GUIDELINE ANSWERS

PROFESSIONAL PROGRAMME

JUNE 2016

MODULE 1

THE INSTITUTE OF
Company Secretaries of India
IN PURSUIT OF PROFESSIONAL EXCELLENCE
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These answers have been written by competent persons and the Institute hopes that the **GUIDELINE ANSWERS** will assist the students in preparing for the Institute's examinations. It is, however, to be noted that the answers are to be treated as model answers and not as exhaustive and the Institute is not in any way responsible for the correctness or otherwise of the answers compiled and published herein.

The Guideline Answers contain the information based on the Laws/Rules applicable at the time of preparation. However, students are expected to be well versed with the amendments in the Laws/Rules made upto **six** months prior to the date of examination.

C O N T E N T S

NOTE: Guideline Answers of the last Four Sessions need to be updated in the light of changes and references given below:

PROFESSIONAL PROGRAMME

UPDATING SLIP

ADVANCED COMPANY LAW AND PRACTICE

MODULE – 1 – PAPER 1

Examination Session	*Question No.*	*Updating required in the answer*
All previous sessions	—	All answers are based on the notified provisions of Companies Act, 2013 and the provisions of Companies Act, 1956 which are still in force. SEBI (ICDR) Regulations, 2009 as amended from time to time.

UPDATING SLIP

SECRETARIAL AUDIT, COMPLIANCE MANAGEMENT AND DUE DILIGENCE

MODULE – 1 – PAPER 2

Examination Session	*Question No.*	*Updating required in the answer*
All previous sessions	—	All answers are based on the notified provisions of Companies Act, 2013 and the provisions of Companies Act, 1956 which are still in force. SEBI (SAST) Regulations, 2011 as amended from time to time. SEBI (ICDR) Regulations as amended from time to time. Consolidated FDI Policy as amended from time to time.

UPDATING SLIP

CORPORATE RESTRUCTURING, VALUATION AND INSOLVENCY

MODULE – 1– PAPER 3

Examination Session	*Question No.*	*Updating required in the answer*
All previous sessions	—	All answers are based on the notified provisions of Companies Act, 2013 and the provisions of Companies Act, 1956 which are still in force. However the provisions under Companies Act, 2013 pertaining to mergers/ acquisitions/winding up are yet to be notified and the provisions relating to buy back and alteration of capital are already notified. Accordingly most of the answers are based on the Companies Act, 1956. SEBI (SAST) Regulations, 2011 as amended from time to time.

PROFESSIONAL PROGRAMME EXAMINATION

JUNE 2016

ADVANCED COMPANY LAW AND PRACTICE

Time allowed : 3 hours *Maximum marks : 100*

NOTE: *1. Answer **ALL** Questions.*

2. All references to sections relate to the Companies Act,2013 unless stated otherwise.

Question 1

(a) A group of persons desirous of forming a company wants to know the procedure for getting the name of the company approved by the Registrar of Companies. Advise the group about the e-form to be used and the procedure to be followed by the applicant group in this regard.

(b) The Board of directors of Growmore Ltd. decides to invite deposits from public. You being the Company Secretary of the company have been asked to prepare and place before the Board, a detailed note on the conditions for inviting public deposits so that the legal requirements are duly complied with. Prepare a note advising the company.

(c) "Under the Companies Act, 2013, a company shall be eligible to apply for the status of dormant company upon fulfilment of certain conditions." Discuss the conditions so stipulated in the Act.

(d) Good Homes Ltd. was registered as a public company with 195 members as follows :

	No. of members
Directors and their relatives	*35*
Employees	*12*
Ex-employees (shares were allotted when they were employees)	*08*
Others	*140*
Total number of members	*195*

Board of directors of the company takes a decision to convert the company into a private company. Being a Company Secretary in Practice, the Board of directors seeks your advice about the steps to be taken for conversion of the company into a private company including reduction in the number of members, if necessary, as per the Companies Act, 2013. Advise the Board.

(5 marks each)

Answer 1(a)

As per section 4(4) of companies Act, 2013 read with Rule 9 of the Companies

(Incorporation) Rules, 2014, an application for the reservation of a name shall be made in Form No. INC.1 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014.

Promoters may to propose up to six names in order of procedure for the proposed company and secure the name availability by making an application to the Registrar of Companies of the State in which they want to have the proposed company incorporated. The proposed name should not be undesirable name in terms of Rule 8 of Companies (Incorporation) Rules, 2014.

While applying for a name in the Form INC -1, using Digital Signature Certificate (DSC), the applicant shall be required to verify that:

(i) He is a promoter (proposed first subscriber to the MoA) and is authorised by the other proposed first subscribers to sign and submit the application.

(ii) He has gone through the provisions of Companies Act, 2013, the Rules there under and prescribed guidelines framed there under in respect of reservation of name, understood the meaning thereof.

(iii) He has used the search facilities available on the portal of the Ministry of Corporate Affairs (MCA) i.e., www.mca.gov.in/MCA21 for checking the resemblance of the proposed name(s) with the companies and Limited Liability Partnerships (LLPs) respectively already registered or the names already approved. He has also used the search facility for checking the resemblances of the proposed names with registered or applied trademarks.

(iv) The proposed name(s) is/are not in violation of the provisions of Emblems and Names (Prevention of Improper Use) Act, 1950 as amended from time to time;

(v) The proposed name is not offensive to any section of people, e.g., proposed name does not contain profanity or words or phrases that are generally considered a slur against an ethnic group, religion, gender or heredity

(vi) The proposed name(s) is not such that its use by the company will constitute an offence under any law for the time being in force.

(vii) He has complied with all the mandated requirements of the respective Act/ regulator, such as IRDA, RBI, SEBI, MCA etc. (applicable only in case proposed name includes words like Insurance, Bank, Stock Exchange, Venture Capital, Asset Management, Nidhi, Mutual Fund, Finance, Investment, Leasing, Hire purchase etc. or any combination thereof)

(viii) To the best of his knowledge and belief, the information given in the application and its attachments is correct and complete, and noting relevant to this form has been suppressed.

(ix) He undertakes to be fully responsible for the consequences, in case the name is subsequently found to be in contravention of Section 4 of the Act, rules made there under and the prescribed guidelines.

Following documents have to be attached to INC - 1:

(i) Copy of Board resolution of the existing company or foreign holding company as a proof of no objection.

(ii) Copy of direction from Central Government, if name is changed due to direction received from the Central Government.

(iii) Trademark or authorisation to use trade mark, if the name of the company is based on trade mark or application for deed of assignment or a copy of application of registered trademark.

(iv) In case the proposed name contains such word or expression for which the approval of Central Government is required, a copy of Central Government's approval.

(v) Proof of relation.

(vi) In principal approval from the concerned regulator wherever is applicable.

(vii) NOC from sole proprietor/ partners/ other associates.

(viii) NOC from existing company ,

(ix) Copy of affidavit in case of proposed name includes phrase 'Electoral Trust'

(x) Resolution of unregistered companies in case of Chapter XXI (Part I) companies,

(xi) Order of competent authority.

(xii) NOC as required in Rule 8(4)

The name, if made available to the applicant, shall be reserved for sixty days from the date of approval. If, the proposed company has not been incorporated within such period, the name allotted shall lapse and will be made available for other applicants.

Answer 1(b)

Note on conditions for inviting public deposits

1. A public company having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent of the company in general meeting.(Section 76 read with Rule 2(1)(e) of Companies (Acceptance of Deposits) Rules, 2014)
2. To pass a resolution in general meeting to accept deposits from its members on such terms and conditions including the provision of security, if any as may be agreed upon between the company and its members.
3. To issue a circular to its members including therein a statement showing financial position of the company, credit rating obtained, details of outstanding deposits, if any and other particulars as prescribed in Rule 4 in Form DPT-1.
4. To file a copy of circular with the Registrar within 30 days before the date of issue of circular.
5. To deposit sum not less than 15% of amount of its deposits maturing during a financial year and the financial year next following in a scheduled bank as deposit repayment reserve account.
6. To certify that the company has not committed any default in repayment of deposits.

7. The company shall not accept or renew deposit if the amount of such deposit together with the amount of such other deposits, outstanding on the date of acceptance or renewal exceeds 25% of aggregate of paid up share capital, free reserves and securities premium account of the company.

8. To appoint one or more trustees for depositors for creating security for the deposits and execute deposit trust deed in Form DPT-2 at least 7 days before issuing the circular.

9. The company shall accept deposit on submission of an application form as specified by company by the intending depositor.

10. On acceptance of deposits, the company is required to furnish a receipt within 21 days from date of receipt of money to the depositor.

11. The company is required to maintain register of deposits with specified particulars (Rule 14).

Answer 1(c)

As per section 455 read with Rule 3 of the Companies (Miscellaneous) Rules, 2014, a company shall be eligible to apply for status of dormant company only if-

(i) No inspection, inquiry or investigation has been ordered or taken up or carried out against the company.

(ii) No prosecution has been initiated and pending against the company under any law.

(iii) The company is neither having any public deposits which are outstanding nor is the company in default in payment thereof or interest thereon.

(iv) The company is not having any outstanding loan, whether secured or unsecured. If there is any outstanding unsecured loan, the company may apply after obtaining concurrence of the lender and enclosing the same with Form MSC -1.

(v) There is no dispute in the management or ownership of the company and a certificate in this regard is enclosed with Form MSC-1.

(vi) The company does not have any outstanding statutory taxes, dues, duties etc. payable to the Central Government or any State Government or local authorities etc.

(vii) The company has not defaulted in the payment of workmen's dues.

(viii) The securities of the company are not listed on any stock exchange within or outside India.

Answer 1(d)

A private company as per section 2 (68) cannot have more than 200 members. As per the requirement of the section present and former employees of the company are not to be counted for the purpose of 200 members. Hence, in the given question, the number of members of public company which is proposed to be converted into a private company is less than 200. Therefore, it may be converted into private company.

The procedure for converting a public company into a private company is as under:

(i) Passing a special resolution authorizing the conversion and altering the articles so as to include therein the restrictions specified in Section 2 (68)

(ii) Within 30 days of passing of the special resolution, Form MGT-14 with a copy of resolution along with explanatory statement under section 173 and amended copy of Article of Association as attachment along with prescribed filing fees payable.

(iii) Changing the name clause of the Memorandum of the company.

(iv) Obtaining the approval of the Tribunal as required by Section 14 (1). Since proviso to section 14(1) has not yet been notified the corresponding sections of Companies Act 1956 shall remain in force. Accordingly, approval of Central Government is required.

Application in Form INC-27 along with minutes of members meeting within 3 months from the date of passing of special resolution for alteration of articles to be sent for obtaining approval of Central Government.

(v) Filing of the documents along with a printed copy of the articles as altered with the Registrar within 15 days. [Section 14 (2)].

Attempt all parts of either Q.No. 2 or Q.No. 2A

Question 2

(a) A group of persons, called promoters have submitted an application to the Registrar of Companies, New Delhi for getting a company incorporated as a public company. Pending the Registrar's decision of granting certificate of incorporation, the promoters enter into certain contracts for the purchase of some assets for the proposed company. Explain the legal position of promoters' liability and the liability of the proposed company after its incorporation, in this regard.

(b) Board of directors of Bright Ltd. decides to change the name of the company to Shine Ltd. Certain members of the company object to the Board's decision to change the name of the company on the ground that the change will affect their rights. Examining the provisions of the Companies Act, 2013, state :

(i) The implications of change in name.

(ii) Whether the objection of the members be tenable ?

(c) During the course of audit of Jyoti Ltd., the auditor observes that the company has committed an offence resulting in fraud in which certain officers are involved. Analyse the extent of obligations of the statutory auditor and the manner in which he would comply with his statutory obligations in this regard.

(d) A company wishes to invest in the shares of other companies in excess of the prescribed limit as per the Companies Act, 2013. Draft required resolution to give authority to the Board of directors, mentioning the type of resolution required.

(4 marks each)

OR (Alternate question to Q.No. 2)

Question 2A

(i) The authorised share capital of Amaze Ltd. is ₹10 crore divided into equity shares of ₹100 each. The Board of directors of the company decides to sub-divide these shares into shares of ₹10 each, so that the liquidity in dealing with shares at the stock exchange may become easier. Articles of association of the company are silent on the issue. The company is listed at Bombay Stock Exchange. As the Secretary of the company, what procedure you would follow to give effect to the Board's proposal under the provisions of the Companies Act, 2013 ? (4 marks)

(ii) Board of directors of Prince Ltd. decides to go for the issue of secured debentures of ₹100 each, to the extent of ₹10 crore. Further, as the company is going for the issue of secured debentures, it is required to create a debenture redemption reserve. The Board seeks your advice on the conditions to be fulfilled and compliance of the provisions of the Companies Act, 2013. Advise the Board. (4 marks)

(iii) Rohit, a member of Happy (Pvt.) Ltd. transfers his shares to Yash. Yash submitted the duly executed instrument of transfer. The Board of directors of the company at its meeting rejected the transfer arbitrarily without assigning any reason. The Articles of the company confer upon the Board to approve or disapprove the transfer.

Examining the provisions of the Companies Act, 2013 :

(a) Advise Yash, the legal remedy available to him.

(b) What shall be your answer in case a relative of Yash wants to take any action against the company to register the transfer ? (4 marks)

(iv) Draft the resolutions required for appointment of Company Secretary for secretarial audit in the annual general meeting of a company. (4 marks)

Answer 2(a)

After submitting the application for incorporation of Company, it is likely that Registrar may take time to register the company. In the meanwhile, the promoters may enter into contracts on behalf of proposed company, like purchase of land, ordering machinery, employing key personnel, investment tie up etc. and also incur expenses relating to incorporation of the company. These must be ratified on the incorporation of the company.

The Articles must authorize the directors to pay the expenses relating to registration of the company. The directors do not have any implied power to incur pre-incorporation expenses.

As per section 15 of Specific Relief Act, 1963; if promoters have made a contract before incorporation of a company for the purpose of the proposed company, and if the contract is warranted by the terms of incorporation, the company may adopt and enforce the contract. The term 'warranted by the terms of incorporation' means 'within the scope of the company's objects as stated in the memorandum of the company'. Thus, the

contract should be for the purposes of the company. As per section 19 of Specific Relief Act, 1963, if the pre-incorporation contract is adopted or accepted by the company after its incorporation and if it is within the terms of incorporation, the other party can also enforce the contract, if such acceptance was communicated to other party to the contract.

However, pre-incorporation contracts are not binding upon the company, if these are not adopted or accepted by the company after its incorporation. Adoption or acceptance of contracts practically means ratification of contract. A Board resolution should be passed for adoption of pre-incorporation contracts at the first Board meeting of the company. On passing such resolution, the contract shall be binding on the company.

In case of a public company, a copy of resolution has to be filed with the concerned ROC along with the statement in lieu of prospectus in form PAS-2. The form should be digitally signed by the managing director or director or manager or secretary of the company duly authorised by the Board of Directors.

Answer 2(b)

The implications of change of name are discussed in various cases and this is well settled that change of name :

1. Shall not affect any rights or obligations of the company.
2. Shall not render defective any legal proceedings by or against the company; and
3. Shall not affect any legal proceedings continued or commenced by or against the company pending in its old name, they may continue in its new name.

The Act recognizes the continued existence of a company which has changed its name. The effect of the issue of the certificate of incorporation on change of name is not to reform or re-incorporate the company as a new entity. When the section refers to the company changing its name, it recognizes the continued existence of the company notwithstanding the change.

A change of name of a company does not result in its dissolution and incorporation of a new company under a new name. Section 13 permits a company to change its name in the manner as prescribed.

Sub-section (3) of Section 13 states that where a company changes its name, the ROC shall enter the new name on the register in the place of the old name, and shall issue a fresh certificate of incorporation with the necessary alterations embodied therein and the change of name shall be complete and effective only on the issue of such a certificate. It would be observed that the emphasis is on the expression 'change of name'. (*Kalipada Sinha* v. *Mahalaxmi Bank Ltd.* RIR 1966 Cal 585).

Thus, taking into account the above provisions, it is quite clear to understand the implications. In the second sub-question, the objections raised by the members shall not be tenable since the change of name is not going affect any of the rights of members.

Answer 2(c)

Section 143(12) read with Rule 13 of the Companies (Audit and Auditors) Rules, 2014 provides that if an auditor of a company, in the course of the performance of his

duties as statutory auditor, has reason to believe that an offence of fraud, which involves or is expected to involve individually an amount of rupees one crore or above, is being or has been committed against the company by its officers or employees, the auditor shall report the matter to the Central Government.

The auditor shall report the matter to the Central Government as under:-

(a) the auditor shall report the matter to the Board or the Audit Committee, as the case may be, immediately but not later than two days of his knowledge of the fraud, seeking their reply or observations within forty-five days;
(b) on receipt of such reply or observations, the auditor shall forward his report and the reply or observations of the Board or the Audit Committee along with his comments to the Central Government within fifteen days from the date of receipt of such reply or observations;
(c) in case the auditor fails to get any reply or observations from the Board or the Audit Committee within the stipulated period of forty-five days, he shall forward his report to the Central Government along with a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he has not received any reply or observations;
(d) the report shall be sent to the Secretary, Ministry of Corporate Affairs in a sealed cover by Registered Post with Acknowledgement Due or by Speed Post followed by an e-mail in confirmation of the same;
(e) the report shall be in the form of a statement as specified in Form ADT-4.

In case of a fraud involving lesser than rupees one crore, the auditor shall report the matter to Audit Committee constituted under section 177 or to the Board immediately but not later than two days of his knowledge of the fraud and he shall report the matter specifying the following:-

(a) Nature of Fraud with description;

(b) Approximate amount involved; and

(c) Parties involved

The details of each of the fraud reported to the Audit Committee or the Board during the year to be disclosed in the Board's Report.

No duty to which an auditor of a company may be subject to shall be regarded as having been contravened by reason of his reporting the matter referred to in sub-section (12) if it is done in good faith.

Therefore, as an auditor, he has to comply with the aforesaid procedure.

Further, If any auditor, cost accountant or company secretary in practice do not comply with the provisions, he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees. [Section 143(15)]

Answer 2(d)

Type of resolution

Special Resolution to be passed at general meeting

Special Resolution to give Authority to Board of Directors to make Investment in excess of the prescribed limit

"RESOLVED THAT pursuant to the provisions of Section 186 of the Act and other applicable provisions, if any, the consent of the members of the company be and is hereby granted to the company to make investments of a sum not exceeding Rs. 100 Crore by way of subscription and/or purchase of equity shares of M/s XYZ Ltd., notwithstanding that such investment or such investment together with the company's existing investment in all other body corporate shall be in excess of the limits prescribed under section 186 of the Act.

RESOLVED FURTHER THAT the Board of directors of the company be and is hereby authorized to do all such acts, deeds, matters and things as, in its absolute discretion, may be considered necessary, expedient or desirable and to settle any question or doubt that may arise in relation thereto in order to give effect to the foregoing resolution or otherwise considered by the Board of directors to be in the interest of the company."

Explanatory Statement

(Pursuant to the provisions of Section 102(1) of the Companies Act, 2013)

As on date the aggregate amount of the investments in shares/debentures, loans and guarantee(s)/security(ies) made, given, or provided by the company to other bodies corporate are within the limits provided in Section 186 of the Companies Act, 2013. Since the Board wants to invest in excess of the prescribed limit specified in Section 186 of the Act, approval of the shareholders of the company is required.

The Board of Directors in its meeting held on---------- decided to recommend the special resolution as set out in the notice for approval of the shareholders.

None of the directors save and except Mr. X and Mr. Y are concerned or interested in this resolution.

Answer 2A(i)

For sub-dividing the share capital of a company, the following procedural steps are required to be taken by the Board of Directors:

1. Articles of the company must have a provision to sub-divide the company's shares. If there is no such provision, then the Articles have to be altered in accordance with the provisions of Section 14 of the Companies Act, 2013, before proceeding to sub-divide the shares.
2. Give 21 clear days' notice of the proposed sub-division of the shares of the company to the stock exchanges on which the securities of the company are listed.
3. In the case of a listed company, make an application to the stock exchange where the securities of the company are listed and any other stock exchange where the company proposes for getting its sub-divided share listed.
4. Convene and hold a Board Meeting to :
   (i) Pass a resolution approving the proposed sub-division of the shares of the company;

(ii) Fix time, date and venue for holding general meeting of the company to pass a special resolution, if so required by the articles for this purpose.

(iii) Approve notice, agenda and explanatory statement to be annexed to the notice of the general meeting.

(iv) Authorize the company secretary to issue, on behalf of the Board, notice of the general meeting as approved by the Board.

5. After the Board meeting, send to the stock exchanges, where the securities of the company are listed, particulars of such alteration of share capital of the company.
6. Issue notice of the general meeting along with the explanatory statement, to all members, directors and auditors of the company.
7. In case of a listed company forward 3 copies of the notice of the general along with the explanatory statement, to the concerned stock exchange.
8. Hold the general meeting and have the resolution passed and forward a copy of the proceedings of the general meeting to the concerned stock exchanges.
9. File with the ROC, Form MGT-14 along with a certified copy of the resolution, the notice and the explanatory statement annexed to the notice of the general meeting at which the resolution was passed and copy of altered Memorandum and Articles of Association within 30 days of the passing of the resolution along with the prescribed fees.
10. Give notice in compliance with the provisions of Section 64, of the sub-division of the shares of the company, to the ROC in form SH-7, within 30 days of passing of the resolution, along with the prescribed filing fee. The ROC will record the alteration in the Memorandum of the company.
11. Finally, make necessary changes in all the copies of the Memorandum of association.

Answer 2A(ii)

Section 71 read with Rule 18 of the Companies (Share Capital and Debentures) Rules, 2014 deals with issue of Debentures.

Conditions to be satisfied for issue of secured debentures:

According to Section 71(4) where debentures are issued by any company under this section, the company shall create a debenture redemption reserve account out of the profits of the company available for payment of dividend and the amount credited to such account shall not be utilized by the company except for the redemption of debentures. The company shall create a Debenture Redemption Reserve for the purpose of redemption of debentures, in accordance with the conditions given below:

(1) The Debenture Redemption Reserve shall be created out of the profits of the company available for payment of dividend.

(2) The company shall create Debenture Redemption Reserve in accordance with the following conditions:

(i) No DRR is required for debentures issued by All India Financial Institutions

regulated by RBI and Banking Companies for both public as well as privately placed debentures. For other Financial Institutions within the meaning of clause (72) of Section 2 of the Companies Act, 2013, DRR will be as applicable to NBFCs registered with RBI.

(ii) For NBFCs registered under Section 45-1A of the RBI (Amendment) Act, 1997, the adequacy of DRR will be 25% of the value of debentures issued through public issue as per present SEBI (Issue and Listing (Issue and Listing of Debt Securities) Regulations, 2008 and no DRR is required in the case of privately placed debentures.

(iii) For other companies including manufacturing and infrastructure companies, the adequacy of DRR will be 25% of the value of debentures issued through public issue as per present SEBI (Issue and Listing of Debt Securities) Regulation 2008 and also 25% DRR is required in case of privately placed debentures by listed company. For unlisted companies issuing debentures on private place basis, the DRR will be 25% of the value of debentures.

Further every company required to create Debenture Redemption Reserve shall on or before the 30th day of April in each year, invest or deposit, as the case may be, a sum which shall not be less than fifteen percent, of the amount of its debentures maturing during the year ending on the 31st day of March of the next year, in any one or more of the following methods, namely:-

(i) in deposits with any scheduled bank, free from any charge or lien;

(ii) in unencumbered securities of the Central Government or of any State Government;

(iii) in unencumbered securities mentioned in sub-clauses (a) to (d) and (ee) of section 20 of the Indian Trusts Act, 1882;

(iv) in unencumbered bonds issued by any other company which is notified under sub-clause (f) of section 20 of the Indian Trusts Act, 1882;

The amount invested or deposited as above shall not be used for any purpose other than for redemption of debentures maturing during the year referred above: Provided that the amount remaining invested or deposited, as the case may be, shall not at any time fall below fifteen percent of the amount of the debentures maturing during the year ending on the 31st day of March of that year;

Answer 2A(iii)

According to Section 58(1) of the Companies Act, 2013, if a private company limited by shares refused, whether in pursuance of any power of the company under its articles or otherwise, to register the transfer of, or the transmission by operation of law of the right to any securities or interest of a member in the company, it shall within a period of 30 days from the date on which the instrument of transfer, or the intimation of such transmission, as the case may be, was delivered to the company, send notice of refusal to the transferor and the transferee or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal. While refusing to register transfer of shares, it is necessary that the directors must act in a good faith and for the benefit

of a company and shareholders and not for some other purpose. Power of refusal to register transfer of shares should be exercised strictly on the grounds specified in the Articles and not on the basis of any other ground.

According to Section 58(3) the transferee i.e. Yash, may appeal to the Tribunal/CLB against the refusal within a period of 30 days from the date of receipt of the notice or in the case no notice has been sent by the company within a period of 60 days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, was delivered to the company.

In case, relative of Yash wants to take any action against the company, he cannot do so as in accordance with section 58(3) the right to appeal in case of refusal has been restricted to only transferee.

Answer 2A(iv)

Type of Resolution

Ordinary Resolution as Special Business in Annual General Meeting

"RESOLVED THAT MS/ XYZ & CO., Company secretaries within the meaning of Section 2 (25) of the Companies Act, 2013 be and is hereby appointed as secretarial auditor of the company on the terms of remuneration as agreed by the Board of directors and the Board of Directors of the company be and is hereby authorized to vary the terms of remuneration and fill the vacancy in his office, if any, caused from the conclusion of this annual general meeting until the conclusion of next annual general meeting;"

Explanatory Statement

Under the provisions of section 204(1) of the Companies Act 2013, the company is required to obtain secretarial audit report from a practicing company secretary which shall be annexed with the report of Board of Directors.

Mr…… is a practicing company secretary of M/s XYZ & Co., Company Secretaries has consented to be appointed as secretarial auditor for the financial year ended……. None of the directors of the company is concerned or interested in the proposed resolution.

Attempt all parts of either Q.No. 3 or Q.No. 3A

Question 3

(a) *During the financial year 2015-16, Deepak was holding 20% of the paid-up share capital in CML Ltd. He wants to increase his shareholding further by 10%, so that he becomes entitled to exercise more than 25% voting rights. Deepak seeks your advice on the obligations to which he and the company be subject to in this regard. Advise. (4 marks)*

(b) *Paresh, a shareholder of Perfect Ltd. expired on 1st January, 2016. Raman, the legal heir informs the company about the death of Paresh and submits an application to the company along with the succession certificate issued by a Delhi Court having jurisdiction in the case. The Board of directors of the company considers Raman's application and approves the transmission of shares in his name. Draft a resolution to effect the above transmission of shares. (4 marks)*

(c) Give a specimen of Board resolution appointing John as the Managing Director of a company, who is already the Managing Director of another company. *(4 marks)*

(d) Examine the validity of the Board of directors' decision in respect of the following appointments of directors as per the provisions of the Companies Act, 2013 :

(i) Board of directors of a company which is not listed at any of the stock exchanges, having a turnover of ₹500 crore decides not to appoint women director on the company's Board.

(ii) Board of directors of a company, which is not listed at any of the stock exchanges, decides not to appoint a resident director.

(iii) Board of directors of a company, having paid-up share capital of ₹50 crore decides not to appoint an independent director. The company is listed at Bombay Stock Exchange. *(4 marks)*

OR (Alternate question to Q.No. 3)

Question 3A

Write notes on the following :

(i) Hypothecation of dematerialised shares

(ii) Procedure for appointment of an additional director in a company

(iii) Limited liability partnership (LLP)

(iv) Private placement of shares. *(4 marks each)*

Answer 3(a)

In terms of Regulation 3(1) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, an acquirer, who (along with persons acting in concert, if any) holds less than 25% shares or voting rights in a target company and agrees to acquire shares or acquires shares which along with his/person acting in concert's existing shareholding would entitle him to exercise 25% or more shares or voting rights in a target company, will need to make an open offer before acquiring such additional shares.

Accordingly, he has to comply with the obligation relating to open offer including appointment of merchant banker, public announcement etc.

Note : It is presumed that the company is listed company.

In case of an unlisted public limited company:

He can acquire shares from other shareholder and got it register in its name. The share transfer instrument shall be in form SH – 4. Transferor shall pay share transfer stamp duty. On submission of duly filled and stamped share transfer form along with relevant share certificates to the company, the company shall register the transfer and endorse the share certificates.

Answer 3(b)

Board Resolution approving Registration of Ransmission of Shares

"Resolved that -

(i) Transmission of...nos. of fully paid equity shares of the company bearing distinctive numbers _____ to _____ (both numbers inclusive) presently registered in the name of Mr. Paresh who has been reported as deceased on 1st January, 2016 in the district of _____ which is situated in the state of _____ in the name of Mr. Raman, son of Mr. _____ resident of _____ be and is hereby approved.

(ii) Since the company has received a letter from the said Mr. Raman intimating to the company that he has decided to have the said shares registered in his name, the said shares be registered in his name; and

(iii) Mr. _____ Company Secretary, be and is hereby authorized to enter the name of the said Mr. Raman in the register of members of the company and send the relevant share certificate to him after appropriately endorsing them in his name.

Answer 3(c)

The Chairman informed the meeting that:

1. Mr. John is the managing director of M/s Ltd.,_____ which is a wholly-owned subsidiary of the company.

2. For administrative convenience and better functioning of both the companies, this company is desirous of appointing the said Mr. _____ as its managing director and the said Mr._____ is willing to accept the appointment as managing director of this company without any remuneration.

3. Mr. John is already a director of this company and is competent and not disqualified to be appointed as the managing director of this company and pursuant to proviso to sub-section (3) of section 203 of the Companies Act, 2013, due specific notice of this meeting and of the proposed resolution has been given to all the directors for the time being present in India.

The meeting discussed the matter and passed the following resolution:

"RESOLVED THAT consent of all the directors present at the meeting be and is hereby accorded to the appointment of Mr. John, who is the managing director of_____ Ltd., as the managing director of this company without any remuneration and the managing director shall exercise such powers and performs such functions as the Board of directors may, from time to time require him to exercise and perform."

Answer 3(d)(i)

In accordance with the provisions of Companies Act, 2013 as contained in first Proviso to Section 149(1) read with Rule 3 of Companies (Appointment & Qualification of Directors) Rules 2014, the following class of companies shall appoint at least one woman director on the Board of the company :

1. Every listed company.

2. Every other public company having-

   (a) Paid-up share capital of Rs. 100 crore or more; or

   (b) Turnover of Rs. 300 crore, or more.

Therefore, the company is required to appoint a woman director since it falls within the criteria of appointment. Company's decision not to a woman director is violative of the provisions.

Answer 3(d)(ii)

Resident Director

The decision of the company not to appoint a Resident Director, is violative of the provisions of section 149(3) of the Companies Act, 2013, as every company is required to appoint at least one director who has stayed in India for a total period of not less than 182 days in the previous calendar year.

Answer 3(d)(iii)

Independent Director

Section 149(1) of the Act provides that every listed public company shall have at least one- third of the total number of directors as independent directors.

Rule 4 of Companies (Appointment and Qualification of Directors) Rules, 2014 provides that the following class or classes of companies shall have at least 2 directors as Independent Directors-

(i) The public companies having paid up share capital of Rs.10 crore or more; or

(ii) The public companies having turnover of Rs. 100 crore or more; or

(iii) The public companies which have, in aggregate outstanding loans, debentures and deposits, exceeding Rs.50 crore.

In the given case since the company is listed at Bombay Stock Exchange, it is required to appointment at l/3rd of the total number of directors as independent directors. Therefore, Board's decision not to appointment Independent Director is voilative of the provisions of the Companies Act, 2013.

Answer 3A(i)

A beneficial owner may, with the prior approval of the depository, pledge or hypothecate his shares held in a depository. Upon receipt of intimation from the beneficial owner about the hypothecation of his shares, the depository shall accordingly make entries in its records. Such an entry in the records of a depository shall be evidence of hypothecation (Section 12) of Depositories Act, 1996. Both the pledger and the pledgee must have a depository account. The procedure for pledge or hypothecations of shares held in demat form is as under:

(i) Investor shall submit the details of shares to be pledged to the DP in the prescribed form.

(ii) DP shall verify the records and on being satisfied that the shares are available

for pledge, make a note in the records and forward the application to the Depository for approval.

(iii) Depository shall obtain confirmation from the pledge and the records the pledge within 15 days of application.

(iv) Depository shall send information to the DP of both pledger and pledgee who will inform the pledger and pledge respectively.

(v) The pledge may invoke the pledge in accordance with the terms of pledge and on such invocation the name of pledge is entered in the Register of Beneficial Owners by the Depository.

(vi) During the pledge is in force, the DP shall not give effect to transfer of any security without the concurrence of the pledge.

(vii) On closure of the loan, the pledger shall request the DP to close the pledge. The pledge, on getting payment, shall make a request for closure of pledge to his DP.

(viii) For making hypothecation of shares held in demat form the above procedure is to be followed. However, before registering the hypothecate as a beneficial owner, the Depository should obtain the consent from the hypothecator.

Answer 3A(ii)

1. Ensure that the Articles of the company authorize the Board to appoint an additional director and such appointment is within the maximum limit of directors mentioned in the Articles.
2. Ensure that individual proposed to be appointed as an additional director, does not suffer from any disqualification.
3. Passing a resolution either at a meeting or by circulation.
4. Get consent of the individual proposed to be appointed in DIR-2.
5. The person to be appointed must have obtained DIN.
6. Declaration from the director to be obtained stating that he is not disqualified to become director under the Act.
7. Send notice in writing to all directors of the company in accordance with Section 173 of the Companies Act 2013 for holding Board meeting.
8. File particulars of director in Form DIR-12 with the ROC within 30 days of appointment after paying the required fee.
9. Required attachments to be attached to For DIR-12- Letter of appointment, consent of director, digital signature on the Form.
10. Particulars of director to be given to the stock exchange where shares are listed.
11. Entry in the registers maintained under Sections 170.

Answer 3A(iii)

LLP is an alternative business vehicle that gives the benefits of Limited Liability Company and flexibility of a partnership firm. Since, LLP contains elements of both 'a corporate structure' as well as 'partnership firm structures' it is many a times termed as

hybrid of a company and partnership. LLP is a separate legal entity which can continue its existence irrespective of changes in its partners. LLP is an incorporated partnership formed and registered under the Limited Liability Partnership Act, 2008.

Owing to flexibility in its structure and operation, LLP is useful for small and medium enterprises, in general, and for the enterprises in services section, in particular. LLP is also a very suitable for professionals like company secretaries, chartered accountants, cost accountants, advocates etc., as itself them to form multi-disciplinary limited liability partnership firms.

An LLP is regulated by the Limited Liability Partnership Act, 2008 and the rules made thereunder.

Answer 3A(iv)

Explanation II(ii) to section 42(1) defines the term 'private placement' to mean offer of securities or invitation to subscribe securities to a selected group of persons by a company (other than by way of public offer) through issue of private placement offer letter and which satisfies the conditions specified in section 42 of the Companies Act, 2013.

Under the private placement, the offer of securities or invitation to subscribe securities, shall be made to such under of persons not exceeding fifty or such higher number as may be prescribed, (excluding qualified institutional buyers and employees of the company being offered securities under a scheme of employee stock option), in a financial year and on such conditions as may be specified under Rule 14(2) of he Companies (prospectus and Allotment of Securities) Rules, 2014.

Rule 14(2)(b) provides that such offer or invitation shall be made to not more than 200 persons in the aggregate in a financial year.

Question 4

(a) In relation to filing of financial statements of a company in XBRL mode and by using the XBRL taxonomy, decide whether the following companies are required to file the financial statements in the said mode :

(i) Grand Ltd., the subsidiary company of Tiny Ltd. which is listed at Kolkata Stock Exchange.

(ii) Prime Ltd., a company which has paid-up share capital of ₹100 crore.

(iii) Crafty Ltd., a company which has a turnover of ₹400 crore.

(iv) Comfort Ltd., a non-banking financial company. (4 marks)

(b) How does the Companies Act, 2013 regulate and restrict the following :

(i) Non-cash transactions involving directors in a company where the company acquires land and building from these directors.

(ii) Managing Director of Strong Ltd. enters into forward dealing in securities of the company in which he is the Managing Director. (4 marks)

(c) Certain acts of mismanagement on the part of directors led the company to go

for winding-up. Though these directors were appointed for a term of three years, they have served the company only for one year. Examining the provisions of the Companies Act, 2013, state :

(i) Whether these directors can be paid compensation for loss of their office as directors ?

(ii) What is the quantum of compensation that can be paid to such directors ?

(iii) Can these directors be paid remuneration for the technical services rendered by them to the company ? (4 marks)

(d) Explaining the provisions of the Companies Act, 2013 relating to appointment of a debenture trustee, examine the validity of appointment of the following persons as debenture trustee by a company going for issue of debentures :

(i) Sachin has pecuniary relationship with the company amounting to 1% of the total income during the two immediately preceding financial years.

(ii) Akash is indebted to an associate company of the company going to appoint such a trustee. (4 marks)

Answer 4(a)

The Ministry of Corporate Affairs has mandated the following select class of companies mentioned below to file financial statements in XBRL (Extensible Business Reporting Language) mode and by using the XBRL taxonomy:

(i) All companies listed with any Stock Exchange(s) in India and their Indian subsidiaries; or

(ii) All companies having paid-up share capital of Rs. 5 crore and above; or

(iii) All companies having turnover of Rs. 100 crore and above; or

(iv) All companies who were required to file their financial statements for financial year 2010- 11, using XBRL mode.

However, banking companies, insurance companies, power companies and Non-Banking Financial Companies are exempted from XBRL filing till further orders.

(i) Grand Limited is the subsidiary company of Tiny Limited which is listed at Kolkata Stock Exchange.

Ans: Yes, company is required to file financial statements through XBRL mode.

(ii) Prime Limited is the company which has paid-up share capital of Rs. 100crore.

Ans: Yes. Company is required to file financial statements through XBRL mode.

(iii) Crafty Limited is the company which has a turnover of Rs. 400 crore.

Ans: Since in this case the turnover is more than Rs.100 crore, the company is required to file the financial statements through XBRL mode.

(iv) Comfort Limited is a Non-Banking Financial Company.

Ans: This company is exempted from filing the financial statements through XBRL mode.

Answer 4(b)(i)

In accordance with the provisions of the Companies Act, 2013, as contained in Section 192(1), without the prior approval of the company in a general meeting, a company will not enter into an arrangement by which:

(a) A director of the company or its holding, subsidiary or associate company or a person connected with him acquires or is to acquire assets for consideration other than cash, from the company; or

(b) The company acquires or is to acquire assets for consideration other than cash, from such director or person so connected

If the director or connected person is a director of the holding company, an approval will also be required by passing a resolution in the general meeting of the holding company.

Answer 4(b)(ii)

Section 194(1) provides that no director of a company or any of its KMP shall buy in the company; or in its holding, subsidiary or associate company-

(a) a right to call for delivery or a right to make delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures; or

(b) a right, as he may elect, to call for delivery or to make delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures.

If a director or any KMP of the company contravenes these provisions of sub-section (1), such director or KMP shall be punishable with imprisonment for a term which may extend to 2 years or with fine which shall not be less than Rs. 1 lakh but may extend to Rs. 5 lakh or with both.

Answer 4(c)

A company may make payment to a Managing Director or a Director holding the office of Manager or in the whole-time employment of the company by way of compensation for loss of office or as consideration for retirement from office or in connection with such loss or retirement in accordance with Section 202 of the Companies Act, 2013 other than the following circumstances-

(a) Where director resign from his office as a result of the reconstruction or amalgamation and appointed in a position in the reconstructed company or resulting company.

(b) Where the director resigns from his office.

(c) Where the office of director is vacated under Section 167(1) vacation of office;

(d) Where the company is being wound up, provided the winding up was due the negligence or default of the director.

(e) Where the director has been found guilty of fraud or breach of trust in relation to or gross negligence in or gross mismanagement of, the conduct of the affairs of the company or any subsidiary company or holding company thereof; and

(f) Where the director has instigated or has been taken part directly or indirectly in bring about the termination of his office.

Any payment of compensation shall not exceed the remuneration for remaining period of his term or for three years, whichever is shorter calculated on average actual remuneration for the last three years. Where he held the office for a lesser period than three years, then calculation shall be made on that period.

The section does not prohibit payment of any remuneration for services rendered by him to the company in any other capacity.

Accordingly,

(i) In this the director's office is vacated as a result of winding of the company and has joined in the restructured company, he is not entitled to any compensation (Refer to Point No.(a).

(ii) Since the company has been wound up because of mismanagement, the directors will not be entitled to any compensation.

(iii) Since the directors have rendered some technical services, the directors shall be entitled for their remuneration as per the contract entered between the directors and the company.

Answer 4(d)

According to section 71(5) Companies Act, 2013, the appointment of debenture trustees is compulsory in case the prospectus is issued to more than 500 persons for subscription of debentures. Further, the Rule 18 specifies that for secured debentures issued by any type of company, the company shall appoint a debenture trustee before the issue of prospectus or letter of offer for subscription of its debentures and not later than 60 days after the allotment of the debentures.

The conditions governing the appointment of debenture trustees under sub-section (5) of Section 71 are prescribed under Rule 18(2) of the Companies (Share Capital and Debentures) Rules, 2014 as under:

(a) The names of the debenture trustees shall be stated in letter of offer inviting subscription for debentures and also in all the subsequent notices or other communications sent to the debenture holders.

(b) Before the appointment of debenture trustee or trustees, a written consent shall be obtained from such debenture trustee or trustees proposed to be appointed and a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures.

(c) A person shall not be appointed as a debenture trustee, if he;

(i) Beneficially holds shares in the company;

(ii) is a promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company.

(iii) is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee.

(iv) Is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary or its holding company.

(v) Has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon.

(vi) Has any pecuniary relationship with the company amounting to 2% or more of its gross turnover or total income or Rs. 50 lakh or such higher amount as may be prescribed, whichever is lower, during the 2 immediately preceding financial years or during the current financial year;

(vii) Is relative of any promoter or an person who is in the employment of the company as a director or key managerial personnel.

Taking into account the above conditions, answers to sub-question are :

(i) Yes, Sachin can be appointed as a debenture trustee since his pecuniary relationship with the company is less than 2%.

(ii) No. Akash cannot be appointed since he is indebted to an associate company of the company going to appoint the debenture trustee, since he does not fulfill the condition.

Question 5

(a) Referring to the provisions of the Companies Act, 2013, examine the validity of each of the following contributions :

(i) The Board of directors of Laxmi Ltd. decides to contribute to charitable funds, a sum of 10% of the company's average profits earned for the 5 years immediately preceding the financial year 2015-16.

(ii) The Board of directors of MNR Ltd. incorporated on 2nd April, 2015 decides to pay 10% of the profit of the company earned during the period of 6 months in the financial year 2015-16, towards political contribution to some political parties. *(4 marks)*

(b) A general meeting of the members of RST Ltd. was called to transact certain special business. Before the scheduled day and time of the meeting, the Chairman of the meeting suo motu due to certain personal reasons adjourned the meeting. Certain members of the company challenge the decision of the Chairman on the ground that the Chairman's action to adjourn the meeting is violative of the provisions of the Companies Act, 2013.

Decide with reasons in brief :

(i) Whether the contention of the members be tenable ?

(ii) Whether the company is required to send a fresh notice for the adjourned meeting as the articles of association are silent on the issue ?

(iii) In case the meeting is a requisitioned meeting and on the scheduled day and time, the required quorum is not present, state whether the members on their own can hold the meeting and pass necessary resolutions.

(4 marks)

(c) *Every listed company and certain class or classes of public companies as prescribed under Rules are required to have independent directors on its Board. Sahyajog Ltd., a listed company, has appointed Raghu as one of the independent directors on its Board. Being the Company Secretary of the company, you have been asked by the management to suggest a format of the declaration to be given by the independent director under section 149(6). Advise the company.* *(4 marks)*

(d) *The Board of directors of PQR Ltd. wishes to accept deposits. As a Company Secretary of PQR Ltd., prepare the check list for secretarial compliance for acceptance of deposits as per the Companies Act, 2013.* *(4 marks)*

Answer 5(a)(i)

According to Section 181, the Board of Directors of a company may contribute to bona fide charitable and other funds:

Provided that prior permission of the company in general meeting shall be required for such contribution in case any amount the aggregate of which, in any financial year, exceed 5% of its average profits for the 3 immediately preceding financial years.

Accordingly, the Company in this case can contribute the said contribution only by prior permission by way a resolution passed by the general meeting of the members. As the permissible limit is 5% of average net profits for three immediately preceding financial years.

Answer 5(a)(ii)

Further, according to Section 182(1), the following companies are barred from making political Contributions :

- Government company
- The company which has been in existence for less than 3 financial years.

Provided that the aggregate of the amount which may be so contributed by the company in any financial year shall not exceed seven and a half percent of its average net profits during the 3 immediately preceding financial years:

Provided further that no such contribution shall be made by a company unless a resolution authorizing the making of such contribution is passed at a meeting of the Board of Directors and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for making and the acceptance of the contribution authorized by it.

The decision of the Board in the given is also violative of the provisions of the Companies Act, 2013 viz. (i) the company has been in existence for less than one year and (ii) the contribution to be made is beyond the limit of 7-1/2%. Therefore, the company cannot pay the said contribution.

Answer 5(b)

For a valid adjournment of a General Meeting, the holding of the meeting at its scheduled time is necessary. A duly convened meeting should not be adjourned arbitrarily

by the Chairman. The Chairman may adjourn a meeting with the consent of the members and shall adjourn a meeting if so decided by the members. The meeting may, however, be adjourned at any time. It may be adjourned after some items of business have been transacted and the remaining items can be transacted at the adjourned meeting.

The Chairman may, with the consent of any meeting at which a Quorum is present, and shall, if so directed by the meeting, adjourn the meeting from time to time and from place to place and may adjourn the meeting for bona fide reasons. Once a meeting is called, the Chairman cannot adjourn it arbitrarily, its continuance or adjournment rests entirely on the will of the members. (Regulation 49 of Table F of Schedule I: Companies Act, 2013).

Accordingly,

(i) Contention of the members is tenable.

(ii) Para 15.2, 15.3 and 15.4 of SS-2 provide for provisions relating to notice of adjourned meeting and states that if a Meeting is adjourned sine-die or for a period of thirty days or more, a Notice of the adjourned Meeting shall be given in accordance with the provisions contained hereinabove relating to Notice.

15.3 If a Meeting is adjourned for a period of less than thirty days, the company shall give not less than three days' Notice specifying the day, date, time and venue of the Meeting, to the Members either individually or by publishing an advertisement in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and in an English newspaper in English language, both having a wide circulation in that district.

15.4 If a Meeting, other than a requisitioned Meeting, stands adjourned for want of Quorum, the adjourned Meeting shall be held on the same day, in the next week at the same time and place or on such other day, not being a National Holiday, or at such other time and place as may be determined by the Board.

(iii) In case of requisitioned meeting, if the required Quorum is not present, the meeting stands cancelled/dissolved. Members presents, in the absence of Quorum cannot hold the meeting. If they hold the meeting and pass the resolutions, these will not be valid and not binding upon the company. (Para 15.5 of SS-2).

Answer 5(c)

M/s,

Dear Sir,

I undertake to comply with the conditions laid down under section 149(6) and schedule IV of the Companies Act, 2013 in relation to conditions of independence and in particular

(a) I declare that up to the date of this declaration, apart from receiving director's remuneration, I did not have any material pecuniary relationship or transactions with the Company, its promotes, its directors it senior management or its holding company, its subsidiary and associates as named in the Annexure thereto which

may affect my independence as director on the Board of the Company. I further declare that I will not enter into any such relationship/transaction; however, if and when I intend to enter into any such relationship/transactions, whether material or non-material I shall seek prior approval of the Board. I agree that I shall cease to be an independent director from the date of entering into such relationship/transaction

(b) I declare that I am not related to promoters or persons occupying management positions at the board level or at one level below the board and also have not been an executive of the Company in the immediately preceding three financial years.

(c) I was not a partner or an employee or was also not partner or an employee during the preceding three years, of any of the following:

(i) The firm of auditors or Company Secretary in Practice or cost auditors of this company or its holding subsidiary or associate company; and

(ii) the legal firm(s) and consulting firms(s) that has or had any transaction with company, its holding subsidiary or associate company amounting to 10% or more of gross turnover of such firm.

Thanking You,

Yours faithfully,

Raghu

Date :

Place :

Answer 5(d)

Check list of secretarial compliance for acceptance of deposits under Companies Act, 2013

The Company Secretary should check:

1. Whether proper Board meeting has been held and the matter of acceptance of deposit has been proposed and issue of notice for holding general meeting for obtaining approval of the shareholder has been taken place.
2. Whether general meeting has been held and approval of the shareholders by means of a special or ordinary resolution has been passed.
3. Whether the said resolution has been filed with Registrar in Form MGT-14 within 30 days of passing of such resolution.
4. Whether Board meeting has been held to obtain the approval for the draft Circular/ Form of Advertisement from the Board and the said draft Circular/Form of Advertisement has been signed by majority of the directors of the Company.
5. Whether copy of Circular/Form of Advertisement approved by the Board has been filed with the Registrar of Companies in Form DPT-1 for registration.

6. Whether one or more deposit trustees for creating security for the secured deposits has been appointed and the company has executed a deposit trust deed in Form DPT-2 at least seven days before issuing circular or circular in the form of advertisement.

7. Whether the company has enter into a contract providing for deposit insurance unless exempted at least thirty days before the issue of circular or advertisement with Insurance Company.

8. Whether the company has obtain the rating unless exempted, (including its net worth, liquidity and ability to pay its deposits on due date) from a recognized credit rating agency for informing the public the rating given to the Company.

9. Whether the company has issued circular/form of advertisement after 30 days from the date of filing of a copy of Circular/Form of Advertisement with the Registrar.

10. Whether the circular has been issued to members by registered post with acknowledgement due or speed post or by electronic mode or publish the circular in the form of an advertisement in Form DPT-1 and in addition to such issue of circular the company has published the same in one English newspaper and one vernacular language in vernacular newspaper having wide circulation in the state of registered office of the company.

11. Whether the company has uploaded the copy of the circular on the Company's website, if any.

12. Whether the company has issued deposit receipt in the prescribed format and under the signature of officer duly authorized by Board, within a period of two weeks from the date of receipt of money or realization of cheques.

13. Whether the company has made entries in the register as per the instruction provided in the rules within seven days from the date of issuance of the deposit receipt and such entries shall be authenticated by a director or secretary of the Company or by any other officer authorized by the Board.

14. Whether the company has filed deposit return in Form DPT-3 by furnishing information contained therein as on 31st day of March duly audited by auditors before 30th June every year.

15. Whether the company has prepared the statement regarding deposits existing as on the date of commencement of the act in Form DPT-4.

Question 6

(a) You being the Secretary of Aryan Ltd., have been asked by the Board of directors to make a report on Corporate Governance as required under clause 49 of the listing agreement. State the procedure you would follow and the information you would include in the report relating to :

(i) General meeting of the company; and

(ii) Nomination and Remuneration Committee. (4 marks)

(b) Board of directors of Princeton Ltd. in the absence of adequate profits in the financial year 2014-15, wants to recommend dividend out of company's reserves. Advise the Board about the conditions to be complied with and the procedure to be followed in accordance with the provisions of the Companies Act, 2013. *(4 marks)*

(c) ABC Ltd. declared dividend, but failed to make the payments to shareholders. Advise the company about the consequence for such default and also list out the circumstances under which no prosecution lies in spite of the fact that the company fails to pay dividend even after declaration. *(4 marks)*

(d) As a Company Secretary in Practice, state the role played by you in relation to 'certification' under clause 47(c) of the listing agreement of your client company. *(4 marks)*

Answer 6(a)

Under SEBI(Listing Obligations and Disclosure Requirements)Regulations, 2015 a company is required to submit a The listed entity shall submit a quarterly compliance report on corporate governance in the format as specified by the Board from time to time to the recognised stock exchange(s) within fifteen days from close of the quarter.

Procedure for making report on Corporate Governance

As per the SEBI(LODR) Reg,2015, the company shall have a separate section on Corporate Governance in the Annual Report of the company with a detailed compliance report on Corporate Governance. The same is also to be disclosed at the website of the company.

- Prepare a checklist with regard to all the information required to be included in the report.
- To check all the related documents from which information for preparing the report needs to be extracted;
- The report shall be signed either by the compliance officer or the chief executive officer of the listed entity.

Information to be included in Corporate Governance Report w.r.t.:

(i) Nomination and Remuneration Committee:

  (a) brief description of terms of reference;

  (b) composition, name of members and chairperson;

  (c) meeting and attendance during the year;

  (d) performance evaluation criteria for independent directors.

(ii) General body meetings:

  (a) location and time, where last three annual general meetings held;

  (b) whether any special resolutions passed in the previous three annual general meetings;

(c) whether any special resolution passed last year through postal ballot – details of voting pattern;

(d) person who conducted the postal ballot exercise;

(e) whether any special resolution is proposed to be conducted through postal ballot;

(f) procedure for postal ballot.

Answer 6(b)

In accordance with Rule 3 of the Companies (Declaration and Payment of Dividend) Rules 2014, declaration of dividend out of reserves is subject to the following conditions to be fulfilled :

(1) The rate of dividend shall not exceed the average of the rates at which dividend was declared by the company in the 3 years immediately preceding that year. However, the sub-rule shall not apply to a company, which has not declared any dividend in each of the 3 preceding financial year.

(2) The total amount to be drawn from such accumulated profits shall not exceed one-tenth of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement.

(3) The amount so drawn shall first be utilized to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared.

(4) The balance of reserves after such withdrawal shall not fall below 15% of the company's paid-up share capital as appearing in the latest audited financial statement.

4th proviso to section 123(1) provides that no company shall declare dividend unless carried over previous losses and depreciation not provided in previous year are set off against profit of the company of the current year.

Procedure

1. Give notice to all the directors of the company for holding a Board meeting. In the meeting take decision to declare dividend out of company's reserves because of inadequacy or absence of profits and also fix the date, time and place of the AGM. Authorize the Company Secretary or any competent person if the company does not have a company secretary to issue the notice of the AGM on behalf of the Board of directors of the company to all the members, directors and auditors of the company and other persons entitled to receive the same.

2. Ensure that the Companies (Declaration & Payment of Dividend) Rules 2014 are complied with.

3. While calculating the profits of the previous years, take only the net profit after tax.

4. Ensure that while computing the amount of profits, the amount transferred from

the Development Rebate Reserve is included and all items of capital reserves including reserves created by revaluation of assets are excluded.

5. In case of listed companies, inform the Stock Exchange about decision to recommend declaration of dividend out of Reserves.
6. Issue notices in writing at least 21 days before the date of the AGM and hold three meeting and pass resolution.
7. Open a separate bank account for making dividend payment and credit the said bank account with the total amount of dividend payable within 5 days of declaration of dividend.
8. Issue dividend warrants or transfer through electronic mode the amount of dividend to different shareholders, within 30 days from the date of declaration of dividend.

Answer 6(c)

As per section 127 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within thirty delays from the date of declaration to any shareholder entitled to the payment of the dividend, a) every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues and b) the company shall be liable to pay simple interest at the rate of eighteen percent per annum during the period for which such default continues;

No offence under this section shall be deemed to have been committed-

(a) where the dividend could not be paid by reason of the operation of any law;

(b) where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has been communicated to him

(c) where there is a dispute regarding the right to receive the dividend;

(d) where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or

(e) where, for any other reason, the failure to pay the dividend or to post the warrant within the period under this section was not due to any default on the part of the company.

Answer 6(d)

As per Reg 40 (8) of SEBI(LODR) Reg,2015 the listed entity shall ensure that the share ransfer agent and/or the in-house share transfer facility, as the case may be, produces a certificate from a practicing company secretary within one month of the end of each half of the financial year, certifying that all certificates have been issued within thirty days of the date of lodgement for transfer, sub-division, consolidation, renewal, exchange or endorsement of calls/allotment monies. The listed entity shall ensure that certificate shall be filed with the stock exchange(s) simultaneously.

Role of Company Secretary

- To check the Register of transfer
- To check register of member
- To check the minutes of Board Meeting in which transfer are approved.

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SECRETARIAL AUDIT, COMPLIANCE MANAGEMENT AND DUE DILIGENCE

Time allowed : 3 hours *Maximum marks : 100*

NOTE: *Answer **ALL** Questions.*

PART A

(Attempt all parts of either Q.No. 1 or Q.No. 1A)

Question 1

(a) What records and information a Company Secretary has to verify to check compliances regarding loans to directors and related party transactions of the company ?

(b) Great Ltd. plans to appoint Kushal as an 'additional director'. As a Company Secretary, what are the checks you would make while appointing Kushal as an additional director ?

(c) As a Company Secretary of Kairar Ltd., state the special points to be checked by you in the matter of issue of foreign currency convertible bonds by the company.

(d) Quick Ltd. is a non-government company. Its Board of directors proposes to donate ₹70,000 to a political party. The average net profit worked out for the three immediately preceding financial years is ₹45,00,000. As a Company Secretary, examine whether the proposed donation of ₹70,000 is within powers of the Board of directors of Quick Ltd. under the Companies Act, 2013.

(e) Adira Ltd. wants to issue preference shares. As a Company Secretary, what are the points you would examine for this purpose ? Explain briefly.

(5 marks each)

OR (Alternate question to Q.No. 1)

Question 1A

(i) You are the Secretarial Auditor of Admire Ltd. State the matters to be considered by you while preparing the audit report. (5 marks)

(ii) Guru Ltd. is a listed company. The articles of association have fixed payment of sitting fees for each meeting of directors at ₹30,000. The company wants to increase the sitting fee to ₹50,000 per meeting. You are required to advise the company as per the requirements of the Companies Act, 2013. (5 marks)

(iii) Larsen, a foreign investor wants to make investment in the following businesses. Identify, giving reasons, whether such investments are under automatic route, government route or prohibited transactions under the Foreign Exchange Management Act, 1999 —

(i) Investment in tea plantations

(ii) 49% investment in insurance sector

(iii) Investment in S.K. Tours & Travels

(iv) Sikkim lottery investment

(v) 49% investment in a trading company doing export activities. (5 marks)

(iv) Buma Ltd. has some urgent items which could not be concluded in the Board meeting. The Board decides to pass the said items by way of resolution by circulation. As the Company Secretary, advise the company about the steps to be taken as laid down in the Companies Act, 2013 and applicable secretarial standard. (5 marks)

(v) Peejay Ltd. is a listed company. It declared 10% dividend in the AGM held on 30th September, 2015 for the financial year 2014-15. Indicate the :

(a) Time limit for payment of dividend; and

(b) Circumstances when Peejay Ltd. will not be deemed to have committed any default even if it does not pay the dividend within prescribed period. (5 marks)

Answer 1(a)

Loans to Directors (Section 185) and Related Party Transactions (Section 188)

The following records and information should be verified by the Company Secretary in light of the provisions of Companies Act, 2013.

(i) Minutes of Board Meeting

(ii) Minutes of Audit Committee Meeting

(iii) Minutes of General Meeting

(iv) Register of Contracts and Arrangements in Which Directors are interested maintained in Form MBP - 4 under Section 189

(v) Form MBP-1 (Disclosure by Directors).

Answer 1(b)

As a Company Secretary, the following checks would be made with regards to appointment of Mr. Kushal as additional director in Great Ltd.

(i) Mr. Kushal must have a valid DIN, if not obtain DIN for him

(ii) Mr. Kushal is not person who failed to get appointed as director in general meeting

(iii) Mr. Kushal has given his declaration in Form DIR 8 regarding his non-disqualification.

(iv) Mr. Kushal has given his consent to act as director

(v) Articles of Association of company authorizes board to appoint additional director

(vi) Appointment should be made by the board of director of the company either at a duly convened meeting or through circular resolution.

Answer 1(c)

As a Company Secretary of Kairer Ltd., the following point should be verified in the matter of issue of foreign currency convertible bonds:

1. Check if the fresh FCCBs is raised with the stipulated average maturity period and applicable all in cost being as per the ECB guidelines.
2. The amount of fresh FCCB shall not exceed the outstanding redemption value at maturity on the outstanding FCCBs.
3. The fresh FCCB shall not be raised 6 months prior to the maturity date of outstanding.
4. FCCB beyond USD500 million for the purpose if redemption of the existing FCCB will be considered under the approval route.
5. The proposed of buyback / prepayment if FCCB from Indian Companies may be considered subject to condition that buy back value of FCCB shall be at a minimum discount of 5% on the accreted value.

Answer 1(d)

Section 182 provides that a company, other than a Government company and a company which has been in existence for less than three financial years, may contribute any amount directly or indirectly to any political party:

Provided that the amount or, as the case may be, the aggregate of the amount which may be so contributed by the company in any financial year shall not exceed seven and a half per cent of its average net profits during the three immediately preceding financial years.

In the given case the average profit of the three immediately preceding financial years is Rs. 45 Lacs and the company can contribute maximum up to Rs. 3,37,500/- (7.5% of the 45 Lacs).

Since the amount proposed to be contributed is less than seven and half percent average net profits during the three immediately preceding financial years, the proposed donation is within the power of the board of directors of Quick Ltd. under the Companies Act, 2013.

Answer 1(e)

As a Company Secretary of Adira Ltd., the following points should be examined for issue of preference shares:

1. The company is authorized by its articles to issue preference shares;
2. There is sufficient authorized capital to issue preference shares;
3. The company, at the time of such issue of preference shares has no subsisting default in the redemption of preference shares issued either before or after the commencement of the Act or in payment of dividend due on any preference shares;
4. Shares are redeemable within 20 years (30 years in case of infrastructure companies);

5. The issue of preference shares has been authorized by passing a special resolution in the general meeting of the company;

6. The resolution has set out the following matters relating to preference shares:

   (a) priority with respect to payment of dividend or repayment of capital vis-a-vis equity shares;

   (b) participation in surplus dividend;

   (c) participation in surplus assets and profits, on winding-up which may remain after the entire capital has been repaid;

   (d) payment of dividend on cumulative or non-cumulative basis;

   (e) conversion of preference shares into equity shares;

   (f) voting rights;

   (g) redemption of preference shares.

Answer 1A(i)

(i) Periodical Secretarial Audit Report is submitted to the board of directors for corrective action, the audit report is prepared in MR-3.

(ii) The report is addressed to the members but is to be submitted to the board.

(iii) The report shall contain the opinion of the statutory compliance examined by the auditor and shall state whether in his opinion the company is carrying out due compliance of the applicable provisions.

(iv) Qualifications/ reservation or adverse remarks, if any, should be stated by the Secretarial Auditor at the relevant places in his report in bold type on in italics.

(v) If the secretarial Auditor is unable to express an opinion on any matter, he must mention it. If the scope of work required to be performed is restricted on account of restriction imposed by the company, the report should mention such limitation.

Answer 1A(ii)

Section 197 (5) of the Companies Act, 2013 provides that, a director may receive remuneration by way of fee for attending meetings of the Board or Committee thereof or for any other purpose whatsoever as may be decided by the Board. Provided that the amount of such fees shall not exceed the amount “as prescribed.

The rules prescribed that the sum of sitting fee payable to a director for attending meeting of the board or committee may be decided by Board of directors which shall not exceed Rs. 100,000 per meeting of the Board or committee thereof.

Further, for independent directors and women directors, the sitting fee shall not be less than sitting fee payable to other directors.

So in the given case of Guru Ltd., the fee payable to a director can be increased to Rs. 50,000 per meeting by a board resolution.

Answer 1A(iii)

Larsen, the foreign investor can make investment as follows:

(i) *Government Route*: because, the activities in tea plantation require industrial license. Hence investment in this activity is possible only through Government route.

(ii) *Government Route* : because, Investment in Insurance sector up to 26% allowed under automatic route, beyond 26% upto 49 % investment in insurance sector requires government approval.

(iii) *Automatic route* : because 100% FDI is allowed

(iv) *Prohibited* : because lottery business is prohibited

(v) *Automatic Route* : up to 51% of the investment is allowed under automatic route.

Answer 1A(iv)

The items which could not be concluded and decided at the board meeting and if it cannot be deferred till the next meeting may be passed by circulation, provided they do not include such items as are required to be passed only at the board meeting by virtue of section 179(3) of the Companies Act, 2013.

As per Section 175 of the Companies Act, 2013, No resolution shall be deemed to have been duly passed by the Board or by a committee thereof by circulation, unless the resolution has been circulated in draft, together with the necessary papers, if any, to all the directors, or members of the committee, as the case may be, at their addresses registered with the company in India by hand delivery or by post or by courier, or through such electronic means as may be prescribed and has been approved by a majority of the directors or members, who are entitled to vote on the resolution:

Provided that, where not less than one-third of the total number of directors of the company for the time being require that any resolution under circulation must be decided at a meeting, the chairperson shall put the resolution to be decided at a meeting of the Board.

(2) A resolution under sub-section (1) shall be noted at a subsequent meeting of the Board or the committee thereof, as the case may be, and made part of the minutes of such meeting.

The Standard-6 (Passing of Resolution by circulation) of SS-1 (Meeting of the Board of Director) shall be applicable.

Answer 1A(v)

(a) Peejay Ltd. should pay the dividend to the registered share holders under section 123 of the Companies Act, 2013 within thirty days from the date of Declaration of Dividend.

(b) In the following circumstances, Peejay Ltd, will not be deemed to have committed any default even if it does not pay the dividend within the prescribed period which are as follows:

(a) where the dividend could not be paid by reason of the operation of any law;

(b) where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has been communicated to him;

(c) where there is a dispute regarding the right to receive the dividend;

(d) where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or

(e) where, for any other reason, the failure to pay the dividend or to post the warrant within the period under this section was not due to any default on the part ofthe company.

PART B

Attempt all parts of either Q.No. 2 or Q.No. 2A

Question 2

(a) Som Ltd. wants to make 'rights issue' of shares. As a Company Secretary, advise on the following issues —

(i) The aggregate value of securities offered is ₹85 lakh.

(ii) The record date for rights issue is 30th June, 2015. The company desires to withdraw rights issue on 2nd July, 2015.

(iii) The rights issue is open for subscription from 30th June, 2015 to 10th July, 2015.

(iv) The letter of offer is dispatched through courier to all existing shareholders on 29th June, 2015 when the issue is open for subscription on 30th June, 2015.

(v) The record date is 30th June, 2015. On 2nd July, 2015, the issue price of shares is decided. (5 marks)

(b) Mini Ltd., a listed company, comes out with issue of shares through ESOS. As a Company Secretary, how would you deal with the following issues —

(i) Suresh is an employee on a contract basis. His contract is renewed every year. Can he participate in ESOS ?

(ii) Lakshya, an employee, is granted option under ESOS by the company. He writes a letter to his friend Mukesh for transferring the offer. But he dies. With whom will the option vest ?

(iii) Akhil, a director and his wife Beena together hold more than 15% of the equity shares of the company. Can the director Akhil participate in ESOS?

(iv) The ESOS in Mini Ltd. is a part of public issue and the shares are issued to employees at the same price as in the public issue. What is the duration of the lock-in-period to which these shares are subject to ?

(v) Anil has acquired shares under ESOS in Simi Ltd. Now, Mini Ltd. acquires Simi Ltd. fully. Mini Ltd. allots shares to Anil in lieu of shares which he has

under ESOS in Simi Ltd. In Simi Ltd., he has undergone 5 months of lock-in-period. How many minimum months of lock-in-period he has to undergo in Mini Ltd. ? *(5 marks)*

(c) A cement company, having dominant position in domestic market, used discriminatory conditions in purchase and sale of goods and services. Explain the conditions in which there is abuse of dominant position. *(5 marks)*

OR (Alternate question to Q.No. 2)

Question 2A

(i) Bombay Stock Exchange delisted the shares of Legacy Ltd. Being the aggrieved company, Legacy Ltd. approaches you to seek a remedy. As a Company Secretary, advise Legacy Ltd., bearing in mind the provisions of the Securities Contracts (Regulations) Act, 1956. *(5 marks)*

(ii) Divi Ltd. is going in for public issue and listing of securitised debt instruments on Bombay Stock Exchange. Draft a note on compliances under the SEBI (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008. *(5 marks)*

(iii) Describe the compliances under institutional placement programme to be furnished by a Company Secretary. *(5 marks)*

Answer 2(a)

(i) Where the aggregate value of the Securities offered is Rs. 50 Lakhs or more, SEBI (ICDR) Regulations, 2009 are applicable. In the given case, it is Rs. 80 Lakhs. Hence, the company is required to file a draft offer with fees with SEBI through a Lead Merchant Banker at least 30 days prior to registering the prospectus.

(ii) If the issuer withdraws the rights issue after announcing the record date, it shall not make an application for listing of any of its specified securities on any recognised stock exchange for a period of twelve months from the record date.

However, the issuer may seek listing of its equity shares allotted pursuant to conversion or exchange of convertible securities issued prior to the announcement of the record date, on the recognised stock exchange where its securities are listed.

(iii) A rights issue shall be open for subscription for a minimum period of fifteen days and for a maximum period of thirty days.

In this case it is open for subscription for a period less than the minimum period. Hence it is not valid.

(iv) The abridged letter of offer, along with application form, shall be dispatched through registered post or speed post to all the existing shareholders at least three days before the date of opening of the issue.

In this case letter of offer is dispatched through courier and that too just one day before the date of opening of issue. Hence it is not valid.

(v) The issue price shall be decided before determining the record date which shall be determined in consultation with the designated stock exchange. In this case it is decided after the record date which is wrong.

Answer 2b

(i) A person eligible to participate in the ESOS must be a Permanent employee of the company.

In the given case, Suresh is not a permanent employee of Mini Ltd., hence he can not participate in ESOS.

(ii) As the Option granted to an employee shall not be transferable to any person and No person other than the employee to whom the option is granted shall be entitled to exercise the option.

Accordingly, writing a letter by Lakshya to his friend Mukesh for transferring the offer is not a valid.

Further, in case of the death of the employee to whom option is granted, his legal heir inherits the rights.

(iii) If 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.

In this case, Akhil along with his wife Beena together holds more than 15% of the equity share. Hence he is not eligible to participate in ESOS.

(iv) If ESOS is a part of the public issue and the shares are issued to employees at the same price as in the public issue, the shares issued to employees are not subject to any lock in period. Hence, in this case the lock in period is zero.

(v) There shall be a minimum period of one year between the grant of options and vesting of option.

Provided that in a case where options are granted by a company under an ESOS in lieu of options held by the same person under an ESOS in another company which has merged or amalgamated with the first mentioned company, the period during which the options granted by the transferor company were held by him shall be adjusted against the minimum vesting period required under this clause.

In this case, lock in period already undergone is 5 Months. Hence, Anil has to undergo a minimum 7 months of Lock in Period in Mini Ltd.

Answer 2(c)

Abuse of dominance is judged in terms of the specified types of acts committed by a dominant enterprise alone or in concert. Such acts are prohibited under the law.

Section 4 (2) of the Competition Act specifies the following practices by a dominant enterprises or group of enterprises as abuse of dominant position:

- directly or indirectly imposing unfair or discriminatory condition in purchase or sale of goods or service;

- directly or indirectly imposing unfair or discriminatory price in purchase or sale (including predatoryprice) of goods or service;
- limiting or restricting production of goods or provision of services or market;
- limiting or restricting technical or scientific development to the prejudice of consumers;
- denying market access in any manner;
- making conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of suchcontracts;
- using its dominant position in one relevant market to enter into, or protect, other relevant market.

Answer 2A(i)

Regulation 21A of the Securities Contracts (Regulations) Act, 1956 provides the provisions regarding delisting of securities. Which are as under :-

(1) A recognised stock exchange may delist the securities, after recording the reasons therefore, from any recognised stock exchange on any of the ground or grounds as may be prescribed under this Act:

Provided that the securities of a company shall not be delisted unless the company concerned has been given a reasonable opportunity of being heard.

(2) A listed company or an aggrieved investor may file an appeal before the Securities Appellate Tribunal against the decision of the recognised stock exchange delisting the securities within fifteen days from the date of the decision of the recognised stock exchange delisting the securities and the provisions of sections 22B to 22E of this Act, shall apply, as far as may be, to such appeals:

Provided that the Securities Appellate Tribunal may, if it is satisfied that the company was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding one month.

Answer 2A(ii)

Major Compliances for public issue and or listing of securities debt instrument on the recognized stock exchange under SEBI (Public Offer and listing of Securities Debt Instrument) Regulations, 2008 are :

1. Ensure that the entity files draft offer document with SEBI at least fifteen working days before the proposed opening of the issue.
2. Ensure that the entity has made arrangements with Registered Depositories for dematerialisation of the securitised Debt instrument.
3. Ensure that the entity has made an application for listing to one or more recognized stock exchanges in terms of Regulation 17A(2) of Securities Contract (Regulations) Act, 1956.

4. Ensure that the credit rating is obtained from at least two registered credit rating agencies and the same is disclosed in the offer document.

5. Ensure that the offer document contains the required details and does not contain any misleading information.

6. Ensure to file necessary reports post issue as directed by SEBI from time to time.

7. Ensure that the entity complies with its obligations relating to Minimum public offering for listing, continuous listing conditions etc.

Answer 2A(iii)

Check list for compliances under Institutional Placement Programme (IPP)

Check list for compliances under Institutional Placement Programme (IPP):

1. Check the certified copy of special resolution passed in the general meeting approving the Institutional Placement Programme and form MGT 14 filed with ROC.

2. Check the issuer has obtained in-principle approval from the stock exchange(s).

3. The issuer has appointed a SEBI registered merchant banker to manage the IPP.

4. Check the copy of the due diligence certificate submitted to SEBI with respect to the IPP.

5. Check that in case of oversubscription allotment of not more than ten percent of the offer size has been made by the eligible seller.

Question 3

(a) While carrying out environmental due diligence, what are the aspects you would take into consideration for preparation of risk analysis matrix ? (8 marks)

(b) In the case of a tender floated by a public sector undertaking, there were allegations that some of the parties have indulged in anti-competitive bidding in the tender. As a practising Company Secretary, how would you check that the company you represent has not indulged in any anti-competitive bidding ?

(7 marks)

Answer 3(a)

While carrying out environmental due diligence, the following aspect should be considered for preparation of Risk Analysis matrix:

1. *Nature of Business*

   It covers the nature of industry, amount of air/water/noise pollution in the process, period of its existence,background of promoters, number of subsidiaries, stakeholders involved, turnover, profit from operations,contribution to CSR activities, business acquisition history etc.

2. *Area of Operations*

   It covers location of site operations, Degree of diversification of products, location of sites of subsidiaries etc.

3. *Identification of potential issues*

   It covers with interaction with internal stakeholders such as employees, contractual labourers and withexternal stakeholders such as local community, shareholders, regulators, NGOs etc. A questionnaire may beevolved for each stakeholder for identifying the potential hidden issues.

4. Potential issues may be

   1. Regulatory non-compliance
   2. Health hazard due to the operations to local community
   3. Location of industry near agricultural land
   4. Amount of noise
   5. Impact of effluents on the rivers etc.
   6. Lack of disaster planning
   7. Inadequate safety systems.
   8. Lack of sustainability initiatives
   9. Lack of occupational or safety measures
   10. Improper water disposal systems.

Impact analysis

It covers cost of regulatory non-compliance, low level of employee morale, degree of reputation risk, agitation of local community, degree of threat to long term sustainability, impact of potential issues on the financial health of the company

Answer 3(b)

Being a practicing Company Secretary, the following should be checked for ascertaining that the Company has not indulged in any anti – competitive bidding.

Check that:

1. The company has not agreed to submit identical bids.
2. The company has not agreed as to who shall submit the lowest bid, agreements for the submissionof cover bids (voluntarily inflated bids).
3. The company has not agreed not to bid against each other.
4. The company has not agreed on common norms to calculate prices or terms of bids.
5. The company has not agreed to squeeze out outside bidders.
6. The company has not agreed on designating bid winners in advance on a rotational basis, or on ageographical or customer allocation basis.
7. The company has not agreed as to the bids which any of the parties may offer

at an auction for the sale of goods or any agreement through which any party agrees to abstain from bidding for any auction for the sale of goods or any agreement through which any party agrees to abstain from bidding for any auction for the sale of goods, which eliminates or distorts competition.

Question 4

(a) Koyal Ltd. borrows money from a scheduled bank to expand its research section. As a Company Secretary, what are the check-lists available to you for utilization of the money advanced ? (5 marks)

(b) Rajan is a director of Kangana Ltd. His wife Mrs. Lata has applied for loan in Kangana Ltd. for construction of house for an amount of ₹30 lakh. Advise the company on the grant of loan with reference to the provisions of the Companies Act, 2013. Explain the penal provisions, if any. (5 marks)

(c) "Legal due diligence provides complete picture of a company through a methodical investigative process." Elucidate. (5 marks)

Answer 4(a)

To ensure that consistency has been maintained in utilisation of moneys advanced to the mortgagor. The following aspects may be specifically examined:

(a) funds have been utilised for the purposes laid down in the indenture. Where funds have not been so utilised, the requisite permission has been taken;

(b) requisite conditions laid down to qualify for the outstanding balance of the loan have been fulfilled;

(c) the drawals from the loan are being kept in a separate Scheduled Bank Account, payments therefrom are being made in the manner laid down in the indenture, the said scheduled bank has foregone its right to set-off or lien, in respect of the said account, and the mortgagor is maintaining the records pertaining to the said account, as provided in the indenture;

(d) no part of the loan moneys has been transferred to call, short term, fixed or any other deposits,without prior consent. Where such consent has been obtained, the scheduled bank has foregone its right to set off any amount due from the company, against the deposits, the deposits have been realised on their due dates and the proceeds thereof re-deposited in the special account;

(e) the expenditure has been financed in the manner provided for in the indenture.; and

(f) any changes/deviations in the time schedule for completion of the project have been made in consultation with the bank(s)/financial institutions.

Answer 4(b)

Section185 of the Companies Act, 2013 provide as under:

(1) Save as otherwise provided in this Act, no company shall, directly or indirectly,

advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person; Subject to exceptions provided under the Act.

(2) If any loan is advanced or a guarantee or security is given or provided in contravention of the provisions of sub-section (1), the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, and the director or the other person to whom any loan is advanced or guarantee orsecurity is given or provided in connection with any loan taken by him or the other person,shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.

Since, Wife of director is covered under "any other person in whom the director is interested" So in the given case loan application of Mrs. Lata for construction of house shall not be considered by Kangana Limited. If considered panel provision may be attracted to the company and officers of the company.

Answer 4(c)

Scope of Legal Due Diligence

Due Diligence provides complete picture of a company through a methodical investigative process. Due Diligence investigations are good at finding liabilities in a company and to uncover the hidden risks.

The scope of legal due diligence depends on the purpose and objectives which may vary from case to case. However, certain mandatory issues that should be covered in any type of legal due diligences are as follows:

1. *Regulatory compliance*

   It would include compliance requirements of the company under various applicable laws such as Companies Act, Income Tax Act, SEBI Act rules and regulations, employee related laws, other business related laws such as pollution control laws, patent laws and other applicable laws in the country where the target company is situated.

2. *Contractual compliance*

   It would include the compliance by the company under various material contracts by the company with suppliers, customers, employees etc. and to verify whether the company has complied with the terms and conditions of different contracts.

3. *Compliance under intra-corporate aspects*

   It would include the compliance by the company under the intra company documents such as Memorandum and Articles of Association, Corporate policies, procedures, code of conduct etc.

4. *Financial aspects*

   It includes thorough reading of the balance sheet to identify the financial obligations of the company, penalties paid for violations of laws in the past etc.

5. *Non financial aspects*

   It includes analysis/examination of aspects such as reputation and goodwill of the company.

6. *Cultural aspects*

   Especially in case of cross border transactions, compatibility and adaptability of corporate cultures are to be analysed to eliminate the problems that may arise out of cultural differences.

Question 5

(a) Write short notes on the following :

(i) Preferential offer

(ii) Global depository receipts

(iii) Convertible debt instruments. (3 marks each)

(b) Distinguish between the following :

(i) 'Operational due diligence' and 'strategic due diligence'.

(ii) 'Financial due diligence' and 'tax due diligence'. (3 marks each)

Answer 5(a)(i)

According to Rule 13 of Companies (Share Capital and Debentures) Rules, 2014, 'Preferential Offer' means an issue of shares or other securities, by a company to any select person or group of persons on a preferential basis and does not include shares or other securities offered through a public issue, rights issue, employee stock option scheme, employee stock purchase scheme or an issue of sweat equity shares or bonus shares or depository receipts issued in a country outside India or foreign securities.

Answer 5(a)(ii)

Clause (44) of Section 2 of the Companies Act, 2013 define Global Depository Receipts (GDR) as under:

Global Depository Receipt means any instrument in the form of adepository receipt, by whatever name called, created by a foreign depository outside India and authorised by a company making an issue of such depository receipts.

Benefits to Investors by Investing in GDRs:

(a) Convenience of holding foreign securities in domestic market.

(b) Diversification in portfolio.

(c) No restrictions in trading as Depository Receipts are treated as domestic securities.

(d) Avoid currency risk.

(e) An effective source of finance.

(f) Global reputation

(g) Extension of shareholder base beyond territory

Answer 5(a)(iii)

Section 71 (1) of Companies Act, 2013 and SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, regulates the issue of convertible debt instruments. Issue of convertible debt instrument shall be approved by special resolution passed in general meeting.Convertible securities offer a unique combination of debt and equity to investors.Holder of such a security can convert the security into equity and benefit if the issuerof the securities performs well.

However, if the issuer is not performing as per expectations, the security holder has the option of redeeming the security at a pre-determined maturity date. Issuing convertible securities help a corporation secure equity financing in a delayed manner, as securities will be converted to equity at a future date. This process delays dilution of the common stock and earnings per share. Companies can sell convertible securities at a lower coupon rate than standard debt issuances because of the conversion option. Convertible security holders only receive interest, resulting in more operating income to the common stockholders until thesecurities are converted to equity.

Answer 5(b)(i)

Operational due diligence

Operational due diligence aims at the assessment of the functional operations of the target company, connectivity between operations, technological upgradation in operational process, financial impact onoperational efficiency etc. It also uncovers aspects on operational weakness, inadequacy of control mechanisms etc.

Answer 5(b)(ii)

Strategic due diligence

Strategic due diligence tests the strategic rationale behind a proposed transaction and analyses whether the deal is commercially viable, whether the targeted value would be realized. It considers factors such as value Creation Opportunities, Competitive Position, Critical Capabilities.

Answer 5(b)(iii)

Financial due diligence provides peace of mind to both corporate and financial buyers, by analysing and validating all the financial, commercial, operational and strategic assumptions being made.

Financial Due Diligence includes review of accounting policies, review of internal audit procedures, quality and sustainability of earnings and cash flow, condition and value of assets, potential liabilities, tax implications of deal structures, examination of information systems to establish the reliability of financial information, internal control systems etc.

The tax due diligence comprises an analysis of:

- tax compliance

- tax contingencies and aggressive positions
- transfer pricing
- identification of risk areas
- tax planning and opportunities.

Question 6

(a) The recognised stock exchange in your city wants to put restrictions on voting rights of its members to be exercised in a meeting and on their right to appoint a proxy.

You are required to state whether the restrictions on voting rights are permissible and on what matters ? Also state the role of Central Government in this regard. (5 marks)

(b) Ajit retired as a member of Competition Commission of India (CCI) on 31st October, 2014. He was offered the post of Chief Executive in Khetan Ltd. which was earlier a party in proceedings before CCI. Can Ajit join the company with effect from 1st November, 2015 ? There was one more offer to Ajit to join ONGC Ltd., a government company with effect from 4th April, 2015 and ONGC was also a party to the proceedings before CCI. Can Ajit take up this offer ? Give reasons. (5 marks)

(c) Explain briefly the advantages as well as disadvantages of a virtual data room. (5 marks)

Answer 6(a)

In terms of Section 7A of the SCRA, 1956, a recognised stock exchange may make rules or amend any rules made by it to provide for all or any of the following matters, namely:

(a) the restriction of voting rights to members only in respect of any matter placed before the stock exchange at any meeting;

(b) the regulation of voting rights in respect of any matter placed before the stock exchange at any meeting so that each member may be entitled to have one vote only, irrespective of his share of the paid-up equity capital of the stock exchange;

(c) the restriction on the right of a member to appoint another person as his proxy to attend and vote at a meeting of the stock exchange; and

(d) such incidental, consequential and supplementary matters as may be necessary to give effect to any of the matters specified in clauses (a), (b) and (c).

Further as per Section 7A(2), no rules of a recognised stock exchange made or amended in relation to any matter referred to in clauses (a) to (d) of sub-section (1) shall have effect until they have been approved by the Central Government and published by that Government in the Official Gazette and, in approving the rules so made or amended, the Central Government may make such modifications therein as it thinks fit, and on such publication, the rules as provided by the Central Government shall be deemed to

have been validly made, notwithstanding anything to the contrary contained in the Companies Act, 1956 (1 of 1956)

Answer 6(b)

Section 53 L of the Competition Act, deals with Restriction on employment of Chairperson and other Members of Appellate Tribunal in certain cases. The Chairperson and other members of the Appellate Tribunal shall not, for a period of two years from the date on which they cease to hold office, accept any employment in, or connected with the management or administration of, any enterprise which has been a party to a proceeding before the Appellate Tribunal under this Act: Provided that nothing contained in this section shall apply to any employment under the Central Government or a State Government or local authority or in any statutory authority or any corporation established by or under any Central, State or Provincial Act or a Government Company as defined in section 617 of the Companies Act,1956 (1 of 1956).

In the given case Mr. Ajit cannot join the Khetan Ltd on 01.11.2015.

He can join ONGC on 04.04.2015.

Answer 6(c)

Virtual Data Room is a site where all the required data of the prospective buyer are stored in digitalized or electronic form. Due diligence exercise these days is carried out through creation of virtual data room in the form of internet site where all the confidential/ material business information is stored.

Major Advantages of Virtual Data Room

1. Savings in cost
2. Saving in time
3. More Comfort to buyer and Seller
4. Availability of information at any time of the day
5. Enables multiple prospective bidders to access the Virtual Data Room
6. Easy to Set up
7. More Secured
8. Improved Efficiency
9. Copying/printing of documents may be restricted.
10. Closure of Virtual Data Room may happen at any time

Some Disadvantages of Virtual Data Room

1. limited interaction with prospective sellers.
2. lack of clarity of documents loaded on the data-site.
3. inability to copy or print information sometimes becomes a hurdle.
4. access to sensitive information such as contracts to third parties poses legal challenges relating to confidentiality of information.

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CORPORATE RESTRUCTURING, VALUATION AND INSOLVENCY

Time allowed : 3 hours *Maximum marks : 100*

NOTE: *1. Answer ALL Questions.*

2. All references to sections relate to the Companies Act, 2013 unless stated otherwise.

PART A

Question 1

1. (a) Discuss the provisions and powers of Competition Commission of India to impose penalty for non-furnishing of information on combination under the Competition Act, 2002. (5 marks)

(b) Comment on the following :

(i) No offer of buy-back shall be made within a period of 180 days from the date of Board meeting or meeting of shareholders, as the case may be, in respect of the preceding offer of buy-back.

(ii) In the event of forfeiture of the amount lying in the escrow account, the acquirer shall be paid one-third of the amount forfeited in terms of regulation 17(10) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

(iii) An offer in which the acquirer has stipulated a minimum level of acceptance is known as 'conditional offer'. (3 marks each)

(c) "Certain disclosures are required to be made in the first financial statements prepared after the amalgamation orders." Mention such disclosures. (6 marks)

Answer 1(a)

Section 43A of Competition Act 2002 provides that if any person or enterprise who fails to give notice to the Commission under sub-section (2) of section 6, the Commission shall impose on such person or enterprise a penalty which may extend to one per cent of the total turnover or the assets, whichever is higher, of such a combination.

The above provision implies that Competition Commission of India (CCI) is empowered to levy penalties for non-compliance of combination regulations.

Answer 1(b)(i)

As per Section 68(2) of the Companies Act 2013, no offer of buy-back shall be made within a period of one year reckoned from the date of the closure of the preceding offer of buy-back, if any.

Answer 1(b)(ii)

In the event of forfeiture of amount, the entire amount is distributed in the following manner:

- One third of the Escrow account to Target Company;

- One third of the escrow account to the Investor Protection and Education Fund established under SEBI (Investor Protection and Education Fund) Regulations, 2009;
- Residual one third of the escrow account is to be distributed pro-rata among the shareholders who have tendered their shares in the offer.

Answer 1(b)(iii)

An offer in which the acquirer has stipulated a minimum level of acceptance is known as a 'conditional offer'. 'Minimum level of acceptance' implies minimum number of shares which the acquirer desires under the said conditional offer. If the number of shares validly tendered in the conditional offer, are less than the minimum level of acceptance stipulated by the acquirer, then the acquirer is not bound to accept any shares under the offer. In a conditional offer, if the minimum level of acceptance is not reached, the acquirer shall not acquire any shares in the target company under the open offer or the Share Purchase Agreement which has triggered the open offer.

Answer 1(c)

Following disclosures are required to be made in the first financial statements prepared after amalgamation orders are as under:

(i) names and general nature of business of the amalgamating companies;

(ii) effective date of amalgamation for accounting purposes;

(iii) the method accounting used to reflect the amalgamation; and

(iv) particulars of the scheme sanctioned under a statute.

Attempt all parts of either Q.No. 2 or Q.No. 2A

Question 2

(a) Explain the term 'persons acting in concert' (PACs) with reference to SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. (5 marks)

(b) Toko Trading Corporation (TTC) is a listed Japanese corporate entity and is holding 24% paid-up equity in Toko Tara India Pvt. Ltd. TTC wishes to extend external commercial borrowings (ECB) to the extent of USD 4 million to its Indian entity. Can it do so ? Explain your answer with reference to the concept of 'recognised lender' under the ECB Guidelines. (5 marks)

(c) What does the term 'crown jewel' stand for, as a defence strategy in respect of a takeover bid ? (5 marks)

OR (Alternate question to Q.No. 2)

Question 2A

(i) 'General exemptions' under regulation 10 and 'Exemption by board' under regulation 11 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 are one and the same. Comment. (5 marks)

(ii) What are the documents that are required to be filed under the Companies

(Court) Rules, 1959 so as to facilitate the court to sanction the scheme of demerger ? (5 marks)

(iii) "Prior approval of the Reserve Bank of India is required before acquiring controlling stake in a deposit taking NBFC." Do you agree ? Justify your answer. (5 marks)

Answer 2(a)

Person Acting in Concert (PACs) are individual(s)/company (ies) or any other legal entity (ies) who, with a common objective or purpose of acquisition of shares or voting rights in, or exercise of control over the target company, pursuant to an agreement or understanding, formal or informal, directly or indirectly cooperate for acquisition of shares or voting rights in, or exercise of control over the target company. SAST Regulations, 2011 define various categories of persons who are deemed to be acting in concert with other persons in the same category, unless the contrary is established.

Answer 2(b)

A "foreign equity holder" to be eligible as “recognized lender” under the automatic route would require minimum holding of paid-up equity in the borrower company as set out below:

(i) For ECB up to USD 5 million - minimum paid-up equity of 25 per cent held directly by the lender,

(ii) For ECB more than USD 5 million - minimum paid-up equity of 25 per cent held directly by the lender and ECB liability-equity ratio not exceeding 4:1

In the given case Toko Trading Corporation is holding only 24%. It can avail ECB upto 5 million provided it increases its stake in took Tara India Pvt Limited to 25%

Answer 2(c)

In business, when a company is threatened with takeover, the crown jewel defence is a strategy in which the target company sells off its most attractive assets to a friendly third party or spin off the valuable assets in a separate entity. Consequently, the unfriendly bidder is less attracted to the company assets. Other effects include dilution of holdings of the acquirer, making the takeover uneconomical to third parties, and adverse influence of current share prices. The way of implementing this type of strategy, by the target company, is to sell its Crown Jewels to another friendly company (White Knight) and later on, when and if the acquiring company withdraws its offer, buy back the assets sold to the White Knight at a fixed price agreed in advance.

Answer 2A(i)

No it is not one and the same.

Exemptions may be:

- Automatic Exemption (under Regulation 10)
- Exemption by SEBI (Regulation 11)

Regulation 10 prescribes the list of Exemption which is automatic. SEBI may for

reasons recorded in writing, grant exemption, other than the listed grounds under Regulation 10, from the obligation to make an open offer for acquiring shares under these regulations subject to such conditions as the Board deems fit to impose in the *interests of investors in securities and the securities market.*

Answer 2A(ii)

The petition is required to be made in Form No. 40 of the Companies (Court) Rules, 1959. The following documents are necessary for enabling the High Court to sanction the scheme: (Rule 79)

(a) Company Petition (Form No. 40 with Court Fee).

(b) An affidavit verifying petition in Form No. 3.

(c) Scheme.

(d) Memorandum and Articles of Association.

(e) Audited Accounts.

(f) Independent Professional Valuer Report.

(g) Copy of the Chairman's Report in Form No. 35.

(h) Six copies of Form No. 5 being the advertisement of petition and Form No. 6 being the notice of petition to be issued to Regional Director, Department of Company Affairs and Registrar of Companies.

Answer 2A(iii)

As per Non-Banking Financial Companies (Deposit Accepting) (Approval of Acquisition or Transfer of Control) Directions, 2009, any takeover or acquisition of control of a deposit taking NBFC, whether by acquisition of shares or otherwise, or any merger/ amalgamation of a deposit taking NBFC with another entity, or any merger/amalgamation of an entity with a deposit taking NBFC, shall require prior written approval of Reserve Bank of India. The Reserve Bank of India may, if it considers necessary for avoiding any hardship or for any other just and sufficient reason, exempt any NBFC or class of NBFCs, from all or any of the provisions of these Directions either generally or for any specified period, subject to such conditions as the Reserve Bank of India may impose.

Question 3

(a) Yellow Overseas Ltd. (YOL) merged with Yellow India Ltd. (YIL). YOL availed the benefit of amortisation of preliminary expenses only for two years till merger order. Whether YIL is eligible to avail this benefit for the remaining period ? Substantiate your answer. (5 marks)

(b) What is 'observation letter' issued by stock exchanges ? What are the obligations of listed companies in relation to 'observation letter' with reference to merger ? (5 marks)

(c) Ludhiana Berry Ltd. has proposed merger of Jalandhar Berry Ltd. with itself. The merger scheme has been approved by 76% shareholders of Ludhiana Berry Ltd. and 98% shareholders of Jalandhar Berry Ltd. (in value terms). Explain with

the help of relevant provisions and decided cases, whether this will be binding on all the shareholders (including dissenting shareholders). (5 marks)

Answer 3(a)

The benefit of amortization of preliminary expenses under section 35D of Income Tax Act, 1961 are ordinarily available only to the assessee who incurred the expenditure. However, the benefit will not be lost in case the undertaking of an Indian company which is entitled to the amortization is transferred to another Indian company in a scheme of amalgamation within the 10 years/5 years period of amortization. The amount of preliminary expenses of the amalgamating company to the extent not yet written off shall be allowed as deduction to the amalgamated company in the same manner as would have been allowed to the amalgamating company.

Answer 3(b)

Observation letter is a letter on the draft scheme of amalgamation by the stock exchange before the same is filed with the court. It is a no objection letter or letter with some observations on the scheme.

(1) The listed entity desirous of undertaking a scheme of arrangement or involved in a scheme of arrangement, shall file the draft scheme of arrangement, proposed to be filed before any Court or Tribunal under sections 391-394 and 101 of the Companies Act, 1956 or under Sections 230-234 and Section 66 of Companies Act, 2013, whichever applicable, with the stock exchange(s) for obtaining Observation Letter or No-objection letter, before filing such scheme with any Court or Tribunal, in terms of requirements specified by the Board or stock exchange(s) from time to time.

(2) The listed entity shall not file any scheme of arrangement under sections 391-394 and 101 of the Companies Act, 1956 or under Sections 230-234 and Section 66 of Companies Act, 2013 ,whichever applicable, with any Court or Tribunal unless it has obtained observation letter or No-objection letter from the stock exchange(s).

(3) The listed entity shall place the Observation letter or No-objection letter of the stock exchange(s) before the Court or Tribunal at the time of seeking approval of the scheme of arrangement:

The validity of the 'Observation Letter' or No-objection letter of stock exchanges shall be six months from the date of issuance, within which the draft scheme of arrangement shall be submitted to the Court or Tribunal.

Answer 3(c)

Section 391(2) of Companies Act 1956 provides that when the court directs the convening, holding and conducting of a meeting of creditors or members or a class of them, a particular majority of the creditors or members or a class of them should agree to the scheme of compromise or arrangement. As per the aforesaid sub-section, the majority required is the majority in number representing three-fourths in value of the creditors or members or a class of them, as the case may be, present and voting in the meeting so convened either in person, or by proxy. After the said meeting agrees with

such majority, if the scheme is sanctioned, by the court, it shall be binding upon the creditors or members or a class of them, as the case may be.

In the case of Punjab and Haryana High Court in Hind Lever Chemicals Limited and Another [2005] 58SCL 211(Punj. & Har.) court held that in our view, the language of Section 391(2) of the Act is totally unambiguous and a plain reading of this provision clearly shows that the majority in number by which a compromise or arrangement is approved should represent three-fourth in value of the creditors/ shareholders who are 'present and voting' and not of the total value of the shareholders or creditors of the company.

PART B

Question 4

(a) Explain the provisions of the Income-tax Act, 1961 in relation to computation of capital gains arising out of slump sale. (5 marks)

(b) Write a short note on the valuation of stock options under SEBI (Share Based Employee Benefits) Regulations, 2014. (5 marks)

(c) Blue Springs Ltd. incorporated a new company namely Defence Springs Ltd. and transferred its defence component division to it on slump sale basis for a lump sum consideration of ₹255 lakh. The assets and liabilities of the defence component division are as under :

	₹ (in lakh)
Assets :	
Gross value of fixed assets	*410*
Accumulated depreciation till date	*240*
Current assets (other than liquid assets)	*80*
Liquid assets	*30*
Liabilities :	
Trade liabilities	*60*
Secured loans (including short-term loans)	*80*
Short-term loans	*35*

Calculate the following —

(i) Aggregate value of total assets;

(ii) Book value of net assets;

(iii) Networth of the defence component division; and

(iv) Capital gains as per section 50B of the Income-tax Act, 1961. (5 marks)

Answer 4(a)

In comparison to demerger, slump sale is not generally tax efficient as the transfer of assets could be subject to capital gains tax in the hands of the transferor. Where the undertaking being transferred was held for more than 3 years prior to the date of the slump sale, the gains from such a sale would qualify as long-term capital gains, and the

effective rate of tax would be 20%. If the undertaking had been held for 3 years or any period lesser than that, prior to the date of slump sale, then the income would be taxable as short-term capital gains, the effective rate of which is currently 30%. Also, any distribution by the company to its shareholders could attract dividend distribution tax.

Answer 4(b)

Valuation under SEBI (Share Based Employee Benefits) Regulations, 2014

Regulation 17 states that the company granting option to its employees pursuant to ESOS will have the freedom to determine the exercise price subject to conforming to the accounting policies specified in regulation 15. Regulation 15 states that the any company implementing any of the share based schemes shall follow the requirements of the 'Guidance Note on accounting for employee share – based Payments' (Guidance Note) or Accounting Standards as prescribed by the Institute of Chartered Accountants of India (ICAI) including the disclosure requirements.

Answer 4(c)

In case of slump sale, various figures can be calculated keeping an eye on the provisions of section 51B of the Income Tax Act, 1961. The desired values are as under:

(i) Aggregate value of total assets= Depreciated value of depreciable assets+ Book Value of other assets

Aggregate value of total assets= (410-240)+80+30=280

Thus it comes to Rs. 280, 00, 000/-

(ii) Book Value of Net Assets=Net Fixed Assets+ Current Assets

Book Value of Net Assets= 170+110= 280

Thus it comes to Rs. 2,80,00,000/-

(iii) Net Worth of the Defence Component Division= Aggregate value of Total Assets- Value of liabilities

Net Worth of the Defence Component Division= 280-140= 140

Thus it comes to Rs. 140,00,000/-

(iv) Capital Gains as per Section 50B of the Income Tax Act= Net Consideration- Net Worth of the Defence Component Division= Rs. 225-140= 115/-

Thus it comes to Rs. 115,00,000/-

Question 5

(a) White Chicks Ltd. is listed on Bombay Stock Exchange. The management wishes to issue sweat equity shares to the new Chairman and Managing Director for which extra-ordinary general meeting is scheduled on 15th July, 2016.

Based on the following information, calculate the minimum value at which sweat equity shares can be issued, and submit your opinion to the management making your own assumptions, wherever required. Substantiate your answer with relevant provisions of SEBI Regulations.

Particulars	*(₹)*
Average of weekly high and low of the closing prices during last six months as on 'relevant date'	*275.00*
Average of weekly high and low of the closing prices during last six weeks as on 'relevant date'	*285.00*
Average of weekly high and low of the closing prices during last six years as on 'relevant date'	*185.00*
Average of weekly high and low of the closing prices during last two months as on 'relevant date'	*282.00*
Average of weekly high and low of the closing prices during last two weeks as on 'relevant date'	*314.00*
Average of weekly high and low of the closing prices during last two years as on 'relevant date'	*214.00*

(5 marks)

(b) "Market based approach to valuation is adopted for determination of price in the case of preferential allotment, buy-back and open offer. But the market price is not so reliable for the purpose of valuation." In the light of the statement, state the limitations of market based approach particularly in case of preferential allotment, buy-back and open offer. *(5 marks)*

(c) Apart from comprehensive analysis covering the past, present and future earnings and prospects of the company, several other factors are to be taken into account for the valuation of an enterprise.

List out the important factors that deserve consideration for proper valuation of an enterprise. *(5 marks)*

Answer 5(a)

Under the SEBI (Issue of Sweat Equity) Regulations, 2002, the price of sweat equity shares shall not be less than the higher of the following:

(a) The average of the weekly high and low of the closing prices of the related equity shares during last six months preceding the relevant date; or

(b) The average of the weekly high and low of the closing prices of the related equity shares during last two weeks

While calculating the minimum price, following assumptions have been made (in Rs.)

(I) Share of White Chick Limited is listed only on BSE.

(II) Prices given have been considered on relevant date as per SEBI regulations.

(III) The intellectual property or the value addition for which sweat equity shares are proposed to be issued has been valued as per the provisions of SEBI Regulations

Following prices are relevant to decide the minimum price at which shares are to be issued:

The average of the weekly high and low of the closing prices of the related equity shares during last six months preceding the relevant date= INR 275.00

The average of the weekly high and low of the closing prices of the related equity shares during last two weeks preceding the relevant date= INR 314.00

Higher of the two, that is. INR 314/- per share is minimum price at which shares can be issued.

Answer 5(b)

It is important to note that Regulatory bodies have often considered market value as one of the very important basis — Preferential allotment, Buyback, Open offer price calculation under the Takeover Code.

However, Market Price Method is not relevant in the following cases:

- Where the shares are not listed or are thinly traded.
- In case of significant and unusual fluctuations in market price the market price may not be indicative of the true value of the share. At times, the valuer may also want to ignore this value, if according to the valuer; the market price is not a fair reflection of the company's underlying assets or profitability status. The Market Price Method may also be used as a backup for supporting the value arrived at by using the other methods.
- In earlier days due to non-availability of data, while calculating the value under the market price method, high and low of monthly share prices were considered. Now with the support of technology, detailed data is available for stock prices. It is now a usual practice to consider weighted average market price considering volume and value of each transaction reported at the stock exchange.
- If the period for which prices are considered also has impact on account of Bonus shares, Rights Issue, etc., the valuer needs to adjust the market prices for such corporate events.

Answer 5(c)

The process of arriving at this value should include a detailed, comprehensive analysis which takes into account a range of factors including the past, present, and most importantly, the future earnings and prospects of the company, an analysis of its mix of physical and intangible assets, and the general economic and industry conditions. It includes:

(1) The stock exchange price of the shares of the two companies before the commencement of negotiations or the announcement of the bid.

(2) Dividends paid on the shares.

(3) Relative growth prospects of the two companies.

(4) In case of equity shares, the relative gearing of the shares of the two companies.

(5) Net assets of the two companies.

(6) Voting strength in the merged (amalgamated) enterprise of the shareholders of the two companies.

(7) Past history of the prices of shares of the two companies.

PART C

Attempt all parts of either Q.No. 6 or Q.No. 6A

Question 6

(a) Great Ltd. having registered office at Jaipur (Rajasthan), entered into an agreement with Newsome Trading for supply of raw material worth ₹4 crore. It was clearly mentioned in the agreement that all disputes will be referred to Delhi High Court. Now, Great Ltd. has defaulted in payments. The management of Newsome Trading has approached you for opinion about jurisdiction as they want to file recovery suit alongwith winding-up petition. Supporting with decided case laws, advise them. (5 marks)

(b) Constitution of National Company Law Tribunal (NCLT) will usher a new era as far as insolvency issues are concerned and will also open up new professional opportunities for Company Secretaries. Comment. (5 marks)

(c) Subrata, one of the guarantor for debt facilities taken by Great Herald Ltd. is aggrieved by an order of Debt Recovery Tribunal. Advise him about the further course of action. (5 marks)

(d) Debt Recovery Tribunal has passed an order for recovery of ₹5 crore against Prism Ltd. and its directors. What modes of recovery are available to recovery officer ? Advise. (5 marks)

OR (Alternate question to Q.No. 6)

Question 6A

(i) Write a note on the list of contributories in case of compulsory winding-up. (5 marks)

(ii) In relation to insolvency laws, mention any five reforms carried out in India in 21st century. (5 marks)

(iii) Oriental Bank of India (OBI) extended loan of ₹20 crore to Aamran Fabricators Ltd. (AFL). Debt Recovery Tribunal (DRT) has issued order against AFL for recovery of outstanding dues amounting to ₹28.5 crore as against the claim of ₹30 crore filed by OBI. Aggrieved by the order of Debt Recovery Tribunal, AFL wants to file appeal in Debts Recovery Appellate Tribunal under section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Explain the pre-conditions to be fulfilled for filing of an appeal against the order of DRT. (5 marks)

(iv) Mention the other functions of securitisation company or reconstruction company

as per the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. *(5 marks)*

Answer 6(a)

In terms of the provisions of Section 10 of the Companies Act, 1956, the jurisdiction for entertaining winding up petition vests either in the High Court having jurisdiction in relation to the place where the registered office of the company is situated or the District Court of the area subordinate to the High Court, in which the jurisdiction has been vested either by the Act or by the Central Government by notification in the Official Gazette. In *GTC Industries Ltd.* v. *Parasrampuria Trading* (1999) 34 CLA 380 (All HC), it was held that only High Court where the registered office is situated has jurisdiction in winding up, even if there was agreement between parties that dispute between parties will be resolved before High Court where registered office is not situated. Regardless of where agreement is executed, Company Court having jurisdiction over the place where the registered office is situated, will have the jurisdiction to entertain a petition for winding up. *LKP Merchant Financing* v. *Arwin Liquid Gases* (2001) 103 Comp. Cas. 211 (Guj.).

Answer 6(b)

The Companies Act of 2013 envisages a paradigm shift in the process of reconstruction/re-organization. NCLT and NCLAT are constituted under Companies Act 2013. The Establishment of a single forum, which is dedicated to corporate matters, removes the problem of multiple regulators. Besides, Companies Act confers new powers on NCLT. NCLT is an adjudicating authority under Insolvency Code 2016 for insolvency resolution process of corporate and LLPs. NCLT and NCLAT is constituted with effect from Jun 01, 2016.

Professional Opportunities for Company Secretaries:

The establishment of NCLT/NCLAT shall offer various opportunities to Practicing Company Secretaries as they have been authorized to appear before the Tribunal/ Appellate Tribunal.

(1) Practicing Company Secretaries would be eligible to appear for matters which were hitherto dealt with by the High Court viz. mergers, amalgamations and winding up proceedings under the Companies Act.

(2) A Practicing Company Secretary can be appointed as a Technical Member of NCLT, provided he has 15 years working experience as secretary in whole-time practice.

(3) The National Company Law Tribunal has also been empowered to pass an order for winding up of a company. Therefore Practicing Company Secretaries may represent the winding up case before the Tribunal. With the establishment of NCLT, a whole new area of practice will open up for Company Secretary in Practice with respect to advising and assisting corporate sector on merger, amalgamation, demerger, reverse merger, compromise and other arrangements right from the conceptual to implementation level. Company Secretaries in Practice will be able to render services in preparing schemes, appearing before NCLT/ NCLAT for approval of schemes and post-merger formalities.

(4) Since all powers of BIFR have been e ntrusted to NCLT, detecting the Sick companies and providing resolution of the queries and for making reference to the Tribunal for revival and rehabilitation of the Company. The provisions also mandated preparation of scheme and seeking approval from the Tribunal as may be required. Thus the practicing professionals could play a pivot role in the same area.

Answer 6(c)

Section 20 of the Recovery of Debt due to Banks and Financial Institutions Act, 1993 provides that any person aggrieved by an order made, or deemed to have been made, by a Tribunal under this Act, may prefer an appeal to an Appellate Tribunal having jurisdiction in the matter. No appeal shall lie to the Appellate Tribunal from an order made by a Tribunal with the consent of the parties. Every appeal shall be filed within a period of forty-five days from the date on which a copy of the order made, or deemed to have been made, by the Tribunal is received by him and it shall be in such form and accompanied by such fee as may be prescribed. Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

On receipt of an appeal, the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against. The Appellate Tribunal shall send a copy of every order, made by it to the parties to the appeal and to the concerned Tribunal. The appeal filed before the Appellate Tribunal shall be dealt with by it as expeditiously as possible and Endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

In view of this provision, Subrata being aggrieved by the order of Debt Recovery Tribunal may appeal to Appellate Tribunal having jurisdiction in the matter.

Answer 6(d)

Modes of recovery of debts

As per the provisions of Section 25 of the Recovery of Debt due to Banks and Financial Institutions Act, 1993, the Recovery Officer shall, on receipt of the copy of the certificate under sub-section (7) of Section 19, proceed to recover the amount of debt specified in the certificate by one or more of the following modes, namely:

(a) attachment and sale of the movable or immovable property of the defendant;

(b) arrest of the defendant and his detention in prison;

(c) appointing a receiver for the management of the movable or immovable properties of the defendant.

Answer 6A(i)

On winding up a list called the list of contributories is prepared by the liquidator and settled by the Court in a compulsory winding up. In a voluntary winding up the list is both prepared as well as settled by the liquidator. The list consists of two parts, namely:

(a) the list of present members, i.e. those whose names appear on the register of members at the commencement of winding up, called the “A” List, and

(b) the list of past members, i.e. those who ceased to be members of the company within one year before the commencement of winding up, called the "B" List. Past members, therefore, include persons whose shares have been forfeited, surrendered or transferred within twelve months before the commencement of winding up, but not a person who has died.

Answer 6A(ii)

- Reforms in Companies(Amendment)Act, 2002(though not enforced)
- Recommendation by JJ Irani Committee on insolvency aspects in line with UNCITRAL model.
- Reforms under Companies Act, 2013
- Securitisation Act, 2002 brought reforms with respect to non-performing assets
- Insolvency and Bankruptcy Code 2016 got gazetted.

Answer 6A(iii)

Section 18 of the SARFAESI Act, 2002 provides that any person aggrieved, by any order made by the Debts Recovery Tribunal under section 17, may prefer an appeal to an Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal. The Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder.

It may be noted that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less. Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent. of debt referred above.

Answer 6A(iv)

Securitisation or Reconstruction Company may do the following functions also in accordance with Section 10 of the Act:

(a) act as an agent for any bank or financial institution for the purpose of recovering their dues from the borrower on payment of such fees or charges as may be mutually agreed upon between the parties;

(b) act as a manager referred to in clause (c) of Sub-section (4) of Section 13 on such fee as may be mutually agreed upon between the parties;

(c) act as receiver if appointed by any Court or Tribunal.

It may be noted that no securitization company or Reconstruction Company shall act as a manager if acting as such gives rise to any pecuniary liability.

It is important to note here that Securitization Company or Re¬construction Company which has been granted a certificate of registration cannot commence or carry on any business other than that of securitization or asset reconstruction without prior approval of the Reserve Bank.

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