

**CORPORATE LAWS AND SECRETARIAL PRACTICES – SEMESTER – 4****MARKS****Q. 2 (a) Directors Having Special Interest:**

The provisions regarding election and removal of directors and term of office do not apply to the directors appointed by the persons having special interests i.e.:-

- 1) Directors nominated by Federal Government or a Provincial Government.
- 2) Directors nominated by any corporation, or company owned or controlled, whether directly or indirectly, by the Federal Government or a Provincial Government.
- 3) Creditors' directors nominated by foreign equity holders on the board of any company set up under a regional co-operation or other co-operation arrangement approved by the Federal Government.
- 4) Director nominated by a Company having shareholding in other company.

**(b) Fresh Election of Directors on Request of Substantial Acquirer:**

A person acquiring 12.5% or more voting shares in a listed company in his own name, may apply to the Commission for requiring the company to hold fresh election of directors in accordance with the procedure laid down in section 178 in the forthcoming annual general meeting of the company.

The Commission may, if it deems appropriate in the interest of the company, its minority shareholders or the capital markets generally, direct the company to hold the election of directors.

The person whose request fresh election of directors is held shall not sell or otherwise dispose of the shares acquired by him for at least one year from the date of election of directors.

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**(c) Directorship of a Person without being a Member:**

Membership is the basic qualification for the office of directorship of a company. But this qualification does not apply in the case of following directors:-

- Nominee of the Government or an institution or authority which is a member.
- A whole-time director who is an employee of the company;
- Chief executive;
- Nominee of a creditor.

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**Q. 3 (a) Rectification of Register of Mortgages:**

- (i) The company may apply to the Commission for rectification of the misstatement of any particular with respect to any charge which requires registration.
- (ii) The rectification would be allowed if the misstatement is:-
- Accidental.
  - Due to inadvertence.
  - Some other sufficient cause
  - Is not of a nature to prejudice the position of creditors or shareholders of the company.
  - On other grounds it is just and equitable to grant relief.
- (iii) The certified copy of the order of the Commission passed shall be filed with the registrar within 21 days of the date of such order by the company or the person on whose application it is passed.

**(b) Period for Payment of Dividend and Consequences for Non-Compliance in this Regard:**

- (i) The dividend is required to be paid to the shareholders in case of listed company within 45 days and in case of other than listed company 30 days of the declaration of the dividend and it is not lawful for the directors or the company to withhold or defer its payment.

It is the responsibility of the Chief Executive to make the payment within the specified period and in case of failure the Chief Executive of the company shall be punishable with imprisonment for a term which may extend to two years and with fine which may extend to one million rupees.

**(ii) Declaration of Final dividend**

Dividend is deemed to have been declared on the date of the General Meeting.

**Declaration of Interim dividend**

The dividend is deemed to have been declared on the date of commencement of closing of share transfer for purpose of determination of entitlement of dividend and where register of member is not closed for such purpose on the date on which such dividend is approved by the directors.

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**Q. 4 (a) Conditions for Issuing Non-Voting Ordinary Shares:**

(i) Since SPL, is a company which is limited by shares, it can issue shares which do not contain any voting rights. However, it has to comply with following other conditions:

- Such provisions should be specified in the memorandum and articles of association.
- Approval of the shareholders should be obtained by way of a Special Resolution.
- Obtain approval of the SECP on the basis of the Special Resolution.
- The fact that shares are issued with no voting rights should be specified in the offering document.

(ii) **Variation In Rights and Privileges Associated with Different Classes of Shares:**

The variation in rights and privileges may be;

- different voting rights, voting rights disproportionate to the paid up value of shares held; voting rights for specific purposes only; or no voting rights at all.
- different rights for entitlements of dividend, right shares or bonus shares or entitlement to receive the notices and to attend general meetings.
- rights and privileges for indefinite period, for a limited specified period or for such period as may be determined by the members through special resolution.

(b) **Circumstances of Winding Up under the Supervision of the High Court: (Any five points)**

A company can be wound up by the Court under the following circumstances:

- (1) By special resolution that the company be wound up by the Court.
- (2) Failure of the company in holding the statutory meeting or delivering the statutory report to the registrar.
- (3) Failure of the company in holding any two consecutive annual general meetings.
- (4) Failure of the company to commence its business within one year from its incorporation.
- (5) Suspension of business by a company for a whole year.
- (6) Reduction of the number of members below two in the case of private company and below seven in the case of public or any other company.
- (7) Insolvency i.e. the company is unable to pay its debt.
- (8) If the company is conceived or brought forth for unlawful or fraudulent activities or is or has been carrying on such unlawful or fraudulent activities.
- (9) If the company is carrying on business not authorized by the memorandum.
- (10) If the company carries on its business in a manner oppressive to its members concerned with the formation or promotion of the company or the minority shareholders i.e. the shareholders together holding of atleast twenty per cent of the

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equity share capital of the company.

- (11) If the management of the company fails to maintain proper and true accounts.
- (12) If the management of the company commits fraud, misfeasance or malfeasance in relation to the company.
- (13) If the management of the company refuses to act according to the requirements of the memorandum or articles or the provisions of the Ordinance or fails to carry out the directions or decisions of the Court or the registrar or the Commission given in the exercise of powers under this Ordinance.
- (14) De-listing of a listed company.
- (15) If the Court is of opinion that it is just and equitable that the company should be wound up.
- (16) If a company does not have a single member.

**Q. 5 (a) Directors' Training Program:**

All listed companies shall make appropriate arrangements to carry out orientation courses for their directors to acquaint them with this code, applicable laws, their duties and responsibilities to enable them to effectively manage the affairs of the listed companies for and on behalf of shareholders.

It shall be mandatory for all the directors of the listed companies to have certification under any directors' training program offered by institutions-local or foreign that meet the criteria specified by the Securities and Exchange Commission of Pakistan.

Provided that from June 30, 2012 to June 30, 2016 every year, a minimum of one director on the board shall acquire the said certification under this program each year and thereafter all directors shall obtain it:

Provided further that individuals with a minimum of 14 years of education and 15 years of experience on the board of a listed company –local and/or foreign – shall be exempted from the directors' training program.

**(b) Significant Policies: (Any four policies)**

The significant policies may include:

- governance, risk management and compliance issues;
- human resource management including preparation of a succession plan;
- procurement of goods and services;
- Investors' relations including but not limited to general investor awareness, complaints and communication, etc;
- marketing;
- determination of terms of credit and discount to customers;
- write-off of bad/doubtful debts, advances and receivables;
- capital expenditure, planning and control;
- investment and disinvestment of funds;

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- borrowing of moneys;
- determination and delegation of financial powers;
- transactions or contracts with associated companies and related parties;
- the corporate social responsibility (CSR) initiatives and other philanthropic activities including donations, charities, contributions and other payments of a similar nature;
- health, safety and environment; and
- the whistleblower policy.

**Records Required to be maintained with regard to Significant Policies:**

A complete record of particulars of the significant policies along with the dates on which they were approved or amended by the board of directors shall be maintained.

**(c) Offer for Sale of Shares by a Person Holding more than 10% of Shares:**

- A person who holds more than ten per cent of the shares of a company may offer such shares for sale to the public subject to the following conditions, namely:
- The size of the capital to be offered to public through offer for sale shall not be less than one hundred million rupees or twenty-five per cent of the capital, whichever is less;
- No premium shall be charged unless the company has profitable operational record for at least one year;
- In case a premium is to be charged on the sale of shares, the offer shall be fully underwritten and the underwriters, not being the associated companies, shall include at least two financial institutions including commercial banks and investment banks and the underwriters shall give full justification of the amount of premium in their independent due diligence reports;
- Due diligence reports of the underwriters shall form part of the material contracts; and
- Full Justification for the premium shall be disclosed in the offer for sale.

**Q. 6 (a) Conditions Applicable to a Modaraba Company:**

- (i) No modaraba company shall engage in any business which is of the same nature and competes with the business carried on by a modaraba floated or controlled by it.
- (ii) No modaraba company or any of its directors or officers or their relatives shall obtain loan, advance or credit from the funds of the modaraba or on the security of the assets of the modaraba.
- (iii) A modaraba company shall subscribe in each modaraba floated by it not less than ten per cent of the total amount of Modaraba Certificates offered for subscription.
- (iv) The remuneration of a modaraba company in respect of a modaraba floated by it shall be a fixed percentage of the net annual profits of the modaraba and shall not exceed ten per cent of such net annual profits.

**CORPORATE LAWS AND SECRETARIAL PRACTICES – SEMESTER – 4****MARKS****(b) Activities or Functions of Investment Finance Company in relation to Corporate Finance Service : (Any five activities or functions)**

An investment Finance Company may perform of the following activity under Corporate Finance Services:!

- (i) act as advisor and financial agent for companies in obtaining direct bank loans, syndicated loans, export credits, leases and project finances, both domestically and internationally;
- (ii) assist companies in private placement of debt and equity, domestically or overseas;
- (iii) act as advisor to companies in corporate or financial restructuring as well as in the preparation of resource mobilization plans;
- (iv) act as advisor to companies in mergers, acquisition and divestitures;
- (v) assist companies with cash management system;
- (vi) prepare feasibility, market or industry studies for companies, both domestic and overseas;
- (vii) assist to raise equity for new and existing companies by acting as financial agent;
- (viii) act as custodian for securities owned or held by clients pursuant to their instructions and provide each or any of the following services;
  - (1) custody of securities;
  - (2) placing or execution of orders for purchase or sale of securities;
  - (3) receipt of dividends and other income on securities;
  - (4) execution of voting and other rights in connection with securities;
  - (5) holding securities on behalf of their clients; and
  - (6) transacting aforesaid activities through nominees, agents, or attorneys;
- (ix) act as nominees, agent, attorney, administrator, executor or trustee for clients;
- (x) act as trustee for Collective Investment Schemes, private equity and venture capital funds, real estate investment trusts and debt instruments, if so approved by the Commission.

**Q. 7 (a) Qualification and Experience of a Company Secretary:**

No person shall be appointed as the Company Secretary of a listed company unless he is:

- a member of a recognized body of professional accountants; or
- a member of a recognized body of corporate / chartered secretaries; or
- a person holding masters degree in Business Administration or Commerce or being a Law Graduate from a University recognized by Higher Education Commission and having at least five years relevant experience.

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**MARKS****(b) (i) Secretarial functions: (any five functions)**

- (1) To ensure compliance of the provisions of Companies Ordinance, 1984 and other statutes and bye-laws by the company.
- (2) To ensure that business of the company is conducted in accordance with its memorandum of association.
- (3) To ensure that affairs of the company are managed in accordance with the articles of association and the provisions of the Companies Ordinance, 1984.
- (4) To prepare the agenda and other documents for regular and special meetings of the board of directors in consultation with the chairman.
- (5) To arrange with to call and hold meetings of the board and prepare a correct record of proceedings thereat.
- (6) To attend the board meetings in order to ensure that the legal requirements are fulfilled, and provide such information as may be necessary.
- (7) To prepare, in consultation with the chairman, the agenda and other documents for the annual general meetings and extraordinary meetings.
- (8) To arrange with the chairman to call the annual and extraordinary general meetings of the company and to attend such meetings in order to ensure compliance with the legal requirement and to make correct records thereof.
- (9) To carry out all matters concerned with the issue of shares, including maintenance of their statutory Share Register and conducting the appropriate activities connected with share transfers.
- (10) To ensure that the company's properties and interest are adequately insured and deal with all insurance matters arising.
- (11) To ensure the custody and administration of the company's property investments, other investments, patent, trade mark, and trade agreements.
- (12) To prepare, approve, sign and seal agreements leases, legal forms, and other official documents on the company's behalf, when authorized by the board of directors or the executive responsible.
- (13) To advise, in conjunctions with the company's solicitors, the chief executive or other executive, in respect of the legal matters, as required.
- (14) To ensure that the official returns, statistics, accounts, etc. are duly completed and submitted.
- (15) To engage legal advisors and defend the rights of the company in Courts of Law.

**(ii) Secretarial Compliance Certificate**

The Company Secretary of a listed company shall furnish a Secretarial Compliance Certificate, in the prescribed form, as part of the annual return filed with Registrar of Companies to certify that the secretarial and corporate requirements of the Companies Ordinance, 1984 have been duly complied with.

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**MARKS****(c) (i) Conditions Related to the Submission of the Proxy:**

- This Proxy Form, duly completed and signed, must be received at the Registered Office of the Company not less than 48 hours before the time of holding the meeting.
- If a member appoints more than one proxy and more than one instruments of proxies are deposited by a member with the Company, all such instruments of proxy shall be rendered invalid.

**(ii) For CDC Account Holders/Corporate Entities**

In addition to the above the following requirements have to be met:

- Attested copies of CNIC or the passport of the beneficial owners and the proxy shall be provided with the proxy form.
- The proxy shall produce his original CNIC or original passport at the time of the meeting.
- In case of a corporate entity, the Board of Directors resolution/power of attorney with specimen signature shall be submitted.

**THE END**