

CORPORATE LAWS & PRACTICES

March-April 2022

Time allowed: 3:30 hours

Full marks: 100

[N.B.: The figures in the margin indicate full marks. Question 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) Explain 'pre-incorporation contract' with an example. Why a company is generally not liable under a pre-incorporation contract? Can a pre-incorporation contract be ratified post incorporation? | 4 |
| (b) Shell Ltd is a public limited company listed with the stock exchanges of Bangladesh. Under a newly inserted Section 11Ka of the Companies Act 1994, it has been made mandatory for public limited companies to add "PLC." or "Public Limited Company" at the end of its name. Shell Ltd is contemplating to implement the same as mandated by the law.
Requirement:
Describe the scope/areas where such changes have to be implemented and the processes to be followed as per the Companies Act 1994 including consequences of the changes as well. | 10 |
| (c) Your company was contemplating to obtain a credit facility for an amount of Tk. 500 million from Fortune Bank Ltd. ("the Bank") for financing your new investment project for which your company had already obtained approval from Bangladesh Investment Development Authority (BIDA) in December 2021. Based on your formal application, the Bank had sanctioned the credit facility vide its sanction letter dated 31 st January 2022.
Pursuant to this, please prepare draft resolutions:
i) for getting the credit facility for approval of the Board
ii) to authorise Mr. X, the Managing Director of the company to execute all necessary documents in this regard
iii) to authorise the Company Secretary to file the necessary Form for registration of charge with the Registrar of Joint Stock Companies and Firms | 6 |
| 2. (a) Tamarin Bangladesh Ltd ("the Company" or "Tamarin") is a subsidiary of a global conglomerate Tamarin A.G., which has been incorporated in Bangladesh under the Companies Act 1994. The company has been operating in Bangladesh as a public limited company but not listed with any stock exchanges. Across the world Tamarin A.G. is a very successful name in FMCG sector, however in Bangladesh it has not been so successful since its incorporation in 2010. To fast track the growth trajectory, the group is looking for acquisition options in Bangladesh. Evergreen Ltd ("Evergreen") is a public limited company, listed with both the stock exchanges of Bangladesh, has also been operating in FMCG sector and has been doing very well with very high level of brand value, deep penetration through very good distribution network across the country. Evergreen is looking for divestment of its operation in FMCG sector and through an investment bank, Tamarin has approached to Evergreen for acquisition of its shares.
Additional information:
1) Evergreen promoters hold 55% of the shares, rest are held by some foreign shareholders, institutions and public. If Tamarin acquires the shares of Evergreen, Tamarin will be able to acquire the promoters' 55% shares
2) Tamarin's current paid-up capital is Tk. 50 crore and it's contemplating the following:
a) After acquisition of Evergreen's shares, it will also go for listing with both the stock exchanges
b) To leverage the synergy effect, after listing with stock exchanges, it will go for amalgamation of both the companies so that it can operate as a single entity
Requirements:
Under Bangladesh Securities and Exchange Commission (Substantial Acquisition of Shares, Takeover and Control) Rules 2018:
i) Describe how acquisition by negotiated deal is done using the trading system of Exchange.
ii) Can a company make substantial acquisition outside the trading system of the exchange? How?
iii) If Tamarin opts for listing with stock exchange, what minimum percentage of its shares have to be offloaded to public?
iv) How the amalgamation process is to be completed? | 3
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- (b) PNG PLC has been incorporated as public limited company in 2005 and been listed with Dhaka Stock Exchange Limited (DSE) in 2010. The authorized capital of the company is BDT 100 crore and paid-up capital of the company is BDT 70 crore with a face value of BDT 10. The company was listed under Book Building method. The performance of the company was good enough to enlisted with the exchange. Sponsors hold the 60% shares of the company.

Up to 2014 the company was traded under 'A' category. For some operational inefficiency, the financial performance of the company deteriorated thereafter. Since, 2016 the company could not make any profit and accumulated loss has eaten up the paid-up capital by 2019. As a result, the company has failed to declare any dividend and could not hold AGM since 2017.

Thereafter, the company has been categorized under 'Z' category on 31 December 2020.

Requirements:

- i) Assuming you are the Company Secretary of PNG PLC, advise the board what are the restriction be imposed by the Bangladesh Securities and Exchange Commission (BSEC) and what will be the next course of action to perform. 5
- ii) Assuming that the company has failed to comply with the regulations within next two years, what will be the consequence for such non-compliance? 5

- (c) ABS PLC is a 'Z' category company been delisted from the main board of Dhaka Stock Exchange Limited on 1 January 2021 and it is being traded Over-the-Counter (OTC) platform. The face value of the shares of the company is BDT 10 and at the time of IPO it was issued at BDT 12 (BDT 2 premium) in 2010. Before the date of delisting, the shares were traded at BDT 8 per share. Net Asset Value (NAV) per share as on 31 December 2021 was BDT 13 as per last audited financial statements as on 31 December 2021. Volume Weighted Average Price (VWAP) for the last one year was BDT 9 per share. The company has failed to hold Annual General Meeting for a period of consecutive two years.

In these circumstances, the sponsors have decided to sale the company and looking for a potential buyer. Recently, a financial consultant firm has introduced a potential buyer with the sponsors. They have expertise and confident that they will be able to run the business profitably. The concert part has offered a price of BDT 11 per shares.

Requirement:

Being you are the Company Secretary of ABS PLC, the Board has advised you to guide the Board to execute the deal, in terms of:

- i) Steps involved with the exit plan;
- ii) Requirement for making application;
- iii) Evaluation of offer price;
- iv) Holding of security holders' meeting; and
- v) Procedure of disposing of holding who did not accept the offer.

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3. (a) ABC Limited is a manufacturing company with paid up capital of BDT 50 crore which produce surgical mask. The face value of the share is BDT 100. Due to ongoing Covid the demand of the mask has gone up and the management of the company wants to expand its existing capacity. To source the funding, they have decided to increase its share capital by issuing shares of BDT 20 crore. The amount was deposited by every director equally on 30 June 2022 and reported as Share Money Deposit. The company made net profit of BDT 7 crore during the year ended on 30 June 2022.

Requirement:

What should be the Earnings per Share (EPS) for the year 2021-2022 of the company as directed by FRC? By when shares need to be issued against the share money deposit? 5

- (b) MNC Bank Limited has been maintaining contributory Provident Fund for its employees which is also recognized by the National Board of Revenue. The entitlement to the fund is mentioned in the rules as follows:

On ceasing membership of the Fund, a member shall be entitled to the amount standing to the credit of his 'Own and Company's Contribution Account' as under:

- i) If he leaves the service of the Company before completion of 2(two) years he shall be entitled only to the amount standing to the credit of his 'Own Contribution Account and interest thereon'.

- ii) If he leaves the service of the Company after completion of 2(two) years, he shall be entitled to the entire amount standing to the credit of his 'Own and Company's Contribution Account along with interest thereon'.

Accordingly, the forfeited amount have been lying with the fund and return from the forfeited amount along with the amount are being distributed among the live members during finalization of fund accounts. Recently, FRC has issued guidelines in this regard.

Requirement:

Justify the course of action made by the Trustee Board of the fund in this regard. What is the directive of FRC in this regard?

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4. ABC Finance Limited, a leading publicly listed financial institution (FI) in Bangladesh having 13 board members including 2 Independent Directors and the CEO. Both the Independent Directors are non-resident Bangladeshi.

Corporate Head Office is located in Dhaka. The FI usually conducts minimum one Board meeting in every quarter. Today is December 15, 2022, and already two board meetings were held in December. Till then both the Independent Directors were physically present at the Board meetings.

Considering the year end, management of the FI has decided to hold another Board Meeting on December 25th. The Chairman of the Board has advised to hold the Board meeting at Cox-Bazar. One of the Independent Directors has informed you that he would not be able to attend the meeting physically but he will join virtually.

The Chairman of the Board who is also the Chairman of a non-listed Bank has advised the Company Secretary among others to raise an agenda to pay honorarium to the top managements who are usually present in the Board meeting.

Requirements:

Considering you as the Corporate Governance expert, please critically evaluate the governance issues involve with the FI considering the following:

- i) Composition of the Board of the FI; 5
- ii) No. of Board meeting permitted during a year and the process of holding the Board meeting on December 25th; and 5
- iii) Entitled Honorarium of the board members and top managements including the CEO. 5

5. One of the leading banks in the country, XYZ Bank Limited holds the following shares of a listed non-banking financial institution, PQR Finance Limited as on 31 December 2021:

Particulars	% of Holding of FI
By the bank itself	9.0%
Through one subsidiary	9.5%
Through another subsidiary	8.0%
Total	26.5%

PQR Finance Limited was established in Bangladesh as joint venture company in collaboration of Canadian investment.

The equity structure of the bank as on 31 December 2021 was as follows:

Particulars	Amount in BDT million
Paid up capital	10,000
Share Premium	1,500
Statutory Reserve	850
Dividend Equalization Reserve	100
Retained Earnings	5,000
Total	17,450

Paid up capital of PQR Finance Limited was BDT 5000 million as on 31 December 2021. Market value of share of the FI's Share as on the same date was BDT 50.

Requirement:

Comment on the investment made by XYZ Bank Limited in PQR Finance Limited in line with the Banking Companies (Amendment) Act, 2013 as well as regulations applicable for financial institutions.

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6. Mr. Rahman Bangladeshi sailor was killed after the vessel Banglar Duth, which remains stranded at a port in Ukraine, came under a "missile" attack in 2022. The deceased, Rahman, was the third engineer of the Bangladeshi flag carrying ship, XYZ Shipping Corporation. He joined the company in 2017. All the employees are covered under group insurance coverage and will get each family BDT 30 lac in case of death of employee. His per day salary was BDT 1,000 and he was also entitled to the gratuity, one-month salary for each year.

Requirement:

What should his nominee get as compensation as per labor law in Bangladesh?

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7. (a) Glow Bangladesh Ltd., a Bangladeshi healthcare products manufacturing company has been incorporated as a public limited company since 1st January 2021. You are a chartered accountant, recently joined in this company as the Chief Financial Officer (CFO) and after the close of year reviewing whether the company needs to comply with the provisions of Participation of Workers in the Profit of the Companies under Bangladesh Labour Act 2006. In relation to this, you are shared with following information:

- 1) The Company started its operation with a paid-up capital of Tk. 10 crore
- 2) The value of fixed assets at the end of 2021 was Tk. 8 crore
- 3) The company posted Tk. 50 lakhs as the profit before tax for the year ended 31st December 2021

Requirements:

- i) Explain whether Glow Bangladesh Ltd. needs to comply with the provisions of Participation of Workers in the Profit of the Companies under Bangladesh Labour Act 2006.

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- ii) If the answer to the (i) is yes, describe:

- a) the timeline within which Workers Participation Fund and Welfare Fund need to be established;
- b) the formation of the Trustee Board and the person to act as the Chairman of the Funds;
- c) amount to be allocated for Workers Participation Fund and Welfare Fund, indicating the proportion of Participatory Fund, Welfare Fund and Workers Welfare Foundation Fund.

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- (b) SQ Limited has been maintaining a provident Fund under a trust duly recognized by the National Board of Revenue. The member of the fund is currently 1,800. The member of the trustee Board is current 9 and they are appointed for a period of five years. By position, the Managing Director is the Chairman as well as the Secretary of the trust.

Both the company and the employees contribute to the fund equally @10% of basic salary per month. An accounts officer has been appointed for the trust. All the expenditure relating to the operation of the trust including his salary and audit fees are accounted for in the fund account. Mr. X who is the member of the fund has taken advance up to 50% of his entitlement for his son's business. Due to ongoing Covid, the accounts of the fund as on 31 December 2020 could not be completed till 31 May 2021. The auditors of the fund have started audit for 2020 and the auditors have issued a draft report qualifying the report with above stated issues.

Requirement:

The chairman and secretary of the trust has requested you, being a labor law expert, to evaluate the above-mentioned clauses to answer the qualification points raised by the auditors.

7

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