

EXAMINERS' COMMENTS

SUBJECT	SESSION
Company Law	Intermediate Examination -Spring 2008

Overall feedback

The overall performance in this paper was unsatisfactory. Lack of in-depth knowledge of the subject and inability to comprehend the precise requirements of the questions contributed to the overall poor performance. Inadequate preparations based on studies of selective topics also impaired the capacity to attempt the questions in a meaningful manner.

It was also observed that a number of the students were not aware of the fine distinctions as well as the legal connotations of terms such as Registrar, SECP, Directors, Members, Shareholders, Authorized Capital, Private Limited Company, Listed Company, Memorandum and Articles of Associations, etc and used them arbitrarily and often in an inappropriate context.

- Q.1 (a) This question related to the use of funds collected from applicants of shares, by a listed company as has been explained in Section 71 of the Companies Ordinance, 1984. A significant number of the students performed well and secured high marks. However, only a few candidates stated that in case of delay in refund of money to the unsuccessful applicants beyond a period of 15 days, mark-up at the rate of 1.5% is payable on a monthly basis. Several candidates did not specify that the rate of markup would be applicable on a monthly basis.
- (b) The question aimed to test the candidates knowledge of the formalities to be complied with regarding the registration of a prospectus. The performance in this question was not satisfactory. Many candidates reproduced the whole of sections 52-57 instead of limiting their answers to the provisions that were relevant to the registration of the prospectus by the Registrar.
- Q.2 (a) (i) Many students correctly mentioned that a holding company can hold shares in its subsidiary in the name of its nominee(s), if such nomination is necessary to ensure that the number of members of the subsidiary company is not reduced below the legal limits. However, the other situation where the holding company allows its nominees to hold shares in the subsidiary arises when the articles of the subsidiary require its directors to hold certain minimum number of shares. This point was mentioned by very few of the candidates.
- (ii) A large number of students simply mentioned that there is no restriction on the directors of a private limited company to participate in the discussions or vote on any contract even if they have an interest in such a contract or arrangement. However, most of them failed to mention the important exception that the directors shall not be allowed to vote in such situation if the private company is a subsidiary or the

- (iii) It was a very simple question from Section 204A of the Companies Ordinance, 1984 but a very poor performance was observed. The reason for this situation was that most of the students were unaware of the latest amendment introduced through the Finance Act, 2007.

Surprisingly, many candidates wrote about the appointment of auditors by a company which was not required.

- (b) This was also a very easy question and was well attempted by a large number of candidates. However, several students did not mention that a minimum notice period of 21 days is required for convening a general meeting where a special resolution has to be passed. Further, the exception that the minimum notice period for convening the meeting may be reduced with the consent of all the members entitled to attend and vote at the meeting, was mentioned by very few of the students.

- Q.3 (a) This question was framed to test the candidates' understanding of the requirements of Section 208 which have to be complied with for granting loan to an associated undertaking.

Some of the candidates stated that such a loan can be granted on approval by the Board of Directors, whereas according to the Companies Ordinance 1984, it has to be approved through a special resolution passed in the general meeting.

- (b) A rather simple question in which several candidates secured full marks. A company is considered a subsidiary of the other (holding company) when the holding company holds more than 50% voting power or can elect more than 50% of the directors. Many students used the term "50% or more" instead of "more than 50%" and lost easy marks.

- Q.4 (a) Again a rather simple question regarding the contents of Memorandum of Association. The contents are listed in Section 16 of the Companies Ordinance 1984. Although a large number of candidates secured full marks yet there were many who could not list all the essential contents.

- (b) The significant changes which are usually required to be made in the articles of association of a private limited company when it is being converted to a public limited company include the following:

- (i) removal of restriction on transfer of shares
- (ii) elimination of restrictions to make public offering of shares/debentures
- (iii) elimination of restrictions on maximum number of members
- (iv) inclusion of the provision for holding a statutory meeting
- (v) increase in the number of directors to a minimum of three persons
- (vi) insertion of a clause requiring the convening of a meeting of the board of directors at least once in each quarter
- (vii) making required amendment in the name of the company.

However, many candidates restricted their replies to the three conditions mentioned in Section 2(28) as referred to in (i), (ii) & (iii) above and

- (c) A large number of candidates described the procedure for effecting a change in the name of a company in accordance with Sections 39 and 40 of the Companies Ordinance, 1984 and secured full marks.

- Q.5 (a) The performance of the candidates in this question on beneficial ownership was average. Many replies erroneously stated the condition “10% or more shareholding” whereas the correct position is “shareholding exceeding 10%”.

Many candidates were able to list the steps (as given in Section 222) which were required to be carried out when the 4% shares were purchased i.e. when the share holding exceeded 10%. However, very few of them knew that statement of change in ownership will have to be submitted each time when the shareholding changed thereafter i.e. within 15 days of the date when 3% shares were purchased.

Many of the students quoted the relevant rules without referring to the situation given in the question. For example, they mentioned the number of days within which the relevant statements were required to be filed. To secure full marks they should have mentioned the exact dates also.

Another common mistake was that instead of mentioning that the statements would be submitted to the SECP as well as the registrar, most of the candidates mentioned the name of only one of the above authorities.

- (b) This question pertained to the issuance of shares for consideration other than cash and submission of documents to the Registrar in accordance with the requirements of Section 73 of the Companies Ordinance, 1984.

It was evident that very few of the students were prepared for such a question. Several students provided details regarding issuance of right shares, which were not required.

- Q.6 (a) The performance of the candidates was poor. Majority of them were unaware of the fact that the Board of Directors and not the Chief Executive, has the authority to make the nomination to represent the company in a general meeting. Several candidates also failed to explain that a corporate nominated person is not required to hold shares in his personal name, for the purpose of attending the general meeting.

- (b) This simple question relating to Section 159 was well attempted by majority of the candidates. The point that the minimum notice period of 21 days for commencing an extra ordinary general meeting can only be waived by the Registrar in the event of an emergency affecting the business, was missed by many candidates. A few candidates incorrectly mentioned that shareholders having more than 10% voting rights can file such an application whereas according to the Companies Ordinance, 1984 only directors may file such an application.

- (c) In part (i) most of the students secured full marks by mentioning that the statutory report of a listed company must be authenticated by at least three directors. one of whom must be the chief executive of the company.

In part (ii), many candidates were unable to explain the details and particulars which must be contained in the abstract of receipts and payments as given in Section 157. The important point that such an abstract should be filed current i.e. within seven days of the date of the report was missed by the majority. A large number of students could mention only one or two of the contents of the report.

- Q.7 (a) The question was based on a specific situation according to which an employee who was being nominated as Chief Executive was indebted to the company. The purpose of the debt was not given in the question. Therefore, the proper approach was to convey the following points:
- (i) The purpose for which a Chief Executive can obtain loan from the company as given in Section 184 (1) should have been explained.
 - (ii) It should have been clarified that if the loan is for the purpose referred to in para (i) above, the concerned person may be appointed as the Chief Executive but in that case he will have to file with the Registrar, the particulars of the loan taken, within 14 days of his appointment.
 - (iii) If the loan was for any other purpose, it should be repaid before his appointment as Chief Executive.
- (b) The response to this question was far below expectations as most of the students could not explain the rule relating to execution of deed by an attorney, as given in Section 212 of the Companies Ordinance, 1984.
- (c) Most of the candidates were able to narrate the shareholders right to inspect the minutes of the proceedings of general meeting, without payment of any charge, but subject to any reasonable restrictions as may be contained in the Articles of Association or which may be imposed in a general meeting. Most of them were also aware that the inspection time should not be less than 2 hours on each business day.

However, a substantial number of the candidates were not aware of the fact that the Companies Ordinance, 1984 does not provide explicit rights to any shareholder to inspect the minutes of the meetings of Board of Directors. However, the Board of Directors may determine, if at all and the conditions under which any such minutes shall be open to inspection of the members.

- Q.8 (a) The performance in this question relating to the circumstances under which SECP can appoint auditors as given in Section 252 of the Companies Ordinance, 1984 was quite satisfactory.
- (b) The answer to this rather straight forward question regarding increase in the amount of **authorized capital** is contained in Section 92 and 94 of the Companies Ordinance 1984. The performance in this easy question was far below expectations. The candidates spent considerable time in discussing the procedure for increase in the **paid-up capital** which was not required.

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