Corporate & Allied Laws – May 2015 - CA Final

Question no. 1 is compulsory.
Attempt any five questions from the remaining six questions.
LEVEL OF PAPER – BALANCED BUT TRICKY

1(a) **PQR Ltd is an unlisted public company having paid up share capital of Rs. 80 crores during the preceding financial year 2014-15. The turnover of the company was Rs. 110 crores for the same period. Referring to the provisions of the Companies Act, 2013, answer the following:**

(i) **Is it mandatory for the above company to appoint an internal auditor for the financial year 2015-2016?**

(ii) **What are the qualifications of the Internal Auditor? (6 Marks)**

Ans. (i) It is mandatory for PQR Ltd to appoint Internal Auditor for financial year 2015-16.

(ii) Chartered Accountant or a Cost Accountant or such other professional as may be decided by Board can be appointed as Internal Auditor. However, statutory auditor cannot be appointed as Internal Auditor of company. Employee of company can be appointed as Internal Auditor.

Analysis: Question from Accounts and Audit chapter. ICAI has selected questions pertaining to limit. It is one of them. Good question.

1(b)(i) **Referring to the provisions of the Companies Act, 2013, examine the validity of the following: The Board of Directors of ABC Ltd proposes to declare dividend at the rate of 20% to the equity shareholders, despite the fact that the company has defaulted in repayment of public deposits accepted before the commencement of this Act. (3 Marks)**

Ans. Board of Directors of ABC Limited cannot declare dividend to the equity shareholders as it has made default of Section 74.

Analysis: Question apparently looks simple but it demands understanding provision of Section 123 read along with Section 73 and 74. Most of students do not understand difference between provisions of Section 73 and Section 74. Tricky question. Here, students will find that they know answer but will not be in position to write it perfectly.

1(b)(ii) **WL Limited is facing loss in business during the current financial year 2015-16. In the immediate preceding three financial years, the company had declared dividend at the rate of 8%, 10%, and 12% respectively. To maintain the goodwill of the company, the Board of Directors has decided to declare 12% interim dividend for the current financial year. Examine the applicable provisions of the Companies Act, 2013 and state whether the Board of Directors can do so? (3 Marks)**

Ans. Here, Board of Directors can declare interim dividend of not more than 10%.

Analysis: Another question from dividend. Most of reference books do not contain enough content on topic of dividend. At the same time, question here confuse students that whether interim dividend can be declared from reserve….. Good question. I am loving it.

1(c) What is the required qualification for the appointment of:

(i) The preceding officer

(ii) Member

of the Securities Appellate Tribunal as per the provisions of the Securities and Exchange Board of India (SEBI) Act, 1992? (4 Marks)

Ans. As per Section 15 M of SEBI Act, 1992, a person shall not be qualified for appointment as the Presiding Officer of the Securities Appellate Tribunal unless he:

- Is a sitting or retired Judge of the Supreme Court; or
- Is a sitting or retired Chief Justice of a High Court; or
- Is a sitting or retired judge of a High Court who has completed not less than 7 years of service as a Judge in a High Court.

The Central Government in consultation with the Chief Justice of India or his nominee appoints the Presiding Officer.

Person is qualified for appointment as member of SAT if he is person of ability, integrity, and standing who has shown capacity in dealing with problems relating to securities market and has qualification and experience of corporate law, securities law, finance, economics, or accountancy. Member of the Board or any person holding a post at senior management level equivalent to Executive Director in the Board shall not be appointed as Presiding Officer or Member of SAT during his service with Board or within 2 years from the date on which he ceases to hold office in Board.

Analysis: In my personal opinion, this question is useless. What is purpose of remembering who can be appointed to SAT. Professionals like CA or CS are never required to have utility of this point except he is discharging sovereign function or acting at higher level in government. Minus point for selection of this question.

2(a) Examine the validity of the following appointments with reference to the provisions of the Companies Act, 2013:

(i) The Board of Directors of MNP Limited appointed Ms. Neha as a woman director in the Board meeting held on 10th September, 2014. The said appointment was made to fill the vacancy of the woman director, which had occurred as a result of resignation of Ms. Sheela on 30th June, 2014.

Will your answer differ if the Board Meeting of the company was held on 8th November, 2014? (4 Marks)

(ii) **LKG Limited was incorporated on 5th May, 2014 under the Companies Act, 2013. Mr. Ramanujan was appointed as the first Resident Director of the company in the Board Meeting held on 30th September, 2014. (4 Marks)**

Ans. (i) Section 149 read along with Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014; contain provisions relating to woman director. It suggests that any intermittent vacancy of a woman director shall be filled up by the Board at next Board Meeting or within 3 months from the date of such vacancy, whichever is later.

(ii) LKG Limited should appoint resident director on or before 5th November, 2014 (i.e. within period of 6 months from incorporation). Company has appointed Mr. Ramanujan as resident director within in stipulated time. Company has complied with provisions of resident director and appointment is valid.

Analysis: Resident director and woman director questions were expected being novel concept to Companies Act, 2013. Most of the students who were not aware about MCA circular on Resident director were not able to write answer correctly. For them, question became story telling exercise or gossip. Good balance questions.

2(b)(i) BUI Limited had filed certain documents with the Registrar of Companies. The said documents were authenticated by the ROC and kept on record. In a suit against the company, the ROC produced the said documents in the court of law. BUI Limited intends to raise objection on the said documents on the ground that the documents need to be authenticated with further proof or production of the original document as evidence. Advise BUI Limited. (4 Marks)

Ans. Objection raised by BUI Limited is not valid.

Analysis: Question which you cannot leave it and at the same time, you can attempt it. I like this question very much. Full marks to ICAI for selection of this question. It require through reading of book and not handbook because handbook offers you handful knowledge. CA Final paper is set with expert level knowledge requirement. This question needs practical knowledge too. Cracking question.

2(b)(ii) Explain the provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 on the conditions for issue of 'Indian Depository Receipt'. (4 Marks)

Ans. Please refer SEBI (ICDR) Guideline.

Analysis: Theoretical Question. Write down and increase score. OK rating from my side.

3(a) **The issued and paid up capital of MNC Limited is Rs. 5 crores consisting of 5,00,000 equity shares of Rs. 100 each. The said company has 500 members. A petition was submitted before the Company Law Board signed by 80 members holding 10,000 equity shares of the company for the purpose of relief against oppression and mismanagement by the majority shareholders. Examining the provisions of the Companies Act, 1956, decide whether the said petition is maintainable. Also, explain the impact on the maintainability of the above petition, if subsequently 40 members, who had signed the petition, withdrew their consent. (8 Marks)**

Ans. As per Section 399 of Companies Act, 1956, an application to get relief against oppression and mismanagement can be made by lowest of the following:

- 100 members; or
- 1/10th of total members; or
- Members holding not less than 1/10th of total issued share capital.

Members applying should have paid all the calls and other sums dues on the shares. In this case, 80 members out of 500 total members apply. It satisfies condition of 1/10th of total number of members. Hence, application is valid and maintainable.

The requirement of 100 members or 1/10th of total members is observed at the time of making application. It has been held by the Supreme Court in Rajmundhry Electric Corp. vs. V. Nageshwar Rao, that if some of the members withdraw their consent, it would not affect the maintainability of petition. Petition is valid and it may be proceeded.

Analysis: Routine Question. Same type of question was asked in November 1999, 2008 and May 2004. I do not understand why ICAI select this kind of question in repetitive manner. They could have done it in better way if they would have drafted same question in different manner. Very very poor selection of question here.

3(b)(i) **ABC Limited, a foreign company failed to deliver some desired documents to the Registrar of Companies as required under Section 380 of the Companies Act, 2013. State the provisions of penalty prescribed under the said Act, which can be levied on ABC Limited for its failure. (4 Marks)**

Ans. It is punishable with a fine of Rs. 1,00,000/- to Rs. 3,00,000 and in case of continuing offence, additional fine up to Rs. 50,000/- per day for the period during which the default continues for non-compliance of Section 380 of Companies Act, 2013.

Analysis: Asking penalty. Most of students and faculty never thought about it. Now it is time to think unthinkable. Good and tricky selection of Question.

3(b)(ii) **Mr. Rohan, an Indian Resident individual desires to obtain Foreign Exchange for the following purposes:**

(A) US $ 1,20,000 for studies abroad on the basis of estimates given by the foreign university
(B) Gift remittance amounting US $ 10,000
Advise him whether he can get Foreign Exchange and if so, under what conditions? (4 Marks)

Ans. (A) Mr. Rohan and Indian Resident can withdraw US $ 1,20,000 without any permission or approval.

(B) Mr. Rohan can obtain foreign exchange of US $ 10,000 for gift purpose with prior approval of RBI.

Analysis: Always small question from FEMA based up on limit has become habit of ICAI. OK question. No comment.

4(a) **The Board of Directors of PCM Limited desires to proceed for voluntary winding up of the company and therefore is required to file 'Declaration of Solvency'. Referring to the provisions of the Companies Act, 1956, answer the following:**

(i) **What is meant by declaration of solvency? Also, state the contents of such declaration.**

(ii) **What procedure is required to be followed by the company to give effect to such declaration?**

(iii) **What are the provisions of penalty, if the declaration of solvency is made by the directors without any reasonable grounds? (8 Marks)**

Ans. Please refer paragraph no. 21 of Chapter no. 12 – Winding up.

Analysis: Old is gold. Companies Act, 1956 is still favorite. Always you will find one question from winding. Question is theoretical. No comment.

4(b)(i) **Explain the concept of KMP (Key Managerial Person) as introduced by the Companies Act, 2013. Explain the classes of companies which are required to appoint whole time Key Managerial Person under the provisions of the said Act. (4 Marks)**

Ans. Section 203 of the Companies Act, 2013 read with Rule 8 provide the appointment of Key Managerial Personnel and makes it compulsory for a listed company and every other public company having a paid- up share capital of Rs. 10 or more, to appoint following whole-time key managerial personnel:

- managing director, or Chief Executive Officer or manager and in their absence, a whole-time director;
- company secretary; and
- Chief Financial Officer

Analysis: Another question triggered from limit. Student may note down that in next examination, question pertaining to limit will be asked. It is one of weak area of students.

4(b)(ii) Mr. Chetan retired as a member of Competition Commission of India (CCI) on 31st October, 2014. He was offered the post of Chief Executive Officer in LCD Limited, which was earlier a party in a proceeding before the CCI. Can Mr. Chetan join the company with effect from 1st November, 2015? What will be the position if Mr. Chetan joins MONA Ltd, a Government Company with effect from 1st April, 2015, if MONA Ltd was also a party in a proceeding before the CCI? (4 Marks)

Ans. Mr. Chetan will not be able to accept the offer position of Chief Executive Officer of LCD Ltd. for 2 years (i.e. up to 31st October, 2016) from the date of his cessation as a member of the Competition Commission because LCD Ltd was a party to the proceedings before the Commission.

In case of MONA Limited, answer would be different because it is Government Company. Mr. Chetan can accept the position in company with effect from 1st April, 2015.

Analysis: Routine Question. Same type of question was asked in November 2009 and May 2005, 2007. Again poor selection of question. Novelty in question is missing. Students are happy.

5(a)(i) Some changes in the particulars of a Director, who has already obtained a Director Identification Number have taken place. Now the director wants to incorporate the changes in his DIN in the database maintained by the Central Government in this regard. Describe the procedure to be followed by the Director. (4 Marks)

Ans. In the event of any change in particulars of director who has been allotted DIN shall apply to Central Government within period of 30 days in e-Form DIR-6. The following attachments are mandatory to be filed in all cases:

- Proof of change in particulars
- Copy of verification by the director in Form No. DIR-7
- Proof of Identity of director
- In case of Indian nationals, Income tax PAN is a mandatory requirement for proof of identity.
- In case of foreign nationals, passport is a mandatory requirement for proof of identity.

The e-Form should be certified by a chartered accountant (in whole-time practice) or cost accountant (in whole-time practice) or company secretary (in whole-time practice) by digitally signing the eForm. In case of proofs which are in languages other than Hindi/English, the proofs should be translated in Hindi/ English from professional translator carrying his details (name, signature, address) and seal.

The Central Government, upon being satisfied, after verification of such changed particulars from the enclosed proofs, shall incorporate the said changes and inform the applicant by way of a letter by post or electronically or in any other mode confirming the effect of such change in the electronic database maintained by the Ministry.

The concerned individual shall also intimate the changes in his particulars to the company or companies in which he is a director within 15 days of such change.

Analysis: Smash hit. For selection of this question, I feel proud. It is based on practical exposure. Most of students are not able to write it effectively. Very good selection.

5(a)(ii) Explain the meaning of 'Fraud' in relation to the affairs of a company and the punishment provided for the same in Section 447 of the Companies Act, 2013. (4 Marks)

Ans. For the purpose of Section 447, in relation to affairs of a company or a body corporate, a fraud includes:

- ✓ any act, or omission, or concealment of any fact, or abuse of position;
- ✓ with intent to deceive or to gain undue advantage from, or to injure the interests of the company or its shareholders, or its creditors, or any other person;
- ✓ whether or not any wrongful gain, or any wrong loss.

If any person is found guilty of fraud is punishable with

- ✓ imprisonment for a term which shall not be less than 6 months but which may extend to 10 years and
- ✓ fine which shall not be less than amount involved in fraud, but which may extend to 3 times amount involved in any fraud.

Analysis: Theory question. Question is testing fundamental knowledge of students. No comments for this question.

5(b)(i) Sewak Cycles Limited is a company incorporated four years ago. It has earned profits amounting Rs. 5 lacs, Rs. 8 lacs and Rs. 11 lacs respectively during the last three financial years. The Board of Directors of the company proposes to donate a sum of Rs. 50,000 to a political party. Examine with reference to the provisions of the Companies Act, 2013, whether the proposed donation is within the powers of the Board of Directors of the company. (4 Marks)

Ans. The Board of Directors wants to contribute political contribute Rs. 50,000 during current financial year is well within limit. It is within power of Board.

Analysis: Expected question. But I think that this question could be drafted in better manner. Students find it comfortable.

5(b)(ii) As per provisions of the Banking Regulation Act, 1949, a banking company, in addition to the business of banking, may carry on some general utility services as listed in Section 6. List out any four of the General Utility Services, which a bank may carry on. (4 Marks)

Ans. As per Section6 of Banking Regulation Act, 1949, Banking Company may provide following general utility services:

- Provide safe custody and locker facility
- Consultancy services
- Payment of pension
- Payment of salaries
- Technology based general utility services like tele-banking, phone banking, online banking, home banking, ATM Services and Credit card services
- D'mat services for trading of securities.

Analysis: Theory question. You will find one question from Banking Act. Creative work here. Entire Section 6 is not required to be mentioned. It asks about general utility services. Good question.

6(a)(i) DHP Producer Company Limited, a producer company is having an average turnover of Rs. 7 crores in the last 5 years. Referring to the provisions of the Companies Act, 1956, answer the following:

(A) Is it obligatory for the company to appoint whole time secretary?

(B) What consequences will follow in case the company does not comply with the provisions in relation to the above? (4 Marks)

Ans. DHP Producer Company Limited is required to appoint whole time company secretary as company is having average turnover of Rs. 7 crores. The company and every officer of company are liable for fine for default (if CS is not appointed).

Analysis: Again question based on limit. Students are not good in remembering all limits together.

6(a)(ii) Referring to the provisions of the Companies Act, 2013, answer the following:

(A) Which companies are required to constitute a 'Nomination and Remuneration Committee'?

(B) What is the composition of the above committee? (4 Marks)

Ans. **(A)** Board of directors of following companies shall constitute an audit committee and nomination and remuneration committee (NRC) :

- ✓ All listed companies;
- ✓ all public companies with a paid up capital of Rs.10 Crores or more;
- ✓ all public companies having turnover of Rs.100 Crores or more;

- ✓ All public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding Rs.50 Crores or more.

(B) The Nomination and Remuneration Committee consisting of Three or more Non-Executive Directors out of which not less than one half shall be Independent directors. The chairperson of the company (whether executive or non-executive) may be appointed as a member of the Nomination and Remuneration Committee but shall not chair such Committee.

Analysis: Again question based on limit. Unlimited question based on limit. Lol.

6(b)(i) The Board of Directors of RPS Limited decides to pass a resolution by circulation for allotment of 1,000 equity shares to Mr. A. Draft a specimen Board Resolution to be passed by circulation for this purpose. (4 Marks)

Ans. **RESOLUTION BY CIRCULATION**

RPS LTD.
ADDRESS: REGISTERED OFFICE

To
Mr................................, Director
(Address)

Dear Sir,
The following resolution, which is intended to be passed as a resolution by circulation as provided in Section 175 of the Companies Act, 2013, is circulated herewith as per the provisions of the said section.

If only you are not interested in the resolution, you may please indicate by appending your signature in the space provided beneath the resolution appearing herein below as a separate perforated slip if you are in favour or against the said resolution. The perforated slip may please be returned if and when signed within 7 days of this letter. However, it need not be returned if you are interested in the resolution.

Yours faithfully,
Secretary

RESOLUTION BY CIRCULATION

"RESOLVED that subject to the consent of the shareholders in an extraordinary general meeting and subject to the guidelines issued by the Securities and Exchange Board of India, approval be and is hereby accorded for the issue of 1,000 equity shares of Rs. 10 each aggregating to Rs. 10,000 by private placement to Mr. A."

"RESOLVED FURTHER that an extraordinary general meeting of the company be held on Tuesday the 3rd October, 2015 at 11 a.m. at the registered office of the company to secure the approval of the members in this regard."

"FURTHER RESOLVED that the draft notice of the extraordinary general meeting placed before this meeting and initialled by the Chairman for the purpose of identification be approved and the Secretary of the company be and is hereby authorised to sign and issue the same to all the members whose names appear in the register of members as on 31st August, 2015."

"FURTHER RESOLVED that Mr. R, Company Secretary be and is hereby authorised to comply with the formalities relating to the issue of shares by private placement including the requirements stipulated in the SEBI Guidelines and affixing digital signature in e-Form."

***For/Against**

Signature

*Strike off whichever is inapplicable.

Analysis: For last several attempt, I am observing that ICAI is asking at least one question on drafting aspect. Selection of this question indicates testing of practical approach and knowledge of students. Most of students are poor in drafting.

6(b)(ii) How a trial under the Prevention of Money Laundering Act, 2002 is conducted in Special Courts?

Central Government in consultation with the Chief Justice of the High Court designated one or more Court of Session for trial of offence of money laundering. The schedule offence and the offence punishable under section 4 shall be triable only by the Special Court constituted for the area in which the offence has been committed. Civil court has no jurisdiction to entertain any suit for the matter which director, adjudicating authority or appellant tribunal is empowered. Court cannot grant injunction order. – Section 41

Analysis: Money laundering is pet topic under Allied Law. Looking to its application in now a day's practical life, selection of question is appropriate.

7 Answer any four of the following:

(a) A scheme provides for Amalgamation of PQL International Limited, a foreign company, with DHP Limited, an Indian Company registered under the Companies Act, 1956. Referring to the provisions of the above Act, decide whether the scheme providing amalgamation of a foreign company as a transferor company can be sanctioned by the Court (NCLT) (4 Marks)

Ans. Companies Act, 1956 defines the 'Transferee Company' and 'Transferor Company'. 'Transferee Company' means company defines under Companies Act, 1956. Transferor Company includes any body corporate. Hence, the scheme of amalgamation may provide for transfer of foreign companies to Indian companies.

Analysis: Good question. Many students could not attempt it due to lack of concept clarity.

(b) JKL Research Development Limited is a registered public limited company. The company has a unique business idea emerging from research and development in a new area. However, it is future project and the company has no significant accounting transactions and business activities at present. The company desires to obtain the status of a 'Dormant Company'. Advise the company regarding the provisions of the Companies Act, 2013 in this regard and the procedure to be followed in this regard. (4 Marks)

Ans. Where a company has not filed or fails to File Financial Statements or Annual Return for two financial year consecutively, the ROC shall issue a notice to that company and enter the name of such company in register maintain for Dormant Company. Alternatively, company may apply to get status of Dormant Company. ROC after considering application, issue certificate to company to this effect. Certificate is issued in Form MSC-2.

Procedure of getting status of dormant company

- ✓ Company should call a Board Meeting and call for EGM.
- ✓ Pass resolution and authorise the director to make application for Dormant with ROC.
- ✓ Issue Notice of General Meeting
- ✓ Engage Chartered Accountant to issue statement of affairs.
- ✓ Hold Extra Ordinary General Meeting and pass Special Resolution or consent of 3/4th shareholders in value.
- ✓ File E-form MGT-14 with ROC. After filling of form MGT-14, File Form MCS-1 with the registrar.

Analysis: Selection of this question is in line with practice. Student who is either very well aware or having practical exposure can write the perfect answer. Remember, it tests procedure aspect. WRITING FORM No. is advisable.

(c) List out three matters on which an Auditor of a company has to express his views and comments in his report as per the Companies (Audit and Auditors) Rules, 2014. (4 Marks)

Ans. As per Rule 11 of Companies (Audit and Auditors) Rules, 2014, auditor of company shall express his views and comments following matters in his report:

- whether the company has disclosed the impact, if any, of pending litigations on its financial position in its financial statement;
- whether the company has made provision, as required under any law or accounting standards, for material foreseeable losses, if any, on long term contracts including derivative contracts;
- whether there has been any delay in transferring amounts, required to be transferred, to the Investor Education and Protection Fund by the company.

Analysis: I think majority of sub-questions of question no. 7 are of good quality. Selection of this question is quite good.

(d) Explain the composition and role of the 'Tariff Advisory Committee' under the provisions of the Insurance Act, 1938. (4 Marks)

Ans. Provisions relating to 'Tariff Advisory Committee' is omitted vide Insurance (Amendment) Act, 2015.

Analysis: Why again asking and make student to focus on what is outdated. Can you prepare professional for 21st Century by teaching them subject matter of 19 Century? Poor selection of question and topic.

(e) Explain the Rule of Reasonable Construction with regard to interpretation of statutes. (4 Marks)

Ans. The rule states that exclusive reliance on dictionary meaning or literal meaning may not indicate proper intention of legislature. Sometime literal meaning gives absurd or inconsistent results. In such cases, the Statute should be construed so as to give sensible meaning that is rational and fair, for which, some modification to language and modification in grammatical and ordinary sense of the words may be done. When plain literal interpretation produces absurd result, Court may modify the language to achieve the intention of the Legislature and produce a rational construction.

Analysis: Reasonable question. No comment.