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**PAPER 4: CORPORATE LAWS AND SECRETARIAL PRACTICE  
MAY 2004**

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

**Question 1**

Answer any **two** of the following:

- (a) A Public Company wants to include the following clause in its articles of association **(5 Marks)**  
“Each Director shall be entitled to be paid out of the funds of the company for attending meetings of the Board or a Committee thereof including adjourned meetings such sum as sitting fees as shall be determined from time to time by the directors, but not exceeding a sum of Rs.30,000 for each such meeting to be attended by the Director”  
You are required to advise the company as to the validity of such a clause and the correct legal position.
- (b) Securities and Exchange Board of India received serious complaints against the Affairs of a Member of a Stock Exchange. Explain the powers of SEBI under Securities Contracts (Regulation) Act, 1956 to make enquiries and to take action, if necessary, against the member of a Stock Exchange. **(6 Marks)**
- (c) The governing body of City Stock Exchange Association Ltd., is desirous of putting various restrictions on voting rights of its members to be exercised in a meeting and on their right to appoint a proxy. You are required to state whether the same is permissible. Also state the role of Central Government in this respect. **(5 Marks)**

**Question 2**

Answer any **two** of the following:

- (a) Mr.Sane, an Indian National desires to obtain Foreign Exchange for the following purposes:  
i. Remittance of US Dollor 50,000 out of winnings on a lottery ticket.  
ii. US Dollar 1,00,000 for sending a cultural troupe on a tour of U.S.A.  
iii. US Dollar 50,000 for meeting the expenses of his business tour to Europe.  
  
Advise him whether he can get Foreign Exchange and if so, under what conditions? **(7 Marks)**
- (b) Explain the restrictions, if any, under Foreign Exchange Management Act, 1999 in respect of the following issue and transfer of shares: **(7 Marks)**  
i. Issue of Equity Shares of Rs.1 crore at face value accounting for 45 per cent of post-issue capital to non-resident Indians in U.S.A on non-repatriation basis. The shares are issued by M/s.ABC Knitwear Limited to finance the modernization of its plant.  
ii. A non-resident Indian, who is holding Equity shares in M/s.DEF Textiles Limited, proposes to sell some shares to another Non-resident Indian for a consideration of Rs.50 lakhs and also transfer shares of face value of Rs.25 lakhs to a person resident in India by way of gift.
- (c) The articles of association of XYZ Computers Limited provided for a maximum of 15 Directors. But the company has only 10 Directors and for two of them representing Foreign Collaborators, alternate Directors have been appointed. Board meeting held on 1<sup>st</sup> August, 2003 was attended by 4 Directors including 2 alternate Directors. **(7 Marks)**  
Examine with reference to the relevant provisions of the Companies Act, 1956 whether quorum was present at the Board Meeting held on 1<sup>st</sup> August, 2003.  
Will your answer be different, if the articles provide for a quorum of a 6 Directors?

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### Question 3

Answer any **two** of the following:

- (a) An unlisted company, having paid up share capital of Rs.3 crores consisting of 30,00,000 Equity Shares of Rs.10 each fully paid up, proposes to make an initial public offer of 90,00,000 Equity Shares of Rs.10 each at a premium of Rs.5 per share, in July, 2004. the promoters acquired 10,00,00 shares on 1<sup>st</sup> January, 2004 at face value: **( 8 Marks)**
- 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?
  - 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.
- (b)
- Explain briefly the powers of SEBI under Securities and Exchange Board of India Act, 1999 to seize the records of a stock broker or other Intermediaries associated with Securities Market. **(4 Marks)**
  - An understanding has been reached among the manufacturers of cement to control the price of cement, but the understanding is not in writing and it is also not intended to be enforced by legal proceedings. **(4 Marks)**  
Examine whether the above understanding can be considered as an “Agreement” with the meaning of sec.2(b) of the Competition Act, 2002.
- (c)
- Explain the effects of a proviso to a section in a statute **(3 Marks)**
  - Examine whether the following contracts requires previous approval of the Central Government keeping in view the effect of the proviso to sec.297(1) of the Companies Act, 1956: **(5 Marks)**
    - Contracts for purchase of goods from a public company having a paid up share capital of more than Rupees one core by a firm in which a director of the Public Company is a director. The purchase is for cash at prevailing market prices.
    - Contracts Attracting Section 297(1) to be entered into by a Public Company having a paid up share capital of Rupees one crore in circumstances of urgent necessity.

### Question 4

- (a) State with reference to the relevant provisions of the Companies Act, 1956 whether the following persons can be appointed as a Director of a Public Company: **(8 Marks)**
- Mr.A, who has huge personal liabilities far in excess of his assets and properties, has applied to the court for adjudicating him as an insolvent and such application is pending.
  - Mr. B, who was caught red-handed in a shop lifting case two years ago, was convicted by a court and sentenced to imprisonment for a period of eight weeks.
  - Mr C, a former Bank Executive, was convicted by a court eight years ago for embezzlement of funds and sentenced to imprisonment for a period of one year.
  - Mr. D, is a director of DLT Limited, which has not filed its Annual Returns pertaining to the Annual General Meetings held in the calendar years 2001,2002 and 2003.
- (b) Draft a resolution proposed to be passed at a General Meeting of a public company giving consent to the Board of Directors for borrowing up to a specified amount in excess of the limits laid down under section 293(1)(d) of the Companies Act, 1956 and also state the borrowings, which are to be excluded from the said limits. **(7 Marks)**

### Question 5

- (a) **(8 Marks)**
- Mr.SDR, a shareholder in M/s.JKP Ltd., holding ten equity shares of Rs.10 each fully paid up wants to give a special notice to the company for removal of Mr.EDM, a director of M/s.JKP Ltd., without stating any reason in the notice. You are required to state as per the provisions of the Companies Act, 1956 and / or any decided case law whether Mr.SDR is entitled to do so.

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- (ii) Would your answer be different, if Mr.EDM was a Director appointed by the Central Government U/s. 408 of the Companies Act, 1956?
- (iii) Explain briefly the provision of the Companies Act, 1956 relating to removal of a Director in case of receipt of an appropriate special notice by the company for this purpose.
- (b) The Registrar of Companies, West Bengal has received a complaint from a group of creditors of a company. The complaint alleges that the Directors of the company, in order to prevent the unearthing of their embezzlement of company's funds, are engaged in falsification and destruction of original accounting books and records. The complaints urged the Registrar to seize the accounting books and records of the company so that the Directors may not be able to tamper the same. You are required to state the powers, if any, of the Registrar in this respect. **(7 Marks)**

### Question 6

- (a) XYZ Producer Company Limited was incorporated on 1<sup>st</sup> April, 2003. At present it has got 200 members and its board consist of 10 Directors. The Board of Directors of the company seeks your advice on the following proposals: **(8 Marks)**
- (i) Appointment of one expert Director and one Additional Director by the Board for a period of four years.
- (ii) Loan of Rs.10,000 to Mr.X, a Director of the company repayable within a period of six months.
- (iii) Donation of Rs.10,000 to a Political Party.
- Advise the Board of Directors explaining the relevant provisions of the Companies Act, 1956.
- (b) The issued, subscribed and paid up share capital of ABC Nidhi Company Limited is Rs.10 lakhs consisting of 90,000 Equity Shares of Rs.10 each fully paid up and 10,000 preference shares of Rs.10 each fully paid up. Out of member of company, 400 members holding one preference share each and 50 members holding 500 equity shares applied for relief U/s. 397 and 398 of the Companies Act, 1956. As on the date of petition, the company had 600 Equity shareholders and 5,000 preference shareholders. Examine whether the above petition U/s. 397 and 398 is maintainable. Will your answer be different, if preference shareholders have subsequently withdrawn their consent? **(7 Marks)**

### Question 7

- (a) Examine with reference to the provisions of the Companies Act, 1956 the validity of the following?
- (i) A scheme provides for Amalgamation of a "Foreign Company" with a Company Registered under the Companies Act, 1956.
- (ii) The statement forwarded with the notice convening a meeting of its members pursuant to Court's Direction U/s. 391 contain only "Exchange Ratio" without details of its calculation.
- (iii) At the time of filing of the petition for Amalgamation, the object clause of both the transferor and Transferee Companies does not contain power to Amalgamate. **(8 Marks)**
- (b) ABC Engineering Limited proposes to invest Rs.20 lakhs in the Equity Shares of PQR Trading Limited. The proposed investment together with the investments in securities of companies and loans to body corporates already exceed 60 per cent of the paid up share capita and also 100 per cent of free reserves of the company. The company has taken term loans from IDBI. Explain the procedure to be followed by ABC Engineering Limited to give effect to the proposed investment. **(7 Marks)**

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**Question 8**

- (a) Mr. A, an Advocate, is a Director of M/s. ABC Limited and he is proposed to be engaged by the company as an Advocate to appear before the court in connection with a case, on a remuneration of Rs.10,000.

Will it amount to an "Office or Place of Profit" attracting section 314 of the Companies Act, 1956?

Will your answer be different, if he is proposed to be appointed on a regular retainer basis for rendering legal advice on a retained fee of Rs.5,000 per month either by ABC limited or its subsidiary?

State also whether the proposed appointments can be made by the Board of Directors of the Companies.

**(8 Marks)**

- (b) Explain, how the auditor will be appointed in the following cases: **(7 Marks)**

- (i) A Government Company within the meaning of section 617 of the Companies Act, 1956
- (ii) The Auditor of the company has resigned on 31<sup>st</sup> December, 2000, while the Financial year of the company ends on 31<sup>st</sup> March, 2004.
- (iii) A company, whose shareholders include the following:
  - (a) Bank of Baroda (A Nationalized Bank) holding 12% of the subscribed capital in the company.
  - (b) National Insurance Company Limited (Carrying on General Insurance Business) holding 10% of the subscribed capital in the company.
  - (c) Maharashtra State Financial Corporation (A Public Financial Institution) holding 8% of the subscribed capital in the company.

**Question 9**

- (a) The Board of Directors of M/s. ABC Ltd., an unlisted company having a paid up capital of Rs.6 crores consisting of Equity share capital of Rs.5 crores and preference share capital of Rs.1 crore and also 1,100 "Small Shareholder's holding equity shares seeks your advice on the following: **(8 Marks)**

- (i) Is it necessary for the company to appoint a Director. The producer to be followed by the company for such appointment and the period for which such appointment can be made.
- (ii) Can such a Director be removed by the company before the expiry of his period of reappointment without the consent of the "Small Shareholders"?

Advise explaining the relevant provisions of the Companies Act, and the Rules.

- (b) 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 Rs.5 lakhs and also to secure further Working Capital facilities provided by the Bank. The charge created on 1<sup>st</sup> January, 2003 was duly registered with the registrar of companies. The bank advanced Rs.10 lakhs subsequent to the creation of charge. The company has gone into voluntary liquidation pursuant to a resolution passed on 1<sup>st</sup> September, 2003. Examine the validity of the floating charge in case it is a creditor's voluntary winding up, but there is no fraudulent preference. Would your answer be different, if it was a member's voluntary winding up? **(7 Marks)**