
**PAPER 4 :CORPORATE LAWS AND SECRETARIAL PRACTICE
MAY 2005**

Examinees are required to answer the questions in the following manner:

- (a) Question Nos. 1, 2 and 3 are compulsory.
- (b) Answer any four from the rest of the questions.

Question 1

Answer any **two** of the following:

- (a) The Annual General Meeting of M/s Robertson Ltd. for laying the Annual accounts thereat for the year ended 31st March, 2004 was not held as the accounts were not ready. In this context:
 - i. Advise the company regarding compliance of the provisions of Section 220 of the Companies Act, 1956 for filing of copies of Annual Accounts with the Registrar of Companies.
 - ii. Will it make any difference in case the Annual Accounts were duly laid before the AGM held on 27th September, 2004 but the same were not adopted by the shareholders? **(5marks)**
- (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 Investor's Association, the Central Government is thinking to withdraw the recognition granted to the said Stock Exchange. You are required to state the circumstances and procedure for withdrawal of such recognition as per the provisions of Securities Contracts (Regulation) Act, 1956 in this regard. Also state the effect of such withdrawal on the contracts outstanding on the date of withdrawal. **(5 marks)**
- (c) Delhi Stock Exchange has refused to grant listing of the shares of ABC Limited but the Exchange has not disclosed any reason therefore. The company wants to challenge the decision of the Stock Exchange in the Civil Court.
Advise the company pursuant to relevant provisions of the Securities Contracts (Regulation) Act, 1956. **(5 Marks)**

Question 2

Answer any **two** of the following:

- (a) Examine, with reference to the provisions of the Foreign Exchange Management Act, 1999, the residential status of the branches mentioned below:
 - i. MKP Limited, an Indian Company having its Registered Office at Mumbai, India established a branch at New York U.S.A. on 1st April, 2004.
 - ii. WIP Ltd., a company incorporated and registered in London established a branch at Chandigarh in India on 1st April, 2004.
 - iii. WIP Ltd.'s Singapore which is controlled by its Chandigarh branch. **(7 Marks)**
- (b) Mr.F, an Indian National desires to obtain foreign exchange for the following purposes :
 - i. Payment of US \$ 10,000 as commission on exports under Rupee State Credit Route.
 - ii. US \$ 30,000 for a business trip to U.K.
 - iii. Remittance of US \$ 2,00,000 for payment as prize money to the winning team in a Hockey Tournament to be held in Australia.Advise him, if he can get the Foreign Exchange and under what conditions. **(7 Marks)**
- (c) Mr.MKP was a member of the Competition Commission of India. He ceased to be such member on 31st March, 2005. Therefore, he was offered the post of Executive Director with appropriate remuneration and perquisites in the following organizations to join his duties on and from 1st July, 2005:
 - (i) HLL Ltd., a private sector public limited company, whose case was disposed off by the Competition Commission under the provisions of the competition Act, 2005 in the month of February, 2005.
 - (ii) Life Insurance Corporation of India.You are required to state with relevant provisions of the competition act, 2002 the option available to Mr. MKP in respect of accepting the above offers. **(7 Marks)**

Question 3

Answer any **two** of the following :

- (a) As on 31st December, 2004, following information and figures were noticed from the Annual Accounts for the year ended 31st March, 2004 of SKP Ltd., a company listed with the Stock Exchange, Mumbai:
- Authorized Share Capital Rs.20.00 Crores comprising of 2 crore Equity share of Rs. 10 each.
 - Paid up share capital Rs.9.00 Crores comprising of 80 lac Equity Shares of Rs.10 each fully paid up and 20 lac Equity Shares of Rs.10 each called and paid up to Rs. 5 each. The total paid up capital is paid up in cash.
 - Securities Premium Account Rs.20.00 Crores.
 - 5 lac fully convertible debentures of Rs.100 each. These debentures are due for conversion on 31st March, 2005 into fully paid Equity Shares of Rs.10 each in the ratio of One Debenture: Two Equity Shares.
 - General Reserve Rs. 30.00 Crores.
 - Fixed Assets Revaluation Reserve Rs.10.00 Crores.
 - Outstanding Liabilities in respect of Bonus to Employees and Workers Rs.25.00 lacs.
 - Outstanding Liabilities in respect of Interest Payable on public deposits comprising of Fixed Deposits from general public Rs. 15.00 lacs.

Following other information is gathered from the books of account and other records of the said Company for the period upto 31st December, 2004:

- The partly paid shares were made fully paid prior to 30th June, 2004
- Bonus to employees and workers was paid on 15th September, 2004.
- Interest on Public Deposits was outstanding on 31st December, 2004.

The Directors of SKP Ltd. wants to issue Bonus Shares on or after 1st April, 2005 in the ratio of 1:1. Advise the Directors on the matter with reference to the guidelines issued by Securities and Exchange Board of India on Bonus Issue. **(8 Marks)**

- (b) Excel Ltd., a public limited company listed with The Stock Exchange, Mumbai, wants to make issue of equity shares on preferential basis pursuant to a scheme approved under Corporate Debt Restructuring framework specified by Reserve Bank of India to various persons as may be selected by the Board of Directors of the company. Following information relevant to the preferential issue is available:
- Total No.of equity shares to be issued: 50 Lac equity shares of Rs.10 each out of which 30 lac equity shares will be allotted on 30th June, 2005 as fully paid up and balance 20 lac equity shares shall be allotted on the same date but paid up to Rs. 5 each and balance Rs. 5 shall be called upon at a later date and shall be paid up on 30th November, 2005.
 - 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, 2005.
 - The meeting of general body of shareholders for approving the preferential issue was held on 15th March, 2005.

Based on the above information you are required to answer the following queries with reference to the SEBI (Disclosure and Investor Protection) Guidelines, 2000:

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

(8 Marks)

- (c)
- Explain the rule of 'ejusdem generis' with regard to interpretation of statutes. **(4 Marks)**
 - Sunrise Industries Ltd. has paid Rs.1,00,000 to a political party as its contribution to fight elections. Can it do so under the provisions of the Companies Act, 1956?

Will it make any difference if the company has advertised its products in the monthly magazine published by the political party? **(4 Marks)**

Question 4

- (a) A majority of the Board of Directors of M/S Bulk Drugs Ltd. have reasons to believe that some of the business activities carried on in the name of the company are prima facie against the interests of the company and its members.

They want the matter to be referred to Central Government in the form of an application for appointment of an Inspector to reach to the bottom of the matter and unveil the truth. In this connection you are required to:

- (i) State the steps required to be taken with reference to the provisions of the Companies Act., 1956.
(ii) Draft an application to be made to the Central Government. **(8 Marks)**

(b)

- i. M/s. LMN Limited has been running in losses and has defaulted payment to its creditors. On 1.8.2004, the company mortgaged its plant and machinery to Mr.Patel, a close friend of the managing director of the company, against payment of his dues of Rs.10 lakhs payable by the company. The other creditors were left in lurch. In the meantime, Mr.Raman (who has not paid by the company for supply of raw material of the value of Rs.50,000) presented a petition for winding up the company before the High Court on 31.12.2004. The company was ordered to be wound up by the court on 30.4.2005. The official Liquidator wants to declare the transaction of mortgage with Mr.Patel as invalid. Will he succeed?

(4 Marks)

- ii. M/s. Iqbal Sons Ltd. Issued shares of the nominal value of Rs.10 per share, out of which Rs.5 was payable on application and balance Rs.5 was payable on call. The call money was invited by the Board of Directors but some shareholders, including a non-executive director, failed to pay the same within the prescribed period. Explain the status of Director who defaulted in paying the call money. **(3 Marks)**

Question 5

- (a) Mr.BPK was appointed as the sole selling agent of M/s KMP Ltd. With effect from 1st January, 2002 for a period of five years. Mr.BPK earned his remuneration as follows during the years 2002 to 2004: **(8 Marks)**

Year	Amount of Remuneration
2002	Rs.4,41,0000
2003	Rs.6,32,000
2004	Rs.7,45,000

On and from 1st January, 2005, the sole selling agency agreement was terminated by M/s. KMP Ltd. You are required to calculate the amount of compensation payable by the said company to Mr.BPK under the provisions of the Companies Act, 1956.

What would be your answer in a case where the said M/S.KMP Ltd. was amalgamated with another company with effect from 1st January, 2005 and Mr.BPK refused to act as the sole selling agent of the amalgamated company after amalgamation. **(8 Marks)**

(b)

- i. Define the expression "Accounting Standards" within the meaning of Companies Act, 1956. **(7 Marks)**
- ii. XYZ Limited did not prepare its Balance Sheet as at 31st March, 2005 and the Profit and Loss account for the year ended on that date in conformity with some of the mandatory Accounting Standards issued by the Institute of Chartered Accountants of India. You are required to state with reference to the provisions of the Companies Act, 1956, the responsibilities of directors and statutory auditor of the company in his regard. **(7 Marks)**

Question 6**(8 Marks)**

- (a)
- i. A two year Producer Company registered under Section 581C of the Companies Act, 1956 wants to donate some amount. The Chief Executive of the Producer Company has approached you to advice him as to how and for what purposes the donation can be made by such company. Also state the monetary restrictions, if any, laid down in the Companies Act, 1956 on making donations by a Producer Company. You are informed that as per the Profit and Loss account of the Producer Company for its last accounting year, net profit was Rs.20.00 lacs.
 - ii. Is it obligatory for every producer company to appoint a whole time secretary under the provisions of the Companies Act, 1956?
- (b) 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 also exceeds 100% of its free reserves. In course of its business requirements, Amar Textiles Ltd. has obtained a term loan from Industrial Development Bank of India (a public financial institution within the meaning of Section 4A of the Companies Act, 1956) 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 provisions of the Companies Act, 1956 to give effect to the above proposal. **(7 Marks)**

Question 7**(8 Marks)**

- (a) Advice M/s Super Specialties Ltd. in respect of the following proposals under consideration of its Board of Directors :
- i. Appointment of Managing Director who is more than 70 years of age;
 - ii. Payment of commission of 4% of the net profits per annum to the ordinary directors of the company;
 - iii. Payment of remuneration to an ordinary director for rendering professional services; and
 - iv. Payment of remuneration of Rs.40,000 per months to the whole time director of the company running in loss and having an effective capital of Rs.95.00 lacs.
- (b) 60% shares of Indo-French Ltd. are held by French Group and balance by an Indian Group. As per Articles of Association of the company both groups had equal managerial powers. The relationship between the two groups soured and the operation s of the company reached a deadlock. The Indian Group approached the Company Law Board for action against the French Group for oppression. Based on these facts, you are required to decide, with reference to the provisions of the Companies Act, 1956 and/ or the decided case laws, the following issues: **(8 Marks)**
- i. Whether the contention of oppression against the French Group by the Indian Group is tenable?
 - ii. What are the powers of the Company Law Board in this regard?

Question 8**(8 Marks)**

- (a) What do you understand by Corporate governance? Explain, how the provisions of the Companies Act, 1956 relating to Audit Committee will help in achieving some of the objectives of Corporate Governance.
- (b) Mr.KMP is director of XLS Ltd. He intends to construct a residential building for his own use. The cost of construction is estimated at Rs.1.50 Crores which Mr. KMP proposes to finance partly from his own sources to the tune of Rs.60 Lacs and the balance Rs.90 lacs from housing finance company. For the purpose of obtaining the loan, he has approached the housing finance company which has in principle agreed to grant the loan, but has put a condition. The condition put by the housing finance company is

that the Company XLS Ltd. of which Mr.KMP on the matter keeping in view the relevant provisions of the Companies Act, 1956. **(7 Marks)**

Question 9

- (a) LMB Ltd., Kolkata is a multiproduct manufacturing company having paid up capital of Rs.5.00 Crores. In order to increase the product portfolio, the said company intends to procure certain machines and equipments worth Rs.1.00 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, you are required to explain briefly the procedure under the provisions of the Companies Act, 1956 to be followed by LMB Ltd. to enter into the said contract. **(8 Marks)**

- (b) **(7 Marks)**
- i. Board of Directors of DBM Limited held a Board Meeting on 2nd May, 2005 at its registered office. You are required to 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 the Managing Director of DBM Limited passed in the above stated board meeting.