

EXAMINERS' COMMENTS

SUBJECT	SESSION
Corporate Laws	Summer 2008

General:

The examination revealed that a large number of candidates were inadequately prepared for the examination. A significant number of candidates produced solutions, which were out of context. The need for candidates to give more thought to the precise requirements of the questions is of paramount importance as the poor performance of many candidates was exacerbated by a clear failure to carefully read the content and requirements of the questions. The poor performance witnessed in questions # 5, 6 and 11 was most probably on account of selective study.

Rather surprisingly, a number of candidates ignored the advice that there should be clear labeling to indicate which questions are being attempted. Use of ambiguous English and incorrect spelling at this stage was unexpected.

Question-wise comments:

- Q.1 This case study was framed in the light of section 178A of the Companies Ordinance, 1984. Whilst many candidates could refer to the provisions describing three years of Director's tenure and casual vacancy and some could cite that the case will be referred to Commission, their knowledge of the amended law regarding fresh election of director, on request of substantial acquirer left much to be desired. A surprising number knew very little and indeed many got confused and wrote the complete procedure of holding election of directors, which was not required.
- Q.2 (a) In this simple question, only few candidates managed to state that the appointment of auditor is made at every annual general meeting (AGM) of the company to hold office from the conclusion of that meeting until the conclusion of the next AGM and since the AGM was adjourned without discussing the re-appointment of auditor, the present auditor shall continue to hold office till the conclusion of the adjourned AGM.
- (b) This question relating to issuance of different classes of shares was framed keeping in view the provisions of Companies Ordinance 1984, and Companies' Share Capital (Variation in Rights and Privileges) Rules 2000. The performance of the students was average. Vast majority of the students were unable to give a complete answer; however, almost every student was able to mention at least some of the following important steps:
1. Alter the Memorandum of Association 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.

2. Pass Special Resolution authorizing the issue of shares.
3. On the basis of the Special Resolution, file an application with the Federal Government, to allow the company to raise its capital further, without issuance of right shares.

Q.3 The performance in this question was average. The candidates were able to specify many of the formalities required to be carried out when a company is winding up its operation in Pakistan and when the company having a branch office is being wound up, in the country of its incorporation. However, very few of the students could give a complete answer.

Q.4 (a) This question was based on Rule 5 of the Companies (Issue of Capital) Rules, 1996. Most of the students were able to perform well; however an important point i.e. that the company may only make a right issue if at least one year has passed since the last issue of capital to the public, was missed by the majority.

(b) (i) Most candidates recognized that since the 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) Most candidates were able to mention that the company may charge premium on right shares up to the free reserves per share. However, only a small percentage of candidates were able to cover the other conditions i.e. (i) the free reserves per share need to be certified by the company's auditors and (ii) the auditor's certificate has to be furnished to the Commission and the stock exchange(s).

Very few candidates knew about the conditions which are required to be fulfilled when a company proposes to charge premium on right shares exceeding the free reserves per share. The requirements are as follows:

- (a) at least 40% of all the shareholders should undertake to subscribe their portion of right issue; and
- (b) the remaining amount shall be underwritten by at least two financial institutions not being an associated company and the underwriters shall give full justification of the amount of premium in their independent due diligence report.

Many candidates narrated all the requirements of Rule 5 of the Companies (Issue of Capital) Rules, 1996 while answering part (a) of the question, instead of mentioning the appropriate provisions in each part of the question.

Q.5 (a) It was a simple question based on Companies (Appointment of Legal Advisers) Act 1974 and the related rules issued in 1975. However, very few students could perform well because it seemed that they had ignored this topic on account of selective studies.

(b) Even where candidates were not totally aware of all the particulars that were required to be specified in the register of legal advisers, the majority listed at least the following through presumption:

- Name of the legal adviser or name of the firm
- Remuneration
- Address
- Date of appointment

However, only few of them could mention about number of partners in case of a firm and date of termination of appointment. It has to be said that it was in the substance of the question that candidates scored good marks.

Q.6 This straight forward question was based on **Rule 2, Part A, Chapter XIX of Foreign exchange regulations**. Disappointingly very few students could secure passing marks as it was evident that a large majority had not studied the Foreign Exchange Regulations. Many of the better performing students restricted their answer to the following statement:

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

They failed to explain the conditions under which a company, firm or branch will be deemed to be controlled by a person resident outside Pakistan.

Q.7 This question was based on code viii (b) of the Code of Corporate Governance. Many candidates referred to accounting policies and responsibilities of audit committee which were not required. Such irrelevant material gained no credit; indeed it showed that they did not recognize the key requirements of the question.

Vast majority produced answers which were based on their general understanding of the powers and responsibilities of the Board of Directors. Consequently, they were able to secure a few marks but very few could produce really good answers.

Q.8 This question was based on Section 17 of the Listed Companies (Substantial Acquisition of Voting Shares and Take-over) Ordinance, 2002. Many candidates were able to mention that upward revision in offer price can be made at any time up to seven working days prior to the date on which the previous offer is to lapse but most of them were not able to list all the other conditions which have to be met before an upward revision of public offer can be made.

Q.9 (a) This question was based on the requirements of section 95A of the Companies Ordinance, 1984 and Rule 5 of the Companies (Buy-Back of Shares) Rules, 1999.

The information given in answer scripts was often reasonably accurate showing that the candidates had properly learnt and revised the topics they chose to cover in their answers. However, many candidates choose to write everything they knew about buy back of shares instead of selecting and applying relevant knowledge and provisions to the given situation.

- (b) A large number of the students were not aware of the specific narrative requirements of drafting the clause to be included in the memorandum of association and consequently produced incomplete and improperly worded answers.
- Q.10 This question was framed in the light of requirements of Section 263 of the Companies Ordinance, 1984 and Rule 18 of the Companies (General Provisions and Forms) Rules, 1985. Few candidates managed to attempt the question correctly. Some candidates confused the requirements with investigation procedures. As for those who at least tried to focus on the issue, many candidates wrote the requirements stated in Sections 263 of the Companies Ordinance, 1984 but did not correlate it with the requirements of Rule 18.
- Q.11 As already mentioned in the General Comments, most students seemed to have ignored the Central Depositories Act, 1997 in their studies and could not answer the question correctly. Part (a) of the question was based on Section 2 (17) of the Act whereas part (b) was based on Section 10 thereof.
- Q.12 While the majority of candidates grasped the essence of this question, a fairly substantial minority failed to see what was required and based their answers on matters which were not central to the question.

In most of the replies, the following shortcomings were noted:

- (i) Students were confused about the inclusion of public holiday for depositing of proxy form at least 48 hours before the meeting.
- (ii) Few students mentioned that proxy form of both proxies were correct whereas, as per the Companies Ordinance 1984, a member shall not be entitled to appoint more than one proxy to attend any one meeting. Since B had appointed more than one proxy for the meeting and more than one instrument of proxy had been deposited with the company, both instruments of proxy became invalid.
- (iii) Most candidates managed to state that company may, by resolution of the directors, authorize any of its officials or any other person to act as its representative at a general meeting of any other company. Disappointingly, many candidates who explained the above provision then went on to contradict themselves by stating that since Mr. Sameer is not an employee of the company, his vote is not valid.
- (iv) Only few students mentioned that 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 was concluded and therefore the shareholder's protest regarding approval of resolution was not valid.
- (v) Some students were confused as to the timings of quorum and failed to mention that since the quorum was present within 30 minutes, the meeting was valid.
- (vi) Many of the candidates who approached the question in a more structured and relevant way by explaining the above issues in the light of the Companies Ordinance 1984, failed to give a final conclusion regarding the validity of the meeting and the resolution.

- (b) (i) Most candidates recognized that 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. However, some were confused with inter company holding.
- (ii) Majority of the candidates knew that a person shall not be appointed as chief executive of a company if he is the member of a stock exchange.

(THE END)