



# Corporate Laws

ICAP PAST PAPER'S QUESTION & ANSWERS  
ARRANGED TOPIC-WISE

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# PREFACE

The Examinations of ICAP are a demanding test of student's ability to master the wide range of knowledge and skills required of the modern professionals. Subject of "Corporate Laws" is one of the efforts made by ICAP in this context for enhancing student's knowledge about detailed overview of corporate and other laws & rules prevailing in Pakistan.

In this kit I have arranged questions from last 09 papers of ICAP exams alongwith their suggested answers. These notes will be updated after every ICAP attempt Insha- ALLAH. Till now this kit includes questions and answers till June 2012 attempt.

In case you find any discrepancies or errors in this booklet please let us know via email at [fzh.fca@gmail.com](mailto:fzh.fca@gmail.com) or at [syedatifabidi@gmail.com](mailto:syedatifabidi@gmail.com). Your suggestions and feedback is also awaited.

I am especially thankful to my respected teacher Sir Atif Abidi for his encouragement and support in making of this booklet.

I hope it will be beneficiary students of Module-E.

May ALLAH bless all of you with success in every exam of both lives.

Please also pray for me  
Thanks

Faisal Zia  
February 13, 2013

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# INCORPORATION and MOA/AOA

## (1) Question Background: Summer 2012, Q # 1

On 29 April 2012, a memorandum of association of AB Limited was filed for registration in the office of Registrar. However, on 25 May 2012, a letter from the registrar office was received by the subscribers to the memorandum in which the registration was refused on the ground that the objects stated in the memorandum were inappropriate. Describe what course of action is available to AB Limited in the above situation, according to the Companies Ordinance, 1984. (05 marks)

### Suggested Answer:-

The subscribers of the memorandum of association of AB Limited or any one of them, authorized by them in writing, may either supply the deficiency and remove the defect pointed out, or within thirty days of the order of refusal prefer an appeal

(i) Where the order of refusal has been passed by an additional registrar, a joint registrar, a deputy registrar or an assistant registrar, to the registrar; and

(ii) Where the order of refusal has been passed, or up-held in appeal, by the registrar, to the Commission.

An order of the Commission shall be final and shall not be called in question before any Court or other authority.

## (2) Question Background: Winter 2009, Q #11(a)

In the annual general meeting of Sabzazar Limited held on September 29, 2009 some of the shareholders have raised the following objections:

**Notice of the annual general meeting was not received by them although they are resident in Pakistan and their registered addresses have also been provided to the company. Comment! (02 Marks)**

### Suggested Answer:-

The notices of the Annual General Meeting were sent to all the shareholders by post at their registered addresses. According to law when a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

## (3) Question Background: Summer 2009, Q # 2

Cannon Industries Limited, a listed company, wishes to change its name to Reliance Foods Limited because the management feels that the change in name would help in rebranding and rebuilding the image of the company and in attracting more customers.

**You are required to explain the requirements of the Companies Ordinance, 1984 which the company is required to comply with, in this regard. Also describe the effect of such change on the rights and obligations of the company. (09 Marks)**

### Suggested Answer:-

If Cannon Industries Limited wishes to change its name, it shall have to comply with the following requirements:

(a) Ascertain from the SECP/registrar, the availability of the name "Reliance Foods Limited".

(b) Obtain members approval in the general meeting, by way of a Special Resolution.

(c) A copy of the resolution shall be filed with the Registrar within 15 days of passing thereof.

(d) An application for approval of change of name is filed with the Registrar.

(e) After approval, the registrar shall issue a certificate for change of name of the company and thereafter, the change of name must be noted in the Memorandum and Articles of Association and in all documents, invoices, letter-heads, bills, sign boards seal etc.

(f) For a period of one year from the date of issue of the certificate by the registrar, the company shall continue to mention its former name along with its new name, outside every office or place in which its business is carried on and in every document and notice issued by the company.

The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced against the company by its former name may be continued by or commenced against the company by its new name.

## SHARE CAPITAL & DEBENTURE

### **(4) Question Background: Summer 2012, Q # 2**

**The Company Secretary of AQ Limited realized on 29 May 2012 that particulars of charge created on the Company's properties in favour of AK Bank Limited on 2 May 2012 have not been filed for registration with the Registrar of Companies. Explain the procedure that would be required to be followed by AQ Limited in the above situation, for registration of charge with the Registrar of Companies. (06 marks)**

#### **Suggested Answer:-**

The time limit of 21 days has expired therefore AQ Limited will have to apply to the Commission for extension of time for the registration of the charge in accordance with the provisions of the Companies Ordinance, 1984.

The company must satisfy the Commission that:

- (i) The omission was accidental or due to inadvertence or due to some other sufficient cause.
- (ii) It would not be of a nature to prejudice the position of creditors or shareholders of the company.
- (iii) On any other grounds it is just and equitable to grant relief.

On satisfaction the Commission may extend the time for registration of charge on such terms and conditions as seem to the Commission just and expedient, and order that the time for registration be extended, or, as the case may be, that the omission or misstatement be rectified, and may make such order as to the costs of the application as it thinks fit. A certified copy of the order of the Commission, passed on the basis of the application, shall be filed with the registrar within twenty-one days of the date of such order by the company.

### **(5) Question Background: Summer 2012, Q # 4**

**The Board of Directors of KG Limited has decided to buy-back one million of its ordinary shares. You are required to describe the procedure to be followed by KG Limited to buy-back its shares in view of the provisions of the Companies Ordinance, 1984 and the Companies (Buy-back of Shares) Rules, 1999. (07 marks)**

#### **Suggested Answer:-**

The purchase procedure to be followed by KG limited is as follows:

- (i) The number of shares to be purchased and price thereof shall be approved in the Board Meeting.
- (ii) The purchase shall also be authorized by a special resolution which shall indicate the maximum number of shares to be purchased; the maximum price at which the shares may be purchased; and the period within which the purchase is to be made.

(iii) The notice of the meeting in which the special resolution authorizing the purchase of shares is proposed to be moved shall be accompanied by an explanatory statement containing all material facts including the following:-

-Justification for the purchase; -Source of funding; -Effect on the financial position of the company; and

-Nature and extent of the interest, if any, of every director, whether directly or indirectly

(iv) The purchase shall always be in cash and shall be out of the distributable profits.

(v) The purchase shall be made through a tender system and the mode of tender shall be decided by the company in general meeting through a special resolution.

(vi) The tender notice for the purchase shall contain

-The maximum number of shares to be purchased by the company. -The manner in which the offer shall be communicated. -The last day by which the offer to sell the shares shall be made; and -The name and the address of the designated branches of the authorized bank.

(vii) The decision of the directors for the purchase shall be communicated to the SECP and the respective stock exchange on the day of the decision.

(viii) The company shall take a decision on the offers received, within ten days of the closing date of the receipt of offers.

(ix) In case the offers received in response to the tender notice exceed the requisite purchase the acceptance thereof shall be on pro-rata basis in lots of five hundreds shares.

(x) The acceptance of the offer shall be communicated within seven days of the decision.

(xi) The shareholder, whose offer has been accepted, shall submit the share certificate along with the transfer deed duly signed, verified and witnessed, to the company through designated branches of the bank within seven days of the receipt of acceptance of the offer.

(xii) Where the shares are on the Central Depository System a confirmation from the Central Depository, about the availability of the shares along with authorization to transfer, shall be sent to the designated branches of the bank within seven days of the receipt of acceptance of the offer.

### **(6) Question Background: Winter 2011, Q # 3**

**ABC Limited has appointed Mr. Saleem as a trustee, under a trust deed, for securing an issue of debentures. Subsequent to his appointment, Mr. Saleem is of the opinion that ABC Limited has failed to meet its obligations under the trust deed, whereas the management denies any wrong doings. Consequently, Mr. Saleem intends to take appropriate action against the company. Narrate the circumstances specified under the Companies Ordinance, 1984 on account of which Mr. Saleem may initiate legal action against the company. (06 marks)**

#### **Suggested Answer:-**

Mr. Saleem, if empowered by the trust deed under which he is appointed, can file a suit against the company for all redemption monies and interest thereon on the following grounds.

(a) where the issuer of the debentures as mortgagor binds himself to repay the debenture loan or pay the accrued interest thereon, or both to repay the loan and pay the interest thereon, in the manner provided on the due date;

(b) where by any cause other than the wrongful act or default of the issuer the mortgaged property is wholly or partially destroyed or the security is rendered insufficient and the trustee has given the issuer a reasonable opportunity of providing further security adequate to render the whole security sufficient and the issuer has failed to do so;

(c) where the trustee is deprived of the whole or part of the security by or in consequence of any wrongful act or default on the part of the issuer; and

(d) Where the trustee is entitled to take possession of the mortgaged property and the issuer fails to deliver the same to him or to secure the possession thereof without disturbance by the issuer or any person claiming under a title superior to that of the issuer.

**(7) Question Background: Winter 2010, Q # 1 (a)**

**Belfast Pakistan Limited (BPL), engaged in real estate business, is a wholly owned subsidiary of Belfast International (BI). The company was incorporated in April 2007 with a paid-up capital of Rs. 100 million. After first three years of unsuccessful operations, BPL has accumulated losses to the tune of Rs. 34 million. In order to revive the company, management intends to venture into a new business and wants to cancel its existing paid-up share capital which has been lost or unrepresented by available assets. Under the provisions of the Companies Ordinance, 1984 state the steps that need to be taken for reducing the share capital of the company. (12 marks)**

**Suggested Answer:-**

**Procedure for Reduction in Paid Up Capital**

If allowed under the Articles of Association of the company, Belfast Pakistan Limited may reduce its share capital as follows:

- (i) Pass a resolution for reduction in share capital in the meeting of the directors.
- (ii) Send notice with statement of material facts under provision of the Companies Ordinance 1984 and copy of the proposed special resolution for reduction in capital to the shareholders convening the extra ordinary general meeting at least 21 days before the date of general meeting and pass the special resolution in the meeting.
- (iii) File copy of the Special Resolution with the Registrar within 15 days from the date of passing of special resolution.
- (iv) Obtain NOC from creditors, if any.
- (v) File Petition before the Court for confirmation of the reduction in share capital.
- (vi) Submit a copy of court's confirmation order for reduction of the capital, with the Registrar.
- (vii) Comply with the Court order for publication of reason for reduction of share capital in the newspapers.

**(8) Question Background: Summer 2010, Q # 11**

Mr. Yaqoob is a nominee of Foundation Bank Limited on the Board of Saad Textile Mills Limited (STML). In a meeting of the board of directors of STML, the company secretary was not able to offer satisfactory clarifications in respect of the following matters:

**(a) STML had received a loan of Rs. 1.5 billion from Trust Bank Limited which was secured by a first mortgage on the company's fixed assets. The company had repaid the loan to the extent of Rs. 250 million but did not send any intimation to the registrar as regards the partial re-payment of the loan. (02 Marks)**

**(b) A foreign currency loan of US \$ 75 million was obtained from Apex Bank Limited which was secured by a first mortgage on company's fixed assets ranking pari-passu with the charge created in favour of Trust Bank Limited. The foreign currency loan has been paid in full but the company has not approached the registrar for vacating the charge because confirmation of repayment has not been received from Apex Bank Limited. (03 Marks)**

**On behalf of Mr. Yaqoob advise the company in the context of Companies Ordinance 1984.**

**Suggested Answer:-**

**(a)** Saad Textile Mills Limited (STML) should have intimated, about the partial re-payment of Rs. 250 million, to the registrar, who would enter, in the register of mortgages and charges, a memorandum of satisfaction that a part of the fixed assets of the company has been released from the charge.

**(b)** Despite the fact that confirmation has not been received from Apex Bank Limited, Saad Textile Mills Limited (STML) should have intimated to the registrar within 21 days of the date of the re-payment of the

loan. The Registrar shall issue a notice to Apex Bank Limited to show cause within a time limit not exceeding 14 days to be fixed in such notice why the re-payment or satisfaction of the charge or mortgage should not be recorded. If no cause is shown by Apex Bank Ltd, the Registrar shall order that a Memorandum of Satisfaction be entered in the register.

**(9) Question Background: Winter 2009, Q # 1**

**The prospectus of FC Textiles Limited included a statement which was misleading in its form and content. On the faith of the prospectus and believing it to be true, Asif subscribed for shares and sustained losses. Can Asif file a suit for compensation of the loss incurred by him? If so, who may be sued for such a loss? (06 Marks)**

**Suggested Answer:-**

Yes, Asif can sue for compensation of loss. Section 59 of the Companies Ordinance provides that an allottee is entitled to claim compensation for damages sustained by reason of any untrue statement contained in this prospectus from the following persons:

- (i) Every person who is a director of the Company at the time of issue of prospectus.
- (ii) Every person who has authorized himself to be named and is named in the prospectus either as a director, or as having agreed to become a director, either immediately or after an interval of time;
- (iii) Every person who is a promoter of the Company; and
- (iv) Every person who is an expert and has given his written consent to include a statement issued by him.
- (v) Auditor, legal advisor, attorney, solicitor, banker or broker, being the member of a stock exchange of the company and the prospectus is accompanied by their written consent to act in that capacity.

**(10) Question Background: Winter 2009, Q # 11(b)**

In the annual general meeting of Sabzazar Limited held on September 29, 2009 some of the shareholders have raised the following objections:

**The company has issued shares to a scheduled bank against a part of the outstanding balance of a loan without offering them to the shareholders by way of a right issue. Comment! (02 Marks)**

**Suggested Answer:-**

The company issued shares without making a right issue because Companies Ordinance, 1984 allows the issuance of such shares to the extent of 20% of the outstanding balance of a loan from a schedule bank if the rate of return, in any two of the preceding three years after expiry of two years from the date of commencement of commercial production, has fallen below the minimum rate of return laid down by the State Bank of Pakistan.

**(11) Question Background: Summer 2009, Q # 7**

The balance sheet of Montana Textile Mills Limited for the year ended June 30, 2008 shows the non-current liabilities as under:

Non-Current Liabilities	Rupees
Long term finance from Sponsors / Directors	61,000,000
Long term finance from related party	150,000,000
Long term finance from Banks	572,000,000
<b>Total</b>	<b>783,000,000</b>

To improve the debt equity ratio, the company wants to convert all non-current liabilities into equity by the issuance of ordinary shares.

**Required: (a) Discuss the provisions contained in the Companies Ordinance, 1984 under which the company may proceed to issue shares against the above non-current liabilities.**

**(b) With reference to the above provisions, advise the extent to which the above liabilities may be converted into equity. (07 Marks)**

**Suggested Answer:-**

**(a)** The company may proceed to convert the above liabilities into equity without issuance of right shares provided it obtains permission from the Federal Government.

In order to apply to the Federal Government, the company shall have to:

- (i) Pass special resolution at a general meeting; and
- (ii) Make an application to Securities and Exchange Commission.

**(b)** The company can issue shares against the full amount of long term finance due from Sponsors / Directors and the related party i.e. shares of Rs. 61 million and Rs. 150 million.

As far as long term loan from the Banks is concerned, the company can convert up to twenty percent of the outstanding balance of such loan into ordinary shares, i.e. up to Rs. 114,400,000 if the term of finance is not less than three years and return has fallen below the minimum rate laid down by SBP in any two of the preceding three years after expiry of two years from the date of commercial production.

**(12) Question Background: Winter 2008, Q # 7**

Mega Projects Limited is presently facing financial crunch. In order to overcome this crisis and to improve profitability, the Board of Directors is considering raising funds through capital injection. The existing shareholders and the potential investors may not be willing to invest at par value which is Rs.10 per share. However, it is estimated that the company could get just about Rs. 7 per share. The directors have therefore decided to issue shares at discount.

**Being a Company Secretary, you are required to advise the directors about the procedure to be followed in this regard, under the Companies Ordinance, 1984. (10 Marks)**

**Suggested Answer:-**

- (i) Mega Projects Limited can issue shares at discount after one year of commencement of business.
- (ii) The directors should pass a resolution to issue shares at discount, specifically mentioning the discount rate and price, reason for the discount and possible effects of the discount on the company and its existing shareholders.
- (iii) Notice should be issued to members with statement of material facts along with copy of the proposed resolution at least 21 days before the date of the general meeting.
- (iv) The shareholders should pass a special resolution to that effect with atleast 3/4th majority.
- (v) A copy of the special resolution should be filed with the Registrar concerned within 15 days of the date of the resolution.
- (vi) An application should be furnished to the SECP for sanctioning the issue with a copy to the Registrar.
- (vii) The shares should be issued within 60 days of the approval from Commission.
- (viii) Return of allotment of shares should be filed with the Registrar within 30 days of the date of allotment.
- (ix) Every prospectus and Balance Sheet issued thereafter should contain particulars of discount allowed and amount not amortized, if any, at the balance sheet date.

# MANAGEMENT & ADMINISTRATION

## (13) Question Background: Summer 2012, Q # 3

List the conditions specified under the Companies Ordinance, 1984 which a listed company is required to comply with before placement of its quarterly accounts on its website. (07 marks)

### Suggested Answer:-

A listed company may place its quarterly accounts on its website, subject to fulfillment of the following conditions:

- (i) Seek the consent of its shareholders in a General Meeting.
- (ii) Consult the respective stock exchanges.
- (iii) Seek prior permission of the Commission.
- (iv) The application for this purpose shall indicate the company's website address.
- (v) The Enforcement department would grant permission after visiting the website and finding it in order.
- (vi) The website address shall not be changed except with the approval of the Commission.
- (vii) The company, after obtaining the requisite permission, shall inform its shareholders through an advertisement in the Press that the subsequent quarterly accounts would be transmitted to them through the company website.
- (viii) The respective Stock Exchanges and the Commission shall be informed in writing, by post.
- (ix) Transmit periodical accounts electronically to the concerned stock exchange(s) so as to place the same on their website.

## (14) Question Background: Winter 2011, Q # 6

A number of shareholders of Nazeer Industries Limited want to hold an extraordinary general meeting to discuss an important matter relating to the company.

**In view of the provisions contained in the Companies Ordinance, 1984 explain: (a) The conditions under which it would become mandatory for the company to convene the meeting. (03 marks)**

**(b) The rights of the concerned shareholders in case the company fails to convene the meeting. (05 marks)**

### Suggested Answer:-

(a) It would be mandatory for Nazeer Industries Limited to convene the meeting if the concerned shareholders representing not less than one-tenth of the voting power, deposit a requisition, duly signed by them, at the registered office of the company.

(b) If the directors of Nazeer Industries Limited do not proceed within twenty-one days from the date of the requisitionists being so deposited to cause a meeting to be called the requisitionists or a majority of them in value, may themselves call the meeting, but in either case any meeting so called shall be held within three months from the date of the deposit of the requisition.

Any meeting called by the requisitionists shall be called in the same manner, as nearly as possible, as that in which meetings are to be called by directors.

The meeting called in the manner stated above is valid and the resolutions passed are binding on the company.

Any reasonable expenses incurred by the requisitionist by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionist by the company.

**(15) Question Background: Winter 2011, Q # 10**

Bilal Garments Limited (BGL) has recently been incorporated in Pakistan. However, prior to obtaining the certificate of commencement of business, BGL has entered into an agreement with Taqi Engineering Limited (TEL) for the supply and installation of machinery at its factory. BGL has also signed an agreement with a commercial bank for a short term finance facility for payment of advance to TEL.

**In the light of the provisions of the Companies Ordinance, 1984 comment on the legality and the implication of entering into the above agreements. (05 marks)**

**Suggested Answer:-**

The agreement signed between Bilal Garments Limited and the TEL Engineering Limited shall be provisional only till BGL is entitled to commence business and will not be binding on the company. The agreement will become binding on that date when the BGL obtains the Certificate for Commencement of Business from the registrar.

The short term finance (exercising of borrowing powers) prior to the issue of commencement of certificate of business obtained by the company is in contravention of the Companies Ordinance, 1984 and every officer and other person, who is responsible for arranging the credit facility, will be liable to fine.

**(16) Question Background: Winter 2011, Q # 12 (a)**

Mr. Babar is currently working as a Marketing Manager in ST Limited (STL). The management intends to appoint him as the Chief Executive of the company. He is willing to accept the offer and has requested for a loan of Rs. 10 million. Moreover, he had also taken a loan in 2009, of which Rs.1 million is still outstanding. **State the conditions as specified in the Companies Ordinance, 1984 which STL would need to comply with, in respect of the above loans. (05 marks)**

**Suggested Answer:-**

(a) The STL must comply with the following conditions before granting loan to Mr. Babar

(i) Approval from SECP will be required for the loan.

(ii) The loan has been taken for any of the following purposes:

⊖ acquisition or construction of a dwelling house or land there for

⊖ defraying the cost of any conveyance of personal use or household effects

⊖ for defraying any expense on his medical treatment or the medical treatment of any relative as are ordinarily made or provided by the company to its employees

(iii) Mr. Babar within fourteen days of his appointment as chief executive must file with the registrar the particulars of any loan taken, prior to his becoming chief executive of the STL which could not have been obtained without the prior approval of the Commission had he at the time of taking the loan been the chief executive of the company

**(17) Question Background: Summer 2012, Q # 12**

**The general meeting of VX Limited, a listed company, was convened on 30 May 2012. However, only four shareholders turned up to attend the meeting. Explain how VX Limited should deal with the above situation in the light of Companies Ordinance, 1984. (06 marks)**

**Suggested Answer:-**

Since VX Limited is a listed company, unless the articles provide for a larger number the quorum of a general meeting shall not be less than ten members present personally, who represent not less than twenty-five percent of the total voting power, either of their own account or as proxies.

In VX limited only four shareholders turned up to attend the meeting and therefore the quorum were not formed. If the quorum is not present within half an hour from the time appointed for the meeting, the Chairman shall adjourn the meeting and the meeting shall stand adjourned to the same day in the next week at the same time and place.

At the adjourned meeting if a quorum is not present within half an hour from the time appointed for the meeting, the members present, being not less than two, shall be a quorum, unless the articles provide otherwise.

**(18) Question Background: Summer 2011, Q # 1**

As on April 1, 2010 Mr. Faisal owned one million shares in Delton Chemicals Limited (DCL), a listed company. He has made the following transactions in the shares of DCL during the year ended March 31, 2011:

Sr. No	Date	Addition/ (Deletion)No. of shares	Remarks
1	31.05.2010	45	Purchased from market
2	15.07.2010	15	Purchased from market
3	30.08.2010	(5)	Sold in market at a profit
4	15.09.2010	(1)*	Sold in market at a profit
5	20.11.2010	5	Bonus shares

*\*These shares were acquired on March 15, 2010 in good faith from Mr. Yaseen in satisfaction of a debt.*

The paid-up capital of DCL is 500 million shares.

**Required: (a) Discuss Mr. Faisal's responsibilities under the Companies Ordinance, 1984 in respect of the above transactions. (08 marks)**

**(b) Briefly discuss the powers of the SECP in case Mr. Faisal fails to carry out his responsibilities as referred to in (a) above. (04 marks)**

**Suggested Answer:-**

(a) (i) May 31, 2010

Mr. Faisal was not required to file any return with the registrar as his holding was less than 10% of the shares of the company even after taking opening balance of one million shares.

(ii) July 15, 2010

Since the shareholding of Mr. Faisal had crossed the level of 10% shares of the company, he had to inform the company and file a return, within 30 days from the date of the transaction, containing particulars of his shareholdings in Delton Chemicals Limited (DCL) with the Registrar and the Commission.

(iii) August 30, 2010

Since Mr. Faisal had made a gain by purchase and sale within a period of less than six months, he was required to make a report and tender the amount of such gain to the company and simultaneously send intimation to this effect to the Registrar and the Commission within 15 days from the date of the transaction.

(iv) September 15, 2010

Mr. Faisal was not required to make a report and tender the gain and send intimation to this effect to the Registrar and the Commission as the concerned rule discussed in (iii) above, is not applicable to such transactions i.e. when shares have been acquired in good faith, in satisfaction of a debt.

(v) November 20, 2010

On receipt of bonus shares, there is a change in his beneficial ownership of DCL, he would therefore be required to inform the company and file a return with the Registrar and the Commission within 15 days from the date of the receipt of bonus shares.

(b) If Mr. Faisal knowingly and willfully contravenes or otherwise fails to comply with any provision of Company Law related to above, he shall be liable to pay a fine.

If Mr. Faisal fails or neglects to tender the amount of the gain or the company fails to recover any gain such gain shall vest in the Commission and unless such gain is deposited in the prescribed account, the Commission may direct recovery of the same as an arrear of land revenue.

**(19) Question Background: Summer 2011, Q # 5**

RK Limited (RKL), a listed company, holds 6.3 million ordinary shares of TK (Private) Limited (TKPL) whose paid-up capital consists of 10 million ordinary shares of Rs. 10 each. The remaining shares are held by Mr. Adnan and his family. The Board of TKPL consists of eight directors of which five directors represent RKL while the remaining three directors, including the chief executive, are representatives of Mr. Adnan and his family. RKL is presently considering the following proposals:

**(a) To appoint one of the directors representing RKL, as the chief executive of TKPL, in place of the existing chief executive. (05 marks)**

**(b) To appoint BL & Co., Chartered Accountants, as auditors of TKPL in the forthcoming annual general meeting. The spouse of one of the partners of BL Associates holds one hundred thousand shares in TKPL. (03 marks)**

**(c) To pledge TKPL's inventories as security against a loan to be obtained by an associated company of TKPL. (03 marks)**

**Comment on the above proposals in the light of provisions contained in the Companies Ordinance, 1984.**

**Suggested Answer:-**

(a) The directors of a company by resolution passed by not less than three-fourths of the total number of directors for the time being, or the company by a special resolution, may remove a chief executive before the expiration of his term of office.

Therefore, the Chief Executive of TKPL can be removed only if the proposal is supported by either of the following:

(i) At least 6 directors of the TKPL or

(ii) By 3/4th majority of the members present in person or proxy.

RKL cannot therefore remove the current Chief Executive of TKPL until the expiry of his term, unless the move is supported by at least one director from the Adnan family or RKL can get support of 3/4th of shareholders present in the person or by proxy in the general meeting.

(b) BL & Co., Chartered Accountants, cannot be appointed as auditors of TKPL because the spouse of one of the partners of BL & Co. holds shares in TKPL.

However, the appointment of BL & Co. may be valid if the concerned partner discloses the fact on his appointment as auditor and gives an undertaking that these shares would be disinvested, within 90 days of his appointment.

(c) TKPL would not be authorized to provide any security in connection with a loan obtained by its associated company as it is a subsidiary of public company, if:

(i) The associated company is a private company of which any such director is a director or a member.

(ii) The associated company is a public company and 25% or more of its voting power is controlled by the director(s) of TKPL; or

(iii) Both the companies (TKPL as well as the associated company) are under common control or management.

**(20) Question Background: Winter 2010, Q # 2**

Mr. Hameed, who is a director in ABC Limited, a listed company, is planning to move to Europe for one year to set up his own business. In the light of Companies Ordinance, 1984 you are required to:

**(a) Respond to his request for advice, as regards his responsibilities, under the Companies Ordinance 1984, in respect of:**

**(i) Attending the annual general meeting of the company. (02 marks)**

**(ii) Attending the board meetings of the company. (04 marks)**

**(b) Discuss the conditions under which he may be allowed to assign his office to another person. (04 marks)**

**(c) State the procedure and the conditions to be complied with if the company wants to remove Mr. Hameed from the directorship of the company, under each of the following assumptions:**

**(i) He was elected as a director of the company.**

**(ii) He became the director of the company by subscribing to the memorandum of association of the company. (06 marks)**

**Suggested Answer:-**

**(a) (i) Director's attendance at Annual general Meeting.**

It is not mandatory for a director to attend the annual general meeting of the company and there are no consequences of not attending it under the Company's Ordinance, 1984.

**(ii) Director's attendance at Board Meeting.**

If Mr. Hameed does not attend, without leave of absence from directors, three consecutive board meetings or all the board meetings for a continuous period of three months whichever is longer he shall ipso facto cease to hold office.

**(b) Restriction on assignment of office of directors**

Mr. Hameed can assign his office to another person, if he is allowed by the articles or by any agreement, between him and the company empowering him to assign his office to another person, duly approved by a special resolution of the company.

**(c) Removal of directors**

In either case, the company may remove Mr. Hameed from the directorship by passing a resolution in general meeting.

**(i) If Mr. Hameed was appointed by the election of directors of the company.**

Mr. Hameed shall be removed if votes cast against the resolution for removal are less than the minimum number of votes that were cast for the election of director at the immediately preceding election of directors.

**(ii) If Mr. Hameed was appointed by the subscribers to the memorandum of association of the company.**

Mr. Hameed shall be removed if votes cast against the resolution for removal are less than the total number of votes for the time being computed as a product of number of shares held by voter and number of director elected at the time of his appointment divided by the number of directors for the time being.

**(21) Question Background: Winter 2010, Q # 3 (a)**

**Western Cement Limited (WCL) has recently formed a provident fund for the benefit of its employees. In view of the provisions contained in the Companies Ordinance, 1984 you are required to advise (i) the directors of WCL and (ii) the trustees of Provident Fund about their responsibilities with respect to the amount to be contributed to the fund and investment thereof. (09 marks)**

**Suggested Answer:-**

The Directors of the company are responsible to collect the contribution of the employees and pay such contributions as well as the company's contributions, to the trustees of the provident fund within fifteen days from the date of collection and thereupon the obligations laid on the company shall devolve on the trustees and shall be discharged by them instead of the company.

The directors shall make sure that no portion of the contribution is utilized by the company except for the breach of the contract of service by the employee, subject to giving prior notice to the employee concerned.

It is the responsibility of the trustees to ensure that all the money deposited with a company by its employees, contribution by the company or received or accruing by way of interest, profit or otherwise from the date of the contribution, receipt or accrual, shall either be deposited:

- (i) In the National Saving Scheme;
- (ii) In a special account opened by the company for the purpose in a scheduled bank or
- (iii) Where the company itself is a scheduled bank, in a special account to be opened by the company for the purpose either in itself or in any other scheduled bank or
- (iv) Be invested in Government securities; or
- (v) In bonds, redeemable capital, debt securities or instruments issued by the Pakistan Water and Power Development Authority; or
- (vi) In listed securities subject to the conditions as prescribed by the SECP.

#### **(22) Question Background: Summer 2010, Q # 1**

An equitable mortgage was created on the factory building of Asif Textile Mills Limited, a listed company, to secure a long term loan obtained from Mrs. Wasif, who is the spouse of a director of the company. All the eight directors of the company were informally aware about Mr. Wasif's interest in the transaction. The board of directors approved the transaction in their meeting which was attended by five directors. Upon inspection of the register of contracts in which directors are interested, a member of the company filed an appeal with the SECP, claiming that the mortgage is invalid because Mr. Wasif, who is an interested director, had also voted on the matter and therefore the contract is void.

In the light of the provisions of Companies Ordinance, 1984 you are required to:

- (a) Evaluate the above situation and comment thereon in the light of the provisions of the Companies Ordinance, 1984. (07 Marks)**
- (b) Explain the manner in which a general notice, regarding disclosure of interest in a contract, may be given by directors of a company. (05 Marks)**

#### **Suggested Answer:-**

**(a)** Mr. Wasif should have disclosed the nature of his interest in the contract in the meeting of the board of directors at which the question of entering into the contract was first taken up for consideration. Mr. Wasif should not have participated in the discussions of approving the contract and his presence would not have been considered for the purpose of forming a quorum or vote and if he had voted, his vote should have been void. However, the contract may not become void merely on the ground of non-disclosure of interest by Mr. Wasif unless with the absence of his vote, there would be no quorum.

**(b)** A director shall give a general notice to the effect that he is a director or a member of a specified body corporate or a member of a specified firm and is to be regarded as concerned or interested in any contract which may after the date of the notice be entered into with body corporate or firm. Any such general notice shall expire at the end of the financial year in which it is given but may be renewed for further period of one financial year at a time by a fresh notice given in the last month of the financial year in which it would otherwise expire. No such general notice and no renewal thereof shall be of effect unless either it is given at a meeting of the directors or the directors concerned take reasonable steps to ensure that it is brought up and read at the first meeting of the directors after it is given.

**(23) Question Background: Summer 2010, Q # 4**

An Extraordinary General Meeting of Mastermind Technologies Limited (MTL), a listed company, was scheduled to be held on October 31, 2009. The directors adjourned the meeting for the next week as the quorum was not present within fifteen minutes of the scheduled time. Based on the provisions of the Companies Ordinance, 1984, you are required to comment on the following:

**(a) The decision of the directors to adjourn the meeting, assuming:**

**(i) The meeting was called upon the requisition of the members.**

**(ii) The meeting was called by the directors.**

**(03 Marks)**

**(b) The impact of the adjournment on the validity and rights of proxies which were deposited with the company before adjournment.**

**(02 Marks)**

**(c) The validity of the resolution passed at the adjourned meeting.**

**(02 Marks)**

**Suggested Answer:-**

**(a)** The directors of the company should have waited for half an hour. The directors of the company may adjourn the general meeting of the company if within half an hour from the time appointed for the meeting the quorum is not present and shall

**(i)** Direct to dissolve the meeting, if the meeting is called upon the requisition of the member.

**(ii)** Adjourn the meeting to the same day in the next week at the same time and place, if meeting is called by the directors.

**(b)** The proxies deposited before adjournment of the meeting shall stand valid for the adjourned meeting. A proxy shall be entitled to attend and vote instead of member appointing him and have such rights in respect of speaking and voting at the adjourned meeting as are available to a member.

**(c)** A resolution passed at an adjourned meeting shall for all purpose, be treated as having been passed on the date on which it was in fact passed and shall not be deemed to have been passed on any earlier date.

**(24) Question Background: Summer 2010, Q # 5**

**Karachi Telecommunication (Private) Limited (KTL) was incorporated on 1st March, 2009 under the Companies Ordinance, 1984. Its directors have decided to hold the first Annual General Meeting (AGM) of the company on August 10, 2010, for placing the first audited financial statements for the period ended March 31, 2010, for approval. Comment on the decision of the directors, in the light of provisions contained in the Companies Ordinance, 1984.**

**(05 Marks)**

**Suggested Answer:-**

The decision of the directors of KTL contravenes various provisions of the Companies Ordinance, 1984 as discussed below:

**(a)** The accounts are being prepared for a 13 month period. For preparation of accounts for a period exceeding twelve months, prior permission of the Registrar shall be required.

**(b)** The accounts are made up to a date earlier than the date of the meeting by more than four months (or hold its first AGM on or before July 31, 2010). As per the Companies Ordinance 1984 the accounts shall be made up to a date not earlier than the date of the meeting by more than four months.

**(25) Question Background: Winter 2009, Q # 2**

**There are allegations in the press and serious charges have been leveled against STR Petroleum Limited about misuse of public funds by the management. Zafar, a director of the company wants to inspect the books of account, in order to ascertain whether the allegations are true. As Zafar does not have adequate knowledge of accounting, he intends to examine the books of account in the presence of**

**his friend Arif, who is a chartered accountant. You are required to advise the company in respect of the above matter under the provisions of the Companies Ordinance, 1984. (05 Marks)**

**Suggested Answer:-**

As a director, Zafar is entitled to inspect the books of account during office hours. However, there is no law that would allow Mr. Zafar to allow his friend to inspect the books of accounts of the company.

**(26) Question Background: Winter 2009, Q # 4**

**Mr. Waleed has acquired 3 million ordinary shares of Acquired Limited whose paid up share capital consists of 22 million ordinary shares of Rs. 10 each. The election of the directors of the company has recently been concluded. Mr. Waleed, being confident of holding a sufficient number of shares to be elected as a director, has requested the management to arrange a fresh election. Based on the provisions contained in the Companies Ordinance, 1984 explain whether and under what conditions a fresh election of the directors may be held. (08 Marks)**

**Suggested Answer:-**

Mr. Waleed has acquired more than 12.5% (Rs. 3/Rs. 22 = 13.64%) shares in the company. Assuming that the company is listed, he may apply to the Commission for requiring the company to hold fresh election of directors in the forthcoming annual general meeting of the company.

The Commission may, if it deems appropriate in the interest of the company, its minority shareholders or the capital markets generally, direct the company to hold the election of directors in the manner provided under section 178, and the company shall comply with such directions.

If fresh elections are held on the directions of the Commission, Mr. Waleed shall not sell or dispose of his shares for at least one year from the date of election of directors. However, if the company is not listed, then no such option would be available to Mr. Waleed.

**(27) Question Background: Winter 2009, Q # 6**

**The annual general meeting (AGM) of Nizam Industries Limited was held on November 16, 2009. Some of the shareholders are not satisfied with the decisions taken at the meeting and are of the opinion that the directors have manipulated the situation in order to obtain certain approvals in the annual general meeting. You are required to explain how and under what conditions the proceedings of the AGM can be declared as invalid. (05 Marks)**

**Suggested Answer:-**

The Court may, on a petition by members having not less than ten percent of the voting power in the company, that the proceedings of a general meeting be declared invalid by reason of any material defect or omission in the notice or irregularity in the proceedings of the meeting which prevented the members from using effectively their rights, declare such proceedings or part thereof invalid and direct holding of a fresh general meeting. Provided that the petition shall be made within thirty days of the impugned meeting.

**(28) Question Background: Winter 2009, Q # 11**

In the annual general meeting of Sabzazar Limited held on September 29, 2009 some of the shareholders have raised the following objections:

**(c) Shareholders were not allowed to make extracts from the register of members on the day on which the election of directors was held.**

**(d) 10,000 shares of a subsidiary, which are the property of the company, are held in the name of a director of the company.**

**(e) The surplus on revaluation of fixed assets was credited to the reserves of the company and later used to pay dividend.**

**(f) One of the directors is not a member of the company**

**You are required to satisfy the shareholders by explaining the relevant provisions, if any, as contained in the Companies Ordinance, 1984. (08 Marks)**

*(You may make appropriate assumptions in your answer to clarify the company's position.)*

**Suggested Answer:-**

(c) The company is required to keep open the register, except when closed under the provisions of the Companies Ordinance, 1984, subject to reasonable restriction as imposed by the company in its general meeting so that not less than 2 hours in each day will be allowed for inspection.

(d) The shares of subsidiary are rightly held in the name of the director because they are the qualification shares which are required to be held to become the director of that company.

(e) The amount in the surplus revaluation account can be transferred to the reserve account provided the amount is the actual amount that has been realized on disposal of the asset which were in accordance with the law and hence the proceeds can be utilized for payment of dividend.

(f) A non-member is allowed to become the director of the company in the following situations:

(i) Persons representing the Government or an institution or Commission which is a member;

(ii) Whole-time director who is an employee of the company;

(iii) Chief executive;

(iv) Person representing a creditor.

**(29) Question Background: Summer 2009, Q # 11(a)**

**Under the Companies Ordinance, 1984 describe the circumstances in which proceedings of a general meeting may be declared invalid by the court. Who is eligible to make petition in this regard. (03 M)**

**Suggested Answer:-**

The Court may, on a petition by members having not less than ten percent of the voting power in the company, that the proceedings of a general meeting be declared invalid by reason of any material defect or omission in the notice or irregularity in the proceedings of the meeting which prevented members from using effectively their rights, declare such proceedings or part thereof invalid and direct holding of a fresh general meeting.

**(30) Question Background: Summer 2009, Q # 11 (b)**

**Explain the provisions of the Companies Ordinance, 1984 with regard to the quorum of a general meeting of a company listed on stock exchange. (03 Marks)**

**Suggested Answer:-**

In the case of a public listed company, the quorum of a general meeting shall be, unless the articles provide for a larger number not less than ten members present personally who represent not less than twenty five per cent of the total voting power, either of their own account or as proxies.

**(31) Question Background: Winter 2008, Q # 2**

The Board of Directors of ABC Limited, a company listed on Karachi and Lahore Stock Exchanges, has resolved to transmit its quarterly financial statements to the members of the company through its corporate website. **You are required to discuss the requirements of Companies Ordinance, 1984 regarding placement of the quarterly accounts on the web. (07 Marks)**

**Suggested Answer:-**

A listed company may place its quarterly accounts on its website, subject to fulfillment of the following conditions:

(i) Seek the consent of its shareholders in a General Meeting.

(ii) Consult the respective stock exchanges.

- (iii) Seek prior permission of the Commission.
- (iv) The application for this purpose shall indicate its website address.
- (v) The company, after obtaining the requisite permission, shall inform its shareholders through an advertisement in the Press that the subsequent quarterly accounts would be transmitted to them through the company website.
- (vi) The respective Stock Exchanges and the Commission shall be informed in writing, by post.
- (vii) The requirement of filing the prescribed number of copies of periodical accounts with the Commission and the Stock Exchange(s) by post shall be fulfilled, in addition to the transmission of the same through the website of the Commission and the Stock Exchange(s).
- (viii) The company will also provide a copy of quarterly accounts, free of cost, to any shareholder, on demand.
- (ix) Transmit periodical accounts electronically to the concerned stock exchange(s) so as to place the same on their website.
- (x) A group of companies under the same management may maintain a single website instead of having an independent website for each company.
- (xi) The listed companies shall also be required to intimate to the Commission through e-mail that quarterly accounts have been placed on their websites, on the due date.

**(32) Question Background: Winter 2008, Q # 4 (b)**

Mr. Khan, chief executive of Prosperous Engineering Limited, is assessing the possibility of setting up a new project in Gwadar in collaboration with a prospective foreign investor. He is confident that the proposed project will reap significant benefits to the company. Since he does not wish to dilute his holding and voting rights, he is planning to issue class B shares to the investor along with 16% TFCs with a floating charge on the book debts of the company and a fixed charge on its machinery in the manufacturing department. He wants to have your advice on the issue.

**Explain the important characteristics of a fixed charge and floating charge and their registration requirements. (05 Marks)**

**Suggested Answer:-**

A **fixed or specific charge** attaches to the specific, clearly identifiable and defined asset of the company as soon as it is created. From then on the company cannot transfer or dispose of such property.

A floating charge does not attach to any specific property of the company until the company commits some act or default (i.e. charge crystallizes). It is free to dispose of the property unencumbered.

A fixed charge takes priority over a floating charge.

All charges, both fixed and floating have to be registered with the Registrar within 21 days of their creation. If such registration is not affected, the charge created by the company becomes void against any liquidator or other creditor.

**(33) Question Background: Winter 2008, Q # 9**

Sigma Industries Limited is a company listed on Karachi Stock Exchange. Its financial year ends on December 31. The final dividend for the year 2007 was approved in the AGM held on March 31, 2008. To maintain its good payout ratio, the company declared two interim dividends of 10% and 12% in January and February 2008 respectively. The books were closed for a period of 12 days and 18 days respectively. The directors of Sigma Industries Limited have now proposed a final dividend of 20% which is to be approved in the forthcoming AGM of the company. The directors intend to close the share transfer register from March 25, 2009 for determining shareholders entitlement for the purpose of dividend, meeting, etc.

**In the light of Companies Ordinance, 1984 you are required to advise the directors as regards the following : (a) The maximum period for which the books of Sigma Industries Limited can be closed and the procedure that should be followed in this regard. (05 Marks)**

**(b) The last date up to which Sigma Industries Limited can hold its AGM. (03 Marks)**

**(c) The procedure relating to sending of notices, annual report and audited accounts to the members and concerned authorities. (05 Marks)**

**Suggested Answer:-**

(a) Sigma Industries can close its books for a maximum of 15 days i.e. from March 25, 2009 to April 8, 2009. This is also in line with the listing regulations of onetime closure of 7-15 days.

Following procedure is to be followed for closing the register of members and the share transfer register.

(i) The company shall give 21 day notice of book closure to Karachi Stock Exchange.

(ii) At least seven days before the book closure a notice of book closure shall also be published in a newspaper having circulation in the province(s) in which the stock exchange on which the company is listed is situated and also in the province in which the registered office of the company exists.

(iii) The total period of book closure should not to exceed 45 days in a year and the period of one time closure shall not exceed 30 days.

(b) The law requires that all subsequent Annual General Meetings (AGMs) should be held once in each calendar year; within 4 months of the close of the financial year but not exceeding 15 months from the conclusion of last AGM. So, Sigma Industries Limited can hold the AGM up to April 30th, 2009.

(c) (i) The notice of AGM along with the copy of annual report and audited accounts would be send to all the members at their registered address at least 21 days before the meeting.

(ii) Simultaneously with the dispatch of notice, five copies each of the annual report and audited accounts, one duly signed by the auditors and CEO/Director would be sending to the Commission, Stock Exchange and the Registrar.

(iii) The notice of meeting shall be published at least 21 days before the meeting in two daily newspapers one English and one Urdu circulating in the province in which the stock Exchange(s) on which the company is listed exist.

(iv) The copy of the notice of AGM shall be faxed to the Commission on the day of its publication.

(v) A copy of the newspaper shall also be sent to the Commission on the day of its publication.

**(34) Question Background: Summer 2008, Q # 1**

During the past 12 months Mr. Sohail's holding in shares of ABC Ltd (a listed company) has increased to 13%. Recently, he has written a letter to the company seeking appointment on its Board of Directors. The company secretary had advised that since the election of directors was held in the preceding annual general meeting, he cannot be admitted on the board till the next elections become due. Mr. Sohail is not satisfied with the response and has sought your advice on the matter.

**You are required to briefly discuss what course of action is available to him.**

**(07 Marks)**

**Suggested Answer:-**

Under the Companies Ordinance, 1984 the tenure of the BOD is 3 years. Before expiry of the term a person can only be admitted to fill in the casual vacancy. However, according to the Companies' Ordinance, 1984 if a person acquires 12.5% or more voting shares in a listed company in his own name; he may apply to the Commission to direct the company to hold fresh election of directors in the forthcoming annual general meeting of the company. The Commission may, if it deems appropriate in the interest of the company, its minority shareholders or the capital markets generally, direct the company to hold the election of directors as above and the company shall comply with such direction. However, in case the election is held as above, Mr. Sohail shall be restricted from selling or disposing of the shares for at least one year from the date of election of Directors of the company.

**(35) Question Background: Summer 2008, Q #2(a)**

**Arif & Co., Chartered Accountants were to be re-appointed as auditors at the Annual General Meeting of Rose Limited, an unlisted company. The meeting was held on October 31, 2007 but stood adjourned without discussing the appointment of auditors. Explain the legal position of the auditors in such a situation. (02 Marks)**

**Suggested Answer:-**

The appointment of auditor is made at every annual general meeting of the company to hold office from the conclusion of that meeting until the conclusion of the next AGM. Since the AGM was adjourned without discussing the re-appointment of Arif & Co., they will continue to hold office till the conclusion of the adjourned AGM.

**(36) Question Background: Summer 2008, Q #12(a)**

See-green Limited, a public limited company, had convened a general meeting at 9:00 a.m. on March 25, 2008 to consider and if deemed fit, pass a special resolution approving the disposal of a part of the company's undertaking. The meeting commenced at 9:16 a.m. as the quorum was not present at the scheduled time and was attended by 100 members (including 10 members represented through proxies) holding 1,000,000 shares in aggregate. After a heated debate, voting was held through show of hands and the chairman declared the resolution successful as 78 votes were casted in favour of the resolution.

On March 31, 2008, the shareholders who gave a dissenting vote in the meeting lodged a protest with the company claiming that the resolution was invalid on account of the following reasons:

- (i) *Mr. A who voted for the resolution was represented through a proxy which was deposited at 5:01 p.m. i.e. after office hours on March 22, 2008. Moreover, since March 23rd was a public holiday, the condition of depositing the proxy at least 48 hours before the meeting, could not be met.*
- (ii) *Mr. B a shareholder with a holding of 50,000 shares was represented by two proxies i.e. Mr. C (30,000 shares) & Mr. D (20,000 shares). Both proxies were counted for the purpose of voting.*
- (iii) *JK (Pvt) Limited holding 20,000 shares of the company, were represented by Mr Sameer, who is neither the director nor the employee of the company. He also voted in favour of the resolution.*
- (iv) *The shareholders who lodged the protest hold 300,000 shares and therefore the resolution was approved by shareholders holding 70% voting rights only.*
- (v) *Since the meeting could not be held on time, it became invalid and should be called again.*

**Discuss the validity of the resolution under the Companies Ordinance 1984, in view of the complaint lodged by the dissenting shareholders. (10 Marks)**

**Suggested Answer:-**

The various situations given in the question are discussed hereunder:

- (i) Since the proxy was lodged after office hours on 22nd March. It would be deemed to have been lodged on 23rd March 2008. Hence, the condition of depositing the proxy 48 hours before the meeting could be met and the vote casted on the basis of such proxy should be considered as valid.
- (ii) As per the Ordinance a member shall not be entitled to appoint more than one proxy to attend any one meeting. If any member appoints more than one proxy for any one meeting and more than one instrument of proxy are deposited with the company, all such instruments of proxy shall be rendered invalid. Accordingly, votes casted by Mr. C and D as proxies would be invalid.
- (iii) As per the Ordinance, a company which is a member of another company may, by resolution of the directors, authorize any of its officials or any other person to act as its representative at any meeting of that other company. Therefore Mr. Sameer's vote is valid.
- (iv) As per the ordinance, at any general meeting, a resolution put to the vote of the meeting shall be decided on show of hands, unless a poll is demanded. The concerned shareholders should have demanded a poll

before or on the declaration of the result of the voting by show of hands and not after the meeting is concluded. Therefore the shareholder's protest is not valid.

(v) As per the Ordinance, if within half an hour from the time appointed for the meeting, a quorum is not present, the meeting may either be dissolved or adjourned. Since the quorum was present within 30 minutes, the meeting is valid.

Conclusion: In view of the above the resolution would be deemed to have been duly passed even after if the proxies lodged by the members who were represented by Mr. B and C are considered invalid as 75% valid votes were casted.

**(37) Question Background: Summer 2008, Q # 12(b)**

In the first meeting of Board of Directors of Alif Cement Ltd a public listed company, Mr. Raof proposed the name of Mr. Haseeb for appointment as chief executive of the Company. Mr. Zahid opposed the proposal on the following grounds: (i) Mr. Haseeb is also the Chief Executive of Bay Cement (Pvt.) limited which holds 15% shares in Alif Limited. (ii) He is involved in the business of stock brokerage.

**Comment on the statement of Mr. Zahid in the light of the provisions of the Companies Ordinance, 1984. (04 Marks)**

**Suggested Answer:-**

(i) As per the Ordinance, a chief executive of a public company shall not directly or indirectly engage in any business which is of the same nature as and directly competes with, the business carried on by the company of which he is the chief executive.

(ii) Moreover, no person shall be appointed as chief executive of a company if he is a member of a stock exchange engaged in the business of brokerage.

*Therefore Mr. Zahid's contention is correct.*

## INVESTIGATION AND RELATED MATTERS

**(38) Question Background: Winter 2011, Q # 1**

As a result of an application filed by the members of MMB Limited, its affairs are under investigation by the Securities and Exchange Commission of Pakistan (SECP). The members claim that the company had allotted shares to an investor against inadequate consideration and that they had not received the notice of meeting in which the decision was approved. They have requested SECP to restrict the transfer of these shares till such time that the investigation is in process. In the light of the provisions of the Companies Ordinance, 1984 you are required to state: **(a) Whether and under what conditions the SECP may impose restrictions on the transfer of shares? (04 marks)**

**(b) What would be the effects of such restrictions on the company and the concerned investors? (06 marks)**

**Suggested Answer:-**

(a) Where it appears to the Commission while investigating the affairs of MMB Limited that there is good reason to find out the relevant facts about any shares, and the Commission is of the opinion that such facts cannot be found out unless the restrictions on that transfer are imposed, the Commission may direct that the shares shall be subject to the restriction for a specified period but not exceeding one year.

Before making an order, the Commission shall provide an opportunity of showing cause against the proposed action to the company and the persons likely to be affected by the restriction.

(b) The effects of restrictions imposed by the Commission may be:

(i) Any transfer of those shares shall be void;

(ii) No voting right shall be exercisable in respect of those shares;

- (iii) No further shares shall be issued in right of those shares or in pursuance of any offer made to the holder thereof; and any issue of such shares shall be void;
- (iv) Except in a liquidation, no payment shall be made of any sums due from the company on those shares, whether in respect of dividend, capital or otherwise; and
- (v) No change other than a change by operation of law shall be made in the directors, chief executive or the managing agent.

**(39) Question Background: Winter 2010, Q # 1 (b)**

**On submission of the report by the inspector appointed by SECP to investigate the affairs of XYZ Limited, SECP is of the opinion that the financial position of the company is such that it endangers its solvency and as such has filed a petition in the Court for taking necessary action against the management of the company. Under the provisions of Companies Ordinance, 1984 describe various actions which the Court may order against the management of XYZ Limited. (04 marks)**

**Suggested Answer:-**

Various actions, which the Court may order against the management of XYZ Limited, are as follows:

- (i) Remove from office any director including the chief executive, managing agent or other officer of the company; Any director including a chief executive, managing agent or other officer who is removed from office shall not be a director, chief executive, managing agent or officer of any company for a period of five years from the date of his removal unless the court specifies a lesser period.
- (ii) Direct that the directors of the company should carry out such changes in the management or in the accounting policies of the company as may be specified in the order; or
- (iii) Direct the company to call a meeting of its members to consider such matters as may be specified in the order and to take appropriate remedial action; or
- (iv) Direct that any existing contract which is to the detriment of the company or its members or is intended to or does benefit any officer or director shall be annulled or modified to the extent specified in the order. Provided that no such order shall be made so as to have effect from any date preceding the date of order.

**(40) Question Background: Summer 2009, Q # 4**

**(a) The Securities and Exchange Commission of Pakistan (SECP), on its own motion, is contemplating appointment of an Inspector to investigate the affairs of Crown Properties Limited and has issued a notice for the same narrating the reasons thereof. The directors of the company are contending that the said action is without any justified cause. You are required to narrate the circumstances specified in the Companies Ordinance, 1984 wherein the SECP may appoint an Inspector. (07 Marks)**

**(b) Assuming that after necessary opportunity afforded by the SECP, Crown Properties Limited is subjected to the Investigation, describe the powers that the Inspector can exercise under the Companies Ordinance 1984, while investigating affairs of the company. (05 Marks)**

**Suggested Answer:-**

**(a)** SECP may appoint an Inspector if in its opinion there are circumstances suggesting:

- (i) Fraudulent Business:* The business of the company is being or has been conducted with intent to defraud its creditors, members or any other person or for fraudulent or unlawful purpose, or in a manner oppressive of any of its members or that the company was formed for any fraudulent or unlawful purpose.
- (ii) Breach of Trust:* The sponsors or management have been guilty of fraud, misfeasance, breach of trust or other misconduct towards the company or its members or have been carrying on unauthorized business.
- (iii) Shareholders deprived of a Reasonable Return:* The affairs of the company have been conducted so as to deprive the shareholders of a reasonable return.
- (iv) Improper Provision of Information to Shareholders:* The shareholders have not been given all the information with respect to its affairs which they might reasonably expect.

(v) *Allotment of shares for Inadequate Consideration:* Any shares of the company have been allotted for inadequate consideration.

(vi) *Mismanagement:* The affairs of the company have not been managed in accordance with sound business principles or prudent commercial practices.

(vii) *Threats to solvency:* The financial position of the company is such as to endanger its solvency. Provided that before making such an order, the SECP shall give the company an opportunity to show cause against the action proposed to be taken

(b) The Inspector Appointed by the SECP, shall have the same powers as are vested in a court under Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:

- (i) Enforcing the attendance of persons and examining them on oath and affirmation.
- (ii) Compelling the discovery and production of books and papers and any material object
- (iii) Issuing commission for examinations of witnesses

In addition, the inspector shall have power to investigate and report on the affairs of the other body corporate, chief executive, managing agent or their associates so far as he thinks that the results of such investigation are relevant to the investigation of Crown Properties Limited

#### **(41) Question Background: Summer 2008, Q # 10**

A group of shareholders of Sky Blue Limited believes that certain business activities carried on by the company are prima facie against the interest of the company and its members. They have approached your firm and seek your guidance for applying to the SECP to carry out the investigation against the directors of the company. **You are required to identify the conditions under which such an application may be filed and the procedure that will have to be followed in this regard.** (05 Marks)

#### **Suggested Answer:-**

An application for investigation against the directors may only be filed by members having not less than one tenth of the total voting power.

The significant steps need to be taken in this regard are as follows:

(i) An application shall be filed with the SECP which among other information shall also include the following:

- Names and addresses of the applicants.
- Precise and specific reasons for requesting the investigation with particulars of alleged irregularities.
- Documentary evidence to support the claim of alleged irregularities.

(ii) The statements made by the applicants should be duly supported by an affidavit.

(iii) The Commission may, before passing any order on the application, require the applicants or any one or more of them to produce such further documentary or other evidence as the Commission may consider necessary

#### **(42) Question Background: Summer 2012, Q # 9, Syllabus Topic:**

Apprehensions are widespread in the stock market that the affairs of JK Limited are being conducted in a manner which is prejudicial to the interest of the stakeholders. In the context of the provisions of the Companies Ordinance, 1984 you are required to explain the followings:

**(a) Identify the persons who may file a suit in the Court with a request to intervene in the business of the company.** (05 marks)

**(b) Decisions that the court may take in the above circumstances.** (04 marks)

#### **Suggested Answer:-**

(a) The court may intervene in the affairs of JK Limited on the complaint by:

- (i) A member or members holding not less than twenty percent of the issued share capital of a company,

(ii) A creditor or creditors having interest equivalent in amount to not less than twenty percent of the paid up capital of the company,

(iii) The registrar, if he is of the opinion, that the affairs of the company are being conducted or are likely to be conducted, in an unlawful or fraudulent manner, or in a manner not provided for in the company's memorandum, or in a manner oppressive to the member or any of the members or the creditors or any of the creditors or are being conducted in a manner prejudicial to the public interest, such member or members or, the creditor or creditors, as the case may be, the registrar may make an application to the Court by petition.

(b) If, on any such petition, the Court is of the opinion-

(i) That the company's affairs are being conducted, or are likely to be conducted, as mentioned in the application and

(ii) That to wind-up the company would unfairly prejudice the members or creditors;

The Court may, with a view to bringing to an end the matters complained of, make such order as it thinks fit, whether for regulating the conduct of the company's affairs in future, or for the purchase of the shares of any members of the company by the other members of the company or by the company and, in the case of purchase by the company, for the reduction accordingly of the company's capital, or otherwise.

## PREVENTION OF OPPRESSION AND MISMANAGEMENT

**(43) Question Background: Winter 2011, Q # 11**

**A group of creditors of XYZ Limited has lodged a complaint with the Registrar of Companies on the ground that the management is indulging in destruction and falsification of the accounting records of the company. The complainants have requested the Registrar to take immediate steps in this regard. In the light of the provisions of the Companies Ordinance, 1984 explain the powers and responsibilities of the Registrar in the above circumstances. (08 marks)**

**Suggested Answer:-**

(a) Where the registrar has reasonable ground to believe that books and papers of, or relating to, any company may be destroyed, mutilated, altered, falsified or secreted, the registrar may, after obtaining permission of the Magistrate of the first class or the Court, search and seize such books and papers.

(b) The registrar may, after he has obtained the permission of the Magistrate or Court under that sub-section, also authorize any officer subordinate to him, not inferior in rank to an assistant registrar.

(i) To enter, with such assistance as may be required, the place where such books and papers are kept;

(ii) To search that place in the manner specified in the order; and

(iii) To seize such books and papers as he considers necessary.

(c) The registrar shall return the books and papers seized under this section as soon as may be and in any case not later than the thirtieth day after such seizure, to the company or, as the case may be, to the chief executive or any other person from whose custody or power they were seized:

Provided that the Commission may, after providing to the company an opportunity to show cause against the order proposed to be made by it, allow the registrar to retain any books and papers for a further period not exceeding thirty days: Provided further that the registrar may, before returning books and papers as aforesaid, take copies of, or extracts from them or put such marks of identification thereon as he considers necessary.

(d) Save as otherwise provided in this section, every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal procedure, 1898 (Act V of 1898), relating to searches or seizures made under that code.

**(44) Question Background: Summer 2010, Q # 10**

**ABC Limited is a major supplier of furnace oil to SUB Power Limited which is facing financial crunch and has been unable to make timely payments to ABC Limited. The directors of ABC Limited intend to request the SECP for appointment of an Administrator to manage the affairs of SUB Power Limited. In the light of provisions of the Companies Ordinance, 1984 describe the conditions under which ABC Limited may request the SECP to appoint the Administrator. (08 Marks)**

**Suggested Answer:-**

The directors of ABC Limited, if the amount of their debt is equal to 60% of the paid up capital of the SUB Power Limited either individually or in combination with other creditors may request the SECP to appoint an Administrator to manage the affairs of the company, on the following grounds:

- (a) The affairs or business of the company are or is being or have or has been conducted or managed:
- (i) In a manner likely to be prejudicial to the interest of the company, its members or creditors, or any director of the company or person concerned with the management of the company is or has been guilty of breach of trust, misfeasance or other misconduct towards any of its members or creditors or directors.
  - (ii) With intent to defraud its members or creditors or any other person or for a fraudulent or unlawful purpose or
  - (iii) In a manner oppressive of any of such persons or for purposes as aforesaid or
  - (iv) As to deprive the members thereof of a reasonable return or
- (b) Any industrial project or unit to be set up or belonging to the company has not been completed or has not commenced operations or has not been operating smoothly or its production or performance has so deteriorated that:
- (i) The market value of its shares as quoted on the stock exchange or the net worth of its shares has fallen by more than seventy-five per cent of its par value or
  - (ii) Debt equity ratio has deteriorated beyond 9:1 or
  - (iii) Current ratio has deteriorated beyond 0.5:1 or
- (c) Any industrial unit owned by the company is not in operation for over a period of two years or has been in operation intermittently or partially during the preceding two years; or
- (d) The accumulated losses of the company exceed sixty percent of its paid-up capital.

**(45) Question Background: Summer 2009, Q # 5**

In order to protect general public, depositors and other stakeholders, Khyber Steel Mills Limited has been declared as a sick unit by the Federal Government which has appointed Mr. Sohail Hamdani to prepare a rehabilitation plan for the re-organization of the company.

**You are required to discuss the following:**

- (a) The measures which Mr. Sohail is empowered to propose as part of the rehabilitation plan.**
- (b) If the rehabilitation plan is approved by the Federal Government, what impact would it have on the rights and liabilities of various stake-holders? (12 Marks)**

**Suggested Answer:-**

(a) Mr. Sohail Hamdani is empowered to propose all or any of the following measures in the rehabilitation plan:

- (i) Reduction of capital so as to provide the following:
  - Extinguish or reduce the liability on any of its shares in respect of shares capital not paid up; or
  - Either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up shares capital which is lost or unrepresented by available assets; or
  - Either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the needs of the company; or
  - Reconstruction, compromise, amalgamation and other arrangements.

- (ii) Alteration of share capital and variation in the rights and obligations of shareholders or any class of shareholders;
- (iii) Alteration of loan structure, debt rescheduling or conversion into shares carrying special rights or other relief and modification in the terms and conditions in respect of outstanding debts and liabilities of the company or any part of such loan, debts or liabilities or variation in the rights of the creditor or any class of them including any security pertaining thereto;
- (iv) Acquisition or transfer of shares of persons who are or have been sponsors or otherwise managing the affairs of the company on the specified terms and conditions;
- (v) Issue of further capital including shares carrying special rights and obligations.
- (vi) Removal and appointment of directors (including the chief executive) or other officers of the company;
- (vii) Amendment, modification or cancellation of any existing contract; or
- (viii) Alteration of the memorandum or articles or changes in the accounting policy and procedure.

(b) If the rehabilitation plan is approved by the Federal Government, it shall become final and shall be binding on all stakeholders. Therefore, all rights and obligation of stakeholders will be determined in accordance with the rehabilitation plan irrespective of anything contained in the Ordinance or agreements or memorandum and articles of association.

Moreover, none of the stake-holders would be entitled to any compensation or damages for any matter or arrangement provided for in, or action taken in pursuance of the rehabilitation plan.

## WINDING-UP

### (46) Question Background: Summer 2012, Q # 5

The Directors of BD Limited intend to wind up the company's business voluntarily. In the context of the Companies Ordinance, 1984 you are required to explain the following:

- (a) **The requirement to file a declaration of solvency.** **(08 marks)**
- (b) **The contents of declaration of solvency.** **(02 marks)**

#### **Suggested Answer:-**

(a) Since it is proposed by the directors of BD Limited to wind up the company voluntarily all its directors and in case the company has more than three directors, the majority of the directors, including the chief executive, may, at a meeting of the board of directors make a declaration verified by an affidavit. A declaration made as aforesaid shall have no effect for the purposes of this Ordinance, unless-

- (i) It is made within the five weeks immediately preceding the date of the passing of the resolution for winding up and is delivered to the registrar for registration before that date; and
- (ii) It is accompanied by a copy of the report of the auditors of the company, prepared, so far as the circumstances admit, in accordance with the provisions of this Ordinance, on the profit and loss account of the company for the period commencing from the date up to which the last such account was prepared and ending with the latest practicable date immediately before the making of the declaration and the balance sheet of the company made out as on the last mentioned date and also embodies a statement of the company's assets and liabilities as at that date.

(b) In a declaration of solvency the directors declare that they have made a full inquiry into the affairs of the company, and that having done so, they have formed the opinion that the company has no debts, or that it will be able to pay all its debts in full within such period not exceeding twelve months from the commencement of the winding up, as may be specified in the declaration.

**(47) Question Background: Summer 2011, Q # 2**

Substantial operating losses sustained by Legend Ceramics Limited (LCL) have forced its directors to proceed for company's voluntary winding up. Accordingly, a general meeting of LCL was held on July 1, 2010 and Mr. Ateeq was appointed as the Liquidator. In the context of the provisions contained in the Companies Ordinance, 1984 you are required to explain the following: **(a) The steps that Mr. Ateeq should take if the winding up is not completed till June 30, 2011. (05 marks)**

**(b) Mr. Ateeq's responsibilities as regards final meeting and dissolution of the company. (05 marks)**

**Suggested Answer:-**

**(a)** If the affairs of the LCL are not wound up till June 30, 2011, Mr. Ateeq shall be responsible to take the following steps:

(i) Summon a general meeting of the company at the end of the first year from the date of commencement of the winding up and, if extension is granted by court, within thirty days of such extended period;

(ii) Present in the meeting an audited account of receipts and payments and acts and dealings and of the conduct of the winding up during the preceding year together with a statement in a prescribed form containing the prescribed particulars with respect to the proceedings in and position of the liquidation, including:

⊖ Reasons for the delay in finalization of the winding up proceedings.

⊖ steps taken to expedite the winding up proceedings.

⊖ further time required for the purpose.

(iii) Forward by post to every contributory, a copy of the account and statement together with the auditor's report and notice of the meeting at least ten days before the meeting.

(iv) File with the registrar, a return of convening of each general meeting, together with a copy of the notice, account, statement and minutes of the meeting, within ten days of the date of the meeting.

**(b) (i)** As soon as the affairs of the company are fully wound up, Mr. Ateeq would be responsible to:

⊖ make a report and account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of and such other particulars as may be prescribed; and

⊖ call a general meeting of the company for the purpose of laying the report and account before it and giving any explanation thereof.

(ii) The account shall be audited and a copy thereof together with a copy of the auditor's report and notice of meeting shall be sent by post to each contributory of the company at least ten days before the meeting required to be held under this section.

(iii) The notice of the meeting specifying the time, place and object of the meeting shall also be published at least ten days before the date of the meeting.

(iv) Within one week after the meeting, the Liquidator shall send to the registrar a copy of his report and account, and shall file a return with him of the holding of the meeting along with the minutes of the meeting in the prescribed manner.

(v) If a quorum is not present at the meeting, the Liquidator shall, in lieu of the return referred to in sub-section (4), file a return that the meeting was duly summoned and that no quorum was present there at, and upon such return being made within one week after the date fixed for the meeting along with a copy of his report and account in the prescribed manner, the provisions of sub-section (4) as to the making of the return shall be deemed to have been complied with.

**(48) Question Background: Summer 2010, Q # 2**

A foreign investor had acquired majority shares in Marine Steel Services Limited (MSSL) in the year 2006. Due to global recession, MSSL has incurred heavy losses and a major portion of its equity has been wiped out. Consequently, the investor intends to wind up the operations of the company voluntarily.

**(a) In the light of the Companies Ordinance, 1984, advise the management as regards the following:**

**(i) When would the voluntary winding up process be deemed to commence and what would be its effect on the operations of MSSL. (03 Marks)**

**(ii) How could the directors ensure that the requirements of making a declaration of solvency have been complied with? (06 Marks)**

**(b) In order to minimize the winding up expenses, the Board wants to appoint one of the directors as the liquidator, on a monthly remuneration of Rs. 50,000. Advise the Board as regards the requirements of Companies Ordinance, 1984 with respect to the appointment and remuneration of liquidator, in the above situation. (04 Marks)**

**Suggested Answer:-**

(a) (i) The voluntary winding up is deemed to commence at the time of the passing of the special resolution in this regard by the company. As soon as the special resolution is passed, Marine Steels Services Limited (MSSL) will cease to carry on its business, except so far as may be required for the beneficial winding up thereof. However, the corporate state and powers of the company shall continue until it is dissolved, notwithstanding anything to the contrary in its articles of association.

(ii) The directors of MSSL must ensure that the declaration of solvency made by them is:

⊖ Made in their meeting which is attended by a majority of the directors of the company including the chief executive

⊖ Verified by an affidavit to the effect that they have made a full inquiry into the affairs of the company.

⊖ Based on their opinion that the company has no debts; or

⊖ The Company will be able to pay its debts in full within such period not exceeding twelve months from the commencement of the winding up.

⊖ Made within five weeks preceding the date of the passing of the special resolution for winding up of the company.

⊖ Delivered to the registrar for registration.

⊖ Accompanied by a copy of the auditors' report on the profit & loss account for the period commencing from the date up to which the last such account was made and ending on a date immediately before the making of the declaration and Balance Sheet of the company as on the last mentioned date

⊖ Accompanied a statement of the company's assets and liabilities.

(b) The liquidator cannot be appointed by the directors as he/she is required to be appointed by the company in its general meeting. The liquidator's remuneration shall also be fixed in the general meeting by way of percentage of the amount realized by him by disposal of assets or otherwise having regard to the amount and nature of the work to be done and subject to prescribed limits. The remuneration of liquidator when fixed shall not be enhanced subsequently but may be reduced by the court at any time.

In addition to the remuneration, a liquidator may be paid a monthly allowance for meeting the expenses of the winding up a period not exceeding twelve months from the date of the commencement of winding up. If the liquidator resigns, is removed from office or otherwise ceases to hold office before conclusion of winding up, he shall not be entitled to any remuneration and remuneration already received by him, if any, shall be refunded by him to the company. No remuneration shall be payable to a liquidator who fails to complete the winding up proceedings within the prescribed period.

**(49) Question Background: Winter 2009, Q # 3 (a)**

After incurring continuous losses Shaheen Private Limited had decided to go into members' voluntary winding up. Mr. Sajjad was appointed as a liquidator on a remuneration of Rs. 200,000 of which 25% was paid at the time of his appointment. However, in June 2009, Mr. Sajjad tendered his resignation as a liquidator. In the light of the provisions contained in the Companies Ordinance, 1984 explain the rights and liabilities of Mr. Sajjad, in the above situation. (05 Marks)

**Suggested Answer:-****Remuneration of Official Liquidator**

If Mr. Sajjad resigns before conclusion of the winding up of the company, he shall not be entitled to any remuneration and the remuneration already received by him, shall be refunded to the company.

**Resignation of Official Liquidator**

He cannot resign or quit his office as liquidator before conclusion of the winding up proceedings except for reasons of personal disability to the satisfaction of the Court. In any case, Mr. Sajjad cannot quit his responsibilities before his replacement is appointed by the court.

**(50) Question Background: Winter 2009, Q # 3 (b), Syllabus Topic:**

Identify the persons who are eligible to file a petition for winding up of a limited company in the Court. (04 Marks)

**Suggested Answer:-**

An application/petition for winding up of a company can be presented in the Court by the following:

- (i) The company itself.
- (ii) Any creditor(s) (including any contingent or prospective creditor).
- (iii) Contributory(ies).
- (iv) Registrar of Companies.
- (v) The Commission or by a person authorized by the Commission.

**(51) Question Background: Winter 2008, Q # 1**

Friends Textiles Limited has suffered heavy losses and has almost ceased its operations due to global recession. The directors foresee no improvement in the company's financial health and are of the opinion that the company should be liquidated now, as otherwise, in view of the deepening economic crises, it would be difficult for the company to fetch a good value for its assets.

**Required: (a) Narrate the circumstances in which a company may be wound up voluntarily? (03 Marks)**

**(b) Advise the directors of the company about the steps that need to be taken to wind up the company voluntarily. (10 Marks)**

**(c) State the requirements and the procedure to be followed for making a Declaration of Solvency under members' voluntary winding up. (05 Marks)**

**Suggested Answer:-****(a) Circumstances in which a company may be wound up voluntarily**

A company may be wound up voluntarily, under the following circumstances:

- (i) On expiration of the period fixed for its duration or on occurrence of the event on the occurrence of which the company is to be dissolved under the articles of association and the company has passed a resolution in the general meeting for it to be wound up voluntarily;
- (ii) If a special resolution is passed that the company be wound up voluntarily;

**(b) The management is required to take the following steps for Members' voluntary winding up under the Provisions of the Companies Ordinance, 1984.**

- (i) Directors may make a declaration of solvency duly supported by an auditor's report to be filed with the registrar within five weeks immediately preceding the date of passing of winding up resolution. They, then, call a general meeting of the members.
- (ii) The company, on the recommendations of directors, passes a Special Resolution for winding up in the general meeting of the members.
- (iii) Notice of resolution shall be given by the company in the Official Gazette within 10 days and also published in the newspapers, with a copy of it is to be filed with Registrar.
- (iv) The company shall appoint a liquidator in the general meeting of the company. On appointment of the liquidator, all the powers (with certain exceptions) of the Directors, chief executive and other officers shall cease to exist.
- (v) Consent of the Liquidator and notice of his appointment is filed with the Registrar.
- (vi) Liquidator shall realize the assets of the company and pay the claims of the creditors. After adjustment of all claims and rights, surplus shall be distributed to the contributories on pro rata basis.
- (vii) Liquidator prepares the accounts and final report, get the accounts audited, and presents the same in the general meeting of the contributories (members).
- (viii) A notice of such meeting of contributories shall be published in the Gazette and newspapers at least 10 days before the date of meeting.
- (ix) Liquidator shall file the accounts, final report and a return of holding the meeting along with minutes thereof, with the registrar, within one week after the meeting.
- (x) On the expiration of three months from registration of the above, the company shall be deemed to be dissolved.

**(c) Requirements and the procedure to be followed for making a Declaration of Solvency under members' voluntary winding**

In case of Members voluntary winding-up:

- (a) All directors, including the chief executive and if the number of directors is more than three, majority of these directors are required to make a declaration of solvency.
- (b) A declaration of solvency is a declaration by the directors that in their opinion the company shall be able to pay all its debts in full within the period specified in the declaration but not exceeding twelve months from the commencement of the winding-up.
- (c) The declaration of solvency is required to be filed with the registrar within 5 weeks immediately preceding the date of passing winding up resolution.
- (d) Following are enclosed with the declaration of solvency:
  - (i) A copy of the report of the auditors.
  - (ii) The profit and loss account of the company, prepared for the period commencing from the date of last such accounts to the date as close as possible to the date of making such declaration.
  - (iii) The balance-sheet of the company as on the above date.
  - (iv) A statement of the company's assets and liabilities as at that date.

## **COMPANIES ESTABLISHED OUTSIDE PAKISTAN**

**(52) Question Background: Summer 2011, Q # 3**

On January 1, 2011 Landmark Limited (LML), a company incorporated in Mauritius, established a branch office in Pakistan and commenced its business with the permission of the Board of Investment, Pakistan. On February 10, 2011 LML received a notice from the registrar's office for non-filing of certain documents. In the light of the provisions contained in the Companies Ordinance 1984, you are required to:

- (a) Give a list of the documents that LML was required to submit to the Registrar before completion of 30 days from the date of establishment of the branch. (05 marks)**

**(b) Explain the effect of non-filing of these documents on the validity of the agreements or contracts entered into by LML during the above period and on the rights of the respective parties to initiate legal proceedings against each other. (04 marks)**

**Suggested Answer:-**

**(a)** Landmark Limited was required to file the following documents with the registrar within thirty days of the establishment of the place of business in Pakistan.

(i) A certified copy of the charter, statute or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company, and if the instrument is not written in English or Urdu language, a certified translation thereof in English or Urdu language.

(ii) The full address of the registered or principal office of the company.

(iii) A list of the directors, chief executives and secretaries (if any) of the company.

(iv) A return showing the full present and former names and surnames, father's name or , in the case of a married woman or widow, the name of her husband or deceased husband, present and former nationality, designation and full address in Pakistan of the principal officer of the company in Pakistan by whatever name called.

(v) The full present and former names and surnames, father's name or, in case of married woman or widow, the name of her husband or deceased husband, present and former nationality, occupation and full addresses of one or more persons resident in Pakistan authorized to accept on behalf of the company service of process and any notice or other document required to be served on the company together with his consent to do so; and

(vi) The full address of that office of the company in Pakistan which is to be deemed as the principal place of business in Pakistan of the company.

**(b)** (i) Any failure by a foreign company in submitting the prescribed documents with the Registrar shall not affect the validity of any contract, dealing or transaction entered into by the company or its liability to be sued in respect thereof.

(ii) The Foreign Company shall not be entitled to bring any suit, claim any set off, or make any counter-claim in respect of any such contract, dealing or transaction, until it has submitted the required documents with the registrar of companies.

**(53) Question Background: Winter 2009, Q # 5**

**ABZ Limited, a company incorporated in a foreign country, has established an office in Pakistan by the name of Search International. You are required to explain the requirements of the Companies Ordinance, 1984 as regards filing of the annual balance sheet and profit and loss account of ABZ Limited and Search International. (10 Marks)**

**Suggested Answer:-**

ABZ Limited, being a foreign company and having a place of business in Pakistan, is required to comply with the following requirements as regards filing of balance sheet and profit and loss account.

(i) Not less than three copies of balance sheet and profit and loss account as may be prescribed, in respect of its operations in Pakistan (i.e. of Search International) prepared as near as possible in the same manner as it would have done, if it were a public company incorporated under the Companies Ordinance, 1984 shall be filed with the registrar.

(ii) In case ABZ Limited is required to file its Balance Sheet and Profit and Loss Account in the country of its incorporation, not less than three copies of such Balance Sheet and Profit and Loss Account, shall also be filed with the registrar.

(iii) In case ABZ Limited is not required to file the Balance Sheet and Profit and Loss Account to authorities in the country of its incorporation, it would have to file its Balance Sheet and Profit and Loss Account

alongwith auditors report and the Balance Sheet and Profit and Loss Account, not less than three copies, shall be in the same form as it would have been required to be under the Companies Ordinance, 1984 as if it were a public company.

(iv) The period during which the above are required to be filed shall be as under:

☐ within 45 days of submission of the accounts in the country of incorporation; or

☐ within six months of the date upto which the accounts are made up; whichever is earlier.

**(54) Question Background: Summer 2008, Q # 3 (a)**

**Pioneer Services Inc., a branch office of a US company engaged in software business has decided to wind-up its operations in Pakistan. You are requested to guide the management about the necessary formalities to be carried out under the Companies Ordinance, 1984. (04 Marks)**

**Suggested Answer:-**

Following necessary formalities need to be carried out by the foreign company.

**Notice of closure of business**

Give a notice of closing the business and ceasing to have any place of business in Pakistan to the Registrar at least thirty days before closing of the business along with the prescribed fee.

**Publication of Notice in Newspaper**

Publish a notice of such intention at least in two daily newspapers circulating in the Province in which such place of business is situated at least thirty days before the closing of the business.

**(55) Question Background: Summer 2008, Q # 3 (b), Syllabus Topic:**

**What requirements would have to be complied with by a foreign company having a branch office in Pakistan, if the company goes into liquidation in the country of its incorporation? (06 Marks)**

**Suggested Answer:-**

The branch of the foreign company is required to:

- Give notice to the Registrar concerned within 30 days;
- Simultaneously publish a notice at least in two daily newspapers circulating in the province(s) in which its place(s) of business is situated;
- Furnish to the Registrar concerned all returns and account relating to the liquidation in respect of its business in Pakistan, within 30 days of the conclusion of the liquidation proceedings; and
- Publish a statement on every invoice, order, letter paper, bill head, notice or other publications in Pakistan that the company is being wound up in the country of its incorporation.

## COMPANIES RULES, 1985

### (56) Question Background: Winter 2011, Q # 2

Mr. Asif is a director of Arif Textiles Limited (ATL), a listed company. He has entered into the following transactions in the shares of ATL:

Sr. No	Date	Purchase/(Sale) No. of shares	Purchase/ Sales Price per share (Rs.)	Remarks
1	15.01.2011	5000	18	Purchased from the market
2	25.02.2011	2000	21	Purchased from the market
3	26.02.2011	3000	20	Purchased from the market
4	27.02.2011	1000		Bonus shares received
5	30.04.2011	(2000)	22	Sold in the market
6	21.05.2011	(5000)	24	Sold in the market
7	30.06.2011	(1000)	23	Sold in the market
8	01.09.2011	(2000)	25	Sold in the market

In the light of the provisions of the Companies (General Provisions and Forms) Rules 1985, you are required to:

(a) Compute the amount of gain or loss to be tendered to the company by Mr. Asif. (06 marks)

(b) The treatment of the amount paid by Mr. Asif on account of brokerage, stamp duty etc. (02 marks)

**Suggested Answer:-**

(a) Computation of the gain to be tendered to the company by Mr. Asif

	Quantity	Sale/Purchase price per share		
<b>Share sold</b>				
30.04.2011	2000	22	44,000	
21.05.2011	5000	24	120,000	
30.06.2011	1000	23	23,000	
01.09.2011*	2000	25	-	<b>187,000</b>
<b>Less: purchases (lowest price comes first)</b>				
15.01.2011	5000	18	90,000	
26.02.2011	3000	20	60,000	<b>(150,000)</b>
<b>Amount of gain to be tendered to the company by Mr. Asif</b>				<b>37,000</b>

\* No gain or loss as shares sold after six months.

The distribution of bonus shares by a listed company to an existing shareholder on the basis of his entitlement shall not constitute a purchase.

(b) The amount of brokerage, stamp duty etc. actually paid in making the gain may be deducted by the person by whom it is to be reported or tendered subject to production of such documentary evidence in support of the payment having been made as may be acceptable to the company.

### (57) Question Background: Winter 2011, Q # 5

Nihal Associates is an association of persons and is involved in charitable and other social activities for the welfare of the general public. It intends to register itself as a limited company but does not want to include the word "Limited" in its name. In view of the provisions of the Companies (General Provisions and Forms) Rules 1985, you are required to identify the conditions that Nihal Associates would need to fulfill in order to get the required permission from the Securities and Exchange Commission of Pakistan. (06 marks)

**Suggested Answer:-**

Nihal Associates would have to fulfill the following conditions:

- (a) The association shall be formed as a public company.
- (b) Payment of remuneration for services or otherwise to its members, whether holding an office in the company or not, shall be prohibited.
- (c) No change in the memorandum and the articles shall be made except with the prior approval of the Commission.
- (d) The limit of liability of its members shall not be less than a reasonable amount having regard to all the circumstances of the case.
- (e) Patronage of any government or authority, express or implied, shall not be claimed unless such government or authority has signified its consent thereto in writing.

The Commission may also direct to include the above conditions in the memorandum of association of the company.

**(58) Question Background: Summer 2010, Q # 8**

**The company secretary of Nayar Textiles Limited, a listed company, has resigned. The directors are in the process of appointing a new secretary and few candidates with varied backgrounds have been short listed for the position. Advise the directors as regards their responsibility while appointing the Company Secretary in the light of the provisions of the Companies (General Provisions and Forms) Rules 1985. (04 Marks)**

**Suggested Answer:-**

The directors of Nayar Textiles Limited shall take reasonable steps to ensure that the company secretary is a person who appears to them to have the requisite knowledge and experience to discharge his functions as company secretary and who is -

- (a) A member of -
  - ⊖ a recognized body of professional accountants; or
  - ⊖ a recognized body of corporate or chartered secretaries; or
- (b) A person holding a master degree in business administration or commerce or being a law graduate from a university recognized by the Higher Education Commission and having at least two years' relevant experience.

## ISSUE OF SHARE CAPITAL RULES, 1996

**(59) Question Background: Summer 2012, Q # 11**

**The Board of Directors of YZ Limited, a listed company, intends to issue 50% right shares. Advise the directors about the conditions required to be complied with, for the issuance of right shares under the Companies (Issue of Capital) Rules, 1996. (07 marks)**

**Suggested Answer:-**

YZ Limited may issue rights shares subject to following conditions, namely:-

- (i) The company shall not make a right issue within one year of the first issue of capital to the public or further issue of capital through right issue.
- (ii) The company, while announcing right issue, shall clearly state the purpose of the right issue, benefits to the company, use of funds and financial projections for three years. The financial plan and projections shall be signed by all the directors who were present in the meeting in which the right issue was approved.

- (iii) The decision of the company to issue right shares shall be communicated to the Authority and the respective stock exchange on the day of the decision.
- (iv) The company may charge premium on right shares up to the free reserves per share as certified by the company's auditors and the certificate of the auditors shall be furnished to the Authority and the respective stock exchange along with intimation of the proposed right issue.
- (v) Right issue of a loss making company or a company whose market share price during the preceding six months has remained below par value shall be fully and firmly underwritten;
- (vi) Book closure shall be made within forty-five days of the announcement of the right issue and the payment and renunciation date once announced for the letter of right shall not be extended except with the permission of the respective stock exchange under special circumstances; and
- (vii) If the announcement of bonus and right issue is made simultaneously, resolution of the board of directors shall specify whether the bonus shares covered by the announcement qualify for right entitlement.

**(60) Question Background: Summer 2011, Q # 7**

The Directors of SQL Limited, a listed company, has decided to issue 50% right shares. You are required to explain the conditions that SQL will have to comply with, in each of the following situations if:

- (a) The shares are to be issued at a premium of Rs. 6 per share. (08 marks)**
- (b) The employees of SQL Limited are also holding shares on account of preferential allocation. (04 M)**

**Suggested Answer:-**

- (a) SQL Battery Ltd. will have to comply with the following conditions if it issues right shares at a premium of Rs. 6 per share:**
  - (i) The company shall not make a right issue within one year of the first issue of capital to the public or further issue of capital through right issue;
  - (ii) The company, while announcing right issue, shall clearly state the purpose of the right issue, benefits to the company, use of funds and financial projections for three years.
  - (iii) The financial plan and projections shall be signed by all the directors who were present in the meeting in which the right issue was approved;
  - (iv) The decision of the company to issue right shares shall be communicated to the Commission and the respective stock exchange on the day of the decision;
  - (v) The company may charge premium on right shares up to the free reserves per share as certified by the company's auditors and the certificate of the auditors shall be furnished to the Commission and the respective stock exchange alongwith intimation of the proposed right issue: Provided that where a company proposes to charge premium on right issue above the free reserves per share it shall be required to fulfill the following requirements, namely:-
    - ⊗ At least forty per cent of all the shareholders undertake to subscribe their portion of right issue; and
    - ⊗ The remaining right issue shall be fully underwritten and the underwriters, not being associated companies, shall include at least two financial institutions including commercial banks and investment banks and the underwriters shall give full justification of the amount of premium in their independent due diligence reports;
  - (vi) Right issue of a loss making company or a company whose market share price during the preceding six months has remained below par value shall be fully and firmly underwritten;
  - (vii) Book closure shall be made within forty-five days of the announcement of the right issue and the payment and renunciation date once announced for the letter of right shall not be extended except with the permission of the respective stock exchange under special circumstances;
- (b) (i) The employees of the company getting preferential allocation if any, shall be charged premium at the same rate as the public.**
- (ii) No other restriction would be applicable on the right shares issued to employee.**

**(61) Question Background: Winter 2009, Q # 9 (a)**

The following statements may contain certain discrepancies with respect to issuance of right shares by a listed company. You are required to identify the discrepancies, if any, and specify the correct position.

- (i) A listed company cannot issue right shares within two years of its incorporation.**
  - (ii) Where a company wishes to charge premium on a right issue in excess of 50% of the face value of shares, it shall require an approval from the Commission and the stock exchange on which the company is listed.**
  - (iii) A company which incurred a loss during its last financial year or a company whose market price is below its par value cannot issue right shares.**
  - (iv) If a company announces a right issue as well as a bonus issue at the same time, the right shares shall also be entitled to the bonus.**
- (12 Marks)**

**Suggested Answer:-**

- (i) The listed company shall not make a right issue within one year of the first issue of capital to the public or within one year of any further issue of capital through right issue.
- (ii) The approval from the commission and the stock exchange is not required for the issuance of right shares at premium. However, the decision of the company to issue right shares shall be communicated to the Commission and the respective stock exchange on the day of the decision. The maximum amount of premium that a company can charge shall be limited to the extent of the free reserves. If the company wishes to charge premium above the free reserves at least 40% of all the shareholders should undertake to subscribe their portion of right issue and the remaining right issue shall be fully underwritten. The underwriters, not being associated companies, shall include at least two financial institutions. In addition, the underwriters shall also give full justification of the amount of premium in their independent due diligence report.
- (iii) A loss making company or a company whose market share price during the preceding six months has remained below par can issue right shares provided the issue is fully and firmly underwritten.
- (iv) If the announcement of bonus and right issue is made simultaneously, resolution of the board of directors shall specify whether the bonus shares covered by the announcement qualify for right entitlement.

**(62) Question Background: Winter 2009, Q # 9 (b)**

**The board of directors of Munawwar Industries Limited, a listed entity, is considering the issuance of bonus shares. You are required to explain (i) the term 'Free Reserves'; and (ii) the conditions related to maintenance of free reserves for issuance of bonus shares; as contained in the Companies (Issue of Capital) Rules, 1996.**

**(08 Marks)**

**Suggested Answer:-**

Free reserves" includes any amount which, having been set aside out of revenue or other surpluses after adjustment of all intangible or fictitious assets, is free in that it is not retained to meet any diminution in value of assets, specific liability, contingency or commitment known to exist at the date of the balance sheet, but does not include:

- (i) reserves created as a result of re-evaluation of fixed assets;
- (ii) goodwill reserve;
- (iii) depreciation reserve to the extent of ordinary depreciation including allowance for extra shifts admissible under the Income Tax Ordinance, 1979;
- (iv) development allowance reserve created under the provisions of the Income Tax Law.
- (v) workers welfare fund;
- (vi) Provisions for taxation to the extent of the deferred or current liability of the company; and
- (vii) Capital redemption reserve.

The free reserves of the company, shall be sufficient to issue the bonus shares after retaining reserves of twenty-five percent of the capital as increased by the proposed bonus shares; A certificate from the auditors shall be obtained to the effect that the free reserves and surpluses retained after the issue of the bonus shares will not be less than twenty-five percent of the increased capital.

**(63) Question Background: Summer 2009, Q # 3**

Tasty Foods (Pvt.) Limited (TFPL) has been incorporated with the objective of taking over entire business assets and liabilities of Tasty Biscuits, a partnership firm, at an agreed cut-off date i.e. December 31, 2008. The partners in the firm are also the directors in the newly incorporated company. Pursuant to an agreement executed between the company and the partnership firm all the assets and liabilities were transferred to the company on the agreed date. 7.8 million Shares of the company were allotted to the partners in consideration of the transfer of firm's property. This allotment however, was made by the directors without considering the requirements of the Companies (Issue of Capital) Rules, 1996 on the contention that these Rules are applicable to the listed companies only.

**Comment on the decision of the directors and state the conditions specified (if any), under the Companies Ordinance, 1984 and Companies (Issue of Capital) Rules, 1996, related to the issuance of shares as mentioned in the above situation. (10 Marks)**

**Suggested Answer:-**

The directors of Tasty Foods (Pvt.) Limited (TFPL) are not justified in their contention, as the Companies (Issue of Capital) Rules, 1996 clearly states that these Rules are applicable to all companies proposing to issue shares for consideration otherwise than in cash.

Following conditions need to be complied with while issuing shares for consideration otherwise than in cash:

*Under the Companies (Issue of Capital) Rules, 1996*

- (i) a consulting engineer registered with Pakistan Engineering Council and borne on the panel of at least two financial institutions as a valuer must determine the value of assets;
- (ii) the value of assets taken over shall be reduced by depreciation charged on consistent basis;
- (iii) the goodwill and other intangible assets shall be excluded from the consideration; and
- (iv) a practicing Chartered Accountant shall give a certificate confirming that all the above conditions have been complied with by the company.

*Under the Companies Ordinance, 1984*

- (i) Produce for the inspection and examination of the registrar a contract in writing constituting the title of the allottee to the allotment together with any contract of sale in respect of which that allotment was made.
- (ii) A copy of such contract, duly stamped and verified in the prescribed manner along with the return of the allotment stating the number and nominal amount of shares so allotted, the amount to be treated as paid-up, and the consideration for which these shares have been allotted should be filed with the registrar within thirty days of the allotment.

**(64) Question Background: Summer 2009, Q # 9**

**PQR holds more than ten percent of the shares of Rahat Technologies Limited (RTL), a company listed on Lahore Stock Exchange. The company intends to dilute its investment in RTL by offering such shares for sale to the public. In the light of the provisions of the Companies (Issue of Capital) Rules, 1996, describe the conditions which must be fulfilled by PQR before such a sale may be made. (05 Marks)**

**Suggested Answer:-**

PQR, who holds more than ten per cent of the shares of RTL, may offer such shares for sale to the public subject to the following conditions, namely:

- (i) The size of the capital to be offered to public through offer for sale shall not be less than one hundred million rupees or twenty-five per cent of the capital, whichever is less;
- (ii) No premium shall be charged unless the company has profitable operational record for at least one year;

- (iii) In case a premium is to be charged on the sale of shares, the offer shall be fully underwritten and the underwriters, not being the associated companies, shall include at least two financial institutions including commercial banks and investment banks and the underwriters shall give full justification of the amount of premium in their independent due diligence reports;
- (iv) Due diligence reports of the underwriters shall form part of the material contracts; and
- (v) Full justification for the premium shall be disclosed in the offer for sale.

**(65) Question Background: Winter 2008, Q # 5**

GP Pharma Limited, a family owned company with zero debt, has witnessed rapid growth during the past 5 years. In order to carry on the successful growth pattern and fulfill the ever increasing customers demand, the board of directors of the company is planning to establish another manufacturing facility at a cost of Rs. 200 million. To meet the cost of the project, the company needs to raise capital and therefore has decided to go public.

**Required: Advise the Board about the conditions to be complied with for the issuance of capital under the Companies (Issue of Capital) Rules, 1996. (09 Marks)**

**Suggested Answer:-**

A company which owns an equity-based project and proposes to raise capital through public offer for the first time shall comply with the following conditions, namely:

- (i) The fixed capital expenditure shall be entirely financed by equity.
- (ii) The project shall be appraised by a financial institution or a commercial bank or an investment bank.
- (iii) The appraisal report shall be accompanied by Auditor's certificate confirming that:-
  - (a) The capital allocated to sponsors, foreign and local investors, if any, has been fully paid; and
  - (b) The land for the project has been acquired, letters of credit have been established and shipment schedule of plant and machinery has been finalized by the suppliers.
- (iv) The issue shall be fully underwritten and the underwriters, not being the associated companies, shall include at least two financial institutions, including commercial banks and investments banks and the underwriters shall evaluate the project in their independent due diligence report.
- (v) The sponsors shall retain at least twenty-five per cent of the capital of the company for a period of five years from the date of public subscription.

**(66) Question Background: Summer 2008, Q # 4**

In its meeting held on October 10, 2007 the Board of Directors of Snow White Limited, a listed company, decided to offer a 60% right issue at par value. You are required to explain:

- (a) The conditions that the Board will have to comply with in this regard. (07 Marks)**
- (b) The additional conditions which the Board will have to comply under each of the following situations:**
  - (i) If the company's shares have been traded below par value during the past one year.**
  - (ii) If the shares are to be issued at a premium of Rs. 5 per share. (03 Marks)**

**Suggested Answer:-**

- (a) The Board of Directors of Snow White Limited will have to comply with the following conditions:**
  - (i) The company may only make a right issue if at least one year has passed since the last issue of capital to the public.
  - (ii) While announcing right issue, the company shall clearly state: - The purpose of the right issue. - Benefits to the company. - Use of funds. - Financial projections for the next three years.
  - (iii) The financial projections shall be signed by all the directors who were present in the meeting in which the right issue was approved.
  - (iv) The decision to issue right shares will have to be communicated to the Commission and the stock exchanges(s) on the day of decision.
  - (v) The book closure will have to be made within forty-five days of the announcement of the right issue.

(b) (i) If market share price during the past one year (preceding six months as per Rule 5) has remained below par value, the right issue will have to be fully and firmly underwritten.

(ii) The company may charge premium on right shares up to the free reserves per shares as certified by the company's auditors. The auditors' certificate has to be furnished to the Commission and the stock exchange(s) along with an intimation of the proposed right issue.

In case a company proposes to charge premium on right shares above the free reserves per share, it shall be required to fulfill the following requirements as well:

(a) At least 40% of all the share-holders undertake to subscribe their portion of right issue; and

(b) The remaining amount shall be underwritten by at least two financial institutions not being the associated company and the underwriters shall give full justification of the amount of premium in their independent due diligence report.

## BUY BACK OF SHARES RULES, 1999

**(67) Question Background: Summer 2012, Q # 4**

**The Board of Directors of KG Limited has decided to buy-back one million of its ordinary shares. You are required to describe the procedure to be followed by KG Limited to buy-back its shares in view of the provisions of the Companies Ordinance, 1984 and the Companies (Buy-back of Shares) Rules, 1999. (07 marks)**

**Suggested Answer:-**

The purchase procedure to be followed by KG limited is as follows:

(i) The number of shares to be purchased and price thereof shall be approved in the Board Meeting.

(ii) The purchase shall also be authorized by a special resolution which shall indicate the maximum number of shares to be purchased; the maximum price at which the shares may be purchased; and the period within which the purchase is to be made.

(iii) The notice of the meeting in which the special resolution authorizing the purchase of shares is proposed to be moved shall be accompanied by an explanatory statement containing all material facts including the following:-

-Justification for the purchase; -Source of funding; -Effect on the financial position of the company; and

-Nature and extent of the interest, if any, of every director, whether directly or indirectly

(iv) The purchase shall always be in cash and shall be out of the distributable profits.

(v) The purchase shall be made through a tender system and the mode of tender shall be decided by the company in general meeting through a special resolution.

(vi) The tender notice for the purchase shall contain

-The maximum number of shares to be purchased by the company. -The manner in which the offer shall be communicated. -The last day by which the offer to sell the shares shall be made; and -The name and the address of the designated branches of the authorized bank.

(vii) The decision of the directors for the purchase shall be communicated to the SECP and the respective stock exchange on the day of the decision.

(viii) The company shall take a decision on the offers received, within ten days of the closing date of the receipt of offers.

(ix) In case the offers received in response to the tender notice exceed the requisite purchase the acceptance thereof shall be on pro-rata basis in lots of five hundred shares.

(x) The acceptance of the offer shall be communicated within seven days of the decision.

(xi) The shareholder, whose offer has been accepted, shall submit the share certificate along with the transfer deed duly signed, verified and witnessed, to the company through designated branches of the bank within seven days of the receipt of acceptance of the offer.

(xii) Where the shares are on the Central Depository System a confirmation from the Central Depository, about the availability of the shares along with authorization to transfer shall be sent to the designated branches of the bank within seven days of the receipt of acceptance of the offer.

**(68) Question Background: Summer 2011, Q # 6**

**The board of directors of EFI Textile Mills Limited, a listed company, plans to buy-back 10% shares of The Company. In the light of the provisions contained in the Companies (Buy-back of Shares) Rules, 1999, specify the conditions that the company should be in compliance with, before it proceeds to buy-back the shares. (04 marks)**

**Suggested Answer:-**

The company should comply with following conditions before it proceeds to buy-back the shares:

(a) The company shall have debt-equity and current ratios as under, namely:

(i) Debt-equity ratio 75:25

(ii) Current ratio 1:1

Provided that the Commission on application of a company may allow it to purchase its own shares even if the company has a higher debt-equity ratio if in the opinion of the Commission it is in the interest of the company and the capital market.

(b) Debt-equity and current ratios shall be indicated in the explanatory statement to be circulated to the members along with the notice of the meeting in which the proposed purchase is to be considered.

(c) The company shall have sufficient cash (resources) available with it for the buy back.

**(69) Question Background: Summer 2010, Q # 9**

**FM Textiles Limited is a company listed on the Karachi Stock Exchange. Its directors have decided that the company would buy back 20% of its shares. List down the steps to be taken for the buy-back of shares as specified in the Companies (Buy-back of shares) Rules, 1999. (10 Marks)**

**Suggested Answer:-**

(a) The number of shares to be purchased and price thereof shall be approved in the Board Meeting.

(b) The above decision shall then be confirmed by passing special resolution.

(c) The decision of the directors for the purchase shall be communicated to the SECP and the respective stock exchange on the day of the decision.

(d) The tender notice for the purchase shall contain:

(i) The maximum number of shares to be purchased by the company;

(ii) The manner in which the offer shall be communicated;

(iii) The last day by which the offer to sell the shares shall be made; and

(iv) The name and the address of the designated branches of the authorized bank.

(e) A shareholder, interested to sell his shares to the company shall make the offer in writing through the designated branches of an authorized bank, providing the following information, namely:

(i) Name of the shareholder;

(ii) His father's name and in the case of a married woman or a widow, her husband's name;

(iii) National Identity Card No.;

(iv) Address of the shareholder registered with the company;

(v) Number of shares offered for repurchase by the company;

(vi) Distinctive numbers of share certificates (if not in the Central Depository);

(vii) Folio No. (if not in the Central Depository); and

- (viii) Sub-account number with the Central Depository, if any.
- (f) The company shall take a decision on the offers received within ten days of the closing date of the receipt of offers.
- (g) In case, offers received in response to tender notice exceed the requisite purchase, the acceptance thereof shall be on pro-rata basis in lots of five hundreds shares.
- (h) The acceptance of the offer shall be communicated within seven days of the decision.
- (i) The shareholder, whose offer has been accepted, shall submit the share certificates along with the transfer deed duly signed, verified and witnessed to the company through designated branches of the bank within seven days for the receipt of acceptance of the offer.
- (j) Where the shares are on the Central Depository System a confirmation from the Central Depository, about the availability of the shares along with authorization to transfer shall be sent to the designated branches of the bank within seven days of the receipt of acceptance of the offer.
- (k) In case of non-compliance with sub-rules (i) and (j), the acceptance of the offer shall be deemed to have been revoked.
- (l) The company shall pay the price of the purchased shares through 'bank draft'/'pay order' immediately on receipt of the share certificates and transfer deed or the authority to transfer the shares from the Central Depository as the case may be, but not later than seven days.

**(70) Question Background: Summer 2008, Q # 9 (a)**

**Express Limited, a company listed on the Karachi Stock Exchange has a paid-up capital of Rs. 100 million divided into 10 million shares of Rs. 10 each. The Board of Directors has approved the purchase of 100,000 treasury stocks at Rs. 15 each within 30 days, by a tender. As the Company Secretary, what procedure would you follow in this regard? (11 Marks)**

**Suggested Answer:-**

Express Limited will have to carry out the following procedures for the purpose of buy back of shares.

- (i) The decision of the directors for the purchase shall be communicated to the Commission and the respective stock exchanges on the day of the decision.
- (ii) Convene a general meeting for passing the special resolutions by giving notice to all members at least 21 days before the meeting.
- (iii) Statement of material facts shall be sent along with the above notice, which shall contain:
- Justification for the purchase.
  - Effects on the financial position of the company.
  - Source of funding.
  - Nature and extent of interest of every director.
- (iv) Notice shall be published in at least two newspapers circulating in the provinces in which the stock exchange on which the company is listed exists.
- (v) Copies of the resolution shall be filed with the Registrar within 15 days of the passing of the resolution.
- (vi) A tender shall be given in the newspaper for purchase of the shares.
- (vii) The purchase of the shares shall be recorded in the register maintained for such purchase.
- (viii) Register of members and other registers shall be amended accordingly.
- (ix) A return with the declaration of solvency shall be filed with the Registrar and Commission within 30 days of the date of purchase.

## **SHARE CAPITAL (VARIATION IN RIGHTS & PRIVILEGES) RULES, 2000**

**(71) Question Background: Winter 2010, Q # 4**

The paid-up capital of Jupiter Technologies Limited consists of 100 million ordinary shares of Rs. 10 each. The directors are now planning to issue two classes of preference shares to the existing shareholders, for Rs.

100 million. In the light of the provisions of The Companies Share Capital (Variation in Rights and Privileges) Rules, 2000 you are required to advise the directors, as regards the following:

- (a) **The conditions which must be complied with, for issuing different classes of preference shares.**  
(b) **The nature of variation in rights and privileges that can be associated with different classes of shares.** (11 marks)

**Suggested Answer:-**

The following pre-requisites must comply with before issuance of various classes of shares by a company limited by shares:

- (i) The issuance of such shares shall be in accordance with the memorandum and articles of association of the company.  
(ii) No company shall issue further share capital of any kind or class carrying different rights and privileges except with prior approval of the Commission to be obtained on the basis of special resolution.  
(iii) Offer of further share capital of any kind or class carrying different rights and privileges shall be made to each existing shareholder proportionately without any discrimination.  
(iv) If any of the existing shareholder declines to accept the offer, the shares so declined shall be disposed of by the directors in such manner as may be provided in the articles or in accordance with the special resolution passed by the shareholders.  
(v) The fact that the company has different classes of shares with different rights and privileges, shall be distinctly mentioned in the offering document and the difference in the rights and privileges of any class of share capital shall be conspicuously mentioned in the offering document or prospectus etc.
- (b) The directors of Jupiter Technologies Limited may offer the following types of variation in rights and privileges with the different kinds of preference shares provided such variation is allowed under the articles of association of the company:
- (i) Different voting rights, voting rights disproportionate to the paid up value of shares held, voting rights for specific purposes only or no voting rights.  
(ii) Different rights for entitlements of dividend, right shares or bonus shares or entitlement to receive the notices and to attend general meetings.  
(iii) Rights and privileges for indefinite period, for a limited specified period or for such period as may be determined by the members through special resolution.

**(72) Question Background: Winter 2008, Q # 4 (a)**

Mr. Khan, chief executive of Prosperous Engineering Limited, is assessing the possibility of setting up a new project in Gwadar in collaboration with a prospective foreign investor. He is confident that the proposed project will reap significant benefits to the company. Since he does not wish to dilute his holding and voting rights, he is planning to issue class B shares to the investor along with 16% TFCs with a floating charge on the book debts of the company and a fixed charge on its machinery in the manufacturing department. He wants to have your advice on the issue.

**Required: Explain to Mr. Khan various rights and privileges which shareholders may have in case of more than one class of share capital, under the Companies Share Capital (Variation in Rights and Privileges) Rules, 2000** (06 Marks)

**Suggested Answer:-**

- (a) If allowed by its Memorandum and Articles a company may have more than one class of shares. Each class of shares may have different rights and privileges, which shall also be as provided in the articles. The rights and privileges of the shareholders may differ in respect of the following:
- (i) Different voting rights; voting rights disproportionate to the paid up value of shares held; voting rights for specific purposes only; or no voting rights at all;

- (ii) Different rights for entitlement of dividend, right shares or bonus shares or entitlement to receive the notices and to attend the general meetings; and
- (iii) Rights and privileges for indefinite period, for a limited specified period or for such periods as may from time to time be determined by the members through special resolution.

**(73) Question Background: Summer 2008, Q # 2(b)**

An equity investment of Rs. 275 million has been offered by KA group of companies to Rose Limited. In order to expand the business activities of the company, the management is inclined to accept the proposal. However, the shares to be issued would not rank pari-passu with the current shares and shall be termed as Class “B” shares. The current position of the company’s capital and reserves is as under:

	<b>Rupees (In Millions)</b>
<b>Share Capital:</b>	
Authorized	500
Issued, subscribed & paid up	330
<b>Capital Reserves:</b>	
Share premium account	45
<b>Revenue Reserves:</b>	
Un-appropriated profit	20

**Identify the relevant provisions which Rose Limited will have to comply with and describe briefly the steps it would need to take, for issuance of shares. (10 Marks)**

**Suggested Answer:-**

Rose Ltd. Should has to comply with the following provisions:

1. Alter the Memorandum of Associations and Articles of Association in order to:

- Increase the authorized capital; and
- Provide for (if not already provided for) issuance of different kinds of shares permitted under the Companies Share Capital (Variation in Rights and Privileges) Rules, 2000.

The main steps which the company needs to take for issuance of shares are as follows:

1. A special Resolution will have to be passed by the shareholders at the General Meeting of the Company.
2. On the basis of the special Resolution, an application will have to be made to the Federal Government, to allow the company to raise its capital further, without issuance of right shares.

## **NON BANKING FINANCE COMPANIES**

**(74) Question Background: Summer 2012, Q # 10 (a)**

**An open-end fund is being managed by LM Limited which is an NBFC. List the persons who would be termed as “connected person” in relation to the above open-end fund. (08 marks)**

**Suggested Answer:-**

**“connected person”** in relation to an NBFC or a collective investment scheme, means,-

- (i) Any person or trust beneficially owning, directly or indirectly, ten percent or more of capital of the NBFC or the collective investment scheme;
- (ii) Any person able to exercise, directly or indirectly, ten percent or more of the total voting power in that NBFC or the collective investment scheme;



⊕ a director, chief executive, chief financial officer, chief internal auditor, research analyst or a trader by whatever name or designation called in a stock brokerage house or in any company or entity owned and controlled by a member of a stock exchange; and

⊕ a member of a stock exchange engaged in the business of brokerage or is a spouse of such member or in control of more than 20% shareholding, directly or indirectly through his close relatives.

**(76) Question Background: Summer 2011, Q # 8 (a)**

**XYZ Limited, an NBFC, is in the process of classification and provisioning of its non-performing assets. You are required to advise the company about the criteria for determining the realizable value of mortgaged, pledged, leased or collaterally held assets in the light of provisions contained in Non-Banking Finance Companies and Notified Entities Regulations, 2008. (07 marks)**

**Suggested Answer:-**

XYZ Limited shall observe the following criteria for determining the realizable value of mortgaged, pledged, leased or collaterally held assets:

- (i) Only assets having registered mortgage, equitable mortgage (where NOC for creating further charge has not been issued by NBFC) and pledged or collaterally held assets shall be considered;
- (ii) Assets having pari-passu charge shall be considered on proportionate basis;
- (iii) Hypothecated assets and assets with second charge or floating charge shall not be considered;
- (iv) Valuations shall be carried out by an independent professional valuer listed on the panel of valuers maintained by the Pakistan Banks Association or the Leasing Association of Pakistan;
- (v) The valuers while assigning any values to the mortgaged, pledged, leased or collaterally held assets, shall take into account all relevant factors affecting the salability of such assets including any difficulty in obtaining their possession, their location; their condition; and the prevailing economic conditions in the relevant sector, business or industry.
- (vi) In determining the realizable value of mortgaged, pledged, leased or collaterally held assets, the valuers must take into account the amount that can be realized from the asset if sold in a forced or distressed sale condition;
- (vii) The valuers shall in their report explain the assumptions, calculations, formula and method adopted in determination of the realizable values;

**(77) Question Background: Summer 2012, Q # 10 (b)**

Describe the provisions contained in the NBFC Rules, 2003 in respect of the following:

- (i) Credit rating. (03 marks)**
- (ii) Appointment of internal auditor. (04 marks)**
- (iii) Sale or purchase transaction between an NBFC and any of its directors. (03 marks)**

**Suggested Answer:-**

**(i) Credit rating**

An NBFC shall obtain credit rating wherever applicable as and when it becomes eligible for rating as per the rating criteria of a rating agency registered with the Commission, and such rating shall be updated at least once every financial year:

Provided that the NBFC shall within one year of the decrease in its rating from the grade specified by the Commission by notification in the official Gazette, obtain a fresh rating and during the period that its rating is below the grade so specified, the NBFC may be allowed by the Commission continue its operation on such conditions as are deemed to appropriate by the Commission;

**(ii) Appointment of internal auditor.**

An NBFC may appoint the following, as its internal auditor:

- a) A person having minimum three year experience as internal auditor who is -
- (i) A chartered accountant; or
  - (ii) A cost and management accountant; or a certified internal auditor; or
  - (iii) A certified information system auditor; or
  - (iv) A member of a recognized foreign accountancy organization; or
  - (v) An individual having master's degree in commerce or business administration with specialization in finance; or
  - (vi) A chartered accountant firm having satisfactory Quality Control Review (QCR) and not being the statutory auditors to whom this function is outsourced;

**(iii) Sale or purchase transaction between an NBFC and any of its director.**

An NBFC shall not purchase anything from or sell anything to any director of the NBFC. This restriction is not applicable to such NBFCs that have a policy to this effect duly approved by their board of directors. In case of any sale and purchase to the directors, prior approval in writing of the board, excluding the participation of the beneficiary directors is required.

**(78) Question Background: Summer 2011, Q # 8 (b)**

**Explain the terms Open-end Scheme and Close-end Scheme as included in the NBFC Rules, 2003. (05 M)**

**Suggested Answer:-**

**Close-end Scheme** means a scheme constituted by way of trust to raise funds through issue of certificates to the public for investing in securities including money market instruments for a definite or indefinite period but which does not continuously offer certificates, neither does it entitle the holder of such certificates, to receive, on demand, their proportionate share of the net assets of the closed-end scheme;

**Open-end Scheme** means a scheme constituted by way of a trust deed that continuously offers for sale its units as specified in the constitutive document that entitle the holder of such units on demand to receive his proportionate share of the net assets for the scheme less any applicable charges.

**(79) Question Background: Winter 2010, Q # 5**

EFL has recently been incorporated as a non-banking financial institution and plans to carry out more than one form of business. You are required to advise it in respect of the following:

- (a) **Any eight conditions specified under the NBFC rules 2003 for the grant of license. (08 marks)**  
(b) **The provisions as regards validity and renewal of license granted to the NBFC. (04 marks)**

**Suggested Answer:-**

(a) Under the NBFC rules 2003, the Commission has specified the following conditions to be complied prior to grant of license for carrying out more than one form of business:

- (i) EFL must be a public limited company incorporated under the Ordinance or any other form of company as may be specified by the Commission through official Gazette.
- (ii) EFL must not be a part of a group of companies already holding a license for the same form of business under NBFC Rules.
- (iii) EFL's equity should be equal to or in excess of the minimum equity as may be specified by the Commission by notification in the official gazette in respect of each form of business.
- (iv) EFL must have allotted at least twenty five percent of the paid up share capital to the promoters.

- (v) EFL's promoters or majority shareholders and directors should have deposited their shares with Central Depository Company of Pakistan Limited in an account marked as "Blocked" and such shares shall not be sold or transferred without prior approval of the Commission.
- (vi) The promoters or majority shareholders and directors shall undertake that they would not enter into any agreement for sale or transfer of their shares in any manner without prior approval of the Commission.
- (vii) EFL shall appoint a chief executive, who shall not hold such office in any other company except for an investment company being managed by the said company, provided that prior approval of the commission has been obtained in this regard.
- (viii) EFL shall give an undertaking that no change in the Memorandum of Association, other than increase in the authorized capital, shall be made without prior approval of the Commission.
- (ix) EFL shall give an undertaking to comply with the rules, regulations or directions given by the Commission.
- (x) EFL shall give an undertaking that within ninety days of the Certificate of Registration, it shall provide evidence to the Commission that the personnel employed by it for executive positions, research or other related functions, possess sufficient educational qualifications and professional experience to undertake the asset management business.
- (b)** An NBFC should commence business within one year of the issuance of license and if it fails, the license shall be deemed to be cancelled or otherwise as specified by the commission by notification in the official gazette. The license granted to the NBFC shall be valid for three years from the date of its issuance and shall be renewable upon expiry of the three years as by making an application at least one month prior to expiry. The Commission may after making such inquiry and after obtaining such further information as it may consider necessary renew the license of NBFC for three years on such conditions as it may deem necessary. Provided that till such time the license is renewed the existing license shall be deemed valid for the purposes of these rules and the regulations unless the company fails to apply and fulfills all the requirements to the satisfaction of the commission for the grant of the license.

**(80) Question Background: Summer 2010, Q # 6 (a)**

**The Board of Directors of Pioneer Leasing Limited is in the process of appointing a new Head of Investment. List down the criteria specified in the Non-Banking Finance Companies and Notified Entities Regulations, 2008 for assessing the person being appointed with respect to:**

- (i) Integrity and track record** **(06 Marks)**
- (ii) Financial soundness** **(06 Marks)**

**Suggested Answer:-**

**(i)** In assessing the Integrity of the person, it should be considered whether or not he/she:

☐ has been convicted of an offence involving moral turpitude;

☐ has been involved in the mismanagement of investments, financial or business misconduct, fraud, et;

☐ has been the subject to adverse findings, in an inquiry conducted by the Commission or any other regulatory or professional body or government agency;

☐ has been actively involved in the management of a company or firm whose registration or license has been revoked or cancelled or which has gone into liquidation or other similar proceedings due to mismanagement of affairs, financial misconduct or malpractices;

☐ is ineligible, under the Companies Ordinance, 1984 or any other legislation or regulation, from acting as a director or serving in a managerial capacity of an NBFC or a company;

☐ has entered into a plea bargain arrangement with the National Accountability Bureau;

**(ii) Financial Soundness**

In assessing the financial soundness of the person, it should be considered whether or not:

- such person's financial statements or record including wealth statements or income tax returns or assessment orders are available;
- such person has been declared by a court of competent jurisdiction as defaulter in repayment of loan to a financial institution exceeding Rupees one million;
- the latest Credit Information Bureau report of the person shows overdue payments or default to a financial institution;
- the person has applied to be adjudicated as an insolvent.
- the person is an un-discharged insolvent.
- the person has been declared a defaulter by a stock exchange.

**(81) Question Background: Summer 2010, Q # 6 (b)**

**Explain the term "Independent Director" and narrate the provisions related to appointment of such directors, as specified under NBFC (Establishment and Regulation) Rules, 2003. (06 Marks)**

**Suggested Answer:-**

The expression "Independent director" means a director who is not connected with the company or its promoters or directors on the basis of family relationship and who does not have any other relationship, whether pecuniary or otherwise, with the company, its associated companies, directors, executives or related parties. The test of independence principally emanates from the fact whether such person can be reasonably perceived as being able to exercise independent business judgment without being subservient to any apparent form of interference. At least one third of an NBFC's directors shall be independent directors. At least two of its directors, excluding the chief executive officer, shall have relevant experience of at least five years at a senior management level in the financial sector. The Commission shall be the final authority to determine the status of a director as independent or otherwise.

**(82) Question Background: Winter 2009, Q # 10 (a)**

**Explain the terms 'asset management services' and 'investment finance services' as included in the NBFC Rules, 2003. (04 Marks)**

**Suggested Answer:-**

**Asset management services** means the services provided for management of collective investment schemes.

**Investment finance services** include money market activities, capital market activities, project finance activities, corporate finance services and general services as specified by the Commission by notification in the official Gazette.

**(83) Question Background: Summer 2009, Q # 12 (a)**

MZE Limited, an NBFC engaged in leasing business, is currently facing serious financial crisis. SECP is not satisfied with the financial management of the company and has ordered a special audit of the company.

**In the light of the relevant provisions of the Companies Ordinance, 1984 relating to NBFCs you are required to explain whether the Commission is empowered to make such an order. Also describe the rights of the Commission in this regard? (06 Marks)**

**Suggested Answer:-**

The commission is required to monitor the general financial condition of a NBFC and at its discretion may order an special audit and appoint an auditor to carry out detailed scrutiny of the affairs of NBFC, provided that the Commission may, during the pendency of the scrutiny, pass such interim orders and directions as may be deemed appropriate by the Commission. On receipt of the special audit report, the Commission may direct a NBFC to do or to abstain from doing certain acts and issue directives for immediate compliance which shall forthwith be complied with, or take such other action as it deems fit.

**(84) Question Background: Summer 2009, Q # 12 (b)**

**Describe the conditions applicable to a NBFC relating to the appointment of internal auditor, under the NBFCs (Establishment and Regulation) Rules, 2003. (05 Marks)**

**Suggested Answer:-**

A NBFC shall, appoint;

- (i) A person having minimum three year experience as internal auditor who is-
  - (a) A chartered accountant; or
  - (b) A cost and management accountant; or a certified internal auditor; or
  - (c) A certified information system auditor; or
  - (d) A member of a recognized foreign accountancy organization; or
  - (e) An individual having master's degree in commerce or business administration with specialization in finance; or
- (ii) A chartered accountancy firm having satisfactory Quality Control Review (QCR) and not being the statutory auditors to whom this function is outsourced.

**(85) Question Background: Winter 2008, Q # 3 (a)**

**List the types of businesses that NBFCs are permitted to carry out under the relevant provisions of Companies Ordinance 1984. (03 Marks)**

**Suggested Answer:-**

Following are the businesses which may be carried out by NBFCs:

- (i) Investment Finance Services;
- (ii) Leasing;
- (iii) Housing Finance Services;
- (iv) Venture Capital Investment;
- (v) Discounting Services;
- (vi) Investment Advisory Services;
- (vii) Asset Management Services; and
- (viii) Any other form of business which the Federal Government may specify, by notification in the Official Gazette, from time to time.

**(86) Question Background: Winter 2008, Q # 3 (b)**

**In order to reap benefits of large scale operations, the Board of Directors of Moonlight Leasing Limited and Dream Leasing Limited intend to amalgamate the operations of the two companies. State the procedure which should be followed for the merger of the two companies and the approvals required to be obtained for this purpose, under the provisions relating to establishment and regulation of NBFCs. (08 Marks)**

**Suggested Answer:-**

- (i) A scheme shall be prepared in draft containing the terms of the amalgamation.
- (ii) Notice of meetings to sanction the scheme shall be given to the shareholders of both companies.
- (iii) These notices shall also be published at least once a week for three consecutive weeks in at least two newspapers which circulate in the locality where the registered offices of both the NBFCs are situated.
- (iv) One such newspaper should be in the language commonly understood in the locality (ies).
- (v) In these meetings, the shareholders, either present in person or by proxy, of both the companies shall give approval to the scheme by a resolution passed by two-third majority.
- (vi) Upon approval by the requisite majority of shareholders, the scheme shall be submitted to the Commission for its sanction.

- (vii) The Commission's written approval of the scheme shall be binding on both the NBFCs and also on all its shareholders.
- (viii) Upon its sanction by the Commission any dissenting shareholder(s) shall be entitled to claim, from Moonlight Leasing Limited and Dream Leasing Limited, the value of their share as determined by the Commission while sanctioning the scheme.
- (ix) The determination of the value of shares by SECP shall be final for all purposes.

**(87) Question Background: Winter 2009, Q # 10 (b)**

**Briefly explain the restrictions that have been placed on the NBFCs under the NBFC Rules, 2003 in respect of the following:**

- (i) Appointment of directors from the same family;**  
**(ii) Transfer of ownership of controlling shares; and**  
**(iii) Employing a person as a broker.**

**(07 Marks)**

**Suggested Answer:-**

- (i) No restriction
- (ii) A NBFC shall not sell or transfer ownership of shares in subsidiary or associated company, merge with, acquire or takeover any other company unless it has obtained prior approval of the Commission in writing to such sale or transfer or scheme of merger, acquisition or takeover.
- (iii) A NBFC shall not enter into transactions with any broker which exceed ten percent of the total brokerage expense of the NBFC in any one accounting year.
- Provided that the NBFC shall not have a common director or officer or employee with the broker

**(88) Question Background: Winter 2008, Q # 6**

**Fiber Leasing Limited has recently lost one of its Directors and the Chief Executive in a tragic car accident. The company wants to appoint Mr. Big and Mr. Smart in place of its late director and chief executive respectively. With reference to NBFC and Notified Entities Regulations, 2007, state the considerations which SECP would take into account while assessing their competence and capability as Director and Chief Executive.**

**(09 Marks)**

**Suggested Answer:-**

**Director:** While assessing the competence and capability of the proposed Directors on the Board of an NBFC, the SECP shall take into account all the relevant considerations including, but not limited to:

- (i) Should be individuals having management/business experience of at least five years at a senior level in an active capacity;
- (ii) Should be professionally qualified and have demonstrated knowledge in the field of banking, mutual funds, accounting, internal audit, law and Information Technology, etc;
- (iii) Should not be minors or of unsound mind; and
- (iv) Should have their names borne on the register of national tax payers except where such person is a non-resident.

**Chief Executive:** The CE must demonstrate his competence and ability to understand the technical requirements of the business, inherent risks and management processes required to conduct its operations effectively, with due regard to the interests of all stakeholders. In determining competence, and capability of the CE, the Commission shall take into account all relevant considerations, including but not limited to:

- (i) Should have a minimum experience of seven to ten years in a senior management position, preferably in the regulated financial services sector;
- (ii) Should have demonstrated, through his qualifications and experience, the capacity to successfully undertake the cognate responsibilities of the position;
- (iii) Should have never been diagnosed as being mentally ill or unstable;
- (iv) Should have a sound knowledge of the business and responsibilities he/she will be called upon to shoulder.

# LEGAL ADVISOR

## **(89) Question Background: Winter 2010, Q # 3 (b)**

**State the provisions contained in the appointment of Legal Advisers Act, 1974 relating to the eligibility for appointment as legal advisers. (03 marks)**

### **Suggested Answer:-**

The Legal Advisor shall be an advocate or a registered firm of advocates.

The number of companies of which such advocate or firm is a Legal Advisor (including the current appointment) shall not exceed:

- (i) in the case of an advocate, three; or
- (ii) in the case of a firm, the product of three and the total number of partners of the firm.

## **(90) Question Background: Summer 2009, Q # 6**

Pills Limited is an unlisted public company. It intends to appoint MM Associates, a registered firm of lawyers with two partners, as its legal advisers. MM Associates are already the legal advisers of the following 6 companies:

- (i) ABC Limited and XYZ Limited having share capital of less than Rs. 500,000.
- (ii) Rose Limited and Bee Limited having share capital of more than Rs. 500,000 but less than Rs. 1 million.
- (iii) Crown (Pvt.) Limited with share capital of Rs 1.2 million; and,
- (iv) Dice (Guarantee) Limited with a share capital of Rs. 1.5 million.

**Based on the requirements of the Companies (Appointment of Legal Advisers) Act, 1974, explain whether MM Associates can be appointed as the legal advisers of Pills Limited. (05 Marks)**

### **Suggested Answer:-**

The number of companies, of which a registered firm can be appointed as the legal advisor, is the product of three and the total number of partners of the firm. Accordingly, MM Associates can be appointed as legal advisers of 6 companies (i.e.  $2 \times 3$ )

However, the definition of a company given under the Companies (Appointment of Legal Advisers) Act, 1974 specifically excludes a company which has a share capital of less than Rs. 500,000 or a company limited by guarantee. In view of the above definition of companies, MM Associates are currently the legal advisers of three companies as two companies having share capital of less than Rs. 500,000 and one company which is limited by guarantee would be excluded from the list of eligible companies. Hence, MM Associates can be appointed as the legal advisers of Pills Limited.

## **(91) Question Background: Summer 2008, Q # 5 (a)**

**Certain persons have been restricted from being appointed as legal adviser of a public limited company. Specify the restrictions imposed in this regard under Appointment of Legal Advisor's Rules 1975. (02 Marks)**

### **Suggested Answer:-**

An advocate or a registered firm cannot be appointed as legal adviser of a company, if upon appointment, the number of companies of which such advocate or firm is a legal adviser exceeds:

- (i) Three, in case of an advocate.
- (ii) The product of three and total number of partners of the firm, in case of a firm.

**(107) Question Background: Summer 2008, Q # 5(b)**

State the particulars which are required to be specified in the Register of Legal Advisers.

**(03 Marks)**

**Suggested Answer:-**

Following particulars are required to be specified in the register of legal advisers.

- (i) Name of the legal adviser or name of the firm
- (ii) Number of partners, in case of a firm.
- (iii) Remuneration
- (iv) Address
- (v) Date of appointment
- (vi) Date of termination of appointment

## SECRETARIAL PRACTICES

**(92) Question Background: Summer 2009, Q # 10**

National Travels Limited (NTA), is a listed company, and operates throughout Pakistan. In order to finalize a running finance arrangement with a bank, it requires a copy of the board resolution approving the terms of financing. Since five out of eight directors are currently out of the city, it is not possible for the secretary to convene the meeting of the board of directors. **In light of the provisions of Companies Ordinance, 1984 you are required to state, whether the above resolution can be passed by circulation and the steps required to be taken to pass such a resolution.**

**(08 Marks)**

**Suggested Answer:-**

A resolution in writing signed by all the directors for the time being entitled to receive notice of a meeting of the directors shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held. Therefore, where it is not feasible to hold the board meeting, it is possible that the required resolution can be passed by way of a circular resolution, subject to the provisions of the articles of association of the company.

**Steps:** The proposed resolution has to be circulated in draft along with the other necessary documents, if any, to all the directors. The resolution will become valid if the same is approved by all the directors entitled to vote on the resolution or such number of directors as may be specified in the Articles of Association. There after the resolution as passed by way of circulation will be entered in the minute's book of the Board of Directors.

**(93) Question Background: Summer 2008, Q # 9 (b)**

The Board of Directors of Ghareeb Limited has decided to contribute a fixed amount every year to a charitable organization. The company secretary notified that a clause needs to be inserted in the object clause of the Memorandum of Association for the same. **Draft a clause to be included in the Memorandum covering the permissibility of the proposed activity.**

**(02 Marks)**

**Suggested Answer:-**

Suggested draft of the Clause to be included in the Memorandum is as follows:

“To grant relief donation for and during calamities, undertake charitable activities which in the opinion of the company would assist and benefit mankind and to establish, maintain, run, manage and administer charity programs, providing relief and to help the needy and poor” .

OR

“To subscribe, donate money for any national, charitable, benevolent, public, general or useful object including any educational institution, hospital, flood or famine relief fund and other institution or fund established for religious or charitable purpose”.

# STOCK EXCHANGE LISTING REGULATIONS

## (94) Question Background: Summer 2012, Q # 6(b)

Based on the Listing Regulations of the Karachi Stock Exchange, state the following:

**Regulations relating to transfer of shares and closure of share transfer books.**

**(05 marks)**

### **Suggested Answer:-**

- (i) The company shall complete shares transfer and have ready for delivery the share certificates lodged for registration of transfer within 45 days of the application for such transfer and its registration.
- (ii) The companies quoted on the Future Counter shall intimate to the Exchange the dates of book closure and corporate actions, if any, on or before 20th day of the month with a notice period of at least 21 days after the said 20<sup>th</sup> day for commencement of book closure.
- (iii) The company shall give a minimum of 14 day notice to the Exchange prior to closure of share transfer books for any purpose.
- (iv) The company shall treat the date of posting as the date of lodgments of shares for the purpose for which shares transfer register is closed, provided that the posted documents are received by the company before relevant action has been taken by the company.
- (v) The company shall issue transfer receipts immediately on receiving the shares for transfer.
- (vi) The company shall not charge any transfer fee for transfer of shares.
- (vii) The company shall provide a minimum period of 7 days but not exceeding 15 days at a time for closure of share transfer register, for any purpose, not exceeding 45 days in a year in the whole.
- (viii) No listed company shall exercise any lien whatsoever on fully paid shares and nor shall there be any restriction on transfer of fully paid shares.

## (95) Question Background: Winter 2011, Q # 7

**Ryan Industries Limited (RIL) has been incurring losses for the last few years and has therefore not declared any dividends. Consequently, the market price of its shares has declined and this has also adversely affected the prices of shares of other group companies. The directors of RIL have therefore decided to opt for voluntary de-listing of the shares of RIL and to offer the purchase of shares from the market. Who will determine the offer price and what would be the basis for determination of the offer price under the listing regulations?**

**(05 marks)**

### **Suggested Answer:-**

Since Ryan Industries Limited (RIL) intending to seek voluntary de-listing from the Exchange, they shall intimate to the stock exchange the proposed minimum price at which the securities are to be purchased.

The final minimum purchase price of the securities to be de-listed shall be fixed with the approval of the Stock Exchange.

The minimum purchase price proposed by RIL will be the highest of the benchmark price based on the following:

- (a) Current Market Price as of the date the exchange receives the sponsors/majority security holder's intimation.
- (b) Average Market Price (Annualized).
- (c) Intrinsic value per share (estimated net realizable value of assets of the company).
- (d) Earnings Multiplier approach (for profitable companies).
- (e) The maximum price at which the sponsors had purchased these shares from the open market in the preceding one year.

**(96) Question Background: Summer 2011, Q # 10**

**State the conditions specified under the listing regulations in respect of each of the following:**

- (a) Declaration of financial results and announcement of dividend. (06 marks)**  
**(b) Issuance and despatch of dividend warrants and payment of dividend. (06 marks)**

**Suggested Answer:-**

- (a)** (i) Every listed company shall send to the Exchange its quarterly and annual financial results.  
(ii) The company shall send to the Exchange such number of copies of annual report and audited accounts as prescribed by the Exchange not later than 21 days before a meeting of the shareholders is held to consider the same.  
(iii) The company shall send to the Exchange copies of all notices as well as resolutions prior to their publication and dispatch to the shareholders and also file with the Exchange certified copies of all such resolutions as soon as these have been adopted and become effective.  
(iv) The company shall send to the Exchange such number of copies of its quarterly accounts as prescribed by the Exchange.  
(v) Every listed company and issuer of a listed security shall advise and keep advised to the Exchange all decisions of its Board of Directors relating to cash dividend, bonus issue, right issue or any other entitlement or corporate action and any other price sensitive information. The said information is required to be communicated to the Exchange prior to its release to any other person or print/electronic media.  
(vi) Intimation of dividend and of all other entitlements shall be sent to the Exchange not later than 14 days prior to commencement of the book closure.
- (b)** Every listed company shall:  
(i) Dispatch interim dividend warrants to the shareholders concerned within 30 days from the date of commencement of closing of share transfer register for purpose of determination of entitlement of dividend.  
(ii) Dispatch the final dividend warrants to the shareholders concerned within 30 days from the date of General Meeting in which the same has been approved;  
(iii) Intimate the Exchange immediately as soon as all the dividend warrants are posted to the shareholders;  
(iv) Dispatch interim and final dividend warrants to the shareholders by registered post unless those entitled to receive the dividend require otherwise in writing.  
(v) All dividend warrants, in addition to the place of the Registered Office of the issuing companies, shall be encashable at Karachi, Hyderabad, Sukkur, Quetta, Multan, Lahore, Faisalabad, Islamabad, Rawalpindi and Peshawar\* for a period of three months from the date of issue.

**(97) Question Background: Winter 2010, Q # 7**

Yasir (Private) Limited is part of a large group of companies including listed as well as unlisted entities. It is considering getting itself listed on the Karachi Stock Exchange. As the CFO of the Company, you are cognizant of the fact that the responsibilities of the company would increase significantly after it gets itself listed. Consequently, you are required to make a report for presentation to the directors as regards the following:

- (a) Conditions required to be complied with by Yasir (Private) Limited under the listing regulations of the Karachi Stock Exchange, to be eligible for listing. (08 marks)**

**Suggested Answer:-**

- (a)** Yasir (Private) Limited must meet the following criteria for being eligible for listing on the Karachi stock exchange (KSE):  
(i) The company must first be converted from private limited company to public limited company.

- (ii) The paid up capital (including public offer) shall not be less than Rs 200 million.
- (iii) A running company for one full year or more, reflecting losses in their last audited accounts shall not qualify for listing if its equity is eroded by 40% or more.
- (iv) Public issue should at least be subscribed by 500 applicants.
- (v) The promoters/ sponsors / controlling directors who are also promoters /sponsors /controlling directors in other listed companies should not be in default of any Listing Regulation.
- (vi) The company should not be a wholly owned subsidiary of any other listed company which has violated Listing Regulations and which is still in default of any Listing Regulation.
- (vii) The company should not be an associated company of any other listed company which has violated Listing Regulations and which is still in default.
- (viii) The Chief Executive should not previously been a chief executive of any other listed company which had violated the Listing Regulations.
- (ix) Promoters / sponsors / controlling directors should not be in the defaulter's list of the State Bank of Pakistan either in their individual capacity or in the capacity of directors of other companies. However, this will not apply to nominee directors of the Government and Financial Institutions.
- (x) The company should provide an undertaking to abide by all the Listing Regulations.

**(98) Question Background: Summer 2010, Q # 3**

**List the circumstances, as referred to in the Listing Regulations of the Karachi Stock Exchange (Guarantee) Limited, under which a listed company may be placed in:**

- (a) Defaulter's segment. (07 Marks)**
- (b) Non-Compliant segment. (03 Marks)**

**Suggested Answer:-**

- (a)** A listed company may be placed on the Defaulters' Segment, for any of the following reasons:-
  - (i) If its securities are quoted below 50 per cent of face value for a continuous period of three years. Provided that if the shares of the company quoted at 50 percent or above of their face value then such a rate is maintained for a continuous period of thirty working days.
  - (ii) If from three years of the date of formal listing, it has not started commercial production in the case of a manufacturing company or has not commenced business in the case of any other company.
  - (iii) If it has failed to hold its annual general meeting for a continuous period of three years.
  - (iv) If it has gone into liquidation either voluntarily or under court order.
  - (v) If it has failed to pay the annual listing fees as prescribed in listing regulations for a period of 2 years.
  - (vi) If it has failed to comply with the requirements of any of the listing regulations.
  - (vii) If for any reasons whatsoever it refuses to join the Central Depository System (CDS) after its securities has been declared eligible securities by the Central Depository Company (CDC).
- (b)** A listed company may be placed in the non-complaint segment if it has failed to declare dividend or bonus:
  - (i) For five years from the date of declaration of last dividend or bonus; or
  - (ii) In the case of manufacturing companies, for five years from the date of commencement of production; and
  - (iii) For five years from the date of commencement of business in all other cases.

# CODE OF CORPORATE GOVERNANCE

**(6) Question Background: Summer 2012, Q # 6(a)**

**Whether an audit firm may be appointed as the auditor of a listed company, if one of its partners is found guilty of professional misconduct? (04 marks)**

**Suggested Answer:-**

The firm shall only be eligible for appointment as an auditor provided a written confirmation is given by the firm to all the stock exchanges of the country and the Commission with a copy to ICAP to the effect that such a partner shall not be engaged in the audit of any listed company for the specified period.

**(99) Question Background: Summer 2011, Q # 11**

**Under the Code of Corporate Governance, what are the conditions under which a person becomes ineligible to be appointed as the director of a listed company? (04 marks)**

**Suggested Answer:-**

Under the Code of Corporate Governance a person becomes ineligible to be appointed as the director of a listed company, if:

- (a) He is serving as a director of ten other listed companies; or
- (b) His name is not borne on the register of National Tax Payers except where such person is a non-resident; or
- (c) He has been convicted by a court of competent jurisdiction as a defaulter in payment of any loan to a banking company, a Development Financial Institution or a Non-Banking Financial Institution or
- (d) He, being a member of a stock exchange, has been declared as a defaulter by such stock exchange;
- (e) He or his spouse is engaged in the business of stock brokerage (unless specifically exempted by the Securities and Exchange Commission of Pakistan).

**(100) Question Background: Winter 2010, Q # 6**

Narrate the provisions contained in the Code of Corporate Governance relating to:

- (a) Orientation Courses / Directors Educational Program. (03 marks)**
- (b) The responsibility of CEO and CFO of a listed company as regards endorsement and approval of financial statements prior to their circulation. (03 marks)**
- (c) Secretarial Compliance Certificate. (03 marks)**

**Suggested Answer:-**

**(a) Orientation Courses / Directors Educational Programme**

All listed companies shall make appropriate arrangements to carry out orientation courses for their directors to acquaint them with their duties and responsibilities and enable them to manage the business affairs of the company on behalf of shareholders.

It will be mandatory for all directors of listed companies to have certification under "The Board Development Series" program offered by the Pakistan Institute of Corporate Governance.

Provided that at least one director shall be required to have such certification up to June 30, 2011 and thereafter, every following year minimum one director on the Board shall acquire the said certification under this program.

**(b) Responsibility of CEO & CFO as regards financial statements**

No listed company shall circulate its financial statements unless the CEO and the CFO present the financial statements, duly endorsed under their respective signatures, for consideration and approval of the Board of

Directors and the Board, after consideration and approval, authorize the signing of financial statements for issuance and circulation.

**(c) Secretarial Compliance Certificate**

The Company Secretary of a listed company shall furnish a Secretarial Compliance Certificate, in the prescribed form, as part of the annual return filed with the Registrar of Companies to certify that the secretarial and corporate requirements of the Companies Ordinance, 1984 have been duly complied with.

**(101) Question Background: Winter 2010, Q # 7**

Yasir (Private) Limited is part of a large group of companies including listed as well as unlisted entities. It is considering getting itself listed on the Karachi Stock Exchange. As the CFO of the Company, you are cognizant of the fact that the responsibilities of the company would increase significantly after it gets itself listed. Consequently, you are required to make a report for presentation to the directors as regards the following:

**(b) Additional information to be disclosed in the Directors' report of a listed company. (08 marks)**

**(c) Circulation of quarterly accounts. (04 marks)**

**Suggested Answer:-**

**(b) Additional information to be disclosed in the Director's Report.**

The following additional information is required to be disclosed in the directors report of a listed company under the provisions of the Companies Ordinance, 1984:

(i) Material changes that have occurred during the financial year concerning the nature of the business of the company or of its subsidiaries in the classes of business in which the company has interest whether as a member of another company or otherwise unless the commission exempts any company from making such disclosure on the ground that such disclosures would be prejudicial to the business of the company.

(ii) Material changes and commitments affecting the financial position of the company occurred after close of the financial year and before preparation of the report.

(iii) Information and explanation in regard to any reservation, observation, qualification or adverse remarks, contained in the auditor's report.

(iv) Pattern of shares holdings.

(v) In case of subsidiary company, the name of its holding company, and country of incorporation, if it is established outside Pakistan.

(vi) Earnings per share.

(vii) Reasons for incurring loss and a reasonable indication of future prospects of profit, if any.

(viii) Information about defaults in payment of debts, if any, and reasons thereof.

**(c) Circulation of quarterly accounts of Listed Companies.**

Every listed company shall:

(i) Within one month of the close of the first, second and third quarter of its year of account, prepare and transmit to the members and the stock exchange in which the shares of the company are listed a profit and loss account for, and balance sheet as at the end of, that quarter, whether audited or otherwise; and

(ii) Simultaneously with the transmission of the quarterly profit and loss account and balance-sheet to the members and the stock exchange, file with the registrar and the commission such number of copies thereof, not being less than three, as may be prescribed.

(iii) The balance sheet and profit and loss account or income and expenditure account shall be approved by the directors and shall be signed by the chief executive and at least one director

(iv) A listed company may place its quarterly accounts on its website which will be treated compliance of the provisions of the Companies Ordinance, 1984.

If a company fails to comply with any of the requirements of this section, every director including chief executive and chief accountant of the company who has knowingly by his act or omission been the cause of such default shall be liable to a fine of not exceeding one hundred thousand rupees and a further fine of one thousand rupees for every day during which the default continues.

**(102) Question Background: Summer 2010, Q # 7**

**Explain the provisions of the Code of Corporate Governance in respect of the following:**

- (a) Appointment of the chairman of the company. **(02 Marks)**  
(b) Meeting of the board of directors and minutes thereof. **(06 Marks)**

**Suggested Answer:-**

(a) The chairman of a listed company shall preferably be elected from among the non-executive directors. The board of directors shall clearly define the respective roles and responsibilities of the chairman, and also decide whether the Chairman and Chief Executive shall be separate individuals or the same individual.

(b) The board of directors of a listed company shall meet at least once in every quarter. Written notices (including agenda) of meetings shall be circulated not less than seven days before the meetings except in the case of emergency meetings, where the notice period may be reduced or waived. The chairman of a listed company shall ensure that minutes of meetings of the board of directors are appropriately recorded. The minutes of meetings shall be circulated to directors and officers entitled to attend board meetings within 14 or 30 days of the date of the meeting. If the director of a listed company is of the view that his dissenting note has not been satisfactorily recorded in the minutes, he may refer the matter to the company secretary. The director may require the note to be appended to the minutes, failing which he may file an objection with the Securities and Exchange Commission of Pakistan in the form of a statement to that effect.

**(103) Question Background: Winter 2009, Q # 7**

**Explain the provisions contained in the Code of Corporate Governance as regards the appointment of external auditors. **(05 Marks)****

**Suggested Answer:-**

(i) The Board of Directors of a listed company shall recommend appointment of external auditors for a year, as suggested by the Audit Committee. The recommendations of the Audit Committee for appointment of retiring auditors or otherwise shall be included in the directors' Report.

(ii) No listed company shall appoint as external auditors a firm of auditors which has not been given a satisfactory rating under the Quality Control Review programme of the Institute of Chartered Accountants of Pakistan.

(iii) No listed company shall appoint as external auditors a firm of auditors which firm or a partner of which firm is non-compliant with the International Federation of Accountants' (IFAC) Guidelines on Code of Ethics, as adopted by the Institute of Chartered Accountants of Pakistan.

(iv) All listed companies in the financial sector are required to change their external auditors every five years. All listed companies other than those in the financial sector shall, at a minimum, rotate the engagement partner after every five years.

**(104) Question Background: Summer 2008, Q # 7**

**The Board of Directors of Iqra Industries Limited, a newly incorporated listed company, is in the process of formulating significant policies to govern the operations of the company. As a member of the Board, identify the significant policies which should be formulated, as advised under the Code of Corporate Governance. **(06 Marks)****

**Suggested Answer:-**

Under the Code of Corporate Governance, The Board of Directors of Iqra Industries Limited should formulate the following significant policies:

- (i) Risk management.
- (ii) Human Resource Management including preparation of the succession plan.
- (iii) Procurement of goods and services.
- (iv) Marketing.
- (v) Determination of terms of credit and discounts to customers.
- (vi) Write-off of bad/doubtful debts, advances and receivables.
- (vii) Acquisition / disposal of fixed assets.
- (viii) Investments.
- (ix) Borrowing of money and the amount in excess of which borrowings shall be sanctioned / ratified by general meetings of shareholders.
- (x) Donations and charities.
- (xi) Determination and delegation of financial powers.
- (xii) Transactions or contracts with associated companies and related parties.
- (xiii) Health, safety and environment.

## FOREIGN EXCHANGE REGULATIONS

**(105) Question Background: Summer 2012, Q # 7**

**Kevin Jason is a UK national but is residing in Australia. He intends to invest in securities listed at Karachi Stock Exchange. In the context of the provisions of Foreign Exchange Regulations, advise him in respect of the procedure to be followed for purchase and sale of shares of companies listed in Pakistan. (06 marks)**

**Suggested Answer:-**

**Trading of Quoted Shares by Non-Residents:**

- (i) Mr. Kevin Jason would be required to open “Special Convertible Rupee Account” with any Authorized Dealer in Pakistan.
- (ii) He may remit funds from abroad into the special account or by transfer from a foreign currency account maintained by him in Pakistan.
- (iii) Payment for such purchase of shares may be debited to the account on production of stock broker’s memo showing sale of shares to the account holder.
- (iv) Disinvestment proceeds may be credited provided evidence of the sale price in the shape of stock broker’s memo is produced.
- (v) The fund available in such special account can be transferred outside Pakistan or credited to a foreign currency account maintained in Pakistan at any time without prior approval of the State Bank.
- (vi) Dividend income can also be credited to the above accounts.

**(106) Question Background: Winter 2009, Q # 8**

**MP Pakistan is a branch of MPGH (a company registered in Germany) and is engaged in the software export business. It requires working capital finance to support its operations and intends to borrow funds from its head office i.e. MPGH on a repatriable basis. You are required to briefly explain the conditions which MP Pakistan would have to comply with under the Foreign Exchange Regulations of the State Bank of Pakistan. (09 Marks)**

**Suggested Answer:-**

Foreign controlled companies are permitted to contract foreign currency loans from their Head Offices for meeting their working capital requirements on the following conditions:

- The repayment period should not exceed twelve months
- The rate of interest should not exceed 1% over LIBOR. Such loans can however be rolled over for further periods not exceeding twelve months each.
- They may approach their bankers (Authorized Dealers), who will satisfy themselves that the applicant is a foreign controlled company. Once such a confirmation is obtained, the concerned company may contract the loan and repatriate the amount for credit to their Rupee account with the Authorized Dealer.
- The concerned Authorized Dealer will issue a proceeds realization certificate, and record the particulars of the loan. On maturity, the Authorized Dealer having received the inward remittance will allow payment of interest minus taxes and repayment of principal. While reporting remittance of interest, a certificate confirming the applicable LIBOR and a certificate confirming payment of income tax will be attached with the Form 'M'. If tax is not payable, a copy of the exemption certificate issued by the Revenue authorities will be submitted. While reporting repayment of the principal, a copy of the proceeds realization certificate will be attached with the Form 'M'.
- Branches in Pakistan of foreign companies are not allowed to pay interest on such loans.

**(107) Question Background: Winter 2008, Q # 8 (a)**

In view of large decline in the value of shares in Asian markets, a group of US investors believe that now is the opportune time to invest in such markets as they have almost reached their lowest limits. One such investor, Mr. NR is interested in buying securities listed on Karachi Stock Exchange. **With reference to relevant provisions of Foreign Exchange Manual, you are required to advise Mr. NR on the following:**

**(i) Procedure to be followed in order to trade in listed shares in Pakistan.**

**(ii) Whether Mr. NR would be entitled to receive dividends on such securities and are there any restrictions on repatriation of funds outside Pakistan? (09 Marks)**

**Suggested Answer:-**

**(i)** • Mr. NR will be required to open a "Special Convertible Rupee Account" with any authorized dealer.

• Such account can be fed by:

- Remittances from abroad

- Transfer from a foreign currency account maintained in Pakistan by Mr. NR.

• Mr. NR shall be allowed to trade freely in any shares quoted on any Stock Exchange in Pakistan from this account.

• Payment from such purchases may be debited to the account on production of stock broker's memo.

• Disinvestment proceeds may be credited to the account on provision of stock broker's memo.

• Transfers from one such account to another may also be made in case of transfer of shares between the two account holders.

**(ii)** Yes, Mr. NR is entitled to receive dividends which shall also be credited into special convertible rupee account. There are no restrictions on repatriation of funds outside Pakistan and the funds available in such special accounts can be transferred outside Pakistan or credited to a Foreign Currency Account maintained in Pakistan at any time without prior approval of the State Bank of Pakistan.

**(108) Question Background: Winter 2008, Q # 8 (b)**

**Explain the meaning of "a person resident outside Pakistan" as referred to in the Foreign Exchange Regulations. (03 Marks)**

**Suggested Answer:-**

"A person resident outside Pakistan" covers a foreign national including a foreign national of Indo-Pakistan origin as also a Pakistani holding dual nationality for the time being resident in Pakistan and a company registered in Pakistan which is controlled directly or indirectly by a person resident outside Pakistan.

**(109) Question Background: Summer 2008, Q # 6**

**Explain the term “Foreign Controlled Company” as referred to in the Foreign Exchange Regulations. (06 M)**

**Suggested Answer:-**

“Foreign Controlled Company” is any company, not being a banking company, which is controlled, whether directly or indirectly, by person’s resident outside Pakistan.

A company/firm / branch or office of a company or firm, is deemed to be controlled directly or indirectly by persons resident outside Pakistan, if:

- (i) It is a branch office of a company incorporated outside Pakistan , or
- (ii) In the case of partnership, if:
  - (a) 50% or more of the capital of the partnership is owned by foreign nationals, or
  - (b) The majority of the partners are foreign nationals, and
- (iii) In the case of companies incorporated in Pakistan, if:
  - (a) 50% of the shares or more are subscribed by foreign nationals, or
  - (b) 50% of the Directors or more are foreign nationals.

In the case of equal share-holding, a company is deemed to be a Pakistan controlled company, if it’s Chief Executive is a Pakistani National.

## **CENTRAL DEPOSITORY ACT, 1997**

**(110) Question Background: Summer 2008, Q # 11**

**Explain the term “Participant” as defined under Central Depository Act, 1997. (02 Marks)**

**Suggested Answer:-**

“Participant” means (i) an account-holder who is a member of a stock exchange; and

(ii) Any other account-holder who meets the qualifications of a participant prescribed in the CDC Regulations.

**(111) Question Background: Summer 2008, Q # 12**

**The Securities of Shalimar Investment Company Limited (SICL) are registered in the name of Central Depository Company (CDC). List the steps which the CDC will have to take where a bonus issue is declared by SICL? (05 Marks)**

**Suggested Answer:-**

CDC will have to take the following steps when a bonus is declared by SICL:

- (i) Such bonus securities entitlement shall be allotted to the Central Depository.
- (ii) On the day before book closure, CDC shall determine the entitlement of each account holder and sub-account holder.
- (iii) CDC shall enter the book-entry securities in the relevant accounts and sub-accounts in accordance with the determined entitlements.
- (iv) Fractional entitlements to book entry securities, relating to the bonus securities, shall not be credited by central depository to the relevant accounts and sub-accounts but shall be consolidated and dealt with in accordance with the regulation.

**(112) Question Background: Winter 2011, Q # 4**

Based on the provisions of the Central Depositories Act, 1997:

**(a) Briefly explain the term “Participant”. (03 marks)**

**(b) Identify the purposes for which issuer of a security may request the Central Depository Company to provide a list of the names and other relevant details of the account holders and sub-account holders of its securities. (06 marks)**

**Suggested Answer:-**

**(a) Participant means**

(i) An account-holder who is a member of a stock exchange; and

(ii) Any other account-holder who meets the qualifications of a participant prescribed in the regulations  
Provided that such account holders

(i) Perform services for sub-account holders in accordance with the terms of an agreement entered into between the Central Depository Company and each of the participants;

(ii) Transfer any securities to the Central Depository Company to the credit of any sub-accounts under their respective accounts; and

(iii) Handle, on behalf of sub-account holders, the book-entry securities in the sub-accounts under their respective accounts;

**(b) The issuer of a security may request the CDC for a list of names and other relevant details of shareholders on account of the following:**

(i) For sending notices to any account holders and sub-account holders of general meetings of the holders of any securities of the issuer;

(ii) For sending any other notices or documents to any account holders and sub-account holders which are required to be sent by the issuer to holders of any securities of the issuer;

(iii) For the purpose of allowing any account holders and sub-account holders to attend general meetings of any holders of securities of the issuer or to appoint proxies for this purpose;

(iv) For dispatching dividend or other warrants to any account holders and sub-account holders;

(v) For dispatching to any account holders and sub-account holders any other payments or benefits paid by the issuer; or

(vi) For dispatching to any account holders and sub-account holders formal offers for subscription of securities of the issuer

**(113) Question Background: Winter 2010, Q # 8**

**The Board of Directors of Modern Textile Mills Limited (MTML) recommended the issue of 20% bonus shares for the year ended September 30, 2010. The register of members for determining the entitlements was closed from October 22, 2010 to October 29, 2010 (both days inclusive). The company is listed on Karachi and Lahore Stock Exchanges and its securities are entered in the Central Depository System. State the responsibility of MTML and the Central Depository upon issuance of bonus shares under the Central Depositories Act, 1997. (04 marks)**

**Suggested Answer:-**

Upon announcement of bonus issue, the securities to be issued on the number of securities of the company registered in the name of Central Depository shall be allotted by Modern Textile Mills Limited (MTML) to the central depository. The Central Depository upon allotment will determine the entitlements of the respective account holders and sub account holders of the company in proportion to the securities standing in their accounts and sub accounts as of the close of business hours of the central depository on the day before the first day of the period of closure of the register of members and credit these in the relevant accounts and sub accounts.

# SECP ORDINANCE AND INSIDER TRADING

**(114) Question Background: Winter 2011, Q # 9**

The Board of Directors of Ujala Industries Limited, a recently incorporated listed company, intends to hold a meeting of the Directors for approval of the annual accounts, declaration of dividend and to make other important decisions relating to the company. At the request of the directors, you being the company secretary, are required to explain the provisions of the Securities and Exchange Ordinance, 1969 as to what constitutes:

- (a) Inside information (04 marks)  
 (b) Insider trading (05 marks)

**Suggested Answer:-**

**(a) Inside information**

- (i) Information which has not been made public relating directly or indirectly, to listed securities or one or more issuers and which, if it were made public, would be likely to have an effect on the prices of those listed securities or on the price of related securities;  
 (ii) In relation to derivatives on commodities or information which has not been made public, relating, directly or indirectly, to one or more such derivatives and which are traded in accordance with accepted market practices on those markets; or  
 (iii) In relation to persons responsible for the execution of orders concerning listed securities, information which is conveyed by a client to such person and related to the client's pending orders.

**(b) Insider trading shall include**

- (i) An insider person transacting any deal, directly or indirectly, using inside information involving listed securities to which the inside information pertains, or using others to transact such deals;  
 (ii) Any other person to whom inside information has been passed or disclosed by an insider person transacting any deal, directly or indirectly, using inside information involving listed securities to which the inside information pertains, or using others to transact such deals;  
 (iii) Transaction by any person as specified in clauses (i) and (ii), or any other person who knows, or ought to have known under normal and reasonable circumstances, that the information possessed and used for transacting any deal is inside information;  
 (iv) An insider person suggesting or recommending to another person to engage in dealing in any listed securities to which the inside information possessed by the insider person pertains, without the inside information being disclosed to the person who has dealt in such securities.

## COMPETITION ORDINANCE

**(115) Question Background: Summer 2012, Q# 8**

- (a) No undertaking shall enter into deceptive marketing practices. List the practices which are deemed to fall under the purview of deceptive marketing practices. (03 marks)  
 (b) No undertaking or association of undertakings shall enter into any agreement which have the object or effect of preventing, restricting or reducing competition within the relevant market. Explain how and under what circumstances an undertaking may claim exemption from the application of the above provision. (07 marks)

**Suggested Answer:-**

(a) The deceptive marketing practices shall be deemed to have been resorted to or continued if an Undertaking resort to-

- (i) The distribution of false or misleading information that is capable of harming the business interests of another undertaking;
- (ii) The distribution of false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the price, character, method or place of production, properties, suitability for use, or quality of goods;
- (iii) False or misleading comparison of goods in the process of advertising; or
- (iv) Fraudulent use of another's trademark, firm name, or product labeling or packaging.

(b) (i) The Commission may grant an exemption from the application of the provisions of Competition Act, 2010 with respect to a particular practice or agreement from being considered as preventing, restricting or reducing competition, if a request for individual or block exemption has been made to it by a party to the agreement or practice and the agreement is one which substantially contributes to the following:

-Improving production or distribution; -Promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit; or -The benefits thereof clearly outweigh the adverse effects of absence or lessening of competition.

(ii) The exemption may be granted subject to such conditions as the Commission considers appropriate to impose and is effective for such period as the Commission considers appropriate.

(iii) That period must be specified in the grant of the exemption.

(iv) An individual exemption may be granted so as to have effect from a date earlier than that on which it is granted.

#### **(116) Question Background: Summer 2011, Q #4**

**Briefly explain the term 'dominant position' and list the practices which constitute an abuse of dominant position, under the provisions of the Competition Act, 2010. (09 marks)**

"Dominant position" of one undertaking or several undertakings in a relevant market shall be deemed to exist if such undertaking or undertakings have the ability to behave to an appreciable extent independently of competitors, customers, consumers and suppliers and the position of an undertaking shall be presumed to be dominant if its share of the relevant market exceeds forty per cent.

The expression "practices" shall include, but is not limited to:

- (i) Limiting production, sales and unreasonable increases in price or other unfair trading conditions;
- (ii) Price discrimination by charging different prices for the same goods or services from different customers in the absence of objective justifications that may justify different prices;
- (iii) Tie-ins, where the sale of goods or services is made conditional on the purchase of other goods or services;
- (iv) Making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which by their nature or according to commercial usage, have no connection with the subject of the contracts;
- (v) Applying dissimilar conditions to equivalent transactions on other parties, placing them at a competitive disadvantage;
- (vi) Predatory pricing, driving competitors out of a market, preventing new entry and monopolizing the market;
- (vii) Boycotting or excluding any other undertaking from the production, distribution or sale of any goods or the provision of any service; or
- (viii) Refusing to deal.

**(117) Question Background: Summer 2009, Q # 8**

The association of leading fertilizer manufacturing companies in their 21st annual general meeting reached an understanding to control the prices of fertilizers and their respective market shares by territories, in order to save the local industry from growing dominance of foreign suppliers. This understanding however, is not intended to be enforced by legal proceedings and has not been put into writing.

**You are required to state whether such verbal understanding can be regarded as an agreement under the relevant provisions of the Competition Ordinance, 2007 and whether such an agreement is in violation of the provisions of the Ordinance. Also list down some of the agreements which are prohibited under the said Ordinance (07 Marks)**

**Suggested Answer:-**

Yes, such verbal understanding can be regarded as an agreement as the term 'agreement' as referred in the Competition Ordinance, 2007 includes any arrangement, understanding or practice, whether or not it is in writing or intended to be legally enforceable.

**Compliance**

An undertaking or an association of undertakings shall not enter into any agreement in respect of the production, supply, distribution, acquisition or control of goods or the provision of services which have the object of preventing, restricting or reducing competition within the relevant market except when granted exemption under this Ordinance. Therefore, the understanding between the leading fertilizer manufacturers is in violation of the provisions of the Competition Ordinance.

**Prohibited agreements**

Such agreements include, but are not limited to-

- (a) Fixing the purchase or selling price or imposing any other restrictive trading conditions for the sale or distribution of any goods or the provision of any service;
- (b) Dividing or sharing of markets for goods or services, whether by territories, by volume of sales or purchases, by type of goods or services sold or by any other means;
- (c) Fixing or setting the quantity of production, distribution or sale with regard to any goods or the manner or means of providing any services;
- (d) Limiting technical development or investment with regard to the production, distribution or sale of any goods or the provision of any service; or
- (e) Collusive tendering or bidding for sale, purchase or procurement of any goods or service;
- (f) Applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a disadvantage; and
- (g) Make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

## **SUBSTANTIAL ACQUISITION**

**(118) Question Background: Summer 2011, Q # 9**

**On May 21, 2011, Mr. Salman made a public announcement of his offer to acquire 45% voting shares of Imtiaz Industries Limited (IIL) from Mr. Kalam. On May 31, 2011 Mr. Sadiq also made a public announcement of his offer to Mr. Kalam for the acquisition of the same number of shares at a higher price. Both, Mr. Salman as well as Mr. Sadiq already own more than 10% shares in IIL. In the light of the provisions of the Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Regulations, 2008 you are required to advise Mr. Salman about the course of action which he would have to follow if he still wants to acquire the shares owned by Mr. Kalam. (05 marks)**

**Suggested Answer:-**

If Mr. Salman still wishes to acquire Mr. Kalam's shares he shall have to announce an upward revision of his public offer in respect of the price and the number of voting shares to be obtained, at least seven days prior to the date of closure of the public offer made by Mr. Sadiq. In addition to the above Mr. Salman will also have to comply with the following conditions:

- (i) The public announcement of the upward revision and all respective amendments shall be announced in all the newspapers in which the earlier public announcement was made;
- (ii) The information regarding the announcement shall be provided to SECP, the stock exchanges on which the voting shares of the target company are listed and the target company at its registered office, simultaneously with the issue of public announcement; and
- (iii) He shall have to make an appropriate increase in the value of the security that he had provided at the time of making the original offer.

**(119) Question Background: Summer 2009, Q # 1**

Marhaba Engineering (Pvt.) Limited (MEPL), holds 15% voting shares in Pasban Engineering Limited (PEL), a company listed on Karachi Stock Exchange. MEPL intends to increase its holding to 29.5% by acquiring additional voting shares in PEL through public offer and has made a public announcement of its intentions. However, the financial due diligence of PEL revealed that the company is facing financial difficulties and it is anticipated that the directors may sell a sizeable business segment of the company. In the light of the provisions of the Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Regulations, 2008 you are required to advise the board of directors of MEPL as regards the following:

- (a) The circumstances under which a public announcement of intention can be withdrawn and the procedure to be followed in this regard. (05 Marks)**
- (b) The restrictions which will apply on PEL after making the public announcement of its intentions. (03 M)**

**Suggested Answer:-**

- (a) A public announcement of intention to acquire additional voting shares may be withdrawn:**
  - (i) Where the sole acquirer is a natural person and has died or has been declared bankrupt or of unsound mind;
  - (ii) If negotiations to acquire voting shares of the target company have failed;
  - (iii) Where the due diligence conducted for the acquisition of shares of the target company by the acquirer is unfavourable;
  - (iv) Where the acquirer is a company,-
    - Has gone into liquidation;
    - Its board of directors passes a resolution not to acquire the voting shares of the target company; or
  - (v) The time period for making the public announcement of offer and extension thereof, if granted, has lapsed.

In the event of withdrawal of the public announcement of intention under any of the circumstances specified above, MEPL or the manager to the offer, shall immediately, -

- (i) Make a public announcement of withdrawal in all the newspapers in which the public announcement of intention was made and disclose reasons for withdrawal; and
- (ii) Along with reasons, inform the Commission, the stock exchange on which the voting shares of the target company are listed and the target company at its registered office simultaneously, with the issue of such public announcement of withdrawal.

- (b) Restrictions on the target company (i.e. PEL) after the public announcement of intentions is made After the public announcement of intention is made by MEPL, the Board of Directors of PEL shall not till MEPL withdraws the public announcement of intention or the commencement of the offer period, -**

- (i) sell, transfer, or otherwise dispose of or enter into an agreement for sale, transfer, or for disposal of the undertaking or a sizeable part thereof, not being sale or disposal of assets in the ordinary course of business of PEL or its subsidiaries;
- (ii) Encumber any asset of the company or its subsidiary unless otherwise in the ordinary course of business;
- (iii) Issue any right or bonus voting shares;
- (iv) Enter into any material contract; and
- (v) Appoint an additional director or fill in any casual vacancy on its board of directors occurring during the period.

**(120) Question Background: Summer 2008, Q # 8**

Mr. Overtaker has issued a public offer for the acquisition of M/s Undertaker Limited, a company listed on the Karachi and Lahore Stock Exchanges, at a price of Rs. 55 per share. The offer has not fetched results and Mr. Overtaker is worried that the offer will lapse without much success.

**Narrate the conditions he will have to comply with if he wishes to revise the offer upwards. (05 Marks)**

**Suggested Answer:-**

Mr. Overtaker can make an upward revision in his offer price at any time up to seven working days prior to the date on which the offer is to lapse.

However, when making such upward revision, the following conditions shall apply:

- (a) A public announcement shall be made in all the newspapers in which the earlier public announcement was made.
- (b) SECP, Karachi Stock Exchange, Lahore Stock Exchange and M/s Undertaker Limited (at its registered office) shall be informed of such upward revision.
- (c) Furnish any additional security as may be required, in order to meet his obligations.

## MISCELLANEOUS

**(121) Question Background: Winter 2011, Q # 12 (b)**

**“All investment made by a company on its own behalf shall be made and held by it in its own name.” Explain the exceptions to this general rule, under the Companies Ordinance, 1984. (04 marks)**

**Suggested Answer:-**

The following are the exceptions to the general rule:

- (i) Where the company has a right to appoint or get elected any person as a director of any other company and a nominee of the company in the exercise of such right has been so appointed or elected, the shares in such other company of an amount not exceeding the nominal value of the qualification shares which are required to be held by a director thereof, may be registered or held by such company jointly in its own name and in the name of such person or nominee, or in the name of such person or nominee alone.
- (ii) A holding company may hold any shares in its subsidiary company in the name of its nominee or nominees if and in so far as it is necessary so to do for ensuring that the number of members of the subsidiary company is not reduced below seven in case it is a public company, or below two in case it is a private company.
- (iii) An investment made by an investment company, that is to say, a company whose principal business is the purchase and sale of securities.