

Solved Scanner CSEP M-II

Paper No. 4

Solution June-2013

Ans. 1

- (i) Please refer 2000 Dec - [1] (c) (iv) on page no. 4.90

Ans. 1

- (ii) The alteration of articles of association must be bonafide for interest of the Company. If the alteration is not for the interest of the Company, but for majority of Shareholders, then the alteration would be bad.
In other words, an alteration of articles must not discriminate between the majority and minority shareholders so as to give the former an advantage over the latter. [All India Railway mens benefit Fund V. Jamadar Baleshwarnath Bali].

Ans. 1

- (iii) The statement is incorrect, because, a company has a branch office whether in India or outside, the book of account relating to transaction effected at the branch office may be kept at that office. [Section 209 (2)]

Ans. 1

- (iv) A Limited Liability Partnership (LLP) registered in Singapore which is proposing to establish a place of business in Mumbai is a foreign LLP and need to comply with LLP Rules 2009.

As per rule 34 (i), provides that a Foreign Limited Liability Partnership shall, within 30 days of establishing a place of business in India, file with the Registrar in Form No. 27.

Following documents must be submitted to Registrar:

- (1) a copy of certificate of incorporation or registration
- (2) a full address of the registered office or principal office.
- (3) a full address of the office of the Limited Liability Partnership in India.
- (4) a list of partners and designated partners.

Ans. 1

- (v) Please refer 2011 Dec.[1] (c) (a) on page no.

Ans. 2

- (i) The statement is false, because the Company is not a Citizenship Act,1955 or the Constitution of India [State Trading Corporation of India Vs.C.T.O].
- (ii) The statement is false, because all the public companies either issue a prospectus or file statement in lieu of prospectus but a private company does not issue prospectus or statement in lieu of prospectus.
- (iii) The statement is false, because if a private company can be converted into a Public Company by passing a special resolution at its general meeting for approving:

- (a) alteration of articles of association (Section 31)
- (b) change its name (Section 21)
- (c) alteration of memorandum of association (Section 16)

Note:- Approval of Central Government is not required in this case.

Ans. 2 (a) (iv)

The statement is false, because a charge created orally would also require registration. A Board Resolution can also be taken to be the fact of creation of a charge.

Ans.2 (a) (v)

The statement is false, because at present secretarial standard are recommendatory. Once the standard gain acceptability and their importance has been recognised, these would be made mandatory / compulsory.

Ans. 2 (b)

- (i) (d) Fifty
- (ii) (a) All companies
- (iii) (b) Two companies
- (iv) (a) 1/3 of total strength of the Board or two directors (whichever is higher)
- (v) (d) After obtaining Certificate of Commencement of business
- (vi) (d) A member of the company.

Ans.3 (a)

- (i) ₹ 1,000
- (ii) two months
- (iii) ₹ 2,50,000
- (iv) Schedule XIV
- (v) Securities Premium Account.
- (vi) Part II of Schedule V
- (vii) Compensation Committee.
- (viii) Extraordinary General Meetings.

Ans.3 (b) Different types of Meetings under the Companies Act, 1956 are as under:

- (i) Statutory Meeting;
- (ii) Annual General Meeting;
- (iii) Extra- ordinary General Meeting
- (iv) Class Meeting
- (v) Board Meeting.
- (vi) Meeting of Board Committee;
- (vii) Meeting of debentureholder;
- (viii) Meeting of Creditor;
- (ix) Meeting of Contributory in winding up

Ans.3 (c)

Please refer 1999 Dec. 8 (I) on page no. ? and

Please refer 2012 Dec. 3 (d) on page no. ?

Ans. 4 (a)

- (i) Please refer 2008 June 8 (iv) on page no. ?
- (ii) Please refer 2007 June 4 (a) on page no. ?
- (iii) **Pre- Scrutiny** : It is a functionality that is used for checking whether certain core aspects are properly filled in the e-form. Before submitting the e- form for pre-scrutiny the user has to make the necessary attachments in PDF format.
Check Form: By clicking “**CHECK FORM**” the user will be in a position to find out whether the mandatory fields in an e -Form are duly filled - in.
For example, if the user enters alphabets in “Date of appointment of director” field, he / she will be asked to correct that.
- (iv) **“Oral Trust” and “ Written Trust”**: A trust may be declared either orally or through an instrument in writing. However, a trust in relation to movable property can be declared orally by transferring the possession of the property with a direction that the property be held in trust. In regard to a private trust for immovable properties, a written trust deed is a pre - requisite.
- (v) Please refer 2004 Dec [7] (a) on page no. ?

Ans. 5

- (a) Please refer 2002 Dec[1] (c) (i) on page no. ?
- (b) Please refer 2011 June [5] (a) on page no. ?
- (c) Please refer 2005 Dec [3] (a) on page no. ?
Every resolution of the Board delegating the Power must specify:-
 - (i) The total amount of outstanding any one time up to which the money may be borrowed by delegate [Section 292 (2)].
 - (ii) The total amount up to which the funds of the Company may be invested and the nature of the investment which may be made by the delegate under item (d); [Section 292 (3)].
 - (iii) The total amount up to which loans may be made by the delegate; the purpose for which the loans may be made, and the maximum amount of loans which may be made for each such purpose in individual cases item (e) [Section 292 (4)].
- (d) Please refer 2011 June [5] (1) on page no. ?

Ans.6 (i) Intangible means “That cannot be touched.”

Some of the assets are such which cannot be touched and do not have physical existence and are called intangible assets.

For example:

- (i) Goodwill;
- (ii) Brands / trademarks;
- (iii) Mining rights;
- (iv) Licenses and franchise;
- (v) Recipes, formulae, models, designs and prototypes.

(ii) **Fungibility-** As per section 9 of the Depositories Act, 1996 specifies that all securities held in a depository shall be in a fungible form. That is all Certificates of the same security are inter- changeable in the sense that investors lose the right to obtain the exact certificate they surrender at the time of entry into depository.

(iii) Please refer 2010 June [8] (v) on page no.?

(iv) Please refer 2003 Dec [1] (c) (i) on page no. ?

(v) Please refer 2004 Dec [8] (a) (iv) on page no. ?

Ans.7 (a) Please refer 2000 June [3] (i) on page no.?

(b) Please refer 2011 June [4] (b) on page no.? and 1998 Dec [6] (i) on page no. ?

(c) In the given case the objection of the employees is sustainable.

In the case of Bharat Commerce and Industries Ltd. it was held that employees' union which is a registered body and which represents quite a number of the employees employed at the registered office of the company, has the right to appear and to oppose the application on the ground that their interests would be likely to be prejudicially affected if such special resolution would be confirmed by the court. It is always open to the employees concerned to bring it to the notice of the court through their union or even individually, if the company is passing such resolution did not act bona fide so as to enable the court to examine the reason set out in the petition to consider whether it would be just and equitable to confirm such a resolution.

(d) According to Section 294 A A (2), no company shall appoint any individual firm or body corporate, who or which has a substantial interest in the company, as sole selling agent of that Company unless such appointment has been previously approved by the Central Government.

In the present case the paid up share capital of Agro Ltd. is not given.

In case where Agro Ltd's paid up share capital is ₹50 lakhs or more, it can appoint Sell- well Ltd. as its sole selling agent by obtaining,

(a) previous approval of the Central Government; and

(b) consent of the company in general meeting by ordinary resolution.

Answer 8 (a)

Ideally, the date of the Director's Report should be later than the date of Auditors' Report. However, both the dates i.e. the date of the Directors' Report and that of the Auditors' Report could be the same.

If there is any reservation, qualification or adverse remark/comments has been given by the Auditor in the Auditors' Report, then the Board is required to give in its report the fullest information and explanations on the adverse remarks given by the Auditor pursuant to section 217(3). If the date of the Auditors' Report is subsequent to that of the Directors' Report, then it would not be possible for the Board to comply with the above requirement. In light of the above, in the present case, the dating of the Directors' Report and Auditors' Report is not in order.

Answer 8 (b)

A Company Secretary cannot call meetings of members. An act done by the secretary after mentioning the matter to some of the directors, but without any express approval of the directors and without a board meeting being held to consider the question will not be considered the act of directors. Subject to the provisions in the articles, any general meeting of the company can be called only on the authority of a Board resolution. If the secretary calls a meeting without the authority of the Board of Directors it will not be effectual unless the Board ratifies the convening before the meeting is held [Haycraft Gold Reduction & Mining Co., Re. (1900)2Ch.230]. Notice of a general meeting given by secretary without the sanction of the directors or proper authority is invalid [State of Wyoming Syndicate, Re.(1901)2 Ch.431].

Answer 8(c)

Kapil, the branch head is apparently a whole- time employee of the company. When the company proposes to appoint him as a director, he will be in the position of a whole time director of the company and the appointment would require the approval of the Central Government under Section 269 of the Companies Act, 1956 if it is not in accordance with Schedule XIII to the Act. In that case, an application seeking approval to the appointment of whole-time director shall be made to the Central Government in e-Form No. 25-A ,within a period of 90 days of such appointment.

However, approval of the Central Government is not necessary if the appointment is made in accordance with the conditions specified in Schedule XIII and a return in e-Form No. 25C is filed with Registrar within 90 days from the date of such appointment.

Answer 8 (d)

According to Section 295(1) of the Companies Act, 1956, no company ,shall without obtaining the previous approval of the Central Government directly or indirectly, make any loan to or give any guarantee or provide any security in connection with the loan made by any person to or to any other person by any director of such company or of a company which is its holding company or any partner or relative of any such director. However, the Ministry or Corporate Affairs had allowed companies to make house building loans to their Managing Directors and Whole-time Directors without obtaining prior approval of the Central Government under Section 295 of the Companies Act, 1956 on such terms and conditions as are applicable to its officers/employees. Approval of the Central Government will however, be necessary in the case of companies having no such scheme or where the house building loan proposed to be made is not covered by the terms and conditions as applicable to its officers/employees.