NOVEMBER 2007
PAPER 4: CORPORATE LAWS AND SECRETARIAL PRACTICE

Question No.1,2 and 3 are compulsory
Answer any four from the rest of the question.

Question 1: Answer any two of the following:

(a) M/s. ABC Ltd., had power under its memorandum to sell its undertaking to another company having similar objects. The Articles of the company contained a provision by which directors were empowered to sell or otherwise deal with the property of the company. The Shareholders passed an ordinary resolution for the sale of its assets on certain terms and required the directors to carry out the sale. The Directors refused to comply with the wishes of the shareholders where upon it was contended on behalf of the shareholders that they were the principal and directors being their agents were bound to give effect to their decision. Based on the above facts, decide the fo0llwing issues, having regard to the provisions of the Companies Act 1956 and case laws.

(i) Whether the contention of shareholders against the non-compliance of their wishes by the directors is tenable.

(ii) Can shareholders usurp the powers which by the articles are vested in the directors by passing are solution in the general meeting? **(5 Marks)**

(b) KYC a recongnised Stock Exchange has not maintained proper books of account of the stock exchange, on the ground that such books of account are not essential. A complaint in this regard was made to SEBI who appointed Mr. E. An expert to make an enquiry. Explain whether SEBI is authorized to make inquiry and take action against the stock exchange. **(5 Marks)**

(c) PQR Ltd., is holding 33% of the paid up equity capital of Keya Stock Exchange. The company appoints MNL Ltd., as its proxy who is not a member of the Keya Stock Exchange, to attend and vote at the meeting of the stock exchange. Examine whether the Keya Stock Exchange can restrict the appointment of MNL Ltd., as proxy for PQR Ltd., and further restrict, the voting right of PQR Ltd., in the Keya Stock Exchange. **(5 Marks)**

Question 2: Answer any two of the following:

(a) Examine with reference to the provisions of the Foreign Exchange Management Act, 1999, the residential status of the branches mentioned below : **(7 Marks)**

(i) NNM Ltd., an Indian Company having its registered office at Mumbai India established a branch at New York U.S>an on 1st April 2005.

(ii) DDI Ltd., a company incorporated and registered in London established a branch at Kanpur in India on 1st April 2005.

(iii) DDI Ltd. has a branch office at Singapore which is controlled by its Kanpur branch.

(b) Explain the meaning of "Capital Account Transactions" under the Foreign Exchange Management Act. 1999. State its categories and also examine whether the following transactions are permissible or not under the above act as Capital Account transactions: **(7 Marks)**

(i) Investment by person resident in India in Foreign Securities.
(ii) Foreign currency loans rose in India and abroad by a person resident in India.
(iii) Export, import and holding of currency/currency notes.
(iv) Trading in transferable development rights.
(v) Investment in a Niche Company.

(c) (i) An arrangement has been made among the Cotton producers that the cotton produced by them will not be sold to mills below a certain price. The Arrangement was in writing but it neither was nor intended to be enforced by legal Proceeding. Examine whether the above arrangement can be considered as an agreement within the meaning of sec. 2(b) of the Competition Act 2002. **(3 Marks)**

(ii) The Central Government has formed the opinion that Mr. CBM (A member of the competition commission of India) has abused his position which may be prejudicial to public interest as a member of the commission Examine the powers of the Central Government in this regard. **(3 Marks)**

Question No.3: Answer any two of the following:

(a) M/s. Earth Chemicals and Engineering Ltd., is a closely held unlisted company with a paid up share capital of Rs. 3.00 crores, since 1st April, 2001 and its net worth as on 31st March, 2007 was Rs. 5.00 crores. The net tangible assets of the company as per last three audited balance sheets as at 31st March, 2005, 2006 and 2007 were Rs. 4.00 crores, 4.50 crores are 5.00 crores respectively out of which monetary assets were less than Rs. 50 lakhs in each of the three years. The company was incorporated incorporated in 1998 and commenced its business on 1st April, 1998 and since then it has earned good profits and it has not incurred any loss in any year in the past. The company has not declared any dividend so far. But according to the profits earned so far, the management could have declared dividends in each of the last five years. The name of the company was changed from Earth Engineering Ltd., to its present name effective from 1st October, 2006. The company wants to make a public issues of shares to raise Rs. 20.00 crores by issuing equity shares at premium. For the purpose of including the information in the prospectus. The company has prepared its accounts for 12 months ended 30th September, 2007 showing segment wise revenue, which reveals that revenue from chemical; segment was more than the revenue from engineering segment. Keeping the relevant guidelines issued by SEBI into account, examine whether the company can make the desired issue of equity shares based on the facts stated above. **(8 Marks)**

(b) An investor has complained to SEBI that he has not received the payment due to him from the stock broker registered with Calcutta Stock Exchange Association Ltd., The complainant has requested SEBI to take appropriate action against the stock broker. State with reference to the provisions of securities and exchange board of India Act, 1992. the action that can be taken against the stock broker, the procedure to be adopted and the factors that will be taken into account of SEBI. **(8 Marks)**

(c) "When tow or more provisions of the same statute are repugnant to each other, the court will try to construe the provisions in such a manner, if possible, as to give effect to all". Examine the statement with reference to the provisions of sections 166 and 210 of the Companies Act, 1956 which appear to be seemingly contradictory to each other for compliance. **(8 Marks)**

Question No.4: Answer the following

(a) Mr. X was appointed as the Managing Director of ABC Ltd., for a period of 5 years w.e.f. 1st January, 2006. Since his work was found unsatisfactory. His services were terminated from 15th August, 2007 by paying compensation for Later, the company discovered that during his tenure of office Mr. X was guilty of many corrupt practices and that he should have been removed without payment of compensation. Advise the company whether the services of the Managing Director can be terminated without payment of compensation as provided in the agreement and whether the company can recover the amount already paid to Mr. X filing a suit. **(8 Marks)**

(b) M/s. FAB Electronics Ltd., (FEL) has appointed four private companies as its selling agents for sale of its white goods in the four regions of the country. A complaint has been made to the registrar of companies, New Delhi that the four selling agents are in fact functioning as sole selling agents and that the terms and conditions of their appointment are not in the interest of FEL. Advise FEL about the provisions of the companies act and the action that may be taken by the authorities under the act. **(7 Marks)**

Question No.5 : Answer the Following

(a) The Board of Directors of XYZ Ltd., has agreed in principle to grant 'loan' worth Rs. 38 lakhs to MNC Ltd., on the basis of the following information. Advise XYZ Ltd., about the requirements to be complied with under the Companies Act, 1956 for the proposed inter-corporate loan to MNC Ltd., **(8 Marks)**

(i) Authorised share capital	Rs. 1,00,00,000
(ii) Issued, subscribed and paid up capital	Rs. 50,00,000
(iii) Free reserves	Rs. 10,00,00

(b) M/s. Flyover Constructions Ltd., has to recruit 2,000 Civil Engineers on contract basis for a period of 5 years. The company entered into an agreement with the employees that each employee will have to deposit Rs. 50,000 as security which sum will be returned on completion of 3 years of contract of services. The company wants to utilize the fund so collected in their business. Advise the company with reference to companies act in the matter of collection and utilization of money received from employees as security deposit. **(7 Marks)**

Question No.6 : Answer the following

(a) M/s. Joel Ltd., was incorporated in London with a paid up capital of 10 million pounds. Mr. Y an Indian citizen holds 25% of the paid up capital. M/s. X Ltd., a company registered in India holds 30% of the paid up capital of Joel Ltd., M/s. Joel Ltd., has recently established a share transfer office at New Delhi. The company seeks your advice as top what formalities it should observe as a foreign company under Companies Act, 1956. State briefly the requirements relating to filing of accounts with the Registrar of Companies by the foreign company in respect of its global business as well as Indian business. **(8 Marks)**

(b) The auditors of PQR Ltd., accepted the Certificate of the Manager, a person of acknowledged competence and high reputation, as to the value of the stock in trade. The stock was grossly overstated for several years in the balance sheets of the company. As a result of this over valuation dividends were paid out of capital. The Auditors did not examine the books of account very minutely. If they had done so and compared the amount of Stockat the beginning of the year, With the purchases and sales during the year, they would have noticed the over valuation. The company subsequently went into liquidation and the auditors were sued to make good the loss caused by the wrongful payment of dividends relying on the balance sheets figures. Based on the above facts, you are required to decided case laws, the following issues : **(7 Marks)**

(i) Whether auditors of the company will be liable for the loss caused to the company by the wrongful payment of dividends based on the Balance sheets duly audited by the Auditors.

(ii) What are the statutory duties of the Auditors in this regard?

Question No.7: Answer the following

(a) M/s. City Hospital Private Ltd., has two groups of Directors. A dispute arose between the two groups out of which one group controlled the majority of shares. A very serious situation arose in the administration of the company's affairs when the minority group ousted the lawful Board of Directors from the possession and control of the management of the company's factory and workshop. Books of account and statutory records were held by the minority group and consequently the annual accounts could not be prepared for two years. The majority group applied to the company law board for relief under sections 397 and 398 of the companies Act. You are required to decide with reference to the provisions of the Said Act, the following issues : **(8 Marks)**

(i) Can majority of shareholders apply to the company law board for relief against the oppression by the minority shareholders?

(ii) Whether company law board can grant relief in such circumstances.

(b) Worthless Ltd., has gone into liquidation because of the inability of the company to pay its debts. During the course of winding Up, a proposal was put forward by the previous management to revive the working of the company through a scheme of arrangement between the company and its creditors. As per the scheme, all the creditors have voiced their opposition to the said scheme. The company approaches you for advice. State the steps that have to be taken by the company in this regard. **(7 Marks)**

Question No.8 : Answer the following

(a) Mr. X appointed as the Managing Director of XYZ Ltd., w.e.f. 1st October, 2006. The company made an application to the Central Government for approval, as the remuneration proposed to be paid to Mr. X was beyond the limits laid down in schedule XIII to the Companies Act, 1956. the company started paying remuneration from the date of appointment and continued to do so till 31st March, 2007. The Central Government did not approve the remuneration as proposed by the company and restricted the same to a lower amount. On scrutiny of the accounts, it was noticed that the company, till 31st March, 2007 has paid to Mr. X, a total sum of Rs. 1.20 lakhs in excess of the remuneration sanctioned by the Central Government. Explain with reference to the provisions of the act whether Mr. X can keep the excess remuneration so paid by the company. **(8 Marks)**

(b) The articles of association of DEF Ltd., mentioned in it that Mr. X and Mr. Y will act as directors of the company from the date of incorporation. The company was incorporated on 2nd January, 2007. The articles also provided that the directors will have to obtain qualification shares with in one month from the date of appointment as director. Mr. X purchased on 28th March, 2007 thus violating the provisions contained in the articles. Having regard to the provisions of the companies act. Examine the validity of the appointments of Mr. X and Mr. Y as directors. **(7 Marks)**

Question No.9: Answer the following

(a) Mr. Z an expert in modern agriculture practices is willing to lend his services as a director of M/s. Lord Krishna Cotton Producer Company Ltd., registered Under Section 581C of the Companies Act, 1956. Advise Mr. Z as to how he can be appointed as a director including (1) The total number of directors that can be appointed (2) The tenure of the Directors (3) The time limit within which the appointment should be made (4) The co-option of directors and (5) The voting powers of such co-opted directors. **(8 Marks)**

(b) M/s. Info-tech Overtrading Ltd., was ordered to be wound up compulsory by an order dated 15th October, 2007 of the Delhi High Court. The official liquidator who has taken control of the assets and other records of the company has noticed the following : **(7 Marks)**

(i) The Managing Director of the company has sold certain properties belonging to the company to a private company in which his son was interested causing loss to the company to the extent of Rs. 50 lakhs. The sale took place on 10th May, 2007.

(ii) The company created a floating charge on 1st January, 2007 in favour of a private bank for the overdraft facility to the extent of Rs. 5 crores, by hypothecating the current assets viz., stocks and book debts.

Examine what action the official liquidator can take in this matter. Having regard to the provisions of the Companies Act, 1956.