



THE INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF  
PAKISTAN (ICPAP)

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|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|---------------|--------------------------------------------|
| Stage                                                                                                                                                                                                       | Professional | Course Code   | P-501                                      |
| Examination                                                                                                                                                                                                 | Winter-2012  | Course Name   | Corporate Law and Governance<br>(solution) |
| Time Allowed                                                                                                                                                                                                | 03 Hours     | Maximum Marks | 100                                        |
| <b>NOTES:</b><br>1) All questions are to be attempted.<br>2) Answers are expected to the precise, to the point and well written.<br>3) Neatness and style will be taken into account in marking the papers. |              |               |                                            |

**Question No 1:-**

**(20 Marks)**

- a) **Can the trading of a listed company be suspended if yes, by whom?**

**(5)**

**Suspension of trading:-**

Yes. The Federal Government or the Stock Exchange can suspend the trading of any listed security by an order, in which reasons are recorded, if it considers it to be in the interest of trade or in the public interest to do so.

- b) **The increase or Decrease in the capital is an internal affair of the company and the Registrar of companies/SECP is not involved at any stage.**

**(5)**

**Involvement of registrar:-**

The increase or decrease in capital is not an internal affairs and therefore involves the registration of the said change by the registrar.

In case of increase in capital beyond the authorized capital, the company shall file with a registrar a notice of the increase within 15 days after the passing of resolution and who shall register the same. The notice shall include the particulars of the shares to be affected and conditions if any attaching thereto. The resolution to share capital shall not take effect unless notice is filed with the registrar.

In case of reduction in capital certified copy of the order confirming reduction and of minutes approved by the court showing the amount of share capital, number of shares into which it is to be divided and the amount of each share in respect to share capital so altered, should be filed with the registrar who shall register the order and minutes and



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certify the same. The resolution for reducing share capital as confirmed by the court shall take effect only on such registration.

- c) **What procedure is to be followed after confirmation of the alteration of Memorandum of Association of the company?** (6)

**Procedure after alteration:-**

Under section 24, a certified copy of the order confirming alteration alongwith a printed altered copy of memorandum shall be filed by the company with the registrar within 90 days from the date of the order. The registrar shall register the same and certify the registration by issuing a certificate which shall be the conclusive evidence that all the requirements relating to alteration and confirmation have been complied with. The altered memorandum shall be the memorandum of the company thereafter.

When the alteration involves the transfer of registered office from one province to another or from Islamabad Capital Territory to a province or vice versa the certified copies of order shall be filed to each concerned registrar separately who shall register the same and certify. The registrar of the province or territory from which office is transferred shall also send all the documents to the concerned registrar.

- d) **What is the register of members of a company?** (4)

**Register of members:-**

A register (consisting of one or more books) in which the name and particulars of every member, statement of shares held, date on which he became a member or ceased to be a member are entered, is called the register of members.

**Question No 2:-** (20 Marks)

- a) **What is the quorum for meeting of directors and shareholders of a company?**

(6)

**Quorum:-**

Under sec. 160 the quorum of a general meeting shall be:



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- i. In case of a public company, 3 members present personally who represent not less than 25% of voting power either of their own account or as proxies;
- ii. In case of a private company, 2 members present personally who represent not less than 25% of voting power either of their own or as proxies.

Provided that a larger number can be fixed by the articles of the company.

According to sec. 193 the quorum for a meeting of directors of a listed company shall not be less than  $1/3^{\text{rd}}$  of their number of 4, whichever is greater. Whereas in case of other companies, articles of association usually specifies the quorum for board of directors meeting.

**b) What are the requirements under Companies Ordinance 1984 relating to the passing of a special resolution? (6)**

**Requirements for passing special resolution:-**

The requirements of the Companies Ordinance, 1984 relating to a special resolution are two fold:-

- i. Notice:-  
21 days' notice is required for the meeting at which a special resolution is to be passed specifying the intention to propose such a resolution. However, less than 21 days notice can also be given if all the members entitled to attend and vote at any such meeting so agree.
- ii. Majority:-  
The said resolution must be passed by a majority of not less than  $3/4^{\text{th}}$  of such members entitled vote as are present in person or through proxy at such a meeting.

**c) How can investment in the associated undertaking be made? Is there any additional requirement in the case of listed company? (8)**

**Investment in Associated companies/undertakings (Sec. 208):-**



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Investment in associated companies or undertaking or in the nature, terms and conditions thereof can be made by passing a resolution which will indicate the nature and amount of investment and terms and conditions attached to it. Resolution should be passed by a majority not less than 60% of the members entitled to vote and are present at a general meeting in person or through proxies. 21 days notice specifying the intention to propose such resolution in essential. In case of a listed company, in addition to its being sent in the normal course, the notice should be published in one Urdu & English daily newspaper having circulation in the province in which stock exchange on which company is listed is situated.

This section shall not apply to:-

- a) A banking company.
- b) A financial institution approved by the Federal Government.
- c) A private company which is not a subsidiary of a public company.

**Question No 3:-**

**(20 Marks)**

**a) What is meant by Disclosure of Interests by directors of a company? (6)**

**Disclosure of interest by directors (Sec. 214):-**

Every director who is directly or indirectly interested in any contract or arrangement entered into or to be entered into by or on behalf of the company shall disclose the nature of his concern or interest at a meeting of the directors. Indeed the rule is so strict that a directors is regarded as interested in a contract if he is merely a shareholder in another company which contracts with "his" company (Transvaal Land Co V New Belgium Land Company).

The director shall be deemed to be interested or concerned if any of his relative i.e. spouse or minor children is so interested or concerned. Disclosure will be made at a meeting at which the question of entering into the contract or arrangement is first taken into consideration or if at that time the said director is not interest/concerned, the first



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meeting after which he becomes so interested or concerned. A general notice of the same should also be given.

### b) What is the difference between statutory report and statutory meeting?

(6)

#### **Statutory Report**

- Report: The statutory report is prepared on Form 25 (reproduced hereinafter).
- Approval of Directors: Board of directors considers and approves the Statutory Report in its meeting.
- Signature: The report is certified as correct by not less as two directors and chief executive.
- Auditor's Authentication: The auditor certifies the report to be correct so far as it relates to the shares allotted, cash received in respect of such shares and the receipts and payments of the company. The cash receipts and payments are reported upto a date within 7 days prior to the date of statutory report.
- Members: Statutory Report is sent to the member's atleast 21 days before the Statutory Meeting.
- Filing: Five copies of the Statutory Report (Form 25) are filed with the registrar concerned simultaneously at the time of sending to the members. Bank Challan is annexed with the report.

#### **Statutory Meeting**

- Application: A public company is required to hold a statutory meeting once in its life.
- Time of holding by new company: The statutory meeting is held within period of no less than 3 months and not more than 6 months from the date of commencement of business by the public company.
- Time of holding by Converted Company: A public company which is converted from private company within one year of its incorporation is required to hold statutory meeting within period of not less than 3 months and not more than 6 months from the date of conversion. A private company which is converted into public company after one year of its incorporation is exempted from holding statutory meeting as it would have hold its AGM.



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- Convening Authority: The Statutory Meeting is convened by management only and cannot be requisitioned. In case of non-holding of a Statutory Meeting, the Commission may give direction under section 170 of the Ordinance to hold over-due Statutory Meeting.
- Board Meeting: The Board of Directors considers and approves Statutory Report and decides to convene the Statutory Meeting.
- Agenda: the statutory meeting has one point agenda i.e. to discuss and approve the Statutory Report.
- Purpose: The main purpose of the statutory meeting is the approval of allotment of shares, receipt and payment of moneys, expenditures especially the capital expenditures and contracts particularly about underwriting agreements and commission paid. The company also apprises the shareholders about the future plan of the company.
- Discussion: The chairman moves a motion to discuss the Statutory Report and allows the members to discuss any matter relating to the formation of the company arising out of Statutory Report.
- Voting: On conclusion of discussion, the chairman moves the motion to vote for approval of the Statutory Report and declares result.
- Other Business: Other business can be discussed in the Statutory Meeting. However, such matters are required to be specified in the notice of statement of material facts in terms of section 160 (1) (b) is required to be stated.
- Adjournment: The Chairman may, with the consent of the members, adjourn the Statutory Meeting to such time and place as may be decided in that meeting.
- Minutes: The minutes of the Statutory Meeting are recorded in the Minute Book of the general meeting and signed.
- Consequence of Non-holding of Statutory Meeting: consequences of non-holding of Statutory Meeting are:-
  - i. Penal action under section 157 (11).
  - ii. Direction of registrar for holding over-due AGM under section 170.

In case of non-holding of Statutory Meeting of non-delivery of Statutory Report, proceedings of winding up can be initiated under section 305 (b)



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c) **What is the procedure relating to sending of notices, annual report and audited accounts to the members and concerned authorities? (8)**

- i. The notice of AGM along with the copy of annual report and audited accounts would be send to all the members at their registered address at least 21 days before the meeting.
- ii. Simultaneously with the dispatch of notice, five copies each of the annual report and audited accounts, one duly signed by the auditors and CEO/Director would be sending to the Commission, Stock Exchange and the Registrar.
- iii. The notice of meeting shall be published at least 21 days before the meeting in two daily newspapers one English and one Urdu circulating in the province in which the stock Exchange(s) on which the company is listed exist.
- iv. The copy of the notice of AGM shall be faxed to the Commission on the day of its publication.
- v. A copy of the newspaper shall also be sent to the Commission on the day of its publication.

**Question No 4:-**

**(20 Marks)**

a) **The prospectus of FC Textiles Limited included a statement which was misleading in its form and content. On the faith of the prospectus and believing it to be true, Asif subscribed for shares and sustained losses. Can Asif file a suit for compensation of the loss incurred by him? If so, who may be sued for such a loss?**

**(6)**

**Civil liability for miss-statements in prospectus**

Yes, Asif can sue for compensation of loss. Section 59 of the Companies Ordinance provides that an allotted is entitled to claim compensation for damages sustained by reason of any untrue statement contained in this prospectus from the following persons:

- i. Every person who is a director of the Company at the time of issue of prospectus.
- ii. Every person who has authorized himself to be named and is named in the prospectus either as a director, or as having agreed to become a director, either immediately or after an interval of time;
- iii. Every person who is a promoter of the Company; and



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- iv. Every person who is an expert and has given his written consent to include a statement issued by him.
- v. Auditor, legal advisor, attorney, solicitor, banker or broker, being the member of a stock exchange of the company and the prospectus is accompanied by their written consent to act in that capacity.

b) As a director Mr. Akram is entitled to inspect the books of a company during office hours. However, is there any law which allows the spouse of Mr. Akram to inspect the books of the company? (5)

c) **Explain the code of corporate governance in respect of meeting of board of directors and minutes of meeting.** (9)

The board of directors of a listed company shall meet at least once in every quarter. Written notices (including agenda) of meetings shall be circulating not less than seven days before the meetings except in the case of emergency meetings, where the notice period may be reduced or waived.

The chairman of a listed company shall ensure that minutes of meetings of the board of directors are appropriately recorded. The minutes of meetings shall be circulated to directors and officers entitled to attend board meetings within 14 or 30 days of the date of the meeting.

If the director of a listed company is of the view that his dissenting note has not been satisfactorily recorded in the minutes, he may refer the matter to the company secretary. The director may require the note to be appended to the minutes, failing which he may file an objection with the Securities and Exchange Commission of Pakistan in the form of a statement to that effect.

**Question No 5:-**

**(20 Marks)**

a) **State procedure for conversion of private company into public company.**

**(7)**

**Conversion from private company into public company**

Section 45 of the Ordinance provides that a private company may convert its status into a public company by altering its articles of association in such a manner that they no longer include the provisions which, under clause (28) of sub-section (1) of section 2 of





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the Ordinance, are required to be included in the articles of association of a company to constitute it a private company, the company shall:

- a) On the date of the alteration, cease to be a private company; and
- b) Within a period of fourteen days after the said date, file with the registrar either a prospectus or a statement in lieu prospectus.

No approval of any authority for the conversion of status from a private company into public company is required, however the company has to adopt below mentioned stepwise procedure for such conversion.

Procedure for the conversion of status of company from private company into public company

Following procedure is required for conversion of private company into public company;-

Step 1:- The proposal for conversion of status of private company into public company is firstly discussed by the Board of Directors.

Step 2:- 21 days' notice accompanied with the proposed special resolution is issued for convening the general meeting of shareholders of the company.

Step 3:- Resolution for conversion of the status from Private Company into Public Company and alteration in Articles of Association is placed before the members as a special resolution. Such special resolution is to be passed by a majority of not less than three-fourth, of such members entitled to vote as are present in person or by proxy at a general meeting.

- It may be noted that significant difference in the Articles of both the companies exist and therefore are required to be amended on change of the status.
- The resolution not only meant for removal of word "(Private)" from the name of the company, but would also resolve deletion of restriction clauses imposed on private company and substitute of new articles meant for a public company.

Step 4:- The Company has to increase its directors and shareholders to minimum number i.e. 3 required for Public Company.

Step 5:- The company shall file the under-mentioned documents with the registrar concerned:-



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- a) Form 26 within 15 days of passing of special resolution.
- b) Amended copy of Memorandum and Articles of Association.
- c) Prospectus or statement in lieu of prospectus. Prospectus is filed by the company which invites the subscription from the general public otherwise Statement in Lieu of Prospectus is filed. Prospectus is prescribed in Part I (Prospectus also required prior approval by the Commission) and Statement in Lieu of Prospectus is prescribed as Part III of the Second Schedule of the Ordinance.
- d) Form 3 (allotment of shares to new members/directors in case the new directors are not members of company).
- e) Form 27 i.e. list of persons consenting to act as directors.
- f) Form 28 (Consent to act as directors)
- g) Form 29 (in case of additional directors of the company does not already have three directors required for a public company).
- h) Bank Challan being filing fee for each return.

Step 6:- The registrar concerned issues filing certificate. He will issue a certificate regarding conversion of private company into public company.

Step 7:- The Company may obtain a certified copy of Memorandum and Articles of Association on payment of copying and providing requisite court fee stamps.

Step 8:- Change of status is recorded in all letterheads, bills, invoices, seal etc. Copies of Memorandum and Articles of Association are also recorded with the alteration.

### **b) State procedure for conversion of public company into private company.**

(7)

#### **Conversion from public company into private company**

A public company can be converted into a private company with the prior approval in writing, and subject to such conditions (being regress nature case) as may be imposed by the Securities and Exchange Commission of Pakistan (Commission) in terms of section 44 read with section 28 of the Ordinance in compliance with rules 7, 28, 30, 32, and 34 of the Rules.

Under rule 7 of the Rules, where the articles of association of a public company have been amended having the effect of converting its status from public company into a private company, the company is required to file an application, not later than sixty days



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from the date on which the special resolution seeking such alteration was passed, on Form 2 to the Commission for its approval under section 44 of the Ordinance.

### **Procedure for the conversion of status of company from public company into private company**

Following procedure is required for conversion of public company into private company:-

Step 1: Approval by the Board of Directors for change of status of the company from public to private is sought.

Step 2: 21 days' notice accompanied with the proposed special resolution is issued for convening the general meeting of the shareholders of the company. In case of a listed company, the notice is also published in at least two newspapers having circulation in the provinces in which the stock exchanges on which the company is listed, exists. (It would be unusual if a public listed company goes for conversion to a private company. A listed company shall firstly convert into unlisted public company and then go for conversion to private company.)

Step 3: Resolution for conversion of the status from Public Company into Private Company and alteration in Articles of Association is placed before the members, as special resolution. It may be noted that significant difference in the Articles of both the companies exists; therefore, the same may be amended to change the status through imposition of the restrictions meant for private companies.

Step 4: Copy of Special Resolution on Form 26 along with bank Challan regarding filing fee is filed with the registrar concerned within 15 days of passing of the special resolution. **(A special resolution is to be passed by the majority of not less than three-fourth, of such members entitled so vote as are present in person or by proxy at a general meeting.)**

Step 5:- Application is sent to the Commission within 60 days of the date of passing of the special resolution. Such application is accompanied with the following documents:

- i. Form 2. (prescribed under the Rules)
- ii. Copy of Form 26 (Special Resolution).
- iii. Copy of the Memorandum and Articles of Association duly amended.
- iv. Certified copy of the existing Memorandum and Articles of Association.
- v. Copy of latest audited Balance Sheet and Profit and Loss Account.



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- vi. Copy of minutes of the General Meeting.
- vii. Bank Challan being application fee and filing fee for filing of Form 26 with the Registrar concerned.
- viii. Affidavit that the contents of the application are true.
- ix. Consent of the creditors.
- x. Application must be in duplicate and a copy is also required to be sent to the registrar concerned under Rule 32 of the Rules.

Step 6:- The Commission gives approval for conversion of public company into private company through an Order.

Step 7:- Certified copy of the order of the Commission is obtained by depositing along with requisite court fee stamps.

Step 8:- Certified copy of the order along with copy of special resolution on Form 26 and amended copy of memorandum and articles of association are filed with the registrar concerned along with bank Challan.

Step 9:- The registrar issues file certificate of special resolution and order of the commission.

The company may obtain a certified copy of memorandum and articles of association on payment of copying fee and providing requisite court fee stamps.

**c) State procedure for conversion of single member company into private company**

**(6)**

**Conversion from single member company into private company**

A single member company originally incorporated as Single Member Company or converted from private company as such may convert into private company in accordance with rule 4 of the SMC rules. The persons becoming members due to transfer or transmission or further allotment of shares, as the case may be, shall pass a special resolution to make alteration in articles and appoint one or more additional directors. Where a single member company converts into a private company pursuant to sub-rule (1), it shall file a notice of the fact in writing in the form as set out in Form S-2 with the registrar within 30 days from the date of passing of special resolution.

A single member company be converted into a private company on increase of the number of its members to more than one due to transfer of shares or further allotment of



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shares or death of the single member or operation of law as provided in rule 4 of SMC Rules.

No approval of any authority for the conversion of status from a Single Member Company into Private Company is required, however, the company has to adopt below mentioned procedure for conversion.

### **Procedure for the conversion of status of company from single company into private company**

Step 1:- The proposal for conversion of status of single member company into private company is firstly discussed and approved by the Board of Directors.

Step 2:- 21 days' notice accompanied by with the proposed special resolution is issued for convening the general meeting of shareholders of the company.

Step 3:- Resolution for conversion of the status from Single Member Company into Private Company and alteration in Articles of Association as placed before the members which is carried as special resolution.

Step 5:- The company has to file the under-mentioned documents with the registrar concerned within 30 days of the passing of special resolution:-

- a) Form 26 within 15 days of passing of special resolution.
- b) Amended copy of Memorandum and Articles of Association.
- c) Form 3 (in case if shares are issued to new members).
- d) Form-29 (appointment of additional director within 14 days of the date of appointment).
- e) Bank Challan being filing fee for each return.

Step 6: The registrar concerned issues filing certificate. He will issue a certificate regarding conversion of single member company into private company.

Step 7: The Company may obtain a certified copy of Memorandum and Articles of Association on payment of copying fee and providing requisite court fee stamps.

Step 8: Change of stats is recorded in all letterheads, bills, invoices, seal etc. Copies of Memorandum and Articles of Association are also recorded with the alteration.

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