

CORPORATE LAWS & PRACTICES

Time allowed – 3 hours

Total marks – 100

[N.B. – The figures in the margin indicate full marks. Questions must be answered in English. Examiner will take account of the quality of language and of the way in which the answers are presented. Different parts, if any, of the same question must be answered in one place in order of sequence.]

Marks

1. Mr. X is the Managing Director of XYZ Consultants Ltd. wherein his wife is the Chairman. Mr. X personally influenced and convinced one of his rich and powerful friends Mr. P to come up with his business fellows to form a private limited company with the prime object to carry out manufacturing of electrical goods in Bangladesh where Mr. X has a long cherished desire to be the Managing Director. By invitation of Mr. P, 15 more persons have gathered to join the company.

In a pre-incorporation meeting it was decided (i) the name of the Company would be PQR Ltd. subject to availability and permission of the Registrar of RJSC, (ii) Mr. X, being the consultant and experienced enough in the field of Tax-Vat-Company related consultancy, should do necessary things to bring the company into light, (iii) proposed company would purchase 120 decimal land at Savar, Dhaka at a cost of Taka 1,70,00,000/- directly from Mr. X for the purpose of factory set-up (iv) there would be 7 directors whose names would appear in the Articles of Association (v) Mr. P should be the Chairman of the Company and Mr. X should be the ‘Acting Managing Director’ until decided by the Board.

After incorporation, an unwanted situation happened in the 1st meeting of the Board of Directors among the members while a consultancy bill of Tk. 7,50,000/- was submitted by Mr. X as pre-incorporation expenses under Agenda no.10 (out of 12) wherein Tk. 5,00,000/- was shown as his Company’s consultancy fees.

The Board was confused discovering the mental state of Mr. X in financial dealings and thereafter the matter made the environment clumsy and 5 directors were crazy to make the various adverse comments against Mr. X.

The Chairman was embarrassed and the meeting was adjourned for next 8 days. Meanwhile, it was revealed that Mr. X had purchased the land in the last year at a cost of Taka 70,00,000 /- with the intention to sell the land to the proposed company and the current market price may be more or less Taka 60,00,000/-. Other members were surprised and shocked and decided neither to purchase the land for the Company nor to make him Managing Director of the Company. A voice has also been raised to expel him from the Board and even from the Company as shareholder by paying off his money so far deposited.

Requirements:

You are the Company Secretary of PQR Ltd., and the Chairman has called a few members including you to discuss the following issues to overcome the situation prevailing in his new company where you should take an active part:

- (a) Resolution of the pre-incorporation meeting has awarded some sorts of responsibilities to Mr. X till incorporation where there was no question of fees. Such responsibilities may be discharged under the guidance of a Consultant or by a Promoter.
- (i) Discuss whether Mr. X stands here as a Consultant or a Promoter analyzing the above circumstances. 3
- (ii) Discuss the legal position of Mr. X to recover his dues from PQR Ltd. 3
- (b) What will happen if the Board refuses to purchase the land from Mr. X at a cost of Taka 1,70,00,000/- of which market value is only Taka 60,00,000/-? 3
- (c) How Mr. X may be removed from the Board? 3
- (d) If situation demands, can Mr. X be removed from Company as a Shareholder by paying off the full amount so far he has paid for his share? 3
- (e) The adjourned meeting is about to resolve three more agenda only being 9 were resolved out of 12. Chairman has a very important agenda which he desires to bring in the next adjourned meeting. Discuss in line with Companies Act 1994. 3

2. (a) You were the auditor of ABC Ltd., a public limited company, for the year ended 30th June, 2017. Some serious questions relating to the financial statements were raised by the shareholders but the answers of the Management did not satisfy the shareholders present in the meeting which has resulted non-adoption of financial statements in the same meeting. Off late, it has come to your knowledge that the Management of the Company tried to blame the auditors in that meeting to safeguard themselves from the angry shareholders. This was (i.e. in the year ended on 30th June, 2017) the third term engagement of your firm as auditors of the said Company and your firm is not eligible to be reappointed as Auditors for the next year i.e. 30th June, 2018 as per BSEC Order No: SEC/CMRRC/2009-193/104/Admin/dated: July 27, 2011. Considering the fact of non-appointment, the company did not invite you to attend the 17th AGM.

Requirement:

Discuss with appropriate legal provisions of Companies Act 1994.

4

- (b) **Analyze the following cases and comment according to the appropriate provisions of Companies Act 1994:**

(i) Your friends have entered into two partnership agreements with the view to form two unregistered Partnership Firm in the names of (i) Padma Associates and (ii) Jamuna Consultants. Numbers of partners are 25 in Padma Associates and 15 in Jamuna Consultants.

4

(ii) A private limited Company called “CPD Constructions Ltd.” obtained a Certificate of Incorporation on 30.06.2017. Just after 15 days, some irregularities prior to incorporation have come to the knowledge of the Registrar of the RJSC what was not discovered by the Office of Registrar at the time of awarding the Certificate.

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(iii) You are the Company Secretary of a public limited company. A shareholder has requested you in writing along with a Crossed Pay Order of Tk. 50.00 (Taka fifty) only favoring the Company to provide him with a copy of Articles of Association of the Company.

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(iv) Mr. P, who is a Chartered Accountant and highly experienced in business, is the shareholding Director of a publicly traded company. Considering the position of Mr. P, company wants to utilize his experiences and accordingly appoints him as a Finance Director unanimously in the last Board of Directors meeting of the Company at a monthly Salary of Tk. 5,00,000/- (Taka five lac) only with a full time car.

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3. (a) Presently, Alfa Company Limited (“the Company”) has three directors namely A, B and C. Previously, the Company had five directors out of whom two directors namely D & E (close friends of C) died in an accident. No other directors were appointed. According to Articles of Association of the Company quorum for directors’ meeting is three. C resigned from the board due to the fact that his views and recommendations are not considered by A & B. A & B intends to appoint M who is a shareholder of the Company in the place of C. But C does not want to appoint M as a director of the Company.

Requirements:

You are required to answer:

(i) When the resignation of C will be complete?

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(ii) What procedures should A & B follow to appoint M as a director of the Company?

5

- (b) A, B, C, D are four directors of ABC Company Limited, a private limited company, which has applied to XYZ Bank Limited for a long term loan & in the loan proposal, it was shown that the company will be converted into a public limited company. The land proposed to be acquired for the factory belonged to three directors A, B and C value of which was shown as their contribution towards sponsors’ portion of the capital in the financial plan. XYZ Bank Limited approved the loan with certain conditions which included:

- The proposed land shall have to be transferred in the name of the company before signing of the loan agreement.
- The company is to be converted into a public limited company.

Requirements:

- i) What type of resolution will be required to approve the transaction; a board resolution or a shareholders' resolution? 3
- ii) Can the directors allot shares to A, B, & C for consideration other than cash? 4

Assume that the four directors will continue & the quorum for the board meeting is three in the company.

4. You are required to advise on the following issues with regard to Price Sensitive Information provided that all the companies mentioned below are listed with both the Stock Exchanges of Bangladesh:

- (a) The Board of Directors ABC Company Limited, a Pharmaceuticals Company, has decided to purchase a land measuring area of 3.00 acres at BSCIC API Industrial Park at a cost of BDT 180.00 million to be paid within 10 years in 10 equal instalments for establishment of a plant of Active Pharmaceutical Ingredients (API). 3
- (b) XYZ Credit Rating Agency has announced the entity rating of ABC Company Limited as "A3" along with a stable outlook based on the audited financial statements up to December 31, 2016. 3
- (c) The Board of Directors of Millennium Bank Limited (Lead Arranger) has approved its participation in the Syndicated Term Loan facility of BDT 500.00 million (out of BDT 2.00 billion) to Alfa Limited. The Board of Millennium Bank Limited declared 100% interim cash dividend for its shareholders. 3
- (d) The Board of Directors of B2B Excellence Limited has decided to increase the Authorised Share Capital of the Company from BDT 2.00 billion to BDT 5.00 billion considering its strategic plans. 3

5. You are the Company Secretary of SRT Ltd. which is a publicly traded company listed with DSE. Your company has observed two great events this year. First one is the successful completion of Right Issue on 25th August 2017 for 1,00,00,000 nos. of shares @ Tk. 25.00 each including premium of Tk. 15.00 each and the next one is that the company has made a supper profit as on 30th June, 2017 which can easily pay 50% cash dividend.

However, company has declared only 5% cash dividend related to the concerned year.

Requirements:

You are asked by the Board of Directors to advise them on the following three issues:

- (a) How the premium amount may be utilized by the company according to Companies act 1994; 4
 - (b) Disclosure requirements according to regulation 31 of DSE (listing) Regulations 2015 regarding Partial or Non-distribution of Profit as Dividend. 4
 - (c) The time limit, if any, for the payment of cash dividend. 2
- 6. (a) ABC Company Limited, a public listed company owns 99% shares of XYZ Investments Limited. ABC Company Limited has applied to BSEC for Issuance Rights Share and appointed XYZ Investments Limited as an Underwriter to the Issue to subscribe 65% of the shares which may not the subscribed by the shareholders.**

Requirement:

What will be the consequence regarding the appointment of XYZ Investments Limited as an Underwriter to the Issue? 5

- (c) Mr. Philips is a shareholder as well as director of Ocean Blue Productions Limited, a public limited company and also of Green Bank Limited, a banking company. He has applied for loan both to Ocean Blue Productions Limited and to Green Bank Limited.

Requirement:

Discuss the issue in light of the provisions of the relevant Act. 5

7. ABC Bank Ltd. has reported its shareholding position to Bangladesh Securities and Exchange Commission (BSEC) as under:

	Shareholding %	Number of Shareholders
01. Sponsors & Placement	21%	25
02. Sponsor-Foreign	5%	5
03. Sponsor & Placement-Company	5%	5
04. General Public	46%	20,555
05. Institutions	20%	1,000
06. ICB	1%	40
07. ICB Unit Fund	0.5%	1
08. ICB Mutual Fund	0.5%	1
09. Employee	0.5%	5
10. Non-Resident Bangladeshi	0.5%	23
Total	100.00%	21,660

The statement reveals that sponsors have only 31% holdings whereas a remarkable holding of 66% is lying with the General Public and Institutions. Share Department of ABC Bank Ltd. in their regular reporting, informed to the Company Secretary that there are 3 individual shareholders X, Y & Z under general public group each of whom has accumulated shares exactly 5% of the total holdings and another 2 Institutions namely PRO Ltd. and ZEO Ltd. have accumulated their holdings 5.17% and 5.10% respectively of total shareholdings of the Bank. The Company Secretary started inquiry into the matter and discovered the following facts:

- (a) Shares acquired @ 5% by Mr. X and Mrs. Y are husband and wife;
- (b) PRO Ltd. has 2 directors who are two sons of Mr. X & Mrs. Y;
- (c) ZEO Ltd. has purchased shares "benami" for Mr. X;
- (d) Mr. Z is a close friend of Mr. X and his family;
- (e) Another shareholder Mr. P, who has purchased share 4%, is also discovered as the brother of Mr. X and he (Mr. P) has purchased shares on behalf of his brother;
- (f) It is revealed that Mr. X, Mrs. Y, Mr. Z and PRO Ltd. are going to submit their nominations towards directors' election in the next 10th AGM scheduled to be held on 15th December, 2017.

News came to the Chairman that the above group has a good possibility to succeed and internally has managed many corporate and individual shareholders having big stake holdings. Moreover, two sponsor shareholders in the existing Board of ABC Bank Ltd. will support Mr. X and his family.

The Chairman of the Bank and his followers are looking crazily to restrain Mr. X and his family from being elected as Directors of the Bank.

Requirement:

You are required to comment on the issue pursuing related rules and regulations.

10

8. (a) XYZ Company Limited, a non-banking financial institution granted an unsecured loan to ABC Company Limited aggregating 15% of the total paid up capital and reserves of XYZ Company Limited. ABC Company Limited is the subsidiary of BCD Company Limited where the major portion of the shareholding is in the name of Mr. Chowdhury who is also a director of XYZ Company Limited.

Requirement:

Discuss the matter in light of the Financial Institutions Act, 1993.

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- (b) Will an insurance company be subject to a penalty in the event of any delay in settlement of an insurance claim? **Discuss.**

3