

MAY 2010

**FINAL
GROUP-I PAPER-4
CORPORATE LAWS AND SECRETARIAL
PRACTICE**

Roll No.....

Total No. of Questions—7]

Time Allowed—3 Hours

[Total No. of Printed Pages—5

Maximum Marks—100

KPM

Answers to questions are to be given only in English except in the case of candidates who have opted for Hindi medium. If a candidate who has not opted for Hindi medium, answers in Hindi, his answers in Hindi will not be valued.

Answer **all** questions.

Marks

1. (a) MNC Limited whose shares are listed on a recognized Stock Exchange, are delisted by the Stock Exchange. The company seeks your advise on the remedies available to the company against the order of the Stock Exchange. Referring to the provisions of the Securities Contracts (Regulation) Act, 1956, advise the company. 5
- (b) Referring to the provisions of the Securities Contracts (Regulation) Act, 1956 :
- (i) Examine the extent to which the Central Government is empowered to suspend business of a recognized Stock Exchange.
- (ii) The Central Government has granted recognition to a Stock Exchange. To what conditions may such a recognition be subject to ?
2. (a) The Reserve Bank of India receives a complaint that an authorized person has submitted incorrect statements and information to the Reserve Bank of India in respect of receipt and utilization of Foreign Exchange. Explain the powers of the Reserve Bank of India with regard to inspection of records of the above authorized person in respect of the above complaint. 7

Referring to the provisions of Foreign Exchange Management Act, 1999, state the duties of the above authorized person.

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P. T. O.

(b) Referring to the provisions of the Foreign Exchange Management Act, 1999, state the kind of approval required for the following transactions :

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(i) M requires U.S. \$ 5,000 for remittance towards hire charges of transponders.

(ii) D requires U.S. \$ 14,000 per annum for donation to Mr. White in U.S.A.

(iii) P requires U.S. \$ 2,000 for payment related to call back services of telephones.

(iv) XYZ Limited, a company incorporated in India under the Companies Act, 1956, wants to withdraw U.S. \$ 5,00,000, for short-term credit to its overseas office situated in Australia.

3. (a) Examining the provisions of the Securities and Exchange Board of India Act, 1992, state the penalties to which the following shall be subject to :

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(i) In case of default committed by a registered stock broker, in payment of amount due to an investor.

(ii) In case of a registered broker communicating some unpublished price sensitive information to a person on his request.

(iii) What factors shall the adjudicating officer take into account while adjudging the quantum of penalty under the Act ?

(b) (i) The competition commission has received a complaint from a State Government alleging that X Limited and Y Limited have entered into an informal agreement, not enforceable at law, to limit or control production, supply and market, to determine the sale price of their products. Such an action of these companies has an appreciable effect on competition.

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Examining the provisions of the Competition Act, 2002 :

(A) Decide whether the above agreement has appreciable effect on competition.

(B) What factors shall the Competition Commission consider while taking the above decision.

(C) What orders can the Competition Commission pass on completion of the inquiry ?

(ii) Explain the provisions of the Competition Act, 2002 relating to the constitution of benches of the commission under the Act.

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4. (a) (i) Explain the rules relating to interpretation of the terms 'Subject to' and 'Not withstanding' as used in the different provisions of the Acts. What is the effect of the term 'Not withstanding anything contained in this Act' used in Section 408 of the Companies Act, 1956 empowering the Central Government to prevent oppression and mismanagement ? 4
- (ii) In what way are the following terms considered as 'internal aid' in the interpretation of statutes ? 4
- (A) Illustrations
- (B) Explanation.
- (b) The Central Government has appointed an Inspector under Section 237 of the Companies Act, 1956, to investigate into the affairs of ABC Limited. It is alleged by the company that during the course of investigation, Mr. Z, an Assistant Company Secretary has revealed certain confidential information relating to the affairs of the company. The Managing Director of the company, therefore, decided to dispense with the services of Mr. Z. 7
- The Managing Director of the company seeks your advise whether the proposed action of the company is in order under the provisions of the Companies Act, 1956.
5. (a) On 24th January, 2010, the Board of Directors BUI Limited appointed Mr. A as the company's Sole Selling Agent for a period of 5 years. At the first general meeting of the company, held after the Board meeting, on April 10, 2010, the above appointment was disapproved. Referring to the provisions of the Companies Act, 1956 : 8
- (i) State the date from which the above appointment comes to an end.
- (ii) What would be your answer in case a condition in the above appointment that "the appointment must be made by the company in General Meeting" was not attached thereto ?
- (b) The profits of MJR Company Limited for the financial year 2009-2010 fell considerably due to recession. The Board of Directors of the company, therefore, bonafide did not recommend any dividend for the year. At the Annual General Meeting of the company, a group of shareholders/members objected to the Board's decision and wanted the Board to make recommendation for dividend. On refusal by the Board, the members, who feel oppressed by the Board's decision to skip the dividend, move to the Company Law Board/Tribunal and complain against the Board on the ground of oppression and mismanagement. 7

Examining the provisions of the Companies Act, 1956, decide :

- (1) Whether the members contention shall be tenable ?
 - (2) Whether the act of Board of Directors not to recommend any dividend shall amount to oppression and mismanagement ?
6. (a) Prince Ltd., desires to appoint an additional director on its board of directors. The Articles of the company confer upon the board to exercise the power to appoint such a director. As such M is appointed as an additional director. In the light of the provisions of the Companies Act, 1956, examine :
- (i) Whether M can continue as director if the annual general meeting of the company is not held within the stipulated period and is adjourned to a later date ?
 - (ii) Can the power of appointing additional director be exercised by the Annual General Meeting ?
 - (iii) As the Secretary of the company what checks would you make after M is appointed as an additional director ?
- (b) DVJ Limited decide to appoint Mr. A, as its Managing Director for a period of 5 years with effect from 1st May, 2010. A, fulfils all the conditions as specified in Part I and Part II of Schedule XIII of the Companies Act, 1956. The terms of appointment are as under :
- (i) Salary Rs. 1 lac per month.
 - (ii) Commission, as may be decided by the Board of Directors of the Company.
 - (iii) Perquisites :
 - Free Housing
 - Medical reimbursement upto Rs. 10,000 per month.
 - Leave Travel concession for the family.
 - Club Membership Fee.
 - Personal Accident Insurance Rs. 10 lacs.
 - Gratuity; and
 - Provident Fund as per company's policy.
- You, being the Secretary of the company, are required to draft a resolution to give effect to the above, assuming that A is already the Managing Director of a public limited company.

7. (a) ADJ Company Limited has 10 directors on its board. Two of the directors have retired by rotation at an Annual General Meeting. The place of retiring directors is not so filled up and the meeting has also not expressly resolved 'not to fill the vacancy'. Since the AGM could not complete its business, it is adjourned to a later date. At this adjourned meeting also the place of retiring directors could not be filled up, and the meeting has also not expressly resolved 'not to fill the vacancy'.

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Referring to the provisions of the Companies Act, 1956, decide :

- (i) Whether in such a situation the retiring directors shall be deemed to have been re-appointed at the adjourned meeting ?
 - (ii) What will be your answer in case at the adjourned meeting, the resolutions for re-appointment of these directors were lost ?
 - (iii) Whether such directors can continue in case the directors do not call the Annual General Meeting ?
- (b) The Official Liquidator of a public company in liquidation instituted misfeasance proceedings against the Managing Director of the company. During the pendency of the proceedings in the High Court, the Managing Director died. The Official Liquidator has applied to the court that the legal representatives of the Managing Director be impleaded in the place of the deceased Managing Director and the proceedings be continued.

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Examining the provisions of the Companies Act, 1956 decide whether the contention of the Official Liquidator be tenable.