

EXAMINATION OF ARTICLES CLERKS

PAPER II
CORPORATE LAWS

Wednesday, 19th April, 2017
Time: 3 Hours [1:00 P.M. to 4:00 P.M.]

TOTAL MARKS – 100

Notes:

1. Short and precise answers will be appreciated. Please respond as far as possible in bullet points and not essays. In any case please do not exceed the specified number of bullet points where the question demands response in bullet points.
2. Case situations should be analysed by providing your reasoning. If you know any case law which covers the situation, please do cite such case law.
3. Read the questions carefully and pay attention to the nuances before responding.

<u>Question 1</u>	<u>Marks</u>
	<u>3</u>
India holds 60% of the shares of Germany. Germany is listed on the BSE Limited and the National Stock Exchange of India Limited. 50% of the shares of India are held by Jammu and the other 50% by Kashmir. Jammu is 100% owned by Maharashtra and Kashmir is 100% owned by Karnataka. Gujarat wants to acquire 100% of the shares of Maharashtra and Karnataka.	
Gujarat has been advised that this transaction will trigger an open offer under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (" Takeover Regulations "). Do you agree or disagree. Please provide your analysis in support of the answer.	

<u>Question 2</u>	<u>Marks</u>
	<u>5</u>
Virat Rahane is a promoter of Crazy Cricket Fans Limited and holds 27% of the shares of Crazy Cricket which is a listed company in India. Ajinkya Kohli is also a promoter of Crazy Cricket and holds 30% of its shares. Crazy Cricket has also issued FCCBs but these are held by financial investors. Virat Rahane acquired shares of Crazy Cricket in the year 2000. Ajinkya Kohli acquired shares of Crazy Cricket in the year 2002.	

<p>Both Virat and Ajinkya have been advised that they should transfer their shares in Crazy Cricket to a Trust. Virat will transfer to Kohli Trust and Ajinkya will transfer to Rahane Trust. Virat Rahane will be sole trustee of Kohli Trust and Ajinkya Kohli will be sole trustee of Rahane Trust.</p> <p>The beneficiaries of Kohli Trust will be the family members of Virat Rahane. He also wants to make his mentor and former captain Sachin Dhoni beneficiary of the trust. The beneficiaries of Rahane Trust will only be the family members of Ajinkya Kohli.</p>		
<p>In this context please provide your bullet point answers to the following questions:</p>		
2.1	<p>Whether such transfer of shares by Virat and Ajinkya to their respective trusts will trigger an open offer in the hands of these trusts under Takeovers Regulations. Please provide a short analysis in support of your response above.</p>	<u>3</u>
2.2	<p>Would your answer change if Ajinkya was trustee of Kohli Trust and Virat was trustee of Rahane Trust and please provide reasons for the same.</p>	<u>2</u>

<u>Question 3</u>	<u>Marks</u>
	<u>9</u>
<p>What are the various triggers for an obligation to make an open offer under the Takeover Regulations?</p>	<u>3</u>
<p>List any six key features of an open offer in bullet point form quoting the relevant regulation and sub-regulation number.</p>	<u>6</u>

<u>Question 4</u>	<u>Marks</u>
	<u>20</u>
<p>Please state whether the following are <u>TRUE</u> or <u>FALSE</u> – please provide one bullet point reason for the same – if there are multiple reasons provide the most relevant one.</p>	
4.1 An Indian company is not permitted to merge with a foreign company under the Companies Act, 2013 (“ Companies Act ”).	<u>2</u>
4.2 A private company having a paid up capital of Rs. 100 Crores must have atleast two independent directors.	<u>2</u>
4.3 A company cannot make investments through more than two layers of investments companies.	<u>2</u>
4.4 A buy-back offer must be for a minimum of 26% of the shares of the company.	<u>2</u>

4.5	A company can approve buy-back of its shares through a circular resolution.	<u>2</u>
4.6	At a shareholders meeting convened by the NCLT to approve, a scheme of arrangement between a company and its related party, the related party is not permitted to vote.	<u>2</u>
4.7	An acquirer who makes an open offer can simultaneously attempt to delist the shares of the company.	<u>2</u>
4.8	A buy-back offer for a listed company must be made at a minimum price equal to 60 trading days volume weighted average price of the shares of the company	<u>2</u>
4.9	A buy-back offer for a listed company cannot be made while it is being merged into an unlisted company.	<u>2</u>
4.10	SEBI does not need to approve the offer document in a buy-back if such buy-back is being made on the open market.	<u>2</u>

<u>Question 5</u>	<u>Marks</u>
	<u>5</u>
<p>Ultra Vires Limited has entered into a scheme of arrangement involving demerger of one of its businesses to Indoor Management Limited under Section 230 of the Companies Act. The shareholders and creditors of both companies have already approved the scheme. In consideration of such scheme, shareholders of Ultra Vires will get shares of Indoor Management. As part of such scheme, it is also proposed that the share capital of Ultra Vires be reduced.</p> <p>The regional director has raised two objections before the NCLT:</p> <p>5.1 that the memorandum and articles of association of Ultra Vires Limited do not permit it to enter into such a scheme.</p> <p>5.2 a reduction of capital cannot be undertaken along with a scheme of arrangement involving a demerger.</p> <p>Ultra Vires wants your advice on whether such objections are tenable and how should it respond to the same (please respond in not more than 3 bullet points for each objection).</p>	

<u>Question 6</u>	<u>Marks</u>
	<u>5</u>
<p>Stingy Limited was required to make CSR contributions under the Companies Act. However, it has failed to do so but it has disclosed in its board report the reasons for not having complied. Please provide the consequences of the above non-compliance under the Companies Act. Is there a violation and if so is it compoundable. Who will be the compounding authority?</p>	

<p><u>Question 7</u></p>	<p><u>Marks</u></p> <p><u>5</u></p>
<p>Please provide bulletized features of a fast track merger under Section 233 of the Companies Act. Please emphasize on the procedures which a fast track merger does not need to go through as compared to a regular merger which significantly curtails the time taken to implement a fast track merger</p>	
<p><u>Question 8</u></p>	<p><u>Marks</u></p> <p><u>5</u></p>
<p>Please describe in brief the provisions for declaration of dividend. Does the nature of approval of dividend by shareholders (ordinary <i>versus</i> special resolution) change if dividend is being declared out of previous year's profits transferred to reserves.</p>	
<p><u>Question 9</u></p>	<p><u>Marks</u></p> <p><u>5</u></p>
<p>Clever and Rich want to start a real estate business in India. Clever has all the knowledge to run the business successfully and Rich has the necessary financial resources. It is therefore agreed that while Clever should have 75% + 1 share in the Company so that he can run it without interference, Rich should have 75% of the economic benefit since he is putting in all the money.</p> <p>Please advise them on the type of company to be incorporated to achieve the above. In particular, please share your thoughts on whether the company should be private or public and whether that impacts the ease of achieving the above with your reasons for the same.</p>	
<p><u>Question 10</u></p>	<p><u>Marks</u></p> <p><u>5</u></p>
<p>Independent India Limited, an unlisted public company having a paid up capital of Rs. 9 Crores but turnover of Rs. 500 Crores has a board of directors comprising 5 members. Of these 5 members, 1 is an independent director. Whether this composition is in compliance of the Companies Act. Please provide reasons for your answer.</p>	
<p><u>Question 11</u></p>	<p><u>Marks</u></p> <p><u>5</u></p>
<p>Identify and describe in brief five requirements of the Companies Act which private companies are exempt from complying.</p>	

<u>Question 12</u>	<u>Marks</u>
	<u>5</u>
<p>Please comment on the requirements to undertake a valuation of shares in the following instances (whether REQUIRED or NOT REQUIRED):</p> <p>12.1 Preferential allotment of shares by a private company; 12.2 Rights issue by a private company; 12.3 Rights issued by an unlisted public company; 12.4 Issue of ESOPs by an unlisted public company; 12.5 Issue of shares on conversion of debentures or loans.</p>	

<u>Question 13</u>	<u>Marks</u>
	<u>5</u>
<p>Debt Ridden Limited has a debt : equity ratio of 5:1. Debt Ridden intends to undertake a buy-back of shares. Such buy-back will be of less than 10% of the total number of shares of the company on a pro-rata basis. All shareholders and creditors are supporting the buy-back.</p> <p>13.1 Is Debt Ridden permitted to undertake such a buy-back? Please give reasons supporting your analysis.</p> <p>13.2 Is there any other route which can be explored by Debt Ridden to achieve the same result?</p>	

<u>Question 14</u>	<u>Marks</u>
	<u>10</u>
<p>Filmstar Productions Limited holds 24% shares of Punt, a listed company in India. Filmstar is owned 70% by Karan Bhansali, 10% by Sanjay Johar and 20% by 30 employees of Filmstar.</p> <p>Filmstar is engaged in the business of producing movies. On account of demonetisation, the film industry is undergoing downtime. Filmstar therefore intends to sell the shares of Punt to meet its urgent cash flow requirements. Since business is slow, dividend income from these shares contributed to the entire income of Filmstar during FY 16-17. Filmstar needs Rs. 120 crores on an urgent basis which it will get by selling shares of Punt.</p> <p>14.1 Does Filmstar need approval from its shareholders to sell shares of Punt – please respond in <u>Yes or No</u>; 14.2 Please provide reasons in not more than 2 bullet points for your response; 14.3 Would your answer change if the shares are being sold to Karan Bhansali; 14.4 What would be the key approval requirement under the Companies Act if the shares are being sold to Karan Bhansali; 14.5 What would be the implications of such a sale under the Takeover Regulations?</p>	

<u>Question 15</u>	<u>Marks</u>
<p>Donald Branson, an Indian citizen and a person resident in India is the CEO of Virgin Towers Limited, a public company having a paid up capital of Rs. 50 crores. Mark Jhunjhunwala, is the CFO of the company who has tendered his resignation. Donald believes he is qualified to act as CFO of the Company and can discharge Mark's functions while continuing to be CEO of the Company.</p> <p>Please analyse quoting the relevant provisions of the Companies Act whether this is feasible or if there are challenges in having such a dual role.</p>	<u>5</u>

<u>Question 16</u>	<u>Marks</u>
<p>Joker has made an open offer to the shareholders of Circus Limited. This offer was triggered on execution of a share purchase agreement (“SPA”) between Joker and Juggler whereby Juggler has agreed to sell 45% of the shares of Circus to Joker. Juggler is a promoter of Circus Limited. Joker has arranged a bank guarantee for the minimum escrow amount required under the Takeover Regulations. SEBI is taking some time to clear the draft letter of offer filed in relation to the open offer on account of some historical non-compliance with disclosure obligations by Juggler. Joker now wants to complete the transaction contemplated in the SPA while SEBI is yet to provide its observations to the draft letter of offer.</p> <p>16.1 What would be the most critical pre-condition, if any, for Joker and Juggler to complete the SPA as contemplated above?</p> <p>16.2 Can such completion occur by way of a block deal on the floor of the stock exchange?</p>	<u>3</u>