

DUE DILIGENCE AND CORPORATE COMPLIANCE MANAGEMENT

377

Roll No.....

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 8

Total number of printed pages : 5

NOTE : Answer SIX questions including Question No.1 which is compulsory.

1. (a) State, with reasons in brief, whether the following statements are true or false :

- (i) A Practising Company Secretary will be attracting the penal provisions of the Companies Act, 1956 for any false statement in the compliance certificate.
- (ii) Normally, the register of members or of debentureholders of an unlisted company is closed before the annual general meeting.
- (iii) Each due diligence review is unique but the overall aim is to provide an investor with sufficient, relevant and timely information in order to assist in the investment decision.
- (iv) Foreign investment can be taken in the form of technical collaboration but not in the form of financial collaboration.
- (v) Under the takeover regulations, once the public announcement has been made, the Board of directors of the target company can appoint an additional director or fill in any casual vacancy.

(2 marks each)

(b) Critically examine and comment on the following :

- (i) The proportionate allotment of securities in an issue that is oversubscribed shall be subject to reservation for retail individual investors.
- (ii) Payment of royalty by Indian companies is allowed under automatic route under the FEMA regulations.

(5 marks each)

2. (a) Choose the most appropriate answer from the given options in respect of the following :

- (i) The merger of subsidiary company into its parent company is called —
 - (a) *De facto* merger
 - (b) Up stream merger
 - (c) Down stream merger
 - (d) Reverse merger.

2/2010/DDCCM (NS)

P. T. O.

- (ii) Which of the following committees is a non-mandatory under the listing agreement —
- (a) Remuneration committee
 - (b) Share transfer committee
 - (c) Shareholders/investors grievance committee
 - (d) Audit committee.
- (iii) The circular of National Securities Depository Limited (NSDL) providing for the process of demat account opening, control and verification of Delivery Instruction Slips (DIS) is subject to —
- (a) Statutory audit
 - (b) Concurrent audit
 - (c) Internal audit
 - (d) Continuous audit.
- (iv) Which of the following sources is not allowed to Indian companies to raise resources from the international market —
- (a) Global depository receipts
 - (b) American depository receipts
 - (c) Indian depository receipts
 - (d) Foreign currency convertible bonds.
- (v) Which of the following is not involved in the issue of Indian depository receipts —
- (a) Foreign company
 - (b) Overseas custodian bank
 - (c) Domestic depository
 - (d) Foreign investors.
- (vi) Under the approval route, the foreign investor or the Indian company requires prior approval from —
- (a) Securities and Exchange Board of India
 - (b) Reserve Bank of India
 - (c) Company Law Board
 - (d) Foreign Investment Promotion Board.

(1 mark each)

- (b) Distinguish between the following :
- (i) 'Amalgamation' and 'takeover'.
 - (ii) 'Liaison office' and 'project office'.

(3 mark each)

- (c) Mention the sectors which are prohibited for foreign investment in India.

(4 marks)

3. (a) Rosy Trading Ltd. borrowed a sum of Rs.20 lakh from a bank on the mortgage of entire assets of the company and on execution of personal guarantee by all its directors, who stood as sureties for the loan. After one year, the company went into liquidation. For paying off the bank loan, on passing a Board resolution, the directors advanced money to the company to discharge the liability towards the bank loan. However, no action for satisfaction of charge against the property of the company with the Registrar of Companies was taken. Directors claimed that they were subrogated to the position of mortgagee bank on paying off the debt and thus wanted to claim the money in priority to others. You have been engaged to decide their claim. Decide giving reasons and citing case law.

(6 marks)

- (b) Ankur, a shareholder of Radha Financial Services Ltd., requested for copies of the register under section 301 of the Companies Act, 1956. His request was turned down stating that the register contains details about interest of directors and contracts in which they are interested, it is therefore confidential and copies thereof cannot be given. As a Practising Company Secretary, advise Ankur whether the refusal is valid.

(5 marks)

- (c) Sonia Enterprises Ltd. is having a good track record for payment of dividend in past five years. The company has paid dividend in the last five years as follows :

<i>Year Ended</i>	<i>Rate of Dividend Paid</i>
31 st March, 2005	12.0%
31 st March, 2006	12.5%
31 st March, 2007	12.5%
31 st March, 2008	15.0%
31 st March, 2009	18.0%

It is apparent from the annual accounts for the year ended 31st March, 2010 that the profits are inadequate to declare dividend for the year ended 31st March, 2010 but the Board of directors of the company wants to declare a dividend @ 14% on the equity shares so as to maintain the image of the company. The company has some accumulated profits earned in the previous years which were not transferred to reserves.

The company seeks your advice as to how it can pay dividend at the rate of 14% on the equity shares.

(5 marks)

377

: 4 :

4. (a) Mention any six cases where approval from shareholders is mandatory by way of special resolution.

(6 marks)

- (b) Prepare a check-list of takeover process in India when there is no competitive bid.

(5 marks)

- (c) Ash Ltd. and Cash Ltd. are contemplating setting-up a project in joint venture. To guide them, you are required to state the advantages and disadvantages of joint ventures.

(5 marks)

5. (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :

- (i) _____ covers those findings in a diligence which may not impact the financials but there exist certain non-compliances which though rectifiable require the investor to tread a cautious path.
- (ii) _____ is a mechanism for subscribing to an issue containing an authorisation to block the application money in a bank account.
- (iii) _____ instruments help in reducing the risk of investing in fixed income instruments.
- (iv) A _____ is a technique which is adopted by a company for taking over control of the management and affairs of another company by acquiring its controlling shares.
- (v) The aggregate of foreign investment made either directly or indirectly (through depository receipts mechanism) shall not exceed _____ of the issued and subscribed capital of the issuing company.
- (vi) Under section 113 of the Companies Act, 1956, a company is required to deliver the certificate within _____ after the allotment of any of its securities.

(1 mark each)

- (b) Nalini, a Practising Company Secretary, was engaged to perform secretarial audit of Hindustan Fibres Ltd. Draft the audit report to be submitted by her, assuming at least three qualifications.

(10 marks)

6. (a) Bharat Foods Ltd., has decided to invite the public to subscribe its equity capital. List out the services which a Practising Company Secretary can render in respect of the initial public offering (IPO).

(6 marks)

- (b) Tej Speed Ltd., an unlisted public company, has issued bonus shares in the ratio 2:1. You are required to prepare a check-list to confirm that every requirement has been fulfilled. Further, if the company is a listed company, what are the additional requirements which are required to be met ?

(6 marks)

- (c) Mention the provisions regarding obtaining of compliance certificate by a company from a Secretary in Whole-time Practice. Also, state the action to be taken on such certificate by the company.

(4 marks)

7. (a) Distinguish between **any two** of the following :

- (i) 'Initial public offering' and 'further public offering'.
- (ii) 'Physical data room' and 'virtual data room'.
- (iii) 'Joint venture' and 'wholly owned subsidiary'.

(4 marks each)

- (b) Write notes on **any two** of the following :

- (i) Transfer of unpaid amount to the Investor Education and Protection Fund
- (ii) Whistle blower policy
- (iii) Depository participants.

(4 marks each)

8. Critically examine and comment on **any four** of the following :

- (i) The objective of due diligence is to allow the investigator to consider the various options, considering the facts found in the course of due diligence.
- (ii) Whenever a corporate action is announced, the issuer or its Registrar and Transfer Agent (RTA) should inform its depository just after the day of communication of the same to the relevant stock exchange(s).
- (iii) A limited two-way fungibility scheme has been put in place by the Government of India for ADRs/GDRs.
- (iv) Overseas investments by established proprietorship or unregistered partnership exporter firms will be subject to certain conditions.
- (v) Corporate laws are core competence areas of a Company Secretary and corporate compliance management broadly requires complete compliance of these laws.

(4 marks each)

—o—