



**THE INSTITUTE OF CORPORATE SECRETARIES OF PAKISTAN
JULY 2013 EXAMINATIONS
COMPANY LAW AND ALLIED RULES
MODULE C - GROUP V**

Time Allowed - 3 Hours

Max. Marks - 100

Instructions: Attempt all questions.

Marks

Q.1 Multiple choice question:

- (a) The time limit for payment of dividend for a listed public limited company is: **10**
- (i) 30 days
 - (ii) 45 days**
 - (iii) 60 days
 - (iv) 90 days
- (b) As per Companies Ordinance 1984 a listed public limited company is bound to prepare its financial statements on:
- (i) yearly basis**
 - (ii) half-yearly basis
 - (iii) quarterly basis
 - (iv) All of the above
- (c) Where the alteration of the articles of a company has the effect of converting a _____, the company shall, not later than sixty days from the date on which the special resolution seeking such alteration was passed, make an application in Form 2 to the Commission for its approval under section 44.
- (i) Public company into a private company**
 - (ii) Private company into a public company
 - (iii) Private company into a sole proprietorship
 - (iv) Sole proprietor into a partnership
- (d) If a company is incorporated before 1984, then it is:
- (i) Association
 - (ii) Corporation
 - (iii) Existing company**
 - (iv) Holding company
- (e) Proof of the existence of the company is:
- (i) Articles and memorandum of association
 - (ii) Certificate of incorporation**
 - (iii) Stamp of registrar
 - (iv) All of the above
- (f) A person who has any share or other security which gives him a voting power/right becomes:
- (i) Director
 - (ii) Chief executive
 - (iii) Member**
 - (iv) Officer

- (g) Companies ordinance does not apply to:
 - (i) Trading corporation controlled or owned by province
 - (ii) Co-operative society
 - (iii) A university
 - (iv) All of the above**

- (h) A body corporate or corporation is a company:
 - (i) Incorporated outside the Pakistan**
 - (ii) Inside the Pakistan
 - (iii) Listed on stock exchange
 - (iv) None of the above

- (i) A public company shall not commence any business unless:
 - (i) It has received minimum subscription of shares
 - (ii) Directors of the company has paid full amount of shares taken
 - (iii) It has repaid all money to applicants in case of failure
 - (iv) All of the above**

- (j) If a company shall not issue prospectus inviting the public to subscribe for its shares, there has been filed with the registrar a statement:
 - (i) In substitute of prospectus
 - (ii) For not disclosing prospectus
 - (iii) In lieu of prospectus**
 - (iv) Both i & iii

- Q.2 (a) Define the following as per Companies Ordinance 1984: **12**
- (i) Company limited by shares 3
 "Company limited by shares" means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them;

 - (ii) Modarba Companies 3
 "Modaraba" means a business in which a person participates with his money and another with his efforts or skill or both his efforts and skill shall include Unit Trust and Mutual Funds by whatever name called; and "modaraba company" means a company engaged in the business of floating and managing modaraba;

 - (iii) Financial Institutions 3
 "Financial institution" includes–
 - a) a company or an institution whether established under any special enactment and operating within or outside Pakistan which transacts the business of banking or any associated or ancillary business through its branches;
 - b) a modaraba, leasing company, investment bank, venture capital company, financing company, housing finance company, a non-banking finance company; and
 - c) such other institution or company authorised by law to undertake any similar business, as the Federal Government may, by notification in the official Gazette, specify for the purpose;]

 - (iv) Redeemable capital 3
 "Redeemable capital" includes finance obtained on the basis of participation terms certificate (PTC), musharika certificate, terms finance certificate (TFC), or any other security or obligation not based on interest, other than an ordinary share of a company, representing an instrument or a certificate of specified denomination, called the face value or nominal value, evidencing

investment of the holder in the capital of the company on terms and conditions of the agreement for the issue of such instrument or certificate or such other certificate or instrument as the Federal Government may, by notification in the official Gazette, specify for the purpose.

(b) Differentiate the following:

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(i) Shareholder and member

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SHAREHOLDER

However a shareholder means a company or a person who is carrying the shares of that particular company. Various times it happens that the person carrying the shares of a company is not getting registered with the membership register of that company. In this particular case he is shareholder of a company but not the member of a company. In Case the share warrants are issued for the shares the holder will become share holders but not the member as his name is removed from the register of a company.

MEMBER

A person is called the member of a company if his name is included in the register of a company. A person remains the member of a company up to the time his name is not removed from the register of a company. A person is also become the member of a company by subscribing the memorandum of Association of the company. In this particular case if he does not obtains the shares of the company, he does not become the shareholder of the company but remains the member of the company.

(ii) Interim and final dividend

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INTERIM DIVIDENDS:

Interim Dividends are declared and distributed before the company's annual earnings have been known. These interim dividends are paid out of undistributed profits (reserves) brought from previous periods.

A company may choose to pay interim dividend quarterly or half yearly as long as it has adequate undistributed profits brought forward from previous periods.

These dividends usually accompanies the company's interim financial statements

FINAL DIVIDENDS:

Final dividends are declared at the end of the financial period whereby the directors are aware of the company's profitability and financial health.

Normally, final dividends are declared before the books are closed and will be paid the following year. Thus final dividends will appears as dividend payable or proposed dividends under current liabilities in the Balance Sheet of that period.

Normally, compared to interim dividends, the final dividends % constitutes the largest payout.

Q.3 (a) Under section 188 of the Companies Ordinance 1984, State the grounds on which a director shall cease to hold office.

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Vacation of office by the directors. –

(1) A director shall ipso facto cease to hold office if—

- a) he becomes ineligible to be appointed a director on any one or more of the grounds enumerated in clauses (a) to (h) of section 187;
- b) he absents himself from three consecutive meetings of the directors or from all the meetings of the directors for a continuous period of three months, whichever is the longer, without leave of absence from the directors;
- c) he or any firm of which he is a partner or any private company of which he is a director—
 - i. without the sanction of the company in general meeting accepts or holds any office of profit under the company other than that of chief executive or a legal or technical adviser or a bank;
 - or

ii. accepts a loan or guarantee from the company in contravention of section 195.
(2) Nothing contained in sub-section (1) shall be deemed to preclude a company from providing by its articles that the office of director shall be vacated on any grounds additional to those specified in that sub-section.

(b) XYZ Limited has eleven (11) directors on the board. The term of present board of directors will expire on July 31, 2013. As a company secretary, list down the steps that you will take for filing of casual vacancy in board of directors (BOD). **06**

FILLING OF CASUAL VACANCIES

1. Advice of Vacancy:

Whenever any vacancy occur in the board of directors due to death, resignation or disqualification or any other reason the secretary informs the board of directors forthwith and at the advice of chief executive convene the meeting of board of directors.

2. Appointment of Directors:

The directors consider the appointment of a member eligible to become director and make such appointment through a resolution.

3. Consent of Director:

In case of public company consent of director on form 28 are also obtained and filed with the registrar enclosed with challan deposited in relevant branch of MCB bank of Rs. 500 being filing fee in case of e-filing and Rs. 1,000 under manual submission.

4. Filing of Return:

Form 29 in duplicate containing the particulars of director is filed within 14 days along with challan deposited in relevant branch of MCB bank of Rs. 500 being filing fee in case of e-filing and Rs. 1,000 under manual submission.

5. Register of Directors:

Particulars of the directors are recorded in the register of directors and other officers as maintained by the company.

(c) What are the contents of the Director's report? **07**

Contents of Director's report –

1. The directors shall make out and attach to every balance-sheet a report with respect to the state of the company's affairs, the amount, if any, which they recommend should be paid by way of dividend and the amount, if any, which they propose to carry to the Reserve Fund, General Reserve or Reserve Account shown specifically in the balance-sheet or to a Reserve Fund, General Reserve or Reserve Account to be shown specifically in a subsequent balance-sheet.
2. In the case of a public company or a private company which is a subsidiary of a public company, the directors report shall, in addition to the matters specified in sub-section (1),-
 - a) disclose any material changes and commitments affecting the financial position of the company which have occurred between the end of the financial year of the company to which the balance-sheet relates and the date of the report;
 - b) so far as is material for the appreciation of the state of the company's affairs by its members, deal with any changes that have occurred during the financial year concerning the nature of the business of the company or of its subsidiaries, or 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;

- c) contain the fullest information and explanation in regard to any reservation, observation, qualification or adverse remarks contained in the auditor's report;
- d) circulate with it information about the pattern of holding of the shares in the form prescribed;
- e) state the name and country of incorporation of its holding company, if any, where such holding company is established outside Pakistan [; and]
- f) state the earning per share;
- g) give reasons for incurring loss and a reasonable indication of future prospects of profit, if any; and
- h) contain information about defaults in payment of debts, if any, and reasons thereof.

Q.4 (a) Al-Shifa public limited company is changing its name and has completed the required process till passing of special resolution in the meeting of shareholders. You are required to: **06**

- (i) Briefly mention the steps involved to complete rest of the process. 3

Change of name of a company:

The following further steps are involved:

1. Copy of special resolution is filed with the registrar on Form 26 within 15 days of passing thereof along with original bank challan of filing fee.
2. Application is made to the registrar for seeking approval of Commission for the change of name. This application is made on simple paper accompanied with various documents (mentioned in requirement ii).
3. The registrar may approve the change of name.
4. After approval, registrar issues certificate for change of name of the company.
5. The change must be noted in the memorandum and articles of association, all documents, invoices, letterheads, bills, signboards, seals etc.

- (ii) List down the documents required to be submitted to the registrar for approval of the Commission for the change of name. 3

Submission of Documents:

The documents include:

1. Copy of special resolution on Form-26
2. Copy of Memorandum and Articles duly amended
3. Statement about reasons for change
4. Copy of availability of name
5. Copy of order of the commission
6. If change is made pursuant to alteration in object clause of memorandum of association,
7. Consent of creditors
8. NOC of the regulatory authorities in case of special companies,
9. Bank challan
10. Affidavit.

(b) Draft a notice of an extra ordinary general meeting of ABC limited containing the following resolutions: **08**

- (i) Appointment of a managing director of the company with effect from 01/01/2013 on a monthly salary of Rs.200,000.
- (ii) Issuance of further 200,000 shares of Rs.15 each which will increase the paid up capital of the company from Rs.12,000,000 to Rs.15,000,000.

ABC Limited
Registered Office _____

Dated: _____

Notice is hereby given that an Extraordinary General Meeting of XYZ limited will be held at the Registered Office of the company at _____ on _____ the _____ day of _____ 2013 at _____ p.m for passing the following resolution. 2 marks

Special Resolution (i): 3 marks

“Resolved that Mr. _____ a director of the company is hereby appointed the Managing Director of the company with effect from January 01, 2013 on a monthly salary of Rs. 200,000.”

Special Resolution (ii): 3 marks

“Further resolved that the capital of the Company be increased from Rs. 12 million to Rs. 15 million by issuing further 200,000 equity shares of Rs.15 each.”

(c) Write down the functions of a company secretary. (Atleast six, one mark for each) **06**

Functions of a Company Secretary:

The Secretary is an officer of the company and his or her duties can be wide ranging. While the Companies Act does not generally specify the role of the company secretary, they usually undertake the following duties:

1. Maintaining the company’s statutory registers or books which include:
 - a. A register of present and past directors and secretaries
 - b. A register of all shareholders, past and present and their shareholdings
 - c. A register of any charges on the company’s assets
 - d. Minutes of general meetings and board meetings
 - e. A register of the debenture holders (typically banks)
2. Filing annual returns at Companies House Other documents which must be filed include the directors’ report and auditors’ report (unless the company is exempt), and financial statements, including details of the company’s assets and liabilities.
3. Arranging meetings of the directors and the shareholders. This responsibility will involve the issue of proper notices of meetings, preparation of agenda, circulation of relevant papers and taking and producing minutes to record the business transacted at the meetings and the decisions taken.
4. Informing Companies House of any significant changes in the company’s structure or management, for example the appointment or resignation of directors.
5. Establishing and maintaining the company’s registered office as the address for any formal communications.
6. Ensuring that all the company’s business stationery carries its name, registered number, country of registration and registered address. These details must also appear on the company website, emails and order forms.
7. Ensuring the security of the company’s legal documents, including for example, the Certificate of Incorporation and Memorandum and Articles of Association.
8. Deciding on the company’s policy for the filing and retention of documents.

Q.5 (a) The Non-Banking Finance Companies (Establishment & Regulation) Rules, 2003 specifies the qualification and experience requirements for the positions of internal auditor in non-banking finance companies. Describe the following in this regard: **09**

(i) The qualification(s) applicable to internal auditors. 6

Qualification of internal auditor:

1. A Chartered Accountant
2. A cost and management accountant
3. A certified internal auditor
4. Certified information system auditor

5. A member of a recognized foreign accountancy organization or
6. An individual having master's degree in Commerce or Business Administration with Specialization in finance.

(ii) The extent of experience required. 1
 Minimum experience of 3 years is required.

(iii) The outsourcing of internal audit function. 2
 It can be outsourced to a chartered accountancy firm having satisfactory Quality Control Review (QCR) and not being the statutory auditors.

(b) The Companies (Issue of Capital) Rules, 1996 impose few conditions for a company to issue shares for consideration other than cash. Describe those conditions. 06

Issue of shares for consideration otherwise than in cash.----

A company may issue shares for consideration otherwise than in cash subject to the following conditions, namely;--

- a) The value of assets shall be determined by a consulting engineer registered with Pakistan Engineering Council and borne on the panel of at least two financial institutions as a valuer; Computer Section, Securities and Exchange Commission of Pakistan, Islamabad.
- b) the value of assets taken over shall be reduced by depreciation charged on consistent basis;
- c) the goodwill and other intangible assets shall be excluded from the consideration; and
- d) certificate from a practicing Chartered Accountant shall be obtained to the effect that the above mentioned conditions have been complied with.

(c) Explain the circumstances in which company may be wound up voluntarily under section 358 of the Companies Ordinance 1984. 05

Circumstances in which company may be wound up voluntarily. –

A company may be wound up voluntarily-

- a. when the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs, on the occurrence of which the articles provide that the company is to be dissolved and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily;
- b. if the company resolves by special resolution that the company be wound up voluntarily;

and, in the subsequent provisions of this Part, the expression "resolution for voluntary winding up" means a resolution passed under clause (a) or clause (b).

Q.6 (a) List down any four mortgages or charges required to be registered under section 121 of the Companies Ordinance, 1984. 04
 (1 mark for each)

Certain mortgages and charges to be void if not registered.—

(1) Every mortgage, charge or other interest created after the commencement of this Ordinance by a company and being either--

- a) a mortgage or charge for the purpose of securing any issue of debentures; or
- b) a mortgage or charge on uncalled share capital of the company; or
- c) a mortgage or charge on any immovable property wherever situate, or any interest therein; or
- d) a mortgage or charge on any book debts of the company; or
- e) a mortgage or charge, not being a pledge, on any movable property of the company; or
- f) a floating charge on the undertaking or property of the company, including stock-in-trade; or
- g) a mortgage or charge on a ship or any share in a ship; or
- h) a mortgage or charge on goodwill, on a patent or licence under patent on, a trade mark, or on a copyright or a licence under a copyright; or
- i) a mortgage or charge or other interest based on agreement for the issue of 1[any instrument in the nature of redeemable capital]; or

- j) a mortgage or charge or other interest based on a mushrika agreement; or
- k) a mortgage or charge or other interest based on hire-purchase or leasing agreement for acquisition of fixed assets;

(b) List down any three restrictions on commencement of business for a public company under section 146 of the Companies Ordinance, 1984. **06**
(2 marks for each)

Restrictions on commencement of business.-

- (1) A company shall not commence any business or exercise any borrowing powers unless--
- a. shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription;
 - b. every director of the company has paid to the company full amount on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash;
 - c. no money is or may become liable to be repaid to applicants for any shares or debentures which have been offered for public subscription by reason of any failure to apply for or to obtain permission for the shares or debentures to be dealt in on any stock exchange;
 - d. there has been filed with the registrar a duly verified declaration by the chief executive or one of the directors and the secretary in the prescribed form that the aforesaid conditions have been complied with and the registrar has issued a certificate referred to in subsection (2); and
 - e. in the case of a company which has not issued a prospectus inviting the public to subscribe for its shares, there has been filed with the registrar a statement in lieu of prospectus.