
**PAPER 4: CORPORATE LAWS AND SECRETARIAL PRACTICE
NOVEMBER 1997**

1, 2 and 3 are compulsory.
Answer any four of the rest.

Question 1

Answer any **three** of the following:

- a. With reference to the provisions of the Companies Act, 1956 examine the validity of the following:
D, who is a director already in 19 Public Limited Companies accepts the directorship of the following companies
- BC Private Limited, which is the holding company of a public limited company.
 - RM Company which is an unlimited company.
 - MJ & Company Ltd., as an alternate director. **(6 Marks)**
- b. J, having substantial interest in XYZ Ltd., is appointed as a Sole Selling Agent by the Board of Directors of the company for a period of 5 years. The company's paid up share capital is Rs.49 (Forty nine) crores. The Board of Directors did not place the matter in the AGM, for paucity of time and communicated to J about his appointment, who in turn accepted the appointment.
Explaining the provisions of the Companies Act, 1956 decide:
- Whether the appointment of J is in order?
 - What course of action would you take as the Secretary of the company in case J does not have substantial interest? **(6 Marks)**
- c. XYZ Company Limited calls a meeting of the Board of Directors without giving notice to directors as required under the Companies Act, 1956. The meeting is attended by all the directors. None of the directors of the company objected to the absence of notice. The proceedings of the meeting are ratified later by the Board of Directors at a regularly constituted meeting.
Decide giving reasons for your answer whether:
- the meeting and the proceedings are valued?
 - the Board of Directors are competent to ratify at a later meeting the above proceedings? **(6 Marks)**
- d. Explain clearly the rule of "Ejusdem generis" as applicable in the interpretation of statutes. Do the courts have a discretionary power to apply the rules in a given situation?

Question 2

Answer any two of the following:

- a. Explaining the relevant provisions of MRTP Act, 1969 decide whether the two companies in the following cases can be deemed to be under the same management:
- If ABC Ltd., holds 20% of the equity shares in DJA Co., Ltd.,
 - 2 months preceding the day, when the question of the two companies being under the same management arose, DJA Co., Ltd., had a total of 4 directors on their Board out of whom one Mr.X was also a director of ABC Ltd., and was also father of Mr.Y another director of DJA Co., Ltd., **(8 Marks)**
- b.
- What are the powers of MRTP commission to award compensation to persons who are aggrieved by unfair trade practice adopted by a dealer? Explain the action that can be taken by MRTP Commission to enforce its order awarding compensation.
 - Explain the provisions of Foreign Exchange Regulation Act, 1973 empowering the Central Government to acquire foreign exchange from resident in India.
 - A resident in India acquired foreign exchange by gift from his relative, who is resident in India. Can it be acquired by the Central Government? **(8 Marks)**

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- c. Palay International Ltd., desirous of setting up Indian Joint Ventures with TS & Company in United States, seeks your advice on the procedure to be adopted for the above. Acquaint the company about the procedure to be adopted in this regard as provided in the Foreign Exchange Regulation Act, 1973.

(8 Marks)

Question 3

Answer any **two** of the following:

- a. What are the powers of BIFR to appoint special directors of a company? What are the privileges of such directors under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985? **(7 Marks)**
- b. What is meant by operating agency? When will an operating agency be appointed by BIFR in the case of potentially sick companies? State the action that can be taken by BIFR on receipt of the report of the operating agency. **(7 Marks)**
- c. A sick company is proposed to be rehabilitated by amalgamation. Examine with reference to the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 the following:
- Restrictions on the nature of company that can be amalgamated with the sick company.
 - Approval of shareholders, creditors and employees of the transferor and transferee companies for the scheme of amalgamation.
 - BIFR's power to provide Income – tax benefit.
 - Date on which the scheme will come into effect.

(7 Marks)

Question 4

- a. As the Secretary of your company, what would you like to ensure in an agreement likely to be entered by the marketing department with the dealers? Explain the procedure for registration of a restrictive trade practice agreement, as prescribed under the MRTP Act, 1969. **(7 Marks)**
- b. Under what circumstances can the Securities and Exchange Board of India, under the provisions of the SEBI Act, 1992 take penal action against a stock broker for defaults and against the different persons for insider trading? **(6 Marks)**

Question 5

- a. Calcutta Textiles Limited defaulted in the matter of repayment of matured deposits accepted from the public and the default continues. The subscribed capital and free reserves aggregated to rupees on crore as per its Balance Sheet as on 31st March, 1997. The Board of Directors of the company propose to give a loan of Rs.40 lakhs to its subsidiary company without seeking the approval of the Central Government. Examine with reference to the provisions of the Companies Act, 1956 whether the proposed loan is in order. **(7 Marks)**
- b. The quorum for a general meeting of a company is 10 members personally present accordingly to the provisions in the articles of association of the company. Examine with reference to the relevant provisions of the Companies Act, 1956 whether there is proper quorum at a general meeting of the company which was attended by the following person:
- 7 Members personally present out of which 2 members are also proxies for 5 members; and
 - 5 members represented by proxies who are not members of the company; and
 - one person representing two member companies; and
 - Public trustee representing shares held in a trust.

(6 Marks)

Question 6

- a. Mr. Ram was appointed as Managing Director of Prudential Company Limited in accordance with schedule XII for a period of 5 years with effect from 1st January, 1996 on a monthly remuneration of Rs.30,000. the Board of Directors of the company propose to increase the remuneration of the Managing Director to Rs.40,000 per month with effect from 1st January, 1998. Advise the Board of Directors about the legal requirements under the Companies Act, 1956 to give effect to the proposal. State whether the increased remuneration can be paid as minimum remuneration in the event of loss or inadequacy of profit. **(7 Marks)**

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- b. Mr.X is named as a director for life in the articles of association of M/s. XYZ Private Limited which was incorporated on 1st April, 1977. The articles of association of the company also provide that he cannot be removed by the members in general meeting. Some of the members want to remove “X” by passing an ordinary resolution in general meeting. State with reference to the relevant provisions of the Companies Act, 1956 whether the proposed action is valid. **(6 Marks)**

Question 7

- a. Discuss the powers of the Company Law Board to pass the following orders on applications seeking reliefs for oppression and mismanagement;
- Termination or modification of any agreement between the company on the one hand, and the Managing Director or Director or any other person, on the other.
 - Alteration in the memorandum or articles of the company. **(7 Marks)**
- b. Explain the provisions of the Companies Act, 1956 relating to the preparation of Annual Report of a Government Company. **(6 Marks)**

Question 8

DEJYAS Ltd., has made an offer to acquire all the equity shares of ABC Ltd., at certain price. Members of the company who hold 90% of the share of ABC Ltd., have accepted the offer. The remaining shares are held by 2 NRI's who do not agree to the deal. Explaining the procedure to finalize the deal, state the steps to be taken by the offeror company to acquire shares of dissenting shareholders. Decide also whether DEJYAS Ltd., can acquire all the shares in ABC Ltd., under the provisions of the Companies Act, 1956. **(13 Marks)**

Question 9

- a. XYZ Co., Ltd., owe a sum of Rs.5,000 to S, who assigns this debt to his two creditors viz., R; to an extent of Rs.4,600, and M; to an extent of Rs.400. M makes a demand for his money from the company by giving a legal notice. The company could not meet his (M's) demand or otherwise satisfy him till the expiry of four weeks from the date of notice. M, therefore, moves to the court with a petition for winding up of the company. Referring to the provisions of the Companies Act, 1956 decide whether M's petition can be accepted by the court and company can be wound up. **(7 Marks)**
- b. Mr. Co. Limited could not hold its first Annual General Meeting within 18 months from the date of its incorporation. The Board of Directors of the company by a resolution decide not to call first AGM at all on the ground that most of the directors were outside India on a business trip and since the company was under gestation period it would cost the company heavily.

Referring to the provisions of the Act, as Secretary of the company examine whether

- the Board of Directors decision is legally justified;
- What course of action is open to the company if one of the members writes to the company for holding the meeting though the statutory time limit is over? **(6 Marks)**