PAPER 4 : COMPANY LAW AND SECRETARIAL PRACTICE
MAY 2006

Examinees are required to answer the questions in the following manner:

(a) Question Nos. 1,2, and 3 are compulsory.
(b) Answer any four questions from the rest of the questions.

Question 1

Answer any **two** of the following

(a) A is Managing Director of APAR Ltd., He gave his resignation letter to the Chairman of the Board of Directors on 31st December, 2005 and requested that he should be relieved immediately. When does the resignation of Mr.A take effect? **(5 Marks)**

(b) On 31st March, 2006, D holds certain securities issued under "Collective Investment Scheme". His name appears in the books of the scheme. He has transferred these securities to another person for a consideration. The transferee lodged the instrument of transfer with the authorities in one month after the date on which the income on these securities became due. Examining the provisions of the Securities Contract (Regulation) Act, 1956 state: **(5 Marks)**

  i. Whether D is entitled to receive and retain the income on these securities for the financial year ended 31st March, 2006 in the given case?
  ii. Would your answer be still the same in case the transferee lodged the instrument of transfer with the authorities 14 days after the date on which the income on these securities became due?

(c) The Executive Committee of a recognized stock exchange desires to transfer certain duties and functions of a clearing house to a recently set up Clearing Corporation, incorporated as a company under the Companies Act, 1956. Examining the provisions of the Securities Contracts (Regulation) Act, 1956: **(5 Marks)**

  i. State the purposes for which such transfer of duties and functions can be made to Clearing Corporation.
  ii. What is the procedure to be adopted for such transfer of duties and functions?

Question 2

Answer any **two** of the following : **(7 Marks)**

(a) State which kind of approval is required for the following transactions under the Foreign Exchange Management Act, 1999:

  i. X, a Film Star, wants to perform along with associates in New York on the occasion of Diwali for Indians residing at New York. Foreign Exchange drawal to the extent of US Dollars 20,000 is required for this purpose.
  ii. F International Ltd., has purchased the trade mark from a Foreign Company to establish retail business chain in India as a joint venture at a consolidated price of US dollars 5,00,000 which is to be paid in Foreign currency of that country.
  iii. R wants to get his heart surgery done at UK. Up to what limit Foreign Exchange can be drawn by him and what are the approvals required?
  iv. L wants to pursue a course in Fashion design in Paris. The Foreign Exchange drawl is US dollars 20,000 towards tuition fees and US dollars 30,000 for incidental and stay expenses for studying abroad.

(b) A French manufacturing company desirous of setting up its branch office at Pune, seeks your advice o the objects for which the company may be allowed to set up the desired branch office. Advise the company about the procedure as required under the Foreign Exchange Management Act, 1999 to be followed in this regard. **(5 Marks)**

(c) Examine with reference to the relevant provisions of the Competition Act, 2002 the following: **(7 Marks)**

  i. Whether a Government Department supplying water for irrigation to the Agriculturists after levying charges for water supplied (and not a water tax) can be considered as an "Enterprise".

ii. Whether a person purchasing goods not for personal use, but for resale can be considered as a "consumer".

Question 3

Answer any **two** of the following :

(a) SEBI received complaints from some investors alleging that ABC Limited and some brokers are indulging in price manipulation in the shares of ABC Limited. Explain the powers that can be exercised by SEBI under the Securities and Exchange Board of India Act, 1992 in case the allegations are found to be correct. **(8 Marks)**

(b) A designated Financial Institution under the Companies Act, 1956 proposes to go for issue of shares. Referring to the SEBI guidelines the institution seeks your advice on the following:

i. What minimum reservation to promoters is to be made by the Financial Institution?

ii. To what conditions shall be Financial Institution be subject to, for reservation for employees out of the proposed issue?

Advise. **(8 Marks)**

(c) What are the Internal and External aids to interpretation of statutes ? Give five examples each of Internal and External aids. **(8 Marks)**

Question 4

(a) Clever, a Director of ABC Ltd., made default in filing of Annual Accounts and Annual Returns with the Registrar of Companies for a continuous period of three financial years ending 31st March, 2005. Referring to the provisions of the Companies Act, 1956 examine the validity of the following: **(8 Marks)**

i. Whether X can continue to be a Director of ABC Ltd., and also EF Ltd., where he is a Director. Also state whether he can be reappointed as a Director in ABC Ltd., as well as EF Ltd.,

ii. Would your answer be still the same in case X is a nominee Director of a Public Financial Institution?

iii. What would be your answer in case the defaulting company (i.e., ABC Ltd.,) is a Private Company?

Question 5

(a) From the following information extracted from the Balance Sheet of VCD Ltd., as on 31st March, 2006, Board of Directors of the company decide to grant a loan of Rs.80 crores to another company JN Ltd. **(8 Marks)**

	Rs.
Paid up share capital:	
Equity share capital	50 crores
Preference share capital	10 crores
General reserves	100 crores
Debentures	5 crores
Debenture Redemption Reserve	5 crores
The Company has already given loans to the following companies:	
(i) Peters Ltd.,	Rs.5 crores
(ii) Steel India Ltd.,	Rs.10 crores

The company has also given a corporate guarantee of Rs.10 crores to NR & Co. Ltd.,
Advise whether the Board can go ahead with the above proposal.

(b) The subscribed share capital of AJR Company Ltd., at the end of the financial year ending 31st March, 2005 was Rs.20 crores, out of which two public Financial Institutions were holding share capital amounting to Rs.3 crores. During the financial year 2005-2006 the company through public issue of shares raised its subscribed capital by additional Rs.60 crores. Out of Rs.60 crores, the two public financial institutions were further allotted shares amounting to Rs.20 crores, raising the total contribution of these two institutions to Rs.23 crores before the date of the company's closure of books for annual general meeting scheduled for 15th September, 2005, where auditors were to be appointed. The company as usual, by getting an ordinary resolution passed appointed the auditors. A group of shareholders of the company allege that the appointment of auditors is violative of certain provisions of the Companies Act, 1956. They however, did not raise any objection to the appointment of auditors at the previous annual general meeting held on 10th September, 2004. Examining the provisions of the Companies Act, 1956 decide: **(7 Marks)**

i. Whether contention of the shareholders shall be tenable?
ii. Should the contention of shareholders be tenable, what action is the company required to take for the appointment of auditors in the above situation at the annual general meting scheduled for 15th September, 2005?
iii. Would your answer be still the same in case the total subscribed capital contributed by the two public financial institutions in only Rs.10 crores, including the previous contribution of Rs.3 crores?

Question 6

(a) The Executive committee of an Inter-state Co-operative Society decides to convert the Society into a "Producer Company" under the provisions of the Companies Act, 1956. You being a practicing Chartered Accountant are approached by the society for advice. Advise the society on the following matters: **(8 Marks)**

i. The steps to be taken for conversion of the society into a "Producer Company"
ii. Manner in which voting rights of members of Producer company after conversion may be exercised.

(b) Referring to the provisions of the Companies Act, 1956, as contained in Section 397 of the Act, Examine whether the following Acts of the company amount to oppression: **(7 Marks)**

i. Allotment of shares by the Directors of the company by which the existing majority is reduced to minority.
ii. Allotment of shares by the Directors by which the existing minority shareholders are made to majority.
iii. A share sale agreement was executed by VC, an NIRI. The shares and transfer deed were handed over to an escrow agent. The sale was subject to RBI permission. The shares were not transferred for 6 years since RBI permission was not received. VC, after waiting for a long period of time raises the issue and complains of oppression in the capacity of a member. As per the agreement the sale was unconditional. During the above period VC did not exercise any right as shareholder nor the company treated him as a member

Question 7

(a)

i. Mr.John has been appointed as Additonal Director on the Board of MCX Ltd., on 12th January, 2006. Mr.John has filed his consent to Act as a Director, if appointed, only with the company. Examine with reference to the provisions of the Companies Act, 1956 whether he is also required to file his consent with the Registrar of Companies. **(8Marks)**
ii. One of the members of ADB Ltd., has proposed the name of Mr.Fame for appointment as a Director of the Company in the Annual General Meeting and given a notice U/s. 257 of the Companies Act, 1956. Mr. Fame is one of the partners of Fame & Fame, 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 Fame & Fame can be reappointed as auditors, if Mr.Fame is appointed as Director.

(b) Examine the validity of the following : **(7 Marks)**

i. The Board of Directors of a company decides to revise the accounts which have been submitted to the Auditors, but the auditors have not yet given their report.

ii. The Board of Directors of a company decides to revise the Audited accounts before adoption by the shareholders in the Annual General Meeting.
iii. The Board of Directors of a company decides to revise the accounts which have already been adopted by the shareholder in the Annual General Meeting.

Question 8

(a) PQR Machines Limited entered into a contract with MN Forgings, in which wife of P, a director of the company is a partner. The contract is for supply of certain components by the firm for a period of three years with effect from 1st September, 205 on credit basis. The paid up share capital was increased form Rs.70 lakhs to Rs.140 lakhs on 1st March, 2006. Explain the requirements under the Companies Act, 1956, which should have been complied with by PQR Machines Limited before entering into contract with MN Forgings. Whether there is any additional requirement which is required to be complied with by PQR Machines Limited in view of the increased paid up share capital on 1st March, 2006.
What would be your answer in case MN Forgings is a Private Company in which P's wife is holding substantial shares? **(8 Marks)**

(b) Imprudent Company Limited approached Safe Finance Company Limited for a loan of Rs.20 lakhs to finance purchase of some essential machinery. The company created a floating charge on some of its assets on 1st December, 2004 for Rs.25 lakhs to secure Rs.5 lakhs already due to Safe Finance Company Limited and additional amount to be advanced by the said Finance Company. Safe Finance Company Limited advanced Rs.15 lakhs on 15th December, 2004 towards purchase of certain machinery. Some of the creditors filed winding up petition in the Court on 1st January, 2005 on the ground that the company was unable to pay its debts and the company was ordered to be would up on 15th December, 2005. Examine with reference to the provisions of the Companies Act, 1956 whether the floating charge is valid. **(7 Marks)**

Question 9

(a) EF Chemicals Limited proposes to appoint one whole time technical Director on a consolidated monthly remuneration of Rs.30,000 and one whole time Marketing Director on a consolidated salary of Rs.25,000 per month for a period of three years with effect from 1st September, 2005. The company has got a Managing Director and he is getting Rs.40,000 per month. Explain the requirements under Companies Act to be complied with by the company in connection with the proposed appointment of whole time Directors taking into account the following data collected from the Balance Sheet of the company as on 31st March, 2005: **(8 Marks)**

		Rs.
1.	Paid up share capital	80,00,000
2.	Debentures redeemable after three years	90,00,000
3.	Investments	20,00,000
4.	Accumulated Loss	70,00,000
5.	Preliminary Expenses not written off	15,00,000

(b) A Public Company proposes to appoint an alternate Director for one of its Directors, who is likely to be outside India for most of the year. There is no specific provision in the Articles of Association in this regard. State the steps to be taken by the Company to given effect to the proposal.
Draft the specimen resolution for appointment of alternate Director and also state the kind of meeting at which such resolution is to be passed. **(7 Marks)**