

Question # 1:**a)****1) Modaraba****2 Marks**

Means a business in which a person participates with his money and another with his efforts or skills or both his efforts and skills and includes unit trusts and mutual funds by whatever name called.

2) Modarba Company**1 Mark**

Means a company engaged in the business of floating and managing modaraba.

3) Modaraba Fund**1 Mark**

Means a fund raised through floatation of Modaraba.

4) Religious Board**2 Marks**

The Federal Govt. has constituted a religious board which consists of three members one of whom is chairman and two members are religious scholars and chairman shall be a person who is to be qualified for a Judge of High Court.

b)

Court may remove any Director, Chief Executive, Managing agent or other officer.

- No compensation shall be offered for loss of office
- If any director is removed ; the casual vacancy shall be filled in accordance with the provisions of Articles.
- If Chief Executive is removed ; Directors shall elect another person as Chief Executive.
- If all the directors including Chief Executive are removed ; General Meeting for election of directors be called
- Directors etc. so removed will be ineligible for such post for 5 years or such lesser period as directed by the Court

1 Mark each for above 5 points

Question # 2:**a)**

- Sargodha (Private) Limited shall submit an application (with prescribed documents) to SECP for approval of such alteration within 60 days of the Special Resolution passed by the members in general meeting.
- Certified copy of the orders of SECP along with altered Memorandum to be filed with registrar for registration within 90 days of the passing of order by SECP.

1.5 mark x 2

b)

Company incorporated abroad wishes to have a branch in Pakistan shall, within 30 days of Establishment of such branch, deliver following documents to the registrar:

- Certified copy of charter, statue, MOA & AOA or other instrument defining constitution in English/ Urdu (or translation in English/Urdu)
- Full address of Registered Office or Principal Office in the country of incorporation
- List of directors, chief executive and secretaries with detailed particulars.

- Return showing complete particulars of Principal Officer in Pakistan.
- Complete particulars of Persons authorized to receive notices etc. together with his consent.
- Full address of office in Pakistan, deemed to be Principal Office in Pakistan.
- Return containing particulars of change, where any change in above info / docs, within 30 days of change

(Note : The question was asking requirements on establishment, not the continuing requirements)

c)

- Balance Sheet and Profit & Loss Account prepared in accordance with the provisions of Banking Companies Ordinance 1962 shall be audited by a Chartered Accountant who is borne on the penal of auditors maintained by SBP.
- Auditors shall hold office for 3 years and cannot be removed before expiry of this term except approval by SECP.
- Accounts and Audit report shall be furnished as returns to SBP within 3 months of the close of period to which they relate. A further extension of 3 months in special circumstances can also be allowed.
- Every banking company incorporated outside Pakistan is required to display at a prominent place in the principal office and in every branch in Pakistan, copy of latest accounts not later than 1st Monday of August. These accounts shall remain displayed until replaced by subsequent accounts.
- Audit shall be conducted as per the directions of SBP.

1 Mark per relevant complete point

Question # 3:

a)

Independent director means a director who is not connected or does not have any other relationship, whether pecuniary or otherwise, with the listed company, its associated companies, subsidiaries, holding company or directors. 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 form of conflict of interest.

No director shall be considered independent if one or more of the following circumstances exist:

- He or she has been an employee of the company, any of its subsidiaries or holding company within the last three years;
- He or she is or has been the CEO of subsidiaries, associated company, associated undertaking or holding company in the last three years;
- He or 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:
(Major shareholder means a person who, individually or in concert 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)
- He or 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;
- He or 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)
 - He/she holds cross-directorships or has significant links with other directors through involvement in other companies or bodies;
 - 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.

1 mark each for 7 above conditions

b)

- The HR&R Committee shall comprise of at least 3 members
- Majority members shall be from non-executive directors, including preferably an independent director.
- CEO may be included as a member of committee but not as the chairman of committee.

1 March for each point**Question # 4:****a)**

- Not less than 10% of class of shareholders aggrieved by variation of their rights may, within 30 days of resolution, apply to Court for an order canceling the resolution
- Application may be made by any one or more of their number (as they may authorise in writing)

10% apply to court = 1 mark, within 30 days = 1 mark, any 1 or more authorised can apply = 1 mark**b)**

- Court shall pass an order of cancellation of the decision of the company if the court is satisfied that
 - Some facts which would have had a bearing on decision of the shareholders were withheld by the Company in getting resolution passed or,
 - Variation would unfairly prejudice shareholders of that class.
- Decision of the Court on any such application shall be final.

Court can cancel = 1 mark, condition 1 = 1 mark, condition 2 = 1 mark**c)**

Multan Limited's shareholders may have following type of various rights and privileges for class "B" shares under **Companies Share Capital (Variation in Rights and Privileges) Rules, 2000**

- Different voting rights
 - Voting right disproportionate to the paid up value of shares
 - Voting right for specific purpose
 - No voting right
- Different right of entitlement of:
 - Dividend
 - Right shares
 - Bonus shares
 - Receiving of notices of meeting and to attend those meetings
- Right & Privileges for period:
 - Indefinite period
 - Definite period
 - Period determined by members from time to time in special resolution

2 marks each for above 3 categories = total 6 marks

Question # 5:

NOTICE IS HEREBY GIVEN that the **nth Annual General Meeting of Chichawatni Limited** will be held at **XYZ Location on Friday, 28th December, 2011** at **10:00 a.m.** to transact the following business:

A. ORDINARY BUSINESS

1. To receive and consider the Audited Accounts for the year ended September 30, 2012 and the Directors' and Auditors' Reports thereon.
2. To appoint Auditors and fix their remuneration.

B. SPECIAL BUSINESS

3. To consider, and if thought fit, to pass the following resolution as an Special Resolution:

“RESOLVED that an investment of Rs 25 Million is to be made in Patoki Limited (an associated company)”.

A statement under Section 160 of the Companies Ordinance, 1984 setting forth all material facts concerning the Resolution contained in item (3) of the Notice which will be considered for adoption at the Meeting is annexed to this Notice of Meeting being sent to Members.

N.B

- 1) The share transfer books of the Company will be closed from _____ to _____ (both days inclusive). Transfers received in order at the office or our Registrar, M/s. ABC, <Address>>> by the close of business (5:00p.m) on Date will be treated as being in time for the purposes to attend the meeting.
- 2) A member entitled to attend and vote at this Meeting shall be entitled to appoint another person, as his/her proxy to attend, speak and vote instead of him/her and a proxy so appointed shall have such rights, as respects attending, speaking and voting at the Meeting as are available to a member. Proxies, in order to be effective, must be received by the Company not less than 48 hours before the Meeting. A proxy need not be a member of the Company.

STATEMENT UNDER SECTION 160 OF THE COMPANIES ORDINANCE, 1984

This Statement is annexed to the Notice of the nth Annual General Meeting of Chichawatni Limited to be held on Friday 28th December 2012 at which certain Special Business is to be transacted. The purpose of this Statement is to set forth the material facts concerning such Special Business.

ITEM (3) OF THE AGENDA

As per the requirements of section 208 of the Companies Ordinance 1984, a special resolution is required to make investment in associates. We intend to invest Rs 25 million to purchase 1 million shares of Patoki Limited having market value of Rs 25 per share from an existing shareholder Mr Nawab Shah. Mr Nawab Shah has approached the company and had offered to sell his shares to the company on this agreed amount.

We shall be completing the transaction on the 10th of January 2013.

By Order of the Board
ABC
Company Secretary

<<City>>
Decemebr 05, 2012

0.5 Mark each for mentioning.....

- 1) Date of AGM
- 2) Time
- 3) Place
- 4) Company Name
- 5) Heading Ordinary business
- 6) 2 Contents of Ordinary Business
- 7) Heading Special business
- 8) Content of special business
- 9) Identifying that this resolution would be passed as "Special Resolution" not ordinary
- 10) Reference of Statement in special Business
- 11) Heading of Notes
- 12) Contents of notes
- 13) Heading of statement under section 160
- 14) Contents of statement
- 15) Giving reference in statement of agenda item for which it is given
- 16) Company Secretary
- 17) City of registered office
- 18) Date of notice

1 additional mark for overall presentation of the notice (If any 2 contents from above 18 are missed, even then complete numbers can be achieved by good presentation)

Question # 6:

a)

- The said director can appoint another person to act in his place with the approval of board of directors.
- The nominee shall ipso facto vacate office as and when the appointing directors returns to Pakistan

1 mark each for both points

b)

Mr Sheikhpura is very valid in his arguments as

- Mr Kabirwala is also Chief Executive of Islamabad Cement Limited; and under Companies Ordinance 1984, a chief executive of public company is prohibited to engage (directly or indirectly) 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
- According to ineligibilities of Chief Executive as defined in Companies Ordinance 1984, 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

2 marks each for discussing both scenerios in light of Companies Ordinance 1984

Question # 7:

(i)

As per the Companies Ordinance 1984, chairman of the board shall chair every General Meeting but If there is no such chairman or chairman is not present within 15 minutes of start of meeting or is unwilling to chair meeting then any director can chair.

However If no director is present or is unwilling, then members can select any person as chairman. So if these rules are being followed then the appointment of chairman is not invalid

(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 cast by both 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 proxy 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. And in show of hands; number of persons are counted irrespective of their voting power.

If the concerned shareholders had some issues with counting the number of person instead of voting power, they should have demanded a poll on or before declaration of results by show of hands.

(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 within 30 minutes, the meeting is valid.

Conclusion:

In view of the above the resolution would be deemed to have been duly passed even after two proxies under point (ii) are considered invalid. As still we have 3/4th majority of persons voting in favor of resolution.

2 points each from point (i) to (iv), 1 mark for point (v) and 1 mark for conclusion

Question # 8:

a)

The application shall contain the following information correct as on the day immediately preceding the day of the passing of the special resolution and signed by a responsible officer, namely:

- Name and address of the company;
- Number and date of incorporation;
- Subscribed and paid-up capital;
- Redeemable capital;
- Business actually being carried on and the clause in the memorandum justifying it
- Reasons for the proposed alteration

1 mark each for 6 points

Note: Question has asked the list of information to be submitted in application, Question had not asked list of documents to be attached with the application. This question has to be answered from Rule 3 of Companies (General Provision and Form) Rules, 1985.

b)

According to the Rule 6 of Companies (General Provision and Form) Rules, 1985

Promoters or members of Sahiwal Associates shall make an **application to SECP** in writing duly signed by them or by any person authorized by association accompanied by

- 1) 3 copies of draft memorandum and articles of proposed association;
- 2) A list of promoters of the association with their occupations and addresses;
- 3) Declaration by a person specified in rule 4 (sec 30) that he has scrutinized application and accompanying documents, and is satisfied about compliance with provisions of ordinance & fulfillment of conditions
- 4) Names of companies, associations and other institutions in which promoters of proposed association hold any office stating the office held in each case;
- 5) If association is already in existence, a copy of audited BS, I&E a/c and annual report on working of association for the financial year immediately preceding the date of application
- 6) Estimate of future annual income & expenditure of proposed Co, specifying sources of income & objects
- 7) Brief statement of work already done by the association or proposed to be done after registration.

Besides others the **following conditions** shall also be fulfilled and shall be included in MOA

- The association shall be formed as a public company;
- Payment of remuneration for services or otherwise to its members, whether holding an office in the company or not, shall be prohibited;
- No change in the MOA and the AOA shall be made except with the prior approval of SECP
- The limit of liability of its members shall not be less than a reasonable amount
- 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.

0.5 mark x 7 documents to be files + 0.5 mark x 5 other conditions

Question # 9:

(a)

- ✓ No person other than advocate or registered firm of advocates
- ✓ Company shall not appoint an advocate or firm of advocates to be the legal advisor, if at the time of appointment, the number of companies of which such advocate or firm is legal advisor, will exceed:
 - In case of advocate 3
 - In case of firm product of 3 and number of partners

0.5 marks for 1st condition, 1.5 for 2nd condition, if all points covered

(b)

- Name of Legal Advisor or the name of Firm (if legal advisor is a firm)
- Number of partners (in case of Firm only)
- Remuneration
- Address
- Date of Appointment
- Date of termination

0.5 mark x 6 particulars

Question # 10:**a)**

- Status of classification of a rescheduled/restructured non-performing Facility shall be changed only when:
 - ✓ Terms and conditions of rescheduled/restructured Facility are fully met for a period of at least 6 months (excluding grace period, if any) from date of such rescheduling/ restructuring; and
 - ✓ At least 20% of the outstanding amount is recovered in cash:
- Condition of 6 months retention period shall not apply if the Borrower repays or adjusts at least 50% of the restructured or rescheduled loan amount in cash.
- NBFC shall ensure that status of classification & provisioning of a rescheduled/restructured non-performing Facility is not changed in its reports to SECP merely due to rescheduling/restructuring of a Facility and rescheduled/restructured loans shall be reported to the Credit Information Bureau (CIB) as such and not as default.
- Where the Borrower subsequently defaults (either on principal or mark-up) after the rescheduling / restructuring, the NBFC shall classify the loan or lease in the same category as it was in at the time of rescheduling / restructuring and NBFC may further downgrade the classification after taking into account the time based criteria stated in Schedule X or XI.
- At the time of rescheduling / restructuring an NBFC shall reconsider and re-examine the viability of the project or business and shall accordingly secure its interests.

1 mark each for 5 points

b)

- Whether or not there is a competitive bid; Mr Gujrat shall have the option to make an upward revision of offer in respect of the price and the number of voting shares to be acquired at any time within 7 working days prior to date of closure of the last subsisting public offer without changing any other terms and conditions of the said public offer.
- Any upward revision shall be made only on the following conditions:
 - a. Making of a public announcement in respect of such changes or amendments in all the newspapers in which the earlier public announcement was made;
 - b. Informing of SECP, SE on which the voting shares of the target company are listed, and the target company at its registered office, simultaneous with the issue of public announcement
 - c. Increase in the value of the security

1st condition = 1 mark, second condition = 3 marks – 1 each for 3 sub conditions**c)**

Yes. The Companies Ordinance provides such a mechanism

- A company may by written agreement refer to arbitration, in accordance with the Arbitration Act, 1940 (X of 1940), an existing or future difference between itself and any other company or person.
- Companies, parties to the arbitration, may delegate to the arbitrator power to settle any term or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by their directors or other managing body.

1 mark for answering “yes” to the question, 1 mark each for two points given