

## EXAMINATION OF ARTICLED CLERKS

### Paper II

### CORPORATE LAWS

Wednesday, 20th April 2016

Time : 3 Hours (1-00 p.m. to 4-00 p.m.)

(Total Marks—100)

- Notes.*— (1) Answers should be legible, precise and to the point.  
 (2) Answers to every question should be on a fresh sheet of paper.  
 (3) Do not reproduce the question.  
 (4) Please write in neat and clear handwriting.  
 (5) In case of Open Book Portion, you are not required to reproduce the entire Section / rule / regulation.  
 (6) Figures to the right indicate full marks.

- |  | <b>Marks</b> |
|--|--------------|
| 1. Write short notes (not exceeding one page) on any <i>five</i> of the following :— | 15           |
| (a) Voting rights of preference shareholders.  |              |
| (b) Circumstances in which a company may be wound up by the Court.                   |              |
| (c) Proxy.   |              |
| (d) Special Business.  |              |
| (e) Holding of shares by a subsidiary in its holding company.                        |              |
| (f) Securities Premium Account.  |              |
| (g) Liability for mis-statements in Prospectus.                                      |              |

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| 2. AB Tech Private Limited (“ ABT ”) proposes to restructure its business as stated below (answer any <i>one</i> ) :— | 10 |
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ABT has two subsidiary companies, CFO Private Limited (“ CFO ”) and MNC Private Limited (“ MNC ”). CFO is the wholly owned subsidiary of ABT and MNC is the wholly owned subsidiary of CFO. CFO is engaged in the business of manufacture and trading in plastic products. MNC is engaged in the business of trading. It is proposed that CFO will transfer its manufacturing business to ABT and MNC will be amalgamated with CFO. On transfer of the manufacturing business of CFO, it is proposed that a part of the paid-up share capital of CFO will be cancelled. Comment on the above transaction and state in brief the procedure to be followed and state applicable legal provisions.

OR

ABT proposes to amalgamate with CFL Traders Private Limited (“ CFL ”) with effect from 1<sup>st</sup> April 2016 (the Appointed Date). CFL is incorporated on 10<sup>th</sup> April 2016 as a wholly owned subsidiary of ABT. As part of the amalgamation, CFL will issue shares to shareholders of ABT and the authorized share capital of CFL will be increased. It is also proposed to change the name of CFL to “ AB Tech Private Limited ”. The Memorandum of Association of ABT does not contain any object/power for amalgamation. Comment on the above transaction and state in brief the procedure to be followed and state applicable legal provisions. Will both companies be required to apply to the Court ?



3. Comment on the legality of the following actions. Explain with reasons (not exceeding more than three lines) (answer any six) :— 12
- (a) B Limited is a company incorporated in the Republic of Mauritius. A Limited is a company incorporated under the Companies Act. It is proposed to amalgamate B Limited with A Limited under the Companies Act.
  - (b) A Limited proposes to re-appoint Mr. X as its Managing Director for a period of 3 years. At the same time, A Limited also proposes to appoint Mr. Y as a Manager and Mr. Z as a Whole-time Director for similar periods.
  - (c) A public company held its annual general meeting after having given due notice of the meeting to all its members in accordance with the provisions of the Companies Act. Some of the members of the company did not receive the notice and therefore, did not attend the meeting. These members (who did not receive the notice) have claimed that the proceedings at the meeting are invalid.
  - (d) The members of a company pass a resolution for voluntary winding-up of the company. After the date of passing of the resolution, Mr. A, a member of the company transfers his shareholding in the company to his wife.
  - (e) A director of a public company permanently shifts out of India. Another director goes out of India for a holiday for a period of one month. The Board of Directors propose to appoint alternate directors to act for each of the two original directors during their absence.
  - (f) A public company proposes to alter its articles of association to provide that the quorum for extra-ordinary general meetings of the company shall be four members personally present.
  - (g) The Board of Directors of a public company proposes to appoint a committee of directors to approve borrowings by the company including borrowings made by issue of debentures.
  - (h) A company proposes to appoint X Limited as its director.
4. Distinguish between the following (answer any two) :— 8
- (a) Special Resolution and resolution requiring Special notice.
  - (b) Reduction of share capital and Cancellation of shares.
  - (c) Doctrine of 'ultra vires' and 'indoor management'.
  - (d) Fraudulent preference and avoidance of voluntary transfer.
5. Advise on the following :— 20
- (a) X Limited has a total of 5 directors. The Chairman is a permanent director under the Articles of Association of X Limited. The Managing Director of X Limited has been appointed for a fixed term and is not liable to retire by rotation. Is the constitution of the Board of Directors of X Limited in accordance with the provisions of the Companies Act ?
  - (b) The paid-up share capital of X Limited comprises 10,00,000 equity shares of the face value of Rs.10/- each, on which only a sum of Rs.5/- per share is called up, and the remaining Rs.5/- is uncalled. Some members have additionally paid the balance Rs.5/- per share, though uncalled. At a general meeting of X Limited, a poll is taken and all members vote in proportion to the amount paid-up on their shares. Is the exercise of voting rights as aforesaid correct ?
  - (c) X Limited proposes to change its name. Please state the procedure for the proposed change.
  - (d) A company registered as an unlimited company proposes to convert itself to a limited company. Please state the procedure for such conversion.
  - (e) X Limited proposes to issue shares at a discount to its employees. Please state the procedure to be followed for such issue.



6. Answer any *one* of the following :—

5

- (a) One group of members of X Private Limited (Group A) is in control of the management of X Private Limited. Group A members are managing X Private Limited without regard to the interest of other members. The other members require advise as to whether they can approach the Company Law Board. If yes, what reliefs can the Company Law Board grant to protect the other members ?
- (b) Explain Preferential Payments and Overriding Preferential Payments in case of winding-up of a company.

**OPEN BOOK PORTION**

7. Advise on any *one* of the following transactions :—

10

- (a) TMT Limited ("TMT") is a listed public company. The acquirer along with persons acting in concert with him ("PAC"), held 25% of the paid-up share capital of TMT as on as on 01-04-2015. During the financial year 2015-16, certain PAC collectively acquired additional shares which increased the total shareholding of the acquirer and his PAC by 4%. During the same period, some other PAC collectively sold shares aggregating to 1.5% of the paid-up capital of TMT. Thus, the total holding of the acquirer and his PAC increased by 4% and reduced by 1.5%. In light of the aforesaid facts, answer the following :—

(i) During the current financial year (2015-16), the acquirer proposes to purchase additional shares constituting 2% of the paid-up capital of TMT from the market. Will the acquirer be required to make an open offer under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("Takeover Regulations") ?

(ii) Instead of acquiring an additional 2% from the market, the acquirer proposes to purchase the shares from one of his PAC. Will the acquirer be required to make an open offer under Takeover Regulations ?

(iii) Will your answer to (ii) above, be different if the acquirer and PAC formed part of the Promoter group of TMT ?

(iv) State the disclosure requirements in the above transactions under the Takeover Regulations.

OR

- (b) MNC Limited ("MNC") is a listed public company. Pursuant to a scheme of amalgamation, MNC is amalgamated with PQR Limited ("PQR"), another listed public company. As a result of the scheme, the shareholding pattern of PQR undergoes a change, and the promoters of MNC acquire more than 25% of the shares of PQR. In light of the aforesaid facts, answer the following :—

(i) Will the promoters of MNC be required to make an open offer under the Takeover Regulations on the acquisition of shares of PQR ?

(ii) After giving effect to the scheme, the composition of the Board of Directors of PQR is to be changed so that a majority of the directors represent the promoters of MNC. Will an open offer be required to be made under Takeover Regulations by the promoters of MNC ?



(iii) If the open offer is required to be made by the promoters of MNC, what is the stipulated minimum offer size? Will the said promoters be bound to acquire the offered shares even if their total shareholding exceeds the maximum permissible non-public shareholding?

(iv) If the open offer is to be made, state the timing of the offer.

(v) Can the change in the composition of the Board of Directors of PQR be effected prior to the making of the open offer or during the offer period?

8. Answer any *four* of the following with reasons (*not exceeding three lines*) :— 12

(a) Mr. A holds shares of a closely-held unlisted public company. Mr. A agrees to sell the shares to Mr. B, and they enter into an agreement for sale, the terms of which provide that the sale will be completed by delivery of the share certificates and payment of the agreed price seven days after the date of the agreement for sale. Is the transaction valid?

(b) Can an acquirer who proposes to make a competing offer under the Takeover Regulations make the competing offer conditional as to minimum level of acceptances?

(c) In case of a buy-back of shares by a listed public company, can the company allot to the shareholders redeemable debentures of the company in consideration for the shares offered for buy-back? Will the answer be different, if the buy-back offer is made by an unlisted closely-held public company?

(d) Is an agreement for sale of units of a mutual fund required to be made on a spot delivery basis?

(e) Can an offer for buy-back of securities made by a private company be withdrawn? Is the company required to secure completion of the offer?

9. Explain briefly any *two* of the following :— 8

(a) Y Limited is a listed public company. Y Limited proposes to make a tender offer to buy-back a part of its issued equity shares from its shareholders. Can Y Limited make the offer to its shareholders other than the Promoters? Will the answer be different if instead of a tender offer, Y Limited proposes to buy-back its shares from the open market through a stock exchange? In either case, can Y Limited withdraw its offer of buy-back at any time?

(b) Can an acquirer who has made a public announcement of an open offer for acquiring shares of a target company delist the company? What are the consequences of failure of such delisting offer and state the rights of shareholders in case of such failure. Can a competing offer be made when a delisting offer is made and what are the consequences there of?

(c) In case of an offer of buy-back by a private company, state the disclosures regarding the promoters to be made by the company to its shareholders. Are there any restrictions on the source of moneys to be used for the buy-back?