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CS PROFESSIONAL JUNE '19

SUBJECT- COMPANY LAW

Test Code - CSP 3010

BRANCH - () (Date :)

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ANSWER : 1

(A) Procedure for Issue Sweat Equity Shares

1. Convene Board meeting to approve the notice of general meeting.
2. Issue notices in writing or through electronic mode, at least clear twenty one days before the date of meeting along with the explanatory statement as required u/s 102.
3. The explanatory statement to be annexed to notice and the resolution for approving the sweat equity shall *inter alia* contain the following information:
 - (a) the date of the Board meeting at which the proposal for issue of sweat equity shares was approved;
 - (b) The reasons or justification for the issue;
 - (c) The class of shares under which sweat equity shares are intended to be issued;
 - (d) The total number of shares to be issued as sweat equity;
 - (e) The class or classes of directors or employees to whom such equity shares are to be issued;
 - (f) The principal terms and conditions on which sweat equity shares are to be issued, including basis of valuation;
 - (g) The time period of association of such person with the company;
 - (h) The names of the directors or employees to whom the sweat equity shares will be issued and their relationship with the promoter or/and Key Managerial Personnel;
 - (i) The price at which the sweat equity shares are proposed to be issued;
 - (j) The consideration including consideration other than cash, if any to be received for the sweat equity;
 - (k) The ceiling on managerial remuneration, if any, be breached by issuance of such sweat equity and how it is proposed to be dealt with;
 - (l) a statement to the effect that the company shall conform to the applicable accounting standards; and
 - (m) Diluted Earnings Per Share pursuant to the issue of sweat equity shares , calculated in accordance with the applicable accounting standards.
4. A copy of the valuation report shall be sent to the shareholders with the notice of the general meeting.
5. Hold the general meeting and pass the Special Resolution.
6. The special resolution authorizing the issue of sweat equity shares shall be valid for making the allotment within a period of not more than 12 months from the date of passing of the special resolution.

7. File the special resolution with the concerned ROC with explanatory statement in **Form MGT. 14** along with the fees as provided in Companies (Registration of Offices and Fees) Rules, 2014 within 30 days of passing of the special resolution.
8. If the shares of the company are listed with the stock exchange, then forward three copies of the notice and a copy of the proceedings of the general meeting.
9. If the shares are listed with any of the recognized stock exchange, then issue of the sweat equity shares shall be in accordance with SEBI (Issue of Sweat Equity) Regulations, 2002.
10. Once the allotment is made, the company shall within 30 days of allotment, file with the Registrar a return of allotment in **Form PAS.3**, along with the fee as specified in Companies (Registration of Offices and Fees) Rules, 2014.
11. The company shall maintain a register of Sweat Equity Shares in **Form SH.3**. The entries in the register shall be authenticated by the Company Secretary of the company or by any other person authorized by the board for the purpose.
12. Deliver the share certificates of allotted shares within a period of 2 months from the date of allotment.
13. Intimate the details of allotment of shares to the Depository immediately on allotment of such shares.

(5 MARKS)

- (B)** According to Section 61 (1), a limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to –
- a) increase its authorized share capital by such amount as it thinks expedient;
 - b) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares;
 - c) convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination;
 - d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum; and
 - e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

A company can exercise its powers to alter its share capital only if it is authorised by its articles. If the articles do not contain any such authorization, the articles must first be amended, before the power can be exercised. The power must be exercised *bona fide* in the interest of the company and not for benefitting any group (Piercy vs. Mills(s) & Co., (1920) 1 Ch. 77.)

Consolidation and division of shares, which results in changes in the voting percentage of shareholders shall take effect after it is approved by the Tribunal.

(5 MARKS)

ANSWER : 2

(A) Issue of bonus shares is governed by the provisions of Section 63 read along with Rule 14 of the Companies (Share Capital and Debentures) Rules, 2014. The bonus shares can be issued out of Free Reserves, Securities Premium Account or Capital Redemption Reserves Account. Bonus shares cannot be issued by capitalizing reserves created by evaluation of assets. According to Section 63, the following conditions must be satisfied before issuing bonus shares;

- a. It is authorized by its articles;
- b. It has, on the recommendation of the Board, been authorized in the general meeting of the company;
- c. It has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
- d. It has not defaulted in respect of the payment of statutory dues of the employees, such as, contributories to provident fund, gratuity and bonus ;
- e. The partly paid up shares, if any outstanding on the date of allotment, are made fully paid up;
- f. It complies with such conditions as may be prescribed;

Rule 14 of the Companies (Share Capital and Debentures) Rules, 2014 provides that the company which has once announced the decision of its Board recommending a bonus issue shall not subsequently withdraw the same.

(5 MARKS)

(B) It is true if majority of shareholders decide to reduce the share capital of the company in the General Meeting and have the special resolution passed, there is not legal impediments or valid reasons for not allowing the reduction of share capital. In *Siel Ltd., in re. (2008) 144 com. Cases 469 (Del.)*], reduction of capital was discussed that the petitioner company proposed to reduce the share capital by cancelling its equity shares which amount was to be credited to the general reserve account of the company. The reduction was approved by a special resolution passed in accordance with the provisions of Section 189 of the Companies Act, 1956 (now Section 114 of the Companies Act, 2013) at an Extraordinary General Meeting. The reduction was in accordance with the Articles of Association of the company. On the objection raised by the Central Government, the petition was allowed on the ground that the reduction of share capital of a company is a domestic concern of the company and the decision of the majority would prevail. If the majority by special resolution decides to reduce the share capital of the company, it has the right to decide that how the reduction should be affected. A selective reduction is permissible within the frame work of the law for a company limited by share. Thus while reducing the share capital the company can decide to extinguish some of its shares without dealing in the same manner with all other shares of the same class. When the creditors and shareholders of the company approved the reduction of share capital none is affected and there has been no unfair or inequitable transaction.

(5 MARKS)

ANSWER : 3

(A) Debenture Trust deed is a written document legally conveying property to a trustee often for the purpose of securing a loan or mortgage. It is the document creating and setting out the terms of a trust. It will usually contain the names of the trustees, the identity of the beneficiaries and the nature of the trust property, as well as the powers and duties of the trustees. It constitutes trustees charged with the duty of looking after the rights and interests of the debenture holders.

As per Section 71(7) of the Companies Act, 2013, any provision contained in a trust deed for securing the issue of debentures, or in any contract with the debenture holders secured by a trust deed, shall be void in so far as it would have the effect of exempting a trustee thereof from, or indemnifying him against, any liability for breach of trust, where he fails to show the degree of care and due diligence required of him as a trustee, having regard to the provision of the trust deed conferring on him any power, authority or discretion;

Provided that the liability of the debenture trustee shall be subject to such exemptions as may be agreed upon by a majority of debenture – holders holding not less than three – fourths in value of the total debentures at a meeting held for the purpose.

A trust deed for securing any issue of debentures shall be open for inspection to any member or debenture holder of the company, in the same manner, to the same extent and on the payment of the same fees, as if it were the register of members of the company, and a copy of the trust deed shall be forwarded to any member or debenture holder of the company, at his request, within seven days of the making thereof, on payment of fee.

As per Section 71 and sub – rule (1) of Rule 18 of the Companies (Share Capital and Debentures) Rules, 2014 a trust deed in Form No. SH. 12 or as near thereto as possible shall be executed by the company issuing debentures in favour of the debenture trustees within sixty days of allotment of debentures.

(5 MARKS)

(B)

1. Whether proper Board Meeting has been held and the matter of acceptance of deposit has been proposed and issue of notice for holding general meeting for obtaining approval of the shareholder has taken place.
2. Whether general meeting has been held and approval of the shareholders by means of a special or ordinary resolution has been passed.
3. Whether the said resolution has been filed with Registrar in Form MGT – 14 within 30 days of passing of such resolution.
4. Whether Board Meeting has been held to obtain the approval for the draft Circular/ Form of advertisement from the board and the said draft Circular/Form of Advertisement has been signed by majority of the directors of the company.
5. Whether copy of Circular/ Form of Advertisement approved by the Board has been filed with the Registrar of Companies in Form DPT – 1 for registration.
6. Whether one or more deposit trustees for creating security for the secured deposits has been appointed and the company has executed a deposit trust deed in Form DPT – 2 at least seven days before issuing circular or circular in the form of advertisement.
7. Whether the company has entered into a contract providing for deposit insurance unless exempted at least thirty days before the issue for circular or advertisement with Insurance company.
8. Whether the company has obtained the Rating unless exempted, (including its net worth, liquidity and ability to pay its deposits on due date) from a recognized credit rating agency for informing the public the rating given to the Company.
9. Whether the company has issued circular/ form of advertisement after 30 days from the date of filing of a copy of Circular/ Form of Advertisement with the Registrar.
10. Whether the circular has been issued to members by registered post with acknowledgement due or speed post or by electronic mode or publish the circular in the

form of an advertisement in Form DPT – 1 and in addition to such issue of circular the company has published the same in one English newspaper and one vernacular language in vernacular newspaper having wide circulation in the state of registered office of the company.

11. Whether the company has uploaded the copy of the circular on the company's website, if any.
12. Whether the company has issued deposit receipt in the prescribed format and under the signature of officer duly authorized by Board, within a period of two weeks from the date of receipt of money or realization of cheques.
13. Whether the company has made entries in the register as per the instruction provided in the rules within seven days from the date of issuance of the deposit receipt and such entries shall be authenticated by a director or secretary of the company or by any other officer authorized by the board.
14. Whether the company has filed deposit return in Form DPT – 3 by furnishing information contained therein as on 31st day of March duly audited by auditors before 30th June every year.
15. Whether the company has prepared the statement regarding deposits existing as on the date of commencement of the act in Form DPT – 4.

(5 MARKS)

ANSWER : 4

- (A)** Section 71(3) states that a company may issue secured debentures subject to terms and conditions as prescribed in Rule 18(1) of the Companies (Share Capital and Debentures) Rules, 2014. The company shall not issue secured debentures, unless it complies with the following conditions :
- a) An issue of secured debentures may be made, provided the date of redemption shall not exceed ten years from the date of issue. However, a company engaged in the setting up of infrastructure projects or infrastructure finance companies, or Infrastructure Debt fund NBFC may issue secured debentures for a period exceeding ten years and but not exceeding thirty years :
 - b) Such an issue of debentures shall be secured by the creation of a charge, on the properties or assets of the company, having a value which is sufficient for the due repayment of the amount of debentures and interest thereon;
 - c) The company shall appoint a debenture trustee before the issue of prospectus or letter of offer for subscription of its debentures and not later than sixty days after the allotment of the debentures execute a debenture trust deed to protect the interest of the debenture holders as per sec 71(5) and in compliance with conditions as in Rule 18(2); and
 - d) The security for the debentures by way of a charge or mortgage shall be created in favour of the debenture trustee on.
 - (i) any specific movable property of the company (not being in the nature of pledge): or
 - (ii) any specific immovable property wherever situate, or any interest therein.

(4 MARKS)

- (B)** For sub – dividing the share capital of a company, the following procedural steps are required to be taken by the Board of Directors :
1. Articles of the company must have a provision to sub – divide the company's share. If there is no such provision, then the Articles have to be altered in accordance with

- the provisions of Section 14 of the Companies Act, 2013, before proceeding to sub – divide the shares.
2. Give 21 clear days’ notice of the proposed sub – division of the shares of the company to the stock exchanges on which the securities of the company are listed.
 3. In the case of a listed company, make an application to the stock exchange where the securities of the company are listed and any other stock exchange where the company proposes for getting its sub – divided share listed.
 4. Convene and hold a Board Meeting to :
 - (a) Pass a resolution approving the proposed sub – division of the shares of the company;
 - (b) Fix time, date and venue for holding general meeting of the company to pass a special resolution, if so required by the articles for this purpose.
 - (c) Approve notice, agenda and explanatory statement to be annexed to the notice of the general meeting.
 - (d) Authorize the company secretary to issue, on behalf of the Board, notice of the general meeting as approved by the Board.
 5. After the Board Meeting, send to the stock exchanges, where the securities of the company are listed, particulars of such alteration of share capital of the company.
 6. Issue notice of the general meeting along with the explanatory statement, to all members, directors and auditors of the company.
 7. In case of a listed company forward 3 copies of the notice of the general meeting along with the explanatory statement, to the concerned stock exchange.
 8. Hold the general meeting and have the resolution passed and forward a copy of the proceedings of the general meeting to the concerned stock exchanges.
 9. File with the ROC, Form MGT – 14 along with a certified copy of the resolution, the notice and the explanatory statement annexed to the notice of the general meeting at which the resolution was passed and copy of altered Memorandum and Articles of Association within 30days of the passing of the resolution along with the prescribed fees.
 10. Give notice in compliance with the provisions of Section 64, of the sub – division of the shares of the company, to the ROC in form SH – 7, within 30 days of passing of the resolution, along with the prescribed filing fee. The ROC will record the alteration in the Memorandum of the company.
 11. Finally, make necessary changes in all the copies of the Memorandum of Association.

(6 MARKS)

ANSWER : 5

- (A)** According to section 71(5) of the Companies Act, 2013, the appointment of debenture trustees is compulsory in case the prospectus is issued to more than 500 persons for subscription of debentures. Further, the Rule 18 specifies that for secured debentures issued by any type of company , the company shall appoint a debenture trustee before the issue of prospectus or letter of offer for subscription of its debentures and not later than 60 days after the allotment of the debentures.

The conditions governing the appointment of debenture trustees under sub – section (5) of Section 71 are prescribed under Rule 18(2) of the Companies (Share Capital and Debentures) Rules, 2014 as under :

- (a) The names of the debenture trustee shall be stated in letter of offer inviting subscription for debentures and also in all the subsequent notices or other communication sent to the debenture holders.
- (b) Before the appointment of debenture trustee or trustees, a written consent shall be obtained from such debenture trustee or trustees proposed to be appointed and a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures.
- (c) A person shall not be appointed as a debenture trustee, if he;**
- (i) Beneficially holds shares in the company;
 - (ii) Is a promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company.
 - (iii) Is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee.
 - (iv) Is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary or its holding company.
 - (v) Has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon.
 - (vi) Has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon.
 - (vii) Has any pecuniary relationship with the company amounting to 2% or more of its gross turnover or total income of Rs. 50 lakh or such higher amount as may be prescribed, whichever is lower, during the 2 immediately preceding financial years or during the current financial year;
 - (viii) Is relative of any promoter or a person who is in the employment of the company as a director or key managerial personnel.

(5 MARKS)

- (B)** Section 2(31) of the Companies Act, 2013 defines 'deposit' as it includes any receipt of money by way of deposit or loan or in any other form by a company but does not include such categories of amount as may be prescribed in consultation with the RBI.

The provisions regarding the exclusion of any receipt of money from being treated the same as deposit are provided under Rule 2(1)(c) or Companies (Acceptance of Deposits) Rules, 2014.

Accordingly :

- (i) In the given case, the company can receive loan from its director, It is assumed that such director has furnished a declaration in writing to the company that the loan given is from his own funds and not from borrowed money in any way. Then, the said loan would not be treated as deposit since it is specifically excluded vide Rule 2(1)(c) (vii) of the Companies (Acceptance of Deposits) Rules, 2014.
- (ii) In the given case, inter corporate deposits are accepted which are not covered in the definition of deposits. Hence, the said inter – corporate deposits would not be treated as deposit since it is specifically excluded vide Rule 2(1)(c) (vi) of the Companies (Acceptance of Deposits) Rule, 2014.
- (iii) In the given case, an advance was received from customers towards the contract of supply of certain products produced by the company. However, such advance should be adjusted within 365 days from the date of receipt of advance. Otherwise it would be termed as deposits. Assuring the fact that the said advance was for the supply of goods accounted for in any manner whatsoever is appropriated against the supply of certain products i.e. goods within a period of 365 days from the acceptance of such advance in absence of any legal proceedings in respect of the said matter. The same

would not be treated as deposit since it is specifically excluded vide Rule 2(1)(c) (xii) (a) of the Companies (Acceptance of Deposits) Rules, 2014.

(iv) In the given case, it is assumed that an amount brought in by the promoter of the company is by way of unsecured loan in pursuance of the stipulation of any lending financial institution or a bank subject to the fulfillment of the following conditions. viz.

- (a) The loan is brought in pursuance of the stipulation imposed by the lending institutions on the promoters to contribute such finance.
- (b) The loan is provided by the promoters themselves or by their relatives or by both; and
- (c) The exemption under this sub – clause shall be available only till the loan of financial institution or bank are repaid and not thereafter.

Hence, the said amount through in by the promoters of company by way of unsecured loan will not be treated as deposit since it is specifically excluded vide Rule 2(1)(c) (xiii) of the Companies (Acceptance of Deposits) Rule, 2014.

(5 MARKS)