

Paper-4
Company Law
Solution

Answer [1] (i) According to Section 13 (ii) (a) of the companies Act, 1956 provides that it is compulsory that the name of every Private Limited Company shall contain as its last words 'Private Limited' on the other hand, the word 'limited' must be added at the end of its name by Public Limited Company. However, Section 25 of the act permit the registration under a license granted by Central Government of all association for not Profit with limited liability need not to use the word 'limited' or Private limited the Central Government may grant license only when it is satisfied that:

- (i) the association is formed as a limited company to promote art, science, commerce, religion, charitable or any other useful object.
- (ii) the company will not declare and pay any dividend to its members, and association will use its profit or any other income for the promotion of its objects.

Answer [1] (ii) Employee stock option means the option given to the whole time directors, officers or employee if a company, which give such directors, officers or employees the benefit or right to purchase or subscribe at a future date, the securities offered by the company at a pre-determines Price [Section 2 (15A) as inserted by the companies (Amendment) Act, 2000]

Employee under SEBI Guideline, 1999 refers to a -

- (a) Permanent employee of the company working in India or abroad
- (b) A director the company whether whole time director or not;
- (c) An employee of a subsidiary in India or out of India or of holding Company of the Company.

Note: An employee who is a promoter or belong to the Promoter group shall not be eligible to participate in the ESOS. On the other hand, a director who either by himself or through his relatives or through any body corporate, directly or indirectly hold more than 10% of the outstanding equity shares of the company shall not be eligible to participate in the ESOS.

Answer [1] (iii) In the process of winding up the assets of the company are disposed of and the debts of the company are paid off out of the realised assets by a liquidator. if any balance remains in the hands of liquidator. It is distributed among the members of the company in accordance with their rights under the articles.

According to Professor Gower, "winding up of a company is the process whereby its life is ended and its property administered for the benefit of its creditors and members. " An administrator, is called liquidator, is appointed and he takes control of the company, collects its assets, Pay its debts and finally distributes any surplus among the members in accordance with their rights. At the end of the winding up there will not be type remained any of assets and liabilities in the company, and it will therefore be simply a formal step for it to be dissolved that is for its legal personality as a corporation to be brought to an end. In between winding up and dissolution the legal entity of the company remains and its may be sued in a court.

A company which has been dissolved no longer exist as a separate entity capable of holding property or of being sued in court of law, but a company in liquidation though the administration of its affairs has passed the liquidator retains its complete existence. If the liquidation shall be annually, The company will resume its Powers. on dissolution the company's

name is struck all the register of companies on its legal personality as a corporation comes to an end.

Answer [1] (iv) *Please refer 2011 Dec. [1] {c} (a) (iv)*

Answer [1] (v) An important business to be transacted at an annual general meeting is adoption of the accounts including:

- (a) Balance Sheet
- (b) Profit and Loss Account
- (c) Director report and
- (d) Auditor report

Answer [3] (a) Appointment of Persons other than retiring directors:

- (1) According to section 257 of the companies Act, Provides the Provisions regarding the appointment of persons other than a retiring directors. A person who is not a retiring director will be eligible for the appointment to the post of director in a Public Company or a Private Company which is subsidiary of a Public Company.
- (2) If any persons other than retiring director wants to stand for the post of directorship or any other member proposes any person for Directorship.
- (3) He must give 14 days notice before the general meeting to signify his intention and the company must positively inform the members of the company within 7 days before the general meeting either by individual or by advertisement of this fact.
- (4) The candidate for the post of director or the number has to deposit a sum as ₹ 500 which will be refundable if the candidate gets success in election but if the person is not elected for the post of director and such amount will be forfeited by the company.

Answer [3] (b) **Annual Accounts and Balance Sheet:** According to Section 210 (2) of the companies Act, 1956 Provides that if a company not carrying on the business for profit, an income and expenditure account shall be laid before the company as at its annual general meeting instead of a profit and loss account.

as per decided in the case, (Madan Gopal ray V State of west Bengal). the fact that the company did not function is no excuse.

In the given case, Fragile Ltd. remains alive it will have to prepare annual report, hold Annual general meeting and submit returns with the Registrar of Companies. Therefore, the decision of the director is not correct and punishable as per law.

Penalty: Every director who fails to take all steps to comply with these provisions shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to ₹ 10,000 or both.

Answer [3] (c)

As per section 227 of the companies Act, 1956 provide that the auditors having right to examine all times to the:

- (a) Books of accounts;
- (b) Balance Sheet;
- (c) Profit and Loss account
- (d) Vouchers and
- (e) Every other documents declared by this Act.

Which employ suggests that they do not have to remain idle at any time after their appointment. Subject to the convenience of the company, he may actually convenience the checking up of balance sheet, profit and loss accounts

vouchers etc. which will save time for the auditors in the preparation of their report in the course.

If the auditor signs the balance sheet on the same date on which the directors have approved it, it may not be inferred from the circumstances that the auditor has not performed about efficiently .

Hence: objection of director is not valid.

Answer: [4] (a) Manner of making call:-

Usually, articles of association of Companies Provide for the manner in which call should be made. They follow the following pattern set out in Regulation 13 to 18 of Table A of Schedule I of the act.

- (1) For each call of least 14 days notice must be given to the members
- (2) An interval of thirty days is required between two successive calls and not more than 25% of the nominal value of Shares can be called at one time.
- (3) The Board of directors has the power to revoke or postpone a call offer it is made.
- (4) The joint shareholders of a share shall be jointly and severally liable to pay call.
- (5) If a member fails to pay call money he is liable to pay interest not exceeding the rate specified in the articles.
- (6) A defaulter member will not have any voting right till call money is paid by him.

Answer: [4] (b) The Statement is correct:

According to Section 234 A of the Companies Act 1956 Provide that, the Registrar has reasonable ground to believe that books and papers relating to, any Company or other body corporate or managing director or manager of such company may be:

- (i) Destroyed;
- (ii) Mutilated
- (iii) Falsified; and
- (iv) Secreted

The Registrar may make an application to the magistrate of the first class or the case may be. The Presidency magistrate having jurisdiction for an order for the seizure of such books and papers and after considering the application and hearing the Registrar.

If necessary, that magistrate may, by order, authorise the Registrar to enter which such assistance as may be required, the place or places where such books and papers are kept search the place and seize such books and papers as considers necessary.

Answer: [4] (c) *Please refer 2010 Dec. 6 (b) on page no.4.201*

Answer: [4] (d) The Cavity Share already issued cannot be converted into redeemable Preference shares even by means of a scheme of arrangement.

In the case of the, Chowgule and Co. (P) Ltd; Conversion of equity shares into rescindable preference shares may be effected only through a process of reduction of capital. Under Section 100 to 104 of the companies Act 1956.

Answer: [5] (a) **Adjournment of meeting and Postponement of meeting:**

Adjournment of meeting: Adjournment refers to suspension of a meeting after it has been duly commenced to be resumed at a later time or date. The time or date of resumption may be fixed up in the same meeting or it may be left to decide later on. A meeting is deemed to be adjourned *Sine die* if it is adjourned without specifying the date and the time of its resumption.

Postponement of meeting: postponement of a meeting is to put off or defer the holding of a meeting before the date originally fixed for the meeting has arrived. There is no general principle relating to Postponement having universal application and wide acceptance. Doubts have been expressed as to whether a duly convened meeting can be properly postponed.

Answer: [5] (ii) Beneficial owner under depository mode and registered owner under depository mode.

Registered owner	Beneficial owner
(1) Whose name entered as such in the register of issuer.	Share certificate belonging to the Investors are dematerialised and their name entered in the record of depository as beneficial owner.
(2) The depository as a registered owner should not have any voting rights or any other rights in respect of securities held by it.	The beneficial owner is entitled to all the rights and benefits and subjects to all the liabilities in respect of securities held by depository.
(3) Transfer of ownership of Security on behalf of a beneficial owner	The beneficial owner can not do so.

Answer: [5] (iii)

Letter of allotment and Letter of renunciation

Letter of allotment:

- (1) In case the certificate in support of the share allotted not sent, a company is required to issue a letter of allotment to all persons who are allotted shares. Such letter is called letter of allotment.
- (2) Such persons are required to surrender this letter of allotment to the company for issue of a share certificate.
- (3) Letter of allotment is applicable in all cases whenever shares are allotted to persons.

Letter of renunciation :

- (1) Letter of renunciation is applicable only in the case of right issue under section 81 of the Companies Act, 1956.
- (2) When a public company (after expiry of 2 years from the date of incorporation of company or after expiry of 1 year from the date of first allotment of share whichever is earlier), Proposes to increase the subscribed capital of company by allotment of further shares.
- (3) The Board of directors are required to offer the shares first to existing shareholders as a preemptive right.
- (4) The letter through which such shareholders renounce shares in favour of other person is called letter of renunciation.

Answer: [5] (iv) Brokerage and underwriting commission

Brokerage: - Brokerage, is a reward or commission paid to a sort of middleman, That is a broker who merely acts as a connecting link between the company and the subscriber and helps in concluding a bargain.

Brokerage means a reasonable brokerage and it is paid to professional person carrying on the business of broker and not to private person.

Under writing commission:

An underwriting contract has been defines as an agreement entered into before the shares are brought before the public, tht in the event of the public not taking up whole of them, or the number mentions in the agreement, the underwriter will for an agreed commission, take an allotment of such part of the shares as the public has not applies for.

Answer: [5] (v) Please refer 2007 June 5 (1) on page no. 4.105

Answer: [6] (a)

- (i) **This Statement is True:** The outsider dealing with a company having satisfied themselves that the proposed transaction is not in its nature inconsistent with the memorandum of Association ad articles of association are not bound to inquire the regularity of any internal Procedure:
- (ii) **This Statement is False;** As per SF₂EBI (ESOs and ESPS) Guidelines, 1999 only permanent employees are covered under the definition of Employees
- (iii) **This statement is True:** According to section 55 the companies Act 1956 provides that the date of prospectus unless the contrary is proves, Shall be taken as the date of Publication of the prospectus.
- (iv) **This statement is False:** As per SEBI CEsOs and ESPS) Guidelines 1999 provides that if shares issued to the employer are of same price as in public issue, there will be no lock in period.
- (v) **This statement is False:** Notification no.501578(1.7.61, GSR 73 (30.12.65) have partly exempted the section 25 companies from the applicability of section 2(45). Hence, The secretary of a section 25 company need not be a person who is a member of ICSI
- (vi) **This statement is False:** As per section 207 of the Companies Act, 1956 provides that for the distribution of dividend with in 30 days from the date of declaration.
- (vii) **This statement is False:** Under the articles of association authorise, a Shareholder has no right of inspection or of obtaining copies of minute of its Board meeting.
- (viii) **This statemnet is False:** Winding lip is the Proses for dissolution of a company

Answer: [6] (b) (i) Plese refer 2000 June (i) (c) on page no 4. 4. 107

Answer: [6](b) (ii) As per section 270 of the companies Act, 1956 Provides for the time within which share qualification is to be obtains

In another way, according to section 293 of companies Act, 1956 provides that the office of director shall become vacant. if he fail to obtain within 2 months from the date of his appointment or Lages to held at any time therefor, the share qualification. if any required of him by articles of the company . [Chander Bhan V. Emporer]

In the given situation, the director failed to obtain qualification share Le vacate the office. the Board of director are not authorised to extend the period. the articles of any company can not detract from the previous of this section.

Answer: [7] (i) Please refer 2007 Dec. 8 (9) on page no. 4.102

Answer: [7] (ii) Voting by Shaw of hands: According to section 177 of companies Act, 1956, provides that at any general meeting, a motion put to the vole are firstly decided on show of hands. In this process the record regarding the member of votes by counting the hands. A declaration by the chairman that a resolution has been carries on the show of hand by a particular majority or lost and an entry to that effect in the minute book of the company shall be evidence of the fact.

Answer: [7] (iii) Class meeting: According to section 106 of the companies Act, 1956 provides that if a company has more than one class of share holders or where the capital of the company is being divides into different chasses of shares such as equity and preference shareholders. It is must for those companies to call a separate meeting of each type of shareholders there meeting maybe hold for securing the consent of a specific class of shareholders for alteration of their sights and privileges the anticus of the company generally provide for holder of such meeting.

Answer: [7] (iv) According to the companies [Disqualification of director under section 274 (i) (g) of the companies Act, 1956] Rule 2003, It shall be duty of statutory auditor of the appointing company as well as disqualifying company, as required under section 227 (3) (f) to report to the members of the company whether any director is disqualified from being appoints as director under section 274 (l) (g) and to furnish a certificate each year as to whether an the basis of his examination of the books and records of the company. any director of the company is disqualified for appointment as a director or not.

Answer : [7] (v) - please refer 2007 Dec 5 (b) on peg no. 4. 459, 2012 Dec. 7 (d) on page no. 4.447

Answer: [8] (a) According to section 287 (2) of the companies Act, 1956 provides that the quorum for a Board meeting is $1/3^{\text{rd}}$ of total strength or 2 directors, whichever is high. the quorum of the board is required at every stage of the meeting and unless a quorum is present is every such stage. the business transacts is void. Therefore, In the given case during the proceeding of the meeting, the prescribe quorum was not present. Hence, the business transacted is void.

Answer: [8] (b) In the case few shares are registered in point names as the articles of association of the company provide that the survivor shall be the only person to be recognised by the company as having any title to the shares. As per section 36, the article will be binding on the Joint shareholders as contract between them and the company.

In the present case; Astro Ltd. cannot be compelled to register any of the lairs of a deceased joint shareholder jointly with the survivor.

Therefor, R the only survivor holds the titles of the shares.

Answer: [8] (c) At it is suggested Answer. - copy from Guideline Answer. Dec. 2012

Answer: [8] (d) copy from Guideline Answer -Dec. 2012