

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN

EXAMINERS' COMMENTS

SUBJECT	SESSION
Company Law	Intermediate Examination - Spring 2014

General:

The result this time was better than the previous attempt. However, some weaknesses were observed which are commonly reported in all comments. Study of laws including company law is different from many other areas as its terminologies, words and even its punctuation like commas and full stop have significance and any misuse can change the meaning of the law entirely. Those students who give due importance to these matters are able to pass easily.

Question 1

The question related to mid-term appointment of two directors and the chief executive by removing the earlier ones appointed for a term of three years. The answer was to be based on Sections 181 and 202 of the Companies Ordinance, 1984 relating to removal of directors and removal of chief executive respectively.

Generally, the students got high marks as they correctly described that the directors can be removed by passing a resolution in the general meeting. Majority of the students were also aware about the provisions of Companies Ordinance, 1984 regarding removal of Chief Executive. However, most of them did not address the issue raised by the existing directors regarding the period of their appointment as per articles of association of the company. Many students also gave detailed procedure about sending notices to the shareholders and in the newspapers which extended the answer unnecessarily.

Some students failed to understand the question and described provisions of Section 178A which pertains to holding of fresh election of directors on the request of a person who acquires 12.5% or more shareholding in the company.

Question 2(a)

Most of the students were well versed with the steps required to be undertaken by a listed company for convening the first annual general meeting and got high marks. Those who could not do well, generally failed to enumerate the following steps:

- Since the company was not holding the meeting in the town in which its registered office was situated, it required permission from SECP. Many students mentioned about taking permission from the Registrar, instead of SECP.
- Since special business was planned to be discussed in the meeting, statement of material facts related thereto were required to be annexed with the notice.
- Some of the students failed to mention about dispatch of notice to the auditors.

Question 2(b)

This part of the question required candidates to list the businesses that need to be transacted in first AGM of a company. Most of the candidates attempted it well on the basis of Section 158 of the Companies Ordinance, 1984.

Question 3

Majority of the students analyzed the given situation correctly and identified that the CEO is indirectly interested in the contract and therefore, should disclose his interest in compliance with the provisions of Companies Ordinance, 1984. However, only few students were able to cover all the relevant points. Most of them gave incomplete answers where important provisions were missing.

Many candidates mentioned the provisions contained in Section 218 of the Ordinance, which pertains to disclosure of director's interest in contract appointing chief executive, managing agent, whole time director or secretary; and accordingly, could not secure any mark.

A number of candidates gave very general answers which only talked about restriction on taking part in the discussions with very little or no further details.

Question 4

This was a straightforward question requiring the candidates to list any twelve powers which can be exercised by the directors of a company. Nearly all candidates succeeded in gaining high marks. Still, there were some who added incorrect or inappropriate points like appointment of auditors, issuance of right and bonus shares, authorization of increments etc.

Question 5

The question contained three parts. In each case, the candidates were required to narrate the relevant provisions of the Companies Ordinance, 1984 which would have to be complied with in the given scenario. Each case is discussed below:

- (a) **Situation:** The Company has received notice from a member proposing a change in the auditors of the Company.

Majority of the students described the company's responsibility of sending a copy of notice received from the shareholder to the retiring auditor and to the members but failed to mention the responsibility relating to publishing of notice in the newspaper.

- (b) **Situation:** A provident fund had been created by the Company but the directors did not intend to create a trust.

A large number of students declared that creation of a trust is necessary which is not correct. Majority of the students who gave the required explanation in terms of Section 227 (2) of the Companies Ordinance, 1984 also covered provisions of Section 227(1) and (3) which were irrelevant to the question as these pertain to money or security deposited by employees of the company in pursuance of their contract of service.

- (c) **Situation:** A shareholder who held 5% shareholding in a company purchased 9% more shares and a further 8% shares subsequently.

This question was to be answered in the context of Section 222 which pertains to the submission of statement of beneficial ownership. The overall performance was good. However, in this case also, some students incorrectly mentioned the provisions of Section 178A regarding request to SECP for holding of fresh elections on acquiring substantial shareholding.

Question 6(a)

Majority of the students got high marks on this part of the question as they correctly narrated the exception to the general rule regarding holding of investment in company's own name in accordance with Section 209 of the Companies Ordinance. The important point that majority of the students missed was that an investment company is also included in the list of exceptions.

Question 6(b)

This part of the question required candidates to list the exceptions to the rule which prohibit a company from purchasing its own shares or from granting of financial assistance by a company for purchase of its own or its holding company's shares. The question was based on Section 95(1) and (2) of the Companies Ordinance, 1984. The students managed to cover most of the relevant parts of the Section; however, some of them failed to mention the following important provisions:

- A subsidiary can deal in shares of its holding company in the ordinary course of its business.
- A private company, not being a subsidiary of a public company, can provide financial assistance for the purpose of purchase to be made by any person of any shares in the company.

Question 7

This was a straightforward and scoring question for those candidates who have properly read and understood Section 30 (1) and (2) of the Securities and Exchange Commission of Pakistan Act, 1997. However, it was noticed that only few candidates have studied this Act properly. As a result, the performance was highly unsatisfactory. Most common mistake was that many candidates narrated the power of seizure of documents by registrar under Section 262 of the Companies Ordinance, 1984 instead of the relevant provisions of SECP Act, 1997.

Question 8

It was a scenario based question from Section 100 of the Ordinance. The requirement was to describe how the Court can proceed on an application made for reduction of share capital, when certain creditors have not given their consent for such reduction.

The overall performance was below average as most of the candidates gave incomplete answers covering one or two points only. A significant number of students mentioned incorrectly that in the absence of consent from the three creditors the court shall reject the application.

Question 9

In this question, three situations were given and the candidates were required to explain how the company's secretary would handle them. Performance in each situation is discussed below:

Situation (i)

100,000 shares were held by three joint holders. Each of them wanted to vote for a different candidate. In such situations guidance is sought from the Articles of Association of the company and in the absence of any guidance, the provisions of Regulation 35 of Table A have to be followed. Very few students could produce correct answers and most students replied incorrectly that the votes would be shared equally.

Situation (ii)

A company has appointed its ex-employee as its proxy and the Proxy Form was signed by the company's secretary. Only few students could produce the correct answer that the Proxy would be considered valid if the appointment as a proxy has been approved by the Board of Directors. Various types of mistakes were observed as most candidates gave one of the following types of responses:

- Proxy appointed by the company should be a member.
- Proxy would be valid if common seal is affixed on it.
- Non-member can be appointed a proxy only if it is allowed by the Articles of Association of the company.

Section (iii)

A shareholder had lodged proxy form one day before the AGM. This was easy and almost all candidates got the right answer.

Question 10

In this question, the candidates were asked about the requirements of Companies Ordinance, 1984 that need to be complied with by an unlisted public company, before proceeding to allot shares. Majority of the students failed to understand the question and narrated the procedure of public subscription like issuance, submission of application, balloting etc. Many students narrated the provisions of Section 73 which pertains to the "Return as to Allotment".

Question 11(a)

According to the situation given in this part of question, a company had decided to convert all its preference shares into ordinary shares. The candidates were required to explain the conditions under which certain preference shareholders aggrieved with the above decision may approach the Court.

The question was based on Section 108 (2) of the Companies Ordinance 1984. Generally the performance was good but some students explained the reasons for which court may reverse the decision, which was not required in this part of the question.

Question 11(b)

This part pertained to the same situation as is mentioned in case of part (a) above. In this part most of the students failed to describe what decision can be taken by the court on application filed by the aggrieved shareholders. However, they explained correctly that no further remedy would be available to the aggrieved shareholders against the decision of the court as it shall be final.

Question 12

According to the situation given in the question, an oil marketing company intended to establish an oil refinery and therefore needed to amend its Memorandum of Association.

Generally, the students did well in this question. However, a number of students failed to understand that the change would be required in the object clause. They also discussed changes in Name and Place clauses which were not relevant. Moreover, without taking into consideration that it was only a 7-mark question, many candidates unnecessarily filled pages by narrating detailed procedure for calling a general meeting for the purpose of alteration of the memorandum of association.

THE END