept with insider trading and wrote irrelevant answers.

Question 4

Average performance was seen in this scenario-based question pertaining to Sections 214 & 216 of the Companies Ordinance, 1984 requiring students to explain the responsibilities of directors relating to disclosure of their direct or indirect interest. Many students wrote unnecessary details and wasted their precious time. Other commonly observed mistakes are as follows:

- Many students did not highlight the basis that lead to the existence of direct / indirect interest of Shehla and Nadir.
- Few students were of the view that Shehla being nominee director is not required to disclose her interest and there is no restriction on her taking part in the Board Meeting in which contract of RML is being discussed.
- Most of the students did not explain the provision relating to expiry and renewal of notice.

Question 5(a)

In this part, students were required to advise the directors of SL regarding the conditions to be complied with in respect of purchase of shares of SL's associated (unlisted) company DL, from one of the shareholders of DL. Overall performance of the students was poor as majority of the

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students answered on the basis of provisions of Section 208 of the Companies Ordinance, 1984, whereas the question specifically required the answer in the light of Associated Companies & Associated Undertaking Regulations, 2012.

Question 5(b)

This part required the candidates to explain the rights of (SL) which had made payment towards right shares that were to be issued to its associated undertaking (unlisted) TL but TL could not issue right shares within the prescribed time to SL. Overall performance was average. A number of students incorrectly stated that SL should demand refund of amount along with surcharge. They are advised to refer to ICAP's suggested answer for guidance on this question.

Question 6

Poor performance was witnessed in this question which required the students to advise the directors of a company regarding the conditions to be complied with for issuance of share capital in the given circumstances. Majority of the students seemed to lack the required knowledge with regards to issuance of shares to employees and overseas Pakistanis. They narrated the procedure for further issuance of shares by the company, which fulfilled only a part of the requirement of the question.

Other commonly observed mistakes are as follows:

- Many students did not take cognizance of the fact that subsequent to issue of shares, the share capital of RL will exceed Rs. 500 million and consequently failed to correctly calculate the number and amount of share capital which can be issued to general public, overseas Pakistanis and employees of the company.
- Those who correctly identified that share capital will be more than Rs. 500 million, wrongly calculated the allocation of capital to general public as Rs. 125 million or 12.5% of the post-issue paid up capital whichever is 'lower' whereas it should have been the higher of the two figures.
- Very few students were able to highlight that allocation of shares to the sponsors in excess of 25% under IPO shall not be saleable for a period of 6 months from the date of public subscription.

Question 7(a)

This part of the question simply required the students to identify who can be appointed as 'Manager to the Offer'. The performance was quite poor. Apparently, majority of the students had not studied the relevant provision and resorted to guesswork. They are advised to seek guidance from ICAP's suggested answer.

Question 7(b)

Poor performance was seen in this question which required students to state the responsibilities of the Manager to the Offer. An exceptionally large number of students did not attempt this question. Majority of those who did attempt it, failed to mention the time limit within which the Manager to the Offer is responsible to return the shares to the shareholders. Further, most of the students did not know that since offeror has become insolvent, security amount deposited by him shall be released to the Court.

Question 8(a)

This scenario based question which required the students to comment on the validity of the decisions taken at the annual general meeting which was chaired by a shareholder, was well attempted by majority of the students.

Question 8(b)

Average performance was seen in this question which required listing of the conditions to be complied with for holding the adjourned meeting and for passing the resolution in the given scenario. Generally the students were not clear about the situation in which a fresh notice is required even in case of an adjourned meeting. Further, a large number of students did not mention the important point that no business shall be transacted at the adjourned meeting other than the business left unfinished at the meeting which was adjourned.

Question 9

It was a straight forward question from Section 405 of the CO-1984. The requirement was to state the manner in which the available funds would be applied by the liquidator under the given circumstances. Overall performance was quite good and about 15% students were able to secure full marks. The most common error was that equal amount was allocated to each unsecured creditor for payment instead of allocation on a pro-rata basis.

Question 10(a)

This straight forward question from Rule 35(xi) of the Code of Corporate Governance regarding certification of directors of companies under Directors' Training Program was well attempted by majority of the students.

Question 10(b)

This question required the students to state the requirements of composition of audit committee under Rule 35(xxiv) of the Code of Corporate Governance. It was generally well attempted. However, an important requirement that at least one member of the audit committee should have financial skills and experience, was missed by most of the students. Some of the students who tried to cover this aspect, stated incorrectly that one member of the audit committee should have knowledge of relevant industry or have 10 years of business experience, etc.

Question 11(a)

An average performance was seen in this part which required the students to state the conditions to be complied with for a loan to be classified as Subordinated Loan under the NBFC (Establishment and Regulation) Rules, 2003. Commonly observed mistakes were as follows:

- Many students stated that this loan should be taken 'preferably from directors'. The use of the word preferably changed the entire context and rendered their answer incorrect.
- Few students confused 'Subordinated loans' with 'Sub-standard loans'.

Question 11(b)

This part pertained to Fit and Proper criteria for appointment of Chief Executive. Overall performance was satisfactory as many students achieved high marks. However, one or more of the following mistakes were commonly observed in many answer scripts:

- Some of the students failed to mention that the chief executive cannot be appointed until it is approved by the Commission on an application made by the company.
- A number of students failed to mention the condition relating to submission of CIB reports of chief executive and the companies, firms, sole proprietorship, etc. where he is acting as a director, partner or owner.

Question 12

This question pertained to matters concerning renewal of license of a public company registered under section 42 of the Companies Ordinance, 1984 read with the Circular 28 of 2015. It was an extremely poor attempted question as following mistakes were observed in most of the answer scripts:

- The license is issued for a period of five years, whereas most of the students mentioned “one year” or “three years”.
- The application for renewal can be made three months before the expiration of period of license, whereas majority students mentioned “30 days”.
- Non-payment of bills does not appear on CIB report and will not affect eligibility of a director, whereas most of the students wrote that license cannot be renewed if a director has utility bills of any amount outstanding for more than 90 days.

(THE END)

CORPORATE LAWS
Summary of Marking Key
Final Examination – Summer 2016

Note regarding marking scheme:

The marking scheme is given as a guide. However, markers also award marks for alternative approaches to a question and relevant/well-reasoned comments/explanations.

		Mark(s)
A.1	(a)	<ul style="list-style-type: none"> ▪ Brief description of the applicable legal requirements 1.0 ▪ Comment on the observation of auditors 1.0 ▪ Comment on the contention of the CFO 1.0
	(b)	<ul style="list-style-type: none"> ▪ Up to 03 marks for identification of each non-compliance in the light of CO-1984 5.0
	(a)	<ul style="list-style-type: none"> ▪ Explanation of the provision of law in the context of ABL's position in the case of: <ul style="list-style-type: none"> – resignation of Farid as liquidator 1.0 – Farid's request for payment of remuneration 2.0
A.2	(b)	<ul style="list-style-type: none"> ▪ Explanation of the provision of law relating to increase in remuneration of Akbar 2.0
	(c)	<ul style="list-style-type: none"> ▪ Identification of the conditions need to be complied with in order to accept the offer made by HL 3.0 ▪ Response to the shareholders who do not agree to the terms of sale 3.0
	(a)	<ul style="list-style-type: none"> ▪ Discussion on the responsibilities of Latif relating to the following as a result of sale and purchase of shares of the company: <ul style="list-style-type: none"> – Reporting of change in beneficial ownership to the company and the Commission 4.0 – Reporting of gains accrue on transaction within six months, to the Commission 4.0
A.3	(a)	<ul style="list-style-type: none"> ▪ List the conditions required to be fulfilled for making investment in its associated undertakings if: <ul style="list-style-type: none"> – price is determined on the basis of fair value 4.0 – price is to be paid which is different from the fair value 2.0
	(b)	<ul style="list-style-type: none"> ▪ Explanation of the rights of SL relating to the advance paid against the issue of right shares 3.0
A.4	(a)	<ul style="list-style-type: none"> ▪ Explanation of Shehla's responsibilities 3.0 ▪ Explanation of Nadir's responsibilities 6.0
	(a)	<ul style="list-style-type: none"> ▪ Explanation of the conditions required to be fulfilled when shares issued to: <ul style="list-style-type: none"> – General public 5.0 – Overseas Pakistanis 2.5 – Employees of the company 1.0 – Sponsors 1.5

CORPORATE LAWS
Summary of Marking Key
Final Examination – Summer 2016

		Mark(s)
A.7	(a)	▪ Explanation of the term “Manager to the Offer” 3.0
	(b)	▪ Stating the responsibility of the manager to the offer upon withdrawal of the public offer by Junaid 3.0
A.8	(a)	▪ Brief description of the applicable legal requirements 3.0
		▪ Comment on the validity of the decisions taken at the meeting 1.0
	(b)	▪ Stating the conditions to be complied with: – for holding the adjourned meeting 2.0
		– for passing the resolution as desired by Farhan 2.0
A.9	▪ 0.5 mark for showing each correct payment order 2.0	
	▪ 0.5 mark for allocating the maximum amount allowed in each case 2.0	
	▪ Allocating the balance amount among unsecured creditors 1.0	
A.10	(a)	▪ 01 mark for stating each requirement relating to certification of companies’ directors under directors training programme 3.0
	(b)	▪ Stating requirement relating to: – number of Audit Committee member and their composition 2.0
		– chairman of Audit Committee 1.0
A.11	(a)	▪ Up to 01 mark for identification of each condition to be complied with for a loan to be classified as subordinated loan 7.0
	(b)	▪ Stating the conditions to be complied with: – for appointment of chief executive of an Investment company 4.0
		– regarding chief executive at the end of each calendar year 3.0
A.12	(a)	▪ Brief description of the applicable legal requirements regarding renewal of licence 1.0
		▪ Advice on the renewal of license to EEF 1.0
	(b)	▪ Brief description of the applicable legal requirements on EEF regarding receiving of local and foreign donations 2.0
	(c)	▪ Advice on the eligibility of a EEF’s director who has not paid his utility bill 2.0

(THE END)