
**PAPER 4: CORPORATE LAWS AND SECRETARIAL PRACTICE
NOVEMBER 2004**

Question Nos.1, 2 and 3 are compulsory.
Answer any four questions from the rest.

Question 1

Answer any **two** of the following:

- (a) ABC Ltd. has 12 directors on its board and has the following clause in its Articles of Association:
“The question arising at any meeting of the Board of the Directors or any Committee thereof shall be decided by a majority of votes, except in cases where the companies Act, 1956 expressly provides otherwise”
In a meeting of the Board of Directors of ABC Ltd. 8 directors were present. After completion of discussion on a matter voting was done. 3 directors voted in favour of the motion, 2 directors voted against the motion while 3 directors abstained from voting.
You are required to state with reference to the provisions of the Companies Act, 1956 whether the motion was carried or not. **(5 Marks)**
- (b) Mr. Patel has transferred his shares of a listed company registered in his name to Mr. Mehta. Mr. Mehta has failed to get shares registered in his name before the company declared and paid the dividend on the shares.
Examine with reference to the provisions of Securities Contracts (Regulation) Act, 1956, whether Mr. Patel is entitled to retain the dividend even though he has transferred the shares before declaration of dividend. **(5 Marks)**
- (c) The Rural Electrification corporation New Delhi issued 6 years bonds to public directly and not through any Stock Exchange. Whether the Rural Electrification Corporation can do so? Is it not a violation of Securities Contracts (Regulation) Act, 1956? **(5 Marks)**

Question 2

Answer any **two** of the following:

- (a)
- i. Tomaco Ltd. A vehicles manufacturing company in India has received an order from a transport company in Italy for supply of 100 Trucks on lease. You are required to state, how the said Tomaco Ltd. Can accept such an order. **(3 Marks)**
 - ii. Forex Dealers Ltd. Is an Authorized Person within the meaning of Foreign Exchange Management Act, 1999. Reserve Bank of India issued certain directions to the said Authorised Person to file certain returns, which it failed to file. You are required to state the penal provisions to which the said Authorised Person has exposed itself. **(4 Marks)**
- (b)
- i. Mr. Sekhar resided for a period of 150 days in India during the Financial year 2003-2004 and thereafter went abroad. He came back to India on 1st April, 2004 as an employee of a business organization. What would be his residential status during the financial year 2004-2005? **(3 Marks)**
 - ii. Mr. Atul, an Indian National desires to obtain Foreign Exchange for the following purposes:
 - a) Remittance of US Dollar 10,000 for payment of goods purchased from a party situated in Nepal.
 - b) US Dollar for remitting as commission to his agent in U.S.A for sale of commercial plot situated in Bangalore, consideration in respect of which was received by Mr. Atul by way of foreign currency inward remittance amounting to US Dollar 1,00,000.
Advice him, if he can get the Foreign Exchange and under what conditions. **(4 Marks)**

c) Poly Ltd. (hereinafter referred to as “Seller”), manufacturer of footwear’s entered into an agreement with City Traders (hereinafter referred to as “purchaser”), for sale of its products. The agreement includes, among others, the following clauses: **(7 Marks)**

- i. That the purchaser shall not deal with goods, products, articles, by whatever name called, manufactured by any person other than the Seller.
- ii. That the Purchaser shall not sale the goods manufactured by the Seller outside the municipal limits of the city of Secundrabad.
- iii. That the Purchaser shall sale the goods manufactured by the Seller at the price as embossed on the price label of the footwear. However, the purchaser is allowed to sale the footwear at prices lower than those embossed on the price label.

You are required to examine wit relevant provisions of the Competition Act, 2002, the validity of the above clauses. **(7 Marks)**

Question 3

Answer any **two** of the following:

(a) The last three year’s Balance sheets of RBS Ltd. Contains the follwing information ad figures:

	As at 31.03.2002	As at 31.3.2003	As at 31.3.2004
Paid up Capital	50,00,00	50,00,000	75,00,000
General Reserve	45,00,000	50,00,000	60,00,000
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(as calculated in accordance with the provisions of Section 349 and 350 of the Companies Act, 1956)	12,50,000	19,00,000	34,50,000

In the ensuring Board Meeting scheduled to be held on 5th November, 2004, among other items of agenda, following item is also appearing:

“To decide about borrowing from financial institutions on long-term basis”

Based on above information, you are required to find out as per the provisions of the Companies Act, 1956, the amount upto which the Board can borrow from financial institutions without seeking the approval in general meeting. **(8 Marks)**

- (b) The Annual Accounts of CALM Ltd. A listed company from for the year ended 31st March, 2003 was finalized on 31st May, 2004. The Company had a paid up capital of Rs.50.00.lacs and free reserves of Rs.100.00lacs. The Company did not have any accumulated losses. The Board of Directors of the Company wishes to make a public issue of Equity shares amounting to Rs.100.00Crores comprising of offer to public through offer document, firm allotment and promoters contribution. State how this can be done under SEBI guidelines. **(8 Marks)**
- (c) Explain briefly the distribution between “Mandatory” and “Directory” provisions in a statue. How the Court deals with them differently? **(8 Marks)**

Question 4

- (a) Mr. Doubtful was appointed as Managing Director of Carefree Industries Ltd. For a period of five years with effect from 1.4.2000 on a salary of Rs.12 lakhs per annum with other perquisites. The Board of Directors of the company on coming to know of certain questionable transactions terminated the services of the Managing Director from 1.3.2003. Mr. Doubtful termed his removal as illegal and claimed compensation from the company. Meanwhile the company paid a sum of Rs.5 lakhs on ad hoc basis to Mr. doubtful pending settlement of his dues. Discuss whether:
1. The company is bound to pay compensation to Mr. Doubtful and, if so, how much

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2. The company can recover the amount of Rs.5 lakhs paid on the ground that Mr. Doubtful is not entitled to any compensation, because he is guilty of corrupt practices. **(8 Marks)**

(b) Excellent Technical Consultants Ltd. Has approached you seeking your opinion on the following appointments relating to directors and their relatives: **(7 Marks)**

1. Appointment of Mr. Sonata (relative of one of the directors) as the Managing Director of the Company on a monthly remuneration of rs.40, 000 and other perquisites as are allowed to other executives of the Company.
2. Appointment of Mr. Romesh (relative of one of the directors) as the General Manager-Marketing of the Company on a consolidated monthly remuneration of Rs.30, 000.
3. Appointment of Mr. Kamal (relative of one of the directors) as an Accounts Manager of the Company on a consolidated monthly remuneration of Rs.18,000

Express your opinion explaining relevant provisions of the Companies Act, 1956

Question 5

(a) Mr. Weldon was appointed as a Director of Esquire Engineering Ltd. With effect from 1st October, 2002. Since the Company, namely, Esquire Engineering Ltd wanted to take full advantage of the wisdom and expertise of Mr.Weldon, it offered him monthly remuneration payable on monthly basis and made an application to the Central Government for approval for payment of such remuneration. Anticipating the approval of the Central Government, Esquire Engineering Ltd started paying such remuneration from the date of appointment and continued to do so till 31st March, 2003. The Central Government did not fully approve the remuneration proposed by the company and restricted the same to a lower amount. On scrutiny of the accounts, it was established that the company, till 31st March, 2003, has paid to Mr. Weldon a total sum of Rs.1.20 lacs in excess of the remuneration sanctioned by the Central Government.

You are required to:

(8 Marks)

- State with reference to the provisions of the Companies Act, 1956 in respect of recovery and waiver of recovery of the excess remuneration so received and under what conditions.
- Draft a resolution for waiver of recovery of the excess remuneration so paid by the Company.

(b)

(7 Marks)

- i. The Articles of Association of MKP Limited incorporated with an authorized share capital of Rs.50 crore divided into 5 crore Equity Shares of Rs.10 each contained the following clause:
“The qualification of a director shall be the holding of at least 1,000 Equity Shares in the Company and such a director, if not already so qualified shall have to obtain his qualification within a period of 30 days from the date of his appointment as a director”

Examine the validity of the above clause in the light of the provisions of the Companies Act, 1956.

- ii. Redraft the above clause which would conform to the provisions of the Companies Act, 1956.

Question 6

(a) (i) An Interstate cooperative society has been incorporated on 1st May, 2004 as a Producer Company under the provisions of the Companies Act, 1956. Give your comments on its proposal to have 18 directors on its Board after incorporation as a Producer Company.

(ii) A Producer company wants to issue bonus shares. You are required to state the relevant provisions of the Companies Act, 1956 in this regard.

(iii) What are the modes of investment, from and out of its general reserves, available to a Producer Company formed under Section 581C of the Companies Act, 1956?

- (b) Mr.Raj, a director of POL submitted his resignation from the post of director to the Board of Directors on 30th June, 2004 and obtained a receipt therefore on the same day. The Board of Directors of POL Ltd., neither accepted the resignation nor did it file Form No.32 with the Registrar of Companies. You are required to state whether Mr.Raj ceases to be the Director of POL Ltd., and if yes, since when? **(7 Marks)**

Question 7

- (a) **(8 Marks)**
- As per provisions of the Companies Act, 1956, what is the status of XYZ Ltd., a Company incorporated in London, U.K which has a Share Transfer Office at Mumbai?
 - ABC Ltd., a foreign company having its Indian principal place of business at Kolkata, West Bengal is required to deliver various documents to Registrar of Companies under the provisions of the Companies Act, 1956. You are required to state, where the said company should deliver such documents.
 - In case, a foreign company, does not deliver its documents to the Registrar of Companies as required U/s. 597 of the Companies Act, 1956, state the penalty prescribed under the said Act, which can be levied.
- (b) M/s.BEF Ltd., a public limited company is having a paid up share capital of Rs.2.50 crores. Whether it is obligatory for the company to have a whole time secretary ? Will it make any difference, if the capital of the said BEF Ltd., was Rs.1.50 crores ? If yes, what other formality would have to be complied by it under the provisions of the Companies Act, 1956? **(7 Marks)**

Question 8

- (a) Mr.Kailash, an employee of M/s.Sweetwill Ltd., met with an accident and died. The accident occurred when Mr.Kailash was on company's duty. He held one hundred shares partly paid. Normally the company has a first and permanent lien on the shares. The Board of Directors however, relaxed the said provision with regard to these shares as a goodwill gesture on the part of the company. Is the action of the company valid? State the reasons, whether company's lien can be extended to dividends payable on such shares? **(8 Marks)**
- (b) State the procedure for the following , explaining the relevant provision of the Companies Act, 1956 : **(7 Marks)**
- Appointment of First Auditor, when the Board of Directors did not appoint the First Auditor within one month from the date of registration of the company.
 - Removal of Statutory Auditor (appointed in last Annual General Meeting) before the expiry of his term.
- What difference it would make, if the Auditor was First Auditor appointed by the Board of Directors ?

Question 9

- a. Following information is available from the audited Balance Sheet as at 31st March, 2004 of ASK Ltd., **(8 Marks)**

	Rs.
Share capital :	
Equity share Capital (5,00,000 shares of Rs.10 each fully paid up in cash)	50,00,000
Less : Calls in arrear	50,000
	49,50,000
Preference share capital	15,00,000
Share application money	10,00,000
Reserves and surplus:	
Securities premium	15,00,000
Capital redemption reserve	12,00,000
Fixed assets revaluation reserve	10,50,000

Sinking fund reserve	11,00,000
General reserve	40,00,000
Profit and loss account	22,00,000
Dividend equalization reserve	6,00,000

Secured loans:

Cash credit facility from Bank	1,00,00,000
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You are required to find out, explaining the relevant provisions of the Companies Act, 1956, the amount upto which the Board of Directors can invest in securities of other bodies corporate and/or give loans.

- b. Some small shareholders of TRG Ltd., a company listed with Mumbai Stock Exchange, want to appoint Mr.Raj, who is holding 1,000 Equity Shares of Rs.10 each in the Company as a Director as their representative on the Board of Directors of the said company. You are required to state the relevant provisions of the Companies Act, 1956 in respect of such proposal to appoint Mr.Raj as a Small Shareholders' Director. **(7 Marks)**