

Paper - 1: Company Secretarial Practice

Chapter - 1: E-Governance of Company Law (MCA-21)

2012 - Dec [4] (ii)

Digital signature certificate is essential for every users who is required to sign in e-form for submission with MCA. For MCA - 21 there are four types of users that is given below are identifies as user of digital signature and are required to obtain digital signature certificate:

- (1) MCA (Government) Employee.
- (2) Professional (Company Secretaries, Chartered Accountants, Cost Accountants).
- (3) Authorised signatories of the company including managing director, directors, manager or secretary.
- (4) Representatives of Banks and Financial Institutions.

Chapter - 3: Alterations in the Memorandum and Articles of Association

2012 - Dec [4] (iv)

Please refer 1999 - June [2] (a) on page no.46

Chapter - 4: Issues of Securities

2012 - Dec [1] {C} (iii)

Please refer 2001 - Dec [4] (b) on page no. 81

Chapter - 5: Allotment of Securities

2012 - Dec [4](iii)

This Statement is partly Correct.

Articles 29 to 35 of Table A of Schedule I provides that forfeiture of shares if authorised by Articles of Association, the shares can be forfeited.

Table A of the Companies Act, 1956 does not provide any clause empowering any Company to accept surrender of shares.

A Company cannot exercise wide powers of accepting a surrender. It can only accept a surrender under conditions and limitations under which shares can be forfeited.

Chapter - 7: Membership and Transfer/Transmission of Shares

2012 - Dec [1] {C} (ii), (v)

(ii) **Type of Resolution** : Special Resolution

Type of Meeting : Meeting of Holders of Redeemable Preference Shares

"RESOLVED THAT pursuant to the provisions of section 106 and any other applicable provisions, of the Companies Act, 1956 and subject to the Memorandum and the Articles of Association of the company in terms of issue of% Redeemable cumulative preference shares (1st series) of ₹ 100 each, as mentioned in the prospectus dated..... consent of the holders of.....% Redeemable cumulative preference shares of ₹ 100 each falling due for redemption on 30th December, 2012 be and is hereby accorded to the company for redemption on 30th December, 2015, extending the date of redemption by three years and also for increasing the fixed preferential dividend on these preference shares by 2% with effect from 31st

DOWNLOAD OUR ANDROID APP FROM PLAYSTORE TO GET UPDATES

SEARCH ---> "STUDENTS OF CA AND CS"

December, 2012 till the date of redemption so extended to 30th December, 2015 and the Board of directors of the company be and is hereby authorized to do all such acts, deeds, matters and things for giving effect to this Resolution.”

(v) Who can issue - The sole owner of share/joint shareholders.

Basis - NSDL Business Rules.

Annexure D of National Securities Depository Limited (NSDL) Business Rules provides the Dematerialization Request Form (DRF). DRF is used by the shareholders for putting a request for dematerialization.

The details contained in the DRF include the following:

1. Name(s) of the First Holder, Second Holder and Third Holder
2. Company Name
3. Type of Security
4. Face Value
5. Details of Securities like Folio No., Certificate No., Distinctive No.
6. Whether the securities are free or locked in
7. Total No. of Certificates
8. Details of locked in securities specifying the lock-in reason and lock-in release date.

Chapter - 8: Directors and Managers

2012 - Dec [4] (i)

General powers of the Board are outlined as per section 291 and the manner in which certain of those powers are to be exercised are provided in section 292, and the powers which can be exercised within the limits granted by shareholders by passing necessary resolutions in accordance under section 293 of the Companies Act.

As such, shareholders even though they are the owners of the company, cannot interfere with the powers of the Board.

As per decided case John Shaw & Sons (Salford) Ltd. V. Shaw (1935) said the only way in which the shareholders can control the exercise of the powers vested by the Articles in the directors is by altering the Articles or by refusing to re-elect the directors whose action they disapprove. They cannot usurp the powers vested in the directors nor the directors can usurp the powers vested in the shareholders.

2012 - Dec [7] (c) (i), (ii)

- (i) According to Section 283 of the Companies Act, 1956, provides the circumstances in which the office of a director shall stand vacated. The vacation under this section takes an automatic effect on the occurrence of any of the event detailed in the Section.

However, if the disqualification to hold office of director occurs due to the following events:

1. he is adjudged an insolvent [Section 283(1)(d)]
2. he is convicted by a Court of an offence involving moral turpitude and sentenced in respect thereof for not less than six months [Section 283(1)(e)]

DOWNLOAD OUR ANDROID APP FROM PLAYSTORE TO GET UPDATES

SEARCH ---> "STUDENTS OF CA AND CS"

3. he becomes disqualified by the order of Court under Section 203, Section 283(1)(j)

As per Section 283(2) provides that disqualification shall not take effect:

- (a) for 30 days from the date of the adjudication, sentence or order;
 - (b) where any appeal or petition is preferred within the thirty days aforesaid against the adjudication, sentence or conviction resulting in the sentence, or order until the expiry of seven days from the date on which such appeal or petition is disposed of; or
 - (c) where within the seven days aforesaid, any further appeal or petition is preferred in respect of the adjudication, sentence, conviction, or order, and the appeal or petition, if allowed, would result in the removal of the disqualification, until such further appeal or petition is disposed of.
- (ii) According to Section 283 of the Companies Act, 1956, provides that with vacation of office by directors. The section is applicable to a private company also. Further, sub-section (3) of section 283 provides that a private company, which is not a subsidiary of a public company may, by its articles, provide additional grounds for vacation of office of director.

Chapter - 9: Company Secretary

2012 - Dec [5] (c)

As per Section 383A of the Companies Act, 1956 provides that every company having such paid-up share capital as may be prescribed shall have a whole time secretary, and where the Board of Directors of any such company comprises only two directors, neither of them shall be the secretary of the company.

As per sub-rule (1) of rule 2 of Companies (Appointment & Qualifications of Secretary) Rules, 1988, every company having paid up share capital 5 crore or more shall have a whole-time company secretary. Further, sub-rule (2) of rule 2 provides that no person shall be appointed as whole-time secretary under sub-rule (1) unless he is a member of the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980. Hence, a company having a paid up share capital of ₹ 10 crore or more is compulsorily required to appoint a whole-time company secretary.

Chapter - 11: Decision Making Forums and Meeting

2012 - Dec [1] {C} (iv)

Who can issue - The notice can be issued by the Secretary of the Company, if so authorized by the Board or by a Director authorized by the Board.

Basis - Section 77A of the Companies Act, 1956.

SPECIMEN OF NOTICE OF GENERAL MEETING NOTICE

Notice is hereby given that the Extraordinary General Meeting of the XYZ Limited will be held on _____, 2013 at 11.00 a.m. at the registered office of the Company at Mumbai to consider and if thought fit, to pass the following resolution as a SPECIAL RESOLUTION, with or without modification.

DOWNLOAD OUR ANDROID APP FROM PLAYSTORE TO GET UPDATES

SEARCH ---> "STUDENTS OF CA AND CS"

“RESOLVED THAT pursuant to the provision of Sections 77A, 77B and all other applicable provisions, if any, of the Companies Act, 1956, and the provisions contained in the Private Limited Company and Unlisted public Limited Company (Buy-Back of Securities) Rules, 1999, prescribed by the Ministry of Corporate Affairs including such modifications or re-enactment of the Act or the Rules and subject to such other approvals, permissions and sanctions as may be necessary and subject to such conditions and modifications as may be prescribed while granting such approvals, permissions and sanctions which may be agreed by the Board of Directors of the Company, the consent of the Company be and is hereby accorded to the Board to purchase its own equity fully paid-up equity shares of ₹ 100/- each upto a maximum of 20,082 equity shares of ₹ 100/- each being 15% of the paid-up equity share capital of the Company to be bought back from the existing shareholders of the Company at a price of ₹ 625/- per share payable in cash.

RESOLVED FURTHER that the Directors of the Company be and are hereby authorized to carry out the aforesaid buying back of securities and to take every step that may be necessary in connection therewith or incidental thereto give effect to the above resolution or to accept any change or modification as may be suggested by the appropriate authorities or advisors.

Mumbai
2013

By Order of the Board
Mr. A
Director

2012 - Dec [2] (c) (i)

In the case of an annual general meeting, all business to be transacted at the meeting shall be deemed special, with the exemption of business relating to :

- (i) the consideration of the accounts, balance sheet, director report and auditors,
- (ii) the declaration of a dividend,
- (iii) the appointment of directors in the place of retiring director and
- (iv) the appointment of, and the fixing of the remuneration of the auditors. Other business shall be special business to be transacted at the AGM. For example, Alteration of MOA and AOA.

In the case of any other meeting, all business shall be deemed special.

2012 - Dec [3] (b)

Adjournment: Meaning & Chairman's Powers

Adjournment means to defer or suspend the meeting to a future time, either at an appointed date or indefinitely or as decided by the members present at the scheduled meeting. For a valid adjournment of a General Meeting, the holding of the meeting at its scheduled time is necessary. A duly convened meeting should not be adjourned arbitrarily by the Chairman. The chairman may adjourn a meeting with the consent of the members and shall adjourn a meeting if so decided by the members.

According to Regulation 53(1) of Table A of Schedule I to the Companies Act, 1956, provides that the Chairman may, with the consent of any meeting at which a quorum is present, and shall, if so directed by the meeting, adjourn the meeting from

DOWNLOAD OUR ANDROID APP FROM PLAYSTORE TO GET UPDATES

SEARCH ---> "STUDENTS OF CA AND CS"

time to time and from place to place. Once a meeting is called, the Chairman cannot adjourn it arbitrarily.

2012 - Dec [7] (b)

According to Section 174(3) of the Companies Act, 1956, provides that Meeting called upon the requisition of Members, if the Quorum is not present within half an hour from the time appointed for holding a meeting of the Company, the Meeting stands dissolved. In another case, the meeting shall stand adjourned. Hence, in this case, since the meeting has been called by Board upon requisition of its members, the meeting shall stand dissolved.

2012 - Dec [8] (a), (c)

(a) Please refer 2011 - June [3] (b) on page no. 250

(c)

Business	Types of Business	Type of Resolution
(i) Declaration of dividend	Ordinary	Ordinary Resolution in all these cases
(ii) Amalgamation of company with another company	Special	Special Resolution in all these cases
(iii) Consideration of annual accounts and auditor's report	Ordinary	Ordinary Resolution in all these cases
(iv) Issue of bonus shares	Special	Special Resolution in all these cases
(v) Alteration of articles of association	Special	Special Resolution in all these cases
(vi) Alteration of objects as stated in the memorandum of association	Special	Special Resolution in all these cases
(vii) Appointment of auditors	Ordinary	Ordinary Resolution in all these cases
(viii) Appointment of directors and fixation of their remuneration	Ordinary	Ordinary Resolution in all these cases

Chapter - 12: Preparation & Presentation of Reports

2012 - Dec [2] (c) (ii)

Clean Audit Report is also known as unqualified report is that where the report does not contain any mistake i.e. where the auditors are satisfied with the Balance Sheet and Profit and Loss Account as presented to them for audit and they are further satisfied that these have been prepared in conformity with the provisions of the Companies Act, 1956.

DOWNLOAD OUR ANDROID APP FROM PLAYSTORE TO GET UPDATES

SEARCH ---> "STUDENTS OF CA AND CS"

Qualified report when the auditors are not satisfied in any respect with the above, they qualify the report stating the areas where they are not satisfied, e.g. adequate depreciation as required under the Act has not been provided, assets have not been valued in terms of accounting principles and do not exhibit a true and fair picture of the affairs of the company.

2012 - Dec [6] (d)

Non financial disclosures can be seen as a way to communicate the corporate activities that impact our society and the environment. One of the principal underpinnings of good corporate governance is to ensure that shareholders and other stakeholders are provided with disclosure on financial and operating results in order to understand the current state of affairs. Traditionally, boards used the audited, historical financial accounts to tell the shareholders about their stewardship. Today, corporates are expected to say far more, not only about how the company has been performing but also about the how it achieved its current performance and to anticipate its future. Non-financial reporting has become an integral and important aspect of corporate governance practices in which the stakeholders are interested.

Chapter - 13: Distribution of Profit

2012 - Dec [2] (c) (iii)

Interim Dividend

As per section 2(14A) defines 'Dividend' to include interim dividend. The Board of Directors may declare interim dividend. The interim dividend is paid between two annual general meetings of the company.

Final Dividend

Final dividend is recommended by the Board of Directors in its report to the shareholders, which is attached to the balance sheet for the relevant financial year. It is declared by the shareholders at the annual general meeting. Usually articles of association of companies provide that the shareholders cannot increase the rate or amount of dividend than the one recommended by the Board.

2012 - Dec [8] (d)

Procedure

1. Hold a board meeting after giving notice as per Section 286 of the Companies Act, 1956, and take the decision of applying to the Central Government for approval for payment of dividend without providing for depreciation.
2. Make an application to the Central Government in e-form 23AAC giving reasons for not providing depreciation along with the following attachments:
 - (a) Certificate from the Company Secretary or director certifying that no relevant facts material to the proposal have been concealed or misrepresented.
 - (b) An undertaking that the company will not come up with any public issue or invite any fresh deposits in the next 18 months.
 - (c) Copy of the Board's resolution in support of the company's proposal.
 - (d) Shareholding pattern of promoters and their relatives.
 - (e) Copy of concurrence of Administrative Ministry.
3. Send a copy of the application to the concerned Registrar of Companies along with a copy of each document annexed to it.

DOWNLOAD OUR ANDROID APP FROM PLAYSTORE TO GET UPDATES

SEARCH ---> "STUDENTS OF CA AND CS"

4. After obtaining approval of the Central Government rest of the procedure is the same as in the case of payment of final dividend.
5. Ensure that the required percentage of profits is transferred to company's reserves.
6. To hold General Meeting and pass ordinary resolution for declaring dividend.

Chapter - 14: Charges

2012 - Dec [8] (b)

Please refer 2003 - Dec [4] (v) on page no.316

Chapter - 15: Inter-Corporate Loans, Investments, Guarantees and Security

2012 - Dec [1] {C} (i)

- Type of Meeting : General Meeting
Type of Resolution : Special Resolution as this investment is not falling in category of exempted investment under section 372A(8)(e) and is exceeding the limits specified in section 372A(1) of the Act.

Resolution

"Pursuant to section 372A read with section 292 of the Companies Act, 1956, and if any other applicable provision of Companies Act the Board of Directors of the company is hereby authorized to acquire.....equity shares of ₹ 10 each, aggregating of ₹at an amount of ₹with a premium of 20% in MNO Ltd., a subsidiary of the company, from MNO Ltd., which held these shares, by a private purchase agreement, which held these shares, by a private purchase agreements, a draft of which was placed before the meeting.

The Board of Directors of the company is hereby authorized to do all such things including acts, deeds, etc. as would be considered by it as necessary/expedient in the circumstances of the investment."

Chapter - 16: Filing and Filing of Returns and Documents

2012 - Dec [2] (b)

(i) Reasons for filling this form

This is a form of application to the Central Government for appointment of cost auditor.

(ii) Particulars required to be filled in the form

1. Corporate Identity Number (CIN) or Foreign Company Registration Number (FCRN) of the company;
2. Name of the company;
3. Category of cost audit order;
4. Details of the cost auditor proposed to be appointed;
5. Proposed remuneration of the cost auditor; and
6. Date of Board Meeting of Directors proposing the name of the cost auditor.

DOWNLOAD OUR ANDROID APP FROM PLAYSTORE TO GET UPDATES

SEARCH ---> "STUDENTS OF CA AND CS"

(iii) Documents required to be enclosed with the form

- (i) Copy of the board resolution of the company sanctioning the proposal for which the Government approval has been sought.
- (ii) Copy of the certificate obtained from cost auditor regarding compliance of Section 224(1B) of the Companies Act, 1956.

(iv) Person who is to sign and certify the form

The form is required to be digitally signed by Managing Director or Director or Manager or Secretary of the company (in case of Indian Company) or an authorized representative (in case of a Foreign Company).

2012 - Dec [6] (a)

E-form 24A [Pursuant to sections 22, 25, 224(3), 224(7) and 297 of the Companies Act, 1956]:

Purpose

Form for filing application to Central Government for:

- 1. Approval for entering into contract under section 297
- 2. Appointment of auditor under section 224(3)
- 3. Issue of license under section 25
- 4. Removal of auditor under section 224(7)
- 5. Rectification of name.

Attachments

- 1. Memorandum of Association (MoA)
- 2. Articles of Association (AoA)
- 3. Future annual income and expenditure estimates
- 4. Details of the promoters and of the proposed directors of the company
- 5. Copy of agreement containing particulars of contract
- 6. Copy of ordinary resolution
- 7. Copy of board resolution.

E-form 24B [Pursuant to section 314(1B) of the Companies Act, 1956]:

Purpose: Form of application to the Central Government for obtaining prior consent for holding of any office or place of profit in the company by certain persons.

Attachments

- 1. Copy of the resolution passed by the Board of Directors, relating to the proposed appointment.
- 2. Copy of members' special resolution approving the proposal alongwith notice and explanatory statement relating there to
- 3. Copy of rules of the company relating to the terms and conditions in regard to perquisites as applicable to its employees.
- 4. Certificate from secretary or director of the company.
- 5. Particulars of employees in receipt of remuneration of ₹ 50,000 or more per month.

Chapter - 17: Striking off Names of Companies

2012 - Dec [6] (c)

The striking off the name of a company does not materially affect the creditors of the company, because such creditors may-

DOWNLOAD OUR ANDROID APP FROM PLAYSTORE TO GET UPDATES

SEARCH ---> "STUDENTS OF CA AND CS"

- (i) enforce their claims against every director, secretaries and treasurer, or any other officer of the company and against every member of the company as if the name of the company had not been struck off;
- (ii) apply to the court, at any time within 20 years from the date of publication of the notice intimating that the name of the company has been struck off, for the restoration of the name of the company to the Register of Companies and on such application being made, court may order the name of the company to be restored to the register.

In the present case Lakshmi Trading Corporation is in the position of an unpaid creditor. As such striking off the name of ABC Ltd. by the Registrar of Companies under section 560 of the Act would not affect the supplier for goods. As such they can enforce their claim for payment of their dues against every directors, manager, officer and also against every member of the company, as if the name of the company had not been struck off. Since the goods were supplied only in 2010, the debt is not barred by the law of limitation. If they fail to recover the dues in the above manner, they may approach the Court to seek winding up of the company.

Chapter - 18: Best Practices

2012 - Dec [6] (b)

Please refer 2007 - June [5] (b) on page no.349

Chapter - 19: Insider Trading

2012 - Dec [5] (b)

Please refer 2000 - June [5] (a) on page no.357

Chapter - 20: Global Developments in Company Law

2012 - Dec [5] (a)

USA

The USA as far back as in 1934, enacted the Securities Exchange Act, 1934 imposing statutory curbs on insider trading, requiring public disclosure of insiders' transactions in the shares of their companies and providing for recovery of 'Shortswing' profit by them. The Act provides the remedial measures for protection of investors against sharp practices and fraudulent schemes by insiders in making short-term, speculative profit.

The insider trading law in USA is part of the general law relating to fraud. Under the federal system prevailing in the USA, there were state laws known as "blue sky" laws which contained anti-fraud provisions which are used to deal with insider trading.

The US Court in *Shapiro v. Merrill Lynch* 495 5F 2d.235, propounded the theory of "disclose or abstain" Stating that this is to protect the investing public and to secure fair dealing in the securities market by promoting full disclosure of insider information so that an informed judgement can be made by the investors.

UK

In UK, the first legislative measure to curb insider trading was made in 1980 by inserting the provisions in the Companies Act, 1980. By virtue of such provisions, the insider trading became a criminal offence under certain eventualities. The Financial Services Act, 1986, also contain provisions for prevention of insider trading.

DOWNLOAD OUR ANDROID APP FROM PLAYSTORE TO GET UPDATES

SEARCH ---> "STUDENTS OF CA AND CS"

An "insider" is any person who has inside information, inter alia, as a result of having access to the information through the exercise of his professional duties. "Inside information" is information of a precise nature that (a) is not generally available, (b) relates, directly or indirectly, to one or more issuers of the qualifying investments and (c) would, if generally available, be likely to have a significant effect on the price of the qualifying investments.

2012 - Dec [7] (a)

Please refer 2009 - Dec [7] (c) on page no.370

Chapter - 21: Objective Questions

2012 - Dec [2] (a)

- (i) **This statement is true:** As per section 581Z of the Companies Act, 1956, states that subject to the provisions of sub-sections (1) and (3) of Section 581D, every member shall have one vote and in the case of equality of votes, the Chairman or the person presiding shall have a casting vote except in the case of election of the Chairman.
- (ii) **This statement is true:** A chairman does not have inherent right to the casting vote. The Companies Act 1956 (CA) is silent on the right to 'casting vote' by the Chairman. It has to be conferred on the Chairman by the articles of association of the company. However, in case of producer company, Section 581Z provides that a Chairman shall have a casting vote except in case of election of chairman.
- (iii) **This statement is false:** As per section 292(1)(c) of the Companies Act, 1956, the Board of Directors of a company shall exercise the power to borrow money otherwise than on debentures by passing of resolution at a duly convened meeting. It can not be passed by circulation.
- (iv) **This statement is true:** As per section 224(1) of Companies Act 1956 provides that auditor appointed by a company at its AGM shall hold office from the conclusion of that AGM until the conclusions of the next AGM. Since the adjourned meeting is the continuation of the original meeting, the tenure of auditor continues till the conclusion of adjourned AGM.

2012 - Dec [3] (a)

- (i) When a company fails to receive minimum subscription of **ninety percent** in respect of a rights issue, the entire subscription will have to be refunded to the applicants within **seventy days*** from the date of closure of the issue.
- (ii) Duties of debenture trustees have been described in detail in Regulation **15** of the SEBI (**Debenture Trustees**) Regulations, 1993.
- (iii) Share transfer deed in the case of a listed company is valid for **12** months from the date of presentation of the form to the prescribed authority or till its next book closure under section 154, whichever is **later**.
- (iv) Casual vacancy caused by the resignation of an auditor can be filled by passing a resolution at the **general** meeting of the company by its **members**.
- (v) Section 313 empowers the Board of Directors to appoint an alternate director, if the **articles** provide for it or the resolution passed in **general** meeting authorise it.

DOWNLOAD OUR ANDROID APP FROM PLAYSTORE TO GET UPDATES

SEARCH ---> "STUDENTS OF CA AND CS"

- (vi) As per clause 49 of the Listing Agreement, an independent director is one, who is not related to **promoters** or persons occupying management positions at the Board level or at **one** below level the Board.

DOWNLOAD OUR ANDROID APP FROM PLAYSTORE TO GET UPDATES

SEARCH ---> "STUDENTS OF CA AND CS"