

PROFESSIONAL PROGRAMME EXAMINATION

JUNE 2009

COMPANY SECRETARIAL PRACTICE

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer SIX questions including Question No. 1 which is **COMPULSORY**.

Question 1

Draft any four of the following :

- (i) A Board resolution for appointment of 'occupier' of a factory premises.*
 - (ii) A resolution to get exemption from the Central Government under section 212(8).*
 - (iii) A notice under section 640B for the Central Government's approval to increase remuneration of the managing director.*
 - (iv) A resolution for approval of annual accounts.*
 - (v) A resolution for appointment of a relative of a director carrying a monthly remuneration of Rs.60,000.*
- (5 marks each)*

Answer 1(i)

Board resolution for appointment of Occupier of a factory premises

RESOLVED THAT Shri, Executive Director, of the company be and is hereby entrusted with ultimate control over the affairs, of the company's factory at and by virtue of the ultimate control over the affairs of the said factory being vested in him he be the "occupier" of the said factory.

FURTHER RESOLVED THAT Mr be and is hereby vested with the following powers and authorities:

..... the powers may be specified here.

FURTHER RESOLVED THAT, as the "occupier" of the company's factory at Shri, will ensure compliance with the general duties, obligations and requirements of all applicable laws, in particular the Factories Act, 1948, including those enumerated in section 7A of the said Act in so far as the company's factory at is concerned, and submit a monthly report to the Managing Director indicating whether there has been such compliance.

Answer 1(ii)

Board resolution to get exemption from the Central Government under sub-section (8) of section 212

"RESOLVED that an application be made to the Central Government seeking an direction under section 212(8) of the Companies Act, 1956, exempting the Company from the requirements of section 212 in relation to the subsidiaries which is required to be stated in the Balance Sheet of the Company under the section.

FURTHER RESOLVED THAT Mr., Company Secretary be and is hereby authorized to submit an application to the Central Government and to do such other things, acts and deeds in connection with the application as may be necessary or required”.

Answer 1(iii)

Notice under section 640B for Central Government’s approval to increase Managing Director’s remuneration

.....Limited

Notice is hereby given pursuant to Section 640B of the Companies Act, 1956 (the Act) that the company intends to make an application to the Central Government for its approval under Section 310 of the Act to increase in the remuneration payable to Shri....., Managing director of the Company.

Registered Office:

For.....Limited

.....

.....

.....

Company Secretary

Dated.....

Answer 1(iv)

Kind of Meeting : Annual General Meeting

Type of Resolution : Ordinary Resolution

Resolution for approval of annual accounts

“RESOLVED that the audited Balance Sheet of the Company as at 31st March 2009 and the Profit and Loss Account of the Company for the financial year ended on that date, together with the Schedules and Notes attached thereto, along with the Reports thereon of the Directors and the Auditors, as circulated to the Members and laid before the Meeting, be and are hereby approved and adopted.”

Answer 1(v)

Resolution for appointment of a relative of Director

Kind of Meeting : General Meeting

Type of Resolution : Special Resolution

“ RESOLVED pursuant to Section 314(1B) of the Companies Act 1956 and subject to the approval of the Central Government that Mr..... a relative of Mr..... a director of the company, be and is hereby appointed as General Manager (Production) of the company at a monthly remuneration of Rs. 60,000.”

“ FURTHER RESOLVED THAT the remuneration payable to Mr..... as aforesaid will be subject to such modification as may be required by the Central Government.”

Question 2

- (a) Choose the most appropriate answer from the given options in respect of the following :
- (i) On incorporation of a company, the Registrar of Companies in addition to the certificate of incorporation, issues a unique identification number called—
 - (a) Unique corporate number
 - (b) Corporate identification number
 - (c) Company identification number
 - (d) Unique identification number.
 - (ii) The appointment of a statutory auditor under section 224A is with reference to 25% of —
 - (a) Paid-up capital
 - (b) Issued capital
 - (c) Subscribed capital
 - (d) Only equity capital.
 - (iii) Non-executive directors of a public company may get remuneration on quarterly basis if such basis of payment is approved by/under —
 - (a) Articles of association of the company
 - (b) General meeting of the company
 - (c) Central Government
 - (d) Schedule XIII to the Companies Act, 1956.
 - (iv) Annual return of a company having share capital is to be filed with the Registrar of Companies in e-form —
 - (a) 20A
 - (b) 20B
 - (c) 25A
 - (d) 25B.
 - (v) On striking off the name of a company considered defunct, the Registrar of Companies is required to —
 - (a) Publish notice thereof in the official gazette
 - (b) Inform the State Government
 - (c) Inform the Central Government
 - (d) Inform the Ministry of Corporate Affairs.
 - (vi) A member of the ICSI in practice shall be deemed to be guilty of professional misconduct if he issues compliance certificates/signs annual returns in aggregate in a calendar year for more than —
 - (a) 20 Companies
 - (b) 50 Companies

(c) 80 Companies

(d) 100 Companies.

(1 mark each)

(b) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :

- (i) Form 23AA relating to keeping of books of account at a place other than the registered office is required to be filed within _____ days with the Registrar of Companies.
- (ii) Approval of the _____ is required to be taken for changing the name of the company under section 21.
- (iii) A copy of the order passed by the Company Law Board is required to be filed with the Registrar of Companies in e-form No. _____ .
- (iv) It is the situation of the _____ of the company that decides the jurisdiction of the court in that company's matters.
- (v) _____ policy adopted by a company is to prevent the misuse of confidential information in the context of insider trading.
- (vi) On the basis of the report of the _____, the Central Government may appoint a competent person as inspector under section 235(1).

(1 mark each)

(c) What is directors' responsibility statement ?

(4 marks)

Answer 2(a)

- (i) (b) Corporate identification number
- (ii) (c) Subscribed capital
- (iii) (c) Central Government
- (iv) (b) 20B
- (v) (a) Publish notice thereof in the official gazette
- (vi) (c) 80 Companies

Answer 2(b)

- (i) Form 23AA relating to keeping of books of account at a place other than the registered office is required to be filed within **7** days with the Registrar of Companies.
- (ii) Approval of the **Central Government** is required to be taken for changing the name of the company under section 21.
- (iii) A copy of the order passed by the Company Law Board is required to be filed with the Registrar of Companies in e-form No. **21** .
- (iv) It is the situation of the **registered office** of the company that decides the jurisdiction of the court in that company's matters.
- (v) **Chinese Wall** policy adopted by a company is to prevent the misuse of confidential information in the context of insider trading.

- (vi) On the basis of the report of the **Registrar**, the Central Government may appoint a competent person as inspector under section 235(1).

Answer 2(c)

Directors' Responsibility Statement

In terms of Section 217 (2AA) of the Companies Act, 1956, the Board's report shall also include a Directors' Responsibility Statement, indicating therein:

- (a) that in the preparation of the annual accounts, the applicable accounting standards have been followed along with proper explanation relating to material departures;
- (b) that the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the Company at the end of the financial year and of the profit and loss of the Company for that period;
- (c) that the Directors have taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the Company and for preventing and detecting fraud and other irregularities;
- (d) that the Directors have prepared the annual accounts on a going concern basis.

Question 3

- (a) *Bring out the distinctive features of the following :*
 - (i) 'Charge', 'mortgage' and 'pledge'.
 - (ii) 'Adjournment' and 'postponement' of a meeting. (3 marks each)
- (b) *State, with reasons in brief, whether the following statements are correct or incorrect:*
 - (i) *An article in the articles of association can be amended by the members of the company by passing a special resolution.*
 - (ii) *A company may get exemption from the provisions of section 212.*
 - (iii) *The eligibility criteria to apply for seeking relief under section 397, etc., inter alia, provide for holding not less than 20% of the issued share capital of the company.*
 - (iv) *No stamp duty on transfer of shares in electronic form (demat mode) is payable.*
 - (v) *It is mandatory to constitute audit committee in all public limited companies.* (2 marks each)

Answer 3(a)(i)

Charge

A charge is a right created by any person including a company referred to as "the borrower" on its assets and properties, present and future, in favour of a financial institution

or a bank, or other person referred to as “the lender”, which has agreed to extend financial assistance.

Section 124 of the Companies Act, 1956 states that “charge” includes “mortgage”. A charge may be fixed or floating depending upon its nature. It is a security for repayment of the amount borrowed. Every charge created by a company should be registered with the Registrar of Companies within 30 days after the date of its creation.

Mortgage

A mortgage is a legal process whereby a person, who borrows money from another person and secures the repayment of the borrowed money and also the payment of interest at the agreed rate, by creating a right or charge in favour of the lender on his movable and immovable property. A mortgage involves transfer of the interest in the property.

Pledge

Pledge is a bailment of personal property as security for some debt or engagement, redeemable on certain terms, and with an implied power of sale on default. Pledge can not be a subject of charge under the Companies Act.

Answer 3(a)(ii)

‘Adjournment’ and ‘postponement’ of a meeting

Adjournment of meeting is different from postponement of a meeting. To adjourn means to defer or suspend the meeting to a future time with no appointed date or indefinitely (sine die) or as decided by the members present at the scheduled time of the meeting. To postpone of a meeting means to put off for the time being. A meeting can be postponed at any time before it is held. A postponed meeting needs not be held again and for its reconvening, the complete procedure is to be complied with.

The adjourned meeting is merely the continuation of the original meeting and unless the Articles provide otherwise, a fresh notice of the adjourned meeting is not necessary, if it is not adjourned beyond 30 days or sine die. At the adjourned meeting, only the unfinished business of the original meeting should be considered.

Answer 3(b)(i)

Correct. Vide section 31 of the Companies Act, 1956, an article in the articles of association can be amended by the members of the company by passing a special resolution.

Answer 3(b)(ii)

Correct. Under section 212(8) of the Companies Act, 1956, a company may get exemption from the compliance of the provisions of section 212 of the Act directing that in relation to any subsidiary section 212 shall not apply or shall apply to the extent as directed.

Answer 3(b)(iii)

Incorrect. The eligibility criteria to apply for seeking relief under section 397 etc.

inter alia provide for holding not less than 10% of the issued share capital of the company. [vide Section 399(1)(a)].

Answer 3(b)(iv)

Correct. No stamp duty on transfer of shares in electronic form (demat mode) is payable. [Vide Depositories Act, 1996].

Answer 3(b)(v)

Incorrect. It is not mandatory to constitute Audit Committee in all public limited companies. It is mandatory for those public companies having paid-up capital of 5 crores or more. [vide section 292A(1)]. Further, all listed companies are mandatorily required under Clause 49 of Listing Agreement to constitute an Audit Committee.

Question 4

- (a) *Explain the external reporting requirements by Compliance Officer as laid down under the SEBI (Prohibition of Insider Trading) Regulations, 1992. (4 marks)*
- (b) *Regulation 168 of the Company Secretaries Regulations, 1982 prohibits a Company Secretary in Practice from engaging in any business or occupation other than the profession of Company Secretary unless it is permitted by a general or specific resolution of the Council of the Institute of Company Secretaries of India. Comment. (4 marks)*
- (c) *"In securities market, information is money." Comment. (4 marks)*
- (d) *In respect of listed companies, certain additional items are required to be considered by the Board at its meeting. Explain. (4 marks)*

Answer 4(a)

Following are the external reporting requirements by a compliance officer as laid down under SEBI (Prohibition of Insider Trading) Regulations, 1992. The compliance officer of a company is required to –

- (i) disclose within 2 working days of receipt of the information received by the company under Regulation 13(1), 13(2), 13(3) and 13(4) to all Stock Exchanges on which the company is listed.
- (ii) inform the SEBI about the violations, if any observed, of the SEBI (Prohibition of Insider Trading) Regulations, 1992, by the company/compliance officer.

As per Regulation 13(1), any person who holds more than 5% shares or voting rights in any listed company is required to disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of :—

- (a) the receipt of intimation of allotment of shares; or
- (b) the acquisition of shares or voting rights, as the case may be.

As per Regulation 13(2), any person who is a director or officer of a listed company is required to disclose to the company in Form B the number of shares or voting rights held and positions taken in derivatives by such person and his dependents, within two working days of becoming a director or officer of the company."

As per Regulation 13(3), any person who holds more than 5% shares for voting rights in any listed company is required to disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure and such change exceeds 2% of total shareholding or voting rights in the company.

As per Regulation 13(4), any person who is a director or officer of a listed company, is required to disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents from the last disclosure and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

As per Regulation 13(5), the disclosure mentioned in sub-regulations (3) and (4) of Regulation 13 shall be made within 2 working days of the receipts of intimation of allotment of shares, or the acquisition or sale of shares or voting rights, as the case may be.

Answer 4(b)

Regulation 168 of CS Regulations, 1982 prohibits a Company Secretary in practice from engaging in any business or occupation other than the profession of Company Secretary unless it is permitted by a general or specific resolution of the ICSI. Members have been permitted to practice/engage in the following business or occupation under Regulation 168 of Company Secretaries Regulations, 1982:

Permission granted generally

- (i) Private tutorship.
- (ii) Authorship of books and articles.
- (iii) Holding of Life Insurance Agency Licence for the limited purpose of getting renewal commission.
- (iv) Holding of public elective offices such as M.P., M.L.A., M.L.C.
- (v) Honorary office-bearership of charitable, educational or other non-commercial organisations.
- (vi) Acting as Justice of Peace, Special Executive Magistrate and the like.
- (vii) Teaching assignment under the Coaching Organisation of the Institute or any other organisation, so long as the hours during which a member in practice is so engaged in teaching do not exceed average four hours in a day irrespective of the manner in which such assignment is described or the remuneration is receivable by the member in practice for such assignment.
- (viii) Valuation of papers, acting as a paper-setter, head examiner or a moderator, for any examination.
- (ix) Editorship of professional journals.
- (x) Acting as ISO lead auditor.

- (xi) Providing Risk Management Services for non-life insurance policies except marketing or procuring of policies.
- (xii) Acting as Recovery Consultant in the Banking Sector.
- (xiii) Becoming non-executive director/promoter/promoter director/subscriber to the Memorandum and Articles of Association of a company the objects of which include areas, which fall within the scope of the profession of Company Secretaries irrespective of whether or not the practising member holds substantial interest in that company.
- (xiv) Becoming non-executive director/promoter/promoter director/subscriber to the Memorandum and Articles of Association of a company which is engaged in any other business or occupation provided that the practising member does not hold substantial interest in the company.

Permission to be granted specifically

Members of the Institute in practice may engage in the following categories of business or occupation, after obtaining the specific and prior approval of the Executive Committee of the Council in each case:

- (i) Interest or association in family business concerns provided that the member does not hold substantial interest in such concerns.
- (ii) Interest in agricultural and allied activities carried on with the help, if required, of hired labour.
- (iii) Editorship of journals other than professional journals.

Answer 4(c)

In the securities market, information is money because its timely gathering, analysis and dissemination are essential for efficient operation in the market. The balance in bargaining power obviously shifts favourably towards the person possessing insider/sensitive information. Hence it leads to unfairness in the market as it violates the belief that there must be a parity in the bargaining power of all the players.

The wrongful obtaining and use of such information by insiders is unfair and adversely affects the incentive to invest in such securities. Therefore, a failure to control this practice would not only result in unfairness permeating into the market but another obvious result would be a loss of public confidence in the institution as a whole as it undermines the honesty that underlie public confidence in securities market of a country. In order to govern the conduct of the Insiders and connected persons on matters relating to Insider trading, Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 were enacted by SEBI.

Answer 4(d)

In accordance with Clause 49 of Listing Agreement, amongst others, the under mentioned items should be made available to the Board and considered at its meeting:

1. Annual operating plans and budgets and any updates.
2. Quarterly results for the company and its operating divisions or business segments.

3. Minutes of meetings of audit committee and other committees of the board.
4. The information on recruitment and remuneration of senior officers just below the board level, including appointment or removal of Chief Financial Officer and the Company Secretary.
5. Details of any joint venture or collaboration agreement.
6. Sale of material nature, of investments, subsidiaries, assets, which is not in normal course of business.
7. Non-compliance of any regulatory, statutory or listing requirements and shareholders service such as non-payment of dividend, delay in share transfer etc.

Question 5

- (a) *Outline the procedure for removal of the statutory auditor.* (8 marks)
- (b) *Enumerate the procedure for conversion of a public company into a private company.* (8 marks)

Answer 5(a)**Procedure for Removal of Statutory Auditor**

1. Convene a Board Meeting and place an item on agenda for removal of the existing statutory auditor of the company with reasons thereof. After deliberation, pass a resolution authorising the officers to make application to the Regional Director for obtaining approval of the Central Government. [Section 224(7) of the Act].
2. File e-Form 24A with the Regional Director. Attach the application explaining in detail the grounds for removal of the existing auditor of the company and the particulars of the company's auditor along with following documents –
 - Copy of ordinary resolution
 - Copy of special notice under section 225(2)
 - Copy of the representation, if any, made by the statutory auditor
3. Simultaneously, deliver a copy of the application with all enclosures to the concerned Registrar of Companies for information and comments/ recommendation, as may be required.
4. Follow up, explain, submit further details/particulars/documents and obtain approval from the Regional Director.
5. On receipt of the approval, convene a Board meeting of the company. Place the approval of the Regional Director so received and decide about (i) new auditor to be appointed in place of the existing auditor of the company; (ii) obtain certificate in writing from the new auditor to the effect of his eligibility to act as auditor if appointed; (iii) fix date, day, time and place of general meeting; and (iv) approve draft notice of the general meeting, specifying therein the resolutions (ordinary or special, as the case may be for removing and appointing Auditor).

6. Issue notice to the members of the company, at least clear 21 days before the date of the meeting alongwith relevant explanatory statement and place the documents including Letter of Approval of the Regional Director for inspection of the Registered Office of the company. It is to be noted that for appointing a person other than the retiring auditor or to provide that the retiring auditor shall not be reappointed, a special notice has to be given and a copy thereof is to be sent to retiring auditor. The retiring auditor has a right to make representations in writing to the company and where practicable to call upon the company to send copy of representation to every member of company.
7. Hold the general meeting and pass the resolutions as set out in the notice with or without modification.
8. Intimate the new auditor with a certified copy of the resolution passed within seven days.
9. Also intimate the auditor removed with a certified copy of the resolution passed along with a copy of the approval of the Regional Director.
10. File e-form 23 with certified copy of the special resolution and explanatory statement relating thereto with requisite filing fees within thirty days from the date of passing of special resolutions together with a copy of the approval letter with the concerned Registrar of Companies.

Answer 5(b)**Conversion of Public Company into a Private Company**

For conversion of a public company to a private company, a company is required to take the following procedural steps:

1. Hold a meeting of its Board of directors to consider and approve the proposal for conversion of public company into private company.

The following resolutions must be passed at the meeting:

- (i) To approve the proposal for conversion of the company into private company.
- (ii) To fix time, date and venue for holding an extraordinary general meeting of the company.
- (iii) To approve notice for the general meeting along with the explanatory statement as required under Section 173 (2) of the Act. The notice of the general meeting must contain text of the following resolutions; which will be required to be passed at the meeting:
 - (a) special resolution for altering the articles of the company, as required under Section 31 of the Companies Act, 1956, so as to include therein restrictions, limitation and prohibition specified in Section 3(1)(iii) of the Act converting the public company into a private company.
 - (b) special resolution for changing the name of the company as required under proviso to Section 21 of the Act.
 - (c) special resolution for altering the memorandum of association (name clause) of the company in accordance with Section 16 of the Act.

- (iv) To authorise the company secretary to issue the notice of the general meeting on behalf of the Board.
- 2. Hold general meeting and have the aforementioned special resolutions passed.
- 3. Within thirty days of passing of the special resolutions, file e-form 23 with copy of resolution along with explanatory statement under Section 173 and amended copy of Articles of Association as attachment along with prescribed filing fee.
- 4. If the number of members of the company is above fifty, appropriate steps should be taken to reduce the number to fifty or below.
- 5. In accordance with the proviso to Sub-section (1) of Section 31 of the Companies Act, 1956, no alteration made in the articles of association of a company shall be effective, which has the effect of converting a public company into a private company, unless such alteration has been approved by the Central Government. Therefore, an application in e-form 1B, along with the attachments and prescribed application fee, will have to be made, within three months from the date of passing of the special resolution for alteration of the articles.
- 6. After the alteration of the articles has been approved by the Central Government, a printed copy of the altered articles of the company should be filed with the concerned Registrar of Companies within one month of the date of receipt of the order of approval [Section 31(2A)].
- 7. Surrender to the Registrar, the Certificate of Incorporation of the company in order to obtain fresh Certificate of Incorporation consequent upon change of name on conversion of the company into a private company [Section 23(1)].
- 8. Issue a general notice in newspapers informing members and public at large that the company has been converted into a private limited company and its name has been changed from Limited to Private Limited with effect from

Question 6

- (a) *Describe the basic features of limited liability partnership (LLP) and distinguish it from normal partnership.* (8 marks)
- (b) *State the important features of electronic filing of documents under the Companies Act, 1956.* (5 marks)
- (c) *Mention against the following e-forms, the subject matter for which these forms are meant :*
 - (i) *e-form-3*
 - (ii) *e-form-4C*
 - (iii) *e-form-24B.* (1 mark each)

Answer 6(a)

Limited Liability Partnership Act, 2008 provides for the formation and regulation of limited liability partnerships and for matters connected therewith or incidental thereto.

The basic features of LLP are as under:

- LLP is an alternative corporate business vehicle that would give the benefits of limited liability but would allow its members the flexibility of organizing their internal structure as a partnership based on an agreement.
- LLP is a separate legal entity, liable to the full extent of its assets, the liability of the partners would be limited to their agreed contribution in the LLP.
- LLP is a body corporate and a legal entity separate from its partners. It will have perpetual succession.
- An LLP is under obligation to maintain annual accounts reflecting true and fair view of its state of affairs.
- The mutual rights and duties of partners of an LLP inter se and those of the LLP and its partners shall be governed by an agreement between partners or between the LLP and the partners subject to the provisions of the Act. It provides flexibility to devise the agreement as per their choice. In the absence of any such agreement, the provisions of law shall govern the mutual rights and duties.

The difference between “LLP” and “Partnership Firm” is as under:

<i>S. No.</i>	<i>Points of Distinction</i>	<i>LLP</i>	<i>Partnership</i>
1.	Governing Act	Limited Liability Partnership Act, 2008	Indian Partnership Act, 1932
2.	Who can Incorporate	Any two or more persons may start a LLP by subscribing their names to the Incorporation document which is to be filed with the Registrar of Companies	Any two or more persons willing to start a business may do so by entering into an agreement
3.	Form of name	The LLP Act stipulates that the partnership name must be approved by the Registrar and the last words must be “Limited Liability Partnership” or the acronym LLP	There is no mandatory provision as to name of a partnership firm
4.	Charter	Limited Liability Partnership Agreement or Schedule I of the LLP Act	Partnership Deed
5.	Alteration in the Charter	Alteration can be made only in accordance with the procedure laid down in the Schedule / LLP Agreement	Alteration can be made only with the consent of all the partners
6.	Separate Entity	A LLP on being registered acquires a legal status separate from its partners	A partnership firm being a sum total of individuals does not acquire a legal personality

Answer 6(b)

The Central Government amended the Companies (Central Government's) General Rules and Forms 1956 vide notification dated 10th February, 2006 and notified e-forms to enable electronic filing of documents.

To support the provisions of e-filing, the Central Government under section 610A and 610E of the Companies Act have enacted the Companies (electronic filing and authentication of documents) Rules, 2006.

Important feature of electronic filing of documents are:

— *Director Identification Number (DIN)*

All existing and any person intending to be appointed as a director are required to obtain the Director Identification Number (DIN).

— *Corporate Identity Number (CIN)*

Every company is being allocated a Corporate Identity Number (CIN).

— *Digital Signature Certificate (DSC)*

The e-forms are required to be authenticated by the authorized signatories using digital signatures as defined under the Information Technology Act, 2000. A digital signature is the electronic signature duly issued by a certifying authority that shows the authority of the person signing the same. It is an electronic equivalent of a written signature. Every user who is required to sign an e-form for submission with MCA is required to obtain a Digital Signature Certificate.

— *Pre-certification by professionals in whole time practice*

Amongst other, Form Nos. 2, 3, 5, 10, 17, 18, 23, 24AB, 25C, 32 are to be pre-certified by a Chartered Accountant or a Cost Accountant or a Company Secretary in whole time practice.

— *Mode of payment*

MCA-21 system provides for the facility of payment of statutory fees through multiple modes i.e. (i) Off-line payment through a challan generated by the system and payment of fees at the counter of the notified bank branches through DDs/Cash; (ii) on-line payments through Internet Banking and Credit Cards [Master Card/VISA].

— *Service Request Number (SRN)*

Each transaction under e-filing is uniquely identified by a Service Request Number. On filing of an e-form, the system generates and provides a Service Request Number. A user can check the status of the document/transaction, by entering the SRN.

Answer 6(c)

- (i) **e-form 3** - Particulars of contract relating to shares allotted as fully or partly paid-up otherwise than in cash.

- (ii) **e-form 4C** - Return in respect of buy Back of Shares.
- (iii) **e-form 24B** - Form of application to the Central Government for obtaining prior consent for holding of any office or place of profit in the company by certain persons

Question 7

- (a) *You are a Practising Company Secretary. One of your clients abroad wants to establish a place of business in India for a company incorporated abroad in which he is a Whole-time Director. Prepare a note for his information indicating the procedure involved to set-up a place of business in India. (8 marks)*
- (b) *Draft the minutes of annual general meeting of Happy Ltd. at which besides adoption of accounts, declaration of dividend, appointment of auditors and the appointment of additional director as regular director featured for consideration and decision. (8 marks)*

Answer 7(a)

If Whole-time Director of foreign company desires to establish a place of business within India, then pursuant to section 592 of the Companies Act, 1956 e-form 44 is required to be delivered to Registrar of Companies within thirty days of the establishment of the place of business, for its registration. In such e-form, some of the important details like address and state of principal place of business in India, date of its establishment, full address of principal office of foreign company, type of office and main division of business activity, details of persons resident in India and authorized to accept on behalf of company service of process and any notices needs or documents to be served on the company. The following documents are required to be attached—

- Charter, statutes or memorandum and articles of association or other instrument constituting or defining the constitution of the company. If the documents are not in English language then it should be translated copy in English language.
- Details of directors (individuals as well as bodies corporate).
- Approval letter from Reserve Bank of India for the setting up of business in India,
- Power of attorney or board resolution in favour of the authorised representatives.

The form is required to digitally signed by the authorized representative of the foreign company.

The details of directors, Secretary and body corporate should contain the following particulars:

- (a) with respect to each director—
 - (i) in the case of an individual, his present name, former name (if any) and surname, his usual residential address, his nationality of origin, (if other than nationality) and his business occupation, if any, or if he has no business occupation but holds any other directorship or directorships, particulars of that directorship or of some one of those directorships; and

- (ii) in the case of a body corporate, its corporate name and registered or principal office; and the full name, address, nationality and nationality of origin, (if different from that nationality) of each of its directors;
- (b) with respect to the secretary, or where there are joint secretaries with respect to each of them—
 - (i) in the case of an individual, his present name, former name (if any) and surname, and his usual residential address; and
 - (ii) in the case of a body corporate, its corporate name and registered or principal office.

Provisions under FEM (Establishment in India of Branch or Office or other place of business) Regulations, 2000

A foreign company or individual planning to set up business operations in India can do so through a Liaison Office / Representative Office, Project Office or a Branch Office. The FEM (Establishment in India of Branch or Office or other place of business) Regulations, 2000 govern the opening and operation of such offices.

Accordingly, Companies incorporated outside India, desirous of opening a Liaison/ Branch office in India have to make an application in form FNC-1. It may be noted that RBI has authorized AD Category I bank to forward FNC-1 along with the necessary enclosures along with the comments and recommendations to

The Chief Manager-in-charge,
Reserve Bank of India
Foreign Exchange Department
Foreign Investment Division
Central Office, Mumbai-400 001.

Answer 7(b)

Minutes of Eighth Annual General Meeting of the Members of Happy Ltd. held on _____ (Date) at _____ AM (Time) at the Registered office of the Company

The following were present:

1. Mr.
2. Mr.
3. Mr.
4. Mr.
5. Mr.

Chairman

In accordance with Article _____ of the Articles of Association, Mr. ..., Chairman of the Board of Directors, took the Chair.

The Chairman welcomed the Members and introduced the Directors seated on the dais.

The Chairman declared that the requisite Quorum was present and called the Meeting to order.

The Register of Directors' shareholdings was placed at the Meeting and was available for inspection.

With the consent of the Members present, the Notice convening the Annual General Meeting of the Company was taken as read. The Chairman requested the Company Secretary to read the Auditors' Report.

After the Auditor's Report had been read, the Chairman delivered his speech.

The business of the Meeting as per the Notice thereof was thereafter taken up item wise.

1. *Adoption of Accounts*

The Chairman proposed the Ordinary Resolution for the adoption of the Accounts for the year ended 31st March 2009 and Mr. _____ seconded the Ordinary Resolution:

"RESOLVED that the audited Balance Sheet of the Company as at 31st March 2009 and the Profit and Loss Account of the Company for the financial year ended on that date, together with the Schedules and Notes attached thereto, along with the Reports thereon of the Directors and the Auditors, as circulated to the Members and laid before the Meeting, be and are hereby approved and adopted."

The resolution was put to vote.

On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried by the requisite majority.

2. *Declaration of Dividend*

Mr. _____ proposed the following Resolution as an Ordinary Resolution:

"RESOLVED that the dividend @ Rs. 2 per share on _____ equity shares of Rs. 10 each, fully paid-up, aggregating to Rs. _____ be and is hereby declared for payment, to those Members whose names appear on the Company's Register of Members on _____(day), _____(date)".

The Resolution was seconded by Mr. _____, and was put to the vote as an Ordinary Resolution.

On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried unanimously.

3. *Appointment of Director*

Proposed by : Mr. _____

Seconded by : Mr. _____

The following Resolution having been proposed and seconded by the aforementioned two Members, was put to the vote as an Ordinary Resolution:

"RESOLVED that, pursuant to Section 256 of the Companies Act, 1956, Mr. ..., who retires by rotation and, being eligible for re-appointment, offers himself for

re-appointment, be and is hereby re-appointed as a Director of the Company and that his period of office be liable to determination by retirement of Directors by rotation.”

On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried unanimously.

4. *Appointment of Auditors*

Proposed by : Mr. _____

Seconded by : Mr. _____

The following Resolution having been proposed and seconded by the aforementioned two Members, was put to the vote as an Ordinary Resolution:

“RESOLVED that M/s. _____, Chartered Accountants, _____, be and are hereby re-appointed as Auditors of the Company to hold office from the conclusion of this Meeting until the conclusion of the next Annual General Meeting of the Company on a remuneration of Rs. _____, plus applicable service tax and other out of pocket expenses incurred for the purposes of the audit”.

On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried unanimously.

Special Business

5. *Appointment of Director*

Proposed by : Mr. _____

Seconded by : Mr. _____

The following Resolution having been proposed and seconded by the aforementioned two Members, was put to the vote as an Ordinary Resolution:

“RESOLVED that Mr. ... who was appointed as an Additional Director by the Board under Section 260 of the Companies Act, 1956 and Article ____ of the Articles of Association of the Company and who holds office only upto the date of this Annual General Meeting and in respect of whom the Company has received a Notice in writing, under Section 257 of the Companies Act, 1956, from a Member signifying his intention to propose Mr. ... as a candidate for the office of a Director of the Company , be and is hereby appointed a Director of the Company liable to retire by rotation.”

On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried unanimously.

Vote of Thanks

The Meeting terminated with a vote of thanks to the Chair.

CHAIRMAN

Date : _____

Question 8

- (a) *Bring out the salient aspects of Secretarial Standard-3 on dividends in respect of (i) interim dividend; and (ii) unpaid/unclaimed dividend.* (4 marks)
- (b) *Which type of companies are subject to audit by Comptroller and Auditor General of India ? Is there any need for having statutory audit by professional auditors? State the legal position in this regard.* (6 marks)
- (c) *Certain information is required to be mandatorily reviewed by the audit committee. Discuss.* (6 marks)

Answer 8(a)

The salient aspects of Secretarial Standard on Dividend (SS-3) on Interim Dividend and unpaid/unclaimed are as follow:

(i) Interim Dividend

- Interim Dividend, if declared, is payable out of estimated profit for the period for which Interim Dividend is to be declared, after taking into account depreciation for the full year and arrears of depreciation, Dividend at the contracted rate on preference shares, if any, appropriations and transfers to statutory reserves, taxation and the provisions of the Companies (Transfer of Profits to Reserves) Rules, 1975. (Clause 1.1.5)
- Where a company has issued equity shares with differential rights as to Dividend, Interim Dividend may, at the option of the Board, be declared on all or any one or more of the classes of such shares in accordance with the terms of issue. (Clause 1.1.6)
- Interim Dividend should be declared by the Board, at a meeting of the Board. (Clause 1.1.7)

The following clauses also apply to interim dividend:

Dividend should be paid out of the profit of the company for the financial year or out of profit(s) for the previous financial year(s) which have not been transferred to reserves, or out of both, only after providing for depreciation for the year and arrears of depreciation, if any. (Clause 1.1.1)

Before declaring Dividend out of profit for the year, any loss for the previous year(s) or the amount of depreciation for the previous year(s), whichever is less, should be set off against such profit. (Clause 1.1.2)

Dividend should not be declared out of the Securities Premium Account or the Capital Redemption Reserve Account or Revaluation Reserve or Amalgamation Reserve or out of profit on re-issue of forfeited shares or out of profit earned prior to the incorporation of the company. (Clause 1.1.3)

If redeemable preference shares have not been redeemed on the due date, no Dividend should be declared on equity shares until such preference shares are redeemed. (Clause 2.5)

Clauses 3.1, 3.3, 3.4, 4.1, 5.1 to 5.7, 6.1 to 6.4, 7.1, 8.1, 9.1 to 9.3 shall also apply to interim dividend.

(ii) *Unpaid/unclaimed Dividend*

- The amount of Dividend which remains unpaid or unclaimed after thirty days from the date of declaration should be transferred to a special Dividend account to be called the “Unpaid Dividend Account” within seven days from the date of expiry of the thirty days period provided for payment of Dividend. (Clause 6.1)
- Any amount in the Unpaid Dividend Account of the company which remains unclaimed and unpaid for a period of seven years from the date of transfer of such amount to the Unpaid Dividend Account should be transferred to the Investor Education and Protection Fund. (Clause 6.2)
- Before transferring any amount to the Investor Education and Protection Fund, the company should give individual intimation to the Members in respect of whose unclaimed Dividend the amount is being transferred, at least six months before the due date of such transfer. (Clause 6.3)
- Any interest earned on the Unpaid Dividend Account should be transferred to the Investor Education and Protection Fund. (Clause 6.4)

Answer 8(b)

Section 619 of the Act provides that the auditor of a Government company shall be appointed or re-appointed by the Comptroller and Auditor-General of India provided that the limits specified in Sub-section (1B) and (1C) of Section 224 apply to such auditor.

Government company as defined under section 617 means any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary of a Government company as thus defined.

The following companies are also required to comply the provisions of 619 i.e. CAG Audit:

A company in which not less than fifty-one per cent of the paid-up share capital is held by one or more of the following or any combination thereof, as if it were a Government company, namely:—

- (a) the Central Government and one or more Government companies;
- (b) any State Government or Governments and one or more Government companies;
- (c) the Central Government, one or more State Governments and one or more Government companies;
- (d) the Central Government and one or more corporations owned or controlled by the Central Government;
- (e) the Central Government, one or more State Governments and one or more corporations owned or controlled by the Central Government;
- (f) one or more corporations owned or controlled by the Central Government or the State Government;
- (g) more than one Government company.

Statutory audit is required to be done by professional auditors. Section 226 contains provision as regards qualifications and disqualifications of auditors. These apply to all companies whether public or private or Section 25 companies or a Government company.

Section 226 provides that only a Chartered Accountant within the meaning of Chartered Accountants Act, 1949 can act as an auditor of a limited company. Though the auditor should be a Chartered Accountant, only Chartered Accountants in practice can act as auditors of companies.

Answer 8(c)

As per Section 292A (6) of the Companies Act, 1956:

- Discussions with the Auditors periodically about internal control system;
- The scope of audit including the observations of the auditors;
- Review of half –yearly and annual financial statements before submission to the Board; and
- to ensure compliance of internal control systems

As per Clause 49 of Listing Agreement, the Audit Committee shall mandatorily review the following information:

1. Management discussion and analysis of financial condition and results of operations;
 2. Statement of significant related party transactions (as defined by the audit committee), submitted by management;
 3. Management letters / letters of internal control weaknesses issued by the statutory auditors;
 4. Internal audit reports relating to internal control weaknesses; and
 5. The appointment, removal and terms of remuneration of the Chief internal auditor shall be subject to review by the Audit Committee
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DRAFTING, APPEARANCES AND PLEADINGS

Time allowed : 3 hours

Maximum marks : 100

NOTE : *Answer SIX questions including Question No. 1 which is COMPULSORY.*

Question 1

Attempt any four of the following :

- (i) Define 'document'. Explain various kinds of deeds.*
- (ii) What are the important points that should be taken into consideration while drafting contracts ?*
- (iii) What are the pre-requisites of 'arbitration' ? Draft the specimen of an arbitration agreement to refer dispute to an arbitral tribunal.*
- (iv) Define the following :*
 - (a) Contract of guarantee*
 - (b) Hypothecation agreement*
 - (c) Lease*
 - (d) Licence*
 - (e) Mortgage.*
- (v) Draft a specimen of memorandum of mortgage by deposit of title deeds.*
(5 marks each)

Answer 1(i)

Document

Document as per Section 31(18) of General Clauses Act, 1894 means any matter expressed or described upon any substance by means of letters, figures or marks, or by the more than one of those means, intended to be used, or which way be used, for the purpose of recording that matter. As for instance, a writing is a document, words printed, lithographed or photographed are documents; a map or plan is a place or stone is a document. A caricature is a document. Thus, document is a paper or other material thing affording information, proof or evidence of anything.

Various kinds of Deeds

1. A good deed is one which conveys a good title, not one which is good merely in form.
2. A good and sufficient deed is marketable deed; one that will pass a good title to the land it purports to convey.
3. An inclusive deed is one which contains within the designated boundaries lands which are expected from the operation of the deed.
4. A latent deed is a deed kept for twenty years or more in man's escritoire or strong box.
5. A lawful deed is a deed conveying a good or lawful title.
6. A pretended deed is a deed apparently or prima facie valid.