

EXECUTIVE PROGRAMME

JUNE 2011

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 liability of member to pay their guaranteed amount arises only when the company has gone into liquidation and not when it is a going concern.*
 - (ii) *The managing director and other directors of a company are not liable to be sued for dues against a company.*
 - (iii) *The competent court of law can entertain a petition for winding-up of an illegal association under company law.*
 - (iv) *A company can be regarded as having enemy character under certain circumstances.*
 - (v) *Preference shares are non-cumulative unless expressly stated to be cumulative.*
- (5 marks each)*

Answer 1(i)

A company limited by guarantee or a “guarantee company” is a registered company having liability of its members limited by its memorandum to such amount as the member may respectively undertake to contribute to the assets of the company in the event of its winding up. Clubs, trade associations and societies for promoting different objects are examples of such a company.

According to sub-section (2) of Section 426, every member of the company shall be liable to contribute to the extent of any sums unpaid on any shares held by him as if the company were a company limited by shares. This is in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound-up.

Answer 1(ii)

A company being a body corporate can sue and be sued in its own name. To sue means to institute legal proceedings against (a person) or to bring a suit in a court of law. All legal proceedings against the company are to be instituted in its own name. Similarly, the company may bring an action against anyone in its own name. A company’s right to sue arises when some loss is caused to the company, i.e. to the property of the company.

As a juristic legal person, a company can sue in its name and be sued by others. In this context, the managing director and other directors are not liable to be sued for dues against a company.

Answer 1(iii)

The law does not recognize illegal association and therefore it cannot be wound up by order of Court. In fact, the Court cannot entertain a petition for its winding up of a company formed in contravention of the provision of Section 4 of the Indian Companies Act, 1913. The winding up of unregistered companies though lawfully formed cannot be done under the provisions of this Act. [*Raghubar Dayal v. The Sarafa Chamber and others* (24 Com. Cas. 388)].

Answer 1(iv)

The facts in question are similar to the facts in *Daimler Co. Ltd. v. Continental Tyre and Rubber Co. (Great Britain) Ltd.* (1916) 2A.C. 307; 32 T.L.R. 624. In one of the questions in debate was, in substance, whether a company which was incorporated in England but whose shareholders (save one) and directors were Germans resident in Germany could sue in this country in time of war between the two countries. Lord Parker of Waddington, expressed the view that “the character of individual shareholders cannot of itself affect the character of the company, but the enemy character of individual shareholders and their conduct may be material on the question whether the company’s agents or the persons de facto in control of its affairs are in fact adhering to, taking instructions from, or acting under the control of enemies.

A company will be regarded as having enemy character, if the persons having de facto control of its affairs are resident in an enemy country, or wherever they may be, are acting under instructions from or on behalf of the enemy.

Answer 1(v)

In case of Cumulative Preference shares, dividend is accumulated if the company does not earn sufficient profit to pay the dividend i.e., if the dividend is not paid in one year it will be carried forward to successive years;

In case of Non-cumulative preference shares, if the company is unable to pay the dividend on preference shares because of insufficient profits, the dividend is not accumulated.

Preference shares are cumulative unless expressly stated otherwise.

According to section 87 of the Companies Act, 1956, dividend shall be deemed to be due on preference shares in respect of any period, whether a dividend has been declared by the company on such shares for such period or not:

- (a) on the last day specified for the payment of such dividend for such period, in the articles or other instrument executed by the company in that behalf; or
- (b) in case no day is so specified, on the day immediately following such period.

Hence, dividend becomes due and accumulated, if the company does not earn sufficient profits. Hence, Preference shares are cumulative unless expressly stated otherwise.

Question 2

- (a) Write the most appropriate answer from the given options in respect of the following :
- (i) Which of the following is not a 'public corporation' within the meaning of company law —
- (a) Life Insurance Corporation of India
 - (b) Damodar Valley Corporation
 - (c) State Trading Corporation of India Ltd.
 - (d) None of the above.
- (ii) All contracts which are purported to be made on behalf of a company before its incorporation are known as —
- (a) Preliminary contracts
 - (b) Provisional contracts
 - (c) Commercial contracts
 - (d) None of the above.
- (iii) Which of the following financial institution shall not be regarded for the purposes of the Companies Act, 1956 as 'public financial institution' (PFI) —
- (a) Life Insurance Corporation of India
 - (b) Infrastructure Development Finance Company Ltd.
 - (c) Unit Trust of India
 - (d) Sundaram Finance Ltd.
- (iv) Which of the following is incorrect as regards creditors of a partnership firm—
- (a) Creditors of a partnership firm are creditors of individual partners
 - (b) A decree against the firm can be executed against the partners jointly and severally
 - (c) Both (a) and (b) above
 - (d) None of the above.
- (v) Under section 252, every public company shall have at least —
- (a) Three directors
 - (b) Two directors
 - (c) Five directors
 - (d) Seven directors.
- (vi) Under section 285, in the case of every company, a meeting of the Board of directors shall be held —
- (a) At least once in every three months
 - (b) At least once in every six months
 - (c) At least once in every four months
 - (d) At least once in every two months.

- (vii) *Appointment of a whole-time Company Secretary is mandatory for every producer company in case where average annual turnover exceeds —*
- ₹ 5 crore in each of three financial years*
 - ₹ 2 crore in each of three financial years*
 - ₹ 10 crore in each of three financial years*
 - ₹ 20 crore in each of three financial years.*
- (viii) *Any political contribution made in contravention of section 293A(5)(a) shall be punishable with fine upto —*
- Three times of the contribution*
 - Two times of the contribution*
 - Four times of the contribution*
 - One time of the contribution.* (1 mark each)
- (b) *Re-write the following sentences after filling-in the blank spaces with appropriate word(s) / figure(s) :*
- The words _____ must be added at the end of its name by a private limited company.*
 - A company formed under an Act of Parliament or State Legislature is called a _____ company.*
 - A subsidiary of a government company is treated as a _____ company.*
 - The quantum of fee prescribed for registration of a company having share capital depends on the _____ of the company to be incorporated.*
 - The application for registration of multi-State co-operative society should be addressed to _____.*
 - Every producer company shall hold its first annual general meeting (AGM) within a period of _____ from the date of its incorporation.*
 - 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 _____.*
 - Register and index of debentureholders should be preserved for _____ after the redemption of the debentures.* (1 mark each)

Answer 2(a)

- (c) State Trading Corporation of India Ltd.
- (a) Preliminary contracts.
- (d) Sundaram Finance Ltd.
- (d) None of the above.
- (a) Three directors

- (vi) (a) At least once in every three months.
- (vii) (a) 5 crore in each of three financial years.
- (viii) (a) Fine upto three times of the contribution.

Answer 2(b)

- (i) The words **Private Limited** must be added at the end of its name by a private limited company.
- (ii) A company formed under an Act of Parliament or State Legislature is called a **Statutory** company.
- (iii) A subsidiary of a government company is treated as a **Government** company.
- (iv) The quantum of fee prescribed for registration of a company having share capital depends on the **Nominal/authorized/registered capital** of the company to be incorporated.
- (v) The application for registration of multi-State co-operative society should be addressed to **the Central Registrar of Co-operative Societies, Krishi Bhawan, New Delhi**.
- (vi) Every producer company shall hold its first annual general meeting (AGM) within a period of **90 days** from the date of its incorporation.
- (vii) 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**.
- (viii) Register and index of debentureholders should be preserved for **15 years** after the redemption of the debentures.

Question 3

Distinguish between any four of the following :

- (i) *'Company' and 'corporation'.*
 - (ii) *'Doctrine of indoor management' and 'doctrine of constructive notice'.*
 - (iii) *'Rights issue' and 'bonus issue'.*
 - (iv) *'Motion' and 'resolution'.*
 - (v) *'Whole-time Company Secretary' and 'Company Secretary in whole-time practice'.*
- (4 marks each)*

Answer 3(i)

'Company' and 'Corporation'

Company – The word Company is used for an association of two or more than two persons for some common object. Section 3 of the Act defines company as company formed and registered under the Companies Act, 1956. Company has two important characteristics are-

- (i) the number of members is more than one, and

- (ii) a member may transfer his share to any person without consent of others.

Generally speaking, an association of persons incorporated according to the relevant law and clothed with legal personality separate from the persons constituting it is known as a corporation. Section 2(7) of the Companies Act, 1956 defines these words as follows:

“Body corporate” or “corporation” includes a company incorporated outside India but does not include—

- (a) a corporation sole;
- (b) a co-operative society registered under any law relating to co-operative societies; and
- (c) any other body corporate not being a company which the Central Government may, by notification in the Official Gazette, specify in this behalf.”

In other words, the expression “Corporation” or “body corporate” is wider than the word ‘company’.

Answer 3(ii)

‘Doctrine of indoor management’ and ‘doctrine of constructive notice’

After registration of the Memorandum and Articles of Association they become public for inspection to the public in the office of the Registrar of Companies. On payment of fees, copies/extracts therefrom can also be obtained from the office of the ROC. Any person, therefore, dealing with the company is supposed to have seen them or to have notice of their contents. This is called Doctrine of Constructive Notice. Thus while an outsider dealing with the company is supposed to have constructive notice of the powers of the company, they are not supposed to know as to whether all the formalities supposed to have been done indoor has been fulfilled or not. This rule is known as doctrine of indoor management. For example, the directors of a Royal British Bank gave bond to Mr. Turquand which they had powers to do under the Articles of Association of the bank only when a resolution authorizing the directors to do so had been passed. In fact, no resolution was passed. Court, in case of Royal British Bank vs. Turquand, decided that an outsider was expected to know the powers of the company and not to see as to whether all the indoor formalities had been duly followed.

Thus while doctrine of constructive notice saves the company from the acts of the outsiders, doctrine of indoor management benefits the outsiders from the irregular acts of the company.

Answer 3(iii)

‘Rights issue’ and ‘bonus issue’

Rights issue – Section 81 of the Companies Act, 1956 provides for the issue of right share and states that whenever at any time after expiry of two years from the incorporation of the 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.

Bonus issue : Bonus share is the capitalization of accumulated profits of the company by issuing fully paid bonus share to the existing shareholders of the company.

Difference

While right issue is to increase capital by inviting existing shareholders to subscribe capital bonus share issued to convert accumulated profits into share capital.

Similarity

The only similarity between the two is that both are issued to the existing shareholders in proportion of their shareholding to the capital paid up at the time of issue.

Answer 3(iv)

‘Motion’ and ‘Resolution’

A motion is a proposition or proposal, subject to amendment, formally submitted to a meeting. When the proposition or the motion with or without any amendment is passed by the meeting, it becomes a resolution. A motion which has been adopted is called a resolution.

A motion must be in writing and signed by its movers. A motion is positive or affirmative form. Generally, the motion is seconded.

A mover of the motion has a right to withdraw it before it is put to vote with the consent of the meeting. He has also right to speak on the motion.

A motion if adopted at the meeting is called a resolution.

Answer 3(v)

‘Whole time company secretary’ and ‘Company secretary in whole-time practice’

<i>Whole time company secretary</i>	<i>Company secretary in whole – time practice is also termed as Practising company secretary</i>
1. A company having a paid up capital of Rs 5 crore and above is required to appoint a whole time company secretary. 2. He should be in the whole time employment of the company. 3. Secretary in whole time employment of a company acts as co-ordinator, statutory compliance officer and administrative officer of the company. 4. Whole time company secretary has to ensure that the provisions of the Companies Act and all other applicable statutes are complied with by the company in which he/she is a whole time company secretary.	Companies having paid up share capital of Rs. 10 lacs and upto Rs 5 crores are required to obtain compliance certificate from a practising company secretary. He is not an employee of any company. There are several areas in which a practising company secretary can render services to the companies. Practising company secretary is responsible for the particular assignments handled by him as assigned to him/her.

Question 4

(a) As on 31st March, 2010, the balance sheet of ABC Ltd. shows the following :

	₹ in Crores
Paid-up share capital	30
Reserves and surplus	40
Reserve for redemption of debenture	20
Capital reserve	10

The company made loan/stood guarantee for loans to other companies as below:

Loan to DEF Ltd. ₹ 15 crore

Guarantee given on behalf of GHK Ltd. ₹ 15 crore

LKP Ltd. approached ABC Ltd. for loan of an amount of ₹ 20 crore.

Advise the management of ABC Ltd. as to whether the company can give loan of ₹20 crore to LKP Ltd. (4 marks)

(b) State the procedure for granting loan by one company to another company. (6 marks)

(c) What is meant by the term 'disqualifying company' under the Companies (Disqualification of Directors under Section 274(1)(g) of Companies Act, 1956) Rules, 2003 ? State the grounds under which the directors are disqualified under the said rules. (6 marks)

Answer 4(a)

According to section 372A of the Companies Act, 1956, a company can give loan/guarantee to company/companies to the extent of 60% of paid-up capital and free reserve or 100% of free reserves whichever is higher with the approval of Board. For any amount beyond these limits approval of the company is required.

The paid up capital of ABC Ltd. is ₹ 30Cr. and its free reserves is ₹ 40 crores.

Board of Directors of ABC Ltd., therefore, can given loan/guarantee upto-

60% of (30+40) crores = 42 crores or

100% of 40 crore = 40 crores whichever is more. Hence ₹ 42 crore is limit beyond which the company needs shareholders approval for giving loan/guarantee.

Existing loans and guarantee-

Loan to DEF Ltd.	₹ 15 crores
Guarantee to GHK Ltd.	₹ 15 crores
Total	₹ 30 crores
Proposed loan to LKP Ltd.	₹ 20 crores
Total	₹ 50 crores

The amount of ₹ 50 crores is beyond the authorized powers of the Board hence approval of the shareholders by a special resolution is required to be passed in General Meeting. In case the company is a listed company such an approval should be taken through postal ballot.

Answer 4(b)

Procedure for granting loan by one company to another:

A company which proposes to make loan in another body corporate must follow the procedure detailed below:

1. Issue notice for Board meeting in writing to every director for the time being in India and to every other director at his usual address in India as per the provisions of Section 286 of the Companies Act.
2. Hold Board meeting to consider the proposal to give loan.
3. If the aggregate amount of proposed loan exceeds the specified limits under Section 372A then fix time, date and venue for holding general meeting to pass the special resolution thereat in that regard.
4. If your company is a listed company then the Special Resolution mentioned above passed shall be passed through postal ballot for giving loans. [Section 192A read with Rule 4(g) of the Companies (Passing of the Resolution by Postal Ballot) Rules, 2001].
5. Issue notice in writing at least twenty one clear days before the date of the General Meeting proposing the special resolution with suitable explanatory statement.
6. In case of listed companies, send three copies of the notice to each Stock exchange, where shares of the company are listed.
7. Hold the General meeting and pass the special resolution.
8. In case of listed company, forward to the Stock exchanges where the shares of the company are listed, copy of the proceedings of the general meeting.
9. File the special resolution in e-form 23 along with the explanatory statement with the concerned Registrar of companies within thirty days of passing the Special Resolution after paying the requisite fee prescribed under Schedule X to the Companies Act, 1956.
10. Ensure that approval of the Public Financial Institution(s) has been obtained before implementing the proposal if the company has taken any term loan from any one of the financial institutions referred to in Section 4A.
11. Ensure that company has not defaulted in complying with the provisions of Section 58A of the Companies Act, 1956.
12. Also ensure that loan to any body corporate is not made at the rate of interest lower than the prevailing bank rate of interest being the standard rate made public under Section 49 of the Reserve Bank of India Act, 1934.

13. The officers authorised for this purpose should comply with all formalities like execution of documents, remittance of money etc.
14. Enter the particulars in respect of every investment or loan made, guarantee given or security provided by the company in relation to any body corporate in a register kept for such purpose in chronological order within 7 days.

Answer 4(c)

According to Rule 2(a) of Companies (Disqualification of Directors under section 274(1)(g) of Companies Act, 1956) Rules, 2003, 'disqualifying company' is a company in which the default has occurred on account of which a Director stands disqualified to be director in other companies. The default will be considered to have occurred:

- (a) Whenever a company fails to file the annual accounts and annual returns, as described in Sub-clause (A) of clause (g) of Sub-section (1) of Section 274, persons who are directors on the last due date for filing the annual accounts and the annual returns for any continuous three financial years commencing on and after the first day of April, 1999, shall be disqualified.
- (b) If a company has failed to repay any deposit, irrespective of the enactment, rules or regulations under which the deposits have been accepted by the companies, or interest thereon, or redeem its debentures, or pay any dividend declared on the respective due dates, and if such failure continues for one year, as described in sub-clause (B) of Clause (g) of Sub-section (1) of Section 274, then the directors of that company shall stand disqualified immediately on expiry of that one year from the respective due dates.

Provided that all the directors who have been directors in the relevant year, from the due date to the expiry of one year after the due date, will be disqualified.

Provided further that disqualification on account of the reasons cited under this Rule shall also apply to the reappointment as a director.

Question 5

- (a) *What is meant by the term 'striking-off' of the name of a company ? Can any aggrieved creditor apply for restoration of the name of the company after 10 years of its striking-off ? If so, how ?* (4 marks)
- (b) *What is the general structure of e-filing process under MCA-21 ?* (4 marks)
- (c) *List out the kind of investigations carried out under the Companies Act, 1956.* (4 marks)
- (d) *Enumerate the circumstances under which the Central Government can order special audit.* (4 marks)

Answer 5(a)

Striking off the name of a company is a short cut method of dissolution. It means striking off the name of a company from the Register of Companies by the Registrar of Companies under section 560, in case the company is defunct company. The only statutory criterion is that the company is not carrying on business or is not in operation.

According to section 560(6) the company having been struck off the register or any member or creditor of such company may make an application to the Court if the company or the member or creditor feels aggrieved by the company having been struck off, for the restoration of the company to the register. Such an application must be made before the expiry of 20 years from the publication in the official gazette of the notice of the striking-off.

The Court may order the name of the company to be restored to the register, if it is satisfied that-

- the company was, at the time of the striking off, carrying on business or in operation; or
- that it is just that the company be restored to the register.

Court orders for restoration when it is satisfied that on restoration the company will be in a position to carry on the business.

Answer 5(b)

E-filing or electronic filing is a key feature of the MCA21 system. An e-form contains certain standardized features. Each e-form contains guidelines for filling up the form. An e-form may be filled in either on line or off line. On line filing implies that the e-form is filled while being connected to My MCA portal through the internet. Off line filling denotes that the e-form is downloaded into users computer and filled later without being connected to internet.

The other requirements include:

E-form requires some mandatory attachments, declaration to the effect that the information and attachments are correct and complete, digital signatures of third parties may be required. Prescribed fees as application will be made either on line or off line. After completion of filing e-form duly signed (Digital Signature) an acknowledgement e-mail is sent to user regarding its approval/rejection.

Answer 5(c)

The Companies Act, 1956 provides for carrying out the following kinds of investigations:

- (a) Investigation of the affairs of the company whose business is being conducted in fraudulent or unlawful manner or in a manner oppressive of any member [section 235 and 237].
- (b) Investigation of the affairs of related companies [section 239].
- (c) Investigation of ownership of the company for the purpose of determining the true persons who are or have been able to control or materially influence the policy of the company or who are or have been financially interested in the success or failure, whether real or apparent of the company [section 247].

Answer 5(d)

Under section 233A, the Central Government can appoint either any Chartered Accountant or company's own auditor to conduct a special audit if in its opinion-

- (i) the affairs of any company are not being managed in accordance with sound business principles or prudent commercial practices, or

- (ii) the company is being managed in a manner likely to cause serious injury or damage to the interests of the trade, industry or business to which it pertains, or
- (iii) the financial position of any company is such as to endanger its solvency.

Question 6

- (a) *“Approval of the government is not always required under section 269 for appointment of a whole-time director by a company having a paid-up capital of ₹ 5 crore.” Discuss. (4 marks)*
- (b) *“A new business cannot be dealt with in an adjourned meeting without permission of the chair.” Do you agree with the statement ? Give reasons. (4 marks)*
- (c) *A single fixed depositholder, after marriage, applied for adding the name of his wife as joint-holder. The company refused to do so. What are the remedies available to the depositholder ? (4 marks)*
- (d) *What do you mean by ‘abridged letter of offer’ ? What should it contain ? (4 marks)*

Answer 6(a)

Where the conditions specified in Parts I to III of Schedule XIII of Companies Act 1956, are met with while appointing whole-time Director, no approval of Central Government is necessary. Section 269(2) provides that no appointment of a person as a managing or whole-time director in a public company or a private company which is subsidiary of public company shall be made except with the approval of Central Government unless such appointment is made in accordance with conditions specified in Parts I to III of Schedule XIII of the Act. Where the provisions of the schedule are satisfied, no approval of Central Government is required.

Answer 6(b)

No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. Since in law an adjourned meeting is a continuation of the original meeting only the business not finished at the original meeting can only be transacted at the adjourned meeting. A fresh business can be dealt only when proper notice is given for a new proposal.

Answer 6(c)

Addition of one or more name(s) as joint holder(s), on a fixed deposit receipt during the period of the fixed deposit is not permissible. Hence, there is no remedy available.

Answer 6(d)

“Abridged letter of offer” means the abridged version of the letter of offer. A listed company is required to send the abridged letter of offer to each and every shareholder who is eligible for participating in the rights issue along with the application form. A company is also required to send detailed letter of offer upon request by any Shareholder.

According to SEBI (Issue Of Capital And Disclosure Requirements) Regulations, 2009 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: Provided that the letter of offer shall be given by the issuer or lead merchant banker to any existing shareholder who has made a request in this regard.

The aforesaid regulations provide that the abridged letter of offer shall contain the disclosures as specified in Part F of Schedule VIII and it shall not contain any matter extraneous to the contents of the offer document.

In addition to the disclosures to be made in case abridged prospectus the abridged letter of offer shall also include the following disclosures as given in Part F of Schedule VIII of aforesaid regulations:

- (a) Provisions pertaining to applications referred to in sub-regulations (2), (3) and (4) of regulation 54;
- (b) Rights entitlement ratio;
- (c) Fractional entitlements;
- (d) Renunciation;
- (e) Application for Additional equity shares;
- (f) Intention of promoters to subscribe to their rights entitlement;
- (g) Statement that a copy of the offer document of the immediately preceding public or rights issue is made available to the public as specified under sub-regulation (1) of regulation 61 and also as a document for public inspection.

Question 7

- (a) *The promoters of a new company have decided to start their company with the name 'i2 Technologies Ltd.'. However, the jurisdictional Registrar of Companies (ROC) has declined to allow the name starting with small alphabets. Is the ROC's contention valid under company law as prevalent in India ? (4 marks)*
- (b) *John, who is a member of Alex Ltd., is of unsound mind. Can the shareholder of unsound mind exercise his voting rights in respect of his membership in the said company ? Give your advice. (4 marks)*
- (c) *Thrive Ltd. is a public limited company, incorporated under the Companies Act, 1956. The Board of directors of the said company has recently decided to insert an article in its articles of association relating to expulsion of a member by the Board of directors of the company where the directors were of the view that the activities or conduct of such a member was detrimental to the interests of the company. Is the Board's decision valid in the eye of law ? (4 marks)*
- (d) *Chatur is a director of Hopes Ltd., a public limited company, registered under the Companies Act, 1956. He wants to inspect the books of account and other books and papers of the company. Can he do so ? Will your answer be different, if the director wants to inspect the books of account through an agent ? (4 marks)*

Answer 7(a)

In accordance with *General Circular No. 6/99 dated 13.5.1999 issued by the Ministry of Law, Justice and Company Affairs*:

ROCs may allow names starting with small alphabets (like i2 Technologies Ltd., etc.) as such names are being increasingly used by many companies in other countries. It should, however, be ensured that the names starting with small alphabets does not have phonetic or visual resemblance to the name of a company in existence.

Earlier name-search for allowing names for companies used to be a manual search based on list of names already in existence on a particular date, names made available by different ROCs (which used to be circulated periodically) etc. The name search is no longer manual. It has become a computerised operation in all ROC offices. In view of this, some of the old constraints (like alphabetical listing) which could be a restrictive factor in the manual system do not exist under the present computerised system.

In the present case ROC's contention of declining the proposed name starting with small alphabets is invalid.

Answer 7(b)

With reference to Table A of Schedule I of Companies Act 1956, a member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee or other legal guardian, and any such committee or guardian may, on a poll, vote by proxy.

In this respect a member of unsound mind may exercise his voting rights in respect of his membership in the said company.

Answer 7(c)

The Ministry of Corporate Affairs while clarifying as to whether a public limited company had powers to insert an article in its Articles of Association relating to expulsion of a member by the Board of Directors of the company had stated that an article for expulsion of a member is opposed to the fundamental principles of the Company Jurisprudence and is ultra vires the company. Such a provision is against the provisions of the Companies Act relating to the rights of a member in a company, the powers of the Central Government as an appellate authority under Section 111 of the Act and the powers of the Court under Sections 107, 395 and 397 of the Companies Act.

According to Section 9 of the Companies Act, the Act overrides the Memorandum and Articles of Association and any provision contained in these documents repugnant to the provisions of the Companies Act, is void.

The Ministry of Corporate Affairs has, therefore, clarified that any assumption of the powers by the Board of Directors to expel a member by alteration of Articles of Association shall be illegal and void.

Considering the abovementioned clarification the Board's decision of Thrive Ltd. is invalid in the eyes of law.

Answer 7(d)

Sub-section (4) of Section 209 provides that books of account and other books and papers should be available for inspection by any director on working days during business hours.

Though generally the director should personally exercise this right of inspection, the right is not so restricted that it can only be exercised personally by the director. In *Vakharia v. Supreme General Film Exchange Co. Ltd.* (1948) 18 Com Cases 34 : AIR 1948 Bom 301 it was held that a director is entitled to take inspection of accounts personally or through an agent provided that there is no reasonable objection to the person chosen and the agent undertakes not to utilise the information obtained by him for any purpose other than the purpose of his principal.

As the right of inspection is a statutory right given under sub-section (4), a director, who is prevented from or refused inspection, may enforce his right through Court.

Question 8

- (a) *Shine Well Ltd. has accepted deposits from the public under the Companies (Acceptance of Deposits) Rules, 1975. The company has now decided to repay some of its deposits before maturity. Can the company do so ? If yes, what are the conditions attached thereto ?* (4 marks)
- (b) *Grow More Ltd. is a government company in which the Central Government and many State Governments in India are members. The company has recently convened its annual general meeting at its registered office. Does the legislature have any access to the annual reports of such a company ? Give your advice.* (4 marks)
- (c) *Daisy Ltd., a company registered under the Companies Act, 1956, has failed to register a charge which requires registration under section 125 and the charge is not registered as per sub-section (1) of section 125. What will be the consequences of such non-registration ?* (4 marks)
- (d) *Rahees, who is a member of Vivek Ltd., a public company, has very recently become an insolvent. Can the insolvent Rahees continue as a member of the company ?* (4 marks)

Answer 8(a)

Deposits are not repayable before maturity. However, in the event of exceptional circumstances the company at its absolute discretion may make premature repayment. The rate of interest payable by the company on such deposits agreed to be repaid before maturity shall be reduced by such rate as may from time to time be specified in the Companies (Acceptance of Deposits) Rules, 1975.

Repayment before the period of maturity was offered at reduced rate of interest in exercise of the power under Clause 11 of the rules framed by the company. The depositor accepted the same. He was estopped from challenging the reduction saying subsequently that his consent was not taken in advance [*Umanath Baliga v. SRP Tools Ltd.*, 2003 CLC 1139: (2003) 47 SCL 146 (CLB)].

Accordingly Shine Well Ltd. can also repay deposits before maturity in exceptional circumstances.

Answer 8(b)

In case of Government companies, the Central Government must place before both the Houses of Parliament an annual report on the working and affairs of each Government company within three months of its annual general meeting together with a copy of the audit report and any comments upon or supplement to such report made by the Comptroller and Auditor General of India. Where a State Government is member of a Government company, the annual report is likewise to be placed before the State Legislature (Section 619A).

Considering this, legislature will have access to the annual reports of Grow More Ltd. a government company.

Answer 8(c)

If a charge which requires registration under Section 125 is not registered as per sub-section (1) of Section 125, the consequences are as follows:

- (a) The charge will be void as against the liquidator (if the company goes into liquidation) and against creditors, but against them only.
- (b) The charge is good against the company and the amount becomes payable immediately.
- (c) Until liquidation, the person seeking to enforce such a charge, has available to him all remedies of a mortgage against the company, though not against other creditors.
- (d) The company may give a subsequent valid mortgage to secure the same debt. But if a subsequent creditor, even with notice of the first charge, takes a registered charge before the first said charge is registered, he obtains priority.
- (e) During liquidation the charge-holder (creditor) assumes the status of an unsecured creditor, as the charge is void against liquidator and creditors.
- (f) The holder of an equitable charge whose charge is void on the ground of non-registration, has no lien on the title deeds or documents deposited with him as the deposit is only ancillary to the void charge.
- (g) Although a security becomes void by non-registration, it does not affect the contract or obligation of the company to repay the money thereby secured. In fact, Section 125 provides that where a charge becomes void by non-registration, the money becomes immediately payable and the company cannot repudiate it on the ground of non-registration.
- (h) Omission to register particulars of charges as required is punishable with fine. The company and every officer of the company or other person who is in default shall be punishable with fine which may extend to five thousand rupees for everyday during which the default continues. A further fine of ₹ 10,000 may be imposed on the company and every officer of the company for other defaults relating to the registration of charges (Section 142).

Answer 8(d)

As insolvent may be a member of a company as long as he is on the register of members, he is entitled to vote, but he loses all beneficial interest in the shares and company will pay dividend on his share to the Official Assignee or Receiver [*Morgan v. Gray* (1953) All E.R. 213].

Similarly, Rahees can continue as a member of the company even after becoming insolvent.
