

EXAMINERS' COMMENTS

SUBJECT	SESSION
Company Law	Intermediate Examination - Autumn 2008

General:

At the outset, it is in the nature of these comments to ponder more attention on the negative aspects of performance in order to try remedying them for the future. So primarily, it must be said that there were some very good performances indeed. However, there were also many poor performances, which indicated a lack, and in some cases a total lack, of required knowledge. Critical evaluation of shortcomings in this regard are:

- Candidates need to realize that it is not possible to complete the examination in three hours if they set out to write everything they know about the given topic. It is recommended that candidates and those preparing them for the examination focus on the time management skills necessary to succeed and candidates must prevent extending their answers unnecessarily. For example, question 5a (i) asked for an Extra Ordinary General Meeting (EOGM), but several candidates wrote exhaustively on all types of general meetings.
- Several candidates could not answer all the questions which is an indication that they resort to studies of selective topics. Candidates are encouraged to exert themselves on every area of the syllabus so that they can at least answer basic questions on each topic. It is often relatively easy to score the first three or four marks on a question, and these marks can be vitally important for marginal candidates.
- Some other vulnerable spots in the scripts were:
 - not indicating the correct question number
 - not starting each question on a new page
 - using additional booklets to no great effect, by simply repeating information
 - relying on lists when the requirement was to explain and vice versa
 - poor command of English.

Question-wise comments are given below:

- Q.1 The question required candidates to demonstrate their legal knowledge regarding circulation of information / documents to various stakeholders prior to the Annual General Meeting on the basis of sections 158, 160, 161 and 164 of the Companies Ordinance 1984 (the Ordinance).

A number of candidates restricted themselves to the circulation requirements in terms of notice only and cited members as the only stakeholders without referring to circulation requirements pertaining to other stakeholders such as:

- auditors of the company
- Securities & Exchange Commission
- Registrar
- Stock exchange
- representative of a member who has died, if the interest of such person is known to the company.

Similarly, documents other than notice and audited accounts, were given little attention. These included:

- proxy form
- copies of draft resolutions, which are proposed for consideration in the meeting
- directors' report

- Q.2 (a) This question offered two options to converse i.e. reduction of dividend and deferment of dividend. There were candidates who appeared not to recognize any distinction between the two options and wrongly concluded that both the options can be exercised with the approval of members.

Only a few candidates were able to describe that once the dividend is recommended by the Board of Directors, it may be reduced by approval of members in the AGM but it shall not be lawful for the directors to defer its payment for more than 45 days. Hence the company can not defer it for six months.

- (b) This was an easy question based on section 121 of the Ordinance and candidates answered it well. However, few unsuccessful candidates wrote irrelevant description such as explanation of fixed and floating charge or details relating to Register of mortgages and charges.

- Q.3 (a) This was an easy question based on section 252 of the Ordinance. Nearly all candidates could state that an auditor appointed in a general meeting may be removed before the conclusion of next AGM through a special resolution.

However, majority did not mention that company will then have to give a notice of such removal to the SECP and the SECP will appoint the new auditor.

- (b) This part was based on section 254 of the Ordinance. It was one of those topics that many candidates had prepared well. On the whole this question was well done and in some instances done very well.

- Q.4 (a) Many candidates were of the view that a company which is a member of another company may only authorize any of its officials to act as its representative, at the meeting of that other company. In fact, there is no such restriction in the Ordinance which clearly states that any of the company's official or any other person, may act as the Company's representative.

Moreover, most of the candidates did not explain that such an authorization requires a resolution of the directors.

- (b) Most of the candidates got confused and wrote about the person acting as the proxy instead of providing the characteristics of a proxy instrument, such as:
- instrument should be in writing and
 - be under company seal or be signed by an officer or an attorney duly authorized.

However, the deadline of submission of proxy instrument i.e. not later than forty-eight hours, before the time of the meeting, was correctly answered.

- Q.5 (a) This question was based on section 159(1) and 159(7) of the Ordinance. Generally candidates were able to mention that all general meetings of a company other than Annual General Meeting and Statutory Meeting shall be called EOGM. However, some confusion was evidenced in some scripts as few of the candidates declared that such a meeting cannot be held on a shorter notice. Many others, who answered in the affirmative, did not know that a meeting on shorter notice will require the registrar's authorization.
- (b) It was a straightforward question and required the candidates to explain the term "special business". However, only few candidates could explain the term in the light of section 160 (i) (b) of the Ordinance. The majority relied on guess work and gained no credit.

- Q.6 This question was based on section 226 of the Ordinance. Majority of the candidates remained restricted to the requirement of keeping the amount of security deposit in a special account with a schedule bank and failed to cite the following points:

- A company shall not receive or utilize any money received as security deposit except in accordance with a contract in writing;
- It can utilize such deposit in the manner as per the agreement; and
- In the case of advance payment by the customers, the company is not required to adhere to any restrictions.

- Q.7 This question was based on section 14 of the Ordinance. As a whole, the performances of the candidates were satisfactory. However, few candidates revealed their inability to comprehend the question as instances were noted where the candidates wasted their time in narrating the rule which had already been mentioned in the question.

- Q.8 (a) Almost all the students responded well and correctly described the type of names which a new company cannot adopt, as are given in section 37 of the Ordinance.
- (b) The question contained various situations and the candidates were required to identify the authorities whose sanction was necessary, in each situation. A large number of students did not realize that the resolution of members of the company is also a decision of the competent authority and should have been mentioned wherever applicable. Besides, some of the candidates mentioned Registrar in place of SECP and vice versa.
- Q.9 This straightforward question related to issuance of shares on discount and was based on section 84 of the Ordinance. Generally the question was answered well; however, few candidates made the following errors:
- could not distinguish between “Special resolution” and any other resolution passed in general meeting.
 - condition that at least one year must have elapsed since the date on which the company was entitled to commence business was incorrectly enumerated as “since the date of incorporation of the company”.
 - condition that shares must be issued within sixty days after the date on which approval is granted by the Commission was faultily enumerated as the “date on which approval is granted by board of directors”.
 - approval of Commission was enumerated as approval of Registrar.
- Q.10 (a) The question was based on section 92 of the Ordinance. Many candidates got confused and instead of narrating the conditions for alteration of memorandum for cancellation of shares, narrated the conditions for reduction of share capital which in fact, were required to be explained in part (b) of the question.
- (b) This part solicited a straightforward answer based on section 96 of the Ordinance. Those candidates who covered the matter relevant to this part in part (a), were left with nothing to write and lost valuable marks. The performance of the remaining candidates was satisfactory.
- Q.11 (a) It was an easy scenario based question intended to test the students' knowledge regarding director's power as explicated in section 196 of the Ordinance. Most of the students performed well as they were able to enumerate as under:
- a business segment, being a sizeable part of the business, could not be sold except with the consent of the members, in a general meeting.
 - the directors are empowered to purchase the new machinery and dispose off the old machinery even if there is a loss on such disposal.
 - the directors shall use their judgment and may approve a write-off through a resolution of the Board of Directors.

- (b) This question was again based on a practical situation. The students were expected to explain as follows:
- The resolution tabled in the meeting of the Board of Directors of Khan (Pvt) Limited was not valid because only 5 of the directors voted in its favour, whereas the CEO can be removed by a majority of 75% of the **total number** of Directors.
 - However, since A,B,C, D & E hold 80% of the shares, they can remove the CEO as members of the company, through a special resolution, which may be passed by calling an Extra Ordinary General Meeting.

Many candidates were of the incorrect view that the resolution was valid because only 5 directors had attended the meeting and therefore according to them, the resolution was passed with 100% majority. Many students simply declared that the resolution of the Board was valid/invalid without giving any argument and lost the marks which were allocated for the arguments.

(THE END)