

PROFESSIONAL PROGRAMME EXAMINATION

JUNE 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 of the following :

- (i) A Board resolution for appointment of 'occupier' of a factory premises.*
- (ii) A resolution to get exemption from the Central Government under section 212(8).*
- (iii) A notice under section 640B for the Central Government's approval to increase remuneration of the managing director.*
- (iv) A resolution for approval of annual accounts.*
- (v) A resolution for appointment of a relative of a director carrying a monthly remuneration of Rs.60,000. (5 marks each)*

Answer 1(i)

Board resolution for appointment of Occupier of a factory premises

RESOLVED THAT Shri, Executive Director, of the company be and is hereby entrusted with ultimate control over the affairs, of the company's factory at and by virtue of the ultimate control over the affairs of the said factory being vested in him he be the "occupier" of the said factory.

FURTHER RESOLVED THAT Mr be and is hereby vested with the following powers and authorities:

..... the powers may be specified here.

FURTHER RESOLVED THAT, as the "occupier" of the company's factory at Shri, will ensure compliance with the general duties, obligations and requirements of all applicable laws, in particular the Factories Act, 1948, including those enumerated in section 7A of the said Act in so far as the company's factory at is concerned, and submit a monthly report to the Managing Director indicating whether there has been such compliance.

Answer 1(ii)

Board resolution to get exemption from the Central Government under sub-section (8) of section 212

"RESOLVED that an application be made to the Central Government seeking an direction under section 212(8) of the Companies Act, 1956, exempting the Company from the requirements of section 212 in relation to the subsidiaries which is required to be stated in the Balance Sheet of the Company under the section.

FURTHER RESOLVED THAT Mr., Company Secretary be and is hereby authorized to submit an application to the Central Government and to do such other things, acts and deeds in connection with the application as may be necessary or required”.

Answer 1(iii)

Notice under section 640B for Central Government’s approval to increase Managing Director’s remuneration

.....Limited

Notice is hereby given pursuant to Section 640B of the Companies Act, 1956 (the Act) that the company intends to make an application to the Central Government for its approval under Section 310 of the Act to increase in the remuneration payable to Shri....., Managing director of the Company.

Registered Office:

For.....Limited

.....

.....

.....

Company Secretary

Dated.....

Answer 1(iv)

Kind of Meeting : Annual General Meeting

Type of Resolution : Ordinary Resolution

Resolution for approval of annual accounts

“RESOLVED that the audited Balance Sheet of the Company as at 31st March 2009 and the Profit and Loss Account of the Company for the financial year ended on that date, together with the Schedules and Notes attached thereto, along with the Reports thereon of the Directors and the Auditors, as circulated to the Members and laid before the Meeting, be and are hereby approved and adopted.”

Answer 1(v)

Resolution for appointment of a relative of Director

Kind of Meeting : General Meeting

Type of Resolution : Special Resolution

“ RESOLVED pursuant to Section 314(1B) of the Companies Act 1956 and subject to the approval of the Central Government that Mr..... a relative of Mr..... a director of the company, be and is hereby appointed as General Manager (Production) of the company at a monthly remuneration of Rs. 60,000.”

“ FURTHER RESOLVED THAT the remuneration payable to Mr..... as aforesaid will be subject to such modification as may be required by the Central Government.”

Question 2

- (a) Choose the most appropriate answer from the given options in respect of the following :
- (i) On incorporation of a company, the Registrar of Companies in addition to the certificate of incorporation, issues a unique identification number called—
 - (a) Unique corporate number
 - (b) Corporate identification number
 - (c) Company identification number
 - (d) Unique identification number.
 - (ii) The appointment of a statutory auditor under section 224A is with reference to 25% of —
 - (a) Paid-up capital
 - (b) Issued capital
 - (c) Subscribed capital
 - (d) Only equity capital.
 - (iii) Non-executive directors of a public company may get remuneration on quarterly basis if such basis of payment is approved by/under —
 - (a) Articles of association of the company
 - (b) General meeting of the company
 - (c) Central Government
 - (d) Schedule XIII to the Companies Act, 1956.
 - (iv) Annual return of a company having share capital is to be filed with the Registrar of Companies in e-form —
 - (a) 20A
 - (b) 20B
 - (c) 25A
 - (d) 25B.
 - (v) On striking off the name of a company considered defunct, the Registrar of Companies is required to —
 - (a) Publish notice thereof in the official gazette
 - (b) Inform the State Government
 - (c) Inform the Central Government
 - (d) Inform the Ministry of Corporate Affairs.
 - (vi) A member of the ICSI in practice shall be deemed to be guilty of professional misconduct if he issues compliance certificates/signs annual returns in aggregate in a calendar year for more than —
 - (a) 20 Companies
 - (b) 50 Companies

(c) 80 Companies

(d) 100 Companies.

(1 mark each)

(b) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :

(i) Form 23AA relating to keeping of books of account at a place other than the registered office is required to be filed within _____ days with the Registrar of Companies.

(ii) Approval of the _____ is required to be taken for changing the name of the company under section 21.

(iii) A copy of the order passed by the Company Law Board is required to be filed with the Registrar of Companies in e-form No. _____ .

(iv) It is the situation of the _____ of the company that decides the jurisdiction of the court in that company's matters.

(v) _____ policy adopted by a company is to prevent the misuse of confidential information in the context of insider trading.

(vi) On the basis of the report of the _____, the Central Government may appoint a competent person as inspector under section 235(1).

(1 mark each)

(c) What is directors' responsibility statement ?

(4 marks)

Answer 2(a)

- (i) (b) Corporate identification number
- (ii) (c) Subscribed capital
- (iii) (c) Central Government
- (iv) (b) 20B
- (v) (a) Publish notice thereof in the official gazette
- (vi) (c) 80 Companies

Answer 2(b)

- (i) Form 23AA relating to keeping of books of account at a place other than the registered office is required to be filed within **7** days with the Registrar of Companies.
- (ii) Approval of the **Central Government** is required to be taken for changing the name of the company under section 21.
- (iii) A copy of the order passed by the Company Law Board is required to be filed with the Registrar of Companies in e-form No. **21** .
- (iv) It is the situation of the **registered office** of the company that decides the jurisdiction of the court in that company's matters.
- (v) **Chinese Wall** policy adopted by a company is to prevent the misuse of confidential information in the context of insider trading.

- (vi) On the basis of the report of the **Registrar**, the Central Government may appoint a competent person as inspector under section 235(1).

Answer 2(c)

Directors' Responsibility Statement

In terms of Section 217 (2AA) of the Companies Act, 1956, the Board's report shall also include a Directors' Responsibility Statement, indicating therein:

- (a) that in the preparation of the annual accounts, the applicable accounting standards have been followed along with proper explanation relating to material departures;
- (b) that the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the Company at the end of the financial year and of the profit and loss of the Company for that period;
- (c) that the Directors have taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the Company and for preventing and detecting fraud and other irregularities;
- (d) that the Directors have prepared the annual accounts on a going concern basis.

Question 3

- (a) *Bring out the distinctive features of the following :*
 - (i) 'Charge', 'mortgage' and 'pledge'.
 - (ii) 'Adjournment' and 'postponement' of a meeting. (3 marks each)
- (b) *State, with reasons in brief, whether the following statements are correct or incorrect:*
 - (i) *An article in the articles of association can be amended by the members of the company by passing a special resolution.*
 - (ii) *A company may get exemption from the provisions of section 212.*
 - (iii) *The eligibility criteria to apply for seeking relief under section 397, etc., inter alia, provide for holding not less than 20% of the issued share capital of the company.*
 - (iv) *No stamp duty on transfer of shares in electronic form (demat mode) is payable.*
 - (v) *It is mandatory to constitute audit committee in all public limited companies.* (2 marks each)

Answer 3(a)(i)

Charge

A charge is a right created by any person including a company referred to as "the borrower" on its assets and properties, present and future, in favour of a financial institution

or a bank, or other person referred to as “the lender”, which has agreed to extend financial assistance.

Section 124 of the Companies Act, 1956 states that “charge” includes “mortgage”. A charge may be fixed or floating depending upon its nature. It is a security for repayment of the amount borrowed. Every charge created by a company should be registered with the Registrar of Companies within 30 days after the date of its creation.

Mortgage

A mortgage is a legal process whereby a person, who borrows money from another person and secures the repayment of the borrowed money and also the payment of interest at the agreed rate, by creating a right or charge in favour of the lender on his movable and immovable property. A mortgage involves transfer of the interest in the property.

Pledge

Pledge is a bailment of personal property as security for some debt or engagement, redeemable on certain terms, and with an implied power of sale on default. Pledge can not be a subject of charge under the Companies Act.

Answer 3(a)(ii)

‘Adjournment’ and ‘postponement’ of a meeting

Adjournment of meeting is a different from postponement of a meeting. To adjourn means to defer or suspend the meeting to a future time with no appointed date or indefinitely (sine die) or as decided by the members present at the scheduled time of the meeting. To postpone of a meeting means to put off for the time being. A meeting can be postponed at any time before it is held. A postponed meeting needs not be held again and for its reconvening, the complete procedure is to be complied with.

The adjourned meeting is merely the continuation of the original meeting and unless the Articles provide otherwise, a fresh notice of the adjourned meeting is not necessary, if it is not adjourned beyond 30 days or sine die. At the adjourned meeting, only the unfinished business of the original meeting should be considered.

Answer 3(b)(i)

Correct. Vide section 31 of the Companies Act, 1956, an article in the articles of association can be amended by the members of the company by passing a special resolution.

Answer 3(b)(ii)

Correct. Under section 212(8) of the Companies Act, 1956, a company may get exemption from the compliance of the provisions of section 212 of the Act directing that in relation to any subsidiary section 212 shall not apply or shall apply to the extent as directed.

Answer 3(b)(iii)

Incorrect. The eligibility criteria to apply for seeking relief under section 397 etc.

inter alia provide for holding not less than 10% of the issued share capital of the company. [vide Section 399(1)(a)].

Answer 3(b)(iv)

Correct. No stamp duty on transfer of shares in electronic form (demat mode) is payable. [Vide Depositories Act, 1996].

Answer 3(b)(v)

Incorrect. It is not mandatory to constitute Audit Committee in all public limited companies. It is mandatory for those public companies having paid-up capital of 5 crores or more. [vide section 292A(1)]. Further, all listed companies are mandatorily required under Clause 49 of Listing Agreement to constitute an Audit Committee.

Question 4

- (a) *Explain the external reporting requirements by Compliance Officer as laid down under the SEBI (Prohibition of Insider Trading) Regulations, 1992. (4 marks)*
- (b) *Regulation 168 of the Company Secretaries Regulations, 1982 prohibits a Company Secretary in Practice from engaging in any business or occupation other than the profession of Company Secretary unless it is permitted by a general or specific resolution of the Council of the Institute of Company Secretaries of India. Comment. (4 marks)*
- (c) *“In securities market, information is money.” Comment. (4 marks)*
- (d) *In respect of listed companies, certain additional items are required to be considered by the Board at its meeting. Explain. (4 marks)*

Answer 4(a)

Following are the external reporting requirements by a compliance officer as laid down under SEBI (Prohibition of Insider Trading) Regulations, 1992. The compliance officer of a company is required to –

- (i) disclose within 2 working days of receipt of the information received by the company under Regulation 13(1), 13(2), 13(3) and 13(4) to all Stock Exchanges on which the company is listed.
- (ii) inform the SEBI about the violations, if any observed, of the SEBI (Prohibition of Insider Trading) Regulations, 1992, by the company/compliance officer.

As per Regulation 13(1), any person who holds more than 5% shares or voting rights in any listed company is required to disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of :—

- (a) the receipt of intimation of allotment of shares; or
- (b) the acquisition of shares or voting rights, as the case may be.

As per Regulation 13(2), any person who is a director or officer of a listed company is required to disclose to the company in Form B the number of shares or voting rights held and positions taken in derivatives by such person and his dependents, within two working days of becoming a director or officer of the company.”

As per Regulation 13(3), any person who holds more than 5% shares for voting rights in any listed company is required to disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure and such change exceeds 2% of total shareholding or voting rights in the company.

As per Regulation 13(4), any person who is a director or officer of a listed company, is required to disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents from the last disclosure and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

As per Regulation 13(5), the disclosure mentioned in sub-regulations (3) and (4) of Regulation 13 shall be made within 2 working days of the receipts of intimation of allotment of shares, or the acquisition or sale of shares or voting rights, as the case may be.

Answer 4(b)

Regulation 168 of CS Regulations, 1982 prohibits a Company Secretary in practice from engaging in any business or occupation other than the profession of Company Secretary unless it is permitted by a general or specific resolution of the ICSI. Members have been permitted to practice/engage in the following business or occupation under Regulation 168 of Company Secretaries Regulations, 1982:

Permission granted generally

- (i) Private tutorship.
- (ii) Authorship of books and articles.
- (iii) Holding of Life Insurance Agency Licence for the limited purpose of getting renewal commission.
- (iv) Holding of public elective offices such as M.P, M.L.A., M.L.C.
- (v) Honorary office-bearership of charitable, educational or other non-commercial organisations.
- (vi) Acting as Justice of Peace, Special Executive Magistrate and the like.
- (vii) Teaching assignment under the Coaching Organisation of the Institute or any other organisation, so long as the hours during which a member in practice is so engaged in teaching do not exceed average four hours in a day irrespective of the manner in which such assignment is described or the remuneration is receivable by the member in practice for such assignment.
- (viii) Valuation of papers, acting as a paper-setter, head examiner or a moderator, for any examination.
- (ix) Editorship of professional journals.
- (x) Acting as ISO lead auditor.

- (xi) Providing Risk Management Services for non-life insurance policies except marketing or procuring of policies.
- (xii) Acting as Recovery Consultant in the Banking Sector.
- (xiii) Becoming non-executive director/promoter/promoter director/subscriber to the Memorandum and Articles of Association of a company the objects of which include areas, which fall within the scope of the profession of Company Secretaries irrespective of whether or not the practising member holds substantial interest in that company.
- (xiv) Becoming non-executive director/promoter/promoter director/subscriber to the Memorandum and Articles of Association of a company which is engaged in any other business or occupation provided that the practising member does not hold substantial interest in the company.

Permission to be granted specifically

Members of the Institute in practice may engage in the following categories of business or occupation, after obtaining the specific and prior approval of the Executive Committee of the Council in each case:

- (i) Interest or association in family business concerns provided that the member does not hold substantial interest in such concerns.
- (ii) Interest in agricultural and allied activities carried on with the help, if required, of hired labour.
- (iii) Editorship of journals other than professional journals.

Answer 4(c)

In the securities market, information is money because its timely gathering, analysis and dissemination are essential for efficient operation in the market. The balance in bargaining power obviously shifts favourably towards the person possessing insider/sensitive information. Hence it leads to unfairness in the market as it violates the belief that there must be a parity in the bargaining power of all the players.

The wrongful obtaining and use of such information by insiders is unfair and adversely affects the incentive to invest in such securities. Therefore, a failure to control this practice would not only result in unfairness permeating into the market but another obvious result would be a loss of public confidence in the institution as a whole as it undermines the honesty that underlie public confidence in securities market of a country. In order to govern the conduct of the Insiders and connected persons on matters relating to Insider trading, Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 were enacted by SEBI.

Answer 4(d)

In accordance with Clause 49 of Listing Agreement, amongst others, the under mentioned items should be made available to the Board and considered at its meeting:

1. Annual operating plans and budgets and any updates.
2. Quarterly results for the company and its operating divisions or business segments.

3. Minutes of meetings of audit committee and other committees of the board.
4. The information on recruitment and remuneration of senior officers just below the board level, including appointment or removal of Chief Financial Officer and the Company Secretary.
5. Details of any joint venture or collaboration agreement.
6. Sale of material nature, of investments, subsidiaries, assets, which is not in normal course of business.
7. Non-compliance of any regulatory, statutory or listing requirements and shareholders service such as non-payment of dividend, delay in share transfer etc.

Question 5

- (a) *Outline the procedure for removal of the statutory auditor.* (8 marks)
- (b) *Enumerate the procedure for conversion of a public company into a private company.* (8 marks)

Answer 5(a)**Procedure for Removal of Statutory Auditor**

1. Convene a Board Meeting and place an item on agenda for removal of the existing statutory auditor of the company with reasons thereof. After deliberation, pass a resolution authorising the officers to make application to the Regional Director for obtaining approval of the Central Government. [Section 224(7) of the Act].
2. File e-Form 24A with the Regional Director. Attach the application explaining in detail the grounds for removal of the existing auditor of the company and the particulars of the company's auditor along with following documents –
 - Copy of ordinary resolution
 - Copy of special notice under section 225(2)
 - Copy of the representation, if any, made by the statutory auditor
3. Simultaneously, deliver a copy of the application with all enclosures to the concerned Registrar of Companies for information and comments/ recommendation, as may be required.
4. Follow up, explain, submit further details/particulars/documents and obtain approval from the Regional Director.
5. On receipt of the approval, convene a Board meeting of the company. Place the approval of the Regional Director so received and decide about (i) new auditor to be appointed in place of the existing auditor of the company; (ii) obtain certificate in writing from the new auditor to the effect of his eligibility to act as auditor if appointed; (iii) fix date, day, time and place of general meeting; and (iv) approve draft notice of the general meeting, specifying therein the resolutions (ordinary or special, as the case may be for removing and appointing Auditor).

6. Issue notice to the members of the company, at least clear 21 days before the date of the meeting alongwith relevant explanatory statement and place the documents including Letter of Approval of the Regional Director for inspection of the Registered Office of the company. It is to be noted that for appointing a person other than the retiring auditor or to provide that the retiring auditor shall not be reappointed, a special notice has to be given and a copy thereof is to be sent to retiring auditor. The retiring auditor has a right to make representations in writing to the company and where practicable to call upon the company to send copy of representation to every member of company.
7. Hold the general meeting and pass the resolutions as set out in the notice with or without modification.
8. Intimate the new auditor with a certified copy of the resolution passed within seven days.
9. Also intimate the auditor removed with a certified copy or the resolution passed along with a copy of the approval of the Regional Director.
10. File e-form 23 with certified copy of the special resolution and explanatory statement relating thereto with requisite filing fees within thirty days from the date of passing of special resolutions together with a copy of the approval letter with the concerned Registrar of Companies.

Answer 5(b)

Conversion of Public Company into a Private Company

For conversion of a public company to a private company, a company is required to take the following procedural steps:

1. Hold a meeting of its Board of directors to consider and approve the proposal for conversion of public company into private company.

The following resolutions must be passed at the meeting:

- (i) To approve the proposal for conversion of the company into private company.
- (ii) To fix time, date and venue for holding an extraordinary general meeting of the company.
- (iii) To approve notice for the general meeting along with the explanatory statement as required under Section 173 (2) of the Act. The notice of the general meeting must contain text of the following resolutions; which will be required to be passed at the meeting:
 - (a) special resolution for altering the articles of the company, as required under Section 31 of the Companies Act, 1956, so as to include therein restrictions, limitation and prohibition specified in Section 3(1)(iii) of the Act converting the public company into a private company.
 - (b) special resolution for changing the name of the company as required under proviso to Section 21 of the Act.
 - (c) special resolution for altering the memorandum of association (name clause) of the company in accordance with Section 16 of the Act.

- (iv) To authorise the company secretary to issue the notice of the general meeting on behalf of the Board.
- 2. Hold general meeting and have the aforementioned special resolutions passed.
- 3. Within thirty days of passing of the special resolutions, file e-form 23 with copy of resolution along with explanatory statement under Section 173 and amended copy of Articles of Association as attachment along with prescribed filing fee.
- 4. If the number of members of the company is above fifty, appropriate steps should be taken to reduce the number to fifty or below.
- 5. In accordance with the proviso to Sub-section (1) of Section 31 of the Companies Act, 1956, no alteration made in the articles of association of a company shall be effective, which has the effect of converting a public company into a private company, unless such alteration has been approved by the Central Government. Therefore, an application in e-form 1B, along with the attachments and prescribed application fee, will have to be made, within three months from the date of passing of the special resolution for alteration of the articles.
- 6. After the alteration of the articles has been approved by the Central Government, a printed copy of the altered articles of the company should be filed with the concerned Registrar of Companies within one month of the date of receipt of the order of approval [Section 31(2A)].
- 7. Surrender to the Registrar, the Certificate of Incorporation of the company in order to obtain fresh Certificate of Incorporation consequent upon change of name on conversion of the company into a private company [Section 23(1)].
- 8. Issue a general notice in newspapers informing members and public at large that the company has been converted into a private limited company and its name has been changed from Limited to Private Limited with effect from

Question 6

- (a) Describe the basic features of limited liability partnership (LLP) and distinguish it from normal partnership. (8 marks)
- (b) State the important features of electronic filing of documents under the Companies Act, 1956. (5 marks)
- (c) Mention against the following e-forms, the subject matter for which these forms are meant :
 - (i) e-form-3
 - (ii) e-form-4C
 - (iii) e-form-24B. (1 mark each)

Answer 6(a)

Limited Liability Partnership Act, 2008 provides for the formation and regulation of limited liability partnerships and for matters connected therewith or incidental thereto.

The basic features of LLP are as under:

- LLP is an alternative corporate business vehicle that would give the benefits of limited liability but would allow its members the flexibility of organizing their internal structure as a partnership based on an agreement.
- LLP is a separate legal entity, liable to the full extent of its assets, the liability of the partners would be limited to their agreed contribution in the LLP.
- LLP is a body corporate and a legal entity separate from its partners. It will have perpetual succession.
- An LLP is under obligation to maintain annual accounts reflecting true and fair view of its state of affairs.
- The mutual rights and duties of partners of an LLP inter se and those of the LLP and its partners shall be governed by an agreement between partners or between the LLP and the partners subject to the provisions of the Act. It provides flexibility to devise the agreement as per their choice. In the absence of any such agreement, the provisions of law shall govern the mutual rights and duties.

The difference between “LLP” and “Partnership Firm” is as under:

<i>S. No.</i>	<i>Points of Distinction</i>	<i>LLP</i>	<i>Partnership</i>
1.	Governing Act	Limited Liability Partnership Act, 2008	Indian Partnership Act, 1932
2.	Who can Incorporate	Any two or more persons may start a LLP by subscribing their names to the Incorporation document which is to be filed with the Registrar of Companies	Any two or more persons willing to start a business may do so by entering into an agreement
3.	Form of name	The LLP Act stipulates that the partnership name must be approved by the Registrar and the last words must be “Limited Liability Partnership” or the acronym LLP	There is no mandatory provision as to name of a partnership firm
4.	Charter	Limited Liability Partnership Agreement or Schedule I of the LLP Act	Partnership Deed
5.	Alteration in the Charter	Alteration can be made only in accordance with the procedure laid down in the Schedule / LLP Agreement	Alteration can be made only with the consent of all the partners
6.	Separate Entity	A LLP on being registered acquires a legal status separate from its partners	A partnership firm being a sum total of individuals does not acquire a legal personality

Answer 6(b)

The Central Government amended the Companies (Central Government's) General Rules and Forms 1956 vide notification dated 10th February, 2006 and notified e-forms to enable electronic filing of documents.

To support the provisions of e-filing, the Central Government under section 610A and 610E of the Companies Act have enacted the Companies (electronic filing and authentication of documents) Rules, 2006.

Important feature of electronic filing of documents are:

— *Director Identification Number (DIN)*

All existing and any person intending to be appointed as a director are required to obtain the Director Identification Number (DIN).

— *Corporate Identity Number (CIN)*

Every company is being allocated a Corporate Identity Number (CIN).

— *Digital Signature Certificate (DSC)*

The e-forms are required to be authenticated by the authorized signatories using digital signatures as defined under the Information Technology Act, 2000. A digital signature is the electronic signature duly issued by a certifying authority that shows the authority of the person signing the same. It is an electronic equivalent of a written signature. Every user who is required to sign an e-form for submission with MCA is required to obtain a Digital Signature Certificate.

— *Pre-certification by professionals in whole time practice*

Amongst other, Form Nos. 2, 3, 5, 10, 17, 18, 23, 24AB, 25C, 32 are to be pre-certified by a Chartered Accountant or a Cost Accountant or a Company Secretary in whole time practice.

— *Mode of payment*

MCA-21 system provides for the facility of payment of statutory fees through multiple modes i.e. (i) Off-line payment through a challan generated by the system and payment of fees at the counter of the notified bank branches through DDs/Cash; (ii) on-line payments through Internet Banking and Credit Cards [Master Card/VISA].

— *Service Request Number (SRN)*

Each transaction under e-filing is uniquely identified by a Service Request Number. On filing of an e-form, the system generates and provides a Service Request Number. A user can check the status of the document/transaction, by entering the SRN.

Answer 6(c)

- (i) **e-form 3** - Particulars of contract relating to shares allotted as fully or partly paid-up otherwise than in cash.

- (ii) **e-form 4C** - Return in respect of buy Back of Shares.
- (iii) **e-form 24B** - Form of application to the Central Government for obtaining prior consent for holding of any office or place of profit in the company by certain persons

Question 7

- (a) *You are a Practising Company Secretary. One of your clients abroad wants to establish a place of business in India for a company incorporated abroad in which he is a Whole-time Director. Prepare a note for his information indicating the procedure involved to set-up a place of business in India. (8 marks)*
- (b) *Draft the minutes of annual general meeting of Happy Ltd. at which besides adoption of accounts, declaration of dividend, appointment of auditors and the appointment of additional director as regular director featured for consideration and decision. (8 marks)*

Answer 7(a)

If Whole-time Director of foreign company desires to establish a place of business within India, then pursuant to section 592 of the Companies Act, 1956 e-form 44 is required to be delivered to Registrar of Companies within thirty days of the establishment of the place of business, for its registration. In such e-form, some of the important details like address and state of principal place of business in India, date of its establishment, full address of principal office of foreign company, type of office and main division of business activity, details of persons resident in India and authorized to accept on behalf of company service of process and any notices needs or documents to be served on the company. The following documents are required to be attached—

- Charter, statutes or memorandum and articles of association or other instrument constituting or defining the constitution of the company. If the documents are not in English language then it should be translated copy in English language.
- Details of directors (individuals as well as bodies corporate).
- Approval letter from Reserve Bank of India for the setting up of business in India,
- Power of attorney or board resolution in favour of the authorised representatives.

The form is required to digitally signed by the authorized representative of the foreign company.

The details of directors, Secretary and body corporate should contain the following particulars:

- (a) with respect to each director—
 - (i) in the case of an individual, his present name, former name (if any) and surname, his usual residential address, his nationality of origin, (if other than nationality) and his business occupation, if any, or if he has no business occupation but holds any other directorship or directorships, particulars of that directorship or of some one of those directorships; and

- (ii) in the case of a body corporate, its corporate name and registered or principal office; and the full name, address, nationality and nationality of origin, (if different from that nationality) of each of its directors;
- (b) with respect to the secretary, or where there are joint secretaries with respect to each of them—
 - (i) in the case of an individual, his present name, former name (if any) and surname, and his usual residential address; and
 - (ii) in the case of a body corporate, its corporate name and registered or principal office.

Provisions under FEM (Establishment in India of Branch or Office or other place of business) Regulations, 2000

A foreign company or individual planning to set up business operations in India can do so through a Liaison Office / Representative Office, Project Office or a Branch Office. The FEM (Establishment in India of Branch or Office or other place of business) Regulations, 2000 govern the opening and operation of such offices.

Accordingly, Companies incorporated outside India, desirous of opening a Liaison/ Branch office in India have to make an application in form FNC-1. It may be noted that RBI has authorized AD Category I bank to forward FNC-1 along with the necessary enclosures along with the comments and recommendations to

The Chief Manager-in-charge,
Reserve Bank of India
Foreign Exchange Department
Foreign Investment Division
Central Office, Mumbai-400 001.

Answer 7(b)

Minutes of Eighth Annual General Meeting of the Members of Happy Ltd. held on _____ (Date) at _____ AM (Time) at the Registered office of the Company

The following were present:

1. Mr.
2. Mr.
3. Mr.
4. Mr.
5. Mr.

Chairman

In accordance with Article _____ of the Articles of Association, Mr. ..., Chairman of the Board of Directors, took the Chair.

The Chairman welcomed the Members and introduced the Directors seated on the dais.

The Chairman declared that the requisite Quorum was present and called the Meeting to order.

The Register of Directors' shareholdings was placed at the Meeting and was available for inspection.

With the consent of the Members present, the Notice convening the Annual General Meeting of the Company was taken as read. The Chairman requested the Company Secretary to read the Auditors' Report.

After the Auditor's Report had been read, the Chairman delivered his speech.

The business of the Meeting as per the Notice thereof was thereafter taken up item wise.

1. *Adoption of Accounts*

The Chairman proposed the Ordinary Resolution for the adoption of the Accounts for the year ended 31st March 2009 and Mr. _____ seconded the Ordinary Resolution:

"RESOLVED that the audited Balance Sheet of the Company as at 31st March 2009 and the Profit and Loss Account of the Company for the financial year ended on that date, together with the Schedules and Notes attached thereto, along with the Reports thereon of the Directors and the Auditors, as circulated to the Members and laid before the Meeting, be and are hereby approved and adopted."

The resolution was put to vote.

On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried by the requisite majority.

2. *Declaration of Dividend*

Mr. _____ proposed the following Resolution as an Ordinary Resolution:

"RESOLVED that the dividend @ Rs. 2 per share on _____ equity shares of Rs. 10 each, fully paid-up, aggregating to Rs. _____ be and is hereby declared for payment, to those Members whose names appear on the Company's Register of Members on _____(day), _____(date)".

The Resolution was seconded by Mr. _____, and was put to the vote as an Ordinary Resolution.

On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried unanimously.

3. *Appointment of Director*

Proposed by : Mr. _____

Seconded by : Mr. _____

The following Resolution having been proposed and seconded by the aforementioned two Members, was put to the vote as an Ordinary Resolution:

"RESOLVED that, pursuant to Section 256 of the Companies Act, 1956, Mr. ..., who retires by rotation and, being eligible for re-appointment, offers himself for

re-appointment, be and is hereby re-appointed as a Director of the Company and that his period of office be liable to determination by retirement of Directors by rotation.”

On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried unanimously.

4. *Appointment of Auditors*

Proposed by : Mr. _____

Seconded by : Mr. _____

The following Resolution having been proposed and seconded by the aforementioned two Members, was put to the vote as an Ordinary Resolution:

“RESOLVED that M/s. _____, Chartered Accountants, _____, be and are hereby re-appointed as Auditors of the Company to hold office from the conclusion of this Meeting until the conclusion of the next Annual General Meeting of the Company on a remuneration of Rs. _____, plus applicable service tax and other out of pocket expenses incurred for the purposes of the audit”.

On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried unanimously.

Special Business

5. *Appointment of Director*

Proposed by : Mr. _____

Seconded by : Mr. _____

The following Resolution having been proposed and seconded by the aforementioned two Members, was put to the vote as an Ordinary Resolution:

“RESOLVED that Mr. ... who was appointed as an Additional Director by the Board under Section 260 of the Companies Act, 1956 and Article ___ of the Articles of Association of the Company and who holds office only upto the date of this Annual General Meeting and in respect of whom the Company has received a Notice in writing, under Section 257 of the Companies Act, 1956, from a Member signifying his intention to propose Mr. ... as a candidate for the office of a Director of the Company , be and is hereby appointed a Director of the Company liable to retire by rotation.”

On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried unanimously.

Vote of Thanks

The Meeting terminated with a vote of thanks to the Chair.

CHAIRMAN

Date : _____

Question 8

- (a) *Bring out the salient aspects of Secretarial Standard-3 on dividends in respect of (i) interim dividend; and (ii) unpaid/unclaimed dividend.* (4 marks)
- (b) *Which type of companies are subject to audit by Comptroller and Auditor General of India ? Is there any need for having statutory audit by professional auditors? State the legal position in this regard.* (6 marks)
- (c) *Certain information is required to be mandatorily reviewed by the audit committee. Discuss.* (6 marks)

Answer 8(a)

The salient aspects of Secretarial Standard on Dividend (SS-3) on Interim Dividend and unpaid/unclaimed are as follow:

(i) *Interim Dividend*

- Interim Dividend, if declared, is payable out of estimated profit for the period for which Interim Dividend is to be declared, after taking into account depreciation for the full year and arrears of depreciation, Dividend at the contracted rate on preference shares, if any, appropriations and transfers to statutory reserves, taxation and the provisions of the Companies (Transfer of Profits to Reserves) Rules, 1975. (Clause 1.1.5)
- Where a company has issued equity shares with differential rights as to Dividend, Interim Dividend may, at the option of the Board, be declared on all or any one or more of the classes of such shares in accordance with the terms of issue. (Clause 1.1.6)
- Interim Dividend should be declared by the Board, at a meeting of the Board. (Clause 1.1.7)

The following clauses also apply to interim dividend:

Dividend should be paid out of the profit of the company for the financial year or out of profit(s) for the previous financial year(s) which have not been transferred to reserves, or out of both, only after providing for depreciation for the year and arrears of depreciation, if any. (Clause 1.1.1)

Before declaring Dividend out of profit for the year, any loss for the previous year(s) or the amount of depreciation for the previous year(s), whichever is less, should be set off against such profit. (Clause 1.1.2)

Dividend should not be declared out of the Securities Premium Account or the Capital Redemption Reserve Account or Revaluation Reserve or Amalgamation Reserve or out of profit on re-issue of forfeited shares or out of profit earned prior to the incorporation of the company. (Clause 1.1.3)

If redeemable preference shares have not been redeemed on the due date, no Dividend should be declared on equity shares until such preference shares are redeemed. (Clause 2.5)

Clauses 3.1, 3.3, 3.4, 4.1, 5.1 to 5.7, 6.1 to 6.4, 7.1, 8.1, 9.1 to 9.3 shall also apply to interim dividend.

(ii) *Unpaid/unclaimed Dividend*

- The amount of Dividend which remains unpaid or unclaimed after thirty days from the date of declaration should be transferred to a special Dividend account to be called the “Unpaid Dividend Account” within seven days from the date of expiry of the thirty days period provided for payment of Dividend. (Clause 6.1)
- Any amount in the Unpaid Dividend Account of the company which remains unclaimed and unpaid for a period of seven years from the date of transfer of such amount to the Unpaid Dividend Account should be transferred to the Investor Education and Protection Fund. (Clause 6.2)
- Before transferring any amount to the Investor Education and Protection Fund, the company should give individual intimation to the Members in respect of whose unclaimed Dividend the amount is being transferred, at least six months before the due date of such transfer. (Clause 6.3)
- Any interest earned on the Unpaid Dividend Account should be transferred to the Investor Education and Protection Fund. (Clause 6.4)

Answer 8(b)

Section 619 of the Act provides that the auditor of a Government company shall be appointed or re-appointed by the Comptroller and Auditor-General of India provided that the limits specified in Sub-section (1B) and (1C) of Section 224 apply to such auditor.

Government company as defined under section 617 means any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary of a Government company as thus defined.

The following companies are also required to comply the provisions of 619 i.e. CAG Audit:

A company in which not less than fifty-one per cent of the paid-up share capital is held by one or more of the following or any combination thereof, as if it were a Government company, namely:—

- (a) the Central Government and one or more Government companies;
- (b) any State Government or Governments and one or more Government companies;
- (c) the Central Government, one or more State Governments and one or more Government companies;
- (d) the Central Government and one or more corporations owned or controlled by the Central Government;
- (e) the Central Government, one or more State Governments and one or more corporations owned or controlled by the Central Government;
- (f) one or more corporations owned or controlled by the Central Government or the State Government;
- (g) more than one Government company.

Statutory audit is required to be done by professional auditors. Section 226 contains provision as regards qualifications and disqualifications of auditors. These apply to all companies whether public or private or Section 25 companies or a Government company.

Section 226 provides that only a Chartered Accountant within the meaning of Chartered Accountants Act, 1949 can act as an auditor of a limited company. Though the auditor should be a Chartered Accountant, only Chartered Accountants in practice can act as auditors of companies.

Answer 8(c)

As per Section 292A (6) of the Companies Act, 1956:

- Discussions with the Auditors periodically about internal control system;
- The scope of audit including the observations of the auditors;
- Review of half –yearly and annual financial statements before submission to the Board; and
- to ensure compliance of internal control systems

As per Clause 49 of Listing Agreement, the Audit Committee shall mandatorily review the following information:

1. Management discussion and analysis of financial condition and results of operations;
 2. Statement of significant related party transactions (as defined by the audit committee), submitted by management;
 3. Management letters / letters of internal control weaknesses issued by the statutory auditors;
 4. Internal audit reports relating to internal control weaknesses; and
 5. The appointment, removal and terms of remuneration of the Chief internal auditor shall be subject to review by the Audit Committee
-

DRAFTING, APPEARANCES AND PLEADINGS

Time allowed : 3 hours

Maximum marks : 100

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

Question 1

Attempt any four of the following :

- (i) Define 'document'. Explain various kinds of deeds.*
- (ii) What are the important points that should be taken into consideration while drafting contracts ?*
- (iii) What are the pre-requisites of 'arbitration' ? Draft the specimen of an arbitration agreement to refer dispute to an arbitral tribunal.*
- (iv) Define the following :*
 - (a) Contract of guarantee*
 - (b) Hypothecation agreement*
 - (c) Lease*
 - (d) Licence*
 - (e) Mortgage.*
- (v) Draft a specimen of memorandum of mortgage by deposit of title deeds.*
(5 marks each)

Answer 1(i)

Document

Document as per Section 31(18) of General Clauses Act, 1894 means any matter expressed or described upon any substance by means of letters, figures or marks, or by the more than one of those means, intended to be used, or which way be used, for the purpose of recording that matter. As for instance, a writing is a document, words printed, lithographed or photographed are documents; a map or plan is a place or stone is a document. A caricature is a document. Thus, document is a paper or other material thing affording information, proof or evidence of anything.

Various kinds of Deeds

1. A good deed is one which conveys a good title, not one which is good merely in form.
2. A good and sufficient deed is marketable deed; one that will pass a good title to the land it purports to convey.
3. An inclusive deed is one which contains within the designated boundaries lands which are expected from the operation of the deed.
4. A latent deed is a deed kept for twenty years or more in man's escritoire or strong box.
5. A lawful deed is a deed conveying a good or lawful title.
6. A pretended deed is a deed apparently or prima facie valid.

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 —
- (a) 3
 - (b) 2
 - (c) 1
 - (d) 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 —
- (a) 25% of the paid-up share capital of the company
 - (b) 20% of the paid-up share capital of the company
 - (c) 15% of the paid-up share capital of the company
 - (d) 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 —
- (a) 2 independent directors
 - (b) 3 independent directors
 - (c) 4 independent directors
 - (d) 1 independent director.
- (vi) A special notice is required for —
- (a) Removal of a member
 - (b) Removal of the Company Secretary
 - (c) Removal of a nominee director
 - (d) 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.

COMPANY SECRETARIAL PRACTICE

Time allowed: 3 hours

Maximum marks: 100

NOTE: 1. Answer SIX questions including Question No.1 which is **COMPULSORY**.
2.All references to sections relate to the Companies Act, 1956 unless stated otherwise.

1.Draft **any four** of the following. In case of resolution, give reasons for passing the requisite resolution stating the authority who can pass it and also the type of resolution referring to the relevant section(s) of the Companies Act, 1956 :

(i)Agreement with Vivek as the Managing Director of Grow Fast Ltd. for a period of 3 years at a remuneration of Rs.20 lakh per month with perquisites allowable under Schedule XIII to the Companies Act, 1956, but with no commission. The company is consistently earning profits and the remuneration will be subject to the provisions of sections 198 and 309. (Only main body of the resolution is to be drafted containing the duties, responsibilities and powers of the appointee.)

(ii)Appropriate resolution to make investment of Rs.15 crore in preference shares of Sona Tractors Ltd., a company in trade dealing relationship with the investing company. The investing company has a paid-up equity capital of Rs.20 crore, a paid-up preference capital of Rs.5 crore and general reserve of Rs.4 crore. The company has no other investment or recoverable loan.

(iii)Resolution recommending declaration of dividend to shareholders without providing for depreciation.

(iv)Notice for book closure prior to payment of final dividend.

(v)A compliance certificate without any qualification for a private limited company having a paid-up capital of Rs.2 crore in respect of the year ended on 31st March, 2009 embodying the substantive part of the report (i.e., the task carried on and scope of the work) including only certification of maintenance of books and registers and filing of required returns/documents with appropriate authorities. (5 marks each)

Answer 1(i)

Authority : **Shareholders**

Type of Resolution : **Ordinary resolution**

Resolved that pursuant to Schedule XIII to the Companies Act, 1956 and subject to the provisions of section 198 and 309 of the Companies Act, 1956, the company be and is hereby appoint Sri M L Annadurai, resident of.....and aged 54 years as its managing director for a period of 3 years commencing from.....and Sri M L Annadurai agrees to act as the managing director (M.D.) of the company for the said duration on the following terms and conditions:

(a)The MD shall work under the superintendence, control and direction of the Company's Board, shall have the powers of general conduct and management of business and affairs of the company in relation to the following function, namely (a)(b).....(c)except in the matters which may be specifically required to be done by the Board either by the governing law or by the articles of the

company.

(b)The MD will exercise and perform such acts and duties as the Board may from time to time delegate to him. He will also do and perform all other acts, deeds and things which in the ordinary course of business, he may consider necessary, proper and in the interest of the company.

(c)Without restricting the general powers and authority as mentioned above, the MD will have following powers to be exercised on behalf of the company–

- (i).....
- (ii)
- (iii)

(d)The MD shall hold office for 3 years commencing from.....

(e)The company shall pay to the MD the remuneration specified below in consideration of services as MD:

- (i)salary at Rs.20 lakh per month inclusive of DA;
- (ii)Perquisites as allowable under Part II, Section II of Sch.XIII.

(f)In the event of the company failing to earn adequate profits or incurring loss during the tenure of the agreement, this agreement will automatically come under section II of Part II of the aforesaid schedule and the remuneration per month will be worked out based on effective capital of the company.

Note: The board of directors of a company can appoint a managing director if authorized by the articles in accordance with Schedule XIII to the Companies Act, 1956. However, according to part III of Schedule XIII, where a managing director is appointed as per Schedule XIII, the appointment shall be subject to approval by a resolution of the shareholders in general meeting. Further, as the question specifically mentions that perquisites are allowable under Schedule XIII, Central Government's approval is not required in the present case.

Answer 1(ii)

Authority : Board of Directors
Type of resolution : Board Resolution

The resolution will be a Board resolution as the proposed investment is within the limit allowed to the Board to make investments, loans etc under section 372A of the Companies Act, 1956.

The paid-up share capital is Rs.20 crore+Rs.5 crore	=	Rs.25 crore
The free reserves	=	Rs.04 crore
Total paid-up share capital and free reserves	=	Rs.29 crore

60% of Rs.29 crore	=	17.4 crore
100% of free reserve	=	4 crore

Rs.17.4 crore is accordingly the upper limit in the case and the proposed investment is Rs.15 crore.

Accordingly, the following is the draft of the Board Resolution:

Resolved unanimously that an Investment of Rs. 15 crore in Preference Shares of Sona

Tractors Ltd. as a trade investment to help that company expand its capacity to meet the company's growing demands for tractors and their components be and is hereby approved. Sri.....,the Executive Director (Finance) is authorized to sign the application form and do all such acts as are necessary or incidental thereto.

Answer 1(iii)

Authority **Board of Directors with approval of the Central Government.**
Type of resolution **Board Resolution subject to approval of the Central Government.**

RESOLVED THAT –

(i)an application be made to the Central Government under clause (c) of the proviso to Sub-section (1) of Section 205 of the Companies Act, 1956 to allow the company to declare and pay dividend for the financial year ending on 2008 out of the profits of the company for that year without providing for depreciation at the rate specified in Schedule XIV, which requires the depreciation on the gas cylinders including valves and regulators, to be provided at per cent.

(ii)the Company Secretary, Shri be and is hereby authorised to make the required application to the Central Government for seeking Central Government's approval to the company declaring and paying dividend for the financial year ending 2008 out of the profits of the company for that year without providing for depreciation at the specified rate.

Answer 1(iv)

NOTICE FOR BOOK CLOSURE

Name of Company:
Registered Office:

Notice

Pursuant to Section 154 of the Companies Act, 1956 and the applicable clauses of the Listing Agreement, notice is hereby given that the register of members and the share transfer register of the company will remain closed, for the purpose of payment of final dividend, from theth day of (month), 2009 to theth day of 2009 (both days inclusive).

Members of the company are requested to intimate to the company at its registered office above, their latest postal addresses, where the final dividend warrants may be sent by the company.

Place:..... For Limited
Date:..... (.....)
Company Secretary

Answer 1(v)

SPECIMEN COMPLIANCE CERTIFICATE

Registration No. of the Company _____
Nominal Capital: Rs. _____

To,
The Members
XYZ Limited,
163 Back Bay Reclamation
Nariman Point
Mumbai

I/We have examined the registers, records, books and papers of XYZ Limited (the Company) as required to be maintained under the Companies Act, 1956, (the Act) and the rules made thereunder and also the provisions contained in the Memorandum and Articles of Association of the Company for the financial year ended on 31st December 2009 (financial year). In my/our opinion and to the best of my/our information and according to the examinations carried out by me/us and explanations furnished to me/us by the company, its officers and agents, I/we certify that in respect of the aforesaid financial year:

1.The company has kept and maintained all registers as stated in Annexure 'A' to this certificate, as per the provisions of the Act and the rules made thereunder and all entries therein have been duly recorded.

2.The company has duly filed the forms and returns as stated in Annexure 'B' to this certificate, with the Registrar of Companies, Regional Director, Central Government, Company Law Board or other authorities within the time prescribed under the Act and the rules made thereunder.

Signature

Date:.....

Place:.....

[.....name.....]

Practising Company Secretary

Membership No. _____

Certificate of Practice No. _____

Question 2

(a) State, with reasons in brief, whether the following statements are correct or incorrect:

(i) A listed company cannot issue sweat equity shares to its promoters.

(ii) Since a producer company is an innovation, it does not need the words 'limited' at the end of its name.

(iii) E-Form 10 relates to registration of charges.

(iv) A company declared defunct under section 560 can never be included again in the register of companies maintained by the Registrar of Companies.

(v) The Insider Trading Regulations promulgated by SEBI excludes the auditor of the company from the scope of the regulations.

(vi) Under the UK Companies Act, 2006, a director of a public company can be removed before expiry of his term only by a special resolution. (2 marks each)

(b) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :

(i) _____ is the conclusive evidence in case of a company that the statutory requirements have been complied with.

(ii) In case the minimum subscription is not received and refund is delayed, _____ % interest is to be paid by a company.

(iii) _____ is a new form of legal entity recognised in India recently.

(iv) Buy-back securities should be physically destroyed within _____ days. (1 mark each)

Answer 2(a)

(i) **Incorrect**

Reason: As per section 79A (1) (d) of the Companies Act, 1956, the sweat equity shares of a company whose equity shares are listed on a recognized stock exchange, are to be issued in accordance with the regulations made by the Securities and Exchange Board of India in this behalf. Under regulation 6 of SEBI (Issue of Sweat Equity) Regulations, 2002, a listed company can issue sweat equity shares to its promoters.

(ii) **Incorrect**

Reason: Section 581C of the Companies Act, 1956 mandates the use of the word 'limited' after the name of a producer company.

(iii) **Correct**

Reason: E-form 10 relates to registration of charges arising out of issue of debentures.

(iv) **Incorrect**

Reason: According to section 560(6) of the Companies Act, 1956, a company, or any member or creditors by way of an application to the Court can request for the restoration of the company's name in the register of companies before the expiry of twenty years from the date the company has been declared defunct in the Official Gazette. The Court may order for the company's name to be included again in the register of companies maintained by the Registrar of Companies.

(v) **Incorrect**

Reason: As per regulation 2(g) of the SEBI ([Prohibition of] Insider Trading) Regulations, 1992, an 'auditor' is included within the definition of 'officer of a company'.

(vi) **Incorrect**

Reason: Section 168 of the U.K. Companies Act, 2006 allows removal of a director of any company before the expiry of his term by passing an ordinary resolution.

Answer 2(b)

(i) Certificate of Incorporation

(ii) 6%

(iii) Limited Liability Partnership

(iv) Seven days

Question 3

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

(i) A notice of disclosure of interest at the Board meeting is the requirement of section —

- (a) 295
- (b) 269
- (c) 297
- (d) 299.

(ii) A director appointed by the Board to hold the office until the conclusion of next annual general meeting is known as —

- (a) Additional director
- (b) Nominee director
- (c) Alternate director
- (d) Director retiring by rotation.

(iii) As per the provisions of the Companies Act, 1956, the form of proxy must be deposited with the company at least —

- (a) 24 Hours before the time of annual general meeting
- (b) 36 Hours before the time of annual general meeting
- (c) 48 Hours before the time of annual general meeting
- (d) 72 Hours before the time of annual general meeting.

(iv) The applicant for availability of name of the proposed company can have option to give maximum —

- (a) 3 Alternative names
- (b) 4 Alternative names
- (c) 5 Alternative names
- (d) 6 Alternative names.

(v) A person who is a Company Secretary and director of a company is—

- (a) Employee director
- (b) Non-executive director
- (c) Executive director
- (d) Independent director.

(vi) A company in which 50.25% of shares are held by one State government while the rest of the shares are held by private sector companies and by retail shareholders, i.e., members of public, is a—

- (a) Government company
- (b) Public company
- (c) Corporation
- (d) Private sector company.

(1 mark each)

(b) "Postal ballot system is an unmixed blessing." Comment. (6 marks)

(c) Briefly outline the provisions of the Companies Act, 1956 in regard to postal ballot. (4 marks)

Answer 3(a)

- (i)(c) 299

- (ii)(a) Additional director
- (iii)(c) 48 hours
- (iv)(c) 5 alternative names
- (v)(c) Executive Director
- (vi)(b) Public company.

Answer 3(b)

Postal Ballot System is indeed a blessing as it enables members spread throughout geographically dispersed areas to cast their votes on matters of crucial interest to them e.g. issue of shares with differential voting rights, alteration of object clause of the Memorandum of Association, buy-back of shares etc. The concept of Postal Ballot is a unique provision which gives shareholders the right to vote on items of business of a corporate body without actually attending its general meetings either personally or through their proxies/representatives.

However, the postal ballot system cannot be said to be an unmixed blessing as the shareholders have no right to express their views and participate in the discussion. They can only express their assent or dissent to the proposed resolution.

Answer 3(c)

Section 192A of the Companies Act, 1956 provides for passing of resolution by postal ballot. Some of the provisions are as under:

- (i) This facility is available only to listed companies;
- (ii) Notice of the proposed resolution is to be sent to every shareholder by registered post acknowledgement due or such other mode as may be prescribed by the Central Government;
- (iii) A postage prepaid envelope shall accompany the notice to enable the shareholder to send their reply;
- (iv) A shareholder is required to send his assent or dissent to the resolution within a period of thirty days from the date of posting of letter;
- (v) Upon receiving the replies (within the stated time), the assents and dissents are counted. If the total of assents reaches the required majority, the resolution shall be deemed to be duly passed.

Question 4

(a) A charge for Rs.3 crore was created and registered by Dada Films Ltd. in favour of State Bank of India. The same was fully repaid on 31st August, 2009, but the relevant 'E-Form' for registering the satisfaction of the charge was filed on 10th October, 2009. The company then realised that it has unintentionally delayed the filing and has attracted penal provision of the Companies Act, 1956 in this regard. The company has approached Chetan, a Practising Company Secretary for his advice as regards the possibility of any condonation of the offence. What would be the advice ? (4 marks)

(b) Discuss the various aspects of 'responsibility and accountability' of the Board in corporate culture. (4 marks)

(c) Explain the impact of speculative reports in media with price sensitive information quoting case law. (4 marks)

(d) What is 'management discussion and analysis report' (MDAR) ? State its contents.
(4 marks)

Answer 4(a)

The situation given in the present case refers to satisfaction of charge. Section 138 of the Companies Act, 1956 requires that a company which has repaid its dues against which charge was created and registered with the Registrar of companies must file Form No.17 within 30 days from the date of satisfaction of charge. There is no provision for extension of time for filing of Form No.17. Any Form No.17 filed after 30 days from the date of satisfaction of charge requires order from the Company Law Board (CLB) for condoning the delay under section 141 of the Act.

In the present case, the dues were repaid on 31st August 2009. So, the company was required to file form No.17 on or before 30th September 2009. However, the company filed form No.17 on 10th October, 2009 i.e. delayed by 10 days. Therefore, the company shall have to file petition under section 141 of the Act to the CLB for condonation of delay of 10 days with relevant reasons. If the CLB passes an order for condonation of delay, the same shall be filed with the Registrar of Companies in form No.21. After approving form 21, form 17 will be approved by the ROC and then, the charge will be satisfied.

Answer 4(b)

Board of Directors is responsible for the governance of their companies and accountable for the resources entrusted to it by the shareholders. A system of good corporate governance promotes relationships of accountability between the board, the management and the auditor. It holds the management accountable to the board and the board accountable to the shareholders. The board is accountable towards the shareholders in maximizing shareholders' wealth. The Directors should not abuse their powers and further ensure that they act in the best interests of the Company in its broad sense. The responsibilities of the board include setting of company's aims, providing the leadership to put them into effect, supervising the management of the business and reporting to the shareholders on their stewardship. The board's actions are subject to laws, regulations and resolutions of the shareholders in general meetings.

The shareholders' role in governance is to appoint the directors and the auditors to satisfy themselves that an appropriate governance structure is in place.

Answer 4(c)

It was held by Appellate Authority in the case of *Hindustan Lever Ltd. vs. SEBI* (1998) 3 Comp LJ 473 (A.P.) that if leading financial newspapers had reported the possibility of a merger, it cannot be alleged later that the information about the merger was a price sensitive information. The reason is that the possibility of a merger would be presumed to be known to the public after the publication of the news of merger. As a fall out of this case, SEBI amended its Regulations in 2002 to specifically provide that speculative reports in print and electronic media shall not be considered as published information (i.e. they will be considered as unpublished price sensitive information), as provided in definition 2(k) of the amended regulations.

Answer 4(d)

A Management Discussion and Analysis Report (MDAR) is a report made by the Board of

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

- Industry structure and developments.
- Opportunities and threats (SWOT analysis).
- Segment wise or product wise performance.
- Risks and areas of concern.
- Internal control systems and their adequacy.
- Discussion on financial performance with respect to operational performance.
- Material developments in human resources /industrial relations front, including number of people employed.

MDAR should be considered and approved by the Board in a meeting of the Board and not through resolution passed by circulation. It is desirable that MDAR is signed in the same manner as in the case of Board's report.

Question 5

As a Company Secretary of Smart Enterprises Ltd., how would you tackle the following situations:

(i) Quorum was present at the beginning of a Board meeting. However, after one hour, one director had to leave for certain emergency and the presence of directors in the meeting fell below the minimum required for quorum. There were two matters remaining to be considered as per the agenda.

(ii) A director of the company remained absent, without notice, for 6 meetings during first quarter of 2009.

(iii) The Union Bank of India has given a loan of Rs.25 crore for the company's new project and as per one of the terms of sanction it wants to nominate its Chief Manager, Vijay on the Board.

(iv) A person informs you in writing that he is not a member of your company, yet he has received a notice for the annual general meeting as a member. (4 marks each)

Answer 5(i)

As per section 287 of the Companies Act, 1956 quorum for the meeting of the Board of directors of a company shall be one-third of its total strength or two directors, whichever is higher. Also, it is necessary that the minimum quorum at the meeting should be present at all time and not only at the beginning of the meeting. It was held in the case of *Balakrishna v. Balu Subudhi* AIR 1949 Pat 184 that the quorum of the Board is required at every stage of the meeting and unless a quorum is present at every stage, the business transacted is void.

Therefore, the board is advised that the remaining businesses should not be taken up and meeting must be adjourned or terminated. The remaining subjects could be taken up in adjourned meeting or in a fresh meeting. If the remaining items are not covered by section 292, the same may also be taken up by way of resolution by circulation.

Answer 5(ii)

As per section 283(1) (g) of the Companies Act, 1956, the office of a director shall become vacant if he absents himself from three consecutive meetings of the board of directors, or from all meeting of the Board for a continuous period of three months, whichever is longer, without obtaining leave of absence from the Board. In the present case, the director remained absent from all meetings held in the first quarter of 2009, without notice i.e. without obtaining leave of absence. Therefore, he should vacate the office in terms of section 283 of the Act. Also, the company will be required to file form No.32 after his vacation from the office of the director.

Answer 5(iii)

One of the modes of appointment of a director on the board of a company is by "third party". A person so appointed is known as Nominee Director. He is not liable to retire by rotation and considered as permanent director till the pleasure of their nominating agencies. He will vacate the office automatically on liquidation of the loan or other credit facilities. However, the Articles of Association of a company must contain an Article enabling such appointment of Nominee Director.

In the given case, Union Bank could nominate its representative on the Board. However, it must be ensured that the Articles of Association of the Company contain provision for the appointment of a nominee director. Otherwise, the Articles have to be altered by passing a special resolution in the general meeting. Further, the appointment of nominee director should fall within the maximum number of directors stipulated in the Articles.

Answer 5(iv)

According to section 111(4) of the Companies Act, 1956, if the name of any person is, without sufficient cause, entered in the register of members of a company, the aggrieved person may apply to the Company Law Board for rectification of the Register.

Any entry made in the register of members, if required to be altered or removed requires approval of the Company Law Board, except any apparent clerical mistake. In the present case, a person has informed the company that he is not a member of the company. Therefore, first of all, it should be verified whether the mistake was a clerical one that would be rectified by intimating to the company. If the mistake was not a clerical one, an application to the Company Law Board is required.

Question 6

(a) There are two executive directors in your company who are technocrats. The company is a public limited company. The company has incurred huge losses in the last two years. The company wants to enhance their remuneration to Rs.6 lakh per month from existing Rs.4 lakh. The data from the balance sheet of the last year indicates that the paid-up capital of the company is Rs.10 crore and accumulated losses of Rs.10.67 crore, term loan and other long-term borrowings are Rs.5 crore. Besides, the company holds a long-term investment of Rs.7 crore. The company's remuneration committee has recommended the proposal and the company is regular in repayment of its debts. As the Company Secretary, how would you deal with the matter? (8 marks)

(b) Bring out the salient aspects of the Companies (Director Identification Number) Rules, 2006 leading to the issue of Director Identification Number (DIN). (8 marks)

Answer 6(a)

The present case deals with the payment of managerial remuneration to the whole time directors of the company. Section 198 of the Companies Act, 1956 deals with the overall remuneration payable to the managerial persons at 11% of the net profit subject to the maximum of 10% for all the directors together but not more than 5% to each such director as allowed by section 309 of the Act.

However, schedule XIII to the Companies Act, 1956 deals with situations where there are no profits or inadequate profits. It takes into consideration the concept of effective capital and fixes the maximum limit of remuneration for each director. However, there are certain conditions imposed by the said Schedule and Parts thereof. If such terms and conditions are fulfilled, the company may pay remuneration according to the provisions of Schedule XIII. In the given case the effective capital works out as under.

Paid up capital	Rs.10 crore
Secured loans	<u>Rs.05 crore</u>
Gross capital employed	Rs.15 crore
Reduced by accumulated losses	<u>Rs.10.67 crores</u>
	4.33
Further reduced by investment	7.00
Effective capital	(-)2.67 crore

Since, the effective capital is negative, as per the provisions given in Schedule XIII; the remuneration payable to each director shall be maximum Rs. 1,50,000 per month. Further, the company is required to apply to the Central Govt. for getting prior approval for the proposed remuneration. Also, approval of members by special resolution and of the remuneration Committee is required.

Answer 6(b)

Salient aspects of the Companies (Director Identification Number) Rules, 2006 leading to the issue of Director Identification Number (DIN) are given as below:

- (1) Application by concerned person by electronic mode for DIN to the Central Government through designated portal of the Ministry of Corporate Affairs.
- (2) The applicant shall access form DIN No.1 from the portal, fill in the required particulars and use 'submit' function. Thereafter, the system will electronically generate and indicate in the space provided a provisional DIN.
- (3) The provisional DIN shall be valid for a period of 60 days from the date on which it was generated.
- (4) After getting provisional DIN, the applicant shall, submit a formal application to the Central Government within 60 days from the date of generation of provisional DIN.
- (5) The applicant shall take a print out of form No.DIN-1, affix his photograph in specified place in the form, and enclose true copies of proof of identity and proof of residence. He shall then physically sign the form at the specified place. The photograph and the proof of identity and residence shall be Pre-certified by any one of the following – (i) Gazetted Officer of the Central Government or any State Government; (ii) Notary Public; (iii) a practicing Company Secretary or Chartered Accountant or a Cost and Work Accountant; (iv) Company Secretary in full time employment of the company.

(6)The Central Government shall communicate within one month of receipt of application, its approval or disapproval of the application, in writing by a letter or by electronic mode.

(7)If DIN is allotted, it is valid for life time of the recipient.

(8)The applicant, within one month of receipt of DIN, shall intimate to the company or companies concerned in which he is a director, the DIN in Form DIN-2.

(9)The company/companies, in turn, shall intimate the DIN communicated to it within one week of receiving the DIN, to the concerned ROC in DIN-3.

(10)Every director, in the event of any change in his particulars as stated in Form No. DIN-1, who has been allotted a Director Identification Number under these rules, shall intimate such change(s) to the Central Government within a period of 30 days of such change(s) in particulars by using Form No. DIN-4 made available by the Ministry on its website. The concerned director will also intimate such changes to the company or companies on which he is a director.

Question 7

(a)Answer the following with reference to Secretarial Standard–7 on passing of Board resolution by circulation process :

(i)Who is authorised to decide that certain resolutions (other than those specified in section 292) are to be taken up for consideration by circulation as against in a meeting ?

(ii)What procedure is to be followed for passing a resolution by circulation ? Are interested directors eligible to receive the proposed resolution and related papers ?

(iii)How is a proposed (circulated) resolution considered approved or not ?

(iv)A notice accompanying the proposed resolution provides for 7 days to intimate directors' assent or dissent. On which date the resolution shall be deemed to be approved when assents from required majority have been received within 3 days of the circulation? (2 marks each)

(b)State the matter along with relevant section(s) of the Companies Act, 1956 for which the following E-Forms are required to be filed :

(i)E-Form 1B

(ii)E-Form 20B

(iii)E-Form 23B

(iv)E-Form 25C. (1 mark each)

(c)State the requirement for audit of the financial accounting statements under the UK Companies Act, 2006. (4 marks)

Answer 7(a)

(i)Secretarial Standard (SS-7) authorizes the Chairman of the Board or Managing Director and in their absence any other director to decide whether the approval of the Board for a particular matter is to be obtained by means of resolution by circulation. Where there is no Chairman or managing director, any other director should decide whether the approval of the Board for a particular business should be obtained by means of a resolution by circulation.

(ii)**Procedure for passing a resolution by circulation–**

A resolution proposed to be passed by circulation should be sent in draft form, together

with the necessary papers, individually to all the directors or, in the case of a Committee to all the members of the Committee, at the same time.

Each business proposed to be passed by way of resolution by circulation should be explained by a note setting out the details of the proposal and the draft of the resolution proposed.

The draft of the resolution to be passed and the necessary papers should be circulated by hand, or by post, or by facsimile, or by email or by any other electronic mode.

Further, interested directors are eligible to get the draft resolution and accompanying papers.

(iii) The resolution is passed, when it is approved by a majority of directors entitled to vote on the resolution other than interested directors. The resolution is deemed to have been passed on the date on which it is approved by the majority of the Directors. If any special majority or the affirmative vote of any particular director or directors is specified in the Articles, the resolution should be passed only with the assent of such special majority or such affirmative vote.

(iv) The proposed resolution shall be deemed to be passed when assent of required majority is received ignoring the interested director(s). Accordingly, the proposed resolution shall be deemed to be passed on the 3rd day of circulation.

Answer 7(b)

(i) E-Form 1B – Application for approval of the Central Government for change of name (section 21) or conversion of a public company into a private company (section 31).

(ii) E-Form 20B – Form for filing Annual Return by a company having a share capital with ROC (Section 159).

(iii) E-Form 23B – Information by auditor to Registrar intimating about his appointment [Section 224(1A)].

(iv) E-Form 25C – Return of appointment of Managing Director or whole-time Director or Manager [Section 269(2) and Schedule XIII.]

Answer 7(c)

Requirement for audited accounts (Section 475 of the UK Companies Act, 2006)

A company's annual accounts for a financial year must be audited in accordance with this Part unless the company—

(a) is exempt from audit under section 477 (small companies), or section 480 (dormant companies); or

(b) is exempt from the requirements of this Part under section 482 (nonprofit-making companies subject to public sector audit).

A company is not entitled to any such exemption unless its balance sheet contains a statement by the directors to that effect.

A company is not entitled to exemption under any of the provisions mentioned in subsection (1)(a) unless its balance sheet contains a statement by the directors to the effect that—

(a) the members have not required the company to obtain an audit of its accounts for the year in question in accordance with section 476, and

(b) the directors acknowledge their responsibilities for complying with the requirements

of this Act with respect to accounting records and the preparation of accounts.

Question 8

Distinguish between **any four** of the following with reference to the provisions of the Companies Act, 1956:

(i) 'Debenture' and 'deposit'.

(ii) 'Reduction of share capital' and 'buy-back of shares'.

(iii) 'Director' and 'deemed director'.

(iv) 'Dividend' and 'bonus shares'.

(v) Legal basis of 'issue of shares at a discount' and 'issue of shares at a premium'.

(4 marks each)

Answer 8

(i) Distinction between Debenture and deposit

Debenture

Section 2(12) of the Companies Act, 1956 defines debenture as follows:

Debenture includes debenture stock, bonds and any other securities of a company, whether constituting a charge on the assets of the company or not. Debenture is a document evidencing a debt or acknowledging it and any document which fulfills either of these conditions is a debenture.

The important features of a debenture are:

1. It is issued by a company as a certificate of indebtedness.
2. It usually indicates the date of redemption and also provides for the repayment of principal and payment of interest at specified date or dates.
3. It usually creates a charge on the undertaking or the assets of the company. In such a case the lenders of money to the company enjoy better protection.

Deposit

Any money received by a non-banking company from any person or any money borrowed in any form from any person is a deposit under Companies Act and the Deposit Rules, unless it qualifies for exemption under rule 2 (b). Therefore, the company must ensure that any money borrowed by the company, regardless of whether it is called deposit or not, is a deposit within the meaning of the Deposit Rules.

(ii) Distinction between Reduction of share capital and buy-back of shares

Reduction of Share Capital (paid up) is governed by the provisions of section 100 of the Companies Act, 1956 whereas the Buy Back of Share is permitted under section 77A of the said Act. Reduction of capital requires passing of special resolution, obtaining consent of all the creditors of the company. Further, High Court's confirmation is required which is a cumbersome and time taking procedure. Power to enforce buyback is vested in the Board of Directors subject to maximum of 10% of the paid up capital. If the buyback exceeds this limit then approval of the Members by special resolution is required.

In buyback, shares bought back has to be extinguished and the share certificates are required to be destroyed whereas in case of the Reduction, there is no such requirement, though the company has to add the words 'and reduced' at the end of its name for a period specified in the court order confirming reduction. In reduction of

capital, every shareholder whose shares are subject to reduction is to adhere to the court order but in buyback, each shareholder has the option not to sell back his shares to the company.

(iii) Distinction between Director and deemed director

Section 2(13) of the Companies Act, 1956 defines the term 'director' in an inclusive manner. It states that a director is a person occupying the position of a director by whatever name he is called. The Act does not contain any definition of 'deemed director'. The definition of director places reliance on functions that a person is discharging in a company rather than a particular position held by him. The meaning of director in the Act has to be understood in a generic sense as a person having the power to direct. Besides, the Act has specified in many places the duties and functions of directors e.g. section 292, section 217 etc.

As regards deemed directors, one has to refer to section 5 and 7 of the Act. Under these sections, even though one does not carry the designation of director or does not perform as a director in a company but he can be treated as a director for certain purposes of the Act. Generally, if he is a person whose directions determine the performance of the directors, he will be treated as a director. Such a person wields actual powers without coming to the surface. However, he is not entitled to exercise any statutory right and power of a director. A deemed director need not necessarily be an individual whereas a director will have to be an individual.

(iv) Distinction between Dividend and bonus shares

Dividend is the return on the share capital subscribed for and paid to a company by its shareholders. The term "dividend" has been defined under Section 2(14A) of the Companies Act, 1956 (the Act) as "dividend" includes any interim dividend. The dictionary meaning of the term 'dividend' is sum payable as interest on loan or as profit of a company to the creditors of an insolvent's estate or an individual's share of it. In commercial parlance, however, dividend is the share of the company's profit distributed among the members.

When a company has accumulated free reserves and is desirous of bridging the gap between the capital and fixed assets, it issues bonus shares to its equity shareholders. Such an issue would not place any fresh funds in the hands of the company. On the contrary, after a bonus issue it would become necessary for the company to earn more to effectively service the increased capital. The shareholder will, however, be benefited by way of higher return on investment and more number of shares in their hands.

A dividend requires an outflow of cash, whereas in the case of issue of bonus shares, no cash flows are involved.

(v) Distinction between Legal basis of issue of shares at a discount and issue of shares at a premium

In simple terms, issue of shares at a discount means a company issuing such shares receiving a predetermined consideration which is lower than the nominal value of such shares. As against this, the issue of shares at a premium means the company receiving a predetermined consideration which is higher than the nominal value of the shares issued.

Issue of shares at discount is regulated by section 79 of the Companies Act, 1956. On the other hand, provisions regarding issue of shares at a premium are contained in section 78 of the Act.

As per section 79, shares can be issued at a discount on fulfillment of the following conditions:

- 1.The issue has to be authorized by a special resolution of the company.
- 2.The issue has to be sanctioned by the CLB.
- 3.The resolution has to specify the maximum rate of discount which at present is 10%. The rate of discount can be fixed at a higher rate provided the CLB is satisfied that a higher rate may be allowed under special circumstances.
- 4.The shares to be issued at a discount should be of a class which has already been issued.
- 5.One year has elapsed since the date the company was entitled to commence business.
- 6.The issue must be made within 2 months of the sanction by the CLB. However, CLB has the power to extend the period.

A company is free to issue shares at a premium as Section 78 does not impose any condition for such issues. However, the section regulates the maintenance and utilization of the amount of premium realized on the issue. It requires the premium to be credited to 'Securities Premium Account' and can only be used for-

- 1.Issue of bonus shares (fully paid).
 - 2.Writing off preliminary expenses.
 - 3.Writing off the expenses and discount on issue of shares/debentures.
 - 4.Providing premium on redemption of preference shares/debentures of the company.
-

PROFESSIONAL PROGRAMME EXAMINATION

DECEMBER 2010

COMPANY SECRETARIAL PRACTICE

Time allowed : 3 hours

Maximum marks : 100

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

2. All references to sections relate to the Companies Act, 1956 unless stated otherwise.

Question 1

Draft any five of the following :

- (i) *Letter to directors for passing a resolution by circulation along with draft resolution.*
- (ii) *Resolution for declaring interim dividend.*
- (iii) *General meeting resolution for appointment of branch auditor.*
- (iv) *Notice by a member proposing another member's name for directorship of the company.*
- (v) *Resolution approving the appointment of Managing Director, notwithstanding that he is already the Managing Director of another company.*
- (vi) *Resolution to give effect to consolidation of shares made by the company in its memorandum of association. (4 marks each)*

Answer 1(i)

Letter to Directors for passing a resolution by circulation along with draft resolution

To

Mr. _____

Address in India only

Dear Sir,

We are stating hereunder following resolution which is intended to be passed as a resolution by circulation as provided in Section 289 of the Companies Act, 1956 for your kind consideration.

“RESOLVED that pursuant to the provisions of Section 313 of the Companies Act, 1956, read with those of Article of the Articles of Association of the Companies, Shri..... be and is hereby appointed as alternate director to Shri..... during the latter's absence for a period of not less than three months from the State of and that the alternate director shall vacate his office as and when Shri..... returns to the said State.”

You are requested to return the duly signed duplicate copy of this letter at the

registered office of the company within _____ days of this letter, mentioning your assent/dissent.

Yours faithfully

For _____

Company Secretary

Answer 1(ii)

Board Resolution for declaring interim dividend

“RESOLVED that approval of the Board of Directors be and is hereby given to the Company for the payment of interim equity dividend at the rate of ____% and absorbing Rs. _____ out of the estimated profits of the Company for the half year ended _____ and that such dividend be paid to those equity shareholders whose names appear in the register of members as on _____”.

“RESOLVED further that the record date for the said purpose will be _____”.

“RESOLVED further that the company secretary of the company be and is hereby authorized to advertise in the newspaper(s) of wide circulation as regards the record date and also to duly notify to the stock exchange(s)”.

Answer 1(iii)

Ordinary Resolution in the general meeting for appointment of branch auditor

“RESOLVED that pursuant to the provisions of Section 228 and other applicable provisions, if any of the Companies Act, 1956, M/s _____, Chartered Accountants, New Delhi be and are hereby appointed as the branch auditors of the Company for auditing the books of accounts maintained by the Delhi branch of the Company and to hold office from the conclusion of this meeting until the conclusion of next annual general meeting of the company at a remuneration to be fixed by the Board of Directors”.

Answer 1(iv)

Notice by a member proposing another member’s name for directorship of the company

To

M/s _____ Limited

Dear Sir,

Sub : Notice for appointment of director

Pursuant to the provisions of Section 257 of the Companies Act, 1956, I _____ a member of your Company hereby give notice of my intention to propose Mr. _____ who

is also a member of your company (Folio No.) as a Director of the Company. A sum of Rs.500/- by way of demand draft made in favour of the Company is enclosed with this notice.

Kindly acknowledge receipt.

Yours faithfully,

Name of the member

Folio No.

No. of shares held

Answer 1(v)

Board Resolution approving the appointment of Managing Director, notwithstanding that he is already the Managing Director of another company

“RESOLVED that subject to the approval of the Central Government pursuant to sub-section (4) of section 316 of the Companies Act, 1956, Mr. XYZ who is already the Managing Director of ABC Limited be and is hereby appointed as a Managing Director of the Company for a period of five years commencing from 1st May, 2010, with the consent of all the Directors present at the meeting of which meeting and the resolution to be moved thereat specific notice was given to all the Directors then in India, on the terms and conditions contained in the draft agreement tabled before the meeting and initialed by the Chairman for purposes of identification”.

Answer 1(vi)

Ordinary Resolution to give effect to consolidation of shares made by the company in its memorandum of association

“RESOLVED THAT—

- (i) pursuant to Section 94(1)(b) and other applicable provisions, if any, of the Companies Act, 1956, and Article... of Articles of Association of the company, all the 5,00,00,000 (five crore) equity shares of Rs.5 (Rupees five) each of the company be and are hereby consolidated into two crore and fifty lakh (2,50,00,000) equity shares of Rs.10/- (Rupees ten) each;
- (ii) all the present shareholders holding in all 2,00,00,000 (two crore) issued, subscribed and fully paid equity shares of Rs. 5 (Rupees five) each be issued, in lieu of their present shareholding, the number of fully paid consolidated equity shares of Rs. 10 (Rupees ten) each;
- (iii) the board of directors of the company be and is hereby authorised to take all the necessary steps for giving effect to the foregoing resolution, including recall of the existing share certificates, issue of new share certificates in lieu of the existing issued share certificates in terms of the foregoing resolutions and in accordance with the applicable provisions of the Companies Act, 1956 and those of the Companies (Issue of Share Certificates) Rules, 1960.”

Question 2

- (a) *Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :*
- (i) *A user can check the status of transactions by entering the _____ on website of MCA-21.*
 - (ii) *The Companies Act, 1956 allows a company to convert its fully paid-up shares into _____.*
 - (iii) *A _____ is allotted at the time of registration of charge.*
 - (iv) *The directors appointed by the principle of _____ hold office for _____ and cannot be removed by the company in general meeting under section 284.*
 - (v) *Casual vacancy in the Board may arise from death, _____ and _____. (Mention any two other reasons.)*
 - (vi) *The declaration of bonus issue in lieu of _____ is not permitted. (1 mark each)*
- (b) *Choose the most appropriate answer from the given options in respect of the following :*
- (i) *The minimum number of directors of the audit committee in the case of a listed company with 12 directors shall be —*
 - (a) *2 Directors*
 - (b) *3 Directors*
 - (c) *4 Directors*
 - (d) *5 Directors.*
 - (ii) *The Central Government may exempt any class of companies from complying with the provisions of Schedule VI of the Companies Act, 1956, if it is necessary to grant such exemption in the —*
 - (a) *National interest*
 - (b) *Public interest*
 - (c) *Social interest*
 - (d) *Company's interest.*
 - (iii) *In a listed company with 11 directors, what is the quorum for the Board meeting —*
 - (a) *2 Directors*
 - (b) *3 Directors*
 - (c) *4 Directors*
 - (d) *5 Directors.*
 - (iv) *A casual vacancy arising out of resignation of company's auditor can be filled by —*
 - (a) *Company in general meeting by ordinary resolution*

- (b) *Company in general meeting by special resolution*
- (c) *Board of directors*
- (d) *Audit committee.*
- (v) *Which one of the following sections of the Act specifies that the provisions of the Companies Act, 1956 override the provisions in the memorandum of association —*
- (a) *Section 2*
- (b) *Section 4*
- (c) *Section 9*
- (d) *Section 13.* (1 mark each)
- (c) *Expand the following :*
- (i) *EDIFAR*
- (ii) *SRN*
- (iii) *SARFAESI*
- (iv) *ISC*
- (v) *ESPS.* (1 mark each)

Answer 2(a)

- (i) A user can check the status of transactions by entering the **Service Request Number** on website of MCA-21.
- (ii) The Companies Act, 1956 allows a company to convert its fully paid-up shares into **Stock** .
- (iii) A **Charge Identification Number** is allotted at the time of registration of charge.
- (iv) The directors appointed by the principle of **Proportional representation** hold office for **Three years** and cannot be removed by the company in general meeting under section 284.
- (v) Casual vacancy in the Board may arise from death, **Resignation** and **Insolvency** (Mention any two other reasons.)
- (vi) The declaration of bonus issue in lieu of **Dividend** is not permitted.

Answer 2(b)

- (i) (b) Three directors
- (ii) (b) Public interest
- (iii) (c) 4 directors
- (iv) (a) Company in general meeting by ordinary resolution
- (v) (c) Section 9.

Answer 2(c)

- (i) EDIFAR – Electronic Data Information Filing and Retrieval

- (ii) SRN – Service Request Number
- (iii) SARFAESI – Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest
- (iv) ISC – Investor Service Cell/ Centre
- (v) ESPS – Employee Stock Purchase Scheme.

Question 3

- (a) *State, with reasons in brief, whether the following statements are true or false :*
- (i) *A fresh notice of every adjourned meeting is necessary.*
 - (ii) *A proxy shall not be entitled to vote on show of hands in a general meeting.*
 - (iii) *In terms of Clause 49 of the listing agreement, not less than 40% of the Board of directors shall consist of independent directors.*
 - (iv) *Resignation of a whole-time director shall take effect once it is tendered.*
 - (v) *Provisions of section 372A do not apply in the case of loan/guarantee by a company to another company in which it is holding 90% of the paid-up capital. (2 marks each)*
- (b) *“Variation of members’ rights is hanging like Democles’ sword on the members in the present liberalised global economy.” Do you agree with this statement in Indian context ? Support your answer with reasons. (6 marks)*

Answer 3(a)

- (i) **False.** An adjourned meeting is merely the continuation of the original meeting and unless the Articles of Association of a company provide otherwise, a fresh notice of the adjourned meeting is not necessary. If, however, the meeting is adjourned sine die, a fresh notice must be given.
- (ii) **True.** A proxy shall not be entitled to vote on show of hands in a general meeting unless the Articles of Association of the company provide otherwise. A proxy is entitled to vote only on a poll. Further, a proxy does not have any right to speak at a meeting (vide section 176).
- (iii) **False.** As per Clause 49 I (A) (ii) of the listing agreement, where the Chairman of the Board is a non-executive director, at least one-third of the Board should comprise of independent directors and in case he is an executive director, at least half of the Board should comprise of independent directors.
- (iv) **False.** The resignation of a whole-time director before the expiry of his terms of office becomes effective only when it is accepted by the company, as he is bound by the terms and conditions of his appointment.
- (v) **False.** Section [372A(8)(c)] of the Companies Act, 1956 specifically provides that nothing contained in section 372A shall apply to any loan made by a holding company to its wholly owned subsidiary. Further, sub-section 8(d) of section 372A of the Act provides that nothing contained in this section shall apply to any guarantee given or any security provided by a holding company in respect of loan made to its wholly owned subsidiary. Therefore, the provisions

of section 372A of the Companies Act, 1956 will apply in the case of loan/guarantee by a company to another company in which it is holding 90% of the paid-up capital.

Answer 3(b)

The power to vary members' rights is contained in section 106 of the Companies Act, 1956. It is indeed a danger to retail shareholders because the aforesaid provision read with section 86 of the Act makes it easier for the controlling group to vary the rights to its advantage.

Apparently, section 106 provides statutory checks on variation of rights by requiring the consent in writing of at least 3/4th of holders of shares of the concerned class or by passing a special resolution of the members of the concerned class in a meeting. This is intrinsically a theoretical approach as retail shareholders (whose number may be in thousands) are generally not aware of the pernicious implications of the move. Also, very few retail shareholders attend the general or class meetings of companies. The move for variation will invariably come from the controlling group to acquire higher voting power to consolidate its grip over the company which in the long run may not be beneficial to the ordinary retail shareholders.

Again, with the amendment of section 86 in the year 2000 to enable issue of shares with differential rights, the passage has been rendered smooth. Further, the Companies (Passing of the Resolution by Postal Ballot) Rules, 2001 provides that resolutions relating to variation in the rights attached to a class of shares or debentures or other securities as specified under section 106 shall be passed through postal ballot.

The experience with postal ballots so far is not very encouraging. It does not allow discussion. If any particular matter requires 'yes or no' response, the lay members without much thought may be inclined to write yes or they may not send their responses. Also, responses which are technically defective or received late will be rejected. Therefore, the controlling group will not spare any effort in organizing voting/consent as may be appropriate to achieve its objective.

Question 4

- (a) *For consideration of certain items of business, special notice is required to be given. Comment.* (4 marks)
- (b) *Discuss the procedure for removal of a director by the Central Government.* (4 marks)
- (c) *It is mandatory that the Company Secretary shall be the compliance officer of a company. Comment.* (4 marks)
- (d) *Discuss the terms of reference for audit committee.* (4 marks)

Answer 4(a)

The following matters require special notice for consideration at a general meeting:

- (i) Resolution for appointment of an auditor other than the retiring auditor at an annual general meeting. [Section 225(1)].
- (ii) Resolution at an annual general meeting to provide that a retiring auditor shall not be re-appointed. [Section 225(1)].

- (iii) Resolution to remove a director before the expiry of his period of office. [Section 284].
- (iv) Resolution to appoint another director in place of the removed director. [Section 284].
- (v) Where the Articles of Association of a company provide for the giving of a special notice for a resolution in respect of any specified matter or matters.

Answer 4(b)**Procedure for removal of a director by the Central Government**

The Central Government shall, by order, remove from office any director concerned in the conduct and management of the affairs of a company, against whom there is a decision of the Company Law Board under Section 388D of the Act (Section 388E).

The decision of the Company Law Board is given on a reference made by the Central Government under Section 388B of the Act.

Where in the opinion of the Central Government there are circumstances suggesting:

- (a) that any person concerned in the conduct and management of the affairs of a company is or has been, in connection therewith, guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law, or breach of trust; or
- (b) the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices; or
- (c) the business of a company is or has been conducted and managed by such person in a manner which is likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or
- (d) the business of a company is or has been conducted and managed by such person with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest;

the Central Government may state a case against the person aforesaid and refer the same to the Company Law Board with a request that the Company Law Board may inquire into the case and record a decision as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

Answer 4(c)

Clause 47(1)(c) of the listing agreement of stock exchanges applicable to listed companies requires a company to appoint the Company Secretary to act as Compliance Officer who will be responsible for monitoring the share transfer process and report to the Company's Board in each meeting. The compliance officer will directly liaise with the authorities such as SEBI, Stock Exchanges, Registrar of Companies, etc., and investors with respect to implementation of various clauses, rules, regulations and other directives of such authorities and investor service and complaints of related matter.

Answer 4(d)

The following is the brief description of the terms of reference for Audit Committee:

- (i) Adopt and review formal written charts approved by the Board for its self-governance.
- (ii) Review with the management the annual/half yearly/quarterly financial statements.
- (iii) Hold separate discussions with the Head- Internal Audit, Statutory Auditors and members of the Audit Committee to find out whether the company's financial statements are fairly presented in conformity with the generally Accepted Accounting Principles (GAAP).
- (iv) Review the adequacy of accounting records maintained in accordance with the provisions of Companies Act, 1956.
- (v) Look into reasons for substantial defaults, if any, in payments to depositors, creditors and shareowners.
- (vi) Review the performance of Statutory Auditors and recommend their appointment and remuneration to the Board considering their independence and effectiveness.
- (vii) Perform other activities consistent with the Memorandum and Articles of the Company, the Companies Act, 1956 and other governing laws.

Question 5

- (a) *What is directors' and officers' liability insurance ?* (6 marks)
- (b) *How does a director resign from the Board of directors in a private limited company, if the Board fails to accept his resignation ?* (6 marks)
- (c) *The articles of association of a company incorporated in 2001 provided that a director should hold 2,000 shares of the value of Rs.10 each as qualification shares. At the annual general meeting held in September, 2003, an ordinary resolution was passed increasing the share qualification of directors to 6,000 shares. The company then issued notice to the directors who did not hold 6,000 shares to acquire additional qualification shares within one month. Madhok, a director who was asked to acquire additional qualification shares, received the notice. He seeks your advice. What advice would you give him ?* (4 marks)

Answer 5(a)

Directors' and Officers' liability insurance policy is designed to protect fortune of Directors and officers of a company (public or private) against the consequences of their personal liability for financial losses arising out of wrongful acts and/or omissions done, or wrongfully attempted in their capacity as Directors or officers.

Wrongful act is defined as any actual or alleged error, omission, mis-statement, misleading statement, neglect, breach of duty or negligent act by any one of the Directors or Officers solely in their capacity as Directors or officers of the Company.

Directors' and Officers' liability coverage comprises two sections (a) damages awarded against Directors and Officers including legal costs (b) company reimbursement.

The Directors' and Officers' section indemnifies the Directors and officers in respect of claims made against them where the company is not legally permitted to reimburse them. (In the absence of D&O insurance cover, Directors and officers would have to pay the loss settlement and defense costs out of their own resources).

Such policy covers former, present and future members of the board of directors and the management.

Answer 5(b)

The Companies Act does not make express provision for the resignation of a director. A director may resign his office in the manner provided by the articles. If the articles contain no provision regarding the resignation by a director, he may resign his office at any time by giving reasonable notice to the company, no matter whether the company accepts it or not [*Abdul Hug v. Katpadi Industries Ltd.* A.I.R. 1960 Mad. 482].

Thus, in the absence of any provision in the articles, resignation once made will take effect immediately when the intention to resign is made clear. In such a case the resignation tendered by a director unequivocally in writing will take effect from the time when such resignation is tendered.

A managing or whole-time director, however, cannot resign merely by giving a notice. His resignation is governed by the terms and conditions of his appointment. In the case of [*Achutha Pai v. Registrar of Companies*, (1966) 36 Comp. Cas 598 (Ker)], it was held that the resignation becomes effective only when the company accepts the resignation and relieves him (managing director) from his duties.

Answer 5(c)

There is no statutory requirement that a director must hold qualification shares in the company in which he is a director. Section 270 of the Companies Act, 1956 lays down that if the articles of a company provide for share qualification, each director must obtain his qualification shares within two months after his appointment as director and the nominal value of the qualification shares shall not exceed Rs. 5,000 or the nominal value of the one share where it exceeds five thousand rupees.

In the present case, two aspects are covered. One is that the special resolution necessary to alter the articles of association of a company was not passed. Secondly, the provisions of Section 270 were violated. In 2001, when the company was incorporated, the minimum limit for holding of qualification shares was fixed at Rs. 20,000. Further, the company increased the limit for holding of qualification shares at Rs. 60,000 in September, 2003 which is clearly a violation of Section 270 of the Act.

Therefore, Madhok is advised not to proceed for taking the additional shares and approach the company on the above mentioned lines.

Question 6

- (a) *Anmol Ltd. in its annual general meeting appointed all its directors by passing one single resolution. No objection was made to the resolution by any one present in the meeting. Examine the validity of the appointment and subsequent acts of the Board of directors explaining the relevant provisions of the Companies Act, 1956. Will it make any difference, if Anmol Ltd. is a government company?*
(8 marks)

(b) *As a Company Secretary, draft a specimen notice of disqualification under Section 274(l)(g) for a director of your company who is otherwise eligible for re-appointment in the ensuing annual general meeting. (4 marks)*

(c) *Madhav, a chartered accountant, is a director in MNL Ltd. The company proposes to appoint/engage the firm M & Co., in which Madhav is a partner in one or more of the following capacities :*

(i) *Consultants on regular retainer basis.*

(ii) *Authorised representatives to appear before tribunals.*

Discuss whether the provisions of section 314 are attracted in the above situations. (4 marks)

Answer 6(a)

As per Section 263 of the Companies Act, 1956, at a general meeting of a public company or of a private company, which is a subsidiary of a public company, a motion shall not be made for the appointment of two or more persons as directors of the company by a single resolution, unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it. Also, a resolution moved in contravention of this provision shall be void, whether or not objection was taken at the time of its being so moved.

In the present case, Anmol Ltd. passed a single resolution appointing all the directors. The resolution is void since before moving the resolution for appointment of all the directors by a single resolution, no resolution was passed to the effect that all the directors shall be appointed by a single resolution. It is immaterial that no member objected to the appointment of all the directors by a single resolution.

As per Section 290 of the Companies Act, 1956, the act of these directors shall not be invalidated until the defect in their appointment is discovered. However, where such defect comes to the knowledge of the company, all subsequent acts of these directors shall be invalid.

Further, section 263 of the Act does not apply to a Government company in which the entire paid-up share capital is held by the Central Government or by any State Government or Governments or by the Central Government and one or more State Governments [Notification No. GSR 577(E), dated 16-7-1985]. Therefore, if Anmol Ltd. is a government company (and satisfy the conditions as mentioned above), the appointment of all the directors by a single resolution shall be valid.

Answer 6(b)

XYZ Ltd.
Registered Office.....

To

Shri _____

We regret to write to you that since M/s. ABC Co.Ltd. (address _____) of which you are a director has not filed annual accounts and annual report for a continuous

period of three financial years from _____ to _____, under section 274(1)(g) of the Companies Act, 1956, you are not eligible for being appointed as a director of our company. Therefore, our company will not be able to re-appoint you again as the director of the company in its ensuing AGM where you are due to retire by rotation.

You may kindly note that by virtue of this disqualification, you shall not be eligible to be appointed as director of our company for a period of five years.

Yours faithfully,

For XYZ Ltd.

(Signed)
Company Secretary

Answer 6(c)

It is considered by the Department of Company Affairs that an advocate or solicitor appears in a court of law as an officer of the court in pleading the cause of justice and hence, such appearance and receiving fees on that account cannot lead to an inference of holding an office or place of profit under the company under Section 314 of the Companies Act, 1956. However, if such a solicitor/advocate, etc. is appointed on a regular retainer basis for rendering legal advice other than appearance in courts, the provisions of Section 314 will be applicable. [Circular : No. 14/75 [8/12/314 (1B) / 75-CL-V], dated 5-6-1975]

Hence, in view of the above:

- (i) Appointment of a firm M & Co., in which Madhav (a director of the company) is a partner, as consultant on regular retainer basis shall be covered by the respective provisions of Section 314(1) and (1B) of the Companies Act, 1956.
- (ii) However, appointment of a firm M & Co. as authorized representatives to appear before tribunals will not be covered by the provisions of Section 314(1) and (1B) of the Act.

Question 7

- (a) Enumerate the procedure for conversion of a public company into a private company. (8 marks)
- (b) Write notes on any two of the following :
 - (i) Filing of document in physical form in the context of MCA-21
 - (ii) Corporate Identification Number (CIN)
 - (iii) Directors' responsibility statement. (4 marks each)

Answer 7(a)

Procedure for conversion of a public company into a private company

1. Hold a meeting of the Board of directors to consider and approve the proposal for conversion of public company into a private company.

The following resolutions must be passed at the board meeting:

- (i) To approve the proposal and fix time, date and venue for holding an extraordinary general meeting of the company.
 - (ii) To authorize the company secretary or some competent officer to issue the notice of the general meeting on behalf of the Board.
2. Hold general meeting and have the special resolutions passed.
 3. Within thirty days of passing of the special resolutions, file e-form 23 to the Registrar of Companies.
 4. If the number of members of the company is above fifty, appropriate steps should be taken to reduce the number to fifty or below.
 5. Send six copies including one certified copy of the amendments to the stock exchanges where the securities of the company are listed.
 6. An application in e-form 1B along with the minutes of the members' meeting and prescribed application fee will have to be made, within three months from the date of passing of the special resolution for alteration of the articles, for obtaining the Central Government's approval to the alteration of the articles of the company.
 7. If the Registrar of Companies so directs, publish a notice in newspaper(s) as per his direction.
 8. Send to the stock exchanges where the securities of the company are listed, three copies of proceedings of the general meeting.
 9. After the alteration of the articles has been approved by the Central Government, a printed copy of the altered articles of the company should be filed with the concerned Registrar of Companies in e-form 62 within one month of the date of receipt of the order of approval.
 10. Surrender to the Registrar, the Certificate of Incorporation of the company in order to obtain fresh Certificate of Incorporation.
 11. Change the name of the company in all copies of the memorandum and articles of association, letter heads, invoice forms, receipt forms, all other stationery items, common seal of the company, sign boards and at every other place where the name of the company appears.
 12. Issue a general notice in newspapers informing members and public at large that the company has been converted into a private limited company.

Answer 7(b)(i)

Filing of document in physical form in the context of MCA-21

After the introduction of MCA-21, all the forms which were previously physically filed with the Registrar of Companies are now being electronically filed with the Registrar of Companies.

Main features of e-filing of documents under the MCA-21 system are briefly discussed below:

- To support the provisions of e-filing, the Central Government under

Section 610A and 610E of the Companies Act have enacted the Companies (electronic filing and authentication of documents) Rules, 2006.

- Every company has been allocated a Corporate Identity Number (CIN). CIN can be found from the MCA-21 portal through search based on ROC Registration No., Existing Company Name, etc.
- The e-forms are required to be authenticated by the authorized signatories using digital signatures as defined under the Information Technology Act, 2000.
- Various e-forms e.g. 2, 3, 5, 10, 17, 18, 23, 24AB, 25C, 32 are to be pre-certified by a Chartered Accountant or a Cost Accountant or a Company Secretary in whole time practice.
- MCA-21 system provides for the facility of payment of statutory fees through multiple modes i.e. (i) Off-line payment through a challan generated by the system and payment of fees at the counter of the notified bank branches through DDs/Cash; (ii) on-line payments through Internet Banking and Credit Cards [Master Card/VISA].

Further, the process of e-stamping has been introduced. However, it has not been made mandatory. Companies have option to pay stamp duty in electronic manner through MCA21 system or in physical form as per the existing procedure. The Companies (Electronic Filing) Rules, 2006 provides that where the documents are required to be filed on Non-Judicial Stamp Paper, and if the stamp duty on such documents is paid electronically through Ministry of Corporate Affairs portal www.mca.gov.in, in such case, the company shall not be required to make physical submission of such documents, in addition to their submission in the electronic form. This process is available only in such States/Union Territories which have agreed to the request of Ministry of Corporate Affairs for collection of e-stamp duty on their behalf.

Answer 7(b)(ii)

Corporate Identity Number (CIN)

Every company has been allocated a Corporate Identity Number (CIN). CIN can be found from the MCA-21 portal through search based on:

- ROC Registration No.
- Existing Company Name
- Old Name of Company (in case of change of name, user is required to enter old name and the system displays corresponding current name).
- Inactive CIN [In case of change of CIN, the user is required to enter previous (inactive) CIN Number].

Answer 7(b)(iii)

Directors' Responsibility Statement

Sub-section (2AA) of Section 217 of the Companies Act, 1956 provides that the Board's report shall also include a Directors' Responsibility Statement, indicating therein,—

- (i) that in the preparation of the annual accounts, the applicable accounting

standards have been followed along with proper explanation relating to material departures.

- (ii) that the directors had selected such accounting policies and applied them consistently and made judgements and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the Company at the end of the financial year and of the profit or loss of the Company for that period.
- (iii) that the Directors have taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the Company and for preventing and detecting fraud and other irregularities.
- (iv) that the Directors have prepared the annual accounts on a going concern basis.

Question 8

Distinguish between any four of the following :

- (i) *'Preferential issue' and 'issue of preference shares'.*
- (ii) *'E-Form 20' and 'e-Form 20A'*
- (iii) *Meaning assigned to 'insider' and 'connected person' in the SEBI (Prohibition of Insider Trading) Regulations, 1992.*
- (iv) *Procedure for appointment of 'cost auditor' and 'statutory auditor'.*
- (v) *Appointment of a Company Secretary by a private company under 'the Indian Law' and 'the Law in the United Kingdom.'* (4 marks each)

Answer 8(i)

'Preferential issue' and 'issue of preference shares'

Preferential issue : Among the many ways by which companies can raise capital is preferential issue — an issue of fresh shares or convertible debentures allotted to a select set of people, whether promoters, their relatives, or institutional investors. One could call it a wholesale equity market since the retail investors or shareholders are not invited to participate.

Promoters have used preferential allotments as a means for raising their stake in their companies — whether through shares or equity warrants, which can be converted at a later date. Unfortunately, however, allegations abound that the system has been misused by unscrupulous promoters, who initially sell their existing holdings at a higher price in the secondary market, and then build up their stakes through such issues at a lower price.

Preference shares : Section 85(1) of the Companies Act, 1956 provides that a preference share or preference share capital is that part of share capital which fulfills both the following requirements:

- (a) With respect to dividend, it carries a preferential right to be paid a fixed amount or an amount calculated at a fixed rate, which may be either free of or subject to income-tax.

- (b) With respect to capital, it carries on winding up or re-payment of capital, a preferential right to be repaid the amount of the capital paid-up or deemed to have been paid-up whether or not there is preferential right to the payment of either or both of the following amounts, namely:
- (i) any money remaining unpaid, in respect of the amount specified in clause (a) up to the date of winding up or re-payment of capital; and
 - (ii) any fixed premium or premium on any fixed scale specified in the memorandum or articles of the company.

Answer 8(ii)**‘E-form 20’ and ‘E-Form 20A’**

E-form 20 : E-form 20 has to be filed by a public company having share capital as a declaration of compliance for obtaining certificate of commencement of business where no prospectus is issued. A copy of the statement in lieu of prospectus is required to be mandatorily attached. The original duly filled-in and signed e-form 20 on stamp paper should be sent to the concerned ROC simultaneously.

E-form 20A : E-form 20A is required to be filed within 30 days from the date of passing of special resolution in pursuance of Section 149(2A) or 149(2B) of the Companies Act, 1956. The original e-form 20A duly filled in and signed on a stamp paper is required to be sent to the concerned ROC simultaneously along with copy of the special resolution or the approval letter of the Central Government where ordinary resolution has been passed pursuant to Section 149(2B).

Answer 8(iii)**Meaning assigned to ‘insider’ and ‘connected person’ in the SEBI (Prohibition of Insider Trading) Regulations, 1992**

Insider : Insider means any person, who is or was connected with the company or is deemed to have been connected with the company and who is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company or who has received or had access to such unpublished price sensitive information.

Connected person : Connected person means any person who -

- (a) is a director of a company as defined in clause (13) of Section 2 of the Companies Act, 1956 or is deemed to be director of the company by virtue of sub-clause (10) of Section 307 of that Act; or
- (b) occupies the position of an officer or an employee of the company or holds a position involving a professional or business relationship between himself and the company whether temporary or permanent and who may reasonably be expected to have access to unpublished price sensitive information in relation to the company.

For this purpose, the words “connected person” shall mean any person who is a connected person six months prior to an act of insider trading.

Answer 8(iv)**Procedure for appointment of 'cost auditor' and 'statutory auditor'**

Cost auditor : The cost auditor is appointed under Section 233B by the Board of Director of a company with the previous approval of Central Government. However, before appointing a cost auditor, a public company shall obtain a written certificate from the proposed cost auditor to the effect that the appointment, if made, will be in accordance with the provisions of Section 224(1B) of the Act.

Statutory auditor : Every company shall at each annual general meeting appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of next AGM. Such auditor is called statutory auditor. While appointing the statutory auditor, every public limited company shall obtain a written certificate from the proposed auditor to the effect that the appointment or reappointment, if made will be in accordance with the limits specified under Section 224(1B) i.e. the maximum number of companies that an auditor can audit.

To sum up, statutory auditor is appointed at the AGM while cost auditor is appointed by the Board with the previous approval of Central Government.

Answer 8(v)**Appointment of a Company Secretary by a private company under 'the Indian Law' and 'the Law in the United Kingdom'**

Section 383A of Companies Act, 1956 lays down that every company having a paid up share capital of rupees five crore or more must have a whole-time secretary and such secretary must be a member of the Institute of Company Secretaries of India (ICSI). The word used in this context is 'every company'. As such even a private company in India is mandatorily required to appoint a whole-time company secretary once its paid-up capital is rupees five crore or more.

As per Section 270 and 271 of UK Companies Act, 2006, a private company is not required to have a company secretary and only public companies are required to appoint a qualified company secretary. Also, Section 272 provides that if it appears to the Secretary of State that a public company is in breach of Section 271 (i.e. it has not employed a company secretary), the Secretary of State may give the company a direction to appoint a company secretary.

PROFESSIONAL PROGRAMME EXAMINATION

JUNE 2011

COMPANY SECRETARIAL PRACTICE

Time allowed : 3 hours

Maximum marks : 100

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

2. All references to sections relate to the Companies Act, 1956 unless stated otherwise.

Question 1

Draft any five of the following. In case of resolution, mention the type of meeting and the nature of resolution, but no explanatory statement need to be given :

- (i) Resolution to alter the name clause in the memorandum of association (use appropriate names).*
- (ii) Due diligence certificate to be submitted to SEBI for public issue of debentures (mention the authority to issue).*
- (iii) Resolution approving re-issue of forfeited shares.*
- (iv) Notice to Rajan, a director of XYZ Ltd., informing him that a notice under section 284 to remove him from directorship has been received from an eligible person.*
- (v) Notice from Jolly, a shareholder of Bright Ltd., proposing the name of Virat as a director under section 257.*
- (vi) Explanatory statement to expand the objects clause in the memorandum of association of a company engaged in manufacture of computer components under licence from a company in USA to include development of computer softwares. (4 marks each)*

Answer 1(i)

Resolution : Special Resolution

Type of Meeting : General Meeting

SPECIAL RESOLUTION FOR ALTERING THE MEMORANDUM OF ASSOCIATION (NAME CLAUSE) OF THE COMPANY

RESOLVED THAT subject to the approval of the Central Government under section 21 of the Companies Act, 1956, and other applicable provisions, if any, of the Companies Act, the name of the company be changed from XYZ limited to ABC limited and accordingly, the name "XYZ Limited" wherever it occurs in the Memorandum and Articles of Association of the Company be substituted by the name "ABC Limited".

Answer 1(ii)

Authority to issue : Debenture Trustee

**DUE DILIGENCE CERTIFICATE TO BE GIVEN BY DEBENTURE
TRUSTEE ALONG WITH DRAFT OFFER DOCUMENT**

To,
Securities and Exchange Board of India
Dear Sirs,

Sub.: Public Issue of by
(Name of the Issuer)

We, the debenture trustees to the above mentioned forthcoming issue, state as follows:

- (1) We have examined the documents pertaining to the said issue.
- (2) We have also examined the relevant documents pertaining to the security to be created.
- (3) On the basis of such examination and of the discussions with the issuer, its directors and other officers, other agencies and of independent verification of the various relevant documents, WE CONFIRM that:
 - (a) The issuer has made adequate provisions for and/or has taken steps to provide for adequate security/asset cover for the secured convertible debt instruments to be issued.
 - (b) The issuer has obtained the permissions / consents necessary for creating security on the property as second charge/pari passu charge (wherever applicable)
 - (c) The issuer has made all the relevant disclosures about the security/asset cover
 - (d) The issuer has made all the relevant disclosures about its continued obligations towards the holders of convertible debt instruments.
 - (e) All disclosures made in the draft prospectus/letter of offer with respect to the convertible debt instruments are true, fair and adequate to enable the investors to make a well informed decision as to the investment in the proposed issue.
- (4) We have satisfied ourselves about the ability of the issuer to service the debt securities.

**Debenture Trustee to the Issue
with his Official Seal**

Date :

Place :

Answer 1(iii)

Type of Meeting : Board Meeting

Nature of Resolution : Board Resolution

Re-issue of forfeited Shares

“RESOLVED THAT equity shares of Rs..... each bearing Distinctive

Nos..... to, both inclusive, previously registered in the name of Shri..... and forfeited on..... as per declaration duly signed by Company Secretary placed on the table, be sold re-issued to Shri..... for Rs..... per share.”

“RESOLVED FURTHER that the Secretary of the Company be and is hereby authorized to obtain the necessary permission from the Stock Exchange for the re-issue.”

Answer 1(iv)

Notice to Rajan, Director, informing him of his removal from Directorship

To

Rajan, Director
XYZ Ltd.
New Delhi

Dear Sir,

Sub : Notice of removal

We write to inform you that the Company has received a notice from a shareholder of the Company of a resolution for your removal from the office of director. The said resolution is intended to be moved at the _____ General Meeting be held at _____ on _____ 2008 at _____ hours.

A copy of the aforesaid resolution is enclosed for your perusal. We draw your attention to the provisions contained in sub-section (3) of section 284 of the Companies Act, 1956 pursuant to which you are entitled to be heard on the resolution at the meeting. Further in terms of sub-section (4) thereof you can make a representation in writing to the Company for notification to the Members of the Company.

We also enclose the agenda of the Meeting with a request to attend the Meeting.

Yours faithfully,

Board of Directors
XYZ Limited

Secretary

Date :

Place :

Answer 1(v)

To,

The Board of Directors
Bright Ltd.

Dear Sirs,

Pursuant to section 257 of the Companies Act, 1956, I, Jolly, a member of Bright Ltd., holding _____ shares hereby propose Mr. Virat, as a candidate for the office of director to be appointed at the forthcoming annual general meeting. Also, a draft of Rupees 500 is enclosed as a deposit as required under section 257(1) of the Companies Act, 1956.

Yours faithfully,

Jolly
Shareholder of Bright Ltd.

Answer 1(vi)**Explanatory Statement**

Your Board has with a view to garner further growth and expansion has considered a proposal to diversify into a related area of operations, namely development of computer software. The objects clause which is presently restricted in scope covering manufacture of computers components only. This requires to be expanded so as to cover development of computer software also. To enable your company to consider embarking upon new activities which considered to be profitable, advantageous, feasible and which can be conveniently integrated to the company's current line of business, the resolution is being proposed. Certain incidental powers are also being added for the convenience of the Company's operations. Your Directors recommend that the special resolution be passed.

None of the Directors of the Company is interested or concerned in the said resolution except as members of the Company.

Question 2

(a) *Explain the legal position and suggested action for the following :*

- (i) *A company is ready with the printed annual report for despatch to all shareholders and there arises a need to hold an extra-ordinary general meeting. The company wants to despatch notice of the annual general meeting and the notice of extra-ordinary general meeting simultaneously in the same envelope.*
- (ii) *The articles of association of a private limited company provide that a director should make a fixed deposit of '5,000 for being qualified to be a director.*
(4 marks each)

(b) Write the most appropriate answer from the given options in respect of the following :

- (i) The maximum age limit for directors in case of private companies is —
- 65 years
 - 70 years
 - 75 years
 - None of the above.
- (ii) Where title in shares of a company is in dispute, the matter has to be resolved by —
- Court
 - Arbitrator
 - Company Law Board
 - Central Government.
- (iii) Global Ltd. has the paid-up equity capital structure — Central Government: 38%; State Government : 10%; Subsidiary of a government company : 17.5%; and retail shareholders: remaining shares. Which of the following classes of companies would it belong to —
- Government company
 - Non-government public company
 - Deemed public company
 - Deemed private company.
- (iv) Contracts made after incorporation of a public company, but before issue of the certificate of commencement of business are —
- Provisional contracts
 - Post-incorporation contracts
 - Preliminary contracts
 - Contracts in the normal course of business. (1 mark each)
- (c) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):
- In public issue, the facility 'ASBA' stands for _____ .
 - The proceedings of the meeting will be _____ if conducted in the absence of a quorum.
 - On satisfaction of complete charge, intimation is required to be given to the Registrar of Companies in prescribed form _____ duly signed by the company and the concerned financial institution/bank.
 - Increase in authorised capital of the company permitted by the articles of association requires resolution to be passed under section _____ of the Companies Act, 1956. (1 mark each)

Answer 2(a)(i)

Pursuant to Section 171 of the Companies Act, 1956, a general meeting may be called by giving 21 clear days' notice. Clear days means the days must be calculated excluding the date on which the notice is served, 48 hours (i.e. 2 days) for postal transit and the day on which the meeting is to be held. Thus, where notice is sent by post, 21 clear days will in effect means 25 days.

As such, one needs to ensure timings of the meetings of the board at which authorization to issue the notices for the Annual General Meeting (AGM) and the Extra Ordinary General Meeting (EGM) has been given by the board.

Section 171(2) of the Companies Act also provides for giving shorter notice if all the members give consent for the purpose of holding AGM and if the 95% of members give consent for the purpose of holding EGM.

Answer 2(a)(ii)

Regulation 66 of Table A provides that a director must hold at least one share in the company. Wherever, share qualification is fixed by the Articles, Section 270 of the Companies Act shall apply. Each and every Director may not be required by articles to hold qualification shares. The articles may prescribe that a technical or finance or other special director need not possess any share qualification. Section 270 provides that every director who is required by articles to hold qualification shares, should obtain them within 2 months after his appointment as director. Sub-section (4) of Section 270 provides that share warrants do not constitute qualification shares. As such, the fixed deposits do not constitute qualification shares. Therefore the provision, if any, in the Articles requiring a director to make fixed deposit of specified amount for being qualified to be a director, is void. Such Article needs to be amended.

Answer 2(b)

- (i) (d) None of the above
- (ii) (a) Court
- (iii) (a) Government company
- (iv) (a) Provisional contracts

Answer 2(c)

- (i) In public issue, the facility 'ASBA' stands for **Applications Supported by Blocked Amount** .
- (ii) The proceedings of the meeting will be **invalid /Void** if conducted in the absence of a quorum.
- (iii) On satisfaction of complete charge, intimation is required to be given to the Registrar of Companies in prescribed form **17** duly signed by the company and the concerned financial institution/bank.
- (iv) Increase in authorised capital of the company permitted by the articles of association requires resolution to be passed under section **94** of the Companies Act, 1956.

Question 3

(a) *State, with reasons in brief, whether the following statements are true or false. Attempt any two :*

(i) *The non-confirmation of minutes of the meeting by the Board of directors in the next subsequent meeting does not affect the validity of the decision taken in the previous Board meeting.*

(ii) *The doctrine of indoor management is not an exception to the rule of constructive notice.*

(iii) *Annual return of a public company must necessarily be filed annually.*
(2 marks each)

(b) *Assume data and draft the notice of an annual general meeting of a listed public company including therein at least one of the special business items.*
(8 marks)

(c) *During a period of about past one and a half decades, a number of countries in the world have engaged themselves in modernising their respective company laws. Can you identify the motivating factors underlying this effort ? Mention Indian scene in particular.*
(4 marks)

Answer 3(a)(i)

True.

In terms of Section 193(1A), the Chairman of the meeting of the Board of Directors or the Chairman of the next succeeding meeting of the Board of Directors is required to initial or sign each page of every such book and to date and sign the last page of the record of the proceedings of the meeting. There is no provision as to confirmation of minutes.

Hence, it is true that non-confirmation of Minutes would not affect the validity of the previous Board Meeting.

Answer 3(a)(ii)

False.

The doctrine of 'constructive notice' seeks to protect the company against the outsiders. Outsiders dealing with incorporated bodies are bound to take notice of limits imposed on the corporation by the memorandum or other documents of constitution. However, the principle of indoor management operates to protect the outsiders against the company and they are entitled to assume that the directors or other persons exercising authority on behalf of the company are doing so in accordance with the internal regulations as set out in the Memorandum & Articles of Association.

Thus doctrine of indoor management is an exception to the rule of constructive notice.

Answer 3(a)(iii)

True.

As per Section 159(1), every company having a share capital within 60 days from the day on which each of the annual general meetings prepare and file with the Registrar

a return containing the specified particulars. However, in case of default, the company and every officer of the company shall be punishable with fine which may extend to five hundred rupees for every day during which default continues.

Hence, annual return is required to be filed not only by public company but by every company having a share capital.

Answer 3(b)

_____ Ltd.

NOTICE

Regd. Office: _____

To all the shareholders of the company

Notice is hereby given that the ____ Annual General Meeting of the members of _____ Ltd. will be held on _____, the _____ at _____ at the registered office of the Company to transact the following business:

ORDINARY BUSINESS

1. To receive, consider and adopt the Director's Report, audited Balance Sheet as at 31st March, _____ and the Profit and Loss Account for the year ended on that date together the Auditor's Report thereon.
2. To declare dividend on equity shares.
3. To appoint a Director in place of Shri _____ who retires by rotation and being eligible offers himself for reappointment.
4. To appoint Auditors of the Company and to fix their remuneration. M/s. _____ Chartered Accounts, the retiring Auditors are eligible for reappointment.

SPECIAL BUSINESS:

5. To consider and if thought fit to pass with or without modification(s) the following resolution as an Ordinary Resolution:

"RESOLVED that Mr. _____ who has been appointed as an additional Director on the Board of the Company w.e.f. _____ and ceases to hold office at this annual general meeting and in respect of whom a notice under Section 257 has been received from a member proposing his candidature be and is hereby appointed as a Director of the Company."

By Order of the Board of Directors

_____ Ltd.

Company Secretary

Place : New Delhi

Date :

NOTES:

1. A Member entitled to attend and vote at the meeting is entitled to appoint a Proxy to attend and on poll to vote instead of himself/herself. A Proxy need not be a member of the Company.
2. Explanatory Statement pursuant to Section 173(2) of the Companies Act, 1956 in respect of item no.5 is annexed hereto.
3. Payment of dividend as declared at the AGM would be made to the members of the Company as on date of the AGM.
4. Members are requested to intimate to the Company changes, if any, in their registered address alongwith PIN code number.
5. Members intending to require information about accounts to be explained at the meeting are requested to write to the Company at least 10 days in advance of the date of Annual General Meeting.
6. The register of members and share transfer books would remain closed from _____ to _____ (both days inclusive).
7. Nomination facility is available to all members for nomination in accordance with the law.

EXPLANATORY STATEMENT

(pursuant to Section 173(2) of the Companies Act, 1956)

Item No.5

Shri _____ who is a qualified and experienced person was co-opted as an additional Director on the Board of the Company w.e.f. _____. In terms of provisions of Section 260 of the Companies Act, 1956, Shri _____ shall cease to hold such office at the ensuing annual general meeting. The Company has received a notice under section 257 of the Act from a member proposing the candidature of Shri _____ as a Director on the Board of the Company.

The Board recommend passing of the proposed Ordinary Resolution.

None of the Director is considered to be interested in or concerned with the proposal resolution except to the extent of their respective shareholding in the company.

Answer 3(c)

A number of countries including India, Australia, Canada, UK and Hong Kong have initiated comprehensive effort to modernize their respective company laws. The need to become more competitive, techno savvy, simple to understand and interpret to facilitate greater compliance, economic to operate, attractive as a worth while investment destination to accelerate economic growth, to emphasize on corporate social responsibility, better regulation and greater transparency in corporate governance and reporting are some of the underlying objectives that motivated them.

Precisely, in India the process has started to evolve the modern, transparent, investor friendly, well governed company law i.e. Companies Bill, 2009. Modernization of corporate

regulation governing setting-up and running of enterprises, governance and accountability to the investors and other stakeholders and structural changes in law commensurate with global standards have become critical for the maintenance and enhancement of a vibrant corporate sector and business environment. By putting in place, a best legal framework would enable the Indian Corporate Sector to operate in an environment of best international practices in a global competitive market.

Question 4

- (a) *Prepare directors' report for Anand Entertainment Ltd., including inter alia response to a qualification by auditors of the company for non-payment to creditors from small scale industries sector amounting to ₹5,000. (State only major headings of directors' report without giving any details except for the qualification.)*
(8 marks)
- (b) *Elucidate the relevance of Secretarial Standard-4 on registers and records and state its current status.*
(4 marks)
- (c) *The case of Dilip Pendse vs. SEBI is highly revealing the susceptibility to misuse of the SEBI (Prohibition of Insider Trading) Regulations, 1992. Briefly give your views.*
(4 marks)

Answer 4(a)

**Anand Entertainment Ltd.
Directors' Report of a Listed Company**

To,

The Members,

Your Directors have pleasure in presenting their Fortieth Annual Report on the business and operations of the Company and the accounts for the Financial Year ended 31st March, 2010.

1. Performance of the Company
2. Expansion and Diversification
3. Dividend
4. Term Deposits
5. Particulars of Employees
6. Conservation of Energy, Technology Absorption and Foreign Exchange Earnings and Outgo
7. Directors
8. Management Discussion and Analysis
9. Directors' Responsibility Statement
10. Auditors
11. Auditors qualification

Regarding auditors qualifications, the Directors state as follows:

For item No.....of Auditors Report read with note no.....of schedule.....

As on date, the company has settled 25% of the amount due (Rs.5000) to the creditors from small scale industries and will make the payment of remaining amount at earliest possible.

12. Acknowledgements

For and on behalf of the
Board of Directors
Chairman and Managing Director
Anand Entertainment Ltd.

Pune

Dated : June 2, 2010.

Answer 4(b)

Secretarial Standard on Registers and Records (SS-4) – Relevance and Current Status

Besides, the necessity of maintaining proper and systematic records of activities, operations and results, the governing law i.e. the Companies Act, 1956 have prescribed maintenance of a number of records on a mandatory basis. These records are open to inspection by governmental authorities/members/creditors etc. and also extracts from some of these can be requisitioned by members. The standard prescribes the principles underlying each record emphasizing on good practices. It provides for maintenance and inspection of the records in light of the law and also in tune with facility of users, both internal and external. The Information Technology Act, 2000 permits the maintenance of the records in electronic mode. SS-4 provides that apart from mandatory records, companies may maintain many other records to facilitate working. Some of the mandatory records are register of members, register for investment in securities, register for buy-back of securities, register for allotment of shares etc. Non-mandatory registers include employee attendance register, register to record daily protection etc.

The compliance with the provisions of Secretarial Standards is recommendatory in nature. Certain companies are voluntary complying with the standards for the purpose of good governance.

Answer 4(c)

The case relates to Tata Finance Ltd., a listed public company of one of the top business groups in the country. Tata Finance Ltd. had a wholly owned subsidiary in the name of Nishkalpa. Nishkalpa incurred a huge loss and it was bound to affect the bottom line of Tata Finance Ltd. It's MD, Sri Pondse passed this information to the wife who in turn sold off her holdings in TFL including the holdings in shares of this company held by companies controlled by her and Sri Pondse's father at a significant gain before this information became public. There was considerable fall in the market price of TFL shares on this information becoming public. By this process, taking advantage of insider

information, Pondse family not only avoided the loss but in fact has made considerable gain while the general investors suffered loss.

To prevent this, ethical conduct of the business and unblemished corporate governance are to be enforced not only by regulators but also by the governing board of business entities. The shareholder and investing public also have to remain constantly vigilant.

Question 5

- (a) Assume yourself to be a Company Secretary in whole-time practice engaged in formation of a public limited company and you are required to give the declaration under section 33(2) in respect of compliance with the relevant provisions of the Companies Act, 1956 and rules framed thereunder as regards registration of the company. By reference to e-form 1, write down the declaration you would be making (keep the space for names blank). (6 marks)
- (b) What is bonus issue of shares and how is it authorised and done? Bring out at least ten important/fundamental conditions to be fulfilled by a listed company to make a bonus issue. (10 marks)

Answer 5(a)

I, _____ son/daughter/wife of _____ do solemnly declare as under:

- (i) That I am
 - (a) a Company Secretary (in whole-time practice) in India who is engaged in the formation of the company.
- (ii) And, I further declare that the particulars given above are true to the best of my knowledge and belief.
- (iii) Forms 18 and 32 are also being filed simultaneously.
- (iv) I further confirm that I am duly authorized to submit this application; and that all the particulars mentioned above are as provided in the Articles of Association as subscribed by the subscribers of the company.
- (v) All, the requirements of the Companies Act, 1956 and rules thereunder in respect of all the matters precedent in the registration of the company and incidental thereto have been complied with and I make this solemn declaration conscientiously following the same to be true.
- (vi) The company has paid correct stamp duty as per applicable Stamp Act.
- (vii) That the subscribers have given declaration of details of his/her conviction by any court for any offence involving moral turpitude or economic or criminal offences or for any offences in connection with the promotion, formation or management of a company.
- (viii) That the subscribers have given declaration that he/she has not been declared as proclaimed offender by any Economic Offence Court or Judicial Magistrate Court or High Court or any other Court.

Answer 5(b)

Issue of bonus shares means issue by a company of shares to its existing shareholders without requiring them to make any payment.

There does not exist any specific provision in the Companies Act permitting or prohibiting this issue. However, proviso to section 205(3) allows a company to capitalize its profits/reserves to issue bonus shares. Similarly, the Articles of a company may provide for issue of bonus shares as Regulations 96 and 97 of Table A authorize a company to capitalize its profits/reserves to issue bonus shares. The articles also provide whether the bonus issue can be authorized by the Board or would require shareholders approval. Declaration of bonus issue in lieu of dividend is not permitted by the Act.

Steps involved in Issue of Bonus Shares

A company issuing bonus shares should ensure that the issue is in conformity with the guidelines for bonus issue laid down by SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2009.

The procedure for issue of bonus shares by a listed company is enumerated below:

1. Ensure that is authorised by its articles of association for issue of bonus shares, capitalisation of reserves, etc.: If there is no such provision in the articles of association, the issuer shall pass a resolution at its general body meeting making provisions in the articles of associations for capitalisation of reserve;
2. Ensure that issuer has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
3. Ensure that the issuer has sufficient reason to believe that it has not defaulted in respect of the payment of statutory dues of the employees such as contribution to provident fund, gratuity and bonus;
4. Ensure that the partly paid shares, if any outstanding on the date of allotment, are made fully paid up
5. It may be noted that no issuer shall make a bonus issue of equity shares if it has outstanding fully or partly convertible debt instruments at the time of making the bonus issue, unless it has made reservation of equity shares of the same class in favour of the holders of such outstanding convertible debt instruments in proportion to the convertible part thereof.
6. The equity shares reserved for the holders of fully or partly convertible debt instruments shall be issued at the time of conversion of such convertible debt instruments on the same terms or same proportion on which the bonus shares were issued.
7. The bonus issue shall be made out of free reserves built out of the genuine profits or securities premium collected in cash only and reserves created by revaluation of fixed assets shall not be capitalised for the purpose of issuing bonus shares.
8. The bonus share shall not be issued in lieu of dividend.

9. An issuer, announcing a bonus issue after the approval of its board of directors and not requiring shareholders' approval for capitalisation of profits or reserves for making the bonus issue, shall implement the bonus issue within fifteen days from the date of approval of the issue by its board of directors. However, where the issuer is required to seek shareholders' approval for capitalisation of profits or reserves for making the bonus issue, the bonus issue shall be implemented within two months from the date of the meeting of its board of directors wherein the decision to announce the bonus issue was taken subject to shareholders' approval.
10. Once the decision to make a bonus issue is announced, the issue can not be withdrawn.

Note : Candidates can discuss any ten conditions.

Question 6

- (a) *Explain as to how the provisions of the Companies Act, 1956 relating to audit committee will help in achieving some of the objectives of good Corporate Governance. (5 marks)*
- (b) *Will the term 'remuneration' cover ESOS or ESOP for determining managerial remuneration ? (5 marks)*
- (c) *What are the requirements under the listing agreement relating to publication of unaudited quarterly results ? (6 marks)*

Answer 6(a)

The concept of Audit Committee was introduced by section 292A of the Companies Act, 1956 with a view to offer better corporate governance. Every public company having paid up capital of not less than Rs.5 crores must have an audit committee. The auditors, the internal auditors, if any, and the Director concerned in finance shall attend and participate at the meetings of Audit Committee. As per the provisions of said Section, the functions of the Committee include : (i) periodical reviews about internal control system, (ii) review of half yearly and annual financial statements and (iii) compliance of internal control systems etc.

The provisions of law relating to powers and functions of the Audit Committee relating to financial statements will help in achieving some of the objectives of corporate governance i.e. Accountability and integrity of financial reporting, healthy audit of financial and operational records, transparency of policies, better implementation, timely interventions leading to better risk management, etc.

Answer 6(b)

As per explanation (b) of Section 198 of the Companies Act, 1956, any expenditure incurred by company in providing any other benefit or amenity free of charge or at a concessional rate to its director and manager will form part of the term 'remuneration' for determining the quantum of remuneration outgo for management personnel. There seems no doubt that sweat equity or ESOP free or at lower cost to director is a 'benefit'. The question is whether providing ESOP or ESOS can be termed as expenditure incurred by the company, as company does not incur any expenditure on these heads. 'Expenditure'

is something paid out or spent. It is true that as per accounting policy of ESOP as per SEBI guidelines, the accounting value of the option granted is treated as employee compensation in accounting. However, company has not paid out any amount to the directors or other managing personnel and there was no expenditure. Hence, legally, such amount is not considered as 'remuneration' to the Director under the Companies Act, 1956.

Another view is that considering the legislative intent and considering that the definition of remuneration is inclusive and not exhaustive, such sweat equity or ESOP may be held as remuneration to director.

Answer 6(c)

1. As per clause 41 of the Listing Agreement, a company is required to submit its quarterly, year to date and annual financial results to the stock exchange.
2. The company has an option either to submit audited or unaudited quarterly and year to date financial results to the stock exchange within forty-five days of end of each quarter (other than the last quarter), subject to the following:
 - (i) In case the company opts to submit unaudited financial results, they shall be subjected to limited review by the statutory auditors of the company (or in case of public sector undertakings, by any practicing Chartered Accountant) and a copy of the limited review report shall be furnished to the stock exchange within forty-five days from end of the quarter.
 - (ii) In case the company opts to submit audited financial results, they shall be accompanied by the audit report.
3. In respect of the last quarter, the company has an option either to submit unaudited financial results for the quarter within forty-five days of end of the financial year or to submit audited financial results for the entire financial year within sixty days of end of the financial year, subject to the following:
 - (i) In case the company opts to submit un-audited financial results for the last quarter, it shall also submit audited financial results for the entire financial year, as soon as they are approved by the Board. Such un-audited financial results for the last quarter shall also be subjected to limited review by the statutory auditors of the company (or in case of public sector undertakings, by any practicing Chartered Accountant) and a copy of the limited review report shall be furnished to the stock exchange within forty-five days from end of the quarter.
 - (ii) In case the company opts to submit audited financial results for the entire financial year, it shall intimate the stock exchange in writing within forty-five days of end of the financial year, about such exercise of option.
4. However, when a company opts to submit un-audited financial results for the last quarter of the financial year, it shall, submit a statement of assets and liabilities as at the end of the financial year only along with the audited financial results for the entire financial year, as soon as they are approved by the Board.

Question 7

- (a) *A reputed public company had validly loaned certain sum of money to one of its directors on certain terms and conditions fixing the time limit for repayment thereof. Now, the director concerned has approached the company with a request to extend the time limit for repayment of the balance of loan amounting to '12 lakh by another six months. You are required to answer the following with reference to the provisions of the Companies Act, 1956 :*
- (i) *Who is authorised to grant the extension as requested by the director ?*
- (ii) *Draft an appropriate notice for the meeting where such extension may be granted. (6 marks)*
- (b) *A complaint was filed against the petitioner and others under section 220 read with section 162 in their capacity as the officers of a company who had failed to file the balance sheet and profit and loss account in the prescribed form with the Registrar of Companies (ROC). The petitioner being accused No.3 contended that he had held the post of a non-executive director and had resigned long back. It was submitted that in his replies to the earlier show cause notices, this fact was conveyed to the ROC and no communication had been received from the ROC. The petitioner produced his resignation letter to the company and also the minutes of meeting of the Board of directors of the company wherein his resignation was recorded. Decide. (4 marks)*
- (c) *A company has 100 members. It sends notice of the general meeting to all of them. 20 members do not attend the meeting. Out of 80 members who are present, 20 members abstain from voting. How many members should vote in favour of a resolution, if it is to be passed as a special resolution ? (3 marks)*
- (d) *Account for the significance of Hong Kong as a vibrant business centre, having some special advantage. Name the law that governs companies in Hong Kong. (3 marks)*

Answer 7(a)

- (i) Pursuant to Section 293(1)(b), a public company cannot give extension of time for the repayment of any debt due by a director, except with the consent of company in general meeting by way of an ordinary resolution. Therefore, the company in General Meeting is authorized to grant extension as requested by the director.
- (ii) Notice for the meeting where such extension may be granted.

Notice of _____ General Meeting/Extraordinary General Meeting

XYZ Limited

Registered Office _____

NOTICE is hereby given that the _____ General Meeting/ Extraordinary General Meeting of the members of XYZ Limited will be held on _____ day _____, the _____ (date), at _____ (time) at _____ (address) to transact the following business:

Special Business:

Granting extension of time for the repayment of debt.

1. To consider and, if thought fit, to pass, with or without modifications, the following Resolution as an Ordinary Resolution:

RESOLVED that pursuant to the provisions of Section 293(1)(b) of the Companies Act, 1956, consent be and is hereby accorded to the company for extending the time for the repayment of balance amount of Rs.12.00 lacs advanced to Mr. AK, the Director of the Company, by a further period of six months ending on _____(date).

2.

3.

By Order of the Board of Directors

PQR
Company Secretary

Place :

Date :

Answer 7(b)

On perusal of the relative record, it has been established beyond doubt that the concerned non-executive director has resigned and such resignation was duly accepted by the Board of Directors of the Company. Further, at that point of time, no balance sheet and the profit and loss account was due for filing with ROC. The contention made by such Director had been ignored by the office of ROC. Accordingly, it may be decided that such Director should not be held liable in any manner for non-filing of balance sheet etc.

Answer 7(c)

For passing a special resolution, the requirement is that the votes cast in favour of the resolution (whether on show of hands or on a poll, as the case may be) by members who, being entitled so to do, vote in person or where proxies are allowed, by proxy, are not less than three times the number of the votes, if any, cast against the resolution by members so entitled and voting.

Here, 80 members are present, out of which 20 have abstained from voting. So, 60 members voted. $\frac{3}{4}$ of 60 is 45.

Hence, 45 members should vote in favour of a resolution, if it is to be passed as a special resolution which is 3 times the numbers of votes cast against the resolution (i.e. 15).

Answer 7(d)**The advantages of Setting Up Business in Hong Kong**

Hong Kong is an international city with advanced information, and the freest harbor for trading in the world. It provides wonderful business situations for entrepreneurs and businessmen. The advantages for setting up Hong Kong Company are as follows:

- (i) *Free to Choose the Name of the Company*: the Hong Kong government allows the names of the company to include the words such as international, chamber of commerce, united group, foundation, association for promotion, etc..
- (ii) *Little Restriction of the Business Areas*: jewelry, treasury, shipment, transportation, import and export, house estate, website, research institution and other hi-tech industry. All these can be businesses.
- (iii) *Great Development in Low Taxation Environment*: The taxation in Hong Kong is very low.
- (iv) *Easy to Get the International Credit*: It is known to all that Hong Kong is the economic and financial center in Asia, every street of which has banks. Credit is the basis to develop international businesses and is easily available.
- (v) *Doing Best to Get the Inhabitant Right in Hong Kong*. If your enterprises have done contributions to Hong Kong, you can apply to the people's inbound affairs office of Hong Kong to arrange the visa for doing businesses. If people have inhabited in Hong Kong for 7 years, they can get the eternal inhabitation right in Hong Kong.

Hong Kong Companies are guided by the Hong Kong Companies Ordinance.

Question 8

Write notes on any four of the following :

- (i) *Online inspection of documents*
- (ii) *Corporate social responsibility*
- (iii) *Resolution requiring special notice*
- (iv) *Chinese wall policy in areas of price sensitive information*
- (v) *Board meeting through video conferencing.* (4 marks each)

Answer 8(i)**Online inspection of documents**

The documents filed online, once taken on record by ROC Offices are available for public viewing on payment of requisite fees. These documents, which are in domain of public documents, include documents relating to incorporation, charges, annual returns and balance sheets and change in directors. A certified copy of the documents can also be obtained by anyone so interested. For this purpose there is also an option to mention the number of pages in the document for which a certified copy is required as well as the number of copies required.

Answer 8(ii)**Corporate social responsibility**

The subject of Corporate Social Responsibility (CSR) has evolved during the last few decades from simple philanthropic activities to integrating the interest of the business with that of the communities in which it operates. Although we have seen a period of sustained economic growth in the current decade, we still continue to face major challenges on the human side in India. The problems like poverty, illiteracy, malnutrition etc. have resulted in a large section of the population remaining as un included from the mainstream. We need to address these challenges through suitable efforts and intervention in which all the state and non-state sectors need to partner together to find and implement innovative solutions.

The CSR policy should invariably cover: care for all stakeholders; ethical functioning; respect for workers' rights and welfare, respect for human rights, respect for environment and activities for social and inclusive development.

At present, the Ministry of Corporate Affairs (MCA) is looking forward to more and more business communities coming forward and adopting the CSR Voluntary Guidelines issued by it. The MCA has also prescribed a form for filling up of the same on voluntary basis to report on CSR.

Answer 8(iii)**Resolution requiring special notice**

A resolution requiring special notice is not actually an independent class of resolutions. Such a resolution may be an ordinary or special resolution. As per provisions of the Companies Act, 1956, a special notice may be given in respect of following matters:

- (a) For the appointment of an Auditor other than the retiring Auditors;
- (b) For a resolution expressly providing that the retiring auditor shall not be reappointed.
- (c) For removing a Director before the expiry of his term. (Section 284).
- (d) For appointing another person as director, in place of the director so removed.

The articles of a company may also provide for circumstances where special notice is required. As per section 190 of the Act, notice should not be less than 14 days before the meeting. The company must immediately give its members notice of the resolution. If that is not practicable, the company must give notice either by advertisement in the local newspaper or in the other mode allowed by the Articles. Such advertisement must be given at least 7 clear days before the meeting.

Answer 8(iv)**Chinese wall policy in areas of price sensitive information**

Price sensitive information is required to be disseminated to the stock exchange on an immediate and continuous basis. To prevent the misuse of confidential information,

the organizations/firms adopt a “Chinese Wall” policy which separates those areas of organizations/firms which routinely have access to confidential information, considered “inside areas” from those areas which deal with sales/marketing/ investment advise or other departments providing support services, considered ‘public areas’.

Answer 8(v)

Board meeting through video conferencing

With the rapid and remarkable advancement in telecommunications, computer technology and electronics, conduct of board meeting through video conferencing has become possible. Video conferencing enables people sitting at a distance of thousand of miles to effectively interact with each other as all of them can not only see each other on screen but are also audible. In UK, USA and other developed countries, conduct of board meetings through video/telephone conference has been accorded legal recognition. In India, the Information Technology Act, 2000 has also provided legal recognition to transactions carried on in electronic data exchange and other modes electronic communication. However, the Companies Act, 1956 does not contain any provision enabling companies to hold electronic/video conferencing meetings. In this context, the process has been initiated by the Government to examine the proposal and under the new proposed amendment Bill, such provision has been suitably incorporated.

PROFESSIONAL PROGRAMME EXAMINATION

DECEMBER 2011

COMPANY SECRETARIAL PRACTICE

Time allowed : 3 hours

Maximum marks : 100

- NOTE :** 1. Answer SIX questions including Question No. 1 which is **COMPULSORY**.
2. All references to sections relate to the Companies Act, 1956 unless stated otherwise.

Question 1

Draft Board resolutions for a listed company for any five of the following businesses:

- (i) A resolution of Aditya Ltd. for providing guarantee for `89 lakh in respect of a loan to be obtained by Mrs. Shankari, a director thereof from a housing finance company for construction of a residential house for her own use.*
- (ii) A resolution for filing of declaration of solvency in voluntary winding-up.*
- (iii) A resolution for approval of annual accounts and recommendation of dividend.*
- (iv) A resolution for vacation of office by director for contravening section 299.*
- (v) A resolution for appointment of the compliance officer of the company.*
- (vi) A resolution for obtaining a certificate of commencement of business under section 149(3). (4 marks each)*

Answer 1(i)

Board Resolution for providing guarantee

“RESOLVED THAT subject to the approval of the Central Government, sanction be and is hereby accorded to the proposal of furnishing the guarantee in respect of a loan of `89 lakhs to be obtained by Mrs. Shankari, a director of the company from M/s. a housing finance company as per terms and conditions contained in the draft loan agreement to be entered into between the said housing finance company and Mrs. Shankari, a copy of which is placed before this meeting and initiated by the Chairman for the purpose of identification.”

RESOLVED FURTHER THAT Mr....., Company Secretary of the company be and is hereby authorized to digitally sign the e-form 24AB, submit the application to the ROC and comply with all other formalities in this regard.”

Answer 1(ii)

Board Resolution for filing of declaration of solvency

“RESOLVED THAT having made a full enquiry into the affairs of the company and formed the opinion that the company has no debts, the consent of the Board of Directors of the company be and is hereby accorded to wound up the company as members’ voluntary winding up.”

“RESOLVED FURTHER THAT Mr. X and Mr. Y, Directors of the company be and are hereby authorized to make sign and verify by an affidavit declaration of solvency

consisting these facts and opinions and that the Secretary be and is hereby authorized to digitally sign the e-form 62, deliver the said declaration of solvency to the ROC forthwith alongwith a copy of the report of the auditors of the company in accordance with the provisions of section 488 of the Companies Act, 1956.”

Answer 1(iii)

Board Resolution for approval of annual accounts

“**RESOLVED** that draft of the audited Balance Sheet as at _____, Profit and Loss Account for the year ended on that date alongwith schedules and notes thereon as placed before the Board be and are hereby approved and the same be authenticated by the directors of the company as required under Section 215 of the Companies Act, 1956 and be sent to the Statutory Auditors of the company for their report thereon and thereafter be sent to the members of the company for adoption at the ensuing Annual General Meeting of the Company.”

Board Resolution for recommendation of dividend

“**RESOLVED THAT** in accordance with the provisions of Section 205 and other applicable provisions, if any, of the Companies Act, 1956 and the Companies (Transfer of Profits to Reserves) Rules, 1975, the Board of directors of the company do hereby recommend a dividend at the rate of Rs. per equity share out of the current profits of the company for the year ended on 31st March 2011 on the fully paid equity shares of the company absorbing Rs. out of the profits of the year and that, subject to the declaration by the members of the company at the ensuing annual general meeting, such dividend be paid to the registered holders of the equity shares whose names would appear on the register of members on 2011.”

Answer 1(iv)

Board Resolution for vacation of office

“**RESOLVED THAT** Mr. P, a Director, having failed to disclose the nature of his interest under section 299 of the Companies Act, 1956, in the contracts entered into by the company with “XYZ Private Ltd.”, pursuant to section 283(1)(i) of the Companies Act, 1956, be and is hereby declared that his office of the director of the company has been deemed vacated w.e.f.....”

“**RESOLVED FURTHER THAT** Mr. KY, Company Secretary of the company be and is hereby authorized to file e-form 32 with the ROC and communicate the above said status to the Bank, Stock Exchange and all the concerned authorities and make necessary entries in the statutory registers as per the requirement of the Companies Act, 1956.”

Answer 1(v)

Board Resolution for appointment of Compliance Officer

“**RESOLVED** that the company do hereby appoint Mr., Deputy Company Secretary of the company who has ten years experience in Listed Companies, as Compliance Officer of the company who shall be responsible for monitoring the share transfer process (both physical and demat mode) and report to the Board in its each meeting and liase directly with the authorities of the SEBI, Stock Exchanges, Registrar

of Companies etc, the shareholders of the company and investors with respect to implementation of various clauses, rules, regulations and other directives of such authorities and investors services and complaints related matters and in compliance with the provisions of the Companies Act, 1956, Listing Agreement and Rules and Regulations framed thereunder.”

Answer 1(vi)

Board Resolution for obtaining a certificate of commencement of business

“**RESOLVED THAT** the draft of the Statement in Lieu of Prospectus made in accordance with the provisions of Schedule III of the Companies Act, 1956, Parts I, II and III, as placed before the Board duly initialed by the Chairman for the purpose of identification be and is hereby approved and that the same be signed by all the directors of the company and delivered to the Registrar of Companies, Delhi & Haryana, for obtaining the Certificate of Commencement of Business.

FURTHER RESOLVED THAT Mr., Director of the Company be and is hereby authorised to sign and file e-Form 20 to the Registrar of Companies, Delhi & Haryana.

FURTHER RESOLVED THAT the directors of the company be and is hereby authorised to give Power of Attorney in favour of Mr., the Director and/or Mr., Advocate to do all such acts, deeds and things for filing of the above said Statement in Lieu of Prospectus and to make any additions, corrections, alterations, etc. for and on behalf of the Board of directors of the company as may be required or directed by the Registrar of Companies for taking on record and to issue the certificate for Commencement of Business.”

Question 2

Explain any four of the following pair of terms to bring out their distinctions :

- (i) *‘Voidable allotment’ and ‘void allotment’.*
- (ii) *‘Registrar of Companies’ and ‘Regional Director’ of Ministry of Corporate Affairs.*
- (iii) *‘Reduction of share capital’ and ‘buy-back of shares’.*
- (iv) *‘Corporate governance’ and ‘corporate social responsibility’.*
- (v) *‘Section 25 company’ and ‘producer company’.* (4 marks each)

Answer 2(i)

Voidable Allotment

According to Section 71 of the Companies Act, 1956, an allotment made by a company to an applicant in contravention of the provisions of Section 69, which prohibits allotment unless minimum subscription has been received by the company or in contravention of the provisions of Section 70, which prohibits allotment in certain cases unless statement in lieu of prospectus has been delivered to the Registrar, is irregular allotment and shall be voidable at the instance of the applicant—

- (a) within two months after the holding of the statutory meeting of the company, and not later, or

- (b) in any case where the company is not required to hold a statutory meeting or where the allotment is made after holding of the statutory meeting, within two months after the date of the allotment, and not later.

The allotment shall be voidable, notwithstanding that the company is in course of being wound-up.

Void Allotment

According to Sub-section (1A) of Section 73, where a prospectus states that an application has been made for permission for the shares or debentures offered thereby to be dealt in one or more designated stock exchanges, such prospectus shall state the name(s) of the stock exchange(s) and any allotment made on an application in pursuance of such prospectus shall, whenever made, be void if the permission has not been granted by the stock exchange or each such stock exchange, as the case may be, before the expiry of ten weeks from the date of the closing of the subscription list.

However, where an appeal against the decision of any stock exchange refusing permission for the shares or debentures to be dealt in on that stock exchange has been preferred to Securities Appellate Tribunal under Section 22A of the Securities Contracts (Regulation) Act, 1956, such allotment shall not be void until the dismissal of the appeal.

Answer 2(ii)

Registrar of Companies – As per the definition given in section 2(40) of the Companies Act, 1956. ‘Registrar’ means a Registrar or an additional, a joint, a deputy or an Assistant Registrar having the duty of registering companies under the Act. ROCs are the field officers who deal directly with companies registered or going to be registered within their jurisdiction. They not only register companies but are also responsible for overlooking the affairs of companies registered with them by receiving information by way of returns, resolutions etc. on a continuous basis. They are officers of Govt. of India under the Ministry of Corporate Affairs although operating on State level.

Regional Director (RD) – He is also an officer of the Ministry of Corporate Affairs having jurisdiction over a region earmarked by the Ministry. His role is primarily to discharge the functions allotted to it by the Companies Act or delegated to it by the Central Government in administering the corporate sector. The Central Government’s powers and functions in respect of following sections have been delegated to the Regional Director – 22, 224, 297(1), 394A, 400, 439, 496, 508 etc.

Answer 2(iii)

	<i>Reduction of Capital</i>	<i>Buy Back of Shares</i>
Approval	Requires confirmation of Court*	Does not require confirmation of Court*
Process	In this case the company has to submit petition before High Court* supported with other documents / reason and if court satisfied it can issue an order for reduction of share capital.	Buy-back is a process which enables a Company to go back to the holders of its shares and offer to purchase from them the shares that they hold and to reduce capital to that extent of purchase.

	<i>Reduction of Capital</i>	<i>Buy Back of Shares</i>
Basic conditions	Reduction must be authorised by the Articles of association, if not, then amendment is required.	If authorised by the articles of associations the company may purchase its own shares or other specified securities out of :- i. its free reserves; or ii. Securities premium account; or iii. the proceeds of any shares or other specified securities.
Applicable provisions	Section 100 of the Companies Act, 1956 and Rules of Companies (court) Rules, 1959. FEMA Regulations.	Section 77A, 77AA, 77B of the Companies Act, 1956. Private Ltd. Company and Unlisted Public Company (Buy Back of Securities) Rules, 1999 FEMA Regulations
Methodology/ Limitation	<p>Where the company is over capitalized:-</p> <ol style="list-style-type: none"> 1. Pay off part of the paid-up capital not wanted for the purpose of the company which is in excess. 2. Where company has suffered loss of capital, in such situation the company can write off or cancel the share capital which has been lost or is unrepresented by available assets. <p>Other methods are:-</p> <ol style="list-style-type: none"> 3. It may extinguish or reduce the liability of member in respect of uncalled or unpaid capital. 4. Pay off part of the paid up share capital on the footing that it may be called up again. 5. Reduce by a combination of the aforesaid methods. 	<p>No company can purchase its own shares or other specified securities unless :-</p> <ol style="list-style-type: none"> a. the buy - back is of less than 25 % of the total paid-up capital and free reserves of the company. b. the buy-back of 'equity shares' in any financial year shall not exceed 25% per cent of its total paid-up equity capital in that financial year. c. the ratio of the debt owned by the company is not more than twice the capital + free reserves after such buy-back. d. all the shares or other specified securities for buy-back are fully paid-up; e. Every buy-back must be completed within 12 months. f. No further issue of the same kind of shares or other specified securities within a period of 06 months of completion. g. Destroy securities so bought back within 07days of completion of buy-back.

* Tribunal, vide Companies (Second Amendment) Act, 2002

Answer 2(iv)

Corporate Governance – There is no universal definition of Corporate Governance. Simply stated it encompasses whole canvas of the corporate activities so that the corporates can achieve their set objectives by following a proper structure of management, decision making and implementation based on the principles of ethics, fairness, legal compliance and sound management. The process is far wide and it impacts on stakeholders, people dealing with the corporates, country's economic objectives and wider societal expectations. However, the process is essentially internal to the corporate.

Corporate Social Responsibility – Stands for response of the corporate in acknowledging and accepting that the corporates work for the economy and public good with a conscious programme for removing/mitigating harms inflicted on the environmental society at a large/it's various segments and to help the immediate and also the wider society to make progress in health/education/culture etc., which are elements of a healthy, progressive and enlightened society. There is no single commonly accepted definition of Corporate Social Responsibility.

Distinction – Corporate Governance, essentially relates to activities of the organizational keeping in view certain principles like business ethics, fair play to various stakeholders, own-exploitation of workers and employees. As against the corporate social responsibility which is based on the classical social contract theory where the corporates are to consider that they too are an integral part of the society and have come to existence for providing goods and services to the society against a compensation known as profit earned in fair manner and holding them to compensate the society for damage to the mother earth with all her resources like land, air, water, vegetation etc. Any corporate activity, specially manufacturing activity, has the potential to harm the earth and her resources. The corporate activities can also damage, the health, culture and integrity in the society.

In India, 'corporate governance' as a concept has been recognized under SEBI's Listing Agreement. Similarly, Corporate Social Responsibility is recognized as a concept by way of Guidelines issued by the Ministry of Corporate Affairs.

Answer 2(v)

Section 25 Company – There are companies which come to existence for promoting commerce, art, science, religion, charity or other useful social activities and not for earning profits. If in the process of carrying out these activities, the entity earns revenue as service charge or in similar form, which results into a surplus, the same can not be distributed to the members of the companies and can only be utilized to further promote its objects.

Producer company – Section 581A(6) has defined a producer company as a body corporate having objects or activities specified in section 581B and registered as producer company. The term 'producer' has been defined as "any person engaged in any activity connected with or relatable to any primary produce" which in turn encompasses agricultural and farm activities resulting in production or in aid of production produce of cottage industries, handloom, handicraft etc.

Distinction – In order to be incorporated as a section 25 company, a license from the Central Government is necessary and that Government has the statutory right to

revoke the license may allow it to dispense with use of words 'Limited' or 'Private Limited' at the end of its name. Accordingly, its number of members will be reckoned. Usually, Chambers of Commerce, Art/Educational societies, clubs etc. are formed as section 25 company, which enjoys some relaxation of regulatory provisions of the Act e.g. not required to pay stamp duty for registration of its Memorandum and Articles, besides other relaxations. It may be limited by share or by guarantee. A Producer Company has to engage itself either in production of primary produce or aiding in such production. It has to use the words 'Producer Company Limited' as the last words of its name. Therefore, it will be a limited liability company which needs at least 10 individuals who are producers or at least two Producer Institution to form. Unlike section 25 company, it is not to hold a licence from the Central Government but have to get registered as producer company. A co-operative society may also get itself registered as a producer company.

Question 3

(a) Your company has total 12 directors as under :

Non-retiring directors	3
Retiring directors	5
Additional directors	4

State the number of directors liable to retire by rotation at the annual general meeting (AGM) and the total number of directors who shall vacate the office at the AGM. (4 marks)

(b) In regard to e-form 25C, state —

- (i) The purpose;
- (ii) Attachment(s) required;
- (iii) Contents of the certificate required; and
- (iv) Declaration required. (1 mark each)

(c) State, with reasons in brief, whether the following statements are true or false:

- (i) Auditors of a government company are appointed by the Central Government.
- (ii) Private limited companies shall be excluded in reckoning the maximum number of companies that the statutory auditor can hold at any point of time.
- (iii) A special resolution is required for removal of a nominee director.
- (iv) It is mandatory to constitute an audit committee in all public limited companies. (2 marks each)

Answer 3(a)

Section 255 of the Companies Act, 1956 provides that unless the articles provide for retirement of all the directors at every annual general meeting not less than two-third of the total number of directors shall be persons whose period of office shall be liable to determination by retirement of directors by rotation.

In the given problem, the total number of directors excluding the additional directors is 8. Therefore, not less 2/3rd of 8 directors shall be persons liable to retire by rotation. 2/3rd of 8 comes to 5.33. As the provision provides for the term 'not less than two-third',

so 6 directors shall be the directors whose period of office shall be liable to retire by rotation at the AGM.

Further in terms of section 256 one-third of the directors liable to retire by rotation shall retire at the AGM. Therefore, 1/3rd of 6 i.e. 2 shall retire from office.

In terms of section 260 the additional directors hold office till the next AGM. So 4 additional directors shall vacate the office at AGM.

Thus, total number of directors who shall vacate office at the AGM shall be 6 i.e. 2 retiring directors plus 4 additional directors.

Answer 3(b)

E-form 25C

(i) Purpose

Return of appointment of managing director or whole-time director or manager pursuant to section 269(2) and schedule XIII of the Companies Act, 1956

(ii) Attachments

- Copy of Board resolution is to be attached.
- Copy of share holder resolution-if any.
- Any other information can be provided as an optional attachment.

(iii) Certificate

Certified that the requirements of schedule read with section 269 of the Companies Act, 1956 have been complied with.

(iv) Declaration

To the best of our knowledge and belief, the information given in this form and its attachments is correct and complete.

We have been authorised by the board of directors' resolution dated (DD/MM/YYYY) to sign and submit this form.

Answer 3(c)

- (i) False** – Under section 619 (2) of the Companies Act, 1956, the auditor of a Government company is required to be appointed or re-appointed by the Comptroller & Auditor General of India (CAG).
- (ii) True** – Section 224(1B) of the Companies Act provide that private limited companies shall be excluded in reckoning the number of companies that an auditor can hold.
- (iii) False** – Nominee Directors hold office at the pleasure of their nominating agencies. They cannot be removed by the members by special resolution.
- (iv) False** – Section 292A mandates that every public limited having a paid up capital of not less than Rs.5 crores is required to constitute an Audit Committee.

Thus public limited companies with paid up capital of less than Rs.5 crores is not mandatorily required to constitute an Audit Committee.

Question 4

- (a) *The Board of directors of Ujwal Pvt. Ltd. having a paid-up share capital of ₹ 1 crore consists of two directors, one of them, viz., Bimal, possesses membership of the Institute of Company Secretaries of India. The company desires to appoint him as a Company Secretary also. Would the provisions of section 314 come into effect ? State the legal position. (4 marks)*
- (b) *Indicate any eight items of business necessarily required to be transacted through postal ballot. Also indicate the type of resolution to be passed — ordinary or special for these items. (4 marks)*
- (c) *Write the most appropriate answer from the given options in respect of the following :*
- (i) *In terms of section 179 in respect of a public company limited by shares, demand for poll can be made by —*
- (a) *Members present in person or by proxy and holding paid-up shares of ₹ 50,000 or more*
- (b) *Any two members having a right to vote on the resolution*
- (c) *Any director present at the meeting*
- (d) *members present in person or by proxy and holding 20% or more voting power in respect of the resolution.*
- (ii) *Annual return of a company not having share capital is to be filed with Registrar of Companies in e-form —*
- (a) *20B*
- (b) *21A*
- (c) *66*
- (d) *23AC.*
- (iii) *Application form for DIN is available on MCA portal on the link —*
- (a) *DIN Application Site*
- (b) *MCA-SRN*
- (c) *Apply For DIN*
- (d) *DIN-1 Form.*
- (iv) *In respect of half-yearly certification of listed debt securities, the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 authorises —*
- (a) *The managing director of the company*
- (b) *Company Secretary in whole-time employment with the company*
- (c) *A Practising Company Secretary*
- (d) *None of the above.*
- to make the certification. (1 mark each)*
- (d) *Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :*
- (i) *Where impracticability for holding extra-ordinary general meeting arises in*

a company having just two members, one of whom is not available as his whereabouts have become unknown, the remaining one member is _____ to call extra-ordinary general meeting under section 186.

- (ii) E-form _____ has to be filed with Registrar of Companies for extension of period for holding annual general meeting by two months.*
- (iii) Without the authorisation from the articles of association, the Board of directors _____ approve/recommend payment of interim dividend inspite of provisions of section 205(1A).*
- (iv) The declaration of bonus issue in lieu of _____ is not permitted.
(1 mark each)*

Answer 4(a)

Section 383A (1) stipulates that every company having such paid-up share capital as may be prescribed i.e. Rs. 5 crore or more, shall have a whole-time secretary and where the Board of Directors of any such company comprises only 2 Directors, neither of them shall be the secretary of the Company.

In the instant case, Ujwal Private limited has a paid-up share capital of Rs. 1 crore. Hence, it is not compulsorily required to have a company secretary. The condition that “in case of two directors, neither of them shall be secretary”, is for such companies only. Therefore, Board of Ujwal private limited may appoint, any one of its directors as company secretary.

Further, provisions of section 314 shall be applicable as such director shall be deemed to hold an office or place of profit and therefore, consent of company by a special resolution shall be required.

Answer 4(b)

According to rule 5 of Companies (passing of the resolution by postal ballot) Rules, 2011, the list of businesses in which the resolutions shall be passed through Postal Ballot is as follows:-

- (a) Alteration in the Object Clause of Memorandum by special resolution;
- (b) Alteration of Articles of Associations in relation to insertion of provisions defining private company by special resolution;
- (c) Buy-back of own shares by the company under sub-section (1) of section 77A by special resolution;
- (d) Issue of shares with differential voting rights as to voting or dividend or other wise under sub-clause (ii) of clause (a) of section 86 by ordinary resolution;
- (e) Change in place of Registered Office out side local limits of any city, town or village as specified in sub-section (2) of section 146 by passing special resolution;
- (f) Sale of whole or substantially the whole of undertaking of a company as specified under sub-clause (a) of sub-section (1) of section 293 by ordinary resolution;
- (g) Giving loans or extending guarantee or providing security in excess of the limit prescribed under sub-section (1) of section 372A by special resolution;

- (h) Election of a director under proviso to sub-section (1) of section 252 of the Act by ordinary resolution;
- (i) Variation in the rights attached to a class of shares or debentures or other securities as specified under section 106 by special resolution.

Answer 4(c)(i)

- (a) Members present in person or by proxy and holding paid-up shares of '50,000 or more

Answer 4(c)(ii)

- (b) 21A

Answer 4(c)(iii)

- (d) DIN-1 Form

Answer 4(c)(iv)

- (c) A Practising Company Secretary

Answer 4(d)

- (i) Where impracticability for holding extra-ordinary general meeting arises in a company having just two members, one of whom is not available as his whereabouts have become unknown, the remaining one member is **Competent/ eligible** to call extra-ordinary general meeting under section 186.
- (ii) E-form **61** has to be filed with Registrar of Companies for extension of period for holding annual general meeting by two months.
- (iii) Without the authorisation from the articles of association, the Board of directors **cannot** approve/recommend payment of interim dividend inspite of provisions of section 205(1A).
- (iv) The declaration of bonus issue in lieu of **dividend** is not permitted.

Question 5

- (a) *Draft a report of the scrutineers to the Chairman on conduct of poll in annual general meeting.* (8 marks)
- (b) *Explain the effects of change of name of a company.* (4 marks)
- (c) *What are the advantages for companies for adopting the secretarial standards issued by the Institute of Company Secretaries of India ?* (4 marks)

Answer 5(a)**REPORT OF THE SCRUTINEERS TO THE CHAIRMAN**

From : Mr _____ & Mr _____

To :

The Chairman of the _____ th Meeting of XYZ Limited, held on _____.

Dear Sir,

In terms of your directions, we the Scrutineers appointed for the conduct of the Poll, had conducted the Poll on the Resolution at Item No. _____ of the Notice dated _____ on the subject _____ and we report that:

1. The Poll commenced at _____ a.m.
2. The Ballot Boxes were verified by us to be empty and were locked and sealed under our supervision
3. The Poll voting papers, duly initialled by one of us, were issued to the Members/ Proxies/Authorised Representatives who were present and were willing to vote.
4. After all of them had exercised their votes, the polling was declared concluded at _____ a.m.
5. The sealed ballot boxes were opened in our presence thereafter and the poll voting papers were scrutinized by us with the assistance of the staff of the Secretarial Department of the Company.
6. We give hereunder the voting details:

Total number of votes cast : _____ (consisting of _____ voting papers) {state number}

Less : Invalid votes : _____ (consisting of _____ voting papers) {state number}

Total valid votes : _____ (consisting of _____ voting papers) {state number}

Votes FOR the Resolution : _____

Votes AGAINST the Resolution : _____

7. All the _____ {state number} poll voting papers are submitted herewith in an envelope duly sealed in our presence and initialled by us.

Thanking you,

Yours faithfully,

1. _____ 2. _____

(Signature and name of Scrutineer) (Signature and name of Scrutineer)

Date : _____

Time : _____

Answer 5(b)

Effect of change of name

1. The change of name shall not affect any rights/obligations of the company or render the same defective in legal proceedings by or against it. Moreover, any

legal proceedings which might have been continued or commenced by or against the company by its former name may be continued by or against the company by its new name [Section 23(3)].

2. However, if any legal proceeding is commenced, after change of name, against the company, in its old name, it is a case of mere misdescription and not a case of proceeding against a person not in existence. It is not an incurable defect and plaint can be amended to substitute the new name.
3. By change of name constitution of company does not change.

Answer 5(c)

The ultimate goal of Secretarial Standards Board issued by the ICSI is to promote good corporate practice leading to better corporate governance. The Standards are for good practices and desirable corporate governance with a view to ensuring full play of shareholders democracy and utmost transparency, integrity and fair play, going beyond the minimum requirements of law. The adoption of Secretarial Standards will have a substantial impact on the improvement of quality of secretarial practices being followed by companies.

By following the Secretarial Standards in letter and spirit companies will be able to ensure adoption of uniform, consistent and best secretarial practices with corporate sector. Such uniformity of best practices, consistently applied will result in furthering the shareholders' democracy by laying down principles for better corporate disclosures thus adding value to the general endeavour to strive for good governance.

Question 6

- (a) XYZ Ltd. proposes to acquire 12.5% of shares of Progressive (P) Ltd. for ₹20 lakh, which have a face value of ₹ 15 lakh. XYZ Ltd. has an outstanding loan of ₹ 10 lakh payable to a public financial institution covered under section 4A. The investing company (XYZ Ltd.) has not defaulted in payment of the loan instalments stipulated in the loan agreement. Based on the following data, advise XYZ Ltd. about the legal position in this respect and allowability of the proposed investment :

	XYZ Ltd. (₹)	Progressive (P) Ltd. (₹)
Authorised capital	50 lakh	2 crore
Issued, subscribed and paid-up capital	25 lakh	1.2 crore
Free reserves	5 lakh	1.5 crore

As on the date of proposed acquisition, XYZ Ltd. does not hold any shares of Progressive (P) Ltd. or any other company. (8 marks)

- (b) What type of information shall mandatorily be reviewed by the audit committee? (4 marks)
- (c) State the requirements under the UK Companies Act, 2006 for audited accounts and the duties of an auditor. (4 marks)

Answer 6(a)

Section 372A of the Act governs inter-corporate investments.

In the given case,

Amount of Investment : ₹ 20 lakh

Limit provided under section 372A is 60% of paid up share capital and free reserves.

Here, 60% of paid up share capital and free reserves = 60% of ₹ 30 lakhs = ₹ 18 lakhs

Since the amount proposed for investment is exceeding the limit provided under section 372A, following steps shall be necessary:

1. Prior approval by way of unanimous resolution of the Board of directors.
2. Prior approval of concerned public financial institution. (As the investment amount exceeds aforesaid 60%, consent of the public financial institution is also required.
3. Passing of special resolution through postal ballot [rule 4 of the Companies (Passing of Resolution by Postal Ballot) Rules, 2001] – section 372A read alongwith section 192A.
4. Enter the prescribed particulars in the Register of Loans and Investments maintained by the company.
5. File copy of the special resolution with ROC within 30 days of its passing (section 192).

It is assumed that XYZ Ltd. has not extended any loan, guarantee etc. to any other body corporate.

Answer 6(b)

As per section 292A (6) of the Companies Act, 1956, the Audit Committee should review the half-yearly and annual financial statements before submission to the Board.

According to clause 49 of the Listing Agreement, the Audit Committee shall mandatorily review the following information:

1. Management discussion and analysis of financial condition and results of operations;
2. Statement of significant related party transactions (as defined by the audit committee), submitted by management;
3. Management letters/letters of internal control weaknesses issued by the statutory auditors;
4. Internal audit reports relating to internal control weaknesses; and
5. The appointment, removal and terms of remuneration of the Chief internal auditor shall be subject to review by the Audit Committee

Answer 6(c)

According to section 475 of UK Act, 2006, a company's annual accounts for a financial year must be audited unless the company is exempt from audit under

section 477 (small companies), or section 480 (dormant companies); or is exempt from the requirements under section 482 (non-profit-making companies subject to public sector audit).

A company is not entitled to any such exemption unless its balance sheet contains a statement by the directors to the effect that (a) the members have not required the company to obtain an audit of its accounts for the year in question and the directors acknowledge their responsibilities for complying with the requirements of this Act with respect to accounting records and the preparation of accounts.

Section 498 specifies the duties of auditor. According to it, a company's auditor, in preparing his report, must carry out such investigations as will enable him to form an opinion as to—

- (a) whether adequate accounting records have been kept by the company and returns adequate for their audit have been received from branches not visited by him, and
- (b) whether the company's individual accounts are in agreement with the accounting records and returns, and
- (c) in the case of a quoted company, whether the auditable part of the company's directors' remuneration report is in agreement with the accounting records and returns.

The auditor shall state that fact in his report according to his opinion on the above.

He shall state the following facts in his report:

- If the auditor fails to obtain all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of his audit.
- If the requirements of regulations under section 412 (disclosure of directors' benefits: remuneration, pensions and compensation for loss of office) are not complied with in the annual accounts, or in the case of a quoted company, the requirements of regulations under section 421 as to information forming the auditable part of the directors' remuneration report are not complied with in that report.
- If the directors of the company have prepared accounts in accordance with the small companies regime, or have taken advantage of small companies exemption in preparing the directors' report, and in the auditor's opinion they were not entitled to do so.

As per section 498A, where the company is required to prepare a corporate governance statement in respect of a financial year and no such statement is included in the directors' report, the company's auditor, in preparing his report on the company's annual accounts for that year, must ascertain whether a corporate governance statement has been prepared, and if it appears to the auditor that no such statement has been prepared, he must state that fact in his report.

Question 7

- (a) *Give broad outline of Employees' Stock Option Scheme with elaboration on objectives of the scheme. (8 marks)*

- (b) *Mention any four grounds for rejection of application for Director Identification Number (DIN).* (4 marks)
- (c) *There is a condition that a private limited company should always adhere to the conditions laid down in section 3(1)(iii). Comment on the consequences of non-compliance of the same. Is there any relief available for the default?* (4 marks)

Answer 7(a)

Employees' Stock Option Scheme is regulated by Securities And Exchange Board Of India (Employee Stock Option Scheme And Employee Stock Purchase Scheme) Guidelines, 1999.

As per Regulation 2A, "employee stock option" means the option given to the whole-time Directors, Officers or employees of a company which gives such Directors, Officers or employees, the benefit or right to purchase or subscribe at a future date, the securities offered by the company at a predetermined price.

As per Regulation 3 "employee stock option scheme (ESOS)" means a scheme under which a company grants employee stock option.

Regulation 4 specifies the eligibility to participate in ESOS. According to it, an employee shall be eligible to participate in ESOS of the company. An employee who is a promoter or belongs to the promoter group shall not be eligible to participate in the ESOS. A director who either by himself or through his relative or through any body corporate, directly or indirectly holds more than 10% of the outstanding equity shares of the company shall not be eligible to participate in the ESOS.

As per Regulation 5, no ESOS shall be offered unless the specified disclosures are made by the company to the prospective option grantees and the company constitutes a Compensation Committee for administration and superintendence of the ESOS.

The Compensation Committee shall be a Committee of the Board of directors consisting of a majority of independent directors. The Committee shall, inter alia, formulate the detailed terms and conditions of the ESOS. The Compensation Committee shall frame suitable policies and systems to ensure that there is no violation of ;-

- (a) Securities and Exchange Board of India (Insider Trading) Regulations, 1992; and
- (b) Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 1995, by any employee.

Approval from Shareholders is required. The companies granting option to its employees pursuant to ESOS will have the freedom to determine the exercise price subject to conforming to the accounting policies. The Board of Directors, shall, inter alia, disclose either in the Directors Report or in the annexure to the Director's Report, the following details of the ESOS:

- (a) options granted;
- (b) the pricing formula;

- (c) options vested;
- (d) options exercised;
- (e) the total number of shares arising as a result of exercise of option;
- (f) options lapsed;
- (g) variation of terms of options;
- (h) money realised by exercise of options;
- (i) total number of options in force;
- (j) employee wise details of options granted to:-
 - (i) senior managerial personnel;
 - (ii) any other employee who receives a grant in any one year of option amounting to 5% or more of option granted during that year.
 - (iii) identified employees who were granted option, during any one year, equal to or exceeding 1% of the issued capital (excluding outstanding warrants and conversions) of the company at the time of grant;
- (k) diluted Earnings Per Share (EPS) pursuant to issue of shares on exercise of option calculated in accordance with International Accounting Standard (IAS) 33.
- (l) Where the company has calculated the employee compensation cost using the intrinsic value of the stock options, the difference between the employee compensation cost so computed and the employee compensation cost that shall have been recognized if it had used the fair value of the options, shall be disclosed.

The impact of this difference on profits and on EPS of the company shall also be disclosed.
- (m) Weighted-average exercise prices and weighted-average fair values of options shall be disclosed separately for options whose exercise price either equals or exceeds or is less than the market price of the stock on the grant date.
- (n) A description of the method and significant assumptions used during the year to estimate the fair values of options, including the following weighted-average information:
 - (1) risk-free interest rate,
 - (2) expected life,
 - (3) expected volatility,
 - (4) expected dividends, and
 - (5) the price of the underlying share in market at the time of option grant

Objective of ESOS

The objective is to achieve the objective of increasing efficiency, productivity and profitability of the enterprises, and in order to encourage a sense of involvement and mutuality of interests of the enterprises and their employees

Answer 7(b)**Common Causes of Rejection of application for Director identification number (DIN)**

- The applicant details (name, father's name, date of birth) are not as per the PAN details.
- The particulars filled in form DIN-1 do not match with the details given in the supporting documents submitted along with DIN application.
- Residence proofs like: Bank Statements, Electricity Bill, Telephone Bill, Utility bills etc. submitted are older than 2 months of submitting the application for verification OR such documents are in the name of some other person, for example father or spouse.
- The supporting documents are not duly attested i.e. Name, Designation, Membership/ Practicing certificate number etc. are not clearly indicated. – If the seal/ stamp does not contain membership/ practicing certificate number, same may be recorded by hand.
- Passport / Driving License / Identity proofs etc attached are expired. – Only such documents which are currently valid should be attached.

Answer 7(c)

Where a private company makes a default in compliance with the statutory requirement as laid down in section 3(1)(iii) of the Act (i.e. if its membership exceeds 50 or it permits free transferability of shares or extends invitation to public to subscribe to shares or debentures or to make deposit), it becomes a public company automatically. As a consequence, the company shall cease to enjoy the privileges and exemptions conferred on a private company and the provisions of the Companies Act shall apply to it as if it were a public company. However, the Company Law Board (now Central Government vide Companies (Second Amendment) Act, 2002) on being satisfied that the failure to comply with the conditions was accidental or due to inadvertence or to some other sufficient cause, may grant relief from such consequence as aforesaid. The relief may be granted on grounds which the Company Law Board (now Central Government) feels are just and equitable.

Petition praying for relief is required to be made in Form No.1 of Annexure II to the CLB Regulations, 1991 along with prescribed application fee accompanied by the following documents:

1. copy of memorandum and articles of association;
2. copy of document showing that the default has been committed in complying with the conditions laid down in section 3(1)(iii);
3. affidavit verifying the petition;
4. bank draft evidencing the payment of prescribed fee;
5. memorandum of appearance.

Question 8

- (a) Give a comparison between the requirements on audit committee under the provisions of the Companies Act, 1956 and under the listing agreement given in clause 49, insofar as meeting of the audit committee and powers of the audit committee are concerned. (8 marks)
- (b) What is meant by 'price sensitive information' ? What is the duty cast upon listed companies in this regard ? (4 marks)
- (c) Susodiya Textiles Ltd. is having a foreign subsidiary company. The said Indian holding company failed to furnish particulars of its foreign subsidiary company in its balance sheet. Decide the liability of Susodiya Textiles Ltd. under the Companies Act, 1956. (4 marks)

Answer 8(a)

	<i>Companies Act, 1956</i>	<i>Clause 49 of Listing Agreement</i>
292A	<p>(5) The auditors, the internal auditor, if any, and the director-in-charge of finance shall attend and participate at meetings of the Audit Committee but shall not have the right to vote.</p> <p>(6) The Audit Committee should have discussions with the auditors periodically about internal control systems, the scope of audit including the observations of the auditors and review the half-yearly and annual financial statements before submission to the Board and also ensure compliance of internal control systems.</p>	<p>II (B) Meeting of Audit Committee: The audit committee should meet at least four times in a year and not more than four months shall elapse between two meetings. The quorum shall be either two members or one third of the members of the audit committee whichever is greater, but there should be a minimum of two independent members present.</p>
292A	<p>(7) The Audit Committee shall have authority to investigate into any matter in relation to the items specified in this section or referred to it by the Board and for this purpose, shall have full access to information contained in the records of the company and external professional advice, if necessary.</p> <p>(8) The recommendations of the Audit Committee on any</p>	<p>II(C) Powers of Audit Committee: The audit committee shall have powers, which should include the following:</p> <ol style="list-style-type: none"> 1. To investigate any activity within its terms of reference. 2. To seek information from any employee. 3. To obtain outside legal or other professional advice. 4. To secure attendance of outsiders with relevant expertise, if it considers necessary.

*Companies Act, 1956**Clause 49 of Listing Agreement*

matter relating to financial management, including the audit report, shall be binding on the Board.

(9) If the Board does not accept the recommendations of the Audit Committee, it shall record the reasons therefor and communicate such reasons to the shareholders.

Answer 8(b)

According to section 2(ha) of SEBI (Prohibition of Insider Trading) Regulations, 1992, 'price sensitive information' means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company.

As per its Explanation, the following shall be deemed to be price sensitive information:-

- (i) periodical financial results of the company;
- (ii) intended declaration of dividends (both interim and final);
- (iii) issue of securities or buy-back of securities;
- (iv) any major expansion plans or execution of new projects;
- (v) amalgamation, mergers or takeovers;
- (vi) disposal of the whole or substantial part of the undertaking;
- (vii) any significant changes in policies, plans or operations of the company.

According to Regulation 12 (2) of the Regulations, all listed companies should abide by the Code of Corporate Disclosure Practices as specified in Schedule II. It provides that:

- Price sensitive information should be given by listed companies to stock exchanges and disseminated on a continuous and immediate basis. Listed companies may also consider ways of supplementing information released to stock exchanges by improving investor access to their public announcements.
- Listed companies should designate a senior official to oversee corporate disclosure who shall be responsible for ensuring that the company complies with continuous disclosure requirements, overseeing and co-ordinating disclosure of price sensitive information to stock exchanges, analysts, shareholders and media, and educating staff on disclosure policies and procedure.
- Information disclosure/ dissemination may normally be approved in advance by the official designated for the purpose.
- Listed companies shall have clearly laid down procedures for responding to any queries or requests for verification of market rumours by exchanges.

- The designated official for corporate disclosure shall be responsible for deciding whether a public announcement is necessary for verifying or denying rumours and then making the disclosure.
- Disclosure of shareholdings/ ownership by major shareholders and disclosure of changes in ownership as provided under any Regulations and the listing agreement should be made in a timely and adequate manner.
- Listed companies should follow the guidelines given hereunder while dealing with analysts and institutional investors:-
 - Only Public information to be provided to the analyst/ research persons/ large investors like institutions. Alternatively, the information given to the analyst should be simultaneously made public at the earliest.
 - In order to avoid misquoting or misrepresentation, it is desirable that at least two company representatives be present at meetings with them and discussion should preferably be recorded.
 - A listed company should be careful when dealing with analysts' questions that raise issues outside the intended scope of discussion. Unanticipated questions may be taken on notice and a considered response given later. If the answer includes price sensitive information, a public announcement should be made before responding.
 - When a company organises meetings with analysts, the company should make a press release or post relevant information on its website after every such meet. The company may also consider live webcasting of analyst meets.

Answer 8(c)

Attachment of documents in relation to foreign subsidiary company: Section 212 of the Companies Act, 1956, does not make any distinction between a local subsidiary company and an overseas subsidiary company. Under section 4(4), a company shall be deemed to be the holding company of another, if, but only, if that other is its subsidiary. Under section 4(5), the expression company includes any body corporate and the definition of body corporate in section 2(7) includes a company incorporated outside India. In view of the aforesaid position, the Indian holding company is legally bound to attach to its balance sheet the documents mentioned under section 212 prepared in accordance with the requirements of the Companies Act. However, there may be some practical difficulty in attaching the documents of foreign subsidiary. The Central Government under section 212(8) has exempted through a circular such holding companies from provisions of section 212 in relation to subsidiaries, which fulfil the conditions provided in the circular specified.

Hence, the company has violated the provisions of section 212 in not furnishing the particulars of the foreign subsidiary and has not fulfilled the condition for exemption shall be liable for imprisonment upto 6 months or fine upto Rs.10,000/- or both. Further, no person shall be sentenced to imprisonment for any such offence unless committed willfully.
