

PROFESSIONAL PROGRAMME EXAMINATION

DECEMBER 2010

COMPANY SECRETARIAL PRACTICE

Time allowed : 3 hours

Maximum marks : 100

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

2. All references to sections relate to the Companies Act, 1956 unless stated otherwise.

Question 1

Draft any five of the following :

- (i) *Letter to directors for passing a resolution by circulation along with draft resolution.*
- (ii) *Resolution for declaring interim dividend.*
- (iii) *General meeting resolution for appointment of branch auditor.*
- (iv) *Notice by a member proposing another member's name for directorship of the company.*
- (v) *Resolution approving the appointment of Managing Director, notwithstanding that he is already the Managing Director of another company.*
- (vi) *Resolution to give effect to consolidation of shares made by the company in its memorandum of association.* (4 marks each)

Answer 1(i)

Letter to Directors for passing a resolution by circulation along with draft resolution

To

Mr. _____

Address in India only

Dear Sir,

We are stating hereunder following resolution which is intended to be passed as a resolution by circulation as provided in Section 289 of the Companies Act, 1956 for your kind consideration.

"RESOLVED that pursuant to the provisions of Section 313 of the Companies Act, 1956, read with those of Article of the Articles of Association of the Companies, Shri..... be and is hereby appointed as alternate director to Shri..... during the latter's absence for a period of not less than three months from the State of and that the alternate director shall vacate his office as and when Shri..... returns to the said State."

You are requested to return the duly signed duplicate copy of this letter at the

registered office of the company within _____ days of this letter, mentioning your assent/dissent.

Yours faithfully

For _____

Company Secretary

Answer 1(ii)

Board Resolution for declaring interim dividend

“RESOLVED that approval of the Board of Directors be and is hereby given to the Company for the payment of interim equity dividend at the rate of _____% and absorbing Rs. _____ out of the estimated profits of the Company for the half year ended _____ and that such dividend be paid to those equity shareholders whose names appear in the register of members as on _____”.

“RESOLVED further that the record date for the said purpose will be _____”.

“RESOLVED further that the company secretary of the company be and is hereby authorized to advertise in the newspaper(s) of wide circulation as regards the record date and also to duly notify to the stock exchange(s)”.

Answer 1(iii)

Ordinary Resolution in the general meeting for appointment of branch auditor

“RESOLVED that pursuant to the provisions of Section 228 and other applicable provisions, if any of the Companies Act, 1956, M/s _____, Chartered Accountants, New Delhi be and are hereby appointed as the branch auditors of the Company for auditing the books of accounts maintained by the Delhi branch of the Company and to hold office from the conclusion of this meeting until the conclusion of next annual general meeting of the company at a remuneration to be fixed by the Board of Directors”.

Answer 1(iv)

Notice by a member proposing another member's name for directorship of the company

To

M/s _____ Limited

Dear Sir,

Sub : Notice for appointment of director

Pursuant to the provisions of Section 257 of the Companies Act, 1956, I _____ a member of your Company hereby give notice of my intention to propose Mr. _____ who

is also a member of your company (Folio No.) as a Director of the Company. A sum of Rs.500/- by way of demand draft made in favour of the Company is enclosed with this notice.

Kindly acknowledge receipt.

Yours faithfully,

Name of the member

Folio No.

No. of shares held

Answer 1(v)

Board Resolution approving the appointment of Managing Director, notwithstanding that he is already the Managing Director of another company

“RESOLVED that subject to the approval of the Central Government pursuant to sub-section (4) of section 316 of the Companies Act, 1956, Mr. XYZ who is already the Managing Director of ABC Limited be and is hereby appointed as a Managing Director of the Company for a period of five years commencing from 1st May, 2010, with the consent of all the Directors present at the meeting of which meeting and the resolution to be moved thereat specific notice was given to all the Directors then in India, on the terms and conditions contained in the draft agreement tabled before the meeting and initialed by the Chairman for purposes of identification”.

Answer 1(vi)

Ordinary Resolution to give effect to consolidation of shares made by the company in its memorandum of association

“RESOLVED THAT—

- (i) pursuant to Section 94(1)(b) and other applicable provisions, if any, of the Companies Act, 1956, and Article... of Articles of Association of the company, all the 5,00,00,000 (five crore) equity shares of Rs.5 (Rupees five) each of the company be and are hereby consolidated into two crore and fifty lakh (2,50,00,000) equity shares of Rs.10/- (Rupees ten) each;
- (ii) all the present shareholders holding in all 2,00,00,000 (two crore) issued, subscribed and fully paid equity shares of Rs. 5 (Rupees five) each be issued, in lieu of their present shareholding, the number of fully paid consolidated equity shares of Rs. 10 (Rupees ten) each;
- (iii) the board of directors of the company be and is hereby authorised to take all the necessary steps for giving effect to the foregoing resolution, including recall of the existing share certificates, issue of new share certificates in lieu of the existing issued share certificates in terms of the foregoing resolutions and in accordance with the applicable provisions of the Companies Act, 1956 and those of the Companies (Issue of Share Certificates) Rules, 1960.”

Question 2

- (a) *Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :*
- (i) *A user can check the status of transactions by entering the _____ on website of MCA-21.*
 - (ii) *The Companies Act, 1956 allows a company to convert its fully paid-up shares into _____.*
 - (iii) *A _____ is allotted at the time of registration of charge.*
 - (iv) *The directors appointed by the principle of _____ hold office for _____ and cannot be removed by the company in general meeting under section 284.*
 - (v) *Casual vacancy in the Board may arise from death, _____ and _____. (Mention any two other reasons.)*
 - (vi) *The declaration of bonus issue in lieu of _____ is not permitted. (1 mark each)*
- (b) *Choose the most appropriate answer from the given options in respect of the following :*
- (i) *The minimum number of directors of the audit committee in the case of a listed company with 12 directors shall be —*
 - (a) 2 Directors
 - (b) 3 Directors
 - (c) 4 Directors
 - (d) 5 Directors.
 - (ii) *The Central Government may exempt any class of companies from complying with the provisions of Schedule VI of the Companies Act, 1956, if it is necessary to grant such exemption in the —*
 - (a) National interest
 - (b) Public interest
 - (c) Social interest
 - (d) Company's interest.
 - (iii) *In a listed company with 11 directors, what is the quorum for the Board meeting —*
 - (a) 2 Directors
 - (b) 3 Directors
 - (c) 4 Directors
 - (d) 5 Directors.
 - (iv) *A casual vacancy arising out of resignation of company's auditor can be filled by —*
 - (a) Company in general meeting by ordinary resolution

- (b) *Company in general meeting by special resolution*
- (c) *Board of directors*
- (d) *Audit committee.*
- (v) *Which one of the following sections of the Act specifies that the provisions of the Companies Act, 1956 override the provisions in the memorandum of association —*
 - (a) *Section 2*
 - (b) *Section 4*
 - (c) *Section 9*
 - (d) *Section 13.* (1 mark each)
- (c) *Expand the following :*
 - (i) *EDIFAR*
 - (ii) *SRN*
 - (iii) *SARFAESI*
 - (iv) *ISC*
 - (v) *ESPS.* (1 mark each)

Answer 2(a)

- (i) A user can check the status of transactions by entering the **Service Request Number** on website of MCA-21.
- (ii) The Companies Act, 1956 allows a company to convert its fully paid-up shares into **Stock** .
- (iii) A **Charge Identification Number** is allotted at the time of registration of charge.
- (iv) The directors appointed by the principle of **Proportional representation** hold office for **Three years** and cannot be removed by the company in general meeting under section 284.
- (v) Casual vacancy in the Board may arise from death, **Resignation** and **Insolvency** (Mention any two other reasons.)
- (vi) The declaration of bonus issue in lieu of **Dividend** is not permitted.

Answer 2(b)

- (i) (b) Three directors
- (ii) (b) Public interest
- (iii) (c) 4 directors
- (iv) (a) Company in general meeting by ordinary resolution
- (v) (c) Section 9.

Answer 2(c)

- (i) EDIFAR – Electronic Data Information Filing and Retrieval

- (ii) SRN – Service Request Number
- (iii) SARFAESI – Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest
- (iv) ISC – Investor Service Cell/ Centre
- (v) ESPS – Employee Stock Purchase Scheme.

Question 3

- (a) *State, with reasons in brief, whether the following statements are true or false :*
- (i) *A fresh notice of every adjourned meeting is necessary.*
 - (ii) *A proxy shall not be entitled to vote on show of hands in a general meeting.*
 - (iii) *In terms of Clause 49 of the listing agreement, not less than 40% of the Board of directors shall consist of independent directors.*
 - (iv) *Resignation of a whole-time director shall take effect once it is tendered.*
 - (v) *Provisions of section 372A do not apply in the case of loan/guarantee by a company to another company in which it is holding 90% of the paid-up capital.* (2 marks each)
- (b) *“Variation of members’ rights is hanging like Democles’ sword on the members in the present liberalised global economy.” Do you agree with this statement in Indian context ? Support your answer with reasons.* (6 marks)

Answer 3(a)

- (i) **False.** An adjourned meeting is merely the continuation of the original meeting and unless the Articles of Association of a company provide otherwise, a fresh notice of the adjourned meeting is not necessary. If, however, the meeting is adjourned sine die, a fresh notice must be given.
- (ii) **True.** A proxy shall not be entitled to vote on show of hands in a general meeting unless the Articles of Association of the company provide otherwise. A proxy is entitled to vote only on a poll. Further, a proxy does not have any right to speak at a meeting (vide section 176).
- (iii) **False.** As per Clause 49 I (A) (ii) of the listing agreement, where the Chairman of the Board is a non-executive director, at least one-third of the Board should comprise of independent directors and in case he is an executive director, at least half of the Board should comprise of independent directors.
- (iv) **False.** The resignation of a whole-time director before the expiry of his terms of office becomes effective only when it is accepted by the company, as he is bound by the terms and conditions of his appointment.
- (v) **False.** Section [372A(8)(c)] of the Companies Act, 1956 specifically provides that nothing contained in section 372A shall apply to any loan made by a holding company to its wholly owned subsidiary. Further, sub-section 8(d) of section 372A of the Act provides that nothing contained in this section shall apply to any guarantee given or any security provided by a holding company in respect of loan made to its wholly owned subsidiary. Therefore, the provisions

of section 372A of the Companies Act, 1956 will apply in the case of loan/guarantee by a company to another company in which it is holding 90% of the paid-up capital.

Answer 3(b)

The power to vary members' rights is contained in section 106 of the Companies Act, 1956. It is indeed a danger to retail shareholders because the aforesaid provision read with section 86 of the Act makes it easier for the controlling group to vary the rights to its advantage.

Apparently, section 106 provides statutory checks on variation of rights by requiring the consent in writing of at least 3/4th of holders of shares of the concerned class or by passing a special resolution of the members of the concerned class in a meeting. This is intrinsically a theoretical approach as retail shareholders (whose number may be in thousands) are generally not aware of the pernicious implications of the move. Also, very few retail shareholders attend the general or class meetings of companies. The move for variation will invariably come from the controlling group to acquire higher voting power to consolidate its grip over the company which in the long run may not be beneficial to the ordinary retail shareholders.

Again, with the amendment of section 86 in the year 2000 to enable issue of shares with differential rights, the passage has been rendered smooth. Further, the Companies (Passing of the Resolution by Postal Ballot) Rules, 2001 provides that resolutions relating to variation in the rights attached to a class of shares or debentures or other securities as specified under section 106 shall be passed through postal ballot.

The experience with postal ballots so far is not very encouraging. It does not allow discussion. If any particular matter requires 'yes or no' response, the lay members without much thought may be inclined to write yes or they may not send their responses. Also, responses which are technically defective or received late will be rejected. Therefore, the controlling group will not spare any effort in organizing voting/consent as may be appropriate to achieve its objective.

Question 4

- (a) *For consideration of certain items of business, special notice is required to be given. Comment.* (4 marks)
- (b) *Discuss the procedure for removal of a director by the Central Government.* (4 marks)
- (c) *It is mandatory that the Company Secretary shall be the compliance officer of a company. Comment.* (4 marks)
- (d) *Discuss the terms of reference for audit committee.* (4 marks)

Answer 4(a)

The following matters require special notice for consideration at a general meeting:

- (i) Resolution for appointment of an auditor other than the retiring auditor at an annual general meeting. [Section 225(1)].
- (ii) Resolution at an annual general meeting to provide that a retiring auditor shall not be re-appointed. [Section 225(1)].

- (iii) Resolution to remove a director before the expiry of his period of office. [Section 284].
- (iv) Resolution to appoint another director in place of the removed director. [Section 284].
- (v) Where the Articles of Association of a company provide for the giving of a special notice for a resolution in respect of any specified matter or matters.

Answer 4(b)**Procedure for removal of a director by the Central Government**

The Central Government shall, by order, remove from office any director concerned in the conduct and management of the affairs of a company, against whom there is a decision of the Company Law Board under Section 388D of the Act (Section 388E).

The decision of the Company Law Board is given on a reference made by the Central Government under Section 388B of the Act.

Where in the opinion of the Central Government there are circumstances suggesting:

- (a) that any person concerned in the conduct and management of the affairs of a company is or has been, in connection therewith, guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law, or breach of trust; or
- (b) the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices; or
- (c) the business of a company is or has been conducted and managed by such person in a manner which is likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or
- (d) the business of a company is or has been conducted and managed by such person with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest;

the Central Government may state a case against the person aforesaid and refer the same to the Company Law Board with a request that the Company Law Board may inquire into the case and record a decision as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

Answer 4(c)

Clause 47(1)(c) of the listing agreement of stock exchanges applicable to listed companies requires a company to appoint the Company Secretary to act as Compliance Officer who will be responsible for monitoring the share transfer process and report to the Company's Board in each meeting. The compliance officer will directly liaise with the authorities such as SEBI, Stock Exchanges, Registrar of Companies, etc., and investors with respect to implementation of various clauses, rules, regulations and other directives of such authorities and investor service and complaints of related matter.

Answer 4(d)

The following is the brief description of the terms of reference for Audit Committee:

- (i) Adopt and review formal written charts approved by the Board for its self-governance.
- (ii) Review with the management the annual/half yearly/quarterly financial statements.
- (iii) Hold separate discussions with the Head- Internal Audit, Statutory Auditors and members of the Audit Committee to find out whether the company's financial statements are fairly presented in conformity with the generally Accepted Accounting Principles (GAAP).
- (iv) Review the adequacy of accounting records maintained in accordance with the provisions of Companies Act, 1956.
- (v) Look into reasons for substantial defaults, if any, in payments to depositors, creditors and shareowners.
- (vi) Review the performance of Statutory Auditors and recommend their appointment and remuneration to the Board considering their independence and effectiveness.
- (vii) Perform other activities consistent with the Memorandum and Articles of the Company, the Companies Act, 1956 and other governing laws.

Question 5

- (a) *What is directors' and officers' liability insurance ?* (6 marks)
- (b) *How does a director resign from the Board of directors in a private limited company, if the Board fails to accept his resignation ?* (6 marks)
- (c) *The articles of association of a company incorporated in 2001 provided that a director should hold 2,000 shares of the value of Rs.10 each as qualification shares. At the annual general meeting held in September, 2003, an ordinary resolution was passed increasing the share qualification of directors to 6,000 shares. The company then issued notice to the directors who did not hold 6,000 shares to acquire additional qualification shares within one month. Madhok, a director who was asked to acquire additional qualification shares, received the notice. He seeks your advice. What advice would you give him ?* (4 marks)

Answer 5(a)

Directors' and Officers' liability insurance policy is designed to protect fortune of Directors and officers of a company (public or private) against the consequences of their personal liability for financial losses arising out of wrongful acts and/or omissions done, or wrongfully attempted in their capacity as Directors or officers.

Wrongful act is defined as any actual or alleged error, omission, mis-statement, misleading statement, neglect, breach of duty or negligent act by any one of the Directors or Officers solely in their capacity as Directors or officers of the Company.

Directors' and Officers' liability coverage comprises two sections (a) damages awarded against Directors and Officers including legal costs (b) company reimbursement.

The Directors' and Officers' section indemnifies the Directors and officers in respect of claims made against them where the company is not legally permitted to reimburse them. (In the absence of D&O insurance cover, Directors and officers would have to pay the loss settlement and defense costs out of their own resources).

Such policy covers former, present and future members of the board of directors and the management.

Answer 5(b)

The Companies Act does not make express provision for the resignation of a director. A director may resign his office in the manner provided by the articles. If the articles contain no provision regarding the resignation by a director, he may resign his office at any time by giving reasonable notice to the company, no matter whether the company accepts it or not [*Abdul Hug v. Katpadi Industries Ltd.* A.I.R. 1960 Mad. 482].

Thus, in the absence of any provision in the articles, resignation once made will take effect immediately when the intention to resign is made clear. In such a case the resignation tendered by a director unequivocally in writing will take effect from the time when such resignation is tendered.

A managing or whole-time director, however, cannot resign merely by giving a notice. His resignation is governed by the terms and conditions of his appointment. In the case of [*Achutha Pai v. Registrar of Companies*, (1966) 36 Comp. Cas 598 (Ker)], it was held that the resignation becomes effective only when the company accepts the resignation and relieves him (managing director) from his duties.

Answer 5(c)

There is no statutory requirement that a director must hold qualification shares in the company in which he is a director. Section 270 of the Companies Act, 1956 lays down that if the articles of a company provide for share qualification, each director must obtain his qualification shares within two months after his appointment as director and the nominal value of the qualification shares shall not exceed Rs. 5,000 or the nominal value of the one share where it exceeds five thousand rupees.

In the present case, two aspects are covered. One is that the special resolution necessary to alter the articles of association of a company was not passed. Secondly, the provisions of Section 270 were violated. In 2001, when the company was incorporated, the minimum limit for holding of qualification shares was fixed at Rs. 20,000. Further, the company increased the limit for holding of qualification shares at Rs. 60,000 in September, 2003 which is clearly a violation of Section 270 of the Act.

Therefore, Madhok is advised not to proceed for taking the additional shares and approach the company on the above mentioned lines.

Question 6

- (a) *Anmol Ltd. in its annual general meeting appointed all its directors by passing one single resolution. No objection was made to the resolution by any one present in the meeting. Examine the validity of the appointment and subsequent acts of the Board of directors explaining the relevant provisions of the Companies Act, 1956. Will it make any difference, if Anmol Ltd. is a government company?*
(8 marks)

(b) *As a Company Secretary, draft a specimen notice of disqualification under Section 274(l)(g) for a director of your company who is otherwise eligible for re-appointment in the ensuing annual general meeting.* (4 marks)

(c) *Madhav, a chartered accountant, is a director in MNL Ltd. The company proposes to appoint/engage the firm M & Co., in which Madhav is a partner in one or more of the following capacities :*

(i) *Consultants on regular retainer basis.*

(ii) *Authorised representatives to appear before tribunals.*

Discuss whether the provisions of section 314 are attracted in the above situations. (4 marks)

Answer 6(a)

As per Section 263 of the Companies Act, 1956, at a general meeting of a public company or of a private company, which is a subsidiary of a public company, a motion shall not be made for the appointment of two or more persons as directors of the company by a single resolution, unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it. Also, a resolution moved in contravention of this provision shall be void, whether or not objection was taken at the time of its being so moved.

In the present case, Anmol Ltd. passed a single resolution appointing all the directors. The resolution is void since before moving the resolution for appointment of all the directors by a single resolution, no resolution was passed to the effect that all the directors shall be appointed by a single resolution. It is immaterial that no member objected to the appointment of all the directors by a single resolution.

As per Section 290 of the Companies Act, 1956, the act of these directors shall not be invalidated until the defect in their appointment is discovered. However, where such defect comes to the knowledge of the company, all subsequent acts of these directors shall be invalid.

Further, section 263 of the Act does not apply to a Government company in which the entire paid-up share capital is held by the Central Government or by any State Government or Governments or by the Central Government and one or more State Governments [Notification No. GSR 577(E), dated 16-7-1985]. Therefore, if Anmol Ltd. is a government company (and satisfy the conditions as mentioned above), the appointment of all the directors by a single resolution shall be valid.

Answer 6(b)

XYZ Ltd.
Registered Office.....

To

Shri _____

We regret to write to you that since M/s. ABC Co.Ltd. (address _____) of which you are a director has not filed annual accounts and annual report for a continuous

period of three financial years from _____ to _____, under section 274(1)(g) of the Companies Act, 1956, you are not eligible for being appointed as a director of our company. Therefore, our company will not be able to re-appoint you again as the director of the company in its ensuing AGM where you are due to retire by rotation.

You may kindly note that by virtue of this disqualification, you shall not be eligible to be appointed as director of our company for a period of five years.

Yours faithfully,

For XYZ Ltd.

(Signed)
Company Secretary

Answer 6(c)

It is considered by the Department of Company Affairs that an advocate or solicitor appears in a court of law as an officer of the court in pleading the cause of justice and hence, such appearance and receiving fees on that account cannot lead to an inference of holding an office or place of profit under the company under Section 314 of the Companies Act, 1956. However, if such a solicitor/advocate, etc. is appointed on a regular retainer basis for rendering legal advice other than appearance in courts, the provisions of Section 314 will be applicable. [Circular : No. 14/75 [8/12/314 (1B) / 75-CL-V], dated 5-6-1975]

Hence, in view of the above:

- (i) Appointment of a firm M & Co., in which Madhav (a director of the company) is a partner, as consultant on regular retainer basis shall be covered by the respective provisions of Section 314(1) and (1B) of the Companies Act, 1956.
- (ii) However, appointment of a firm M & Co. as authorized representatives to appear before tribunals will not be covered by the provisions of Section 314(1) and (1B) of the Act.

Question 7

- (a) *Enumerate the procedure for conversion of a public company into a private company.* (8 marks)
- (b) *Write notes on any two of the following :*
 - (i) *Filing of document in physical form in the context of MCA-21*
 - (ii) *Corporate Identification Number (CIN)*
 - (iii) *Directors' responsibility statement.* (4 marks each)

Answer 7(a)

Procedure for conversion of a public company into a private company

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

The following resolutions must be passed at the board meeting:

- (i) To approve the proposal and fix time, date and venue for holding an extraordinary general meeting of the company.
 - (ii) To authorize the company secretary or some competent officer to issue the notice of the general meeting on behalf of the Board.
2. Hold general meeting and have the special resolutions passed.
 3. Within thirty days of passing of the special resolutions, file e-form 23 to the Registrar of Companies.
 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. Send six copies including one certified copy of the amendments to the stock exchanges where the securities of the company are listed.
 6. An application in e-form 1B along with the minutes of the members' meeting 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, for obtaining the Central Government's approval to the alteration of the articles of the company.
 7. If the Registrar of Companies so directs, publish a notice in newspaper(s) as per his direction.
 8. Send to the stock exchanges where the securities of the company are listed, three copies of proceedings of the general meeting.
 9. 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 in e-form 62 within one month of the date of receipt of the order of approval.
 10. Surrender to the Registrar, the Certificate of Incorporation of the company in order to obtain fresh Certificate of Incorporation.
 11. Change the name of the company in all copies of the memorandum and articles of association, letter heads, invoice forms, receipt forms, all other stationery items, common seal of the company, sign boards and at every other place where the name of the company appears.
 12. Issue a general notice in newspapers informing members and public at large that the company has been converted into a private limited company.

Answer 7(b)(i)

Filing of document in physical form in the context of MCA-21

After the introduction of MCA-21, all the forms which were previously physically filed with the Registrar of Companies are now being electronically filed with the Registrar of Companies.

Main features of e-filing of documents under the MCA-21 system are briefly discussed below:

- 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.

- Every company has been allocated a Corporate Identity Number (CIN). CIN can be found from the MCA-21 portal through search based on ROC Registration No., Existing Company Name, etc.
- The e-forms are required to be authenticated by the authorized signatories using digital signatures as defined under the Information Technology Act, 2000.
- Various e-forms e.g. 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.
- 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].

Further, the process of e-stamping has been introduced. However, it has not been made mandatory. Companies have option to pay stamp duty in electronic manner through MCA21 system or in physical form as per the existing procedure. The Companies (Electronic Filing) Rules, 2006 provides that where the documents are required to be filed on Non-Judicial Stamp Paper, and if the stamp duty on such documents is paid electronically through Ministry of Corporate Affairs portal www.mca.gov.in, in such case, the company shall not be required to make physical submission of such documents, in addition to their submission in the electronic form. This process is available only in such States/Union Territories which have agreed to the request of Ministry of Corporate Affairs for collection of e-stamp duty on their behalf.

Answer 7(b)(ii)

Corporate Identity Number (CIN)

Every company has been allocated a Corporate Identity Number (CIN). CIN can be found from the MCA-21 portal through search based on:

- ROC Registration No.
- Existing Company Name
- Old Name of Company (in case of change of name, user is required to enter old name and the system displays corresponding current name).
- Inactive CIN [In case of change of CIN, the user is required to enter previous (inactive) CIN Number].

Answer 7(b)(iii)

Directors' Responsibility Statement

Sub-section (2AA) of Section 217 of the Companies Act, 1956 provides that the Board's report shall also include a Directors' Responsibility Statement, indicating therein,—

- (i) that in the preparation of the annual accounts, the applicable accounting

standards have been followed along with proper explanation relating to material departures.

- (ii) that the directors had selected such accounting policies and applied them consistently and made judgements 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 or loss of the Company for that period.
- (iii) 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.
- (iv) that the Directors have prepared the annual accounts on a going concern basis.

Question 8

Distinguish between any four of the following :

- (i) 'Preferential issue' and 'issue of preference shares'.
- (ii) 'E-Form 20' and 'e-Form 20A
- (iii) Meaning assigned to 'insider' and 'connected person' in the SEBI (Prohibition of Insider Trading) Regulations, 1992.
- (iv) Procedure for appointment of 'cost auditor' and 'statutory auditor'.
- (v) Appointment of a Company Secretary by a private company under 'the Indian Law' and 'the Law in the United Kingdom.' (4 marks each)

Answer 8(i)

'Preferential issue' and 'issue of preference shares'

Preferential issue : Among the many ways by which companies can raise capital is preferential issue — an issue of fresh shares or convertible debentures allotted to a select set of people, whether promoters, their relatives, or institutional investors. One could call it a wholesale equity market since the retail investors or shareholders are not invited to participate.

Promoters have used preferential allotments as a means for raising their stake in their companies — whether through shares or equity warrants, which can be converted at a later date. Unfortunately, however, allegations abound that the system has been misused by unscrupulous promoters, who initially sell their existing holdings at a higher price in the secondary market, and then build up their stakes through such issues at a lower price.

Preference shares : Section 85(1) of the Companies Act, 1956 provides that a preference share or preference share capital is that part of share capital which fulfills both the following requirements:

- (a) With respect to dividend, it carries a preferential right to be paid a fixed amount or an amount calculated at a fixed rate, which may be either free of or subject to income-tax.

- (b) With respect to capital, it carries on winding up or re-payment of capital, a preferential right to be repaid the amount of the capital paid-up or deemed to have been paid-up whether or not there is preferential right to the payment of either or both of the following amounts, namely:
 - (i) any money remaining unpaid, in respect of the amount specified in clause (a) up to the date of winding up or re-payment of capital; and
 - (ii) any fixed premium or premium on any fixed scale specified in the memorandum or articles of the company.

Answer 8(ii)**‘E-form 20’ and ‘E-Form 20A’**

E-form 20 : E-form 20 has to be filed by a public company having share capital as a declaration of compliance for obtaining certificate of commencement of business where no prospectus is issued. A copy of the statement in lieu of prospectus is required to be mandatorily attached. The original duly filled-in and signed e-form 20 on stamp paper should be sent to the concerned ROC simultaneously.

E-form 20A : E-form 20A is required to be filed within 30 days from the date of passing of special resolution in pursuance of Section 149(2A) or 149(2B) of the Companies Act, 1956. The original e-form 20A duly filled in and signed on a stamp paper is required to be sent to the concerned ROC simultaneously along with copy of the special resolution or the approval letter of the Central Government where ordinary resolution has been passed pursuant to Section 149(2B).

Answer 8(iii)**Meaning assigned to ‘insider’ and ‘connected person’ in the SEBI (Prohibition of Insider Trading) Regulations, 1992**

Insider : Insider means any person, who is or was connected with the company or is deemed to have been connected with the company and who is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company or who has received or had access to such unpublished price sensitive information.

Connected person : Connected person means any person who -

- (a) is a director of a company as defined in clause (13) of Section 2 of the Companies Act, 1956 or is deemed to be director of the company by virtue of sub-clause (10) of Section 307 of that Act; or
- (b) occupies the position of an officer or an employee of the company or holds a position involving a professional or business relationship between himself and the company whether temporary or permanent and who may reasonably be expected to have access to unpublished price sensitive information in relation to the company.

For this purpose, the words “connected person” shall mean any person who is a connected person six months prior to an act of insider trading.

Answer 8(iv)**Procedure for appointment of ‘cost auditor’ and ‘statutory auditor’**

Cost auditor : The cost auditor is appointed under Section 233B by the Board of Director of a company with the previous approval of Central Government. However, before appointing a cost auditor, a public company shall obtain a written certificate from the proposed cost auditor to the effect that the appointment, if made, will be in accordance with the provisions of Section 224(1B) of the Act.

Statutory auditor : Every company shall at each annual general meeting appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of next AGM. Such auditor is called statutory auditor. While appointing the statutory auditor, every public limited company shall obtain a written certificate from the proposed auditor to the effect that the appointment or reappointment, if made will be in accordance with the limits specified under Section 224(1B) i.e. the maximum number of companies that an auditor can audit.

To sum up, statutory auditor is appointed at the AGM while cost auditor is appointed by the Board with the previous approval of Central Government.

Answer 8(v)**Appointment of a Company Secretary by a private company under ‘the Indian Law’ and ‘the Law in the United Kingdom’**

Section 383A of Companies Act, 1956 lays down that every company having a paid up share capital of rupees five crore or more must have a whole-time secretary and such secretary must be a member of the Institute of Company Secretaries of India (ICSI). The word used in this context is ‘every company’. As such even a private company in India is mandatorily required to appoint a whole-time company secretary once its paid-up capital is rupees five crore or more.

As per Section 270 and 271 of UK Companies Act, 2006, a private company is not required to have a company secretary and only public companies are required to appoint a qualified company secretary. Also, Section 272 provides that if it appears to the Secretary of State that a public company is in breach of Section 271 (i.e. it has not employed a company secretary), the Secretary of State may give the company a direction to appoint a company secretary.
