

<b>THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN</b>	
<b>EXAMINERS' COMMENTS</b>	
<b>SUBJECT</b> Corporate Laws	<b>SESSION</b> Certified Finance and Accounting Professional (CFAP) Examination - Winter 2016

**General:**

An average performance was observed in this paper which was slightly better than the performance in the previous attempt. The same types of issues were noted in this attempt also which the examiners have been highlighting during the past few years i.e. selective studies, failure to address the exact requirement of the question and use of inappropriate legal terms.

Question-wise comments are as under:

**Question 1**

This question pertained to the issue of investment in associated company. Only few students were able to secure good marks. Most of the students got low marks as they failed to list down the conditions mentioned in Regulation 7 & 8 of the Companies (Investment in Associated Companies or Associated undertaking). Generally the students discussed the rate of interest on loan and recovery thereof but failed to mention the conditions like approval of members through special resolution. Finer points like the following were rarely mentioned:

- (i) Since interest on previous loan is outstanding further loan may only be granted if repayment of such loan is rescheduled after approval by way of a special resolution.
- (ii) Investment shall be made within 12 months of special resolution.

**Question 2**

This question of 12 marks comprised of three parts and tested the area of Employees Stock Option Scheme. Part-wise comments are given below:

**Question 2(a)**

This part required the students to define 'employees' and identify the persons who are eligible to participate in the scheme. Majority of the students were unable to secure good marks as they did not know that the definition of employee for this purpose is quite different from the way in which the term employee is generally understood. Further, while discussing the eligibility, most of them used the term permanent employee instead of regular employee.

**Question 2(b)**

This part required the pre-requisites / pre-conditions for launching such a scheme. A significant number of students did not seem to have no clue and did not attempt the question or gave totally wayward answers.

### **Question 2(c)**

This part of the question required the candidates to specify the matters to be considered while drafting the Scheme, in respect of Lock-in period, variation of terms of the Scheme and right of option holders with regard to dividend, voting, transferability and pledge of options and in case of death, permanent incapacity or resignation of the employee. Quite apparently, only few students had read the relevant rules. Consequently, they failed to correctly explain the lock in period and variation in terms of scheme. However, as regards the rights of option holder, most of them used their general understanding of these areas and were able to secure reasonable marks.

The common shortcomings were as under:

- Many students ignored the requirement of the question and tried to define these terms.
- Only few students mentioned that TWL shall have the freedom to specify the lock-in period for the shares issued pursuant to an exercise of option.

### **Question 3**

This question of 11 marks consisted of four part and each part tested a different area as discussed below:

#### **Question 3(a)**

The performance was good as most of the students correctly explained that the remuneration of directors for performing extra services is determined by the directors or members as per the articles of the company. However, some candidates seemed totally confused and stated that no remuneration can be paid to an independent director.

#### **Question 3(b)**

In this part, the candidates were required to specify the conditions relating to the appointment of alternate director. The overall performance was quite poor probably because the candidates were somewhat confused because the person to be appointed as the alternate director was the brother of the director who was going on vacations. Previously, when the same issue was tested in a simpler situation, the performance was much better.

#### **Question 3(c)**

According to the situation given in this part of the question, an urgent request had been received from a member for inspection and supply of minutes. The overall performance was good but many students did not read dates given in the question clearly or ignored them altogether. Consequently, they were unable to understand the crux of the matter i.e. the member had requested the inspection and supply of minutes of the meeting within three days whereas the members are entitled to be furnished certified copy of the minutes of the general meeting after seven days.

#### **Question 3(d)**

This was a simple question which was well replied by most of the students.

#### **Question 4**

This question of 8 marks comprised of two parts relating to Single Member Companies Rules, 2003. Part-wise comments are as under:

##### **Question 4(a)**

In this part the candidates were required to advise how the company would operate in case of death of the single member. Quite obviously, those who had studied the relevant rules were able to answer the question correctly; however, the number of such students was quite limited. Moreover, the point related to succession certificate was missed by most of the good students as well.

##### **Question 4(b)**

This part required students to advise what procedure would have to be followed if the single member transfers 10% of the shares to each of his two daughters. This part was based on Rule 4 and was generally attempted well as the candidates described the procedure to be followed correctly. However, most of them were unable to mention an obvious but important point that the company would be converted into a private limited company.

##### **Question 5(a)**

This part of the question requires students to specify the forms of business which may be carried on by a Fund Management NBFC. It was a simple question which was well attempted by the students.

##### **Question 5(b)**

This part of the question required students to advise the board of directors on three given situations in the light of the provisions of Non-Banking Finance Companies Rules, 2003. Situation-wise comments are as under:

- (i) According to this situation SECP had given permission on 15 June 2016 to an asset management company to establish a Fund Management NBFC but incorporation of the NBFC has been delayed because it was not possible to commence business by 1 July 2017.

Most of the students seemed unaware of the relevant rules and used guesswork. They did not mention anything about application to the Commission for grant of licence which was the key issue as the date of commencement of business is specified in the licence.

- (ii) Here the advice was sought regarding appointment of a person as the CEO of an NBFC where the said person was currently working as CEO of another company. This was an easy question and most of the students performed well.
- (iii) According to the given situation, a major shareholder of an NBFC had recommended the name of his son for appointment as Chief Investment Officer (CIO) of the NBFC. The response was below average and the following mistakes were generally observed:
- Majority of the students did not know that there is no restriction under the Rules with regard to the appointment of son of a major shareholder as CIO and declared that the appointment would be invalid.

- Many students did not read the question clearly and discussed the appointment of CEO instead of CIO.

### **Question 6**

This question of 8 marks required students to narrate the conditions required to be complied with by (i) A contributory (ii) The Registrar and the Commission and (iii) A contingent or prospective creditor, for filing a petition for winding up of a company under Section 309 of the Companies Ordinance 1984. Majority of the students explained the conditions related to a contributory correctly. In the case of Registrar and the Commission, the response was average as many students mixed up the two or gave the same conditions for both. Very few students could correctly explain the conditions relating to contingent or prospective creditor especially the condition related to costs was rarely mentioned.

### **Question 7**

This question of 13 marks comprised of three parts. Part-wise comments are as under:

#### **Question 7(a)**

According to this part of the question, a listed company (ZL) had announced interim dividend which was to be paid in the form of shares of ZL's unlisted subsidiary. The candidates were required to describe the responsibilities of ZL in respect of the above under the Pakistan Stock Exchange Regulations and the consequences if ZL fails to fulfill its obligations.

The overall performance was below average as many students got mixed up and narrated the responsibilities of the company and the CEO under section 251 of the Companies Ordinance, 1984. Among those who did refer to the concerned regulations, many were confused between the par value and market value and/or didn't mention the correct time limit. Moreover, ZL was responsible to get the subsidiary's shares listed but many students termed it as the responsibility of the subsidiary.

#### **Question 7(b)**

This part of the question required the students to state the requirements of Pakistan Stock Exchange Regulations, to be complied with by a company with regard to issuance of notice to the stock exchange for closure of share transfer books, where its shares are traded on ready as well as future counter. Majority of the students were not aware of the requirements especially those relating to the future counter.

#### **Question 7(c)**

This part of the question requires students to narrate the provisions related to notice of general meeting as specified in Regulation 6 of Companies E-Voting Regulations, 2016. The performance was average. Most of the students only mentioned that the notice of the meeting should specify the right of members to vote through e-voting and such notice shall be placed on the website of the company. However, they failed to narrate the conditions under which e-voting becomes binding on the company.

### **Question 8**

This question contained 5 marks and required the students to list the exceptions to the rule whereby a person making a public offer of securities is required to get the prospectus approved by the Commission, as stated in Section 87 of the Securities Act 2015. Though about 11% of the students secured full marks in this question, about 41% could not secure any mark, which was quite obviously due to lack of knowledge and selective studies.

### **Question 9**

This question pertained to a company (SFL), which held 20% shares in a company (ML) but intended to acquire a further 20% shareholding in ML and was based on Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Regulations, 2008. There were three parts of this question. The requirement of each part and the performance is discussed below:

#### **Question 9(a)**

The requirement was to specify the steps to be taken by SFL before making the public announcement. Majority of the students got low marks on this part of the question as they only mentioned the responsibility of the company for submission of copy of announcement but failed to identify the authorities to whom the copy of announcement has to be submitted.

#### **Question 9(b)**

In this part the students were asked to specify the conditions which ML had to comply with after the public announcement and prior to withdrawal of public announcement or commencement of the offer period, as the case may be. This part was well attempted by most of the students.

#### **Question 9(c)**

The requirement was to advise the possible consequences if SFL makes the public announcement but wants to withdraw it under the given circumstances. Generally the performance was poor as the students were not aware of the relevant rules. They are advised to seek guidance from ICAP's suggested answers.

### **Question 10**

This question was of 14 marks and comprised of three parts. Part-wise comments are as under:

#### **Question 10(a)**

This part of the question requires students to discuss the composition of the BOD under the Code of Corporate Governance, 2012. Generally, the performance was average. Majority of the students were able to explain about the number of each type of directors but could not say much about the general guideline given in the code.

#### **Question 10(b)**

This part of the question required the students to state the steps that a company should take to facilitate a person contesting the elections as the representative of minority shareholders. The overall performance was below average as quite evidently only a few students seemed to have studied this topic.

**Question 10(c)**

This part of the question required the students to briefly state the conditions which are required to be fulfilled by a listed company while offering shares through book building process. The performance was below average. Majority of the students had no idea whatsoever and resorted to guesswork. A number of students did not attempt this part altogether. They are advised to refer to Regulation 4 of the Book Building Regulations, 2015 to seek guidance on this issue.

(THE END)