

PROFESSIONAL PROGRAMME EXAMINATION

DECEMBER 2010

**DUE DILIGENCE AND CORPORATE
COMPLIANCE MANAGEMENT**

Time allowed : 3 hours

Maximum marks : 100

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

Question 1

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

- (i) *A Practising Company Secretary will be attracting the penal provisions of the Companies Act, 1956 for any false statement in the compliance certificate.*
- (ii) *Normally, the register of members or of debentureholders of an unlisted company is closed before the annual general meeting.*
- (iii) *Each due diligence review is unique but the overall aim is to provide an investor with sufficient, relevant and timely information in order to assist in the investment decision.*
- (iv) *Foreign investment can be taken in the form of technical collaboration but not in the form of financial collaboration.*
- (v) *Under the takeover regulations, once the public announcement has been made, the Board of directors of the target company can appoint an additional director or fill in any casual vacancy. (2 marks each)*

(b) *Critically examine and comment on the following :*

- (i) *The proportionate allotment of securities in an issue that is oversubscribed shall be subject to reservation for retail individual investors.*
- (ii) *Payment of royalty by Indian companies is allowed under automatic route under the FEMA regulations. (5 marks each)*

Answer 1(a)(i)

True

Section 628 deals with penalty for false statements. According to said Section, if in any return, report, certificate, balance sheet, prospectus, statement or other document, required by or for the purpose of any of the provisions of the Act, any person makes a statement

- (a) *which is false in any material particular, knowing it to be false, or*
- (b) *which omits any material fact, knowing it to be material;*

he shall, except as otherwise expressly provided in the Act, be punishable with imprisonment for a term which may extend to two years and shall also be liable to fine. Accordingly, a Practising Company Secretary will be attracting the penal provisions of Section 628, for any false statement in any material particular or omission of any material fact in the Compliance Certificate.

Answer 1(a)(ii)**False**

Normally, the Register is closed before the Annual General Meeting and for other purposes record dates may be fixed by listed companies. This requirement will not normally apply to a private limited company/unlisted company.

Answer 1(a)(iii)**True**

Due diligence exercise is transaction based and not simply a number crunching exercise. It involves collation of strategic non financial information which is likely to be crucial in the overall investment decision.

Answer 1(a)(iv)**False**

Foreign investment can be taken in the form of technical collaboration as well as financial collaboration. Technical collaboration involves payment of royalty, technical know-how fee etc. and in financial collaboration it involves foreign direct investments in the form of equity, FCCB's etc.

Answer 1(a)(v)**False**

Once the public announcement has been made, the Board of Directors of the target company cannot appoint any additional director or fill in any casual vacancy on the Board of Directors, by any person(s) representing or having interest in the acquirer, till the date of certification by the merchant banker on fulfillment of obligations by acquirer.

However, upon closure of the offer and the full amount of consideration payable to the shareholders being deposited in the special account, changes as would give the acquirer representation on the board on control over the company can be made by the target company;

Answer 1(b)(i)

The proportionate allotment of shares to retail individual investors would be equivalent to the number of shares applied for divided by the oversubscription rate of retail individual investor category, subject to minimum application size. For example the retail individual investors' category is over subscribed 8.25 times and the minimum application size is 9. A has applied for 81 specified Securities, B has applied for 72 specified securities and C has applied for 45 specified securities. As per allotment procedure, the allotment to retail individual investors shall be on proportionate basis i.e., at $1/8.25$ th of the total number of specified securities applied for. The actual entitlement shall be as follows:

1. For A- $81/8.25 = 9.82$ specified securities rounded off to 10 specified securities.
2. For B- $72/8.25 = 8.73$ specified securities rounded off to 9 specified securities (i.e. minimum application size).

3. For C- 45/8.25=5.45 specified securities. Application liable to be rejected. (as the entitlement is less than the minimum application size).

It may be noted that as per SEBI (ICDR) Regulations 2009 not less than 35% of net offer in case of issue through book building process and not less than 50% of net offer in case of issue other than book building process, shall be allocated to retail individual investors.

Answer 1(b)(ii)

Earlier, the payment of royalties under Foreign Technology Collaboration was provided for automatic approval for foreign technology transfers involving payment of lumpsum fee not exceeding US\$ 2 million and payment of royalty limited to 5% on domestic sales and 8% on exports. The said limits have been removed and payments for royalty, lumpsum fee for transfer of technology and payments for use of trademark/brand name is permitted under the automatic route i.e. without any approval of the Government of India. However, all such payments are subject to Foreign Exchange Management (Current Account Transactions) Rules, 2000 as amended from time to time.

Question 2

- (a) Choose the most appropriate answer from the given options in respect of the following :
- (i) The merger of subsidiary company into its parent company is called —
 - (a) De facto merger
 - (b) Up stream merger
 - (c) Down stream merger
 - (d) Reverse merger.
 - (ii) Which of the following committees is a non-mandatory under the listing agreement —
 - (a) Remuneration committee
 - (b) Share transfer committee
 - (c) Shareholders/investors grievance committee
 - (d) Audit committee.
 - (iii) The circular of National Securities Depository Limited (NSDL) providing for the process of demat account opening, control and verification of Delivery Instruction Slips (DIS) is subject to —
 - (a) Statutory audit
 - (b) Concurrent audit
 - (c) Internal audit
 - (d) Continuous audit.
 - (iv) Which of the following sources is not allowed to Indian companies to raise resources from the international market —
 - (a) Global depository receipts
 - (b) American depository receipts

- (c) *Indian depository receipts*
- (d) *Foreign currency convertible bonds.*
- (v) *Which of the following is not involved in the issue of Indian depository receipts —*
 - (a) *Foreign company*
 - (b) *Overseas custodian bank*
 - (c) *Domestic depository*
 - (d) *Foreign investors.*
- (vi) *Under the approval route, the foreign investor or the Indian company requires prior approval from —*
 - (a) *Securities and Exchange Board of India*
 - (b) *Reserve Bank of India*
 - (c) *Company Law Board*
 - (d) *Foreign Investment Promotion Board.* (1 mark each)
- (b) *Distinguish between the following :*
 - (i) *'Amalgamation' and 'takeover',*
 - (ii) *'Liaison office' and 'project office'.* (3 mark each)
- (c) *Mention the sectors which are prohibited for foreign investment in India.* (4 marks)

Answer 2(a)(i)

- (b) Up stream merger

Answer 2(a)(ii)

- (a) Remuneration Committee

Answer 2(a)(iii)

- (b) Concurrent audit

Answer 2(a)(iv)

- (c) Indian depository receipts

Answer 2(a)(v)

- (d) Foreign investors

Answer 2(a)(vi)

- (d) Foreign Investment Promotion Board

Answer 2(b)(i)

Amalgamation is a legal process by which two or more companies are joined together to form a new entity or one or more companies are absorbed or blended with another and as a consequence the amalgamating company loses its existence and

its shareholders become the shareholders of new company or the amalgamated company. In case of amalgamation, a new company may come into existence or an old company may survive while amalgamating company may lose its existence.

Takeover means acquisition by one company of control over another, usually by buying all or a majority of its shares. A transaction or a series of transactions by which a person acquires control over the assets of a company is generally known as takeover of the company. Takeover may be 'friendly take over' or 'hostile take over'

Answer 2(b)(ii)

Liaison Office acts as a channel of communication between the principal place of business or head office and Indian activities. Liaison office cannot undertake any commercial activity directly or indirectly and cannot, therefore, earn any income in India. The role of Liaison Office is limited to collecting information about possible market opportunities and providing information about the company and its products to prospective Indian customers.

Reserve Bank has granted general permission to foreign companies to establish Project Offices in India, provided they have secured a contract from an Indian company to execute a project in India, and

- (i) the project is funded directly by inward remittance from abroad; or
- (ii) the project is funded by a bilateral or multilateral International Financing Agency; or
- (iii) the project has been cleared by an appropriate authority; or
- (iv) a company or entity in India awarding the contract has been granted Term Loan by a Public Financial Institution or a bank in India for the project.

Answer 2(c)

Prohibition on Investment in India

FDI is prohibited in the following activities/sectors:

- (a) Retail Trading (except single brand product retailing)
- (b) Lottery Business including Government /private lottery, online lotteries, etc.
- (c) Gambling and Betting including casinos etc.
- (d) Business of chit fund
- (e) Nidhi company
- (f) Trading in Transferable Development Rights (TDRs)
- (g) Real Estate Business or Construction of Farm Houses
- (h) Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes

- (i) Activities / sectors not opened to private sector investment including Atomic Energy and Railway Transport (other than Mass Rapid Transport Systems). Besides foreign investment in any form, foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also completely prohibited for Lottery Business and Gambling and Betting activities.

Question 3

- (a) *Rosy Trading Ltd. borrowed a sum of Rs.20 lakh from a bank on the mortgage of entire assets of the company and on execution of personal guarantee by all its directors, who stood as sureties for the loan. After one year, the company went into liquidation. For paying off the bank loan, on passing a Board resolution, the directors advanced money to the company to discharge the liability towards the bank loan. However, no action for satisfaction of charge against the property of the company with the Registrar of Companies was taken. Directors claimed that they were subrogated to the position of mortgagee bank on paying off the debt and thus wanted to claim the money in priority to others. You have been engaged to decide their claim. Decide giving reasons and citing case law. (6 marks)*
- (b) *Ankur, a shareholder of Radha Financial Services Ltd., requested for copies of the register under section 301 of the Companies Act, 1956. His request was turned down stating that the register contains details about interest of directors and contracts in which they are interested, it is therefore confidential and copies thereof cannot be given. As a Practising Company Secretary, advise Ankur whether the refusal is valid. (5 marks)*
- (c) *Sonia Enterprises Ltd. is having a good track record for payment of dividend in past five years. The company has paid dividend in the last five years as follows:*

<i>Year Ended</i>	<i>Rate of Dividend Paid</i>
<i>31st March, 2005</i>	<i>12.0%</i>
<i>31st March, 2006</i>	<i>12.5%</i>
<i>31st March, 2007</i>	<i>12.5%</i>
<i>31st March, 2008</i>	<i>15.0%</i>
<i>31st March, 2009</i>	<i>18.0%</i>

It is apparent from the annual accounts for the year ended 31st March, 2010 that the profits are inadequate to declare dividend for the year ended 31st March, 2010 but the Board of directors of the company wants to declare a dividend @ 14% on the equity shares so as to maintain the image of the company. The company has some accumulated profits earned in the previous years which were not transferred to reserves.

The company seeks your advice as to how it can pay dividend at the rate of 14% on the equity shares. (5 marks)

Answer 3(a)

The directors of Rosy Limited are not entitled to claim money in priority to others. Although, the directors advanced money on passing the board resolution, yet the particulars of charge under Section 125 of the Company Act, 1956 not got registered in their favour

in the records of the Registrar of Companies. Accordingly, their position was of an ordinary unsecured creditor. Hence, the directors are not entitled to get payment in priority over the secured creditor.

In case of, *Prabhu v. Official Liquidator* (2008) 146, Com cases 157(ker), the Appellant was one of the directors of M/s. Mittal Steel Re-rolling and Allied Industries Ltd., which was under liquidation. The company, earlier applied for and availed of financial facilities from Canara Bank, to a limit of Rs.75 lakhs out of which an amount of Rs.22 lakhs and odd was outstanding as payable in June, 1981. The entire assets of the company including the land and machinery were mortgaged to the Canara Bank and directors of the company including the appellant had executed personal guarantee bonds and stood as sureties for the said loan. On account of the failure of the company to pay back the dues in proper time by 1981 the Canara Bank had expressed its inability to make further advances for the functioning of the company. In view of the above, the director advanced some money to the company and the company cleared the liabilities of the Canara Bank. The company filed winding up petition in 1987. It was observed in the judgement that there was no registered deed crediting mortgage in favour of appellant. But, the appellant advanced money to the company. The company paid the amount due to the bank using the money advanced by the appellant's group. At the time when winding up application was filed in 1987, he has no case that there is a charge for the property. So, he was not subrogated to the position of the Canara Bank.

Answer 3(b)

No, the stand taken by Radha Financial Services Limited is untenable.

The refusal is not valid and binding on the company. As per Section 301 of the Companies Act, 1956, every company shall keep one or more registers in which shall be entered separately particulars of all contracts entered into by the company in which any of the directors is interested. Such register shall be kept at the registered office of the company and shall also be open to the inspection of any member of the company and extracts may be taken therefrom and copies thereof may be required by any member of the company, to the same extent, in the same manner and on the payment of the same fee, as in case of the register of members of the company.

In view of this provision, Mr. Ankur a shareholder of the Radha Financial Services Limited had a right to take the copies of the register u/s 301 of the Companies Act, 1956. Here, the company can be directed to give the copies of the register as per his request.

Answer 3(c)

In the event of inadequacy or absence of profits in any year, dividend may be declared by a company for that year out of the accumulated profits earned by it in previous years and transferred it to the reserves. As per Companies (Declaration of Dividend out of Reserves) Rules, 1975, dividends out of past profits/reserves shall not exceed average of dividends declared during the last 5 years or 10% of its paid up capital whichever is less. Since, in the given problem, it is proposed to declare dividend @ 14% it shall not be possible without previous approval of the Central Government as per section 205 A (3) if the accumulated profits earned in the previous years which were not transferred to reserves is inadequate.

Here, in such situation the company is advised to make an application to the Central Government seeking approval for payment of dividend at 14%.

Question 4

- (a) *Mention any six cases where approval from shareholders is mandatory by way of special resolution.* (6 marks)
- (b) *Prepare a check-list of takeover process in India when there is no competitive bid.* (5 marks)
- (c) *Ash Ltd. and Cash Ltd. are contemplating setting-up a project in joint venture. To guide them, you are required to state the advantages and disadvantages of joint ventures.* (5 marks)

Answer 4(a)

Instances where the approval of shareholders is mandatory by way of special resolution

1. Change of name of the Company under Section 21
2. Alteration of Articles of association of the company under Section 31
3. Buy-back of shares under Section 77A
4. Issue of sweat equity shares under Section 79A
5. Appointment of Auditor under Section 224A
6. Appointment of sole selling agents under Section 294AA(3)
7. Appointment of director/relative etc to hold office or place of profit under Section 314.
8. Winding up of company by Tribunal under Section 433(a)
9. For Keeping of register or index of members etc at a place other than registered office, but within the city in which the registered office is situated. (Section 163)

Answer 4(b)

Takeover Process in India

The following chart gives an overview of takeover process in India, when there is no competitive bid.

- Check whether the company has conducted Board meeting for considering public offer.
- Check whether the company has appointed Merchant Banker.
- Check whether the company has Opened Escrow Account.
- Check whether the company has made Public Announcement (PA).
- It may be noted that PA has to be made within 4 days of agreement with Merchant Banker. PA has to contain specified details and not contain misleading

information. Copy of PA has to be filed with SEBI, Target Company and Stock Exchanges where the shares are listed.

- Check whether the company has filed Letter of Offer (LOO) with SEBI.

It may be noted that LOO has to be filed with SEBI within 14 days of PA. Draft LOO has to be sent to the target company also within 14 days of PA.

- Check whether the company has carried out the modifications recommended by SEBI.
- Check whether the company has dispatched LOO to Shareholders, which has to be dispatched not earlier than 21 days from the date of filing LOO with SEBI.
- Opening of Offer has to be made not later than 55th day of PA and to be opened for atleast 20 days.
- Ensure the payment of consideration as required.

Answer 4(c)

Benefit of Joint Venture

- Sharing of risks;
- Access to technology/R&D/markets;
- Access to foreign capital;
- Reduction of manufacturing costs and other overheads including expenditure on R&D;
- Complimentary skills/resources;
- New technology or products or capital;

Disadvantages of a Joint Venture

- Potentially high capital cost plus ongoing financial support are required;
- Profitable returns may take some time to achieve;
- High level of commitment of staff and management takes time;
- Time consuming (especially where a new venture is involved);
- Potential for conflict between joint venture partners;
- Cultural differences and communications difficulties;
- A minority equity position may work against partner;
- Difficult to get out of it quickly, if desired;
- Working in a different legal and commercial system;
- Political risks in the country where the joint venture is based.

Question 5

- (a) *Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :*
- (i) _____ covers those findings in a diligence which may not impact the financials but there exist certain non-compliances which though rectifiable require the investor to tread a cautious path.
 - (ii) _____ is a mechanism for subscribing to an issue containing an authorisation to block the application money in a bank account.
 - (iii) _____ instruments help in reducing the risk of investing in fixed income instruments.
 - (iv) A _____ is a technique which is adopted by a company for taking over control of the management and affairs of another company by acquiring its controlling shares.
 - (v) The aggregate of foreign investment made either directly or indirectly (through depository receipts mechanism) shall not exceed _____ of the issued and subscribed capital of the issuing company.
 - (vi) Under section 113 of the Companies Act, 1956, a company is required to deliver the certificate within _____ after the allotment of any of its securities. (1 mark each)
- (b) *Nalini, a Practising Company Secretary, was engaged to perform secretarial audit of Hindustan Fibres Ltd. Draft the audit report to be submitted by her, assuming at least three qualifications. (10 marks)*

Answer 5(a)

- (i) **Deal Cautioners** covers those findings in a diligence which may not impact the financials but there exist certain non-compliances which though rectifiable require the investor to tread a cautious path.
- (ii) **Applications supported by blocked account (ASBA)** is a mechanism for subscribing to an issue containing an authorisation to block the application money in a bank account.
- (iii) **Hedging** instruments help in reducing the risk of investing in fixed income instruments.
- (iv) A **Takeover bid** is a technique which is adopted by a company for taking over control of the management and affairs of another company by acquiring its controlling shares.
- (v) The aggregate of foreign investment made either directly or indirectly (through depository receipts mechanism) shall not exceed **51%** of the issued and subscribed capital of the issuing company.
- (vi) Under section 113 of the Companies Act, 1956, a company is required to deliver the certificate within **three months** after the allotment of any of its securities.

Answer 5(b)

To

The Board of Directors
Hindustan Fibres Ltd.

I have examined the registers, records and documents of Hindustan Fibres Ltd ("the Company") for the financial year ended on March 31, 2010 according to the provisions of-

1. The Companies Act, 1956 and the Rules made under that Act;
 2. The Depositories Act, 1996 and the Regulations and Bye-laws framed under that Act;
 3. The following Regulations and Guidelines prescribed under the Securities and Exchange Board of India Act, 1992 ('SEBI Act');
 - (a) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997;
 - (b) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992;
 - (c) The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;
 - (d) The Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999 and
 4. The Securities Contracts (Regulation) Act, 1956 ('SCRA') and the Rules made under that Act; and
 5. The Equity Listing Agreements with Bombay Stock Exchange Limited and National Stock Exchange of India Limited.
- A. Based on my examination and verification of the registers, records and documents produced to me and according to the information and explanations given to me by the Company, I report that the Company has, in my opinion, complied with the provisions of the Companies Act, 1956 ("the Act") and the Rules made under the Act and the Memorandum and Articles of Association of the Company, with regard to:
- (a) maintenance of various statutory registers and documents and making necessary entries therein;
 - (b) closure of the Register of Members;
 - (c) forms, returns, documents and resolutions required to be filed with the Registrar of Companies and Central Government;
 - (d) service of documents by the Company on its Members, and the Registrar of companies;
 - (e) notice of Board meetings and Committee meetings of Directors;
 - (f) the meetings of Directors and Committees of Directors including passing of resolutions by circulation;

- (g) the 17th Annual General Meeting held on June 20, 2009;
 - (h) requirements under section 391-394 of the Act read with Companies (Court) Rules, and the Order of the Hon'ble High Court of Delhi with regard to amalgamation of XYZ Private Limited with the Company.
 - (i) minutes of proceedings of General Meetings and of Board and other meetings;
 - (j) approvals of the Members, the Board of Directors, the Committees of Directors and government authorities, wherever required;
 - (k) constitution of the Board of Directors / Committee(s) of directors and appointment, retirement and re-appointment of Directors including the Managing Director and Wholetime Directors;
 - (l) payment of remuneration to the Directors including the Managing Director and Wholetime Directors;
 - (m) appointment and remuneration of Auditors and Cost Auditors;
 - (n) transfers and transmissions of the Company's shares, issue and allotment of shares and issue and delivery of original and duplicate certificates of shares;
 - (o) declaration and payment of dividends;
 - (p) transfer of certain amounts as required under the Act to the Investor Education and Protection Fund;
 - (q) borrowings and registration, modification and satisfaction of charges;
 - (r) investment of the Company's funds including inter corporate loans and investments and loans to others;
 - (s) giving guarantees in connection with loans taken by subsidiaries and associate companies;
 - (t) form of balance sheet as prescribed under Part I of Schedule VI to the Act and requirements as to Profit & Loss Account as per Part II of the said Schedule;
 - (u) contracts, common seal, registered office and publication of name of the Company; and
 - (v) generally, all other applicable provisions of the Act and the Rules made under that Act.
- B. I further report that:
- (a) the Directors have not complied with the requirements as to disclosure of interests and concerns in contracts and arrangements, shareholdings / debenture holdings and directorships in other companies and interests in other entities;**
 - (b) the Directors have not complied with the disclosure requirements in respect of their eligibility of appointment, their being Independent and compliance with the Company's Code of Business Conduct & Ethics (COBE) for Directors and Management Personnel;**
 - (c) the Company has obtained all necessary approvals under the various provisions of the Act;
 - (d) there was no prosecution initiated against or show cause notice received by the

Company and no fines or penalties were imposed on the Company during the year under review under the Companies Act, SEBI Act, SCRA, Depositories Act, Listing Agreement and Rules, Regulations and Guidelines framed under these Acts against the Company, its Directors and Officers.

C. I further report that the Company has not complied with the certain provisions of the Depositories Act, 1996 and the Bye-laws framed under that Act by the Depositories with regard to dematerialisation / rematerialisation of securities and reconciliation of records of dematerialised securities with all securities issued by the Company.

D. I further report that:

- (a) the Company has complied with the requirements under the Equity Listing Agreements entered into with the Bombay Stock Exchange Limited and the National Stock Exchange of India Limited;
- (b) the Company has complied with the provisions of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;
- (c) the Company has complied with the provisions of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 including the provisions with regard to disclosures and maintenance of records required under the Regulations;
- (d) the Company has complied with the provisions of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 including the provisions with regard to disclosures and maintenance of records required under the Regulations; and
- (e) the Company has not complied with the provisions of the Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999 with regard to implementation of Employee Stock Option Scheme, grant of Options and other aspects.**

Signature of Company Secretary

C.P. No.

DECLARATION

I _____ a member of the Institute of Company Secretaries of India, do declare that I am a Secretary in whole-time practice as defined in Section 2(2) of the Company Secretaries Act, 1980 and hence am I qualified to undertake Secretarial Audit of your company.

I do further declare that I do not suffer from any of the disqualifications set out in the Guidance Note issued by the Institute of Company Secretaries of India.

Signature

Name

Address

Certificate of

Practice No.

Membership No.

Place :

Date :

Question 6

- (a) *Bharat Foods Ltd., has decided to invite the public to subscribe its equity capital. List out the services which a Practising Company Secretary can render in respect of the initial public offering (IPO).* (6 marks)
- (b) *Tej Speed Ltd., an unlisted public company, has issued bonus shares in the ratio 2:1. You are required to prepare a check-list to confirm that every requirement has been fulfilled. Further, if the company is a listed company, what are the additional requirements which are required to be met ?* (6 marks)
- (c) *Mention the provisions regarding obtaining of compliance certificate by a company from a Secretary in Whole-time Practice. Also, state the action to be taken on such certificate by the company.* (4 marks)

Answer 6(a)

The plethora of services, which a Practising Company Secretary can render in IPOs include the following:

1. Planning Stage
 - (a) Deciding the time line
 - (b) Compliance related issues
 - (c) Importance of Corporate Governance
 - (d) Structure of Board
 - (e) Promoters consent
 - (f) Method of issuance of shares (Demat/Physical/Both) - Compliance
2. Due diligence
 - (a) Company Contract and Leases
 - (b) Legal and Tax Issues
 - (c) Corporate issues
 - (d) Financial Assets
 - (e) Financial Statement
 - (f) Creditors & Debtors
 - (g) Legal Cases against the company
3. Appointing Advisors and other intermediaries such as:
 - (a) Investment Bankers
 - (b) Book Running Lead Managers
 - (c) Issues with Depository

- (d) Legal Advisor
- (e) Bankers
- 4. Offer Document
 - (a) Drafting the offer document
 - (b) Filing with SEBI
 - (c) In-principle approval of Stock Exchange
 - (d) Filing with Designated Stock Exchanges
 - (e) Complying with Comments received from SEBI
 - (f) Filing with ROC
- 5. Issue Period
 - (a) Adhering to Issue Opening/Closing Date
 - (b) Compiling Field Reports on subscription status
 - (c) Coordinating with Registrar/Bankers to the issue
- 6. Allotment of shares
 - (a) Basis of allotment
 - (b) Board meeting for allotment
 - (c) Crediting shares in beneficiary account/dispatch of share certificates
 - (d) Despatch of refund orders
 - (e) Payment of stamp duty
- 7. Listing
 - (a) Filing for Listing with Designated Stock Exchange
 - (b) Finalisation of Listing Process
- 8. Post issue compliances
 - (a) To ensure proper compliance with Listing Agreement
 - (b) Redressal of shareholder complaints
 - (c) Timely filing of required reports with ROC/SEBI/Stock Exchange

As can be seen from the above, a Company Secretary is a key member in an IPO team. Apart from checking the applicability and eligibility norms or exemption from eligibility norms and the pre-listing requirements of Stock Exchange, he is responsible for ensuring that the company has complied with the pre-issue, issue and post-issue obligations of the company and corporate governance requirements including disclosures with respect to, inter alia, material contracts, statutory approvals, subsidiaries and promoter holding and litigations.

Compliance of SEBI (ICDR) Regulations 2009 and other applicable Acts and guidelines is a primary responsibility of the Company Secretary in case the company proposes to list its securities abroad, he is also required to comply with conditions for listing abroad.

Answer 6(b)

Checklist for issue of Bonus shares

Checklist for unlisted company

Check whether:

- (i) Articles of Association of the company provide for capitalisation of profits;
- (ii) Requisite resolution was passed by the Board and shareholders in their meeting for capitalization of profits and issuing bonus shares;
- (iii) Return of allotment in e-Form No. 2 was filed within 30 days of passing resolution.

Checklist for listed company

With respect to listed companies, SEBI (ICDR) Regulations additionally prescribes the following criteria for issue of bonus shares.

- Ensure that issuer has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
- 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;
- Ensure that the partly paid shares, if any outstanding on the date of allotment, are made fully paid up
- 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.
- 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.
- The Bonus issue shall be made out of free reserves and not out of revaluation reserves.
- The bonus share shall not be issued in lieu of dividend.
- 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.

- Once the decision to make a bonus issue is announced, the issue can not be withdrawn.

Answer 6(c)

Under Section 383 A(1) of the Companies Act, 1956, every Company having a paid-up share capital of not less than five crore rupees shall have a whole-time Company Secretary. Every Company not required to employ a whole-time secretary under Section 383 A(1) of the Companies Act, 1956 and having a paid up capital of ten lakhs rupees or more shall obtain a certificate from a secretary in whole-time practice. . It is necessary for the company to attach a copy of the Compliance Certificate with the Board's report while forwarding the same to members and others. The Compliance Certificate is required to be laid by the company in its annual general meeting. The compliance certificate is also required to be filed with the ROC the Compliance Certificate within thirty days from the date on which its annual general meeting is held.

Question 7

(a) Distinguish between any two of the following :

- (i) 'Initial public offering' and 'further public offering'.
- (ii) 'Physical data room' and 'virtual data room'.
- (iii) 'Joint venture' and 'wholly owned subsidiary'. (4 marks each)

(b) Write notes on any two of the following :

- (i) Transfer of unpaid amount to the Investor Education and Protection Fund
- (ii) Whistle blower policy
- (iii) Depository participants. (4 marks each)

Answer 7(a)(i)

Initial Public Offering (IPO) is when an unlisted company makes either a fresh issue of securities or an offer for sale of its existing securities or both for the first time to the public. This paves way for listing and trading of the issuer's securities.

A further public offering (FPO) is when an already listed company makes either a fresh issue of securities to the public or an offer for sale to the public, through an offer document. An offer for sale in such scenario is allowed only if it is made to satisfy listing or continuous listing obligations.

Answer 7(a)(ii)**Virtual and Physical Data Room – A comparison**

Some of the major points of distinction between the two include the following:

<i>Sl. No.</i>	<i>Particulars</i>	<i>Physical Data Room</i>	<i>Virtual Data Room</i>
1	Form of documents	Papers, files, boxes or any tangible thing	Electronic / Digital/soft copies of documents including video/audio documents
2	Security of documents	Lies with the integrity of person who is in charge of the data room	More secured through specific log-in id and pass word. In addition facilities like internet fire walls are there.
3	Time required for creation of data room	Longer time required.	Can be created within 48 hours also once demands of prospective bidders are identified.
4	Cost	High because of reasons like— Requirement of one person to take care of data room. Requires bidders to travel from their place to the place of location of data room etc	Low as the documents can be viewed from any location with internet security.
5	Convenience	Low Level because of reasons like— Only one prospective bidder can review the documents at a time Difficult to search the documents that is required	More convenient as it enables multiple bidders to review documents with search facility also.
6	Accessibility to data room	Restricted time	Any time.
7	Facility to restrict access of document access	Not there	Access can be restricted.
8	Facility to check who has reviewed what documents and how many times	Not available	Available
9	Facility to highlight new information	To be conveyed manually to all bidders	A highlight can be made in the site created as data room
10	Ability to copy documents	Possible	Not possible always
11	One to one communication in person with the seller or his representatives	Available	Not available

Answer 7(a)(iii)

Joint Ventures and Foreign Collaborations are important business models which become more popular with the opening up of the economies in the context of liberalization, competition and globalization.

A joint venture is a partnership through which two or more firms create a separate entity to carry out a particular economic activity in which each partner takes an active role in decision making. The essential features of joint ventures may be classified as:

- (a) an agreement between the parties on common long term objectives such as production, sales, financing etc.
- (b) pooling of assets, IPRs and other facilities for achievement of agreed objectives
- (c) sharing of profits.

Joint ventures are considered appropriate when complementary needs exist between companies and there is compatibility with the strategies.

Wholly owned subsidiary with respect to Indian holding company means a foreign entity formed, registered or incorporated in accordance with the laws and regulation of the host country whose entire capital is held by Indian party. Similarly foreign entities may incorporate wholly owned subsidiaries in India subject to conditions and approvals as prescribed.

Answer 7(b)(i)**Transfer of unpaid amount to the Investor Education and Protection Fund**

As per Section 205C of the Companies Act, 1956, the Central Government shall establish a fund to be called the Investor Education and Protection Fund which shall be credited with the following amounts, namely:

- (a) amounts in the unpaid dividend accounts of companies;
- (b) the application moneys received by companies for allotment of any securities and due for refund;
- (c) matured deposits with companies;
- (d) matured debentures with companies;
- (e) the interest accrued on the account referred to in clauses (a) to (d);
- (f) grants and donations given to the Fund by the Central Government, State Government, companies or any other institutions for the purposes of the Fund; and
- (g) the interest or other income received out of the investments made from the Fund.

It may be noted that no such amounts referred to in clauses (a) to (d) above shall form part of the fund unless such amounts have remained unclaimed and unpaid for a period of seven years from the date they became due for payment.

The Fund shall be utilised for promotion of investor awareness and protection of the interests of investors in accordance with such rules as may be prescribed.

Answer 7(b)(ii)

Whistle Blower Policy

The company may establish a mechanism for employees to report to the management concerns about unethical behaviour actual or suspected fraud or violation of the company's code of conduct or ethics policy. This mechanism could also provide for adequate safeguards against victimization of employees who avail of the mechanism and also provide for direct access to the Chairman of the Audit Committee in exceptional cases. Once established, the existence of the mechanism may be appropriately communicated within the organization.

Answer 7(b)(iii)

Depository Participants

Just as a broker act an agent of the investor at the stock exchange, a depository participant (DP) is the representative (agent) of the investor in the depository system providing the link between the company and investor through the depository. The depository participant maintains securities account balance and intimate the status of holding to the account holder from time to time. According to SEBI guidelines, financial institutions like banks, custodians, stock brokers etc. can become participants in the depository. A DP is one with whom an investor needs to open an account to deal in shares in electronic form. While the depository can be compared to a bank, DP is like a branch of that bank with which an account can be opened.

Question 8

Critically examine and comment on any four of the following :

- (i) The objective of due diligence is to allow the investigator to consider the various options, considering the facts found in the course of due diligence.*
 - (ii) Whenever a corporate action is announced, the issuer or its Registrar and Transfer Agent (RTA) should inform its depository just after the day of communication of the same to the relevant stock exchange(s).*
 - (iii) A limited two-way fungibility scheme has been put in place by the Government of India for ADRs/GDRs.*
 - (iv) Overseas investments by established proprietorship or unregistered partnership exporter firms will be subject to certain conditions.*
 - (v) Corporate laws are core competence areas of a Company Secretary and corporate compliance management broadly requires complete compliance of these laws.*
- (4 marks each)*

Answer 8(i)

The goal of due diligence is to provide the party proposing the transaction with sufficient information to make a reasoned decision as to whether or not to complete the transaction as proposed. It should provide a basis for determining or validating the

appropriate terms and price for the transaction incorporating consideration of the risks inherent in the proposed transaction.

Withdrawal of deal - if the due diligence uncovers information that disclosed the investments, loan or participation, a risky or undesirable one and which cannot be adequately resolve then the investigator may withdrawal from the deal.

Adjusting the valuation of the investment – the investigator may revise his valuation of the company or reassess the price at which it will provide services. More often, the information will be adverse and therefore the valuation will go down or the price will go up.

Solving of problems uncovered - it may be possible for a problem uncovered by the due diligence to be solved before the deal goes ahead. For example, unpaid stamp duty could be paid, company filing could be put in order or, if negative information is uncovered on a principal of the target company, the investor may put pressure on the target is put into a state that the investigator is happier with before it deals with it.

Answer 8(ii)

Whenever a corporate action is announced, the issuer or its register and transfer agent, should inform its depository just after the day of communication of the same to the relevant stock exchange(s). The depository should then inform the participants through a circular about the relevant action, the no-delivery period, the cut-off date and the procedure to be followed by the participants.

On the basis of the particulars of the holding a beneficial owners received from the depository as of the cut-off date, the issuer or its register and transfer agent would distribute dividend, interest and other monetary benefits directly to the beneficial owners.

Answer 8(iii)

A limited two-way fungibility scheme has been put in place by the Government of India for ADRs/GDRs. Under this scheme, a stock broker in India registered with SEBI, can purchase shares of an Indian company from the market for conversion into ADRs/GDRs based in instructions received from overseas investors. Re-issuance of ADRs/GDRs would be permitted to the extent of ADRs/GDRs which have been redeemed into underlying shares and sold in the Indian market.

Answer 8(iv)

Overseas investments by established proprietorship or unregistered partnership exporter firms will be subject to the following conditions:

- (i) The Partnership/Proprietorship firm is a (Director General of Foreign Trade) DGFT recognized Star Export House.
- (ii) The Authorised Dealer category-I bank is satisfied that the exporter is KYC (know your customer) compliant-B engaged in the proposed business and meets the requirement.
- (iii) Exporter has proven track record i.e. export outstanding does not exceed 10 per cent of the average export realization of preceding three financial years.

- (iv) The exporter has not come under adverse notice of any government agency like Enforcement Directorate, CBI and does not appear in the exporters' caution list of the Reserve Bank or in the list of defaulters to the banking system in India.
- (v) The amount of investment outside India does not exceed 10 per cent of the average of three financial years export realization or 200 per cent of the net owned funds of the firm, whichever is lower.

Answer 8(v)

Corporate Compliance Management can add substantial business value only if compliance is done with due diligence. A Company Secretary is the 'Compliance Manager' of the company. It is he who ensures that the company is in total compliance with all regulatory provisions. Corporate disclosures, which play a vital role in enhancing corporate valuation, is the forte of a Company Secretary.

Corporate laws are core competence areas of a company secretary and corporate compliance management broadly requires compliance of laws by corporates which includes:

- (i) Companies Act, 1956 and the various Rules and Regulations framed there under, MCA-21 requirements and procedures.
 - (ii) Secretarial standards/Accounting Standards/Cost Accounting Standards issued by ICSI/ICAI/ICWAI respectively.
 - (iii) Foreign Contribution Regulation Act, 1976.
 - (iv) Competition Act, 2002.
 - (v) Foreign Exchange Management Act, 1999.
 - (vi) Prevention of Money Laundering Act, 2007.
 - (vii) Micro Small and Medium Enterprises Development Act, 2006.
 - (viii) Essential Commodities Act, 1955.
 - (ix) Intellectual Property Laws, etc.
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