

FINAL MOCK – CRASH COURSE MAY 2013 – SOLUTION WITH MARKING SCHEME

T.MARKS= 100	CORPORATE LAWS	TIME: 3 HOURS
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Q1

a)

- Any document or additional detail required to be filed or lodged with the SECP or the Registrar under the Ordinance may be submitted electronically
- Any form prescribed under these rules shall be authenticated by companies by affixing electronic signature or advanced electronic signature, as defined under Electronic Transactions Ordinance, 2002, (LI of 2002).
- The filing of electronic documents with the SECP or the registrar, as the case may be, shall be made from the date of launching of any E-Services Project of the SECP, provided that for a period to be determined by the SECP from time to time, the submission of documents in paper form shall be permissible.
- From date of launching of any E-Services Project, the Co shall file any additional document required to be submitted to the SECP or the registrar under the Ordinance, in a scanned form.
- The fee for the filing of documents may be paid through any of the acceptable methods of payment specified by SECP from time to time.
- The SECP may provide e-service for the electronic filing or lodging of documents required under the Ordinance to be filed or lodged with the SECP or the registrar.
- A copy of or an extract from any document electronically filed or lodged with the SECP or the registrar under these rules or supplied or issued by the SECP or the registrar shall be admissible in evidence in any proceedings as of equal validity as the original document.
- Where a document is electronically filed or lodged, the SECP or the registrar shall not be liable for any loss or damage suffered by any person by reason of any error or omission, if such error or omission was made in good faith and in the ordinary course of the discharge of the duties of the SECP or the registrar or was due to any defect or breakdown in service or in equipment used for the e-service

Topic	Companies (General Provisions and Forms) Rules 1985 – Rule 9
Broad Area of ICAP Syllabus	Rules
Marking Scheme	1 mark each for every valid point (8 x 1 = 8 Marks)

b)

Court may order any of the following actions regarding Purple Limited:

- Remove any Director, Chief Executive, Managing agent or other officer from their office without any compensation for loss of office.
- Direct the directors to carry out changes in management and in accounting policies.
- Direct any existing contract, which is to the detriment of the Company, to be annulled or modified.
(No compensation payable on modification or annulment of contracts)
- Direct Co to call a meeting of members to take remedial actions on specified matters.

Topic	Investigation
Broad Area of ICAP Syllabus	Companies Ordinance 1984 – Advance Ares
Marking Scheme	1 mark each for every valid point (4 x 1 = 4 Marks)

Q2

First of all we would have to calculate "Free Reserves"

From the given data

Free Reserves = 40 Million (General Reserves) – 10 Million (Intangible assets) = 30 Million

Now applying the rule that "Free reserves retained after the issue of bonus shares must be at least 25% of the enhanced capital"

We are required to issue 25% bonus shares; means 25% of 60 Million = 15 Million

After the issue of bonus shares

Free Reserves = 30 Million – 15 Million = 15 Million

Enhanced Capital = 60 Million + 15 Million = 75 Million

Conclusion

Now retained free reserves (15 million) are not 25% or more of the enhanced capital (75 million), therefore Brown Limited cannot issue bonus shares in this situation

Topic	Issue of Capital Rules 1996
Broad Area of ICAP Syllabus	Rules
Marking Scheme	1 mark each for - Calculating Free reserves - Amount of bonus issue - Retained free reserves and Enhanced Capital - Conclusion
	(4 x 1 = 4 Marks)

Q3

a)

Steps to be taken	Listing Reg	Buy Back Rules
Directors of Co meeting shall take decision of purchase and number of shares to be purchased		©
They shall fix a date for General Meeting to pass Special Resolution.		©
The decision of the Directors shall be communicated to the SECP and SE on the date of decision.		©
<p>Orange Textiles Limited shall intimate to the Stock Exchange immediately regarding</p> <ul style="list-style-type: none"> - Intention of the majority shareholders/sponsors to purchase all the shares from other shareholders with the purpose to de-list the Co. - Reasons of voluntary de-listing - Minimum price at which the shares are proposed to be purchased. 	©	
<p>The minimum purchase price proposed by the sponsors will be the highest of benchmark price based upon any of the following:</p> <ul style="list-style-type: none"> - Current market price - Average market price (Annual Average) - Breakup value based historical cost whereas [Breakup value = Equity/no. of shares] - Earning multiplier approach Fair value = Estimated Earning x Price Earning Ratio *Estimated Earning = Average price per share of last 3 years. *Price Earning Ratio = Market Price per share / EPS - Maximum price at which the sponsors had purchased shares from market during 12 months 	©	
Now SE shall determine the minimum percentage of shares to be purchased by the sponsors to qualify for de-listing.	©	
Special Resolution shall be passed at general meeting.	©	©
The sponsors cannot withdraw their offer to purchase their shares if such proposal has been approved by the Co in a general meeting through a special resolution.	©	
Copy of special resolution send to SE immediately along with complete list of the shareholders	©	
Together with the application of de-listing the Co shall submit an undertaking from a purchase agent (who may be commercial bank, investment bank or a member of SE.)	©	
The offer to purchase at the relevant price from the other shareholders shall remain open at least for a period of 60 days. Application for voluntary de-listing shall be accompanied with consent of purchase agent.	©	
The Co after passing special resolution shall convey to all the shareholders the decision of the majority shareholders through a register post along with copy of special resolution. A notice in this regard shall also be published in two widely circulated news papers including one in Karachi.	©	

<p>The tender notice shall contain the following information:</p> <ul style="list-style-type: none"> - Maximum No. of shares to be purchased. - The manner in which offer to be communicated. - Last date by which the offer shall be made by the shareholder. - The names and addresses of the designated branches of the authorized banks. 		©
<p>A shareholder interested to sell his share to the Co in response of the tender notice shall make offer to sell in writing to the designated branches of the authorized banks providing following information:</p> <ul style="list-style-type: none"> - Name of the shareholder - Father name / Husband name - NIC No - Address - No. of shares offered - Shares distinctive number [If shares are not in CDS] - Folio number [If shares are not in CDS] - The account number [If shares are in CDS] 		©
<p>The Co shall take a decision within 10 days of the closing date.</p>		©
<p>In case the offer exceeds the required purchase the acceptance shall be made by the Co on pro-rata basis in lots of 500.</p>		©
<p>The acceptance of the offer shall be communicated to the shareholder within 10 days of the decision.</p>		©
<p>The shareholder whose offer has been accepted shall submit to the bank share certificates along with verified transfer deed within seven days of the receipt of the acceptance of the Co.</p> <ul style="list-style-type: none"> - Where the shares are in CDS a confirmation from the CDC about the availability of shares along with authorization to transfer the shares to the designated bank. 		©
<p>In case the Co bank (Designated) does not receipt the shares within 7 days the acceptance of the Co shall be deemed to have been revoked.</p>		©
<p>Co shall pay the price of shares purchased within 7 days of the receipt of shares.</p>		©
<p>➤ On completion of purchase, the Co shall submit the following information.</p> <ul style="list-style-type: none"> - Total no. of shares issued - Shares owned by majority shareholders before the offer - Shares purchased under the offer - Total shares currently owned by the majority shareholders - Shares still outstanding with minority shareholders 	©	
<p>Co shall submit to SECP & Registrar concerned a Return & "Declaration of Solvency" within 30 days of purchase in manner set out in schedule to these rules.</p>		©
<p>The sponsors shall continue to remain obliged to purchase the shares still outstanding with the minority from them at relevant price for a period of 12 months from the expiry of initial pay back period.</p>	©	
<p>Purchase shall be disclosed in the Balance Sheet as reduction of capital and necessary details would be provided in the Notes to the Account.</p>		©
<p>The Co once de-listed under listing regulation shall not be allowed to re-listing for a period of 5 years.</p>	©	

Topic	Listing Regulations + Buy Back rules
Broad Area of ICAP Syllabus	Other Laws + Rules
Marking Scheme	8 Marks for the requirements of listing regulations 6 Marks for the requirements of Buy Back Rules (8 + 6 = 14 Marks) *Note: The requirements of both topics can also be presented in 2 separate headings.

b)

In relation to an NBFC or a collective investment scheme, connected person means,-

- Any person or trust beneficially owning, directly or indirectly, ten percent or more of capital of the NBFC or the collective investment scheme;
- 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;
- A collective investment scheme being managed by an NBFC;
- The NBFC managing a collective investment scheme;
- A trustee or custodian of the collective investment scheme;
- Any person or trust controlled by a person who or which meets the descriptions given in sub-clause (a) to (e);
- Any member of the group of which that person, or trust forms part; and
Any director or officer of that NBFC or the investment Co being managed by that NBFC or of any of their connected persons as specified in sub-clauses (a) to (g);

Topic	NBFC Rules 2003 – Definitions
Broad Area of ICAP Syllabus	Rules
Marking Scheme	1 mark each for point a, b, e, f & g; 0.5 marks each for point c & d (5 × 1) + (0.5 × 2) = 6 Marks]

c)

According to the requirements of the Companies Ordinance 1984, the directors of any Public Co or a subsidiary of any Public Co shall not **except with consent of general meeting** sell, lease or otherwise dispose of the undertakings or a sizeable part thereof, unless main business of the company comprises of such selling or leasing.

In given scenario of Black Limited (which is a public company), directors of Black Limited cannot sale the segment Y without members approval in a general meeting.

Assumptions:

- Segment Y is a sizeable part of Black Limited
- Its not ordinary business of the company to sell its segments

Topic	Directors – Section 196
Broad Area of ICAP Syllabus	Companies Ordinance 1984 – Module D
Marking Scheme	1 mark for identifying the condition of general meeting for approval 1 mark for relating of the situation with the legal requirement along with at least one assumption. (1+1=2 Marks)

Q4

(a)

Insider trading shall include

- 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
- 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;
- Transaction by any person mentioned in above cases, 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;
- 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:

Topic	SECP Ordinance 1969 – Sec 15A
Broad Area of ICAP Syllabus	Other Laws
Marking Scheme	1 mark each for each valid point (4 x 1 = 4 Marks)

(b). Insiders

1. Sponsors, executive officers and directors of an issuer;
2. Sponsors, executive officers, directors and partners of a legal person or unincorporated business association, in which the issuer holds shares or voting rights, directly or indirectly, of 20% or more;
3. Sponsors, executive officers, directors and partners of a legal person or unincorporated business association who holds, directly or indirectly, shares or voting rights of 10% or more in an issuer;
4. Sponsors, executive officers and directors of an organization, that has been engaged in the placement of listed securities or public offer of securities or issuing and marketing of such securities, who has had access to insider information during his employment till a period of one year after leaving employment;
5. Any natural person holding, directly or indirectly, 10% or more shares of an issuer;
6. Sponsors, executive officers and directors of credit institutions in which the issuer has an account;
7. Any person obtaining inside information as part of his employment/discharging his usual duties in an official capacity, or in any other way relating to work performed under contract of employment/ otherwise;
8. Any person obtaining inside information through unlawful means; and
9. A spouse, lineal ascendant or descendant, partner or nominee of any above

Topic	SECP Ordinance 1969 – Sec 15C
Broad Area of ICAP Syllabus	Other Laws
Marking Scheme	0.5 mark each for any 8 valid points out of 9 (8 x 0.5 = 4 Marks)

Q5

a)

Basis for application

A winding up application against Shocking Pink Modaraba may be filed on ground that accumulated losses of Modaraba have exceed 50% of the paid up capital.

Applicant

Registrar can make application in the given situation

Authority

Modaraba Tribunal

Topic	Modaraba
Broad Area of ICAP Syllabus	Other Laws
Marking Scheme	2 marks for basis, 1.5 marks each for identifying the applicant and the authority (2 + 1.5 + 1.5 = 5 Marks)

b)

As per the requirements of Companies Ordinance 1984, where a company carries on business for more than 6 months with less than prescribed minimum number of members (For Private company; Less than 2); Every member of the Company (knowing the fact) during that default time shall be severally liable for payment of the whole debts of the Co contracted during that time

As in the underlying situation, Indigo (Private) Limited carried out business for more than 6 months (Aug 28, 2008 to March 2009) with only 1 member; therefore Mr Green can be held liable by Mr Red if he proves that

- a) His debt was contracted during that default period
- b) Mr Green was cognizant of the fact that Mr Yellow has died and he is carrying on the business solely.

Topic	Incorporation and related matters - Sec 47
Broad Area of ICAP Syllabus	Companies Ordinance – Module D
Marking Scheme	0.5 mark each for identifying <ul style="list-style-type: none"> - More than 6 months condition - Number of minimum members in case of private Co. - Condition of knowledge of the fact - Debt contracted during default period 0.5 marks each for relating all the four points with the scenario [(0.5 x 4) + (0.5 x 4) = 4 Marks]

Q6List of documents to be submitted by LBL

- 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

Formalities relating to filing of Accounts

Prescribed number of copies (not less than 3) of audited Balance Sheet and Profit & Loss Account with such particulars as are required to be filed by a Co registered in Pakistan shall be filed within earlier of

- 45 days of date of submission to the public authority of Mauritius, or
- Within 6 months of the date up to which accounts are prepared

Topic	Companies Established Outside Pakistan
Broad Area of ICAP Syllabus	Companies Ordinance – Advance Areas
Marking Scheme	4 mark for documents to be filed and 3 marks for filing of accounts [4 + 3 = 7 Marks]

Q7:Gray Motors Limited

As the company has decided to change the Registered Office from one place in Lahore to another place in Lahore, therefore it is not required to change "Registered Office Clause" of its MOA.

The only procedure it has to follow is

- Intimate the registrar of the new place of registered office through an express notice within 28 days.

Gray Autos (Private) Limited

As the company has decided to change the Registered Office from Peshawar to Lahore, therefore it is also required to change "Registered Office Clause" of its MOA due to a change in province.

The procedure it has to follow is

- Change "Registered Office Clause" of its MOA
 - Special Resolution
 - Apply to SECP for confirmation
 - Take order from SECP and submit the details to the registrar within 90 days of order
- Intimate the registrar of the new place of registered office through an express notice within 28 days.

Topic	Alteration in MOA – Sec 21, 25, 142
Broad Area of ICAP Syllabus	Companies Ordinance – Module D
Marking Scheme	2 Marks for Gray Motors 4 Marks for Gray Autos (Private Limited) (2 + 4 = 6)

Q8:

a)

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

- He/she has been an employee of the Co, any of its subsidiaries or holding Co within the last three years;
- He/she is or has been the CEO of subsidiaries, associated Co, associated undertaking or holding Co in the last three years;
- He/she has, or has had within the last three years, a material business relationship with the Co either directly, or indirectly as a partner, major shareholder or director of a body that has such a relationship with the Co:
(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 Co)
- 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 Co apart from a director's fee or has participated in the Co's share option or a performance-related pay scheme;
- He/she is a close relative of the Co'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.

Topic	Code of Corporate Governance
Broad Area of ICAP Syllabus	Other Laws
Marking Scheme	1 Mark each for each condition (7 x 1 = 7 Marks)

b)

- At least 3 members comprising majority of non-executive directors, including preferably an independent director.
- CEO may be included as a member of committee but not as chairman of committee.
- CEO if member of HR&R Committee shall not participate in the proceedings of committee on matters that directly relate to his performance and compensation.

Topic	Code of Corporate Governance
Broad Area of ICAP Syllabus	Other Laws
Marking Scheme	1 Mark each for each condition (3 x 1 = 3 Marks)

Q9:

a)

Requirements of the Companies Ordinance 1984

- Produce for inspection & examination of registrar contract in writing constituting title of Violet Engineering (Pvt.) Limited to the allotment along with contract of sale of machinery.
- Contract shall be duly stamped
- File with registrar copies verified in prescribed manner of all such contracts
- Where contract not reduced to writing, Co shall, within 30 days after allotment, file with registrar prescribed particulars of contract stamped with same stamp duty as would have been payable if the contract had been reduced to writing.
- File a Return stating number and nominal amount of shares so allotted, amount to be treated as paid-up, and consideration for which they have been allotted

Requirements of the Issue of Capital Rules 1996

- Value of machinery shall be determined by consulting valuer registered with Pakistan Engineering Council and is on the penal of at least two financial institutions as valuer.
- Value must be net of depreciation.
- Goodwill and intangible assets shall be excluded from the consideration.
- A certificate from a practicing CA shall be obtained for compliance of above conditions.

Topic	Allotment (sec 73) & Issue of shares other than cash (Rules)
Broad Area of ICAP Syllabus	Companies Ordinance 1984 – Module D & Issue of Capital Rules 1996
Marking Scheme	3 Mark each for both heading and sub points (3 x 2 = 6 Marks)

b)

- Shares cannot be issued on discount within 1 year of commencement of business
- Issue of share at discount must be authorised by **resolution** passed in general meeting of Sea Blue Oils Limited (Resolution must specify maximum rate of discount)
- After passing resolution, Co may apply to SECP for an order **sanctioning** the issue
 - SECP may make an order sanctioning issue on such terms & conditions as think fit.
 - Shares to be issued within 60 days after sanctioning by SECP or within such extended time as SECP may allow
- Issue of shares at a discount shall not be deemed to be reduction of capital.
- Every prospectus and every balance-sheet issued by Co subsequent to issue of shares shall contain particulars of discount allowed.

Topic	Issue of Shares at Discount – sec 84
Broad Area of ICAP Syllabus	Companies Ordinance 1984 – Module D
Marking Scheme	1 Mark Each for a valid point (5 x 1 = 5 Marks)

Q10:

As per the requirements of the Companies Ordinance 1984, a person who is holder of 10% or more voting securities of a listed company is required to submit statement of beneficial ownership to the registrar and SECP

- Within 30 days of occupying position, acquisition or listing
- Within 15 days of change of interest.

<u>Date</u>	<u>Cumulative holding</u>	<u>Deadline for submitting statements</u>
July 10, 2007	9%	Not required to submit the statement
February 15, 2008	13% (Crossed 10%)	Feb 15, 2008 + 30 days = March 16, 2008
March 7, 2008	16% (Change of interest)	March 7, 2008 + 15 days = March 22, 2008

Topic	Directors – sec 222
Broad Area of ICAP Syllabus	Companies Ordinance 1984 – Module D
Marking Scheme	2 Marks for identifying the conditions 2 marks for calculating the relevant dates (2 + 2 = 4 Marks)

Q11:Responsibility of casual vacancy & its tenure

Directors are responsible for filling the casual vacancy in the office of directors

Casual vacancy shall be appointed for the remaining term of office of Mr White. (i.e. April 2011)

Removal of Directors

Directors can be removed by passing a resolution for removal of directors.

(i) Mr. Light Gray (Causal Vacancy)

As per the requirements of the Companies Ordinance 1984, a casual vacancy director cannot be removed if votes casted in his favor exceeds the number of votes arrived at by dividing the total number of votes that were available during preceding election by total number of the directors for the time being

Hence Mr Light Gray would not be removed if votes casted in his favor are 300,000 (2,400,000/8)

(ii) Mr. Dark purple (Elected Director)

As per the requirements of the Companies Ordinance 1984, an elected director cannot be removed if votes cast in his favor exceeds the minimum number of votes cast at immediately preceding election

Hence Mr Light Gray would not be removed if votes casted in his favor are 187,500 (Working 1)

Working 1:

Total Votes casted = 2,400,000

Votes casted to	
Mr. White,	600,000
Mr. Dark purple,	350,000
Mr. Green	480,000
Mr. Yellow.	220,000

Remaining Votes 750,000

Vote casted for family directors (Each director) = $750,000/4 = 187,500$

So minimum number of votes casted to any director are 187,500

Topic	Directors – sec 180, 181
Broad Area of ICAP Syllabus	Companies Ordinance 1984 – Module D
Marking Scheme	1 Mark for responsibility of Casual Vacancy 1 Mark for tenure of Casual Vacancy 1 Mark for identifying that a director can be removed by resolution 2 Marks each for 2 directors (1 for rule, 1 for calculation) [(3 x 1) + (2 x 2) = 7 Marks]