

CA



THE INSTITUTE OF  
**CHARTERED** ACCOUNTANTS  
OF SRI LANKA

# SUGGESTED SOLUTIONS

**16304 – Commercial Law and Corporate Law**

CA Professional (Strategic Level I) Examination

December 2014

**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF SRI LANKA**

**Answer No. 01**

- (a) In determining whether the advertisement of Makes-u-sick (Private) Limited, amounted to an offer or not, we will have to consider the decision given in a similar case, **Carlill v Carbolic Smoke Ball Co. [1893] 1 Q.B. 256.**

In the given scenario, and the decided case mentioned above, the company made a deposit to a bank to show their genuineness. As was held in the decided case, this act of making a deposit, showed that the company intended the advertisement to take the form of an offer.

Therefore it could be said that the advertisement of Makes-u-sick (Private) Limited, in the given scenario, amounted to an offer and not an invitation to treat.

Next we will see as to who can accept this offer. Since this offer in the advertisement was made to the world at large, it could be accepted by anybody out there. Therefore Mr. Gullible as a member of the world at large, had an option to accept this offer.

For an acceptance to be valid, it has to be communicated to the offeror. In the given scenario there is no direct communication of such acceptance by Mr. Gullible.

But as held in the case of **Carlill v Carbolic Smoke Ball Co.**, the mere fact that the offeree acted on the offer, amounts to an acceptance of the offer by him. Therefore in the given scenario, by using the shampoo as prescribed, Mr. Gullible in fact accepted the offer of the company.

Therefore since there is an offer which has been accepted, the end result will be the formation of a valid contract. Hence it could be said that a valid contract has been formed between Makes-u-sick (Private) Limited and Mr. Gullible, in this instance.

Accordingly the company is liable to pay the promised reward of Rs. 10,000 to Mr. Gullible.

- (b) In the given scenario, the subject matter of the contract, the tea plantation, has been destroyed due to no fault of the parties to the contract.

Further the landslide which destroyed the subject matter of the contract, the tea plantation, was beyond the control of the parties to the contract.

Therefore if the parties try to go ahead with the contract for the sale of this plantation, as envisaged originally, the contract so performed will be a totally different one to that which the parties initially intended to enter into.

Hence in the law relating to contracts, it is said that the contract between Appuhamy and Sinnathamby, has been “frustrated”, and therefore the parties to the contract are discharged from performing the contract.

Therefore in the given scenario Appuhamy has to return the initial advance of Rs. 2 million, which was received from Sinnathamby, back to Sinnathamby.

Further there is no need for **Sinnathamby** to pay the balance of Rs. 8 million to **Appuhamy**, as the contract is now discharged.

**(Total: 10 marks)**

### **General Comments**

Higher percentage of candidates had disclosed satisfactory knowledge in areas of offer made to world at large. Similar percentage had disclosed a poor knowledge in areas of frustration may be due to the non-payment of attention on those areas. It is a fact normally candidates are familiar with areas lie offer, acceptance and so on., since those are the basics of law of contract therefore most of the accountancy candidates have some knowledge in offer, acceptance. Counter offer after, offer to world at large and so on. It is very important for the candidates to have equal attention to all the areas covered in syllabus since the examiner expect them to have reasonable knowledge in all these areas covered in syllabus.

### **Specific Comments**

Part (a) majority had correctly understood. Since the candidates are familiar with well-known case Canhill vs. Canbolic they are capable of correctly explaining the special points such as the act of making a deposit in a bank to meet the liability if arises from the offerors side showed that the company had the intention to advertisement take the form of offer to create legal relationship.

However there was a less percentage of candidates who have failed to understand this part of the question correctly and had focused their answers in various incorrect directions.

Part (b) Minor percentage of candidates had correctly understood that this is a contract which was discharged due to frustration. Majority has failed to understand that there is a question based on discharge of contract due to frustration and had focused their answers in discussing some areas which are completely irrelevant.

**Answer No. 02**

- (a) In this scenario Rani has not disclosed the existence of a principal. Rani has in fact contracted as if she was the principal.

In a situation like this, it is possible for Rani to subsequently reveal to Dolly that Jenny was in fact the principal behind this contract, and enforce this contract with Jenny.

In such a situation, Jenny takes over the liability under this contract from Rani, and therefore Rani is freed from it.

On the other hand, Dolly upon coming to know of the existence of Jenny (the undisclosed principal), is given the option of holding either Jenny (the principal) or Rani (the agent) liable on this contract.

The general rule is that if Dolly opts to hold one of them liable, she is thereafter prevented from subsequently reversing her decision and holding the other liable.

- (b) (i) The contract can only be ratified by the principal who was named or ascertainable when the contract was made.
- (ii) The agent must have a principal who was in actual existence at the time of making the contract.
- (iii) The principal must have had contractual capacity at the time the contract was entered into and have it at the time of ratification.
- (iv) The principal must, at the time of ratification, have full knowledge of the material facts or intended to ratify the contract whatever the facts may be.
- (v) The principal must ratify the contract within the time set or within a reasonable time.
- (vi) The agent must have expressly contracted as an agent.

**(Total: 10 marks)**

### **General Comments**

Both parts of the question are based on law of agency. Part (a) on an agency contract of undisclosed principal and part (b) on the conditions to be satisfied to ratify a contract made by an agent under the law of agency.

Performance in part (b) is much better than that of part (a). It may be mainly due to poor ability to analyses of a situation given in question i.e. where an agent has entered into an agreement without disclosing that it is an agency contract. Therefore, it is very important for the candidates that they should read the question carefully and understood it properly as to what is expected by the question before they start answering any question.

### **Specific Comments**

Part (a) only handful of candidates had furnished some satisfactory answers for this part as they were competent to understand that the question is based on “undisclosed principal” and the liability of the relevant parties. The candidates had stated that if the third party has told one of the parties liable thereafter it prevented from reversing the decision and holding the other party liable subsequently. However answers presented by majority are not satisfactory in their answers they had dealt with completely different and irrelevant areas.

Part (b) Almost all the candidates know at least few conditions which need to be satisfied to ratify a contract under Law of agency although majority was not competent to give 5 such conclusions on required by the question since the area is not very well familiar to them. Majority had included in their answers some conditions like principal must have contractual capacity, principal must be in existence at the time of the contract is entered into and at the time of ratification. Contract must be ratified within the time set or if no such set time within a reasonable time, principal must have the full knowledge of the material facts on the contract to be ratified and so on and earned reasonable marks for them.

A minor percentage had stated only few of the relevant conditions and balance of their answers had covered to explain some irrelevant areas.

**Answer No. 03**

- (a) An essential requirement in a fire insurance policy is that the fire which caused the damage, should have been ignited.

The fact that Mr. O.F. Stump, lit the crackers, amounts to him igniting the fire.

Therefore the fire which caused the bats to be burnt, falls within the scope of a fire covered under a fire insurance policy.

One may argue that Mr. Stump acted negligently, when he threw the crackers towards the shelf which contained his prized possession, his bats. But even a fire ignited by the insured's negligence, is covered under fire insurance.

Therefore Mr. Stump could make a successful claim on his fire insurance policy, and recover his loss.

- (b) Every partner has a duty to render true accounts and full information on all things affecting the partnership.

Every partner should account to the firm for any benefit derived by him without the consent of the other partners, from any transaction concerning the partnership.

Further every partner must disclose any secret profit he makes in dealing with the firm, and account for that profit to the firm.

Therefore in the given scenario, Chamil must account to the partnership the secret profits he has made from this transaction.

The given scenario is similar to the facts and ruling laid down in **Bentley Vs Craven [1853] 18 Beav. 75.**

**(Total: 10 marks)**

### **General Comments**

Two parts of the question cover two different subject areas namely fire insurance part (a) and partnership part (b) which are common areas in commercial law-generally the candidates are expected to have some knowledge insurance performance in fire insurance question is extremely poor. What could be observed is that most of them had tried to discuss the principal of insurance in general rather than paying their attention to case given in question. As a result they have lost marks in this easy question. They have failed to realise the requirements to be fulfilled to claim damages under fire insurance policy.

Answers to part (b) are better than the answers to part (a). Duties of a partner to the partnership are normally known to accountancy students since their areas are partly covered under partnership accounts. Accordingly they have dealt with making secret profit n transaction with the partnership rendering relevant accounts to the partnership disclosing benefits derived by a partner when he deals a transaction on behalf of the partnership and so on and scored reasonable marks.

### **Specific Comments**

Part (a) question expects to discuss whether O.F slump can make a successful insurance claim under his insurance policy in the given scenario. They failed to understand the question property and had wasted time to explain various irrelevant areas which have nothing to do with the question.

Part (b) Answers to this part are satisfactory to a certain extent since the candidates are familiar with duties of a partner toward the partnership and earned reasonable marks.

However there were some candidates who had failed to focus their answers on correct directing but dealt with some irrelevant areas.

**Answer No. 04**

- (a) The unpaid seller has the **right of resale** when the buyer, within a reasonable time refuses to pay for the goods tendered.

This right is available in the following situations:

- When the goods are of a perishable nature.
- When the buyer after being given notice of resell, does not pay the price within a reasonable time.
- When the seller has expressly reserved a right of resale.
- Where the buyer has repudiated the contract and the seller has accepted this repudiation.

- (b) The following are the main duties of an **Arbitral Tribunal**:

- (i) An Arbitral Tribunal shall deal with any dispute submitted to it for Arbitration in an impartial, practical and expeditious manner.
- (ii) An Arbitral Tribunal shall afford all the parties an opportunity of presenting their respective cases in writing or orally and to examine all documents and other material furnished to it by the other parties or any other person.
- (iii) The Arbitral Tribunal may, at the request of a party, have an oral hearing before determining any question before it.
- (iv) An Arbitral Tribunal may, notwithstanding the failure of a party without reasonable cause, to appear before it, or to comply with any order made by it, continue the arbitral proceedings and determine the dispute on the material available to it.
- (v) The Arbitral Tribunal may accept amended prayers subject to the condition that it is within the Arbitration agreement.

*[Section 15 of the Arbitration Act]*



(c) **Copyright**

A Copyright means the rights given by law, to creators of literary and artistic works.

These rights take two forms (a) economic rights and (b) moral rights.

The economic rights include the right to reproduce, sell, rent, distribute, communicate to the public, translate etc.

Whereas the moral rights cover the right to claim the authorship and right to oppose distortion or mutilation of the work.

**Patent**

A Patent protects inventions and ensure that the inventors get the benefits resulting from their inventions.

Thereby providing incentives for creativity, encouraging further inventions and promoting investment. This will spur the economic and technological development.

Patent documents describe newly invented technologies and are available for anyone to refer to. They contain vital information for researchers, inventors and enterprises etc.

**(Total: 10 marks)**

### **General Comments**

Though the answers to part (a) are satisfactory to certain extent answers to other 2 parts are extremely poor and nearly 90% of the candidates had exercised the option to answer part (c) of the question i.e. majority had answer parts (a) and (c). However a very low percentage had attempted all 3 parts though they have to answer only 2 parts.

A fair percentage of candidates had furnished answers clearly explaining the rights of re-sell available to an unpaid seller and had dealt with situations like “when (b) goods are of perishable nature” “when the buyer had been given the notice of resell of the buyer fails to pay price within a reasonable time”, “when the seller had expressly reserved the right of resell” and so on for which they deserve good marks.

A similar if not lesser percentage had explained situation which are not relevant to the question and had dealt with to define as to what is a sale agreement, method that could be followed in formation of sale agreements, rights and duties of the seller and the buyer and so on and had wasted their valuable time Handful of them had stated that a copyright means right given for creators of literally and artistic work by law which patents provides incentives for creativity encouraging for the inventions and promoting inventions thus inventors and ensuring the inventors to get benefits resulting from inventions and so on which deserve reasonable marks. But a very high percentage had dealt with completely irrelevant points such as both are coming under intellectual property, law possibilities of changing the ownership of copy right/patent, restrictions enforced on misusing them and various other points instead of dealing with main feature.

As the candidates are not at all familiar with duties of an Arbitrial Tribunal as have been laid down under section 15 of the Arbitration Act they had tried to explain what they know about dispute settlements and the manner in which disputes are settled. Handful of others had misunderstood Arbitrial Tribunals with labour tribunals.

### **Specific comments**

Part (a) as stated above a few percentage of candidates had given almost all the situations under which an unpaid seller has the right to do re-sell although no candidates had known that if the buyer has repudiated the contract and the seller has accepted such repudiation seller get the right to resell.

Many others had not understood this easy question properly and had focused their answers in various irrelevant/incorrect directors.

Part (b) Few candidates had tried to explain the duties of a tribunal or such other similar institution/commission in general and the manner in which a tribunal may handle its duties such as calling the relevant parties, allowing the parties to furnish their claim and so on. But the majority nearly 90% had wasted time to explain which are not at all relevant to the duties of an Arbitral tribunal.

Part (c) Only a very few had furnished some satisfactory answers dealing with main features of copyright/patent such as copy rights are rights given by law to creates of literacy and artistic work which are in two form namely economic rights and moral rights which deserve some reasonable marks. A patent protects inventions and make the way to inventors to get benefits arising from inventions and so on which too are relevant.

**Answer No. 05**

- (a) (i) The company has to pass a special resolution of the shareholders, approving the proposed alteration to its articles.

*[Sec. 15 (1) (c)]*

- (ii) In order to pass this special resolution the company can either, call for an extraordinary general meeting of the shareholders by giving 5 working days' notice (subject to its articles of association), section 135 (i) (b) or by shorter notice if approved by the shareholders holding at least 95% of the voting rights or by circulation amongst all the shareholders. section 135 (3) (b)

- (iii) Thereafter the company shall give notice through the specified form, [Form 39] to the Registrar of Companies within ten (10) working days, setting out in full the text of the resolution and of the alterations to the company's articles.

*[Sec. 15 (2)]*

- (b) Subject to the company's Articles of Association, the board of directors of the company may change the registered office of the company at any time, firstly by passing a Board Resolution.

Thereafter notice of this change shall be given to the Registrar in the prescribed form (Form 13) for registration.

This change shall take effect only after five (5) working days have lapsed from the date of the notice is received by the Registrar, or on such latter date as may be specified in the notice.

*[Sec. 114]*

**(Total: 10 marks)**

### **General Comments**

Majority of the candidates are well aware that a special resolution should be passed at an extra ordinary general meeting to change the articles. Also they know for the purpose of calling for E.O.G.M 5 working days notice should be given or it could be done by a shorter notice if it is approved by the shareholders holding at least 95% of the voting rights (section 135 (3) (b) or by circulation among shareholders. To complete the change of Articles company has to give notice Registrar of Companies in specified form no. 39 within 10 working days setting and full text of the resolution and of the alteration to the Articles of the company indicating that their knowledge in subject areas is satisfactory.

A fair percentage knows that the Board of Directors of a company has the authority to change the registered office at any time after passing a board resolution. Also they are aware that registrar of companies should be given notice in prescribed form (no. 13) regarding the change of current address of the company. Some of them had very correctly stated that such change shall effect only after 5 working days from the receipt of the notice by registrar or a such other later date as may be specified in the notice as laid down under section 114 of Companies Act. Those answers deserve reasonable marks.

### **Specific Comments**

Part (a) Majority had correctly stated that this change (Pvt.) Ltd. has to pass a special resolution for changing its existing articles. However a minor percentage knows that the company has to call extra ordinary general meeting for the purpose by giving 5 working days' notice or given shorter notice with consent of not less than 95% of the voting right or circulating among all the shareholders. Also they know that company has to inform registrar regarding such changes to articles in form no. 39 within 10 working days of passing the special resolution.

Part (b) Although a minor percentage knows that the current address of Yes Charge (Pvt.) Ltd. could be charged at any time by passing a board resolution a higher percentage had expressed the view that for that purpose a special/ordinary resolution should be passed at a EOGM/GM as they are not much familiar with section 114 of the Act. Further few others had stated the company has to give public notice within 20 working days from the change indicating that they have mixed the change of address with the change of the name of the company and stated further that notice should include the following details.

- (i) New address of the company.
- (ii) Old address of the company before change
- (iii) Registered no. of the company and the notice may be in newspapers or any other media for the information of general public and other included parties.

If they failed to do so the company shall be guilty of an offence and liable to conviction to be fixed and amount not exceeding Rs. 50,000. If the registrar has not objected for the change the company should change its address within 5 working days from the order of registrar if companies. The indication here is that they have wasted their valuable time to explain all there irrelevant areas since they are not familiar with section 114 of the Act.

### **Answer No. 06**

The contract between **Polly** and **Sally**, is a pre-incorporation contract entered into for and on behalf of the company before it is formally incorporated.

Under the Companies Act, a contract purported to be made by a person on the company's behalf before and in contemplation of its incorporation may be ratified in the name of the company or on behalf of the company.

When a person purports to make a pre-incorporation contract for and on behalf of the company to be incorporated, he is deemed to give an implied warranty that the company will be incorporated within the period specified in the contract or if no such period is specified, within a reasonable time and that the company will ratify the contract within such period.

Once ratified, this contract will be valid and enforceable as if the company had been a party to this contract at the time it was entered into.

*(Secs. 23 & 24)*

**(Total: 10 marks)**

#### **General Comments**

The intention of the examiner on this question is very clear and to test the knowledge on pre-incorporation contract mainly on the nature of the particular contract the main implied warranties contain in the contract and the effect of ratification of a pre-incorporation contract by the company after it is incorporate.

There were others who are not much familiar with the relevant sections of the Act like sections 23 & 24 had gone and explained various irrelevant areas such as who is the promoter, his powers and responsibilities, remedies available to a promoter when the company refused to ratify the pre-incorporation contract and so on.

#### **Specific comments**

Fair percentage had correctly identified this is as a pre-incorporation contract which was entered into by the promoter on behalf of the company which was under incorporation. Majority is familiar with the implied warranties to be given by the promoter, also they are familiar with the effect of ratification of the pre-incorporation contract and had explained and earned good marks.

Here again there was a fair percentage of candidates who could not understand the question property had dealt with various areas which do not deserve any marks but only wasting of their valuable time. Few examples could be quoted as follows.

- (i) Explaining who is a promoter and his duties/functions same had stated that the person forms the company is called promoter generally a promoter has 2 main functions namely intention to form a company and take all necessary steps to activate that institution.

**Answer No. 07**

- (a) In practice the company should disclose to the public all the information they would require to know about the company in order to induce them to invest. Therefore the prospectus should contain the following information:
1. The business which the subscribers or promoters intend to carry out during the next period of five years.
  2. The number of shares, if any, fixed by the articles as the share qualification required of a director.
  3. The names, and descriptions and addresses of the directors or proposed directors.
  4. The number of founders or management ore deferred shares if any and the name and extent of the interest of the holders in the property and profits of the company
  5. The time of the opening and closing of the subscription list.
  6. The names and addresses of auditors, if any.
  7. The amount payable on application and allotment on each share.
- and so on (Altogether there are 19 items given in Fourth Schedule)
- (b) A statement purporting to be made by an expert, shall not be issued, unless the following are present:
- The expert has given his written consent to the issue of the prospectus with his statement being included in the form and context in which it was given.
  - Before the delivery of a copy of the prospectus for registration, the expert has not withdrawn his written consent to the issue of the prospectus containing his expert statement.
  - The prospectus should also contain a statement stating that the expert has given and has not withdrawn his consent, to the inclusion of his statement in the prospectus.

*[Sec. 38 (1)]*

**(Total: 10 marks)**

### **General Comments**

Both parts of the question in respect of prospectus which is issued by a public company which invites public to invest in shares of the company. Whilst the part (a) is a straightforward question and simply asks to state five information that should be included in the prospect part (b) requires to discuss the law relating to inclusion of a statement issued by an expert into a prospectus.

Very high percentage of candidates are familiar information that should be included in a prospectus issued by public company for its initial public offer and had given even more than 5 correct information while some had given even more than 5 such information. It may be mainly due to that they had the chances of covering that areas in their accounting subjects and also an average accountancy student can even assume the information that should be included in a prospectus. But still there were few who had failed to furnish correct answers to this easy question there they could have earned easy marks.

Answers to part (b) are not up to expectation though a minor percentage had furnished some satisfactory answers where they had dealt with that the expert has given his written consent to include his/her statement and the expert has not withdrawn the written consent to issue the prospects containing his/her expect statement.

**Answer No. 08**

- (a) As per the given facts, it is clear that there was a defect in the appointment of Mr. Vick Tim as a director of the company, as the company should have passed a special resolution as per its articles.

Further, Mr. Vick Tim was not offered and did not hold an ordinary share in the company as required by its Articles. This amounts to a disqualification to hold office as a director of the company.

The Companies Act states that the acts of a director shall be valid notwithstanding the fact that;

- His appointment was defective, and
- He is not qualified for such appointment

Therefore, the subsequent acts done by Mr. Vick Tim in the capacity of a director of the company are valid and legal in the eyes of the law.

- (b) The office of director of a company shall be vacated if the director;
- Resigns from his office in accordance with the provisions of the Companies Act;
  - Is removed from office in accordance with the provisions of the Act or the articles of the company;
  - Becomes disqualified from being a director in terms of the provisions of Act;
  - Dies;
  - Vacates office after reaching the maximum age limit allowed under the Act (Section 210(2)) or
  - Vacates office in accordance with the articles of the company.

*[Sec. 207]*

**(Total: 10 marks)**



### **General Comments**

Part (a) of the question requires to discuss the validity of subsequent acts of a director who was not correctly appointed while part (b) is a bonus question to give 5 instances where the office of a director will be considered as vacated under Companies Act. Although answers to part (b) are satisfactory answers, to part (a) not up to expectations. Very high percentage had full marks for part (b) and some had given even more than 5 instances as they know more than what was expected.

Handful of candidates had realized the appointment of director Mr. Vich Tim has not been done properly. Further few others had correctly explained the provisions of the Companies Act and stated that the acts of a director shall be valid notwithstanding the fact that the appointment of the director is defective and he is not qualified for such appointment that too is a proper explanation.

But majority was not competent to give such explanations and had focused their answers in various incorrect/irrelevant directions. Accordingly some had discussed the validity of the appointment of Vick Tim as a director instead of discussing the validity of subsequent acts by the director whose appointment was not proper.

Answers to part (b) are very much better than that of part (a) and earned very high marks since it is a very simple/easy questions. However a very few had stated if he is disable of lunatic, not in sound mind, and various other irrelevant instances which do not cover in the Act.

**Answer No. 09**

- (a) The first auditor of a company may be appointed by the board of directors of the company before the first annual general meeting, and if so appointed, will hold office until the conclusion of first annual general meeting.

If the board does not appoint an auditor as specified above, the company shall appoint the first auditor at a meeting of the company (i.e. shareholder's meeting).

Neither the board nor the company shall be required to appoint an auditor in accordance with the above provisions of the Companies Act, if a unanimous resolution is passed by the shareholders that no auditor be appointed. Such a resolution ceases to have effect at the commencement of the first annual general meeting of the company.

*[Sec. 159]*

- (b) As the value of the land to be purchased is more than half the value of the assets of the company, this proposed transaction falls under the category of a "major transaction".

Therefore in order to execute a major transaction legally within the framework of the Companies Act, the company should comply with either of the following provisions of the Act:

- Get this transaction approved by a special resolution of the shareholders.
- Get the consent of all the shareholders in writing.
- Ensure that the articles of the company, expressly authorized this particular transaction, at the time the company was incorporated.

*[Sec. 185]*

**(Total: 10 marks)**

### **General Comments**

Question has covered two different areas in Companies Act i.e. appointing of the first auditor of a limited liability company (part a) and major transaction entered in to by a company (part b) Performance in both parts is average. A fair percentage of candidates had furnished satisfactory answers while the answers furnished by a similar percentage are not satisfactory for the both parts. Quite a good no. of candidates had dealt with correct procedure that should be followed in opportunity the first auditor of a company laid down in the Companies Act and an equal number is not familiar with the correct procedure as laid down in the Act and had furnished their own assumed answers which are hardly relevant to the question. Many had explained the procedure followed in appointing of the auditor annually instead of explaining the procedure of appointing the first auditor of a company.

Similarly a fair percentage had correctly dealt with the provisions laid down in Companies Act regarding a major transaction and an equal percentage had explained the particular transactions as a normal are ignoring the rules applicable for a major transaction as they are not much familiar with section 185 of the Companies Act as they have failed even to note the contents of the question i.e. Major (pvt.) Ltd entered in to an agreement to purchase a land for Rs. 3 mn while the total value of assets of the company as at 31.3.2014 was amounted to Rs. 5 mn (the value of the transaction exceeds 50% of the total value of the assets of the company) Had the candidates carefully rated the value of the new transaction is exceeds 50% of the total value of assets of the company they could have furnished correct relevant answers which deserve good marks.

**Answer No. 10**

- (a) From the facts of the question it seems that Drake has complied with all the requirements to be a shareholder, even though his name is not entered in the share register.

Further this omission is due to a mistake on the part of the company.

Therefore Drake is deemed to be a shareholder as per the Companies Act.

Since he is a shareholder, Drake is entitled to all the rights and privileges afforded to a shareholder, which includes the right to participate at a meeting of the shareholders and to vote on a resolution of the shareholders.

Generally, subject to the company's articles, each share in a company shall confer on the holder, one vote on a poll at a meeting of the company on any resolution.

To pass an ordinary resolution, more than 50% votes should be for the resolution.

In this situation as the total number of votes that the 3 shareholders who are for the resolution have, is 600, whilst the total number of votes that the shareholder who is opposing the resolution has is 500.

Therefore the ordinary resolution could be passed in this instance, since more than 50% votes are for the resolution

*[Secs. 86(1)(a), 86(3) and 49(2)]*

- (b) An application for registration of an offshore company shall be annexed with the following documents;
- (i) a certified copy of the charter, statute or memorandum and articles of association of the company or other instrument constituting or defining the constitution of the company, and where such instrument is not in an official language or in English, a translation of the instrument in such language as may be specified by the Registrar;
  - (ii) a list of the directors or those managing the affairs of the company, containing their full names, addresses, occupations and the offices they hold in the company;
  - (iii) the names and addresses of one or more persons who are resident in and are citizens of Sri Lanka, who is or are authorized to represent the company;
  - (iv) a statement containing the full address of:
    - the registered or principal office of the company in the country of incorporation; and
    - the office of the company in Sri Lanka; Company incorporated for business outside Sri Lanka.
  - (v) a certified copy (certified of recent date) of the incorporation of the company.

**General Comments**

Part (a) of the question to discuss the legal effect when a person has completed all the requirements to become a shareholder of a company but by an oversight his/her name has not been entered in the share register and whether his/her vote can be casted for passing a resolution. In the given 3 shareholder including the shareholder whose name is not entered in share register having total values of 600 have valid for an ordinary resolution while are shareholder with 500 vale has valid against it and question is whether resolution could to legally passed. Since the shareholder whose name is not entered in share register has 200 votes his votes could be the deciding factor, because if his votes are not counted there are 500 votes against the resolution while only 400 votes for it and candidates are required to discuss whether resolution could be passed. A good number of candidates had correctly dealt with the situation and explained that in terms of the Companies Act (where name is not entered in share register) is deemed to be a shareholder of the company therefore he has the right to vote the ordinary resolution making the total votes for the resolution 600 and only 500 votes against it thereby the said resolution could be passed since it requests only more than 50% votes or a simple majority earning very high marks.

However some candidates are not familiar with provisions of the Act an had expressed the view that director is not a shareholder. Since his name is not entered in share register, therefore his votes does not be countered for passing the resolution i.e. it cannot be passed.

Part (b) is a very simple question and required to outline the documents that an off-shore company is required to annex its application for registration of an off share company under the Companies Act. Candidates are familiar with those documents of this question had appeared very often in the past. Although they are expected to give only 4 such documents some had given more than such documents but without sufficient descriptions. Candidates however earned very reasonable marks for those correct answers. Any how a handful candidates are not much familiar with those documents and given mark of incorrect documents for which they do not deserve any marks.

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## Notice of Disclaimer

The answers given are entirely by the Institute of Chartered Accountants of Sri Lanka (CA Sri Lanka) and you accept the answers on an "as is" basis.

They are not intended as "Model answers", but rather as suggested solutions.

The answers have two fundamental purposes, namely:

1. to provide a detailed example of a suggested solution to an examination question; and
2. to assist students with their research into the subject and to further their understanding and appreciation of the subject.

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