

CORPORATE LAWS & PRACTICES

July-August 2023

Time allowed- 3:30 hours

Total marks- 100

[N.B. - The figures in the margin indicate full marks. Questions must be answered in English. Examiner will take account of the quality of language and of the manner in which the answers are presented. Different parts, if any, of the same question must be answered in one place in order of sequence.]

Marks

1. a) A logistic company, ABC Ltd. has been incorporated as a private limited company on 1 July 2020 with authorized capital of BDT 1 crore and paid-up capital of BDT 35 lac. There are 7 directors, each director subscribes the Memorandum of Association of the company to subscribe 50 thousand shares at a face value of BDT 10.

After the incorporation, only 4 directors have deposited the capital against their subscriptions. Rest of the directors were yet to deposit the capital having received several calls. They are reluctant in attending meeting of the Board and denying resigning from the Board even.

Moreover, Annual General Meeting and statutory audit have not yet been completed and subsequent formalities thereafter could not be completed as well. The company is following its financial year from 1 July to 30 June.

In these circumstances, the chairman of the Board has asked your legal advice.

Requirements:

- i) Legal status of the directors as per Companies Act, 1994 and RJSC who have not yet been deposited the required capital against their share subscriptions. 4
- ii) What are the options available to the management for removal of the directors who have not paid their contributions? 4
- iii) There are some interdependencies among the period of financial year, audit of those financials and holding of the AGM as per the Companies Act, 1994.

How to formalize the requirement of holding Annual General Meeting and subsequent formalities like completion of statutory audit and tax return submission? 4

- b) Explain the term 'right of pre-emption' on the allotment of shares. Mr. X is a non-resident Bangladeshi shareholder of NRB Bangladesh Ltd, a private limited company has been incorporated under the Companies Act 1994. Mr. X recently decided not to carry on as a shareholder of the company and wants to leave his shares, upon transferring the same to Mr. Y, a friend of Mr. X, who is a resident Bangladeshi and not shareholder of NRB Bangladesh Ltd.

Requirements:

- i) Upon explaining the term 'right of pre-emption' on the allotment of shares, describe the steps that NRB Bangladesh Ltd should follow to execute the transfer of shares to Mr. Y as per the wish of Mr. X. 7
- ii) List out the required documents for execution of Share Transfer to Mr. Y 2

- c) ABC Electronic Ltd. has been incorporated in Bangladesh under foreign direct investment on 15 March 2022. There are only 2 directors: Mr. Jotin Sharma, director nominated by ABC Electronic, India and Mr. Jotin Sharma, himself, an Indian national.

The Authorized Share Capital of the Company is BDT. 5,00,00,000 (Five Crore) divided into 5,00,000 (Five Lac) Ordinary Shares of BDT 100 (One Hundred) each with power to increase or reduce the capital and to divide the shares into different classes and to attach thereto any special right or privileges or conditions as regards dividends, repayment of capital, voting or otherwise or to consolidate or sub-divide the shares.

They remitted the following amount with the view to purchase shares of the company:

Date	Source	USD	BDT	Remarks
03-Jun-22	Mr. Jotin Sharma	135.00	11,481.75	Remitted against 100 shares allotted to him
03-Jun-22	ABC Electronic, India	119,910.00	10,198,345.50	Remitted against 999,900 shares allotted to the company
11-Jun-22	ABC Electronic, India	149,910.00	13,791,720.00	
19-Jul-22	ABC Electronic, India	49,937.50	4,669,156.25	
06-Oct-22	ABC Electronic, India	69,910.00	6,921,090.00	
	Total	389,802.50	35,591,793.50	

In 5 years' plan, management is also planning for debt financing from the local market. If the debt financing is cheaper than the equity financing in the long run, they will go for debt financing and will reduce the share capital accordingly.

Requirements:

Being you are the company Secretary of ABC Electronics Ltd., advise the management-

- i) The process of converting Share Money Deposit into Share Capital of the company as per the Companies Act, 1994. Is there any non-compliance, if so how to address those issues? 3
- ii) What is the regulation of converting share money deposit into share capital by Financial Reporting Council? 3
- iii) The process of capital reduction as per Companies Act, 1994. 3

2. a) The Manager (Finance & Account) of PQR Ltd., a publicly traded company engaged in the food manufacturing and distribution business, is currently preparing the financial statements for the third quarter (as on 31st March 2023). These statements are required to be approved by the Board of Directors for publication, in accordance with the Bangladesh Securities and Exchange Commission Notification No. BSEC/CMRRCD/2006-158/208/Admin/81 dated 20th June 2018. As the company Secretary, the Chairman is discussing with you the adoption of the Q3 Financial Statements. He would like to know the specific date for the next Board Meeting and the legal formalities, authentication process, the required disclosure of Price Sensitive Information and the mode of publication.

Requirement:

Advise your chairman on the issues raised.

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- b) With the expectation that capital market of Bangladesh will turn back after the current volatility in economy, Mr. X and Mr. Y are planning to form an asset management company in order to launch a venture capital fund. The authorized capital of the company will be 100 crore and paid-up capital will be BDT 25 crore.

They have no experience in this regard and do not know which one needs to start first, formation of company with Registrar of Joint Stock Companies and Firm (RJSC) or consent of Bangladesh Securities and Exchange Commission (BSEC) for approval of venture capital fund.

Requirement:

Assuming that you are experienced in these issues, please advise them in this regard. You are also required to advise them as to what are documents required to be submitted with RJSC for formation of company.

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3. a) ABC Bangladesh PLC is a newly incorporated public limited company. The company just started its operation from 1st July 2021 and in the last fiscal period 2021-2022 it recorded the following financial data in its books of account:

- 1) Annual revenue in preceding financial year Tk. 45 crores.
- 2) Total asset value Tk. 20 crores.
- 3) Total liabilities excluding equity shares 9 crores.

In view of the above financial data, ABC Bangladesh PLC is wondering, as to whether the company falls under the definition of Public Interest Entity (PIE).

Requirement:

Quoting the relevant provisions of law under Financial Reporting Act 2015, indicate whether ABC Bangladesh PLC shall be treated as a PIE.

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- b) XYZ Finance PLC is a listed financial institution operating under Financial Institutions Act, 1993 in Bangladesh. The institution is listed with both Dhaka and Chittagong Stock Exchanges. Most of the shares of the company are free float. Following is the shareholding structure of the company as on 30 September 2022:

Sl.#	Shareholder	% of share held	No. of director nominated	Remarks
1	ABC Bank PLC	10%	3	One of the directors is the Chairman of the financial institution since 01 October 2012.
2	ABC Securities Ltd (subsidiary of ABC Bank)	9%	-	
3	ABC Investments Ltd (subsidiary of ABC Bank)	6%	-	
	Sub-total of ABC group	25%		
4	PQR Group (3 associated companies)	20%	2	One of the directors is nominated by one associate and other by the group
5	2 individual institutions Holding 5% share each	10%	2	By each institution. One of the directors is the son of the entrepreneur who has just completed his graduations (has no business experience).

6	Mr. Rahman Sarker	1.5%	1	He is politically exposed person and has control over the institution.
7	2 Independent Directors	1.5%	2	One of them holds 1.5% shares of the company before his appointment
	<i>Sub-total (Sl.# 4 to 7)</i>	<i>33%</i>	<i>10</i>	
8	<i>General public and institutions</i>	<i>42%</i>		
	Total	100%	11	Total no. of Board members is 11, including the Managing Director.

Bangladesh Securities and Exchange Commission (BSEC) has some directives on the holding of the shares by the prompters and/or directors in the listed company. Moreover, in order to bring more transparency in the financial market, Bangladesh Bank has recently has issued some directives on the holding of shares by the directors and their appointment.

Since, XYZ Finance PLC is a listed financial institution, the Board has advised you the review the status of compliance with the relevant regulations in this regard.

Requirements:

- i) What are the regulations of BSEC regarding the holding of shares by the directors and their appointment? Is there any non-compliance? 4
 - ii) What are the regulations of Bangladesh Bank regarding the holding of shares by the directors and their appointment? Is there any non-compliance? 5
 - iii) How do you advise to address the non-compliance, if any? 4
4. a) The financial statements of Unique Bank PLC have been duly audited and the auditors have issued a draft report. The following is the status of equity as on 31 December. Net profit of the bank for the year 2022 is BDT 1,576,197,208. The bank has been able to maintain capital reserve @14% along with 2.5% capital conservation buffer against its risk-based assets as on 31 December 2022.

Particulars	31.12.2022	31.12.2021
Paid-up capital	3,959,033,190	3,770,507,800
Share premium	1,260,585,930	1,260,585,930
Statutory reserves	3,266,109,507	2,950,870,065
General reserves	1,000,000,000	1,000,000,000
Dividend equalization reserves	46,500,000	46,500,000
Retained earnings	3,594,563,025	3,087,706,819
Total equity	13,126,791,652	12,116,170,614

The management is planning to hold financial authentication meeting of the Board on 14 February 2023.

Requirements:

Based on the available information, you are advised the CFO, how the net profit of 2022 be allocated to:

- i) Statutory reserves and general reserve as per Bank Companies Act, 2013; 4
 - ii) How much dividend both cash and stock are allowed by dividend policy of Bangladesh Bank applicable for banks? Is it permitted by the net profit? 4
 - iii) Assuming that the bank will declare the highest rate of dividend they are allowed. How the stock dividend will be declared if the total number of stock dividend calculated become fractional? 2
- b) Mr. X, a member of a very wealthy family, is a Shareholding Director of 'CD Bank plc'. He issued a personal guarantee for a loan amount of Taka 5 crore to another commercial bank called 'PD Bank plc' on behalf of his friend, Mr. Y. Unfortunately, within a year, the loan became classified as a 'Bad Loan' due to the nonpayment of the total outstanding amount of Taka 5.50 crore. It should be noted that the business was destroyed by fire, and Mr. Y does not have the ability to repay his dues to the bank. Subsequently, Bangladesh Bank issued a notice to Mr. X, requesting him to settle the entire outstanding dues of Mr. Y within 2 months from the date of the notice to 'PD Bank plc'.
- As the Company Secretary of 'CD Bank plc', Mr. X is discussing with you about the loan for which he is a guarantor on behalf of his friend, Mr. Y. During the discussion, it becomes clear to you that Mr. Y is an honest individual, and the fire incident has caused significant devastation for which no insurance coverage was in place. Mr. X is considering not paying off Mr. Y's dues and instead intends to approach the high court to protect himself from any potential negative consequences that may arise from the decision of Bangladesh Bank if the dues are not settled within the specified 2-month period.

Requirements:

You should advise Mr. X on the following based on section 17 of Banking Companies Act 1991 (as amended up to 2013):

- i) What are the consequences if dues are not paid by Mr. X within 2 months from the date of issuance of the notice? 2
- ii) Should you suggest to Mr. X that he pay the full amount of dues within the specified time or should you suggest that he go to the High Court against the decision of Bangladesh Bank? 2
- iii) In the event of losing directorship due to non-payment of dues from the position of a Director at 'CD Bank plc', can he regain the position? If so, how? 2

5. Mr. A Karim has retired as the CEO of AFC Finance PLC, a listed FI operating in Bangladesh on 30 June 2021. As a seasoned banker, the board of AFC Finance PLC is planning to appoint him as one of the independent directors of the company with effect from 1 January 2023.

Currently, he is acting as independent directors of 3 non-listed FMCG operating in Bangladesh. Moreover, he is also acting as an independent director of non-listed Insurance company operating in Bangladesh.

Requirement:

As you are the Company Secretary of AFC Finance PLC, before placing the proposal to the board, the board has advised you to review his appointment as the independent director of the company as per CGC of BSEC.

6. Distinguish between reinsurance and double insurance. 6

7. Universe Bangladesh PLC ("the Company") is a public limited company and a subsidiary of Universe Group of Sweden, has been operating in Bangladesh since 2001 as a consumer goods manufacturer. The Company manufactures its consumer goods in its factory located at Maona, Gazipur, where a substantial number of workers (more than 500) have been employed since the inception of the Company. The Company has two registered unions, out of them one has been elected as the CBA.

As part of its welfare initiative, the Company introduced a funded provident fund scheme in 2001, which has been approved by National Board of Revenue (NBR) as a recognized provident fund. Some of the features of the provident fund as per its Trust Deed and Rules as approved by NBR are as follows:

- i) There's a 9 member Trustee Board with representation from all functions including one member from factory workers.
- ii) In the Fund, Company contributes 10% of basic salary for each employee and employee also contributes the similar amount.
- iii) Interest on loan from the fund is 4% as per Income Tax Ordinance (allowed only in special cases)
- iv) Outgoing members eligible for getting company's contribution part only after completion of 5 year 6 months from the joining date.

Recently, in line with Group's compliance program, there was an audit focusing labour law compliance only, who submitted their report with following observations as not complying with labour law:

- i) Trustee Board formation is not aligned with the labour law.
- ii) Company's contribution to the Fund for each employee exceeds the upper limit as recommended in labour law.
- iii) Interest on loan @ 4% is far below the rates recommended in the labour law.
- iv) Eligibility of company's contribution payment to outgoing members not complying with labour law.

On the above observations, the Human Resources department feel that there's nothing they can do to address those non-compliances under labour law, as the same has been approved by NBR and if they revise this based on the provisions of labour law, it may violate the provisions of Income Tax Ordinance, which is a precondition for getting recognition from NBR.

Requirements:

Being the Company Secretary, the Human Resources department approached you for a solution, which may comply with the provisions of both the Income Tax Ordinance and the Labour law.

- a) Advise on the best possible solutions available, complying with both the Income Tax Ordinance and the Labour law taking into account the above non-compliances under the labour law. 10
- b) The steps the Company needs to follow to address the above 4

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