

Paper 4 – Corporate Laws & Secretarial Practice

**Question No.1, 2 and 3 are compulsory. Answer any four from the rest.
(In Q.No.1, 2 and 3 answer any two out of three sub-questions/options)**

Question No.1 Answer any Two of the following:

- (a) Primus Group of Companies has three Companies, viz. Primus Rolling Mills Ltd, Primus Steel Pipe Manufacturers Ltd, and Primus Marketing Company Ltd., All the 3 Companies want to appoint Prem as their MD. State whether such appointments are permissible. **(5 Marks)**

- (b) Working of City Stock Exchange Association Ltd is not being carried on by its Governing Board in public interest. On receipt of representations from various investors and Investors' Association, the Central Government is thinking to withdraw the recognition granted to the said Stock Exchange. You are required to state the circumstances and the procedure for withdrawal of such recognition as per SCRA. Also state the effect of such withdrawal on the contracts outstanding on the date of withdrawal. **(5 Marks)**

- (c) The Governing Body of City Stock Exchange Association Ltd is desirous of putting various restrictions on voting rights of its members to be exercised in a meeting and on their right to appoint a proxy. You are required to state whether the same is permissible. Also state the role of the Central Government in this respect. **(5 Marks)**

Question No.2 Answer any two of the following:

- (a) TKM Exporters of New Delhi is engaged in Export Business. It made certain exports but failed to realize and repatriate to India, the foreign exchange due on its exports. The Adjudicating Authority imposed a penalty under FEMA, 1999. Being aggrieved by the penalty, the said exporter seeks your advice as to the Authority to which appeal can be made and the time limit for making such appeals. You are required to advise on the matter. **(7 Marks)**

- (b) Kale, an Indian National desires to obtain foreign exchange for the following purposes – **(7 Marks)**
 - (i) Remittance of US Dollar 50,000 out of winnings on a lottery ticket.
 - (ii) US Dollar 1,00,000 for sending a tour of a cultural troupe to U.S.A.
 - (iii) US Dollar 50,000 for meeting the expenses of his business tour to Europe.

Advise him, if he can get the Foreign Exchange and under what conditions.

Question No.2 (c) (i)

3 Marks

In a proceeding before CCI involving two pharmaceutical Companies, the Plaintiff requested the Presiding Officer to call upon the services of experts from the pharmaceutical sector to determine the truth of the allegations levelled by it against the Respondent. The Respondent opposed the request on the ground that such action cannot be taken by the CCI. State whether the contention of the Respondent is tenable, under the provisions of the Act.

Question No.2 (c) (ii)

4 Marks

The Central Government has formed an opinion that Mr. CBM (a Member of CCI) has acquired such financial interest as is likely to affect prejudicially his functions as a Member of the CCI and wants to remove him from his office. State whether the Central Government can do so, and if yes, how?

Question No.3 (a) (i)**4 Marks**

What do you understand by “Price Sensitive Information” as contemplated in SEBI Act, 1992? What are the information which can be deemed to be “Price Sensitive Information”?

Question No.3 (a) (ii)**4 Marks**

MGR Ltd wants to issue certain Shares on preferential basis and has sought your advice in respect of pricing the Shares for such issue. State the Guidelines issued by SEBI in respect of pricing of the issue of Shares on a preferential basis.

Question No.3 (b)**4 + 4 = 8 Marks**

Excel Ltd, a Public Limited Company listed with the Mumbai Stock Exchange, wants to make an issue of Equity Shares on preferential basis, pursuant to a scheme approved by the Corporate Debt Restructuring Framework specified by RBI, to various persons as may be selected by the Board of Directors of the Company. Following information relevant to the preferential issue is available –

- (a) Total Number of Equity Shares to be issued: 50 Lakh Equity Shares of Rs.10 each, out of which 30 Lakh Equity Shares will be allotted on 30th June 2008 as fully paid up and the balance 20 Lakh Equity Shares shall be allotted on the same date but paid upto Rs.5 each, and the balance of Rs.5 shall be called upon at a later date and shall be paid up on 30th November 2008.
- (b) Out of the proposed allottees, some persons are holding their Shares in Excel Ltd in physical form, and not in dematerialized form and some persons had sold their entire shareholding in Excel Ltd in January 2008.
- (c) The meeting of the general body of Shareholders for approving the preferential issue was held on 15th March 2008.

From the above information, answer the following queries based on SEBI Guidelines –

1. What would be the lock-in period for the Shares allotted on preferential basis?
2. Who are the persons not entitled for allotment of Shares on preferential basis?

Question No.3 (c)**5 Marks**

Explain the rules of interpretation of the terms “subject to” and “notwithstanding” used in the provisions of an Act. State the effect of the term “notwithstanding anything contained in this Act” used in Sec.408 of the Companies Act, empowering the Central Government to prevent oppression and mismanagement.

Question No. 4 (a)**8 Marks**

Raj is a Director in 14 Public Limited Companies as on 30.07.2007. He continues to be so till 26.09.2007. The following Companies appoint Raj as a Director at their respective AGMs held on dates mentioned against their names –

<u>Company</u>	<u>Date of AGM</u>
MLP Ltd	27.09.2007
PAT (P) Ltd	25.09.2007
Retail Traders Association (Sec.25 Company)	26.09.2007
KMC Ltd	29.09.2007

State the options available to Raj in respect of accepting or not accepting the appointment of the Directors of the above Companies.

Question No. 4 (b)**7 Marks**

What do you understand by the term “Director Identification Number” (DIN)? Describe the procedure to obtain the same as enumerated under the Companies Act, 1956 read with the relevant Rules.

Question No. 5 (a)**8 Marks**

A group of Shareholders has approached you for advice regarding the affairs of LPM Paper Mills Ltd. According to them, the management of the Company is not carrying out its functions in accordance with the prudent commercial practice and if the affairs of the Company are allowed to run in future in the same manner, the Company's solvency would be in danger. They want that a Special Audit be conducted to find out the actual nature of the transactions.

- (a) State as to when a special audit can be directed and by whom.
- (b) Draft an application to be submitted to the appropriate authority in this respect.

Question No. 5 (b)**7 Marks**

Big Ball Ltd, a reputed Public Company, over the years, has performed excellently and its General Reserve is many times more than the Paid Up Capital of the Company. The Chairman of the Company came to know that a group of unscrupulous persons in cornering the Shares of the Company and may lodge them for transfer in their names. It is apprehended that such transfer may lead to change in the composition of Board of Directors which may be prejudicial to the Public Interest. State as to how Big Ball Ltd can block the above stated transfer of shares.

Question No. 6 (a)**8 Marks**

- (i) An Inter-State Co-Operative Society has been incorporated on 01.05.2008 as a Producer Company under the Companies Act. Give your comments on the proposal to have 18 Directors on its Board after incorporation as a Producer Company.
- (ii) Mr. Zameen, a Member of a Producer Company, wants to transfer his Shares. State as to how he can transfer his shares under the provisions of the Companies Act, 1956.
- (iii) A Producer Company wants to issue bonus shares. You are required to state the relevant provisions of the Companies Act, 1956 in this regard.
- (iv) What are the modes of investment from and out of the General Reserves, available to a Producer Company formed and registered u/s 581C?

Question No. 6 (b)**7 Marks**

Amar Textiles Ltd is a Company engaged in manufacture of fabrics. The Company has investments in Shares of other Bodies Corporate including 70% Shares in Amar Cotton Co. Ltd and it has also advanced loans to other Bodies Corporate. The aggregate of all the investments made and loans granted by Amar Textiles Ltd exceeds 60% of its Paid Up Share Capital and Free Reserves, and also exceeds 100% of its Free Reserves. In course of its business requirements, Amar Textiles Ltd has obtained a Term Loan from IDBI and the same is still subsisting. Now the Company wants to increase its holding from 70% to 80% of the Equity Share Capital in Amar Cotton Co. Ltd by purchase of additional 10% Shares from other existing Shareholders.

State the legal requirements to be complied with by Amar Textiles Ltd under the Companies Act, 1956 to give effect to the above proposal.

Will your answer be different if the Company has defaulted in repayment of matured deposits accepted from the public?

Question No. 7(a)**8 Marks**

The last three years' Balance Sheet of PTL Ltd, contains the following information and figures –

	For the year ended (Amounts in Rs.)		
	31.03.2006	31.03.2007	31.03.2008
Paid Up Capital	50,00,000	50,00,000	75,00,000

General Reserve	40,00,000	42,50,000	50,00,000
Credit Balance in Profit & Loss Account	5,00,000	7,50,000	10,00,000
Debenture Redemption Reserve	15,00,000	20,00,000	25,00,000
Secured Loans	10,00,000	15,00,000	30,00,000
Net Profit for the year u/s 349 & 350	12,50,000	19,00,000	34,50,000

In the ensuing Board Meeting scheduled to be held on 05.05.2008, among other items of agenda, following items are also appearing –

- (a) To decide about borrowing from Financial Institutions on long-term basis.
- (b) To decide about contributions to be made to Charitable Funds.

Based on above information, you are required to find out the amount upto which the Board can borrow from Financial Institutions and the amount upto which the Board of Directors can contribute to Charitable Funds during the financial year 2008–09 without seeking the approval in General Meeting.

Question No. 7 (b)

7 Marks

OGC Ltd was a supplier of Raw Material to SAM Ltd, which could not make payment to OGC Ltd, owing to huge losses and financial constraints. Ultimately, SAM Ltd went into liquidation and the Official Liquidator was appointed. OGC Ltd filed a suit for recovery of its dues. The Court awarded a decree in favour of OGC Ltd. Armed with the Court's decree, OGC Ltd approached the Official Liquidator to pay the amount to it in preference over dues of the workmen. The workmen protested the demand of OGC Ltd and contended that their dues rank *pari passu* with the Secured Creditors and will override all other claims of other Creditors even where a decree has been passed. Ascertain the validity of the arguments of the workmen.

Question No. 8 (a)

8 Marks

HPC Ltd, for a number of years was in various types of business. In order to exit from its non-core business, its management decided to hive off the business of Food Processing by demerging the said business with an Associate Company namely, BCD Ltd. Advise the steps the management should take to give effect to the proposed demerger.

Question No. 8(b)(i)

3 Marks

Whether Guarantee Commission paid to a Director is "Remuneration" to the Director requiring Central Government's permission, when the amount of such Commission exceeds the limits prescribed in Sec.309 of the Companies Act?

Question No. 8(b)(ii)

2 Marks

BHP Ltd wants to make the liability of its Directors unlimited. State whether this can be done.

Question No.8(b)(iii)

2 Marks

John is a Director of MNC Ltd which had accepted deposits from public. The financial position of MNC Ltd turned very bad and it failed to repay the deposits which fell due for payment on 10th April 2007 and such repayment has not been made till 5th May 2008. Another Company JKL Ltd wants to appoint the John as its Director at its AGM to be held on 6th May 2008. State whether John can be appointed as a Director of JKL Ltd.

Question No.9 (a)**8 Marks**

LMB Ltd, Kolkata is a multiproduct manufacturing Company having Paid Up Capital of Rs.5 Crores. In order to increase the product portfolio, the said Company intends to procure certain machines and equipments worth Rs.1 Crore from a Partnership Firm, namely, M/s MLPK, in which the son of Managing Director of LMB Ltd is a Partner. The contract for purchase of said machines and equipments is to be placed before the Board of Directors of the Company for its consideration. In view of above facts, explain briefly, the procedure to be followed by LMB Ltd to enter into the said contract.

Question No.9(b)(i) & (ii) Answer any one.**3 Marks**

- (i) Board of Directors of DBM Limited held a Board Meeting on 2nd May 2008 at its Registered Office. State the salient points to be taken into account while drafting the minutes of the said Board Meeting.
- (ii) Draft a Board Resolution for appointment of Mr.Paul as MD for 5 years, with effect from 01.06.2008 of DBM Ltd, passed in the above-stated Board Meeting.

Question 9(c):**4 Marks**

AGM of a Company has been concluded on 30th April 2008. Now the Company is required to submit / file its Annual Return and Annual Accounts with ROC. You are required to state the procedure for such submission / filing.