EXAMINATION OF ARTICLED CLERKS

PAPER II

CORPORATE LAWS

Wednesday, 18th April, 2018

Time: 3 Hours (1:00 PM to 4:00 PM)

TOTAL MARKS – 100

Notes:

1. **Answers to be short and precise. Please respond as far as possible in bullet points and not paragraph form. In any case please do not exceed the specified number of bullet points where the question demands response in bullet points.**

2. **Read the questions carefully before responding.**

1. Please state whether the following are TRUE or FALSE – please provide one bullet point reason for the same – if there are multiple reasons provide the most relevant one. **40 Marks**

a. A voluntary open offer under Regulation 3 of the SEBI Takeover Regulations can be made for a minimum of 10% of the total shares of the target company

b. Voluntary winding up of companies is no longer governed by the Companies Act, 2013.

c. The minimum escrow amount to be deposited by an acquirer for an open offer is 100% of the total consideration payable in the open offer and such escrow amount is required to be deposited in cash

d. A private limited company can have only two classes of shares viz., equity shares or preference shares.

e. Approval of a scheme of merger can be undertaken at a meeting held through video conferencing.

f. A company cannot make investments in shares of other companies unless such investments are approved by ALL directors of the Company, whether or not attending the board meeting at which such investments are taken up for consideration.

g. Shareholders of a company need not approve appointment of a statutory auditor who has been appointed by the board on account of a casual vacancy.

h. Quorum for a meeting of shareholders of a public company is five members personally present.

i. Securities premium can be used to issue bonus shares after obtaining approval of the National Company Law Tribunal.

j. An open offer cannot proceed unless the committee of independent directors of the target company has given a favourable report in support of the open offer.

k. Any amount received by the company from its director does not qualify to be a deposit.

l. A member who is a related party cannot vote on any resolution to approve a contract to be entered into between a private company and a related party.

m. A bonus issue, once announced, can be withdrawn by the board if it believes it is in the best interest of the company to do so.

n. An acquirer who holds more than 5% shares or voting rights of a target company is required to disclose any acquisition or disposal of shares or voting rights representing 2% or more of the shares or voting rights of the target company.

o. A wholly owned subsidiary of an unlisted public company need not appoint independent directors even if their turnover exceeds Rs. one hundred crores.

p. A meeting of creditors to approve a scheme of compromise or arrangement is indispensable.

q. A director who incurs a disqualification under Section 164(2) of the Companies Act, 2013 is liable to vacate his office as director in all companies of which he is a director.

r. Any person who acquires control over a listed target company in India is liable to make an open offer regardless of the number of shares or voting rights acquired.

s. All shareholders of a listed company are entitled to participate in a buy-back from open market in proportion to their shareholding in the company.

t. Once an open offer is made, it can only be withdrawn with the approval of SEBI.

2. Please write a bulletized note on the duties and liabilities of directors under the Companies Act, 2013. Not more than 10 bullet points. **10 Marks**

3. Please write a bulletized note on the features of a deemed direct acquisition under the SEBI Takeover Regulations. Not more than 5 bullet points. **5 Marks**

4.	Please write a bulletized note on the powers of the Serious Fraud Investigations Office under the Companies Act, 2013. Not more than 5 bullet points.	**5 Marks**
5.	Shareholders of a company would like to requisition an extraordinary general meeting to direct the board of directors of the company to undertake a strategic review of the business of the company and its potential divestment. Is this permissible? Please provide reasons for your answer.	**5 Marks**
6.	A listed target company (ABC) has approved a scheme of demerger wherein some of its businesses will be demerged into another listed company. After the approval of such scheme, an acquirer X has made an open offer to the shareholders of the ABC under the SEBI Takeover Regulations. X seeks your advice on his rights qua the open offer and scheme of demerger under the Companies Act and the SEBI Takeover Regulations.	**5 Marks**
7.	An unlisted public company is held 94% by its promoters and 6% by its public shareholders. The company proposes to undertaken a capital reduction wherein only shares held by the public shareholders will stand cancelled. Please give your views on whether such a reduction is permissible.	**5 Marks**
8.	A company wishes to declare dividend, partly out of its profit and loss account and party out of reserves. Please analyse applicable requirements of the Companies Act, 2013 in this regard.	**5 Marks**
9.	What is the threshold of eligibility for the following: a. Application for oppression under Section 241 of the Companies Act, 2013; b. Class action suit under Section 245 of the Companies Act 2013.	**5 Marks**
10.	Please summarise the key requirements for availing an exemption under Regulation 10(1)(a)(i) of the SEBI Takeover Regulations.	**5 Marks**
11.	Y, a foreign company wants to acquire a listed company XYZ Limited. However, Y does not want XYZ to remain listed and would like to acquire XYZ only if (a) Y can acquire a minimum of 90% of XYZ and (b) XYZ is delisted.Please write a brief note on applicable law, legal possibility of such a transaction, process involved, the options available to Y and risks involved in undertaking such a transaction.	**10 Marks**