

CORPORATE LAWS AND SECRETARIAL PRACTICES – SEMESTER -4

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Q.2 (a) Particulars required to be specified by the Subscriber in the Memorandum of the Association of the Company having Shares Capital:

1. Name and surname (present and former).
2. NIC No. (in case of foreigner, Passport No.).
3. Father's/Husband's Name.
4. Nationality (ies)/ with any former Nationality.
5. Occupation.
6. Residential Address.
7. Number of shares taken by each subscriber.

Additional Particulars Required to be Specified by a Person other than a Natural Person:

In case of a person other than a natural person, the address of its registered office or principal office shall be specified and the authorized representative signing the documents shall also add his particulars.

(b) Shifting of Registered Offices:

The alterations in memorandum of association shall not take effect until and except in so far as it is confirmed by the Commission on petition. But the confirmation is not required when alteration is for changing the place of registered office of a company from a place in the Province of Punjab to the Islamabad Capital Territory or vice-versa or from one city in a Province to another in the same Province.

Accordingly the changes at (i) & (ii) will not require confirmation of Commission but it is necessary for (iii).

(c) Change of Name by a Company:

The following further steps are involved:

1. Copy of the special resolution is filed with the registrar on Form 26 within 15 days of passing thereof along with original bank challan of filing fee.
2. Application is made to the Registrar for seeking approval of Commission for the change of name. This application is made on simple paper accompanied with various documents*.
3. The Registrar may approve the change of name.
4. After approval, Registrar issues certificate for change of name of the company.

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5. The change must be noted in the Memorandum & Articles of Association, all documents, invoices, letterheads, bills, signboard, seal etc.

Submission of Documents with Application to the Registrar For Seeking Approval of the Commission for the Change of Name:

*The documents include: Copy of Special Resolution on Form-26, Copy of Memorandum & Articles duly amended, Statement about reasons for change, Copy of availability of name, Copy of order of the Commission, if change is made pursuant to alteration in object clause of Memorandum of Association, Consent of creditors, NOC of the regulatory authorities in case of special companies, Bank Challan, Affidavit.

Q. 3 (a) Voting Power Needed by a Member, the Nature of Grounds and the Time Available to Move Petition incase of Declaration of Invalid Proceeding of General Meetings:

1. Members having not less than 10% of the voting power can file the petition.
2. The grounds are: (1) material defect or omission in the notice or (2) irregularity in the proceedings of the meetings which prevented members from using effectively their rights.
3. The petition is to be made within 30 days of the impugned meeting.

(b) (i) Status of Contract before Issue of Certificate of Commencement of Business:

The status of contract made before issue of certificate of commencement of business, would be provisional and not be binding on the company. On the date the certificate is issued, the contract would become binding.

(ii) Ordinance not to Apply to Certain Corporations:

The Ordinance does not apply to following corporations in terms of Section 4:

1. A trading corporation owned or controlled by a Province and carrying on business only within that Province.
2. A co-operative society.
3. A university.

(iii) Alternatives Available for Presiding a General Meeting in the Absence of Chairman:

Any one of the directors present can be elected as chairman of the meeting, and if none of the directors is present or unwilling to act as chairman the members present shall choose one of their members as chairman.

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(c) Quorum of the General Meeting:

- (i) The minimum quorum required under the Ordinance, in the given situation, is two members present personally who represent not less than 25% of the total voting power, either of their own account or as proxies. Since the two members together represent 15% of the total voting power, the minimum quorum is not present.
- (ii) The requirement for minimum quorum is the same for non-listed public company and a private limited company.
- (iii) Yes, the Articles can provide a larger number of quorum.
- (iv) If a quorum is not present within half an hour from the appointed time, the meeting, if called upon the requisition of members, shall be dissolved; in any other case, it shall stand adjourned to the same day in the next week at the same time and place. If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present, being not less than two, shall be a quorum, unless the articles provide otherwise.

Q. 4 (a) (i) Nominee Director and Alternate Nominee Director:

‘Nominee Director’ means an individual nominated by a single member to act as director in case of his death. ‘Alternate Nominee Director’ means an individual nominated by a single member to act as nominee director in case of non-availability of nominee director. At the time of incorporation a nomination has to be filed with the registrar in the form as set out in Form S1 indicating at least two individuals to act as nominee director and alternate nominee director. The nomination is also filed where the membership of a single member company is transferred to a new member.

(ii) Actions to be Taken by Nominee Director upon Death of Single Member:

Nominee director shall take the following actions:

1. Manage the affairs of the company in case of death of single member till the transfer of shares to legal heirs of the single member.
2. Inform the registrar concerned of death of the single member, provide particulars of the legal heirs and in case of any impediment report the circumstances seeking the directions in the form as set out in Form S3 within 7 days of the death of the single member.
3. Transfer the shares to legal heirs of the single member.
4. Call the general meeting of the members to elect directors.

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(iii) Prohibition of Sole Director to Become Company Secretary:

The Single Member Companies Rules, 2003 prohibit sole director to become company secretary.

- (b) (i) The CFO, the head of internal audit and representative of external auditors shall attend meetings of the Audit Committee at which issues relating to accounts and audit are discussed.

- (ii) Audit Committee has to hold one exclusive meeting with head of internal audit and other members of the internal audit function without the CFO and external auditors being present.

The other exclusive meeting is held with the external auditors without the CFO and the head of internal audit being present.

- (iii) The other Committee is Human Resource & Remuneration Committee.

(c) Issue of Shares for Consideration other than in Cash:

The 4 conditions are as follows:

1. The value of assets shall be determined by consulting engineer registered with Pakistan Engineering Council and borne on the panel of at least two financial institutions as a value.
2. The value of assets taken over shall be reduced by depreciation charged on consistent basis.
3. The goodwill and other intangible assets shall be excluded from the consideration.
4. Certificate from a practicing Chartered Accountant shall be obtained to the effect that the above mentioned conditions have been complied with.

Q. 5 (a) (i) Qualification of Internal Auditors:

A Chartered Accountant

A Cost and Management Accountant or a Certified Internal Auditor (CIA)

Certified Information System Auditor (CISA)

A member of a recognized foreign accountancy organization or

An individual having master's degree in Commerce or Business Administration with specialization in finance.

(ii) Minimum Experience for the Position of Internal Auditor:

Minimum experience of three years is required.

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(iii) Outsource of Internal Audit Function:

It can be outsourced to a chartered accountancy firm having satisfactory Quality Control Review (QCR) and not being the statutory auditors.

(b) Religious Board:

1. It consists of 3 members.
2. Two of the members shall be religious scholars and the Chairman shall be a person who is, or has been, or is qualified to be a judge of High Court.
3. The appointing authority is Federal Government.
4. Tenure is 3 years.
5. Any casual vacancy shall be filled in by appointment by the Federal Government of a person qualified to be a member, for the unexpired term of the outgoing member.

Q. 6 (a) (i) Date of Resolution:

The Ordinance provides that the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed and shall not be deemed to have been passed on any earlier date i.e. the date of adjourned meeting passed it.

(ii) Dividend and Dividend Warrant:

Dividends are paid warrants, sent by the secretary of the company to each shareholder, on the authority of the directors. Like a cheque, a dividend warrants is an unconditional order to the bank to pay the sum of money specified thereon to the named shareholder in cash or by credit to his account.

A statement in writing, showing the following particulars shall accompany or be annexed to each dividend warrants:

- The gross amount, deduction for income tax, and the net amount actually paid.
- The rate and amount of the income tax assessed against the gross amount.

(b) Identification of Ordinary Businesses:

- (i) The consideration of the accounts, balance sheets and the reports of the directors and auditors and

The appointment and fixation of remuneration of the auditors.

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These items being of regular nature are invariably transacted in all annual general meetings in the normal circumstances.

(ii) Election of directors.

It would be held in the 1st AGM and then every third year i.e. in the 4th, 7th and so on.

(iii) Declaration of dividend.

That can be made in either, both or none of the two depending on the profitability, cash flow and other considerations before the board.

(c) Circulation of Notice:

(i) A notice may be given by a company to any member either personally or by sending it by post to him to his registered address or, if he has no registered address in Pakistan, to the address, if any, within Pakistan supplied by him to the company for the giving of notices to him.

(ii) If a member has no registered address in Pakistan, and has not supplied to the company an address within Pakistan for the giving of notices to him, a notice addressed to him or to the shareholders generally and advertised in a newspaper circulating in the Province or part of Pakistan not forming part of a Province in which the registered office of the company is situated shall be deemed to be duly given to him on the day on which the advertisement appears.

(iii) A notice may be given by the company to the joint-holders of a share by giving the notice to the joint-holder named first in the register in respect of the share.

(iv) No, it will not.

THE END