

**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN**

**EXAMINERS' COMMENTS – FINAL EXAMINATIONS**

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**SUBJECT**  
Corporate Laws

**SESSION**  
Summer 2007

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**General:**

Overall, the performance in the paper was poor. In a number of cases, the examinees wrote lengthy but irrelevant answers. Many tried to quote the full sections without considering as to what was required or relevant. The question-wise comments are given below:

**Q.1 Lending to/from associated undertakings**

The response to this question was better but majority of the students did not cover the following points in their answers:

- (i) The limit of trade credit can be enhanced by management of RBC Ltd. based on their own assessment and without any further approval or legal requirement.
- (ii) No company can grant or take loan if the same was not authorized under their respective articles of association.
- (iii) Copy of resolution passed should be filed with the registrar and also with the SECP if RBC was a listed company. Some students mentioned the provisions contained in sub-sections (2) and (4) of section 208 of the Companies Ordinance 1984, which were not relevant.

**Q.2 Alteration of rights of class B shareholders**

Section 108 (2) and its proviso provided a complete answer to this question. The students were generally aware of the requirement. However, many students mentioned that aggrieved shareholders should apply to SECT whereas, in such a situation, they will be required to approach the court.

**Q.3 Custody of company's property**

This question together with Question 11 was the worst attempted. Most of the students narrated to general powers of liquidator and the court rather than those relating to the circumstances cited in the question (management creating hurdles etc.). As stated in Section 330 of the Companies Ordinance, 1984 the liquidator can seek the help of the court and the district magistrate to remove hurdles and to obtain custody of books, records, property etc.

Q.4 (a) **Eligibility conditions for an NBFC director**

This part was well-attempted although many gave incomplete answers. Some conditions applied not only to directors but also to the companies they managed. Many students failed to point this out.

(b) **Operation of venture capital fund**

Conditions related to operation of venture capital fund were required to be given as have been explained in rule 27 of NBFC Rules 2003. Large number of students somehow went on to quote the eligibility conditions for grant of licence to the venture capital fund as are given in rule 25, which were irrelevant.

Q.5 (a) **Missing address of shareholder for notice purposes**

This part was well-answered by the majority.

(b) **Deposit from dealers for security purposes**

Students quoted the provisions of Section 88 relating to invitation of deposits which was not relevant in the given case. The answer should have been based on Section 226.

(c) **Loan of Chief Executive**

Students tried to quote all the provisions contained in Section 195 of the Companies Ordinance 1984. They should have limited their answer to the relevant proviso only. One of the important condition i.e. getting approval of loan from SECP was not mentioned by the majority.

Q.6 **Extension in period for holding AGM**

This was another badly attempted question as only 9% secured passing marks. Various conditions are mentioned in rules 14 of the Companies Rules, 1985. Most students could mention only two of them i.e. (i) application for extension can be made to the registrar and (ii) registrar can extend the time upto 60 days. A number of students incorrectly mentioned that the application for extension is required to be made to SECP.

**Non-adoption of accounts**

Very few students could provide the correct answer based on Section 242 (2) of the Companies Ordinance, 1984.

**Q.7 (a) Disclosure of interest by director**

The answer to this part of the question was based on Section 214 and 216 of the Companies Ordinance, 1984. The deficiencies generally noticed in the answer scripts were as under:

- The question was based on a particular situation. Many examinees did not mold their answers according to the situation and also quoted various irrelevant matters contained in the above sections.
- Many students restricted their answers to Section 214 regarding disclosure of interest only but did not specify the requirements of Section 216 such as non-participation of interest director in the meeting, restrictions on voting and his non-inclusion for quorum purposes.

**(b) Application of section 214 and 216 to XYZ (Private) Ltd.**

The requirement to disclose the interest as given in Section 214 applied in case of all companies and therefore applied to XYZ (Pvt) Limited also.

However, the restrictions relating to participation and voting etc. applied to XYZ (Pvt) Limited only if XYZ was either a subsidiary or the holding company of a public company. Very few of the students could provide a satisfactory answer to this part of the question.

**Q.8 Demand of poll**

This question based on Section 167 of the Companies Ordinance, 1984, required the candidates to describe as to when and under what conditions, a poll can be demanded by the shareholder(s). The common errors were as follows:

The question was silent as to whether the company was a private or a public company. The students were expected to incorporate both the situations in their answers. Many students covered the question from the point of view of a public company only.

Many students mentioned the minimum number of participants on whose request a poll may be demanded but did not mention the fact that even a single share holder can demand a poll if he has 10% or more of the total voting power as 10% or more of the total paid-up capital.

**Q.9 Code of Corporate Governance**

This question was fairly attempted. However, many students wrongly opined that Chief Executive cannot become the chairman of the audit committee. The code of Corporate Governance rule (xxx) recommends that chairman should preferably be a non-executive director but the same is not mandatory.

**Q.10 Indirect ownership of listed shares.**

According to the scenario given in the question Mr. Abbasi the director of a company had given loan to his nephew on soft terms. His nephew had then used the funds to purchase the shares of the company in which Mr. Abbasi was a director.

The above situation was an indication of the fact that Mr. Abbasi had acquired the shares of the company in an indirect manner. It was therefore advisable for him to comply with the requirements of Section 222 (2) (c) of the Companies Ordinance 1984 and (rule xxvi) of the Code of Corporate Governance. The students were expected to discuss the situation in the light of the above. Very few students could understand the situation. Majority was of the opinion that Mr. Abbasi will not be required to do anything as he had no interest in the transaction whatsoever. Some of the students who did conclude that it was an indirect purchase, were not aware of the legal requirements which were required to be followed in such situation.

In this question, the reasoning behind the conclusions arrived at were more important than the conclusion itself. Many students gave their conclusions either without or with very little reasoning.

**Q.11 Circumstance creating unreasonable monopoly power.**

This was a practical question on Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, 1970. According to Section 5 (1) of the above Ordinance, unreasonable monopoly power shall be deemed to exist under three different situations which have been explained in para (a), (b) and (c) of the above section.

The question also contained three situations and the students were required to discuss each of them to ascertain whether unreasonable monopoly power existed or not. The examiner expected them to briefly describe the conditions mentioned in the above section and briefly evaluate each situation as given in the question accordingly.

Here again the reasoning and the logic behind the decision were important. The observations of the examiners on the students responses are as follows:

- There was serious lacking as regards the knowledge of the relevant law.
- Many students omitted the question altogether whereas many others just gave their opinion, mostly in a single line without any reasoning.
- Those who did try to give reasons, emphasized more on the relationship as associates rather than the relationships creating unreasonable monopoly power.

*(THE END)*