

PROFESSIONAL PROGRAMME EXAMINATION

JUNE 2011

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. In case of resolution, mention the type of meeting and the nature of resolution, but no explanatory statement need to be given :

- (i) Resolution to alter the name clause in the memorandum of association (use appropriate names).*
- (ii) Due diligence certificate to be submitted to SEBI for public issue of debentures (mention the authority to issue).*
- (iii) Resolution approving re-issue of forfeited shares.*
- (iv) Notice to Rajan, a director of XYZ Ltd., informing him that a notice under section 284 to remove him from directorship has been received from an eligible person.*
- (v) Notice from Jolly, a shareholder of Bright Ltd., proposing the name of Virat as a director under section 257.*
- (vi) Explanatory statement to expand the objects clause in the memorandum of association of a company engaged in manufacture of computer components under licence from a company in USA to include development of computer softwares. (4 marks each)*

Answer 1(i)

Resolution : Special Resolution

Type of Meeting : General Meeting

SPECIAL RESOLUTION FOR ALTERING THE MEMORANDUM OF ASSOCIATION (NAME CLAUSE) OF THE COMPANY

RESOLVED THAT subject to the approval of the Central Government under section 21 of the Companies Act, 1956, and other applicable provisions, if any, of the Companies Act, the name of the company be changed from XYZ limited to ABC limited and accordingly, the name "XYZ Limited" wherever it occurs in the Memorandum and Articles of Association of the Company be substituted by the name "ABC Limited".

Answer 1(ii)

Authority to issue : Debenture Trustee

**DUE DILIGENCE CERTIFICATE TO BE GIVEN BY DEBENTURE
TRUSTEE ALONG WITH DRAFT OFFER DOCUMENT**

To,

Securities and Exchange Board of India

Dear Sirs,

Sub.: Public Issue of by

(Name of the Issuer)

We, the debenture trustees to the above mentioned forthcoming issue, state as follows:

- (1) We have examined the documents pertaining to the said issue.
- (2) We have also examined the relevant documents pertaining to the security to be created.
- (3) On the basis of such examination and of the discussions with the issuer, its directors and other officers, other agencies and of independent verification of the various relevant documents, WE CONFIRM that:
 - (a) The issuer has made adequate provisions for and/or has taken steps to provide for adequate security/asset cover for the secured convertible debt instruments to be issued.
 - (b) The issuer has obtained the permissions / consents necessary for creating security on the property as second charge/pari passu charge (wherever applicable)
 - (c) The issuer has made all the relevant disclosures about the security/asset cover
 - (d) The issuer has made all the relevant disclosures about its continued obligations towards the holders of convertible debt instruments.
 - (e) All disclosures made in the draft prospectus/letter of offer with respect to the convertible debt instruments are true, fair and adequate to enable the investors to make a well informed decision as to the investment in the proposed issue.
- (4) We have satisfied ourselves about the ability of the issuer to service the debt securities.

**Debenture Trustee to the Issue
with his Official Seal**

Date :

Place :

Answer 1(iii)

Type of Meeting : Board Meeting

Nature of Resolution : Board Resolution

Re-issue of forfeited Shares

“RESOLVED THAT equity shares of Rs..... each bearing Distinctive

Nos..... to, both inclusive, previously registered in the name of Shri..... and forfeited on..... as per declaration duly signed by Company Secretary placed on the table, be sold re-issued to Shri..... for Rs..... per share.”

“RESOLVED FURTHER that the Secretary of the Company be and is hereby authorized to obtain the necessary permission from the Stock Exchange for the re-issue.”

Answer 1(iv)

Notice to Rajan, Director, informing him of his removal from Directorship

To

Rajan, Director
XYZ Ltd.
New Delhi

Dear Sir,

Sub : Notice of removal

We write to inform you that the Company has received a notice from a shareholder of the Company of a resolution for your removal from the office of director. The said resolution is intended to be moved at the _____ General Meeting be held at _____ on _____ 2008 at _____ hours.

A copy of the aforesaid resolution is enclosed for your perusal. We draw your attention to the provisions contained in sub-section (3) of section 284 of the Companies Act, 1956 pursuant to which you are entitled to be heard on the resolution at the meeting. Further in terms of sub-section (4) thereof you can make a representation in writing to the Company for notification to the Members of the Company.

We also enclose the agenda of the Meeting with a request to attend the Meeting.

Yours faithfully,

Board of Directors
XYZ Limited

Secretary

Date :

Place :

Answer 1(v)

To,

The Board of Directors
Bright Ltd.

Dear Sirs,

Pursuant to section 257 of the Companies Act, 1956, I, Jolly, a member of Bright Ltd., holding_____ shares hereby propose Mr. Virat, as a candidate for the office of director to be appointed at the forthcoming annual general meeting. Also, a draft of Rupees 500 is enclosed as a deposit as required under section 257(1) of the Companies Act, 1956.

Yours faithfully,

Jolly
Shareholder of Bright Ltd.

Answer 1(vi)**Explanatory Statement**

Your Board has with a view to garner further growth and expansion has considered a proposal to diversify into a related area of operations, namely development of computer software. The objects clause which is presently restricted in scope covering manufacture of computers components only. This requires to be expanded so as to cover development of computer software also. To enable your company to consider embarking upon new activities which considered to be profitable, advantageous, feasible and which can be conveniently integrated to the company's current line of business, the resolution is being proposed. Certain incidental powers are also being added for the convenience of the Company's operations. Your Directors recommend that the special resolution be passed.

None of the Directors of the Company is interested or concerned in the said resolution except as members of the Company.

Question 2

(a) *Explain the legal position and suggested action for the following :*

- (i) *A company is ready with the printed annual report for despatch to all shareholders and there arises a need to hold an extra-ordinary general meeting. The company wants to despatch notice of the annual general meeting and the notice of extra-ordinary general meeting simultaneously in the same envelope.*
- (ii) *The articles of association of a private limited company provide that a director should make a fixed deposit of '5,000 for being qualified to be a director.*
(4 marks each)

(b) Write the most appropriate answer from the given options in respect of the following :

- (i) The maximum age limit for directors in case of private companies is —
 - (a) 65 years
 - (b) 70 years
 - (c) 75 years
 - (d) None of the above.
 - (ii) Where title in shares of a company is in dispute, the matter has to be resolved by —
 - (a) Court
 - (b) Arbitrator
 - (c) Company Law Board
 - (d) Central Government.
 - (iii) Global Ltd. has the paid-up equity capital structure — Central Government: 38%; State Government : 10%; Subsidiary of a government company : 17.5%; and retail shareholders: remaining shares. Which of the following classes of companies would it belong to —
 - (a) Government company
 - (b) Non-government public company
 - (c) Deemed public company
 - (d) Deemed private company.
 - (iv) Contracts made after incorporation of a public company, but before issue of the certificate of commencement of business are —
 - (a) Provisional contracts
 - (b) Post-incorporation contracts
 - (c) Preliminary contracts
 - (d) Contracts in the normal course of business. (1 mark each)
- (c) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):
- (i) In public issue, the facility 'ASBA' stands for _____ .
 - (ii) The proceedings of the meeting will be _____ if conducted in the absence of a quorum.
 - (iii) On satisfaction of complete charge, intimation is required to be given to the Registrar of Companies in prescribed form _____ duly signed by the company and the concerned financial institution/bank.
 - (iv) Increase in authorised capital of the company permitted by the articles of association requires resolution to be passed under section _____ of the Companies Act, 1956. (1 mark each)

Answer 2(a)(i)

Pursuant to Section 171 of the Companies Act, 1956, a general meeting may be called by giving 21 clear days' notice. Clear days means the days must be calculated excluding the date on which the notice is served, 48 hours (i.e. 2 days) for postal transit and the day on which the meeting is to be held. Thus, where notice is sent by post, 21 clear days will in effect means 25 days.

As such, one needs to ensure timings of the meetings of the board at which authorization to issue the notices for the Annual General Meeting (AGM) and the Extra Ordinary General Meeting (EGM) has been given by the board.

Section 171(2) of the Companies Act also provides for giving shorter notice if all the members give consent for the purpose of holding AGM and if the 95% of members give consent for the purpose of holding EGM.

Answer 2(a)(ii)

Regulation 66 of Table A provides that a director must hold at least one share in the company. Wherever, share qualification is fixed by the Articles, Section 270 of the Companies Act shall apply. Each and every Director may not be required by articles to hold qualification shares. The articles may prescribe that a technical or finance or other special director need not possess any share qualification. Section 270 provides that every director who is required by articles to hold qualification shares, should obtain them within 2 months after his appointment as director. Sub-section (4) of Section 270 provides that share warrants do not constitute qualification shares. As such, the fixed deposits do not constitute qualification shares. Therefore the provision, if any, in the Articles requiring a director to make fixed deposit of specified amount for being qualified to be a director, is void. Such Article needs to be amended.

Answer 2(b)

- (i) (d) None of the above
- (ii) (a) Court
- (iii) (a) Government company
- (iv) (a) Provisional contracts

Answer 2(c)

- (i) In public issue, the facility 'ASBA' stands for **Applications Supported by Blocked Amount**.
- (ii) The proceedings of the meeting will be **invalid /Void** if conducted in the absence of a quorum.
- (iii) On satisfaction of complete charge, intimation is required to be given to the Registrar of Companies in prescribed form **17** duly signed by the company and the concerned financial institution/bank.
- (iv) Increase in authorised capital of the company permitted by the articles of association requires resolution to be passed under section **94** of the Companies Act, 1956.

Question 3

(a) *State, with reasons in brief, whether the following statements are true or false. Attempt any two :*

(i) *The non-confirmation of minutes of the meeting by the Board of directors in the next subsequent meeting does not affect the validity of the decision taken in the previous Board meeting.*

(ii) *The doctrine of indoor management is not an exception to the rule of constructive notice.*

(iii) *Annual return of a public company must necessarily be filed annually.*
(2 marks each)

(b) *Assume data and draft the notice of an annual general meeting of a listed public company including therein at least one of the special business items.*
(8 marks)

(c) *During a period of about past one and a half decades, a number of countries in the world have engaged themselves in modernising their respective company laws. Can you identify the motivating factors underlying this effort ? Mention Indian scene in particular.*
(4 marks)

Answer 3(a)(i)

True.

In terms of Section 193(1A), the Chairman of the meeting of the Board of Directors or the Chairman of the next succeeding meeting of the Board of Directors is required to initial or sign each page of every such book and to date and sign the last page of the record of the proceedings of the meeting. There is no provision as to confirmation of minutes.

Hence, it is true that non-confirmation of Minutes would not affect the validity of the previous Board Meeting.

Answer 3(a)(ii)

False.

The doctrine of 'constructive notice' seeks to protect the company against the outsiders. Outsiders dealing with incorporated bodies are bound to take notice of limits imposed on the corporation by the memorandum or other documents of constitution. However, the principle of indoor management operates to protect the outsiders against the company and they are entitled to assume that the directors or other persons exercising authority on behalf of the company are doing so in accordance with the internal regulations as set out in the Memorandum & Articles of Association.

Thus doctrine of indoor management is an exception to the rule of constructive notice.

Answer 3(a)(iii)

True.

As per Section 159(1), every company having a share capital within 60 days from the day on which each of the annual general meetings prepare and file with the Registrar

a return containing the specified particulars. However, in case of default, the company and every officer of the company shall be punishable with fine which may extend to five hundred rupees for every day during which default continues.

Hence, annual return is required to be filed not only by public company but by every company having a share capital.

Answer 3(b)

_____ Ltd.

NOTICE

Regd. Office: _____

To all the shareholders of the company

Notice is hereby given that the ____ Annual General Meeting of the members of _____ Ltd. will be held on _____, the _____ at _____ at the registered office of the Company to transact the following business:

ORDINARY BUSINESS

1. To receive, consider and adopt the Director's Report, audited Balance Sheet as at 31st March, _____ and the Profit and Loss Account for the year ended on that date together the Auditor's Report thereon.
2. To declare dividend on equity shares.
3. To appoint a Director in place of Shri _____ who retires by rotation and being eligible offers himself for reappointment.
4. To appoint Auditors of the Company and to fix their remuneration. M/s. _____ Chartered Accounts, the retiring Auditors are eligible for reappointment.

SPECIAL BUSINESS:

5. To consider and if thought fit to pass with or without modification(s) the following resolution as an Ordinary Resolution:

"RESOLVED that Mr. _____ who has been appointed as an additional Director on the Board of the Company w.e.f. _____ and ceases to hold office at this annual general meeting and in respect of whom a notice under Section 257 has been received from a member proposing his candidature be and is hereby appointed as a Director of the Company."

By Order of the Board of Directors

_____ Ltd.

Company Secretary

Place : New Delhi

Date :

NOTES:

1. A Member entitled to attend and vote at the meeting is entitled to appoint a Proxy to attend and on poll to vote instead of himself/herself. A Proxy need not be a member of the Company.
2. Explanatory Statement pursuant to Section 173(2) of the Companies Act, 1956 in respect of item no.5 is annexed hereto.
3. Payment of dividend as declared at the AGM would be made to the members of the Company as on date of the AGM.
4. Members are requested to intimate to the Company changes, if any, in their registered address alongwith PIN code number.
5. Members intending to require information about accounts to be explained at the meeting are requested to write to the Company at least 10 days in advance of the date of Annual General Meeting.
6. The register of members and share transfer books would remain closed from _____ to _____ (both days inclusive).
7. Nomination facility is available to all members for nomination in accordance with the law.

EXPLANATORY STATEMENT

(pursuant to Section 173(2) of the Companies Act, 1956)

Item No.5

Shri _____ who is a qualified and experienced person was co-opted as an additional Director on the Board of the Company w.e.f. _____. In terms of provisions of Section 260 of the Companies Act, 1956, Shri _____ shall cease to hold such office at the ensuing annual general meeting. The Company has received a notice under section 257 of the Act from a member proposing the candidature of Shri _____ as a Director on the Board of the Company.

The Board recommend passing of the proposed Ordinary Resolution.

None of the Director is considered to be interested in or concerned with the proposal resolution except to the extent of their respective shareholding in the company.

Answer 3(c)

A number of countries including India, Australia, Canada, UK and Hong Kong have initiated comprehensive effort to modernize their respective company laws. The need to become more competitive, techno savvy, simple to understand and interpret to facilitate greater compliance, economic to operate, attractive as a worth while investment destination to accelerate economic growth, to emphasize on corporate social responsibility, better regulation and greater transparency in corporate governance and reporting are some of the underlying objectives that motivated them.

Precisely, in India the process has started to evolve the modern, transparent, investor friendly, well governed company law i.e. Companies Bill, 2009. Modernization of corporate

regulation governing setting-up and running of enterprises, governance and accountability to the investors and other stakeholders and structural changes in law commensurate with global standards have become critical for the maintenance and enhancement of a vibrant corporate sector and business environment. By putting in place, a best legal framework would enable the Indian Corporate Sector to operate in an environment of best international practices in a global competitive market.

Question 4

- (a) *Prepare directors' report for Anand Entertainment Ltd., including inter alia response to a qualification by auditors of the company for non-payment to creditors from small scale industries sector amounting to ₹5,000. (State only major headings of directors' report without giving any details except for the qualification.)*
(8 marks)
- (b) *Elucidate the relevance of Secretarial Standard-4 on registers and records and state its current status.*
(4 marks)
- (c) *The case of Dilip Pendse vs. SEBI is highly revealing the susceptibility to misuse of the SEBI (Prohibition of Insider Trading) Regulations, 1992. Briefly give your views.*
(4 marks)

Answer 4(a)

**Anand Entertainment Ltd.
Directors' Report of a Listed Company**

To,

The Members,

Your Directors have pleasure in presenting their Fortieth Annual Report on the business and operations of the Company and the accounts for the Financial Year ended 31st March, 2010.

1. Performance of the Company
2. Expansion and Diversification
3. Dividend
4. Term Deposits
5. Particulars of Employees
6. Conservation of Energy, Technology Absorption and Foreign Exchange Earnings and Outgo
7. Directors
8. Management Discussion and Analysis
9. Directors' Responsibility Statement
10. Auditors
11. Auditors qualification

Regarding auditors qualifications, the Directors state as follows:

For item No.....of Auditors Report read with note no.....of schedule.....

As on date, the company has settled 25% of the amount due (Rs.5000) to the creditors from small scale industries and will make the payment of remaining amount at earliest possible.

12. Acknowledgements

For and on behalf of the
Board of Directors
Chairman and Managing Director
Anand Entertainment Ltd.

Pune

Dated : June 2, 2010.

Answer 4(b)

Secretarial Standard on Registers and Records (SS-4) – Relevance and Current Status

Besides, the necessity of maintaining proper and systematic records of activities, operations and results, the governing law i.e. the Companies Act, 1956 have prescribed maintenance of a number of records on a mandatory basis. These records are open to inspection by governmental authorities/members/creditors etc. and also extracts from some of these can be requisitioned by members. The standard prescribes the principles underlying each record emphasizing on good practices. It provides for maintenance and inspection of the records in light of the law and also in tune with facility of users, both internal and external. The Information Technology Act, 2000 permits the maintenance of the records in electronic mode. SS-4 provides that apart from mandatory records, companies may maintain many other records to facilitate working. Some of the mandatory records are register of members, register for investment in securities, register for buy-back of securities, register for allotment of shares etc. Non-mandatory registers include employee attendance register, register to record daily protection etc.

The compliance with the provisions of Secretarial Standards is recommendatory in nature. Certain companies are voluntary complying with the standards for the purpose of good governance.

Answer 4(c)

The case relates to Tata Finance Ltd., a listed public company of one of the top business groups in the country. Tata Finance Ltd. had a wholly owned subsidiary in the name of Nishkalpa. Nishkalpa incurred a huge loss and it was bound to affect the bottom line of Tata Finance Ltd. It's MD, Sri Pondse passed this information to the wife who in turn sold off her holdings in TFL including the holdings in shares of this company held by companies controlled by her and Sri Pondse's father at a significant gain before this information became public. There was considerable fall in the market price of TFL shares on this information becoming public. By this process, taking advantage of insider

information, Pondse family not only avoided the loss but in fact has made considerable gain while the general investors suffered loss.

To prevent this, ethical conduct of the business and unblemished corporate governance are to be enforced not only by regulators but also by the governing board of business entities. The shareholder and investing public also have to remain constantly vigilant.

Question 5

- (a) *Assume yourself to be a Company Secretary in whole-time practice engaged in formation of a public limited company and you are required to give the declaration under section 33(2) in respect of compliance with the relevant provisions of the Companies Act, 1956 and rules framed thereunder as regards registration of the company. By reference to e-form 1, write down the declaration you would be making (keep the space for names blank). (6 marks)*
- (b) *What is bonus issue of shares and how is it authorised and done ? Bring out at least ten important/fundamental conditions to be fulfilled by a listed company to make a bonus issue. (10 marks)*

Answer 5(a)

I, _____ son/daughter/wife of _____ do solemnly declare as under:

- (i) That I am
 - (a) a Company Secretary (in whole-time practice) in India who is engaged in the formation of the company.
- (ii) And, I further declare that the particulars given above are true to the best of my knowledge and belief.
- (iii) Forms 18 and 32 are also being filed simultaneously.
- (iv) I further confirm that I am duly authorized to submit this application; and that all the particulars mentioned above are as provided in the Articles of Association as subscribed by the subscribers of the company.
- (v) All, the requirements of the Companies Act, 1956 and rules thereunder in respect of all the matters precedent in the registration of the company and incidental thereto have been complied with and I make this solemn declaration conscientiously following the same to be true.
- (vi) The company has paid correct stamp duty as per applicable Stamp Act.
- (vii) That the subscribers have given declaration of details of his/her conviction by any court for any offence involving moral turpitude or economic or criminal offences or for any offences in connection with the promotion, formation or management of a company.
- (viii) That the subscribers have given declaration that he/she has not been declared as proclaimed offender by any Economic Offence Court or Judicial Magistrate Court or High Court or any other Court.

Answer 5(b)

Issue of bonus shares means issue by a company of shares to its existing shareholders without requiring them to make any payment.

There does not exist any specific provision in the Companies Act permitting or prohibiting this issue. However, proviso to section 205(3) allows a company to capitalize its profits/reserves to issue bonus shares. Similarly, the Articles of a company may provide for issue of bonus shares as Regulations 96 and 97 of Table A authorize a company to capitalize its profits/reserves to issue bonus shares. The articles also provide whether the bonus issue can be authorized by the Board or would require shareholders approval. Declaration of bonus issue in lieu of dividend is not permitted by the Act.

Steps involved in Issue of Bonus Shares

A company issuing bonus shares should ensure that the issue is in conformity with the guidelines for bonus issue laid down by SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2009.

The procedure for issue of bonus shares by a listed company is enumerated below:

1. Ensure that is authorised by its articles of association for issue of bonus shares, capitalisation of reserves, etc.: If there is no such provision in the articles of association, the issuer shall pass a resolution at its general body meeting making provisions in the articles of associations for capitalisation of reserve;
2. Ensure that issuer has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
3. Ensure that the issuer has sufficient reason to believe that it has not defaulted in respect of the payment of statutory dues of the employees such as contribution to provident fund, gratuity and bonus;
4. Ensure that the partly paid shares, if any outstanding on the date of allotment, are made fully paid up
5. It may be noted that no issuer shall make a bonus issue of equity shares if it has outstanding fully or partly convertible debt instruments at the time of making the bonus issue, unless it has made reservation of equity shares of the same class in favour of the holders of such outstanding convertible debt instruments in proportion to the convertible part thereof.
6. The equity shares reserved for the holders of fully or partly convertible debt instruments shall be issued at the time of conversion of such convertible debt instruments on the same terms or same proportion on which the bonus shares were issued.
7. The bonus issue shall be made out of free reserves built out of the genuine profits or securities premium collected in cash only and reserves created by revaluation of fixed assets shall not be capitalised for the purpose of issuing bonus shares.
8. The bonus share shall not be issued in lieu of dividend.

9. An issuer, announcing a bonus issue after the approval of its board of directors and not requiring shareholders' approval for capitalisation of profits or reserves for making the bonus issue, shall implement the bonus issue within fifteen days from the date of approval of the issue by its board of directors. However, where the issuer is required to seek shareholders' approval for capitalisation of profits or reserves for making the bonus issue, the bonus issue shall be implemented within two months from the date of the meeting of its board of directors wherein the decision to announce the bonus issue was taken subject to shareholders' approval.
10. Once the decision to make a bonus issue is announced, the issue can not be withdrawn.

Note : Candidates can discuss any ten conditions.

Question 6

- (a) *Explain as to how the provisions of the Companies Act, 1956 relating to audit committee will help in achieving some of the objectives of good Corporate Governance.* (5 marks)
- (b) *Will the term 'remuneration' cover ESOS or ESOP for determining managerial remuneration ?* (5 marks)
- (c) *What are the requirements under the listing agreement relating to publication of unaudited quarterly results ?* (6 marks)

Answer 6(a)

The concept of Audit Committee was introduced by section 292A of the Companies Act, 1956 with a view to offer better corporate governance. Every public company having paid up capital of not less than Rs.5 crores must have an audit committee. The auditors, the internal auditors, if any, and the Director concerned in finance shall attend and participate at the meetings of Audit Committee. As per the provisions of said Section, the functions of the Committee include : (i) periodical reviews about internal control system, (ii) review of half yearly and annual financial statements and (iii) compliance of internal control systems etc.

The provisions of law relating to powers and functions of the Audit Committee relating to financial statements will help in achieving some of the objectives of corporate governance i.e. Accountability and integrity of financial reporting, healthy audit of financial and operational records, transparency of policies, better implementation, timely interventions leading to better risk management, etc.

Answer 6(b)

As per explanation (b) of Section 198 of the Companies Act, 1956, any expenditure incurred by company in providing any other benefit or amenity free of charge or at a concessional rate to its director and manager will form part of the term 'remuneration' for determining the quantum of remuneration outgo for management personnel. There seems no doubt that sweat equity or ESOP free or at lower cost to director is a 'benefit'. The question is whether providing ESOP or ESOS can be termed as expenditure incurred by the company, as company does not incur any expenditure on these heads. 'Expenditure'

is something paid out or spent. It is true that as per accounting policy of ESOP as per SEBI guidelines, the accounting value of the option granted is treated as employee compensation in accounting. However, company has not paid out any amount to the directors or other managing personnel and there was no expenditure. Hence, legally, such amount is not considered as 'remuneration' to the Director under the Companies Act, 1956.

Another view is that considering the legislative intent and considering that the definition of remuneration is inclusive and not exhaustive, such sweat equity or ESOP may be held as remuneration to director.

Answer 6(c)

1. As per clause 41 of the Listing Agreement, a company is required to submit its quarterly, year to date and annual financial results to the stock exchange.
2. The company has an option either to submit audited or unaudited quarterly and year to date financial results to the stock exchange within forty-five days of end of each quarter (other than the last quarter), subject to the following:
 - (i) In case the company opts to submit unaudited financial results, they shall be subjected to limited review by the statutory auditors of the company (or in case of public sector undertakings, by any practicing Chartered Accountant) and a copy of the limited review report shall be furnished to the stock exchange within forty-five days from end of the quarter.
 - (ii) In case the company opts to submit audited financial results, they shall be accompanied by the audit report.
3. In respect of the last quarter, the company has an option either to submit unaudited financial results for the quarter within forty-five days of end of the financial year or to submit audited financial results for the entire financial year within sixty days of end of the financial year, subject to the following:
 - (i) In case the company opts to submit un-audited financial results for the last quarter, it shall also submit audited financial results for the entire financial year, as soon as they are approved by the Board. Such un-audited financial results for the last quarter shall also be subjected to limited review by the statutory auditors of the company (or in case of public sector undertakings, by any practicing Chartered Accountant) and a copy of the limited review report shall be furnished to the stock exchange within forty-five days from end of the quarter.
 - (ii) In case the company opts to submit audited financial results for the entire financial year, it shall intimate the stock exchange in writing within forty-five days of end of the financial year, about such exercise of option.
4. However, when a company opts to submit un-audited financial results for the last quarter of the financial year, it shall, submit a statement of assets and liabilities as at the end of the financial year only along with the audited financial results for the entire financial year, as soon as they are approved by the Board.

Question 7

- (a) *A reputed public company had validly loaned certain sum of money to one of its directors on certain terms and conditions fixing the time limit for repayment thereof. Now, the director concerned has approached the company with a request to extend the time limit for repayment of the balance of loan amounting to '12 lakh by another six months. You are required to answer the following with reference to the provisions of the Companies Act, 1956 :*
- (i) *Who is authorised to grant the extension as requested by the director ?*
 - (ii) *Draft an appropriate notice for the meeting where such extension may be granted. (6 marks)*
- (b) *A complaint was filed against the petitioner and others under section 220 read with section 162 in their capacity as the officers of a company who had failed to file the balance sheet and profit and loss account in the prescribed form with the Registrar of Companies (ROC). The petitioner being accused No.3 contended that he had held the post of a non-executive director and had resigned long back. It was submitted that in his replies to the earlier show cause notices, this fact was conveyed to the ROC and no communication had been received from the ROC. The petitioner produced his resignation letter to the company and also the minutes of meeting of the Board of directors of the company wherein his resignation was recorded. Decide. (4 marks)*
- (c) *A company has 100 members. It sends notice of the general meeting to all of them. 20 members do not attend the meeting. Out of 80 members who are present, 20 members abstain from voting. How many members should vote in favour of a resolution, if it is to be passed as a special resolution ? (3 marks)*
- (d) *Account for the significance of Hong Kong as a vibrant business centre, having some special advantage. Name the law that governs companies in Hong Kong. (3 marks)*

Answer 7(a)

- (i) Pursuant to Section 293(1)(b), a public company cannot give extension of time for the repayment of any debt due by a director, except with the consent of company in general meeting by way of an ordinary resolution. Therefore, the company in General Meeting is authorized to grant extension as requested by the director.
- (ii) Notice for the meeting where such extension may be granted.

Notice of _____ General Meeting/Extraordinary General Meeting

XYZ Limited

Registered Office _____

NOTICE is hereby given that the _____ General Meeting/ Extraordinary General Meeting of the members of XYZ Limited will be held on _____ day _____, the _____ (date), at _____ (time) at _____ (address) to transact the following business:

Special Business:

Granting extension of time for the repayment of debt.

1. To consider and, if thought fit, to pass, with or without modifications, the following Resolution as an Ordinary Resolution:

RESOLVED that pursuant to the provisions of Section 293(1)(b) of the Companies Act, 1956, consent be and is hereby accorded to the company for extending the time for the repayment of balance amount of Rs.12.00 lacs advanced to Mr. AK, the Director of the Company, by a further period of six months ending on _____(date).

2.

3.

By Order of the Board of Directors

PQR

Company Secretary

Place :

Date :

Answer 7(b)

On perusal of the relative record, it has been established beyond doubt that the concerned non-executive director has resigned and such resignation was duly accepted by the Board of Directors of the Company. Further, at that point of time, no balance sheet and the profit and loss account was due for filing with ROC. The contention made by such Director had been ignored by the office of ROC. Accordingly, it may be decided that such Director should not be held liable in any manner for non-filing of balance sheet etc.

Answer 7(c)

For passing a special resolution, the requirement is that the votes cast in favour of the resolution (whether on show of hands or on a poll, as the case may be) by members who, being entitled so to do, vote in person or where proxies are allowed, by proxy, are not less than three times the number of the votes, if any, cast against the resolution by members so entitled and voting.

Here, 80 members are present, out of which 20 have abstained from voting. So, 60 members voted. $\frac{3}{4}$ of 60 is 45.

Hence, 45 members should vote in favour of a resolution, if it is to be passed as a special resolution which is 3 times the numbers of votes cast against the resolution (i.e. 15).

Answer 7(d)**The advantages of Setting Up Business in Hong Kong**

Hong Kong is an international city with advanced information, and the freest harbor for trading in the world. It provides wonderful business situations for entrepreneurs and businessmen. The advantages for setting up Hong Kong Company are as follows:

- (i) *Free to Choose the Name of the Company*: the Hong Kong government allows the names of the company to include the words such as international, chamber of commerce, united group, foundation, association for promotion, etc..
- (ii) *Little Restriction of the Business Areas*: jewelry, treasury, shipment, transportation, import and export, house estate, website, research institution and other hi-tech industry. All these can be businesses.
- (iii) *Great Development in Low Taxation Environment*: The taxation in Hong Kong is very low.
- (iv) *Easy to Get the International Credit*: It is known to all that Hong Kong is the economic and financial center in Asia, every street of which has banks. Credit is the basis to develop international businesses and is easily available.
- (v) *Doing Best to Get the Inhabitant Right in Hong Kong*. If your enterprises have done contributions to Hong Kong, you can apply to the people's inbound affairs office of Hong Kong to arrange the visa for doing businesses. If people have inhabited in Hong Kong for 7 years, they can get the eternal inhabitation right in Hong Kong.

Hong Kong Companies are guided by the Hong Kong Companies Ordinance.

Question 8

Write notes on any four of the following :

- (i) *Online inspection of documents*
- (ii) *Corporate social responsibility*
- (iii) *Resolution requiring special notice*
- (iv) *Chinese wall policy in areas of price sensitive information*
- (v) *Board meeting through video conferencing.* (4 marks each)

Answer 8(i)**Online inspection of documents**

The documents filed online, once taken on record by ROC Offices are available for public viewing on payment of requisite fees. These documents, which are in domain of public documents, include documents relating to incorporation, charges, annual returns and balance sheets and change in directors. A certified copy of the documents can also be obtained by anyone so interested. For this purpose there is also an option to mention the number of pages in the document for which a certified copy is required as well as the number of copies required.

Answer 8(ii)**Corporate social responsibility**

The subject of Corporate Social Responsibility (CSR) has evolved during the last few decades from simple philanthropic activities to integrating the interest of the business with that of the communities in which it operates. Although we have seen a period of sustained economic growth in the current decade, we still continue to face major challenges on the human side in India. The problems like poverty, illiteracy, malnutrition etc. have resulted in a large section of the population remaining as un included from the mainstream. We need to address these challenges through suitable efforts and intervention in which all the state and non-state sectors need to partner together to find and implement innovative solutions.

The CSR policy should invariably cover: care for all stakeholders; ethical functioning; respect for workers' rights and welfare, respect for human rights, respect for environment and activities for social and inclusive development.

At present, the Ministry of Corporate Affairs (MCA) is looking forward to more and more business communities coming forward and adopting the CSR Voluntary Guidelines issued by it. The MCA has also prescribed a form for filling up of the same on voluntary basis to report on CSR.

Answer 8(iii)**Resolution requiring special notice**

A resolution requiring special notice is not actually an independent class of resolutions. Such a resolution may be an ordinary or special resolution. As per provisions of the Companies Act, 1956, a special notice may be given in respect of following matters:

- (a) For the appointment of an Auditor other than the retiring Auditors;
- (b) For a resolution expressly providing that the retiring auditor shall not be reappointed.
- (c) For removing a Director before the expiry of his term. (Section 284).
- (d) For appointing another person as director, in place of the director so removed.

The articles of a company may also provide for circumstances where special notice is required. As per section 190 of the Act, notice should not be less than 14 days before the meeting. The company must immediately give its members notice of the resolution. If that is not practicable, the company must give notice either by advertisement in the local newspaper or in the other mode allowed by the Articles. Such advertisement must be given at least 7 clear days before the meeting.

Answer 8(iv)**Chinese wall policy in areas of price sensitive information**

Price sensitive information is required to be disseminated to the stock exchange on an immediate and continuous basis. To prevent the misuse of confidential information,

the organizations/firms adopt a “Chinese Wall” policy which separates those areas of organizations/firms which routinely have access to confidential information, considered “inside areas” from those areas which deal with sales/marketing/ investment advise or other departments providing support services, considered ‘public areas’.

Answer 8(v)

Board meeting through video conferencing

With the rapid and remarkable advancement in telecommunications, computer technology and electronics, conduct of board meeting through video conferencing has become possible. Video conferencing enables people sitting at a distance of thousand of miles to effectively interact with each other as all of them can not only see each other on screen but are also audible. In UK, USA and other developed countries, conduct of board meetings through video/telephone conference has been accorded legal recognition. In India, the Information Technology Act, 2000 has also provided legal recognition to transactions carried on in electronic data exchange and other modes electronic communication. However, the Companies Act, 1956 does not contain any provision enabling companies to hold electronic/video conferencing meetings. In this context, the process has been initiated by the Government to examine the proposal and under the new proposed amendment Bill, such provision has been suitably incorporated.
