

## May 2007 COMPANY LAW & SECRETARIAL PRACTICE

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### Question 1:

- (a) A 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) Describe the provisions of the Securities Contracts (Regulation) Act, 1956 regarding the powers of the Central Government to supersede the Governing Body of a recognised Stock Exchange and the consequences of such supersession. **(5 Marks)**
- (c) SEBI is of the opinion that in the interest of investors, it is desirable to amend the rules of RSP Stock Exchange prohibiting the appointment of the broker-member as President of the Stock Exchange. Explain briefly with reference to the provisions of Securities Contract (Regulation) Act, 1956, whether it is possible for SEBI to amend the rules of the Stock Exchange, if the Stock Exchange does not change the rules. **(5 Marks)**

### Question 2(a):

**(5 Marks)**

- (i) Tomco Ltd. a vehicles manufacturing company situate at Pune, Maharashtra has received an order from a transport company in Italy for supply of 100 Trucks on lease. You are required to state, how the said Tomco Ltd. can accept such an order.
- (ii) Forex Dealers Ltd. is an Authorised Person within the meaning of Foreign Exchange Management Act, 1999. Reserve Bank of India issued certain directions to the said Authorised Person to file certain returns which it failed to file. You are required to state the penal provisions to which the said Authorized Person has exposed itself.

### Question 2 (b):

**(5 Marks)**

- (i) Mr. Sekhar resided in India for a period of 150 days in India during the financial year 2006-2007 and thereafter went abroad. He came back to India on 1<sup>st</sup> April, 2007 as an employee of a business organization. What would be his residential status during the financial year 2007-2008 ?
- (ii) Mr. Atul, an Indian National desires to obtain foreign exchange for the following purposes:
- Remittance of US Dollar 10,000 for payment for goods purchased from a party situated in Nepal.
  - US Dollar 10,000 for remitting as commission to his agent in U.S.A. for sale of commercial plot situated near Bangalore, consideration in respect of which was received by Mr. Atul by way of foreign currency inward remittance amounting to US Dollar 1,00,000.
- Advise him, if he can get the Foreign Exchange and under what conditions.

### Question 2 (c):

**(5 Marks)**

- (i) Hon'ble Justice Mr. HCJ, a retired High Court Judge, attained the age of 61 years on 31<sup>st</sup> December, 2004. The Central Government appointed him as the Chairperson of the Competition Commission of India with effect from 1<sup>st</sup> January, 2005. You are required to state, with reference to the provisions of the Competition Act, 2002, the term for which he may be appointed as Chairperson of the Competition Commission of India. Whether he can be reappointed as such and till when he can remain as Chairperson of the Competition Commission of India?

- (ii) After ceasing to be a member of the Competition Commission of India with effect from 31<sup>st</sup> March, 2007, Mr.MKP was offered the post of Executive Director with appropriate remuneration and perquisites in the following organizations with effect from 1<sup>st</sup> April, 2007:
- HLL Ltd. a private sector public limited company, whose case was disposed off by the Competition Commission under the provisions of the Competition Act, 2002 in the month of February, 2007.
  - Life Insurance Corporation of India.
- You are required to state with relevant provisions of the Competition Act, 2002, the option available to Mr.MKP in respect of accepting the offers.

**Question 3(a):**

**8 Marks**

As on 31<sup>st</sup> December, 2006, the following information and figures are noticed from the Annual Accounts for the year ended 31<sup>st</sup> March, 2006 of CAS Ltd. a Company listed with The Stock Exchange, Mumbai.

- Authorised Share Capital Rs.20.00 Crores comprising of 2 Crore Equity shares of Rs.10 each.
- Paid up Share Capital Rs.9.00 Crores comprising of 80 lac Equity Shares of Rs.10 each fully paid up and 20 Lac Equity Shares of Rs.10 each called and paid upto Rs.5 each. The total paid up capital is paid up in cash.
- Securities Premium Account Rs.20.00 Crores.
- 5 Lac Fully Convertible Debentures of Rs.100 each. These debentures are due for conversion on 31<sup>st</sup> March, 2007 in full into fully paid Equity Shares of Rs.10 each in the ratio of one Debenture: two Equity Shares.
- General Reserve Rs.30.00 crores.
- Fixed Assets Revaluation Reserve Rs.10.00 crores
- Outstanding Liabilities in respect of Bonus to Employees & Workers Rs.25.00 Lacs.
- Outstanding Liabilities in respect of Interest payable on Public Deposits comprising of Fixed Deposits from General public Rs.15.00 lacs.

Following other information is gathered from the books of account and other records of the said Company for the period upto 31<sup>st</sup> December, 2006:

- The partly paid shares were made fully paid prior to 30<sup>th</sup> June, 2006.
- Bonus to employees and workers was paid on 15<sup>th</sup> September, 2006.
- Interest on Public Deposits was outstanding on 31<sup>st</sup> December, 2006.

The Directors of CAS Ltd. wants to issue Bonus Shares on or after 1<sup>st</sup> April, 2007 in the ration of 1:1. Advise the Directors or the matter with reference to the guidelines issued by Securities and Exchange Board of India on Bonus Issue.

**Question 3 (b):**

**8 Marks**

Securities and Exchange Board of India (SEBI) has issued certain guidelines in respect of fixation of exit price through “Book Building” process for the shares to be bought back by the listed companies, who want to voluntarily delist their shares from the stock exchanges. You are required to state the salient features of the said “Book Building” Process.

**Question 3(c):**

**8 Marks**

- what is the effect of a proviso? Does it qualify the main provisions of an Enactment?
- Does an explanation added to a section widen the ambit of a section ? Support your answer with an example from the Companies Act, 1956.
- What do you understand by the term “Preamble” and how does it help in interpretation of a statue?

**Question 4 (a):****8 Marks**

- (i) Mr. MTP was appointed as a director at the Annual General Meeting of a limited company held on 30<sup>th</sup> September, 2005 and he carried on his duties and functions as a director. In the month of August, 2006, it was found out that there were certain irregularities in his appointment and on 31<sup>st</sup> August, 2006, his appointment was declared invalid. But Mr. MTP continued to act as director even after 31<sup>st</sup> August, 2006. you are required to state, with reference to the provisions of the Companies Act, 1956, whether the acts done by Mr. MTP are valid and binding upon the company?
- (ii) In course of administration of the affairs of a limited company, chairman of its Board of Directors came across a matter, which required the approval by way of a board resolution. In the prevailing circumstances, it is not possible to convene and hold a Board Meeting. The Chairman approaches you to advise him of the way and the relevant procedure to obtain such approval without holding the BOARD Meeting. You are required to advise him on the matter as per the provisions of the Companies Act, 1956.

**Question 4(b):****7 Marks**

The management of ATP Ltd. a company listed with The Stock Exchange, Mumbai wants to appoint Mr.BDF as a Director of the Company at the Annual General Meeting of the Company to be held on 24<sup>th</sup> May, 2007. It may be noted that Mr. BDF is not a retiring Director. The Management seeks your guidance regarding the procedure to be adopted for the purpose. You are required to state the procedure to be followed for giving effect to such proposal and formalities to be observed after appointment of Mr.BDF as Director, by the management of ATP Ltd. as per the provisions of the Companies Act, 1956.

**Question 5 (a):****8 Marks**

A majority of the Board of Director of M/s.Bulk Drugs Ltd. have reasons to believe that some of the business activities carried on in the name of the company are prima facie against the interests of the company and its members. They want the matter to be referred to Central Government in the form of an application for appointment of an Inspector to reach to the bottom of the matter and unveil the truth. In this connection you are required to :

- (i) State the steps required to be taken with reference to the provisions of the Companies Act, 1956.
- (ii) Draft an application to be made to the Central Government.

**Question 5 (b):****7 Marks**

- (i) 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 a 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?
- (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) State the relevant provisions of the Companies Act, 1956 in case of an appropriate special notice is received by the company for removal of any director.

**Question 6 (a):****8 Marks**

- (i) Define the expression "Accounting Standards" within the meaning of Companies Act, 1956.
- (ii) XYZ Limited did not prepare its Balance Sheet as at 31<sup>st</sup> March, 2007 and the Profit and Loss Account for the year ended on that date in conformity with some of the mandatory Accounting Standards issued by the Institute of Chartered Accountants of India. You are required to state with reference to the provisions of the Companies Act, 1956, the responsibilities of directors and statutory auditor of the company in this regard.

**Question 6 (b):****7 Marks**

- (i) A two year old Producer Company registered U/s. 581 C of the Companies Act, 1956 wants to donate some amount. The Chief Executive of the Producer Company has approached you to advise him as to how and for what purposes the donation can be made by such company. Also state the monetary restrictions, if any, laid down in the Companies Act, 1956 on making donations by a Producer Company. You are informed that as per the profit and loss account of the producer company for its last accounting year the profit was Rs.20.00 lacs.
- (ii) State the powers and functions of the Board of Directors of a Producer Company as enumerated in the Companies Act, 1956.

**Question 7 (a):****8 Marks**

60% shares of Indo-French Ltd. are held by French Group and balance by an Indian Group. As per articles of association of the company both groups had equal managerial powers. The relationship between the two groups soured and the operations of the company reached a deadlock. The Indian Group approached the Company Law Tribunal (Company Law Board till Company Law Tribunal becomes functional, referred to as CLB hereinafter) for action against the French Group for oppression. Based on these facts, you are required to decide, with reference to the provisions of the Companies Act, 1956 and / or the decided case laws, the following issues:

- (i) Whether the contention of oppression against the French Group by the Indian Group is tenable?
- (ii) What are the powers of the CLB in this regard?

**Question 7 (b):****7 Marks**

State the provisions of the Companies Act, 1956 in respect of appointment of Auditor in the following cases:

- (i) A Government Company within the meaning of section 617 of the Act.
- (ii) A public limited company at whose annual general meeting held on 30<sup>th</sup> November, 2006 in respect of its accounting year ended on 30<sup>th</sup> June, 2006, the auditor was appointed to hold office as such till the conclusion of its next annual general meeting, but whose auditor has resigned on 15<sup>th</sup> March, 2007.
- (iii) A company whose shareholders include the following :
- Bank of Boroda (a nationalized bank) holding 12% of the Subscribed capital in the Company.
  - National Insurance Co. Ltd. (carrying on general insurance business) holding 10% of the Subscribed capital in the Company.
  - Maharashtra State Financial Corporation ( a public financial institution) holding 8% of the subscribed capital in the company.

**Question 8 (a):****8 Marks**

MNC Ltd. a company, whose paid up capital was Rs.4.00 crores, has issued rights shares in the ratio of 1:1. The said company is listed with Mumbai Stock Exchange. Whether the company is required to appoint any Audit Committee and if yes, draft a suitable Board Resolution to appoint an Audit Committee covering the aspects as provided in the Companies Act, 1956 and the Listing Agreement with the Stock Exchange. In case the company is not required to appoint any Audit Committee, state the provisions of the Companies Act, 1956 in respect of appointment of Audit Committee by a company.

**Question 8 (b):****7 Marks**

An allegation was leveled against RQR Ltd. that the funds of the company are misused. Mr.Z one of the Directors of the company wants to inspect the books of account of the company in order to ascertain whether the allegation was true. But since Mr.Z does not have the knowledge as accounting, he appoints Mr.A, his friend and a practicing Chartered Accountant to go thorough the books of account of the company on his behalf. The company seeks your advise as to whether Mr.A may be allowed to inspect the books of account of the company on behalf of Mr.Z. you are required to give your advice to the company keeping in view the provisions of the Companies Act, 1956.

What would be your advise if Mr.Z would have been a shareholder only and not a Directors of the company?

**Question 9 (a):****10 Marks**

Following information is available from the audited Balance Sheet as at 31<sup>st</sup> March, 2007 of ASK Ltd. :

| Capital & Liabilities  | Rs.         | Assets  | Rs.         |
|--|-------------|---|-------------|
| Share capital :  |             | Fixed Assets:   |             |
| Equity share capital (5,00,000 shares of Rs.10 each fully paid up in cash) | 50,00,000   | Goodwill  | 10,00,000   |
| Less: Calls in arrear  | 50,000      | Land & Buildings  | 75,00,000   |
|  | 49,50,000   | Plant & Machinery   | 1,50,00,000 |
| Preference share capital   | 15,00,000   | Furniture & Other Assets                                    | 2,50,000    |
| Share Application Money  | 10,00,000   | Investments :   |             |
| Reserve & Surplus  |             | Equity shares in wholly owned subsidiary company KMC Ltd.   | 12,50,000   |
| Securities premium   | 15,00,000   | Equity shares representing 90% of share capital of MTC Ltd. | 4,50,000    |
| Capital Redemption Reserve   | 12,00,000   | Debentures in SKT Ltd.                                      | 12,00,000   |
| Fixed Assets Revaluation Reserve   | 10,50,000   | Preference share in HUT Ltd.                                | 5,00,000    |
| Sinking Fund Reserve   | 11,00,000   | Capital account balance in Partnership Firm-BKP & Co.       | 8,00,000    |
| General Reserve  | 40,00,000   | Current Assets:   |             |
| Profit and Loss Account  | 22,00,000   | Stock and Book Debts  | 14,00,000   |
| Dividend Equalization Reserve  | 6,00,000    | Cash & Bank balances  | 1,00,000    |
| Secured Loans:   |             | Loans & Advances:   |             |
| Cash credit facility from Bank   | 1,00,00,000 | Inter-corporate deposits                                    | 25,00,000   |
| Unsecured Loans:   |             | Business Advances   | 14,00,000   |
| Fixed deposits (From general public maturing after 31.12.2007)             | 20,00,000   |   |             |
| Current liabilities and provisions :                                       |             |   |             |
| Current liabilities  | 12,50,000   |   |             |
| Provision for taxation   | 10,00,000   |   |             |
|  | 3,33,50,000 |   | 3,33,50,000 |

The directors of the company want to make further investments stated below by taking a decision in the meeting of Board of Directors without seeking approval of the shareholders:

|   |           |
|---|-----------|
|   | Rs.       |
| (a) Loan to KMC Ltd.                                      | 25,00,000 |
| (b) Loan to MTC Ltd.                                      | 15,00,000 |
| (c) Purchase of further debentures in SKT Ltd.            | 8,00,000  |
| (d) Purchase of shares from the open market in Glaxo Ltd. | 15,00,000 |

You are required to state, with reference to the relevant provisions of the Companies Act, 1956 , whether the directors can do so and mention the relevant calculations.

**Question 9 (b):****5 Marks**

X Ltd. and Y Ltd. are two listed companies engaged in the business of telecommunication. The companies are not making profits and as such their share's market prices have gone down. A substantial portion of their share capital is held by Central Government as well as some public financial corporations. In order to increase the share value, the Central Government wants to amalgamate the aforesaid two companies into a single company.

Examine the powers of Central Government to amalgamate the two companies in public interest as per the provisions of the Companies Act, 1956.