

INTERMEDIATE EXAMINATION

JUNE 2009

COMPANY LAW

Time allowed : 3 hours

Maximum marks : 100

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

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

Question 1

Comment on any four of the following :

- (i) The property of the company is the property of the shareholders.
- (ii) The doctrine of ultra vires is a protection to the shareholders.
- (iii) The word 'promoter' is not defined in the Companies Act, 1956 but the same is used in the said Act.
- (iv) Board of directors has no discretion to stop the share transfer.
- (v) Increase in managerial remuneration shall not have any effect unless it is approved by the Central Government. (5 marks each)

Answer 1(i)

A company being a legal person and entirely distinct from its members, is capable of owning, enjoying and disposing of property in its own name. The company is the real person in which all its property is vested, and by which it is controlled, managed and disposed of. Their Lordships of the Madras High Court in *R.F. Perumal v. H. John Deavin*, A.I.R. 1960 Mad. 43 held that "no member can claim himself to be the owner of the company's property during its existence or in its winding-up". A member does not even have an insurable interest in the property of the company. A person, for example, was the holder of nearly all the shares except one of a timber company and was also a substantial creditor. He insured the company's timber in his own name. The timber, having been destroyed by fire, the insurance company was held not liable to him. [See *Macaura v. Northern Assurance Co. Ltd.*, 1925 A.C. 619]. Lord Buckmaster observed in this case that "No shareholder has any right to any item of property owned by the company, for he has no legal or equitable interest therein". In the words of Walton, J.: "The property of the company is not the property of the shareholders, it is the property of the company". [*Gramophone and Typewriter Co. v. Stanley*, (1906) 2 K.B. 856 at 869].

Answer 1(ii)

A company can carry on the business which is stated in the object clause of the memorandum of association. Whatever is not stated in the memorandum as the objects or powers is prohibited by the doctrine of ultra vires. If any act is done beyond the powers given in the memorandum, it is ultra vires i.e. beyond the powers of the company. As a result, an act which is ultra vires is void, and does not bind the company. Neither the company nor the other contracting party can sue on it. Also, the company cannot make it valid, even if every member assents to it. The doctrine of ultra vires is meant to

protect the shareholders of the company in the sense that they can be confident that the money invested by them will be utilized for the purpose of carrying on objects stated in the memorandum and nowhere else.

This doctrine has been used in the famous case of *Ashbury Railway Carriage & Iron Company Ltd. v. Riche* (1878) L.R.7 H.L.653.

Answer 1(iii)

The Companies Act, 1956, does not define the expression 'promoter' but the word promoter has been used in Sections 62, 69, 76, 478 and 519 of the Companies Act, 1956. According to Regulation 2(h) of SEBI (Substantial Acquisition of Shares & Takeover) Regulations, 1997, 'promoter' means:

- (a) any person who is in control of the target company;
- (b) any person named as promoter in any offer document of the target company or any shareholding pattern filed by the target company with the stock exchanges pursuant to the Listing Agreement, whichever is later;

and includes any person belonging to the promoter group as mentioned in Explanation I:

Provided that a director or officer of the target company or any other person shall not be a promoter, if he is acting as such merely in his professional capacity.

Explanation I: For the purpose of this clause, 'promoter group' shall include:

- (a) in case promoter is a body corporate -
 - (i) a subsidiary or holding company of that body corporate;
 - (ii) any company in which the promoter holds 10% or more of the equity capital or which holds 10% or more of the equity capital of the promoter;
 - (iii) any company in which a group of individuals or companies or combinations thereof who holds 20% or more of the equity capital in that company also holds 20% or more of the equity capital of the target company; and
- (b) in case the promoter is an individual -
 - (i) the spouse of that person, or any parent, brother, sister or child of that person or of his spouse;
 - (ii) any company in which 10% or more of the share capital is held by the promoter or an immediate relative of the promoter or a firm or HUF in which the promoter or any one or more of his immediate relative is a member;
 - (iii) any company in which a company specified in (i) above, holds 10% or more, of the share capital; and
 - (iv) any HUF or firm in which the aggregate share of the promoter and his immediate relatives is equal to or more than 10% of the total.

Answer 1(iv)

The power to refuse registration of shares which is conferred on the directors by the articles, is a discretionary power and must be exercised reasonably, and in good faith for the benefit of the company. Unless the contrary is proved, the power is deemed to have been exercised properly (*Berry & Stewart v. Tottenham Hotspur Football and Athletic Co. Ltd.*, 1936, 3 A11 E.R. 554).

The provisions with regard to power of the Board to refuse registration and appeal against refusal are contained in Section 111 of the Companies Act, 1956. It may be noted that though the inherent power of the Board to refuse registration of transfer of shares, if so, authorised by the articles and intimation thereof to the transferor and the transferee has been retained, this right has been sheltered with sufficient safeguards by the Companies Amendment Act of 1988 by requiring companies to categorically state the reasons therefor.

Answer 1(v)

Section 310 provides that in case of a public company or a private company which is a subsidiary of a public company, any provision or an amendment thereof, either in the company's Memorandum or Articles or in an agreement entered into by the company or in any resolution of the shareholders or of the Board, which purports to increase or has the effect of increasing, whether directly or indirectly, the remuneration of any director including a managing or whole-time director, shall not have any effect (a) in case where Schedule XIII is applicable, unless such increase is in accordance with the conditions specified in that schedule; and (b) in any other case, unless it is approved by the Central Government.

Thus, the approval of the Central Government shall not be required if the fixation or the increase in managerial remuneration is in accordance with the conditions specified in Schedule XIII. It may be noted that Schedule XIII does not specify any conditions for increase in remuneration. It simply specifies the limits within which salary, commission and other perquisites can be paid without Government approval.

Question 2

- (a) *Choose the most appropriate answer from the given options in respect of the following :*
- (i) *Auditors of a Government Company is appointed by the —*
 - (a) *Governor of the State*
 - (b) *Accountant General of the State*
 - (c) *Comptroller and Auditor General of India (CAG)*
 - (d) *State Government in consultation with the CAG.*
 - (ii) *Shares passed on to legal heirs by right of inheritance is an act of —*
 - (a) *Transfer of shares*
 - (b) *Transmission of shares*
 - (c) *Surrender of shares*
 - (d) *Forfeiture of shares.*
 - (iii) *A company may appoint a person who is of 75 years of age as its Managing Director provided —*
 - (a) *The approval of Central Government is obtained*
 - (b) *The appointment is unanimously approved by the Board*
 - (c) *The company passes a special resolution in general meeting*

- (d) *The company obtains prior approval of the Registrar of Companies in this regard.*
- (iv) *The compulsory appointment of Company Secretary is required for a company having —*
- (a) *Paid-up capital of Rs.2 crore*
 - (b) *Paid-up capital of Rs.5 crore*
 - (c) *Authorised capital of Rs. 10 crore*
 - (d) *Turnover of Rs.100 crore.*
- (v) *Producer companies are permitted to donate —*
- (a) *To the extent of 3% of the net profit in the preceding year*
 - (b) *To the extent of 3% of the gross profit in the preceding year*
 - (c) *To the extent of 5% of the net profit of the current year*
 - (d) *To the extent of 5% of the gross profit of the preceding year.*
- (vi) *E-form 32 is required to be filed in connection with the cessation or appointment of —*
- (a) *Company Secretary*
 - (b) *Manager*
 - (c) *Independent Director*
 - (d) *All the above.*
- (vii) *Under Section 621A, compounding of offence is not possible when the offence is punishable with —*
- (a) *Imprisonment or fine*
 - (b) *Fine*
 - (c) *Imprisonment only*
 - (d) *None of the above.*
- (viii) *Board meeting of a company can be held, if convenient to its directors —*
- (a) *At any place in the world*
 - (b) *At any place within the city where the registered office is situated*
 - (c) *At any place within India*
 - (d) *Only at the registered office of the company. (1 mark each)*
- (b) *Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :*
- (i) *A resolution when put to vote at a meeting shall be decided by _____ unless a poll is demanded.*
 - (ii) *It is for the Chairman to decide as to the validity of the proxies and his decision will stand, unless it was proved to the _____ to be wrong.*
 - (iii) *The status of a member availing the services of a depository changes from that of a registered holder to that of a _____.*
 - (iv) *Clause 49 of the _____ deals with corporate governance.*

- (v) *Every balance sheet and profit and loss account of a company not being a banking company, shall be signed on behalf of the Board of directors by its manager or secretary, if any, and by not less than _____ director(s) of that company, one of whom shall be managing director, where there is one.*
- (vi) *Where a company borrows without the authority conferred on it by its articles of association, it is an _____ borrowing.*
- (vii) *A company licensed under section 25, cannot alter the provisions of its memorandum of association with respect to its objects except _____.*
- (viii) *The right to claim compensation for any loss sustained by reason of any untrue statement in a prospectus is available only to _____ of the shares on the faith of the prospectus containing the untrue statement.*
(1 mark each)

Answer 2(a)

- (i) (c) Comptroller and Auditor General of India (CAG)
- (ii) (b) Transmission of shares
- (iii) (c) The company passes a special resolution in general meeting
- (iv) (b) Paid-up capital of Rs.5 crore (w.e.f. 15th March, 2009)
- (v) (a) To the extent of 3% of the net profit in the preceding year
- (vi) (d) All of the above
- (vii) (c) Imprisonment only
- (viii) (a) At any place in the world

Answer 2(b)

- (i) A resolution when put to vote at a meeting shall be decided by **show of hands** unless a poll is demanded.
- (ii) It is for the Chairman to decide as to the validity of the proxies and his decision will stand, unless it was proved to the **court** to be wrong.
- (iii) The status of a member availing the services of a depository changes from that of a registered holder to that of a **Beneficial owner**.
- (iv) Clause 49 of the **listing agreement** deals with corporate governance.
- (v) Every balance sheet and profit and loss account of a company not being a banking company, shall be signed on behalf of the Board of directors by its manager or secretary, if any, and by not less than **two** director(s) of that company, one of whom shall be managing director, where there is one.
- (vi) Where a company borrows without the authority conferred on it by its articles of association, it is an **ultra vires** borrowing.
- (vii) A company licensed under section 25, cannot alter the provisions of its memorandum of association with respect to its objects except **with the previous approval of the Central Government in writing**.

- (viii) The right to claim compensation for any loss sustained by reason of any untrue statement in a prospectus is available only to **Subscriber** of the shares on the faith of the prospectus containing the untrue statement.

Question 3

- (a) *Discuss the statement that "it is the duty of those who issue the prospectus to be truthful in all respects."* (8 marks)
- (b) *Enumerate the benefits of depository system.* (8 marks)

Answer 3(a)

It is the duty of those who issue the prospectus to be truthful in all respects. This Golden Rule was enunciated by Kinderseley, V.C. in *New Brunswick, etc., Co. v. Muggeridge*, (1860) 3 LT 651, and has come to be known as the "golden legacy". "Those who issue a prospectus hold out to the public great advantages which will accrue to the persons who will take shares in the proposed undertaking. Public is invited to take shares on the faith of the representation contained in the prospectus. The public is at the mercy of company promoters. Everything must, therefore, be stated with strict and scrupulous accuracy. Nothing should be stated as a fact which is not so and no fact should be omitted, the existence of which might in any degree affect the nature or quality of the privileges and advantages which the prospectus holds out as inducement to take shares. In short, the true nature of the company's venture should be 'disclosed'. If concealment of any material fact has prevented an adequate appreciation of what was stated, it would amount to misrepresentation. Thus, even if every specific statement is literally true, the prospectus may be false if by reason of the suppression of other material facts, it conveys a false impression".

Answer 3(b)

Benefits of depository system

In the depository system, the ownership and transfer of securities takes place by means of electronic book entries. At the outset, this system rids the capital market of the dangers related to handling of paper. The system provides numerous direct and indirect benefits, like:

Elimination of bad deliveries - In the depository environment, once holdings of an investor are dematerialised, the question of bad delivery does not arise i.e. they cannot be held "under objection". In the physical environment, buyer of shares was required to take the risk of transfer and face uncertainty of the quality of assets purchased. In a depository environment good money certainly begets good quality of assets

Elimination of all risks associated with physical certificates - Dealing in physical securities have associated security risks of theft of stocks, mutilation of certificates, loss of certificates during movements through and from the registrars, thus exposing the investor to the cost of obtaining duplicate certificates and advertisements, etc. This problem does not arise in the depository environment.

Immediate transfer and registration of securities - In the depository environment, once the securities are credited to the investors account on pay out, he becomes the legal owner of the securities. There is no further need to send it to the company's registrar for registration.

Faster disbursement of non cash corporate benefits like rights, bonus, etc. – Depository system provides for direct credit of non cash corporate entitlements to an investors account, thereby ensuring faster disbursement and avoiding risk of loss of certificates in transit.

Reduction in brokerage by many brokers for trading in dematerialised securities - Brokers provide this benefit to investors as dealing in dematerialised securities reduces their back office cost of handling paper and also eliminates the risk of being the introducing broker.

Reduction in handling of huge volumes of paper and periodic status reports to investors on their holdings and transactions, leading to better controls.

Elimination of problems related to change of address of investor, transmission, etc.- In case of change of address or transmission of demat shares, investors are saved from undergoing the entire change procedure with each company or registrar. Investors have to only inform their DP with all relevant documents and the required changes are effected in the database of all the companies, where the investor is a registered holder of securities.

Elimination of problems related to selling securities on behalf of a minor - A natural guardian is not required to take court approval for selling demat securities on behalf of a minor.

Question 4

Write short notes on any four of the following :

- (i) *Alteration of objects clause of the memorandum of association*
- (ii) *Buy-back through book building*
- (iii) *Company's register of charges*
- (iv) *Office or place of profit*
- (v) *Advertisement inviting deposits.* (4 marks each)

Answer 4(i)

Alteration of objects clause of the memorandum of association

Earlier for changing the objects of the company, the confirmation of Company Law Board was required. However, the Companies (Amendment) Act 1996 w.e.f. 1.3.1997 has done away with this requirement. Consequently, pursuant to Section 17(1) of the Companies Act, 1956, a company can change its object clause by passing a special resolution and confirmation of Company Law Board for the same is not required. However, the requirement of confining the alteration to the seven point formula as laid down in sub-section (1) of section 17 remains applicable. Therefore, a company may [as laid down in] alter its object clause.

- (1) To carry on its business more efficiently and economically [Section 17(1)(a)]
- (2) To attain its main purpose by new or improved means [Section 17(1)(b)]
- (3) To enlarge or change the local area of its operation [Section 17(1)(c)]
- (4) To carry on some business, which under existing circumstances, may

conveniently or advantageously be combined with the business of the company [Section 17(1)(d)]

- (5) To restrict or abandon any of the objects specified in the memorandum.
- (6) To sell or dispose of the whole or any part of the undertaking or any of the undertakings [Section 17(1)(f)].
- (7) To amalgamate with any other company or body corporate [Section 17(1)(g)]

Answer 4(ii)

Buy-back through book building

Buy-back through book building is one of the methods of buy-back. Following is the procedure for buy-back through book building as per SEBI (Buy-back of Securities) Regulations, 1998:

- (i) Passing of special resolution specifying the maximum price at which the buy-back shall be made.
- (ii) To appoint merchant bankers.
- (iii) To make public announcement at least seven days prior to the commencement of buy-back.
- (iv) To deposit the funds in escrow account before making public announcement.
- (v) To file the copy of public announcement with SEBI within two days of such announcement.
- (vi) The book building process shall be made through an electronically linked transparent facility.
- (vii) The number of bidding centers shall not be less than 30.
- (viii) The offer of buy-back shall remain open for a minimum period of 15 days and maximum of 30 days.
- (ix) After fixation of final buy back price, the same has to be paid to security holders.

Answer 4(iii)

Company's Register of Charges

Every company is required to keep at its registered office a register of all charges (including mortgages) specifically affecting the property of the company and enter therein all charges specifically affecting property of the company and all floating charges on the undertaking or on any property of the company giving in each case a short description of the property charged, the amount of the charge, and the names of the persons entitled to it (Section 143). Further, every company must keep at its registered office, a copy of every instrument creating any charge (Section 136). Inspection of the Register of Charges and of the instrument creating charges can be allowed only during the business hours to any creditor or member of the company without fee and to any other person on payment of a fee of rupees ten (Section 144).

Answer 4(iv)**Office or place of profit**

Section 314(3) of the Companies Act, 1956 defines the term 'office or place of profit'. An office or place held by a director shall be deemed to be an office or place of profit, only if the director obtains from the company anything by way of remuneration over and above the remuneration to which he is entitled as such director. In case the office or place is held by any other person, other than director, if such person holding it obtains from the company anything by way of remuneration, whether as salary, fees, commission, perquisites, rent free accommodation etc.

Section 314 of the Companies Act, 1956 regulates holding any office or place of profit by a director and other specified categories which are related to director. As per the provisions of section 314(1), except with consent of the company given by a Special Resolution,

- (a) no director of a company shall hold any office or place of profit; and
- (b) no partner or relative of any director, no firm in which any director or his relative is a partner, no private company of which any director is a director or member and no director or manager of such private company, shall hold any office or place of profit carrying a total emolument of Rs.10,000 per month or more,
 - (i) under the company; or
 - (ii) under any subsidiary of the company

Answer 4(v)**Advertisement inviting deposits [Rule 4 of the Companies (Acceptance of Deposits) Rules, 1975]**

A company accepting deposits has to issue an advertisement in a leading English Newspaper and in one vernacular newspaper circulating in the state in which the registered office of the company is situated.

The text of the advertisement has to be approved by the Board of Directors which contains the following information:

1. Name of the company.
2. Date of incorporation.
3. Nature of business.
4. Particulars of management of the company.
5. List of directors with their addresses and occupation.
6. Profit position of the company for the past 3 years.
7. Dividend distributed by the company for the past 3 years.
8. Summarised financial positions as in the two audited balance sheets immediately preceding the date of advertisement.
9. Limit up to which a company can raise deposit.

10. Statement by the company that there are no overdue deposits.
11. A declaration to the effect that all the requirements under Companies (Acceptance of Deposit) Rules, 1975 have been complied with.

Question 5

- (a) *What are the liabilities of a person whose name is entered as a member in the register of members of a company limited by shares ?* (5 marks)
- (b) *What are the disadvantages of corporate form of enterprises ?* (5 marks)
- (c) *Define 'foreign company'. What are the documents required to be filed by a foreign company to establish a place of business in India ?* (6 marks)

Answer 5(a)

A member is liable to pay the full nominal value of the shares he holds in a company as and when called up by the company. A member is also liable both under civil law and under criminal law for any misrepresentation, fraud etc. which may, at any stage during his membership, be detected by the company.

The liability of the members becomes unlimited if the number of members falls below the statutory limits i.e., seven in a public company and two in a private company and the company carries on its business for more than 6 months after such reduction in its members. (Section 45).

If a person ceased to be member of a company within one year prior to the commencement of the winding up of the company he is liable to pay on the shares which he held to the extent of the amount unpaid thereon, if:

- (i) on the winding up, debts exist which were incurred while he was a member, and
- (ii) the present members are not able to satisfy the contribution required from them in respect of their shares.

Answer 5(b)**Disadvantages of corporate form of enterprises**

- (i) *Formalities and Expenses* : Incorporation of a company involves complex, cumbersome and detailed legal formalities and procedures involving considerable time and money compared to other form of enterprises.
- (ii) *Limited Accessibility* : The members have restricted accessibility to a company's internal management and day to day administration of the corporate working.
- (iii) *Separation of ownership and control* : Though members have invested in the share capital of a company they have no effective and intimate control over the working of the company as is available in other form of business enterprises.
- (iv) *Greater social responsibility* : The corporate form of business is required to show greater social responsibility in its working and for that purpose are subject to greater control and regulation in the form of audit and filing various returns which will be available to the public in general.

- (v) *Create tax burden* : Irrespective of its size corporates are taxed at higher rates in comparison to other forms of business organization and there is no minimum taxable limit.
- (vi) *Detailed winding up procedure* : Similar to the formation of a company, the winding up of a company also involves expensive, elaborate and time consuming procedure.

Answer 5(c)

A foreign company is a company which is incorporated in a country outside India under the law of that other country and has a place of business in India. [Section 591 of the Companies Act, 1956].

Section 592 of the Companies Act, 1956 lays down that every foreign company which establishes a place of business in India must, within 30 days of the establishment of such place of business, file the following particulars in e-form 44 with the Registrar of Companies at New Delhi and also with the Registrar of Companies of the State in which such place of business is situated:

- (a) a certified copy of the charter, statutes, or memorandum and articles, of the company, or other instrument constituting or defining the constitution of the company; and if the instrument is not in the English language, a certified translation thereof;
- (b) the full address of the registered or principal office of the company;
- (c) a list of the directors of the company and its secretary with full particulars of their names, nationality, their addresses and business occupations;
- (d) the names and addresses of one or more persons resident in India who are authorised to accept service of process and any notices or other documents required to be served on the company; and
- (e) the full address of the principal place of business in India.

Question 6

- (a) *What is a 'proxy' ? Who are entitled to inspect proxies ? In what type of companies proxies are not allowed ?* (8 marks)
- (b) *What are the rights of a retiring auditor ? When is the Central Government empowered to appoint auditor of a company under section 224(3) ?* (8 marks)

Answer 6(a)

The word 'proxy' has two different meanings. Firstly, a proxy means an agent appointed by a member of a company to attend and vote on his behalf at a meeting of the company. Secondly, it is the instrument by which such an agent is appointed. Every member of a company having share capital has a right to appoint a proxy to attend and vote at a general meeting on his behalf.

Persons entitled to inspect proxies

- (i) A director of a company has right to inspect proxies lodged with the company. *Armstrong v. Landmark Corpn. Ltd.* (1967)NSWR13 Australia.

- (ii) Every member entitled to vote at a meeting of the company or on any resolution, is entitled during the period beginning 24 hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect proxies at any time during business hours of the company by giving not less than 3 days notice in writing to the company of his intention to do so.
- (iii) The Court has power to compel the company to give certified copy of proxy forms filed with it so as to enable the complaining member to have his question decided as to who is the right proxy of a member. [*Swadesh Polytextiles v. V K Goel* (1988) 63 Com cases 688: (1988) 1 Com LJ 135 (DB) (Del)].

In the case of a company not having a share capital, this right is available only if the articles make a specific provision for it.

Answer 6(b)

A retiring auditor, for whom it has been proposed that he shall not be re-appointed or that a person other than him be appointed, has been protected under section 225(2) and 225(3) based on the principle of natural justice in the following way:

- (i) right to receive notice of the resolution
- (ii) right to make a written representation to the company with the request of its notification to the company and to members
- (iii) right to get representation circulated among the members.

If no auditors are appointed or re-appointed at an annual general meeting, the Central Government may appoint a person to fill the vacancy [Section 224(3)]. The company is required to give notice to the Central Government within seven days that the power has become exercisable. If a company fails to give such notice, then the company and every officer of the company who is in default shall be punishable with fine upto Rs. 5000/-.

Question 7

- (a) *You are the Secretary of a public limited company. Raja, a member, has lodged a share transfer deed duly stamped and executed by guardian for transfer of shares in favour of Mohan, a minor. The shares are fully paid-up. Will you recommend transfer of shares in favour of the minor? Will your answer be different, if the articles of association of the company contain a provision prohibiting transfer of shares in favour of a minor?* (8 marks)
- (b) *John, the transferee, executed transfer of shares and the transfer deed and the original share certificates were handed over by the transferor to John for lodging with the company. However, the documents were lost in transit. Advise, as a Practising Company Secretary, how John can obtain the shares transferred in his name. Will your advice be different if only the transfer deed is lost and the share certificates are not lost?* (8 marks)

Answer 7(a)

It has been held by the Company Law Board that an agreement in writing for a minor to become a member may be signed on behalf of the minor by his lawful guardian and the registration of transfer of shares in the name of the minor, acting through his or her

guardian, especially where the shares are fully paid cannot be refused on the ground of the transferee being a minor [*Miss Nandita Jain v. Benett Coleman and Co. Ltd.*, Appeal No. 27 of 1972 dated 17.2.78]. Therefore, in the present situation, shares can be transferred in favour of Mohan, a minor.

Articles of Association of any company cannot impose a blanket ban prohibiting transfer of shares in favour of a minor. Such a restriction being unreasonable is not sustainable. Shares are movable property and in case such a restriction is in force, transmission of shares may not take place where the legal heirs are all minors. Thus, the prohibition, if available, in the Articles of Association restricting transfer of shares in favour of a minor is contrary to various legal provisions and liable to be struck down, if questioned before Court of law.

Answer 7(b)

Transfer of shares when transfer deed and share certificates are lost

If the loss of the transfer deed duly stamped and executed by the transferor and transferee along with the original share certificates are lost, the same has to be proved to the satisfaction of the Board of Directors of the company and an indemnity as the Board may require is to be furnished by the transferee along with an application signed with the stamp required for instrument of transfer offered thereon. The company will first issue a duplicate share certificate of the one lost in transit in the first instance and seek no objection of the transferor i.e. holder of the certificate and on receiving the no objection will register the transfer in the name of the transferee and make necessary transfer endorsement on the reverse of the duplicate share certificate issued.

Transfer of shares when only the transfer deed is lost and the share certificate is not lost

In such a case, the company may receive a request from the transferee by way of an application carrying adequate stamp duty. In terms of the first proviso to Section 108(1) of the Act, the procedure is: (1) an application, in writing should be made to the company by the transferee, which should bear stamp duty required for an instrument of transfer. (2) the Board of directors of the company should be satisfied that the instrument of transfer signed by or on behalf of the transferor and by or on behalf of the transferee has been lost. The proof may be in the form of an affidavit from the transferor or the transferee and supported by the purchase or sale note of the broker and the registration receipt issued by the postal authorities. (3) In addition, the company can take an indemnity to safeguard its position.

Question 8

- (a) What is 'sweat equity'? What conditions should be satisfied for issue of sweat equity? Is there any restriction on issue of sweat equity? (8 marks)
- (b) State the provisions of the Companies Act, 1956 regarding any two of the following:
 - (i) Further issue of capital.
 - (ii) Treatment of unclaimed dividend.
 - (iii) Disclosure of interest by directors and recording thereof. (4 marks each)

Answer 8(a)

As per Explanation II of Section 79A(1), sweat equity shares means equity shares issued by a company to its employees or directors at a discount or for consideration other than cash for providing knowhow or making available rights in the nature of intellectual property rights or value additions, by whatever name called. Section 79A of Companies Act, 1956 permits issue of such shares.

A company can issue sweat equity shares, if the following conditions are satisfied:

- (i) Sweat equity can be issued of a class of shares already issued by the company.
- (ii) The issue can be made only if authorized by a special resolution passed by the company in a general meeting.
- (iii) The following are clearly mentioned in the special resolution:
 - (a) number of shares to be issued
 - (b) current market price
 - (c) consideration, if any
 - (d) class or classes of directors or employees to whom such shares are to be issued
- (iv) As on the date of issue, at least one year should have elapsed from the date on which the company was entitled to commence business.
- (v) A company whose shares are listed on a recognized Stock Exchange should comply with the relevant SEBI (Issue of Sweat Equity) Regulations, 2002 while issuing the sweat equity shares with respect to issue of sweat equity shares to employee, promoters, pricing of sweat equity shares, and other procedural aspects such as passing of Special Resolution, Postal Ballot etc.
- (vi) A company whose shares are not listed shall issue sweat equity shares in compliance with the relevant rules provided under Unlisted Companies (issue of Sweat Shares) Rules, 2003.

Restriction on issue of sweat equity shares

As per rule 6 of unlisted Companies (Issue of Sweat Equity Shares) Rules, 2003, a company shall not issue sweat equity shares for more than 15% of the total paid-up equity share capital in a year or shares of the value of Rs.5 crores, whichever is higher except with the prior approval of the Central Government.

Answer 8(b)(i)**Further issue of capital**

Section 81 of the Companies Act provides for the issue of "Rights Shares" and states that whenever at any time after expiry of two years from the incorporation of a company or after the expiry of one year from the first allotment of shares, whichever is earlier, it is proposed to increase the subscribed capital by allotment of further shares, such shares shall be offered to the existing holders of equity shares in proportion to the capital paid-up on their shares at the time of further issue. For listed companies, the information as regards the quantum of such issue and the proportion in which rights shall be offered shall be supplied to the concerned Stock Exchanges in advance.

Section 81(1A) deals with issue of shares to persons other than existing shareholders and provides that a company can issue further shares to persons other than existing shareholders in any manner whatsoever provided —

- (1) The company in General Meeting passes a special resolution to this effect.
- (2) Where only an ordinary resolution has been passed, the approval of the Central Government is obtained by the Board of directors stating that the proposal is most beneficial to the company.

Answer 8(b)(ii)

Treatment of unclaimed dividend

As per Section 205A(1), dividend which has been declared by a company but has not been paid/claimed within 30 days from the date of declaration, by any shareholder, should be transferred to unpaid/unclaimed dividend account within 7 days from expiry of 30 days.

Section 205A(5) of the Companies Act, 1956 provides that any money transferred to the unpaid dividend account of a company which remains unpaid or unclaimed for a period of seven years from the date of such transfer must be transferred by the company to the Investor Education and Protection Fund (IEPF) established by the Central Government under section 205C.

No claims shall lie against the IEPF or the company in respect of individual amounts which were unclaimed and unpaid for a period of seven years from the date they first became due for payment and no payment shall be made in respect of such claims [Explanation to sub-section (2) of section 205C].

Answer 8(b)(iii)

Disclosure of interest by directors and recording thereof

Section 299 of the Companies Act, 1956 provides, that every director of a company who is in any way, whether directly or indirectly concerned or interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into by or on behalf of the company shall disclose the nature of his concern or his interest at a meeting of the Board of directors [Section 299(1)].

The general notice given to the Board is not effective unless it is given and it is brought up and read at the first meeting of the Board after it is given. The notice required to be given under Section 299 of the Act should be in Form No. 24AA which is prescribed by the Companies (Central Governments) General Rules and Forms, 1956.

Such general notice (Form 24AA) shall expire at the end of the financial year in which it is given, but may be renewed for further period of one financial year at a time, by a fresh notice given in the last month of the financial year in which it would otherwise expire.
