

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN	
EXAMINERS' COMMENTS	
SUBJECT Corporate Laws	SESSION Certified Finance and Accounting Professional (CFAP) Examination - Summer 2018

General:

The overall performance in this attempt was quite good as the students seemed to have come to terms with the Companies Act 2017. The passing ratio was 42.6% as compared to 10.1% in the previous attempt. However, failure to apply knowledge in scenario based question still remained a very weak area of the students. Failure to use the appropriate legal terms was also a common issue with the students.

Question 1

This question was based on a simple scenario according to which the directors of a private company were considering members' voluntary winding up and planned to appoint the company's existing chief accountant as the liquidator. The question consisted of three parts. Performance in each part is discussed below:

Question 1(a)

In this part the candidates were asked to specify the requirement of filing a declaration of solvency and discuss whether the chief accountant can be appointed as the liquidator.

The overall performance was average. Generally, the candidates wrote most of the requirements correctly but failed to give proper justification while responding to the issue of appointment of existing chief accountant as the liquidator. Another common mistake was that instead of mentioning majority of the directors, most candidates stated that declaration of solvency has to be signed by all the directors. Moreover, the need to specify the period during which the directors intend to pay all the debts and that this period shall not exceed one year was not stated by majority of the candidates. Further, there was lot of confusion as regards whether the declaration has to be filed with the Registrar or the SECP.

Question 1(b)

In this part, the requirement was to discuss the responsibility of the liquidator in case the declaration of solvency is filed by the directors but subsequently the liquidator assesses that it would not be possible to pay the company's debts and whether the liquidator could continue to act as liquidator in such a situation.

The performance was average as almost 50% of the students knew the responsibilities of the liquidator in the given situation. A number of candidates mentioned members instead of creditors. Some of them even mentioned members/creditors.

Question 1(c)

In this part the candidates were required to state what action would the liquidator have to take in case he calls a final meeting after the completion of the liquidation process but the quorum for the meeting is not complete. The performance in this part was very poor as only few students could specify all the relevant provisions, whereas about 25% of the candidates gave partially correct answers.

Question 2

This question was based on a simple scenario in which the directors of a company had decided to issue Class B shares and classify the existing shares as Class A shares. The overall response was good as 59.4% candidates secured passing marks. The question consisted of two parts and part wise comments are given below:

Question 2(a)

In this part the candidates were required to discuss the validity of the resolution passed by the directors and to explain the nature of the variation in rights and privileges that may be attached to different classes of shares.

The performance remained average. Very few students knew that directors' resolution would only be valid if the variation in rights is specifically allowed under the Articles and Memorandum of Association. However, most of them were able to write the different types of variations that may be attached to the different classes of shares. The most common omission in this regard was that the provision related to different voting rights was missed.

Question 2(b)

In this part the candidates were required to specify the remedy available to the shareholders who did not agree with the directors' decision. The performance was satisfactory. However, some students used the term voting rights instead of shares. Further, many students were of the view that petition in this regard had to be filed with SECP instead of the Court.

Question 3

This question consisted of two parts. Good performance was witnessed in this question as 59.1% candidates secured passing marks. Part wise comments are given below:

Question 3(a)

In this part, the requirement was to state the restrictions imposed under Companies (Issue of Capital) Rules, 1996 on the sponsors when the company issues shares to the general public.

Good performance was witnessed in this part. The most common omissions were with regard to restriction on making any arrangement with the underwriters to buy the shares which the underwriters may have to buy and reporting of block sale to stock exchange on the same day.

Question 3(b)

This part contained a simple scenario in which the directors were considering to issue shares at a premium to general public as well as the employees of the company. The requirement was to state the conditions required to be fulfilled in respect thereof under Companies (Issue of Capital) Rules, 1996.

Though the performance was satisfactory, many students could not specify that if shares are issued to employees at a lower price, then these shares shall not be transferable or saleable for six months. Many candidates stated incorrectly that same price has to be charged from the employees and the general public.

Question 4

This question consisted of two independent parts. The overall performance was below average as only 25% of the candidates secured passing marks. Performance in each part is discussed below:

Question 4(a)

According to the scenario given in this part a company had offered its factories in Multan and Sharjah as security against a loan after release of existing charge on the Multan Factory. The requirement was to specify the procedures to be carried out in this regard.

The performance remained average as most of the students gave too generalised answers. Some of the common mistakes were as follows:

- For release of charge it was stated that the company should give notice to the Registrar but what should the notice state was not specified.
- Similarly, with regard to registration of charge it was stated that necessary documents should be filed with the registrar without exactly specifying the required documents.
- Only few students knew that additional procedures may be required to register charge over Sharjah factory, to comply with the laws in Sharjah.

Question 4(b)

According to the scenario given in the question, a private company had two shareholders holding 67% and 33% of the shares. The number of directors nominated by them were five and three respectively. The candidates were required to assess whether the 67% shareholder was in a position to remove the existing chief executive of the company before expiry of his term.

The performance remained poor as most of the students only knew that the chief executive may be removed by passing a special resolution. Only few mentioned the other possibility i.e. by a resolution passed by not less than three fourth of the total number of directors. Further, many students only quoted the related provision without applying them to the given situation. Further, many students were of the opinion that the Chief Executive can be removed with simple majority of the directors.

Question 5

This question required the candidates to classify the receivables (under two different situations) under the provisions of NBFCs and Notified Entities Regulations, 2008. The performance was reasonable as 33.6% of the candidates secured passing marks. The common errors were as follows:

Question 5(a)

In this part the candidates classified the receivables based only on the fact that the overdue installments have been restructured and six months have passed since restructuring. The finer point that the classification can only be changed if terms of restructured finance are fully met for six months and 20% of the outstanding amount (principal and markup) is recovered in cash.

Question 5(b)

In this part majority of the candidates wrote that the leases would be classified as doubtful because the debtor has failed to comply with the terms of rescheduling. However, they failed to notice that since the period for which the balance is outstanding has increased to more than one and a half year, the amount would have to be further downgraded and classified as a loss.

Question 6

This question consisted of two independent parts. The overall performance was good as 58% of the candidates secured passing marks. Performance in each part is discussed below:

Question 6(a)

In this part names, qualifications and type of directorship of 9 directors of a listed company were given. Further, three options for constituting the audit committee were also given and the candidates were required to comment on the appropriateness of those options.

The overall performance was quite good. However, some of the commonly observed errors are discussed below:

- In option (i), many students were of the view that executive director can also be part of the committee.

- In option (ii), many students were of the view that chairman of board of directors cannot be a member of the audit committee which is incorrect. He can be a member of the committee but cannot be the chairman. Moreover, only few students were able to identify that there was no independent director in this option.
- In option (iii), many students declared it to be an appropriate composition of Audit Committee missing out the requirement of having a “Financial Literate” in the Committee. Moreover, some students used the term financially sound instead of financial literate.
- Many students mentioned the requirements of the Code of Corporate Governance but did not offer any comment on the options given in the question.

Question 6(b)

This part was very well attempted by the students and most of them secured full marks. A common error was that many candidates mentioned about taking the matter to the court instead of the Commission.

Question 7

A below average performance was witnessed in this question as only 23.7% of the candidates were able to secure passing marks. Some of the common errors were as follows:

- Many students mixed the requirements with that of Insider Trading and therefore included many irrelevant points.
- Various types of errors were made in the treatment of the gain. The candidates are advised to refer to the ICAP’s suggested answer in this regard.
- Some candidates mention about depositing the gain with the Federal Consolidated Fund instead of the Commission.

Question 8

This question consisted of three independent parts. The overall performance was average as 44.5% of the candidates secured passing marks. Part wise comments are given below:

Question 8(a)

This part was generally well attempted. Most common error was that the candidates linked the concept of money laundering to terrorism and hawala business whereas the term used in the law is much vast in scope i.e. proceeds of crime.

Question 8(b)

This question was generally well attempted. The most common error was that the candidates failed to specify how the fractional entitlements would be dealt with.

Question 8(c)

The performance in this part was average as only 50% of the students appeared to have answered on the basis of their knowledge of the Competition Act. The rest of them resorted to guesswork. For example, many of them stated that actions which lead to reduction in competition, low quality products, charging of higher prices are deceptive marketing practices.

Question 9

This question consisted of three short questions related to single member companies. The performance remained below average as only 37.2% of the candidates secured passing marks. Most of them did not know the correct answer of part (a). Part (b) was better attempted but in part (c) again, the candidates were mostly of the incorrect view that a single member cannot enter into contract with the single member company. Some of them who knew that such a contract can be entered into but did not explain that it should be in writing or its terms shall be set out in a written memorandum or recorded in the minutes of directors' meeting.

Question 10

This question consisted of two parts. The performance remained below average as only 38.2% of the candidates secured passing marks. Part wise comments are given below:

Question 10(a)

In this part the candidates were required to specify who manages and controls the Investor Education and Awareness Fund and specify the amounts which are credited to the fund.

Most of the students mentioned incorrectly that the fund is managed by the Federal Government whereas it is managed by the Securities and Exchange Commission. The remaining portion was also not attempted well as most of the students could give one or two correct points only.

Question 10(b)

The overall performance in this part was almost similar to that of part (a) i.e. most of the students were able to list two or three conditions only.

(THE END)