

**Solved Scanner
Paper-4
Company Law**

2010 - June [1] (a)

- (i) Corporation defines as when an association of person is incorporated according to the law of land is associated with legal personality it becomes a legal entity separate from the persons those constituting its. A company formed under an Act of parliament or its state legislature is called as statutory corporation.

The statutory character of the corporation identifies a corporation as STATE within the meaning of Article 19 of the constitution of India.

- (i) the sources of share capital.
- (ii) Whether the corporation has monopoly status.
- (iii) Whether that belonged to a department of government formerly was transferred to the corporation.

2010 - June [1] (a)

- (ii) Reduction of capital means reduction of issued, subscribed and paid-up capital of a company. Diminution of capital under section 94 does not constitute a reduction of capital within the meaning of the companies Act.

In the following cases, the diminution of share capital next to be treated as reduction of share capital.

- (i) When the company cancel shares which have not been taken or agreed to be taken by any person.
- (ii) When redeemable preference shares are redeemed;
- (iii) When there is a surrender of shares; and
- (iv) When any share is forfeited for non-payment of calls.

2010 - June [1] (a)

- (iii) List of the business in which the resolutions shall be passed through postal Ballot area.
- (a) alteration in the object clause if memorandum
- (b) alteration of Articles of Association in relation to insertion of provisions defining private company.
- (c) buy-back of own shares by the company.
- (d) change in place of registered office outside local limits of any city, town or village.
- (e) election of a director under section 252(91)

2010 - June [1] (a)

- (iv) Oppression must be a continuous process.

The Supreme Court has observed regarding the meaning of term 'oppression' as follows: It is not enough to show that there is just and equitable cause for winding up though that must be shown as preliminary to the application of Section 397. It must further be

shown that the conduct of the majority shareholders was oppressive to the minority as members and this requires that events have to be considered not in isolation but as part of a consecutive story. There must be continuous acts on the part of the majority shareholders continuing up to the date of petition.

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(v) Please refer 2008 -09 (13 (c)(i) on page No S-4

2010 - June [2] (a)

(i) (a); (ii) (a); (iii) (b); (iv) (b); (v) (c)

2010 - June [2] (b)

- (i) Depository participants
- (ii) Shareholding
- (iii) Unpaid Call
- (iv) Two
- (v) Arrangement

2010 - June [2] (c)

Please refer 2009 - June [5] (b) on page no S-333

Ans 3(i) Please refer 2007 - June [5] (i) on page no S-59

Ans 3(ii) Sweat equity shares means equity shares issued by a company to its employees or

director at a discount or for consideration other than cash for providing know-how or making available right in the nature of intellectual property rights or value additions by whatever name called.

A company can issue sweat equity shares, of a class of shares already issued if the following conditions are satisfied.

(a) the issue has been authorised by a special resolution passed by the company in the general meeting.

(b) the resolution clearly specifies number of shares, current market price, consideration

(c) on the date of issue, at least one year should have elapsed from the date on which the company was entitled to commence business.

The issue of shares on a preferential basis can be made at a price not less than the higher of the following;

(i) the average of the weekly high and low of the closing prices of related shares quoted on the stock exchange during the six months preceding the relevant date;

Or

(ii) the average of the weekly high and low of the closing price of the

related shares quoted

on a stock exchange during the two weeks preceding the relevant date.

- 3. (iii) Please refer 2002-Dec (5)(c) on page no S-68
- 3. (iv) Please refer 2007-June(5) (iii) on page no S-203
- 3. (v) Shelf prospectus (Section 60 A)

Section 60 A which has been inserted by the companies Amendment Act, 2000. Shelf

prospectus means a prospectus issued by any financial institutions or bank or one or more issues of the securities or class of securities specified in what document. The shelf prospectus will be valid for a period of 1 year, from the date of first issue of securities. A company filing a shelf prospectus with the Registrar shall not be required to file prospectus afresh at every stage of after of securities by it will in a period of validity of such self prospectus.

Red hearing prospectus: Red hearing prospectus is a prospectus, which does not have complete particulars:

- (a) the price of securities offered and
- (b) the quantum of securities offered.

Ans 4(a) Section 2 (36) define a prospectus as any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debenture of a body corporate.

The following ingredients may be said to constitute a prospectus.

- (a) There must be an invitation to the public;
- (b) the invitation must be to subscribe or purchase
- (c) the invitation must relate to shares or debentures.

Ans 4(b)the following documents must be attached to the copy of a draft red-hearing prospectus filed with the Registrar.

- (i) the consent of the expert to the issue. If his report is to be included in the prospectus.
- (ii) A copy of every contract, relating to the appointment or remuneration of managing director or manager.
- (iii) A copy of every material contracts, not being a contract entered into in the ordinary course of business or a contract entered into more than 2 years before the date of the prospectus.
- (iv) A written statement relating to adjustments, if any, made by the auditors or accountants in their report relating to profit or losses or assets and liabilities.

Ans 4(c)Refusal of Registrar for registration of prospectus:- Section 60 (3) provides certain

conditions that Registrar shall not register a prospectus.

(i) Section 55 provides that if prospectus is not being dated then Registrar is not bound to

register the prospectus.

(ii) It does not comply with the requirement of section 56 as to the matters and reports to be

set out in it.

(iii) It should contains statements or reports of experts engaged or interested in the formation

or promotion or management of the company.

(iv) It should also include a statement to be made by an expert, and expert should not

withdrawn his consent to the issue of prospectus.

Ans 5(a)(i) This statement is correct.

A company is an artificial person. Being a body, corporate a company can sue and

be sued in its own name. To sue means, a company has right to start legal proceeding. against or to bring a suit in a court of law. All legal proceeding against the company are to be instituted in its own name. A company has separate legal entity so he can sue one of its our members for liable.

Ans5(a)(ii) This statement is correct.

It must be cleared that inspite of own the control of the government. A government company is neither Government department nor a Government established. It is just an agency of the Government similarly the employees of Government companies or not the employee of Central or State Government.

Ans 5 (a)(iii)This statement is incorrect.

According to section 14 of the companies Act, 1956 memorandum of association

should be in any of the forms specified in Table 13, C, 8 and E of schedule I of the companies Act, 1956 as may be applicable in relation to the type of company proposed to be incorporated or in a form as near thereto as the circumstances admit.

Ans 5(a)(iv) This statement is incorrect.

A director is an agent of the company not of others members of Board. Anything

done by the Board can not make director liable even tough he attends the subsequent meeting at which the minute

recording the wrongful action of earlier meeting are concern.

Ans.5(a)(v) This statement is only individual can make a nomination who are applying holding shares or debenture on their own behalf singly or jointly in other words non-individual including specify body corporate, firm, karta of HUF, Holder of power of a Horney cannot nominate.

Ans 5(b) Procedure for conversion of public company into private company.

(i) Passing a special resolution authorizing the conversion as altering the articles so as

to contain the matters prescribed in Section 3(i)(iii).

(ii) An alteration made in the Articles which has the effect of converting a public

company into a Private Company shall have effect only when such alteration has been approved by the Central Government.

(iii) Filing a printed copy of the articles so altered within one month of the receipt of the

approval of Central Govt (Sec 31 (2A)).

So, Tuff Ltd., can be converted into private company even after 18 years of existence as a public company provides if complies with the procedure as mentioned above.

Ans 6(a)

According to section 292 of the Companies Act, 1956 has given wide powers to the

Board of Directors of a company to invest the fund of the company. Every resolution delegating the power referred to in clause (d) of sub-section (1) shall specify the total amount up to which the funds may be invested, and the nature of the investment which may be made, by the delegate.

The Board also has the power to make loan, borrow money etc., Board power under

section 292 to make loan, give guarantee or provide security has been restricted under Section 372 A of the Act.

The Companies (Amendment) Act, 1999 has introduces a new section, viz. section 372

Act.

No company shall directly or indirectly:

(i) make any loan to any body corporate.

(ii) give any guarantee or provide security, in connection with a loan made by any other

person to or to any other person by, any body corporate; and

(iii) require (by way of subscription purchase or otherwise) the securities of any other body

corporate exceeding (a) 60 percent of its paid up share capital and free reserves, or (b) 100% of its free reserve.

Approval by way of special Resolution: Where the aggregate of the investment loans,

etc., So far made in all other bodies corporate, along with the investment, loan, guarantee or security proposed to be made or given by the Board of Directors, exceed the aforesaid limits no investment or loan shall be made or guarantee given or security provided unless previously authorised by a special resolution passed in a general meeting.

Ans 6(b) Any act done or any contract made by the company which goes beyond the memorandum or which is not expressly warranted by it is ultra vires the company. A contract which is ultra vires the company will have no legal effect. The company can neither sue nor be sued on such contracts. Also, as stated earlier the company cannot make it valid even if every member assents to it.

In the given case, the Speed Jet Ltd. invested an amount of Rs. 50 crores in producing a commercial film not covered under the object clause. The act of the company is ultra vires and persons responsible for entering into the venture are personally responsible for the loss of the company.

Hence the suit filed in the court is tenable.

Ans 6(c) Please refer 2007-Dec (3) (b) on page no 43

Ans 7(a) Transmission of shares:- Where as transmission of shares take place by operation of

law, e.g. due to death or insolvency or lunacy of the power.

There is no prescribed instrument of transfer. When as no stamp duty is payable in case of transmission of shares.

Ans 7(b) A minor is not competent to enter into any contract, because any agreement with a

minor is absolutely null and void. Also, in India, a minor is not competent to enter into any contract as per section 11 of the Indian Contract Act, 1872.

In the given case, the shares are fully paid up. If the minor enters into a contract on

behalf of a lawful guardian, Fortune Ltd., can not refuse to enter the name of the minor son of deceased member.

Ans. 7(c) Please refer 1999 Dec (43 on Page No S-77

Ans.8(a) According to RBI Act, 1934, it is mandatory for a bank to get itself registered with RBI.

for registration with R.B.I. a Company incorporated under companies Act, 1956 and desirous of commencing its business banking.

(i) should have a initial minimum paid up capital of Rs. 200 crore which is to be raised to

Rs. 300 crore within three years of commencement of business ;and

(ii) the promoters contribution should be a minimum of 40% of paid up capital of the bank of any point of time.

Ans 8(b) A company may change its name by a special resolution and with the approval of the Central Government signified in writing. But no such approval is required in cases of addition or deletion of the word "Private" convergent on the conversion of a public company into Private company and vice-versa (sec21).

All listed companies which decide to change their names shall be required to comply with the following conditions.

- (a) At least one year must have elapsed from the last name change.
- (b) At least 50 percent of its total revenue in the preceding one year.
- (c) the change in name has to be sanctioned in the light of guideline prescribed by the Central Government in this behalf the Registrar will enter the new name in the register and issue a fresh certificate of incorporation.

Ans.8(c) Transmission of shares takes place when:-

- (i) a registered shareholder dies;
- (ii) is adjudicated insolvent or
- (iii) If a shareholder being a company goes into liquidation.

On the death of a shareholder his shares vest in his legal representative. the legal representative can sell the shares without being registered or subject to the provisions of Articles, he is entitled to be put on the Register of members, if he so desires. The company should, for this purpose accept the evidence of succession that is probate letter of administration or succession certificates as the case may be.

Accordingly, if a widow applies for transmission of shares pertains to name of her deceased husband without producing succession certificate and if articles of association of the company so authorize, the directors of the company may dispense with the production of succession certificate, probate or letter of administration upon such terms as to indemnity as the directors may consider necessary. By obtaining indemnity bond from widow of deceased, a director may transmit the share therefore, Grace Ltd. can transfer the share of deceased member to rosy.

Ans.8(d) Under section 4(4), A company is known as the holding company of another company if it has control over that another company. But it should be remembered that both holding and subsidiary companies continue to enjoy separate legal entities.

Normally, a subsidiary company cannot become a member of its holding company.

Exception : Where a subsidiary company had become the member of the holding company before it became the subsidiary company, it can continue to be a member in the holding company. But the subsidiary company shall not have any voting rights in respect of shares held in the holding company.