

CORPORATE LAWS AND PRACTICES

July-August 2022

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) ABC Bangladesh Ltd ("the company") is a subsidiary of a global company has been operating as a public limited company listed with the stock exchanges of Bangladesh for more than 10 years, where you have been working as Company Secretary for the last three years. Under a group policy recently the company has decided to change its name, following the due processes as per law. In view of this name change, describe the effect of the change of name in relation to the following:

- i) Continue existence of the Company 2
- ii) Legal proceedings by or against the Company 2
- iii) Shareholding by the Company 2

- b) XYZ OPC was incorporated on 1st July 2021 with a paid-up capital of Tk. 1 crore, Mr. X is the only shareholder cum director. The company completed a successful fiscal year for the year ended on 30th June 2022, where it posted a turnover of Tk. 55 crore. Considering this, Mr. X feels that to comply with the provisions of the Companies Act, it cannot continue as an OPC. Therefore Mr. X has decided to convert the company into a private limited company for which Mr. X will include his wife in the shareholdings of the company.

In view of this, advise as to the procedures to be followed for conversion of XYZ OPC into XYZ Ltd as a private limited company.

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- c) ABC Ltd has been incorporated in 2000 with authorized capital of BDT 500 crore and paid-up capital of BDT 200 crore. As per the clause of articles of the company, in 2002, to meet its cash flow requirement, the company has also issued 10% non-cumulative fully paid Preference Shares of BDT 100 crore which was comparatively cheaper than external borrowing. The company has got listed with Dhaka Stock Exchange Limited and Chittagong Stock Exchange Limited in 2010. Initially the company had operating loss and has become profitable since 2005. As on 31 December 2021, the company has accumulated profit of BDT 50 crore.

In 2021, the Board of Directors has decided to redeem its entire preference shares. Recently you have been appointed as the Company Secretary of the company and have been assigned with the project.

Requirements:

You are required to advise the Board:

- i) Will the Preference Shareholders get any dividend up to 2005? Whether the company can redeem its entire non-cumulative Preference Shares in 2021? 2
 - ii) If the answers are no, what will be the process of redeeming entire Preference Shares? 3
- d) Mr. X transferred his business of cricket bat making, initially run as a sole proprietorship, to a company (X Ltd.), incorporated with members comprising of himself and his family. The price for such transfer was paid to Mr. X by way of shares, and debentures having a floating charge (security against debt) on the assets of the company. Later, when the company's business failed and it went into liquidation, Mr. X's right of recovery (secured through floating charge) against the debentures stood prior to the claims of unsecured creditors, who would, thus, have recovered nothing from the liquidation proceeds.

To avoid such alleged unjust exclusion, the liquidator, on behalf of the unsecured creditors, alleged that the company was sham, and was essentially an agent of Mr. X, And therefore, Mr. X being the principal, was personally liable for its debt. In other words, the liquidator sought to overlook the separate personality of X Ltd., distinct from its member X, so as to make Mr. X personally liable for the company's debt as if he continued to conduct the business as a sole trader.

Requirement:

Discuss what are the safeguards available to Mr. X and counter logic for unsecured creditors as per law.

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2. a) XYZ Finance Ltd (herein after “FI”) is a traditional non-bank Financial Institution operating in Bangladesh since 1990. The FI has got listed with Dhaka Stock Exchange and Chittagong Stock Exchange Limited in 2010.

In January 2022, there was a discussion that took place to launch shariah compliant Islamic financial service wing for its customer in addition to the traditional financing system. The financial for the year ended 31 December 2021 has been finalized and will be placed in the next meeting of the Board for authentication scheduled to be held on 14 February 2022.

Note that during incorporation of the FI, nothing has been mentioned in the existing memorandum regarding the Islamic banking operation of the FI.

Requirements:

Now, the management has sought an expert opinion on the steps to be followed to launch the Islamic financial services in addition to traditional financing with regard to:

- i) Board approval; 1
 - ii) Bangladesh Bank regulation; 1
 - iii) Shareholders’ approval; 1
 - iv) Registrar of Joint Stock and Firm (RJSC) formalities; and 1
 - v) Bangladesh Securities and Exchange Commission (BSEC) regulation. 1
- b) ABC PLC is a company listed with Dhaka and Chittagong Stock Exchanges. The company maintains its books of accounts on calendar year basis. The accounts for the year ended 31 December 2021 have been finalized and certified by the auditors duly. The auditors have issued draft report which is unqualified.

The company used to get best presented financial statements award as well as governance award every year from the ICAB, ICMAB, ICSB and SAFA. As a part of good governance, the board wants to hold the AGM within 31 March 2022. You are the Company Secretary and is responsible to coordinate the whole issue. There are no extra ordinary business agenda to be placed in the board.

Requirements:

- i) Following Listing Regulations requirements, draft a suitable calendar for holding of the declaration meeting of the Board as well as the AGM with regard to: 4
 - a. Notification to exchanges and the Commission;
 - b. Fixation AGM date, time and venue.
 - c. Fixation of Board meeting date;
 - d. Declaration of Record date; and
 - e. Date of forwarding notice for the AGM.
 - ii) You are advised to draft the notice for the AGM to be placed before the declaration of meeting of the Board. 2
 - iii) What will be date of authentication of financials, assuming the auditors have signed the audit reports on the following week after the Board meeting? 2
 - iv) Assuming both Stock and cash Dividend have been declared, where in the financials the declaration will be stated? 2
- c) XYZ PLC is a company listed with the Dhaka Stock Exchange Limited and Chittagong Stock Exchange Limited. Paid up capital of the company is BDT 100 crore. The sponsors and directors initially held 50% share of the company and rest shares were free float. The share price has gone up and demand for the shares has increased recently. In these circumstances, the sponsors and directors have decided to offload their shares in the market. Currently, the joint holding of shares by them has reduced to 25%.

As per the regulation of Bangladesh Securities and Exchange Commission (BSEC), sponsors and directors of a listed company shall hold jointly at least 30% shares. And the sponsors and directors have failed to comply with the requirement by the time frame of BSEC.

Requirement:

Advise the Board what actions need to be taken to address such non-compliances.

3. a) With high aspiration, you started a new dimension of your career in 2022 by opening a firm to pursue your professional expertise as a practicing chartered accountant. You have come to know that most probably in the year 2023 you have to be enlisted as auditor with the Financial Reporting Council (FRC) under the Financial Reporting Act 2015. Suppose six months after such enlistment, FRC brings an allegation of non-compliance against you, and suspends your enlistment certificate, for which you are not given reasonable opportunity of showing reasons in relation to your position, although you think that you have very strong grounds to prove that there was no such non-compliance.

Requirements:

- i) Explain in view of the provisions of the Financial Reporting Act 2015, whether FRC can cancel or suspend enlistment certificate of auditors without giving the enlisted auditor the reasonable opportunity of showing reasons. 3
- ii) If you feel that you are aggrieved, describe if there are opportunities to file an appeal against the decision of FRC under the law, and what could be the outcome of such appeal. 5
- b) ABC Ltd. is a listed company and has a Contributory Provident Fund (CPF) for its employees. The CPF is recognized by NBR. The accounting year of ABC Ltd. and the Fund is from 01 January to 31 December. The CPF had forfeited the employer's contributions made in respect of the employees who left the company prior to completion of 02 years of their employments with the company. Such forfeited amounts are as follows:

2014	Tk. 200,000
2015	Tk. 300,000
2016	Tk. 250,000
2017	Tk. 150,000
2018	Tk. 200,000
2019	Tk. 220,000
2020	Tk. 270,000
2021	Tk. 280,000

All the above forfeited amounts have been distributed among the members who are still continuing their membership with the CPF.

Requirements:

- i) In the light of the relevant FRC notification, you are required to state what ABC Ltd. is required to do with regard to the above forfeited amounts. 5
- ii) What action is required in case the accounting years of CPF and ABC Ltd. are not the same? 2
4. The financial statements of ABC 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 2021 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 2021.

Particulars	31.12.2021	31.12.2020
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 2022.

Requirements:

Based on the available information, you are to advise the CFO as to how the net profit of 2021 should be allocated to:

- i) Statutory reserves and general reserve as per the Bank Companies Act, 1991; 5
- 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? 5

iii) Assuming that the bank will declare the highest rate of dividend as is allowed, how will the stock dividend be declared if the total number of stock dividend calculated becomes fractional?

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5. ABC Finance Ltd (herein after referred to as 'FI') is a listed non-banking Financial Institution operating in Bangladesh. The Board of the FI is comprising of 11 members including 2 (two) Independent Directors and 1 (one) Managing Director. All other directors are nominated by their respective institutions and none of them hold any share of the company personally.

In compliance with Bangladesh Bank guidelines, the FI has two sub-committees of the Board: Audit Committee and Executive Committee comprising of all directors of the Board. Further the FI has three subsidiaries: one for Brokerage House operations, one for Merchant Banking operations and one for asset management operations.

In compliance with the Corporate Governance Guidelines of Bangladesh Securities and Exchange Commission (BSEC), the Board of the FI has nominated one independent director as the chairman of the Audit Committee of the Board as well as the Chairman of the Board of Asset management operations and another Independent Directors as the Chairman of another two subsidiaries: Brokerage House operations and Merchant Banking operations. The Chairman of the Executive Committee is a nominated director.

Recently, Bangladesh Bank has issued a directive that none of the Chairman of the Board, Audit Committee and Executive Committee of FI shall remain as the Chairman and/or member of the Board of subsidiaries.

Within the stipulated time frame, FI is planning to reconstitute its boards to comply with the regulations of both Bangladesh Bank and Bangladesh Securities and Exchange Commission.

Requirement:

ABC Finance Ltd, being a listed FI, are governed by both Bangladesh Bank and Bangladesh Securities and Exchange Commission. Advise how the Board of the FI, its sub-committees and Boards of subsidiaries of the FI need to be reconstituted to comply with the regulations of the regulators.

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6. Stone Bangladesh Ltd (Stone), a subsidiary of a global conglomerate, has been operating in Bangladesh as an importer and manufacturer of food products upon maintaining a very high ethical standards as followed by the group. For manufacturing operation, Stone imports substantial quantity of raw and packaging materials from abroad for which it spends millions of Taka in marine insurance premiums. Currently, Stone takes all insurance related services (marine and property insurance) from a reputed insurance company in Bangladesh. Recently, Stone has been approached by another insurance company, who for the purpose of procuring this lucrative business, offered an additional 35% commission on all insurance premium cost, considering Stone has very low claim history in the past.

Suggest whether Stone can accept the offer of the new insurance company in view of the Insurance Law applicable in Bangladesh.

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7. a) Adore Bangladesh PLC (Adore), a subsidiary of Adore Group based in Singapore, has been operating as an industrial undertaking in Bangladesh since 2019. As on 31st December 2021, the paid up capital of the company was Tk. 10 crore and a number of employees including management staff and Directors was 250. Out of the 250 employees, there are a four-member Board of Directors including the Managing Director Mr. Z, 46 managerial staff and 200 factory workers. In 2021, for the first time company posted a profit, which invokes following points to the Governing body of Adore i.e., the Board of Directors as to whether:

1. The company is required to participate in Workers' Profit Participation Fund and Welfare Fund
2. Who are the eligible beneficiaries as per the law
3. What are other formalities under the law (i.e., Bangladesh Labour Act 2006), etc.

For the year ended on 31st December'22, key results of the company were as follows:

Particulars	Amount (crore Tk.)
Turnover	90.00
Profit before tax	20.00
Tax	5.50
Profit after tax	14.50

Requirements:

- i) Quoting the relevant provision of the law, explain whether Adore is required to participate in Workers' Profit Participation Fund and Welfare Fund 3
 - ii) Quoting the relevant provisions of labor law and Company law, determine from the above table which profit should be considered for participation in Workers' Profit Participation Fund, Welfare Fund, and Bangladesh Worker's Welfare Foundation Fund. 4
 - iii) Determine, as per the labour law, the tax incidence for Adore for the amount contributed to Workers' Participation Fund and Welfare Fund 2
 - iv) Among the 250 employees of Adore, determine the number of eligible beneficiaries under the labour law, explaining the reason. 2
- b) Suppose you have been acting as the Head of Rewards of Human Resources Department of MNC PLC. Following relevant provision of the Bangladesh Labour Act 2006, the Company has been maintaining an approved Gratuity Fund and a recognized Provident Fund for its employees.

The following events were happened during 2021:

- i) Mr. Sanaullah Khan who joined as Manager, operation on 1 June 2018 was unfortunately affected by Covid 19 in early 2021 and died on 1 May 2021. He was a permanent employee of the company and was an outstanding performer.
- ii) The company has a dedicated sales force who are engaged in physical marketing of the company's products. Due to ongoing pandemic, the company has focused on online marketing and decided to cut down its field sales force. Accordingly, 10 employees who joined on 1 January 2018 have been decided to be terminated on 1 June 2021.
- iii) Mr. Rahmatullah who was in charge of Dhaka depot for the last 7 years has suddenly become paralyzed in early 2020. Since then he was bed ridden and he has been paid with half pay during his sickness. As per company HR policy, from 1 July 2021, he has been granted leave without pay till 31 December 2021; and since he is not fit for work, the company has decided to discharge him from the job effective from 1 January 2022.

Requirement:

Head of Human Resources has advised to write a memo for approving their compensation as per the Bangladesh Labour Act, 2006.

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