

PROFESSIONAL PROGRAMME EXAMINATION

DECEMBER 2009

COMPANY SECRETARIAL PRACTICE

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer SIX questions including Question No. 1 which is **COMPULSORY**.

Question 1

Draft any four specimen resolutions stating the authority who can pass it and also the type of resolution. Give reasons for passing the requisite resolution referring to the relevant section(s) of the Companies Act, 1956 :

- (i) Health Care Ltd. (HCL) wants to make investment of Rs.55 crore and loans of Rs.45 crore in other companies. Balance sheet as on 31st March, 2009 shows HCL's paid-up capital of Rs.35 crore and reserves of Rs.75 crore.*
- (ii) Buoyant Ltd., a loss incurring company, wants to appoint Jolly as Managing Director w.e.f. 15th March, 2009 on a total remuneration of Rs.10 lakh per month (all inclusive). Its paid-up capital is Rs.5 crore, reserves Rs.3 crore and term loans Rs.10 crore. The company has accounting year ending on 31st March every year.*
- (iii) Grow India Ltd. is sanctioned a credit facility of Rs.25 crore by the Union Bank of India, Kapurbavdi Branch, Thane, against its inventory and receivables. The company wants to enjoy the sanctioned credit facility.*
- (iv) Global Fashion Ltd. wants to appoint Amitabh as a director in place of Dharmendra who has resigned due to ill health.*
- (v) Neo Biotech (P) Ltd. wants to appoint the first auditors in the regular course within a fortnight of the registration of the company. (5 marks each)*

Answer 1(i)

Authority : Shareholders

Type of Resolution : Special Resolution

"RESOLVED THAT pursuant to Section 372A and other applicable provisions of Companies Act, 1956, consent of the company be and is hereby accorded to the Board of Directors of the company to make loans not exceeding an aggregate sum of Rs.45 crores and also to make investment not exceeding Rs.55 crores in other bodies corporate".

Explanatory Statement

In the case of the aggregate amount of the investments in shares/debentures, loans and guarantee(s)/security(ies) proposed to be made by the company to other bodies corporate exceeds the limits provided in Section 372A of the Companies Act 1956 requires approval of the shareholders by Special Resolution at a General Meeting.

None of the directors save and except Shri..... and Shri..... who are also Directors on the Board of HCL (Ltd.) are concerned or interested in the resolution.

Note : As per the provisions of section 372A of the Companies Act, 1956, the Board of directors of a public company can make investments and give loans to the extent of 60% of its paid up capital and free reserves or 100% of its free reserves which is higher. If the company wants to exceed this limit then consent of the members at General Meeting is needed by passing a special resolution.

In the instant case, the company's aggregate of paid-up capital and free reserves is Rs. 110 crore. Therefore, a special resolution is required.

Answer 1(ii)

Authority : *Board/Shareholder with approval of the Central Government*

Types of Resolution : *Board Resolution subject to approval of the Central Government.*

“RESOLVED THAT, as per the provisions of section 198, 269 and 309 and subject to the approvals of the shareholders and the Central Government and subject to the compliance of the requirement of Schedule XIII of the Companies Act, 1956, Mr. Jolly be and is hereby appointed the managing director of the company with effect from 15th March, 2009 on a remuneration of Rs.10 (ten) lakhs per month or Rs.120 lakhs per annum inclusive all benefits and perquisites for a period of 3 years or lesser as may be approved by the Central Government and he shall not be liable to retire by rotation”.

Note : The board of directors of the company can appoint a managing director subject to approval of the members at the General Meeting by complying with the provisions of the various sections of the Companies Act read with Schedule XIII, Part III of the Act. Section 269 of the Act applies to this appointment as the company, a public company, is having paid-up capital of Rs.5 crore. When a student gives an ordinary resolution passed at a general meeting for appointment of managing director, he should also be fully awarded provided the body of the resolution is on.

Answer 1(iii)

Authority : *Board of Directors*

Type of Resolution : *Board Resolution*

“RESOLVED THAT in terms of section 292(1)(c) of Companies Act, 1956, the company do commence enjoying the credit facility of Rs.25 crore against its inventories and receivables sanctioned by Union Bank of India, Kapurbavdi Branch, Thane and do accept the terms and conditions of such sanction mentioned in the sanction letter No..... dated..... copy of which was tabled before the board and duly initialled by the Chairman for the sake of authentication.”

“RESOLVED FURTHER THAT, Mr. A, the Chairman or Mr. B, the Managing Director of the company, be and is hereby authorized to acknowledge the sanction letter by signing the duplicate copy thereof, on behalf of the company.”

“RESOLVED FURTHER THAT, Mr. B, the Managing Director of the company along with Mr. C, Director Finance be and are hereby authorized to sign and execute Promissory Note, Deed of Hypothecation and other documents, writings as deemed necessary by the said Union Bank of India, on behalf of the company, to avail the sanctioned credit facility”.

“RESOLVED FURTHER THAT, the Common Seal of the company be affixed to all such documents, deeds and other writings as required by the said Union Bank of India in the presence of Mr. B, Managing Director and Mr. C, Director Finance and counter signed by the Secretary of the company as per Article 72 of the Articles of Association of the company who shall sign the same in token thereof.”

Note : In terms of the section 292 (1)(c) of the Companies Act, 1956, the power to borrow moneys otherwise than debentures can be exercised by Board of Directors by means of resolution passed at the meeting of the Board. Further, to avail any credit facility sanctioned by a bank, first the same has to be acknowledged by signing the duplicate copy of the same. An authorization for signing of the documents has to be given to the director/s of the company and to affix common seal of the company as required by the Articles of Association of the company.

Answer 1(iv)

Authority : *Board of Directors*

Type of Resolution : *Board Resolution*

“RESOLVED THAT, in terms of the provisions of section 262 of the Companies Act, 1956 and Article 56 of the Articles of Association of the company Mr. Amitabh be and is hereby appointed as a Director of the company to fill up the casual vacancy resulted in the Board of Directors of the company due to the resignation by Mr. Dharmendra, due to his ill health, and he shall hold the office up to the remaining term of the said resigned director.”

Note : The section 262 of the Companies Act, 1956 empowers the company to fill in the casual vacancy resulted in the board of directors of the company. Such appointee shall hold the office until the director who resigned would have held such office of the director. The Articles of Association should contain a provision for such appointment, which normally most of the Articles do have.

Answer 1(v)

Authority : *Board of Directors*

Type of Resolution : *Board Resolution*

“RESOLVED THAT subject to compliance of section 224(1B) of the Act, consent of the Board of directors be and is hereby accorded to the appointment of M/s....., Chartered Accountants, who have given a certificate in writing of their eligibility, as First Auditors of the company to hold office up to the conclusion of the First AGM of the company at a remuneration of Rs..... in addition to the out of pocket expenses incurred by them plus service tax, if any applicable, in connection with audit of company accounts.

“RESOLVED FURTHER THAT the Secretary of the company be and is hereby directed to give intimation of the appointment to the Auditors so appointed within 7 days of the date of resolution.”

Note : As per section 224(5) of the Act, the First Auditor are expected to be appointed by the Board within one month of registration of the company. As the appointment is proposed within the fortnight of registration, the appointment is to be made by the Board

in the regular course, subject to compliance with Ceiling Rule contained in Section 224(1B) of the Act.

Question 2

- (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :
- (i) Alteration to articles of association requires a _____ resolution under section _____ of the Companies Act, 1956.
 - (ii) Allotment of equity shares requires e-form _____ whereas increase in authorised capital needs e-form _____ .
 - (iii) Once a dividend is declared, it must be paid within _____, but unpaid dividend account balance needs to be transferred within 7 years to _____.
 - (iv) A Company Secretary in whole-time employment is to be appointed by every company whose paid-up capital is Rs. _____ and above under section _____ of the Companies Act, 1956. (1 mark each)
- (b) State, with reasons in brief, whether the following statements are correct or incorrect:
- (i) A public limited company can have equity share capital alone, but it cannot have preference share capital alone.
 - (ii) A company is not bound to close its register of members even for a single day.
 - (iii) Interim dividend can be declared out of reserves by a company which has even incurred a loss.
 - (iv) The annual general meeting of a company for the current year as also for the previous year can be held on the same day.
 - (v) A group of 44 members of a company limited by shares holding in aggregate 2% of the issued share capital of the company cannot under any circumstances apply to the Company Law Board alleging mismanagement of the company. The company has 550 members.
 - (vi) The expression 'free reserves' for the purpose of section 372A does not include the balance to the credit of 'securities premium account'. (2 marks each)

Answer 2(a)

- (i) Alteration to articles of association requires a **Special** resolution under section **31** of the Companies Act, 1956.
- (ii) Allotment of equity shares requires e-form **2**, whereas increase in authorised capital needs e-form **5** **duly stamped. (Stamping is not required in all the States)** .
- (iii) Once a dividend is declared, it must be paid within **30 days** , but unpaid dividend

account balance needs to be transferred within 7 years to **Investors Education & Protection Fund** .

- (iv) A Company Secretary in whole-time employment is to be appointed by every company whose paid-up capital is **Rs.5 crore** and above under section **383A** of the Companies Act, 1956.

Answer 2(b)(i)

True

Reason : By the very definition of 'preference share capital' in section 85, preference shareholders have certain preferential rights over the equity shareholders. So, in the absence of equity share capital, there cannot be preference share capital.

Answer 2(b)(ii)

True

Reason : Section 154 of the Companies Act has not made the closure of register mandatory. As per Secretarial Standard 4 (cl.4.2.1) issued by ICSI, a company is not bound to close its register even for a day, a company chooses to close its register so as to update it for reckoning entitlements to dividend, right bonus etc, such closure may be for any period or periods not exceeding in aggregate 45 days in a year, but not exceeding 30 days at any one time.

Answer 2(b)(iii)

False

Reason : Though section 205(1A) has empowered the Board to declare interim dividend, but such dividend cannot be declared out of reserves. According to Secretarial Standard 3 issued by ICSI (cl.1.2.2), while final Dividend may be paid out of Free Reserves subject to compliance of the rules, no Interim Dividend should be paid, in the event of a loss or inadequacy of profits, by transfers out of any reserves.

Answer 2(b)(iv)

True

Reason : Section 166 of the Companies Act, 1956 provides as under:

1. In every Calendar year there must be 1(one) AGM held.
2. The Time Gap between two consecutive AGM must not be more than 15 months, however, the ROC is authorized to extend this by 3 (three) months for valid reasons.
3. From the closure of the accounting year AGM must be held within 6 months under section 210.

However, there is no provision in the Act prohibiting the holding of two AGMs on the same day. The situations where two AGMs may be held on the same day :

1. The first and second AGM may be held on same day.

2. When the company changes financial year two AGMs may be held on the same day.

There should, however, be separate notices for each meeting, and they should be held at different timings on the same day after the conclusion of the 1st AGM.

Answer 2(b)(v)

False

Reason: The Central Government under section 399(4) of the Companies Act, 1956 may authorize such application alleging mismanagement, if it is satisfied that circumstances justify allowing such application.

Answer 2(b)(vi)

False

Section 372(A) of the Companies Act, 1956 while explaining the term “Free Reserves” has specifically included securities premium account balance in the term “Free Reserves”, which reads as follows:

“free reserves” means those reserves which, as per the latest audited balance sheet of the company, are free for distribution as dividend and shall include balance to the credit of the securities premium account but shall not include share application money.

Question 3

- (a) Choose the most appropriate answer from the given options in respect of the following :

(i) As per the Companies Act, 1956, the maximum number of directors a private limited company which is subsidiary of a public company, can have without approval of the Central Government is —

- (a) 10
- (b) 11
- (c) 12
- (d) 13.

(ii) The aggregate of the contributions to any political party or for any political purpose to any person by a company in any financial year shall not exceed—

- (a) 2 i% of its average net profits determined in accordance with the provisions of sections 349 and 350 during the five immediately preceding financial years
- (b) 5% of its average net profits determined in accordance with the provisions of sections 349 and 350 during the three immediately preceding financial years
- (c) 7 4-% of its average net profits determined in accordance with the provisions of section 349 during the five immediately preceding financial years

- (d) 10% of its average net profits determined in accordance with the provisions of section 349 read with section 350. The average profit is to be calculated by reference to preceding three financial years.
- (iii) The number of scrutineers to be appointed by the Chairman of a general meeting is —
- 3
 - 2
 - 1
 - 4.
- (iv) As per the rules framed under section 205A(3) relating to use of past reserves for payment of dividend, a company after drawal of the amount from the reserves for payment of dividend should retain in the reserves an amount not less than —
- 25% of the paid-up share capital of the company
 - 20% of the paid-up share capital of the company
 - 15% of the paid-up share capital of the company
 - 10% of the paid-up share capital of the company.
- (v) As per clause 49 of the listing agreement, the audit committee comprising of five directors must have a minimum of —
- 2 independent directors
 - 3 independent directors
 - 4 independent directors
 - 1 independent director.
- (vi) A special notice is required for —
- Removal of a member
 - Removal of the Company Secretary
 - Removal of a nominee director
 - None of the above. (1 mark each)
- (b) You are the Company Secretary of Alltime Favourites Ltd., a listed company, and the Managing Director of your company wants to know the procedure for shifting of registered office from Mumbai to Pune. Prepare a note for him. (10 marks)

Answer 3(a)(i)

- (c) 12

Answer 3(a)(ii)

- (b) 5%

Answer 3(a)(iii)

- (b) 2

Answer 3(a)(iv)

(c) 15%

Answer 3(a)(v)

(c) 4

Answer 3(a)(vi)

(d) (Note: A nominee director cannot be removed but his nomination is to be withdrawn). Hence (d) none of the above.

Answer 3(b)**Note for Managing Director**

MD Sir,

As desired by you, I am attaching herewith my note in detail for the procedure the company will have to follow for shifting of Regd. Office of the company from Mumbai to Pune.

According to Section 17A inserted by the Companies (Amendment) Act, 2000 a company can not change the place of its registered office from one place to another from the jurisdiction of one Registrar to another within the same State wherein more than one Registrars of Companies have jurisdiction, unless such change is confirmed by the concerned Regional Director.

Hence, a company, which needs to change its registered office within the same State but under the jurisdiction of another Registrar of Companies, shall have to take the following procedural steps in addition to the steps relating to shifting the Registered Office outside the local limits of any city, town or village where such registered office is situated -

1. After holding general meeting and having passed special resolution to this effect the company should make application to the Regional Director in the prescribed e-Form 1AD for confirmation along with a fee of Rs. 500/-.

The attachments prescribed alongwith e-form 1AD are :

- (a) Copy of the minutes of the meeting
 - (b) Copy of the newspaper advertisement
 - (c) Particulars of investor grievances, if any
 - (d) Any attachment to support the details of the prosecution filed against the company and its officers in default, if any
2. The Regional Director shall pass an order in writing confirming the change after giving necessary opportunity of being heard to the parties, within four weeks from the date of receipt of application.
 3. The company shall file with the concerned Registrar of Companies, a certified copy of the confirmation order of the Regional Director within two months from the date of confirmation order alongwith e-form 61.

4. The company should obtain a certificate of registration of the confirmation order from the Registrar of Companies who shall certify under his hand within one month from the date of filing of such confirmation order.
5. Such certificate shall be conclusive evidence that all the requirements of this Act for the alteration and confirmation have been complied with and henceforth the memorandum of association so altered shall be the memorandum of association of the company.
6. The Registrar shall make necessary changes in the register of companies and transfer the records to the Registrar of Companies, Pune under whose jurisdiction the company has shifted its registered office.

Regards,

Yours truly,

Sd/-A
Company Secretary

Question 4

- (a) *Swan Ltd. was sanctioned a term loan of Rs.15 crore by Fantastic Bank Ltd. with a stipulation of conversion of loan into equity. The company could not repay the loan as stipulated. As per one of the conditions of sanction, the bank now wants to exercise the right of conversion of Rs.5 crore loan into equity. State the procedure for the same. (8 marks)*
- (b) *Bipin is the Managing Director of Adarsh Ltd. and also of Bolder Ltd. Cleaner Ltd. decides to appoint Bipin as the Managing Director of the company. State the legal requirements under the Companies Act, 1956 to give effect to the proposed appointment and also draft a resolution for the appointment of Bipin as the Managing Director of Cleaner Ltd. (8 marks)*

Answer 4(a)

Fantastic Bank Ltd. had granted a term loan of Rs.15 crore to Swan Ltd. However, the borrowing company could not repay the term loan as stipulated. One of the conditions of the sanction provides a covenant that in the circumstances of non-repayment of the term loan as stipulated, the bank shall have right to get the loan converted into equity shares. The company therefore, on receipt of intimation from the bank will have to take steps for such conversion into equity shares by making allotment. Since the borrowing company is a public company it has to first offer shares to its existing shareholders on rights basis. However, the shares are required to be allotted to persons other than existing shareholders. This requires Special Resolution under section 81(1A) to be passed at a general meeting. Accordingly a general meeting has to be convened and the following special resolution is to be passed.

Draft Resolution:

To be passed at a General Meeting as a Special Resolution.

“RESOLVED THAT, in accordance with sub-section 1A of the section 81 of the

Companies Act, 1956 and Article 25 of the Articles of Association of the company, consent of the members be and is hereby accorded to the Board of directors to allot 50,00,000 (Fifty lakhs) Equity Shares of Rs.10(ten) each, at par to Fantastic Bank Ltd., by conversion of a part of the Term Loan of Rs.15 crore availed by the company, in terms of term loan agreement signed by the company, with the said Bank.”

Board Resolution/s at a Board Meeting:

“RESOLVED THAT, an allotment of 50,00,000 (Fifty lakhs) Equity Shares of Rs.10 each bearing distinctive No.100,00,001 to 150,00,000 be and is hereby made to Fantastic Bank Ltd.”

“RESOLVED FURTHER THAT, share certificates nos.....for respective 50 lakhs equity shares be issued by the company duly stamped and signed by any two directors of the company mechanically/manually/physically and by the Company Secretary, Mr. X, physically and by affixing the Common Seal of the company in their presence.”

“RESOLVED FURTHER THAT, necessary entries in the Register of Members of the company be made to record the said allotment of shares.”

“RESOLVED FURTHER THAT, the Secretary of the company Mr. X, be and is hereby authorized to file Form No.2, the Return of Allotment with the concerned Registrar of Companies, notifying this allotment to it.”

Answer 4(b)

As per Section 316 –

- (a) A person can act as a Managing Director in two or more than two companies, provided none of those companies is a public company.
- (b) A public company may appoint a person as its Managing Director, who is already a Managing Director in any other company, including a private company, only if such appointment is made by a unanimous resolution passed at a meeting of the Board of which specific notice has been given to all directors then in India.
- (c) A person can be appointed as Managing Director in more than two public companies only with the approval of the Central Government. The Central Government may permit a person to be appointed so if it is satisfied that it is necessary that the company should have a common Managing Director for their proper working and function as a single unit.

So Cleaner Ltd. can appoint Mr. Bipin as Managing Director of the company, subject to approval of the Central Government.

Draft Resolution:

“RESOLVED THAT, subject to the approval of the Central Government under sub-section (4) of Section 316, Mr. Bipin, who is already the Managing Director of two companies, namely M/s. Adarsh Ltd. and M/s. Bolder Ltd., be and is hereby appointed as Managing Director of the company by the directors present at the meeting and by specific notice in this regard was given to all directors then in India, on the terms and conditions in the draft agreement tabled before the meeting and initialed by the Chairman for the purpose of identification and that Mr. S, the Secretary of the company be and is hereby authorized to apply to the Central Government for seeking their approval.”

“RESOLVED FURTHER THAT, Shri D, Director and Shri S, the Secretary of the company be and is hereby authorized to execute the said agreement subject to such modifications/alterations made by the Central Government and to affix the common seal of the company thereon.”

Question 5

- (a) *What is a ‘foreign company’ and ‘foreign controlled company’? State the legal requirements a foreign company should comply with relating to delivery of documents to the Registrar of Companies, if it wishes to establish a place of business in India under the Companies Act, 1956. (8 marks)*
- (b) *Amar, Akbar and Anthony failed to pay the first call money of Rs.2.5 per equity share of Rs.10 each on 300, 500 and 1,000 equity shares held by them respectively in Good Prospects Ltd. The Board of directors wants to know what can be done in this situation. Guide the Board of directors by way of a note stating the steps involved and procedure to be followed by the company if it wants to forfeit the shares held by them. Also explain to the Board of directors whether the forfeiture will amount to reduction of share capital. (8 marks)*

Answer 5(a)

A foreign company means a company incorporated outside India and having a place of business in India, whatever be the pattern of their holding. However, as per section 591(2) of the Companies Act, 1956, where not less than 50% paid-up capital of foreign company is held by one or more citizens of India or by one or more bodies corporate incorporated in India, whether singly or in aggregate, such company shall comply with the provisions of the Companies Act, 1956, as if it were a company incorporated in India.

“A foreign controlled company”, however means a company in which the majority shareholding and voting power is in the hands of foreign individuals and/or bodies corporate.

Filing of returns and documents (sections 592 and 593): Foreign companies which establish a place of business in India must within one month from that date file with the ROC :

- (1) a certified copy of the charter, statutes or memorandum and articles of the company or other instrument defining its constitution with a certified translation of the documents in the English language if they are not in that language. Rule 16 of the Central Government’s General Rules, 1956 specifies the persons who are to certify the documents;
- (2) the full address of the Registered or principal office of the company;
- (3) a list of directors giving with respect to each of the directors who are individuals, his name and surname, former name and surname, usual residential address and nationality;
- (4) the present name and surname, former name and surname and usual residential address of the Secretary, if he is an individual and if a body corporate its corporate name and its registered office or principal office and if a firm, the partners of which are joint secretaries, the name and principal office of the firm;

- (5) the names, addresses of persons resident in India and authorized to accept service of documents, notices and processes on behalf of the company; and
- (6) the address of the principal place of business in India (section 592).

A foreign company should deliver to the ROC within the prescribed time, a return containing particulars of any changes or alterations in any of the particulars mentioned above (section 593).

Rule 17 of the Central Government's General Rules, 1956 prescribes the time limit within which the particulars of alterations are to be filed.

Answer 5(b)

A brief note for the Board of Directors in respect with non-payment of call money and effect thereof.

To
The Board of Directors
Good Prospects Ltd.

As desired by you I furnish below the information required by you in respect with the matter of non-payment of call money by Mr. Amar, Mr. Akbar and Mr. Anthony for the shares held by them.

The shareholders are expected to make payment of call money due from them on the shares held by them in the time limit specified. In case of non-payment, the company has power to forfeit the shares held by them under Article 15 of the Articles of Association of the company. The provisions for forfeiture of shares are as under.

Procedure for forfeiture of shares

1. A forfeiture of any share must be done on the authority of the Board of Directors or, of a Committee of the Board if authorised by articles of association for the purpose, by its resolution. The resolution should provide for a notice to be given to the shareholder concerned before the forfeiture is actually effected in pursuance of the resolution, requiring payment of so much of the call as is unpaid, together with any interest which may have accrued.
2. The notice threatening forfeiture in pursuance of the Board resolution must be given in accordance with the provisions of the articles. The notice aforesaid shall
 - name a further day (not being earlier than the expiry of fourteen days from the date of service of the notice) on or before which the payment required by the notice is to be made; and
 - state that, in the event of non-payment on or before the day so named, the shares in respect of which the call was made will be liable to be forfeited.
3. The notice must:
 - specify clearly the amount payable on account of unpaid call money as well as interest accrued, if any, and other expenses.
 - mention the day on or before which the amount specified ought to be paid, not be earlier than 14 days from the date of service of the notice.

- contain an unambiguous clear statement to the effect that in the event of failure to pay the specified amount latest on the appointed day, the shares in respect of which the amount remains unpaid would be liable to be forfeited..
4. The notice threatening forfeiture as contemplated in regulation 29 of Table A must be served in accordance with the provisions of section 53 of the Companies Act, 1956.
 5. If the call money is not paid in response to such notice threatening forfeiture, the company may, at any time thereafter, before the payment required by the notice has been made, forfeit the shares by a resolution of the Board to that effect.
 6. It is common practice by widely held listed company to publish a notice of forfeiture in newspapers so that the members of the public are made aware of the forfeiture and cautioned not to deal in the forfeited shares.
 7. A further notice after the shares are forfeited is not necessary. However, it is advisable and a common practice to give a notice of the shares having been forfeited to the concerned shareholders by registered post.
 8. Regulation 34 of Table A provides for a verified declaration in writing to be issued under the signature of a director, manager or secretary of the company that a share in the company has been duly forfeited on a date stated in the declaration. The declaration so made shall be conclusive evidence of the facts stated therein as against all persons claiming to be entitled to the shares forfeited. The accidental non-receipt of notice of forfeiture by the defaulter is not a ground for relief against forfeiture regularly effected.
 9. The fact of the forfeiture will be entered in the Register of Members and the name of the concerned shareholder as a member of the company will be deleted from the register.

I hope the matter is clearly explained to you. Please advise if any action is to be initiated in this direction.

Regards,

Sd/-

Company Secretary

It may be noted that the forfeiture amounts to reduction of capital till the forfeited shares are re-issued.

Question 6

- (a) *Arnold is the elder son of John. John was holding 5,000 equity shares of Dreams Ltd. and died. As the Company Secretary of the company, how will you guide Arnold to claim the shares of John ? He has one brother, 2 sisters and mother. John had not made any nomination. (4 marks)*
- (b) *Article No.72 of the articles of association of the company requires 25 persons to be present personally and/or by proxy to constitute the quorum at a general meeting. The company now wants to have the lowest minimum quorum as*

provided in the Companies Act, 1956. As the Company Secretary of the company, how could this be achieved by you for your company ? (4 marks)

- (c) *A complaint has been made to the Registrar of Companies by 5 members asking him to direct the Timely Holdings Ltd. of which they are members to re-convene annual general meeting since they had not received the notice of the company for the annual general meeting held on 30th September, 2008. The Registrar of Companies issues notice as to show cause why such directions should not be issued. What would be your response as the Company Secretary of the aforesaid company ? (4 marks)*
- (d) *The Board of directors of Free Flow Ltd. registered in Chennai, proposes to hold the next meeting of Board of directors in the month of January, 2010. Advise with reference to the provisions of the Companies Act, 1956 and relevant Secretarial Standards in respect of the following matters :*
- (i) *Can the meeting of Board of directors be held in Kolkata, when all the directors of the company reside at Chennai ? (1 mark)*
- (ii) *Whether the meeting of Board of directors can be called on a public holiday and that too after business hours as the majority of the directors of the company have gone to Kolkata on vacation ? (1 mark)*
- (iii) *Is it necessary that the notice of the meeting of Board of directors should specify the nature of business to be transacted ? (2 marks)*

Answer 6(a)

From the details given in the question it is understood that the deceased member late Mr. John was holding 5000 shares of Dreams Ltd. and left behind him his wife two sons and two daughters.

As the company secretary I will have to advise Mr. Arnold as under:

Transmission of shares is a process by operation of law.

Secretarial Standard 6 (Clause 1.4) reads as follows with regard to transmission where there is no will and there are more than one legal heirs.

“Where a sole shareholder who has not appointed a Nominee, dies intestate, the company should on receipt of written request from the legal heir, accompanied by the certificate evidencing the death of the shareholder and the Succession Certificate or Letter of Administration, register the Shares in the name of the legal heir within a period of 30 days.

In case the transmission is requested in favour of one or more but not all the legal heirs, the company may require a No Objection Certificate relinquishing their right on the said Shares or Deed of Relinquishment from other legal heir(s) for such transmission.”

After compliance procedure as prescribed above by Mr. Arnold, the Secretary will place the matter for the approval of the transmission of 5000 shares in his name by the board of directors by passing appropriate resolution. After such approval by the board, necessary change in the entries will be made in the Register of Members. Then the share certificate shall be endorsed in the name of Mr. Arnold and sent to him by registered post.

Answer 6(b)

The Article No.72 of the Articles of Association of the company requires 25 persons to be present personally and/or by proxy to constitute the quorum of a general meeting. The Company now wants to have the lowest minimum quorum as mentioned in the Companies Act, 1956. The said Act under section 174 states that at least 5 members to be present personally in case of public company and two members personally in case of private company, to constitute the quorum at a General Meeting to commence and transacting the business thereat.

The proposed action amounts to an alteration to the Articles of Association of the Company which could be done by passing a Special Resolution under section 31 of the Companies Act, 1956. To do this following steps would be undertaken:

1. To hold a board meeting to consider the matter of alteration of the Article No.72.
2. At the same board meeting fix date of holding an extra-ordinary General Meeting and approve the draft notice of General Meeting and authorize to issue the same to the members under the signature of the Director or Secretary of the Company. Despatch the notice at least 21 clear days before the General Meeting. Also approve the Explanatory Statement under section 173.
3. Hold General Meeting and pass a Special Resolution incorporating the desired number to be the quorum.
4. File form no.23 along with the certified copies of the Special Resolution and Explanatory Statement. (This will go as an attachment to e-form 23).
5. Also copy of the Altered Articles be sent as an attachment to the said e-form 23.
6. After approval of e-form 23 the Articles stand altered from the date of passing the special resolution.
7. If the company is a listed public company then 3 copies of notice be sent to the Stock Exchange(s) and also after passing the resolution copies of such resolution be sent along with copy of Altered Articles.

Answer 6(c)

Five members of Timely Holdings Ltd., claimed and complained to the Registrar of Companies, that they have not received any Notice of Annual General Meeting and therefore any proceedings took place thereat be treated as null and void.

One of the fundamental and basic rights of a shareholder/member of a company is to receive a Notice of General Meeting, attend and vote thereat.

The response to the Registrar will be on the following lines by the Company Secretary to submit that :

1. The Notice was sent to the complainants on their registered address with the company as per Register of Members.
2. The Notice was sent through post.

3. Besides this a Public Notice under section 154 of the Companies Act, 1956 was published in two news papers one in English and other in Vernacular having largest circulation in the district of the Regd. Office of the company.
4. Since the company has strictly followed and complied with all the provisions of the Companies Act, 1956 in respect with issue of Notice there is no question of reconvening the Annual General Meeting held on 30th September, 2008.

Answer 6(d)(i)

Yes. There is no prohibition in Companies Act, 1956 regarding time, day, venue of the Board meetings.

As per clause 1.2.2 of Secretarial Standard-1, a Board meeting may held at any time, any day including a public holiday and at any place.

Answer 6(d)(ii)

Yes, there is no prohibition in the Companies Act, 1956 regarding time, day, venue of the Board meetings. As per clause 1.2.2 of Secretarial Standard-1, a Board meeting may held at any time, any day including a public holiday and at any place.

Answer 6(d)(iii)

Section 286 of the Companies Act, 1956 does not make it mandatory to specify the nature of business to be transacted along with notice of the meeting. If the Articles of Association are silent, the notice of the Board Meeting is not required to specify the nature of business to be transacted. However, Secretarial Standard-1 has specified that agenda for the meeting should be provided, along with the notes on agenda atleast 7 days before the date of the meeting.

Question 7

- (a) *Enumerate the search facilities in MCA-21.* (6 marks)
- (b) *Enumerate the contents of Management Discussion and Analysis Report (MDAR) which forms part of the Board of directors' report.* (6 marks)
- (c) *Discuss directors' remuneration report in the light of Companies Act, 2006 of the United Kingdom.* (4 marks)

Answer 7(a)

The following search facilities are available to locate the requisite information:

- (a) *Search for viewing public document* : Public documents are those documents that are available for viewing, by anyone, on payment of requisite fees. Users may need to see public documents of any company registered with MCA for various purposes. Similarly, banks and financial institutions may also need to view these documents while sanctioning loan.

The following are the categories of public documents:

- (i) Incorporation documents
- (ii) Charge documents

- (iii) Annual Return & Balance Sheet
 - (iv) Change in directors
 - (v) Other documents.
- (b) *Search for getting certified copy*: The user selects one or more document(s) for viewing and clicks the “Get Certified copy” button. User has the option to choose more than one document at a time. This is a paid service. User will have the facility to add the documents to his cart and make the payment collectively. The user has the option to mention the number of pages in the document for which he wants a certified copy as well as the number of copies.
- Once the request reaches to the pending work list of the concerned MCA official, the official will take the printouts of the documents and sign it with seal and deliver to the requester. The certified copy will be delivered in the physical form.
- (c) Finding the Corporate Identity Number (CIN).
 - (d) Checking Company Name.

Answer 7(b)

The MDAR should either form a part of the Board’s Report or to be given as an addition thereto in the annual report to the shareholders. The MDAR should include a discussion on the following matters within the limits set by the company’s competitive position:

- (1) Industry structure and developments.
- (2) Opportunities and threats.
- (3) Segment wise or product wise performance.
- (4) Outlook.
- (5) Risks and area of concern.
- (6) Internal control systems and their adequacy.
- (7) Discussion on financial performance with respect to operational performance.
- (8) Material developments in human resources/industrial relations front including number of people employed.

It is desirable that MDAR is signed in the same manner as in the case of the Board’s Report.

Answer 7(c)

Duty to prepare directors’ remuneration report under UK Companies Act, 2006 (Section 420 & 422)

The directors of a quoted company shall for each financial year prepare a directors’ remuneration report which shall contain the information specified in the Schedule to Act and comply with any requirement of that Schedule as to how the information is to be set out in the report. The directors’ remuneration report shall be approved by the Board of directors and signed on behalf of the Board by a director or the secretary of the company. Every copy of said report which is laid before the company in general meeting or which

is otherwise circulated, published or issued, shall state the name of the person who signed it on behalf of the Board. The copy of the directors' remuneration report which is delivered to the registrar shall be signed on behalf of the Board by a director or the secretary of the company.

Question 8

Write notes on any four of the following :

- (i) One person company*
- (ii) Independent director*
- (iii) Share warrants*
- (iv) Nominee director*
- (v) Secretarial Standards.*

(4 marks each)

Answer 8(i)**One person company**

One person company is totally a new concept for India but in United Kingdom and other developed countries this is already in existence. In the proposed Companies Bill, 2009 this concept is being brought in and introduced. It is alike a proprietorship firm but with limited liability of the company. Dr. J J Irani Committee has made recommendations for this concept. This company will have at least one director. The last words in the name must indicate the word "OPC" to distinguish it with others. The company will function more or less on the broad principles of company type of organization in India with total independence. All the compliances and regulations as applicable to other companies shall be also applicable to this OPC.

Answer 8(ii)**Independent director**

Independent director has gained great importance in the present functioning of the boards of Indian companies. The meaning of the word 'independent' means having no pecuniary interest whether directly or indirectly in the company in which such person is appointed. International Corporate Governance norms require constitution of various committees on which independent director is being appointed as the Chairman to have total transparency of working of the company. The SEBI guidelines on Corporate Governance has directed that every public listed company will have composition of its board as under.

If the chairman is executive director, there should be atleast 50% directors as independent.

If the chairman is non-executive then such strength should be atleast 1/3rd of the total strength.

The purpose behind this direction is to have control over the core promoters actions to decide various matters of the company so that shareholders interest not being jeopardized.

Answer 8(iii)**Share warrants**

Share warrants are bearer instruments as such very easy to sell or buy as it does not require any procedure for getting them transferred in the name of the buyer. The warrant holder however does not have any right to attend and vote at the General Meetings of the Company.

Share warrants can be issued only by a public company if its Articles of Association permits. A special resolution is required to be passed to issue share warrants. Also prior approval of the Central Government is required if the shares are to be converted into warrants. Share warrants are quasi negotiable instruments. On conversion of the shares into warrants the names of such shareholders is removed from the Register of Members of the company.

Answer 8(iv)**Nominee director**

Nominee director is a person who is an individual appointed by third party to protect its interest in the company and have participation in the decision making process of the board. Usually, the Banks or Financial Institutions or others who have large stake in the company nominates their representatives on the board in terms of the conditions of sanctioning of the credit facilities, term loans or financial investments. The Articles of Association must contain provisions for appointment of such nominee director/s. Such appointed director will be on the board until the continuation of the credit exposure to the company or withdrawal of nomination by the nominating entity. As soon as the company liquidates its dues to the bank/financial institution etc. the nominee director normally is withdrawn from the board. He is not liable to retire by rotation. Also he is not considered as an independent director for the purpose of deciding the retiring director every year.

Answer 8(v)**Secretarial Standards**

The Institute of Company Secretaries of India, (ICSI), recognising the need for integration, harmonisation and standardisation of diverse secretarial practices, has constituted the Secretarial Standards Board (SSB) with the objective of formulating Secretarial Standards.

The Secretarial Standards do not seek to substitute or supplant any existing laws or the rules and regulations framed thereunder but, in fact, seek to supplement such laws, rules and regulations.

Secretarial Standards that are issued will be in conformity with the provisions of the applicable laws. However, if, due to subsequent changes in the law, a particular Standard or any part thereof becomes inconsistent with such law, the provisions of the said law shall prevail.
