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SCANNER™ Appendix

CS Professional Programme Module-I December - 2009

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PAPER'S

Paper - 1 : Company Secretarial Practice

Chapter - 1 : E-Governance of Company Law (MCA-21)

2009 - Dec [7] (a) Enumerate the search facilities in MCA-21. (6 marks)

Chapter - 2 : Company formation and Conversion

2009 - Dec [5] (a) What is a 'foreign company' and 'foreign controlled company'? State the legal requirements a foreign company should comply with relating to delivery of documents to the Registrar of Companies, if it wishes to establish a place of business in India under the Companies Act, 1956. (8 marks)

2009 - Dec [8] Write notes on the following :

- (i) One person company (4 marks)

Chapter - 3 : Alterations in the Memorandum and Articles of Association

2009 - Dec [3] (b) You are the Company Secretary of Alltime Favourites Ltd., a listed company, and the Managing Director of your company wants to know the procedure for shifting of registered office from Mumbai to Pune. Prepare a note for him. (10 marks)

Chapter - 4 : Issue of Securities

2009 - Dec [8] Write notes on the following :

- (iii) Share warrants (4 marks)

Chapter - 5 : Allotment of Securities

2009 - Dec [5] (b) Amar, Akbar and Anthony failed to pay the first call money of Rs. 2.5 per equity share of Rs. 10 each on 300, 500 and 1,000 equity shares held by them respectively in Good Prospects Ltd. The Board of directors wants to know what can be done in this situation. Guide the Board of directors by way of a note stating the steps involved and procedure to be followed by the

company if it wants to forfeit the shares held by them. Also explain to the Board of directors whether the forfeiture will amount to reduction of share capital. (8 marks)

Chapter - 6 : Issue and redemption of Debentures

2009 - Dec [4] (a) Swan Ltd. was sanctioned a term loan of Rs.15 crore by Fantastic Bank Ltd. with a stipulation of conversion of loan into equity. The company could not repay the loan as stipulated. As per one of the conditions of sanction, the bank now wants to exercise the right of conversion of Rs.5 crore loan into equity. State the procedure for the same. (8 marks)

Chapter - 7 : Membership and Transfer/Transmission of Shares

2009 - Dec [6] (a) Arnold is the elder son of John. John was holding 5,000 equity shares of Dreams Ltd. and died. As the Company Secretary of the company, how will you guide Arnold to claim the shares of John? He has one brother, 2 sisters and mother. John had not made any nomination. (4 marks)

Chapter - 8 : Directors and Managers

2009 - Dec [1] {C} Draft specimen resolutions stating the authority who can pass it and also the type of resolution. Give reasons for passing the requisite resolution referring to the relevant section(s) of the Companies Act, 1956 :

- (ii) Buoyant Ltd., a loss incurring company, wants to appoint Jolly as Managing Director w.e.f. 15th March, 2009 on a total remuneration of Rs.10 lakh per month (all inclusive). Its paid-up capital is Rs.5 crore, reserves Rs.3 crore and term loans Rs.10 crore. The company has accounting year ending on 31st March every year.
- (iv) Global Fashion Ltd. wants to appoint Amitabh as a director in place of Dharmendra who has resigned due to ill health. (5 marks each)

2009 - Dec [4] (b) Bipin is the Managing Director of Adarsh Ltd. and also of Bolder Ltd. Cleaner Ltd. decides to appoint Bipin as the Managing Director of the company. State the legal requirements under the Companies Act, 1956 to give effect to the proposed appointment and also draft a resolution for the appointment of Bipin as the Managing Director of Cleaner Ltd. (8 marks)

2009 - Dec [8] Write notes on the following :

- (ii) Independent director
- (iv) Nominee director (4 marks each)

Chapter - 10 : Auditors

2009 - Dec [1] {C} Draft specimen resolutions stating the authority who can pass it and also the type of resolution. Give reasons for passing the requisite resolution referring to the relevant section(s) of the Companies Act, 1956 :

- (v) Neo Biotech (P) Ltd. wants to appoint the first auditors in the regular course within a fortnight of the registration of the company. (5 marks)

Chapter - 11 : Decision making forums and Meetings

2009 - Dec [6](b) Article No. 72 of the articles of association of the company requires 25 persons to be present personally and/or by proxy to constitute the quorum at a general meeting. The company now wants to have the lowest minimum quorum as provided in the Companies Act, 1956. As the Company Secretary of the company, how could this be achieved by you for your company? (4 marks)

(c) A complaint has been made to the Registrar of Companies by 5 members asking him to direct the Timely Holdings Ltd. of which they are members to re-convene annual general meeting since they had not received the notice of the company for the annual general meeting held on 30th September, 2008. The Registrar of Companies issues notice as to show cause why such directions should not be issued. What would be your response as the Company Secretary of the aforesaid company? (4 marks)

(d) The Board of directors of Free Flow Ltd. registered in Chennai, proposes to hold the next meeting of Board of directors in the month of January, 2010. Advise with reference to the provisions of the Companies Act, 1956 and relevant Secretarial Standards in respect of the following matters :

- (i) Can the meeting of Board of directors be held in Kolkata, when all the directors of the company reside at Chennai ? (1 mark)
- (ii) Whether the meeting of Board of directors can be called on a public holiday and that too after business hours as the majority of the directors of the company have gone to Kolkata on vacation?(1 mark)
- (iii) Is it necessary that the notice of the meeting of Board of directors should specify the nature of business to be transacted? (2 marks)

Chapter - 12 : Preparation & Presentation of Reports

2009 - Dec [7] (b) Enumerate the contents of Management Discussion and Analysis Report (MDAR) which forms part of the Board of directors' report. (6 marks)

Chapter - 15 : Inter-Corporate Loans, Investments, Guarantees and Security.

2009 - Dec [1] {C} Draft specimen resolutions stating the authority who can pass it and also the type of resolution. Give reasons for passing the requisite resolution referring to the relevant section(s) of the Companies Act, 1956 :

- (i) Health Care Ltd. (HCL) wants to make investment of Rs. 55 crore and loans of Rs.45 crore in other companies. Balance sheet as on 31st March, 2009 shows HCL's paid-up capital of Rs.35 crore and reserves of Rs. 75 crore.

- (iii) Grow India Ltd. is sanctioned a credit facility of Rs.25 crore by the Union Bank of India, Kapurbaydi Branch, Thane, against its inventory and receivables. The company wants to enjoy the sanctioned credit facility. (5 marks each)

Chapter - 18 : Best Practices

2009 - Dec [8] Write notes on the following :

- (v) Secretarial Standards. (4 marks)

Chapter - 20 : Global Developments in Company Law

2009 - Dec [7] (c) Discuss directors' remuneration report in the light of Companies Act, 2006 of the United Kingdom. (4 marks)

Chapter - 21 : Objective Questions

2009 - Dec [2] (a) Re-write the following sentences after filling in the blank spaces with appropriate word(s)/figure(s) :

- (i) Alteration to articles of association requires a _____ resolution under section _____ of the Companies Act, 1956.
- (ii) Allotment of equity shares requires e-form _____ whereas increase in authorised capital needs e-form _____.
- (iii) Once a dividend is declared, it must be paid within _____, but unpaid dividend account balance needs to be transferred within 7 years to _____.
- (iv) A Company Secretary in whole-time employment is to be appointed by every company whose paid-up capital is Rs. _____ and above under section _____ of the Companies Act, 1956. (1 mark each)

(b) State, with reasons in brief, whether the following statements are correct or incorrect :

- (i) A public limited company can have equity share capital alone, but it cannot have preference share capital alone.
- (ii) A company is not bound to close its register of members even for a single day
- (iii) Interim dividend can be declared out of reserves by a company which has even incurred a loss.
- (iv) The annual general meeting of a company for the current year as also for the previous year can be held on the same day.
- (v) A group of 44 members of a company limited by shares holding in aggregate 2% of the issued share capital of the company cannot under any circumstances apply to the Company Law Board alleging mismanagement of the company. The company has 550 members.
- (vi) The expression 'free reserves' for the purpose of section 372A does not include the balance to the credit of 'securities premium account'.

(2 marks each)

2009 - Dec [3] (a) Choose the most appropriate answer from the given options in respect of the following :

- (i) As per the Companies Act, 1956, the maximum number of directors a private limited company which is subsidiary of a public company, can have without approval of the Central Government is —
 - (a) 10
 - (b) 11
 - (c) 12
 - (d) 13
- (ii) The aggregate of the contributions to any political party or for any political purpose to any person by a company in any financial year shall not exceed —
 - (a) $7\frac{1}{2}\%$ of its average net profits determined in accordance with the provisions of sections 349 and 350 during the five immediately preceding financial years
 - (b) 5% of its average net profits determined in accordance with the provisions of sections 349 and 350 during the three immediately preceding financial years
 - (c) $7\frac{1}{2}\%$ of its average net profits determined in accordance with the provisions of section 349 during the five immediately preceding financial years.
 - (d) 10% of its average net profits determined in accordance with the provisions of section 349 read with section 350. The average profit is to be calculated by reference to preceding three financial years.
- (iii) The number of scrutineers to be appointed by the Chairman of a general meeting is —
 - (a) 3
 - (b) 2
 - (c) 1
 - (d) 4
- (iv) As per the rules framed under section 205A(3) relating to use of past reserves for payment of dividend, a company after drawal of the amount from the reserves for payment of dividend should retain in the reserves an amount not less than —
 - (a) 25% of the paid-up share capital of the company
 - (b) 20% of the paid-up share capital of the company
 - (c) 15% of the paid-up share capital of the company
 - (d) 10% of the paid-up share capital of the company.

- (v) As per clause 49 of the listing agreement, the audit committee comprising of five directors must have a minimum of —
 - (a) 2 independent directors
 - (b) 3 independent directors
 - (c) 4 independent directors
 - (d) 1 independent director.
- (vi) A special notice is required for —
 - (a) Removal of a member
 - (b) Removal of a Company Secretary
 - (c) Removal of a nominee director
 - (d) None of the above.

(1 mark each)

Paper - 2 : Drafting Appearances and Pleadings

Chapter - 2 : General Principles of Drafting-I
2009 - Dec [1] {C} Attempt the following :

- (b) Define 'deed'. What are the components of a deed in general ?
(5 marks)

2009 - Dec [4] (b) Distinguish between the following :

- (i) 'Document' and 'deed'.
(3 marks)

2009 - Dec [5] (b) Explain *habendum*. What does a *habendum* clause signify in a document?
(4 marks)

Chapter - 3 : Drafting of Agreements
2009 - Dec [4] (a) What are the requisites of an 'award' under the Arbitration and Conciliation Act, 1996?
(4 marks)

2009 - Dec [4] (b) Distinguish between the following :

- (iii) 'Counter guarantee' and 'fidelity guarantee'.
(3 marks)

2009 - Dec [5] (a) The government of a particular State and Sriram Holdings (P) Ltd. went to arbitration and the arbitrator passed an award on 12th October, 2003 against the appellant, copy of which was received by appellant on 23rd October, 2003. Review was sought on 2nd April, 2004, after 6 months from the date of award. Objections to the award were filed after 10 months from the date of the award. Will the appellant be entitled to file objections under the Arbitration and Conciliation Act, 1996?

Support your answer with case law.
(4 marks)

2009 - Dec [6] (b) Management issues an appointment letter to a probationer and the relevant para of his appointment letter reads as follows :

"Clause (I) — You are hereby appointed as a Salesman.... You will serve a probationary period of six months; this period of probation may be extended

by a further period of three months or more in suitable cases in the absolute discretion of the company. The company has the right to terminate your services during the period of probation or extended period of probation or before confirmation in writing without notice and without assigning any reason whatsoever.'

The probationer joined the services of the company on probation. The management terminated his services after 2 months of joining by a letter saying "we regret to terminate your services with immediate effect in terms of clause (I) of your appointment letter."

Do you think what management did is correct? What are the remedies available to the probationer? (5 marks)

2009 - Dec [7] (c) Briefly explain the contents of a service contract. Draft a specimen agreement of employment of manager of a business concern.

(8 marks)

Chapter - 4 : Drafting of Various Deeds-I

2009 - Dec [1] {C} Attempt the following :

- (a) Anand sells a property to Karan. After completion of the conveyance, Karan discovers that under a decree for partition, a portion of the property had been allotted to Chandan and Anand's omission to disclose the decree is fraudulent. Discuss the rights and course of action available to Karan. (5 marks)

2009 - Dec [2] (b) Explain mortgage by deposit of title deeds. (4 marks)

2009 - Dec [3] (a) Arvind mortgages his houses at Delhi and Gurgaon to Suresh. Arvind then mortgages the Delhi house to Navin. On default, Navin brings Delhi house to sale in enforcement of his mortgage and he himself purchases Delhi house. Suresh then obtains an order for sale on his mortgage. What are the rights and remedies available to Navin? (5 marks)

2009 - Dec [4] (b) Distinguish between the following :

- (iv) 'English mortgage' and 'simple mortgage'. (3 marks)

Chapter - 5 : Drafting of Various Deeds-II

2009 - Dec [2] (c) Draft a deed of agreement of admission of a new partner into a partnership firm. (8 marks)

2009 - Dec [3] (c) Draft a power of attorney to execute a deed of sale.

(6 marks)

2009 - Dec [6] (a) What are the ingredients that are necessary to prepare —

- (i) Power of attorney; and
(ii) Instrument of trust? (3 marks each)

2009 - Dec [8] (b) What is 'deed of assignment'? Draft a specimen deed of assignment of copyright of a novel. (8 marks)

Chapter - 6 : Drafting of Agreements under Companies Act

2009 - Dec [2] (a) Discuss the requirements of section 13 of the Companies Act, 1956 with regard to 'objects clause' of the memorandum of association of a company. What are the precautions which must be taken in drafting the objects clause? (4 marks)

2009 - Dec [3] (b) What special points must be taken into account while drafting notices in case of a company? (5 marks)

Chapter - 7 : Appearances & Pleadings-I

2009 - Dec [7] (a) Mention the orders against which no appeal lies to the Securities Appellate Tribunal (SAT). (4 marks)

Chapter - 8 : Appearances & Pleadings-II

2009 - Dec [4] (b) Distinguish between the following :

- (ii) 'Affidavit' and 'petition'. (3 marks)

2009 - Dec [5] (c) Define 'affidavit'. What rules and guiding principles should be followed while drawing up an affidavit ? (8 marks)

Chapter - 9 : Appearances & Pleadings-III

2009 - Dec [7] (b) "In presenting a case before the tribunal/quasi-judicial body, a Company Secretary owes duty to the court, to the client and to the opponent." Describe these duties of the Company Secretary. (4 marks)

2009 - Dec [8] (a) Write notes on the following :

- (i) Communication etiquettes
- (ii) Advocacy tips to professionals. (4 marks each)

Chapter - 10 : Compounding of Offence & Consent Orders

2009 - Dec [6] (c) What is 'compounding of offences'? How does compounding of offences take place under the Securities and Exchange Board of India Act, 1992 ? (5 marks)

Chapter - 11 : Objective Questions

2009 - Dec [1] {C} Attempt the following :

(c) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :

- (i) _____, in legal sense, means an act of preparing legal documents.
- (ii) _____ are those deeds in which there are two or more parties.
- (iii) _____ is a special type of agency, which combines agency with guarantee.
- (iv) _____ is a method of acquiring the right to use equipment or real property for consideration.

- (v) Pleadings filed by a defendant/respondent in answer to the claim set-out by the plaintiff/petitioner in the form of affidavit and/or supported by an affidavit are referred to as _____. (1 mark each)
- (d) State, with reasons in brief, whether the following statements are true or false :
- (i) 'Drafting' and 'conveyancing' provide the same meaning although these terms are not inter-changeable.
 - (ii) Consideration is very important in a document and must be expressed. But, non-mention of consideration does not invalidate the document.
 - (iii) Agreements not relating to immovable property and agreements not creating an interest in immovable property are not compulsorily registrable.
 - (iv) "I promise to pay Balram Rs.2,000 and all other sums which shall be due to him" is a promissory note.
 - (v) A private trust will fail, if the object is uncertain or incapable of application. (1 mark each)
- (e) Choose the most appropriate answer from the given options in respect of the following :
- (i) If a power of attorney is executed in favour of more than one person and is silent on the mode of execution by attorneys, the attorneys will be entitled to act only —
 - (a) Jointly
 - (b) Severally
 - (c) Both (a) and (b)
 - (d) None of the above.
 - (ii) The notices issued by a company under the Companies Act, 1956 may be —
 - (a) Contingent
 - (b) Conditional
 - (c) Both (a) and (b)
 - (d) None of the above.
 - (iii) The Code of Civil Procedure, 1908 prescribes that dates, sums and numbers expressed in pleading shall be in —
 - (a) Figures
 - (b) Words
 - (c) Both (a) and (b)
 - (d) None of the above.

- (iv) The writ that is available to any person, whenever any body of persons having legal authority to determine questions affecting rights of subjects and having the duty to act judicially acts in excess of its legal jurisdiction, is —
- (a) *Mandamus*
 - (b) *Certiorari*
 - (c) Both (a) and (b)
 - (d) None of the above.
- (v) The power of registered proprietor of a trade mark to assign his rights in the trade mark is dealt under section 37 of —
- (a) The Copyright Act, 1957
 - (b) The Trade Marks Act, 1999
 - (c) The Trade and Merchandise Marks Act, 1958
 - (d) None of the above.

(1 mark each)

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