

**PAPER 13 – Corporate Laws and Compliance**

**SECTION A**

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

1. (a) 'X' was appointed as managing director for life by the articles of association of a private company incorporated on 1<sup>st</sup> June, 1970. The articles also empowered 'X' to appoint a successor. 'X' appointed, by will, 'S' to succeed him after his death. Can 'S' succeed 'X' as managing director after the death of 'X'? **[3]**

(b) The issues, subscribed and paid-up share capital of XYZ Ltd. is ₹ 10 lakhs consisting of 90,000 equity shares of ₹ 10 each fully paid up and 10,000 preference shares of ₹ 10 each fully paid up. Out of members of company, 400 members holding one preference share each and 50 members holding 500 equity shares applied for relief under sections 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 under sections 397 and 398 is maintainable. Will your answer be different, if preference shareholders have subsequently withdrawn their consent? **[6]**

(c) The subscribed share capital of ABC Company Ltd at the end of the financial year ending 31.3.2012 was ₹ 25 crores, out of which 2 Public Financial Institutions were holding share capital amounting to ₹ 4 crores. During the financial year 2012-13 the company through public issue of shares raised its subscribed capital by additional ₹ 70 crores. Out of ₹ 70 crores, the 2 Public Financial Institutions were further allotted shares amounting to ₹ 22 crores, raising the total contribution of these two institutions to ₹ 26 crores before the date of the company's closure of books for AGM scheduled for 15.9.2013, 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 AGM held on 10.9.2012.

(i) Whether the contention of the shareholders is tenable?

(ii) If the contention of shareholders be tenable, what action should the company take for the appointment of Auditors at the AGM scheduled for 15.9.2013? **[6]**

2. (a) The liability of members may become unlimited and several, even in the case of a limited liability company – explain. **[4]**

(b) In relation to winding up of a Company incorporated under the Companies' Act 1956, explain clearly the meaning of the term 'Overriding Preferential Payments'. Examine and decide whether the following debts of a Company under the winding up shall be 'Preferential Payments' and shall be paid in priority to the claim of Unsecured Creditors –

- Wages amounting to ₹30,000 only of an Employee for services rendered for a period of 8 Months within the preceding 12 Months next before the relevant date.
- ₹1 Lakh due to an employee from Provident Fund and ₹50,000 towards Gratuity.
- ₹20,000 payable by the Company on account of expenses incurred in respect of investigation held u/s 235. **[6]**

## PTP\_Final\_Syllabus 2012\_Jun2014\_Set 1

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**(c)** The board meeting of MNO Ltd. was held on 10<sup>th</sup> May, 2008 at Chennai at 11 a.m. At the time of starting the board meeting the number of directors present were 7. The total number of directors were 10. The board transacted ten items in the board meeting. At 12 noon after the completion of four items in the agenda 4 directors left the meeting. Examine the validity of these transactions explaining the relevant provisions of the Companies Act, 1956. **[5]**

**3. (a)** A French manufacturing company desirous of setting up its branch office at Pune, seeks your advice on the object 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. **[7]**

**(b)** Mr. MKS was a member of the Competition Commission of India. He ceased to be such member on 31<sup>st</sup> May, 2013. Thereafter, he was offered the post of Executive Director with appropriate remuneration and perquisites in the following organizations to join his duties on and from 1<sup>st</sup> September, 2013:

**(i)** HIL 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 March, 2013.

**(ii)** Life Insurance Corporation of India. **[3]**

**(c)** The Balance Sheet of M/s. Quick Bucks Ltd. As at 31.3.2013 disclosed the following details :

(i) Share Capital ₹ 200 Crores

(ii) Reserves and Surplus ₹ 800 Crores

The company has issued in the year 2008, fully convertible debentures of ₹ 150 Crores, which are due for conversion in the year 2013. The company proposes to issue bonus shares in the ratio of 1:1. Explain briefly the SEBI guidelines to be followed by the company. **[5]**

**4. (a)** Three persons X, Y and Z formed a scheme of developing barren land. Under the scheme, X and Y were to incorporate a company and Z, a professional, was to provide loan equivalent to the capital brought in by X and Y. The loan part was essential for giving shape to the scheme. Can Z be regarded as one of the promoters of the company? **[4]**

**(b)** A Public Company has been declaring dividend at the rate of 20% on equity shares during the last 5 years. The company has not made adequate profits during the year ended March 31, 2013, but it has got adequate reserves which can be utilized for maintaining the rate of dividend at 20%. Advise the company as to how it should go about if it wants to declare dividend at the rate of 20% for the year 2012-13. Would your answer be different if the company utilized only the profits made in the previous years and retained in the profit and loss account for the purpose of payment of dividend at the rate of 20% for the year 2012-13? **[7]**

**(c)** The Directors of Khalsa Electronics Ltd. allotted to themselves certain Rights Shares for which no application was made by certain shareholders as required u/s 81. Discuss the validity of their action specially in view of the fact that market price of shares of his company is 40% above par. **[4]**

**5. (a)** Can an auditor be disqualified for indebtedness in the following cases?

**(i)** Where he is recovering his fees on a progressive basis even though the job is not complete.

**(ii)** Where the auditor's firm has purchased goods from the auditee company and not paid for them for over six months. **[4]**

## PTP\_Final\_Syllabus 2012\_Jun2014\_Set 1

---

**(b)** A company wants to provide financial assistance to its employees to enable them to subscribe for fully paid shares of the company. Does it amount to purchase of its own share? If, the instant case, the company itself purchases to redeem its Preference Shares, does it amount to acquisition of its own shares ? **[4]**

**(c)** Indian citizens incorporated a company in London for the purpose of carrying on business there. Examine with reference to the relevant provisions of the Companies Act, 1956 whether it is a "Foreign Company". What would be your answer in case the London company was incorporated by a company registered in India ? **[4]**

**(d)** on 1<sup>st</sup> January 2013 the Board of Directors of Amir Co Ltd. appointed Mr. J as sole selling agent of the accompany for a period of 4 years. On 8<sup>th</sup> March 2013, Amir Co Ltd. In its general meeting disapproved the appointment of Mr. J as sole selling agent of the company.

(i) What are the circumstances when compensation for loss of office is prohibited to a sole selling agent ?

(ii) Is Mr. J entitled to payment of compensation for loss of office ? **[3]**

**6. (a)** After serious disagreement and difference of opinion among the shareholders of the company in the last annual general meeting, some of the directors took the steps as noted below. Discuss the validity and effect of the following:

(i) Mr. John, the managing director sends his notice of resignation.

(ii) Mr. Paul, an ordinary director verbally resigns and not in writing.

(iii) Mr. David, another ordinary director, had sent his resignation, but withdrew it before the Board meeting was held for accepting his resignation. **[6]**

**(b)** 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 following 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 a resolution in the general meeting? **[6]**

**(c)** All statements in a prospectus issued by ABC Co Ltd. were literally true, but it failed to disclose that the dividends stated in it as paid were not paid out of trading profits, but out of realized capital profits. An allottee of shares wanted to avoid the contract on the ground that the prospectus did not disclose this fact which, in his opinion, was very material. Would he succeed? **[3]**

### SECTION B

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

**7. (a)** Describe the role of stock exchange in Corporate Governance ? **[5]**

## PTP\_Final\_Syllabus 2012\_Jun2014\_Set 1

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- (b)** What is the relationship between CSR and sustainability ? **[5]**
- (c)** Why Corporate Governance is required in Banks ? **[5]**
- (d)** What are the difficulties encountered in governance in state owned business ? **[5]**
- (e)** Corporate Social Responsibility is not charity – explain. **[5]**
- (f)** Write short note on Corporate Citizenship. **[5]**