

PAPER 13 – Corporate Laws & Compliance

SECTION A

[Answer to Q.No.1 is compulsory and attempt any 4 from the rest]

1. (a) Arun & Co., a proprietary firm of Arun, a Chartered Accountant in practice, has been appointed as statutory auditors for a private limited company. Subsequently it came to the light that Mrs. Arun has been holding less than 1% of the shares of that company. Will this vitiate the appointment of the statutory auditors? [2]
- (b) A Public Limited Company with a paid up share capital of ₹3.00 crores and free reserves of ₹2.00 crores has not so far given any guarantee. Advise the company about the legal requirements under the Companies Act in respect of the following transactions:
- (i) To give guarantee to a housing finance company in respect of ₹40 lakhs borrowed by the company's employees.
- (ii) To give security to a finance company for a loan of ₹2 crores obtained by its subsidiary company. [4]
- (c) A company created a floating charge of its current assets in favour of a bank to secure a current account, which was in debit of ₹5 lakhs and also to secure further working capital facilities provided by the bank. The charge created on 1st January, 2012 was duly registered with the Registrar of Companies. The bank advanced ₹10 lakhs subsequent to the creation of charge. The company has gone into voluntary liquidation pursuant to a resolution passed on 1st September, 2012. Examine the validity of the floating charge in case, it is a creditors' voluntary winding up, but there is no fraudulent preference. Would your answer be different, if it was a member's voluntary winding up? [5]
- (d) Seema, a Registered Shareholder of Y Limited left her Share Certificates with her Broker A. Broker A forged the Transfer Deed in favour of Zia, accompanied by these Share Certificates lodged the Transfer Deed along with the Share Certificates with the Company for Registration. The Company Secretary, who had certain doubts, wrote to Seema informing her of the proposed transfer and in the absence of a reply from her (Seema) within stipulated time, registered the transfer of Shares in the name of Zia. Subsequently, Zia sold the Shares to Jima and Jima's name was placed in the Register of Shareholders. Later on, Seema discovered that forgery has taken place. State the remedy available to Seema and Zia in the given case. Explain. [4]
2. (a) Whether the name 'ABC Steel Bank Limited' is permissible for a Company carrying on business of manufacturers and Stockiest of Iron and steel? [2]
- (b) One of the members of ABC Ltd. has proposed the name of Mr. Hugo for appointment as a Director of the Company in the Annual General Meeting and given a notice under Section 257 of the Companies Act, 1956. Mr. Hugo is one of the partners of the Hugo & Hugo, Chartered Accountants, who are the retiring auditors of the Company. But the audit of the Company is being looked after by another partner of the firm. Examine whether Hugo & Hugo can be reappointed as auditors, if Mr. Hugo is appointed as Director. [3]

(c) ABC Ltd. has 12 Directors on its Board and has the following clause in its Article of Association:

"The question arising at any meeting of the Board of Directors or any Committee thereof shall be decided by a majority of votes, except in cases where the Companies Act, 1956 expressly provides otherwise."

In one of the meeting of the Board of Directors of ABC Ltd., 8 Directors were present. After completion of discussion on a matter, voting was done. 3 Directors voted in favour of the motion, 2 Directors voted against the motion while 3 Directors abstained from voting. State whether the motion was carried or not. It is clarified that the motion being voted up to was not concerning a matter which requires consent of all the Directors present in the meeting. [4]

(d) Mr. Fern, an Indian National desires to obtain foreign exchange for the following purpose:

- (i) Payment of US\$ 10,000 as commission on exports under Rupee State Credit Route.
- (ii) US\$ 30,000 for a business trip to U.K.
- (iii) Remittance of US\$ 2,00,000 for payment as prize money to the winning team in a Hockey Tournament to be held in Australia.

Advise him, if he can get the Foreign Exchange and under what conditions. [6]

3. **(a)** Mr. Baheti retired as a Member of Competition Commission of India (CCI) on 31st October, 2012. He was offered the post of Chief Executive in M/s. LED Ltd. which was earlier a party in the proceedings before CCI. Can he join the company with effect from 1st November, 2013?

What will be the position if Mr. Baheti joins Oil & Natural Gas Commission Ltd., a Government Company with effect from 1st April, 2013? ONGC was also earlier a party in the proceedings before CCI. [2]

(b) Mr. Bhanu was appointed as the managing director of Chandni Industries Ltd. for a period of five years with effect from 01.04.2010 on a salary of ₹12 lakhs per annum with other perquisites. The Board of Directors of the company, on coming to know of certain questionable transactions, terminated the services of the managing director from 01.03.2013. Mr. Bhanu termed his removal as illegal and claimed compensation from the company. Meanwhile the company paid a sum of ₹5 lakhs on ad hoc basis to Mr. Bhanu pending settlement of his dues. Discuss whether:

- (i) The company is bound to pay compensation to Mr. Bhanu, and, if so, how much.
- (ii) The company can recover the amount of ₹5 lakhs paid on the ground that Mr. Bhanu is not entitled to any compensation, because he is guilty of corrupt practices. [3]

(c) The scheme of amalgamation was approved by overwhelming majority of the members of the merging companies, namely ABC Ltd. and XYZ Ltd. at meetings called as per directions of the Court. When the scheme of amalgamation was awaiting sanction of the Court, the exchange ratio was questioned by a small group of dissenting shareholders of ABC Ltd.

The exchange ratio was fixed by a firm of reputed Chartered Accountants. Examine with reference to the Court rulings, whether the dissenting shareholders will succeed.

Would your answer be different, if the exchange ratio was objected to by the Central Government and not by the members of the merging companies? [4]

(d) An unlisted company, having paid-up share capital of ₹3 crores consisting of 30,00,000 equity shares of ₹10 each fully paid-up, proposes to make an initial public offer of 90,00,000 equity shares of ₹10 each at a premium of ₹5 per share, in July, 2012. The promoters acquired 10,00,000 shares on 1st January, 2008 and another 10,00,000 shares on 1st January, 2012 at face value.

(i) What should be the minimum contribution that should be made by the promoters of the above company in order to comply with the guidelines issued by SEBI?

(ii) State also the period for which the promoters are required to hold these shares and also the shares, if any, acquired by the promoters in excess of the required minimum contribution. [6]

4. (a) Is it possible to re-register a private limited company to a public limited company and then back to a private limited company? Are there any restrictions? [3]

(b) XYZ Producer Company Limited was incorporated on 1st April, 2012. At present it has got 200 members and its Board consists of 10 directors. The Board of directors of the company seeks your advice on the following proposals:

Appointment of one expert director and one additional director by the Board for a period of four years. Advise the Board of directors explaining the relevant provisions of the Companies Act, 1956. [2]

(c) Write short note on management by administrator under The Insurance Act, 1938. [5]

(d) What is the effect of forfeiture of Shares by a Company? Does forfeiture absolve the Shareholder from all liabilities? [3]

(e) A Company wants to shift some of its objects from 'Other Objects' to the 'Main Objects'. State whether it is a permissible alteration. [2]

5. (a) State the duties of generating companies as per The Indian Electricity Act, 2003. [3]

(b) The Comptroller and Auditor General of India has appointed Shiva & Co. to conduct a supplementary audit of Shivani Ltd., a subsidiary of a Government company. Shivani Ltd., however, is of the opinion that the Comptroller and Auditor General has no power to authorise such audit, it being merely a subsidiary of the Government Company. Is the argument correct? Discuss. [3]

(c) At a General Meeting of Members, ABS Company Ltd passed an Ordinary Resolution to buy-back 30% of its Equity Share Capital. The Company's AOA empower the Company for buy-back of Shares. The Company further decides that the payment for buy-back be made out of the proceeds of the Company's earlier issue of Equity Shares. Explain the provision of Companies Act, 1956, and stating the sources through which the buy-back of Companies own Shares be executed. Examine –

A. Whether Company's proposal is in order.

B. Would your answer be still the same in case the Company instead of 30% decided to buy-back only 20% of its Equity Share Capital? [2]

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(d) Miss Shaina already holds Directorships in 13 Public Ltd. Companies. She was appointed as Director in the following Public Ltd. Companies on the date given below:

Company	Date of appointment
A Ltd.	29.02.2012
B Ltd.	10.03.2012
C Ltd.	11.03.2012
D Ltd.	13.03.2012

- A. Shaina did not choose the Directorships as required u/s 277. State the legal implications thereof.
- B. What would be the position if the appointment in D Ltd were made on 18.03.2012?
- C. What would be the position if the appointment in C Ltd. and D Ltd. were made on 28.03.2012?

[5]

(e) Yen Estates Ltd. was incorporated with the object of developing land for residential houses as well as purchase and sale of flats. It had, therefore, purchased 5 acres of land near the airport at Kolkata. But Govt. acquired the same for defence purposes. The company would not replace the land as the prices of land of other places were prohibitive.

What will be the decision of the court in the following cases:

- (i) The company suspends its business for a whole year?
- (ii) The company fails to resume its operations (business) for 5 years and the prospects seemed gloomy?

[2]

6. (a) The last three years' Balance Sheets of RBS Ltd. contains the following information and figures:

	As at 31.03.2010	As at 31.03.2011	As at 31.03.2012
	₹	₹	₹
Paid up Capital	50,00,000	50,00,000	75,00,000
General Reserve	45,00,000	50,00,000	60,00,000
Debenture Redemption Reserve	15,00,000	20,00,000	25,00,000
Secured Loans	10,00,000	15,00,000	30,00,000
Net Profit for the year*	12,50,000	19,00,000	34,50,000

(*as calculated in accordance with the provisions of section 349 and 350 of the Companies Act, 1956)

In the ensuing Board Meeting scheduled to be held on 5th November, 2012, among other items of agenda, following item is also appearing:

"To decide about borrowing from financial institutions on long-term basis."

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

[5]

(b) X Ltd., having paid up capital of ₹99 lacs, entered into an agreement for purchase of raw material worth ₹50 lacs with F Pvt. Ltd., in which 2 directors of the company are the directors, with the prior approval of the Board but before material could be supplied, the paid-up capital of the company became ₹1.50 crores. The company did not obtain approval of the Central Govt. even after the increase of paid-up capital. Decide whether there is any violation of section 297? [2]

(c) A director of a company repaid personal loans by withdrawing cheques from bank account of the company. In a suit filed by the company against the lender to recover the money the defendant claimed that the director is entitled to draw the cheques and that defendants were not bound to enquire into the validity of the payment. Discuss the validity of the suit by the company to recover the money. [2]

(d) "The Board meeting scheduled for Thursday, the 8th August, 2011 could not be held for want of quorum" - Advise the chairman of the company in this regard. [2]

(e) Certain Members of Vaani Company Limited having share capital feel that the affairs of the company are being mismanaged by Directors. Members therefore, decide to move the Company Law Board, complaining the mismanagement of company affairs by Directors of the Company. Examine the provisions of the Companies Act, 1956 and state:

(i) Whether members are entitled to complain the Company Law Board.

(ii) Whether the following acts of the Board of Directors amount to mismanagement:

(a) Continuation of Directors in their office after expiry of their tenure and infighting continues among them.

(b) Non-declaration of dividend when it does not lead to devaluation of shares. [4]

SECTION B

[Answer any five questions from Q.No.7 (a) to (f)]

7. (a) What is Corporate Governance? What is the need for Corporate Governance in India? [5]

(b) "In a highly competitive and surcharged environment, family-owned concerns are changing for the better."

In view of the above statement, discuss some of the factors responsible for such a change. [5]

(c) Mention the core elements of CSR Policy as per the CSR Voluntary Guidelines 2009. [5]

(d) Write short note on Triple Bottom Line Approach of Corporate Social Responsibility (CSR). [5]

(e) "The concept of Memorandum of Understanding (MoU) has been designed to provide flexibility and autonomy to CPSEs such that it facilitates them in pursuing the objectives and purposes, for which the enterprises have been set up."

In the light of the above statement, explain the concept of MoU in India. [5]

(f) State the advantages of Good Corporate Citizenship.

[5]