

SUBJECT NO 19J

CORPORATE SECRETARYSHIP PILOT PAPER

SUGGESTED ANSWERS

SECTION A

1. (a) No marks for noting that S330CA85 prohibits loans to Directors. One mark for each of the following exceptions to the general rule up to a maximum of four marks:
- a loan of a "small amount" not exceeding £5,000
 - a short term quasi-loan of up to £5,000 repayable within two months
 - credit transactions not exceeding £10,000
 - loans for the purpose of enabling the Director to properly to perform his/her duties, provided the loan has been disclosed to and approved / ratified by shareholders in general meeting
 - a "Money-lending company" whose ordinary business includes the making of loans etc., provided that the loan is on the same terms as would be provided to any other borrower who is not a Director
 - intra-group loans, where a director is a director of both the holding and subsidiary company.
- (b) Up to two marks are available for a reasonable description of a Scheme of Arrangement: A Scheme of Arrangement under S425 CA85 provides a method of effecting changes in rights of members or creditors of a company. It involves application to the Court (where the proposed Scheme will be presented in outline) for an order that a meeting be convened of the members or creditors concerned. On receiving Court permission, the Scheme must be approved by 75% majority by value and a majority by number attending at the meeting. It will then involve a further application to the Court for an Order to approve and implement the Scheme.
- Up to a further two marks are available for describing minority protection and the common uses of a Scheme of Arrangement: Minority shareholders that object to the proposed Scheme will be given the opportunity to object at this stage. Schemes of arrangement are commonly used to reconstruct the capital of a company, to restructure a group of companies, to progress arrangements with creditors that avoid insolvency, or to initiate programmes such as debt for equity swaps. Schemes of arrangement can also be used to carry through transactions such as amalgamations, takeovers, or demergers.
- (c) Up to two marks for noting that Form 288(a) must be completed, signed by the incoming director and also by a serving officer (e.g. an existing director or the secretary) and filed with the Registrar within 14 days of the date of the appointment. Up to a further two marks for noting the information that must be

contained in Form 288(a) should include the Director's (three answers per mark):

- full name
- date of birth
- residential address
- occupation
- nationality
- other directorships within the past five years (excluding group and dormant companies)

- (d) Up to three marks for noting that a S212 investigation is where a public company enquires of a person whom the company believes currently (or within the last 3 years) has an interest in its shares to deny or confirm the fact and if the latter, to provide details of the holding and further information as may be necessary for the company to determine the ultimate beneficial holder.

One final mark for stating that S213 obliges the company to enter against the name of the registered holder of those shares, in a separate part of its register of interests in shares (which is open to public access), the details of the response following the S212 Investigation.

- (e) Up to two marks for noting that under S320CA85 the acquisition or sale of assets from a Director which exceeds the requisite value of £100,000 or 10% of the net assets if less, subject to a de minimis value of £2,000 is a substantial property transaction. A further mark for noting that the substantial property transaction is prohibited unless approved by shareholders in general meeting. A final mark for candidates that are aware of the anti-avoidance provisions in S320 which also makes connected persons and directors of holding companies subject to the substantial property transaction rules.

- (f) One mark is available for each answer, up to a maximum of four marks:

- proxies at meetings of both private and public companies have the right to vote on a poll and a right to call for a poll
- proxies at a general meeting of a private company may speak on a resolution but proxies of a public company may not (unless the Chairman of the Meeting or the Articles otherwise permits)
- proxies at general meetings of both private and public companies may not vote on a show of hands
- unless otherwise permitted by the Articles, a member of a private company may not appoint more than one proxy per meeting. A member of a public company may appoint more than one proxy
- proxies at general meetings of both private and public companies do not have the right of access to minutes of the meeting to which they have attended

- (g) Up to two marks for explaining that Rolling Settlement is the phrase used to explain the difference between the date the share trade is executed and the date the funds are settled and the securities delivered in respect of that trade. Rolling settlement also emphasises the move from the old fixed two week "account" periods for settlement.

Up to another two marks for noting that the London Stock Exchange operates a T+3 Rolling Settlement, which means that funds for a trade are settled three business days following the trade.

- (h) One mark for candidates that realise that the use of ex-dividend and record dates is usually in respect of listed companies which require time to prepare the orderly administration of dividend payments.

Up to a further two marks for explaining that from the ex-dividend date (and up until the dividend payment date) the seller of the shares has the right to retain the dividend on the shares sold – the ex-dividend date therefore occurs no later than the record date and in normal circumstances the ex-dividend dates is usually on a Wednesday with the record date the following Friday. Companies usually use a "ready reckoner" timetable provided by the Stock Exchange for fixing the record dates and ex dividend dates.

Another mark for noting that a record date is the date selected by a company for determining which shareholders shall be entitled to receive the dividend.

- (i) *One mark* for noting that in a public issue of shares, underwriting removes the risk of under-subscription by ensuring that the whole amount of securities offered is in fact subscribed and issued. *A further mark* for knowing that the Underwriter agrees (for a fee/commission) with the company or issuing house to purchase any securities not subscribed for by the investing public and to pay a fixed issue price or minimum tender price. *Another mark* for stating that alternatively, a main underwriter may undertake that they will find a sufficient number of persons to act as underwriters for a fee/commission (referred to a 'sub-underwriter'). *A final mark* for stating that in addition an Underwriter may 'underwrite firm' – that is subscribe for a specified amount of shares regardless of the level of public response.

- (j) Up to two marks for explaining that pre-emption rights is the priority right of all shareholders of a particular class of shares to receive an issue of shares in proportion to their existing holding. One mark each for mentioning the two methods of disapplying pre-emption rights:

- (i) by an express special resolution in general meeting pursuant to S95; and
- (ii) for private companies only, by special resolution to the effect of excluding pre-emptive rights in the company's Memorandum or Articles of Association.

SECTION B

2. (a) One mark for mentioning that Board approval will be required for the appointment of Miss Sole. Up to two marks for mentioning the information required to complete and file the Form 288(a) and necessary information to update the statutory registers. One mark for mentioning that an appropriate service agreement should be drawn up in respect of the appointment as Managing Director. One final mark for mentioning that specimen signatures, bank mandates, letterheading etc. should be updated as necessary. (5 marks)
- (b) Up to two marks for noting that pursuant to Article 65, any one director may appoint another director as his alternate providing that the alternate is willing to act and is approved by the Board. A further mark for stating that Article 66 entitles the alternate to the right to receive notice of meetings and the right to attend meetings where the director who appointed him is not present. Up to three marks for mentioning that an alternate director carries the same duties and responsibilities as the director who appointed him and that all the necessary formalities (such as completion and filing of a Form 288(a), necessary updates of the statutory registers etc) will be required. (6 marks)
- (c) One mark for noting that the Board will need to approve the transfer of shares to Mr Lace. One mark for mentioning that Mr Heel will need to complete a share transfer form, including the agreed price, and forward it to Mr Lace together with the share certificate. A further mark for stating that Mr Lace will then complete his transferee details on the stock transfer form and will then present it to the Stamp Office for payment of Stamp Duty at the rate of 50 pence per £100, rounded up to the nearest £5. Two marks for stating that as the company's shares are not traded in public, the Stamp Office may seek confirmation that the agreed transfer price is a fair reflection of the value of the shares. Up to three further marks for explaining that the stamped completed stock transfer form and the share certificate should then be returned to you for entry into the register of members and so that the old certificate may be cancelled and a new certificate issued. Another mark for noting that the register of interests for Directors and Secretaries will need to be updated to reflect the sale of shares. (9 marks)
3. One mark is available for each matter as follows:
- Apology for absence of Mr Smith
 - Resignation of Mr Old w.e.f. 9 January
 - Proposal motion for Mrs Young w.e.f. 9 January
 - Mr Man's objection to Mrs Young proposed appointment with majority approval of the Board, with Mr Man dissenting
 - Approval of the contract with Big Bakers Limited
 - Delegation of authority to a nominated person(s) (usually one or more directors) to execute the contract on behalf of the company
 - Termination of the meeting/no further business
 - Space at end of minutes for Chairman of the meeting to sign

Up to two marks are available for each of the following:

- Conditional approval of the share transfer w.e.f. 10 January from Mr Old to Mrs Young, subject to Mrs Young being appointed a Director on the preceding day. Approval of the transfer should be subject to stamping.
- The Dividend approval should refer to the record dates. It should also have confirmation that the company has sufficient distributable reserves to pay the interim dividend.
- resolution(s) that instructs the Secretary to prepare the necessary documents to give effect to all of the above resolutions.
- Recording of the absence of Mr Boss at the beginning and end of the dividend resolution
- Declaration of interest by Mr Ham and proper recording of the fact that he was not included in the quorum of the meeting or participated in the vote regarding the matter (this is the main point). Also confirmation from the directors whether the terms of the deal were at an arm's length basis.

Up to two further marks are available for using appropriate minute writing style:

- Suitable headings
- Suitable language
- A reference or numbering system for the minutes

4. (a) One mark for explaining that most companies are companies limited by shares and are incorporated to meet commercial needs. Another mark for explaining that in this context a company limited by shares is a company by which the liability of the shareholder is limited to the amount of money that they have paid or agreed to pay for their shares.

Another mark for stating that as Youth Help is not a commercial undertaking, it may be suited to a company being limited by guarantee if there is little or no commercial risk. Up to two marks are available for mentioning that the members of a company limited by guarantee have their liability limited to the extent of the aggregate sum they have to contribute to the assets of the company in the event of the company being wound up. One mark for confirming that the guaranteed sums is not usually great and reflects the low level of commercial risk – e.g. £5 per member. A further mark for explaining that in the event of the company winding up both current and previous members (up to one year prior to the date of winding up but not for debts contracted after they ceased to be a member) may be required to make their contribution.

Another mark for stating that it is not possible to have a share capital for newly formed companies limited by guarantee and that it may therefore not issue shares. Another mark for stating that guarantee companies cannot become public limited companies. One mark for stating that if it complies with certain other requirements under S30 CA85 in connection with the non-payment of dividends and return of capital to members, it may be exempt from using the word "limited" in its name.

Up to two marks for the brief recommendation to Mrs Flower as to whether a company limited by guarantee is appropriate. Candidates are permitted to come

to their own conclusions on this matter so long as it is supported. It is expected that answers will cover some or all of the following:

- that further information regarding the undertaking is required before a recommendation may be made, e.g. the sources of income and whether it will return any capital to members. This will help to determine the level of commercial risk; or
- a recommendation to proceed with a company limited by guarantee in view of the not-for-profit nature of the business. (12 marks)

(b) One mark is available for each of the following, up to a maximum of four marks;

- A public limited company may offer shares or debentures to the public - a private company may not do so.
- Confirm that the company meets the £50,000 minimum share capital requirement.
- A public limited company requires the minimum of two Directors (the question appears to assume this already) and also a suitably qualified Secretary.
- Board meeting should be convened to propose the matter to be considered at a general meeting.
- A special resolution is required to pass the proposal.
- The Memorandum and Articles should be amended as necessary to reflect the necessary changes proposed, e.g. from "Limited" to "Public Limited Company" and a statement in the Memorandum that the company is a public limited company.

Up to three marks for noting the documents to be filed with the Registrar within 15 days of the passing of the Special Resolution:

- Signed copy of special resolution
- Revised Memorandum & Articles
- Form 43(3) and Statutory declaration on Form 43(3)(e), duly completed
- A balance sheet made up to a relevant date not more than 7 months prior to the date of the special resolution, supported by an auditors statement

One mark for mentioning that if all is in order, the Registrar will issue a new Certificate of Incorporation with the plc name but that the business may carry on trading as a private limited company until receipt of such Certificate.

(8 marks)

5. (a) Up to two marks for noting that for a private limited company the approval of only 95% of the voting rights is required to consent to a shorter notice period than permitted under statute for the purposes of an EGM – as Mr Jones only holds 4% the shares the company would need to confirm that it has received the approval of the remaining 96% of the votes.

One mark for mentioning that prima facie, failure to give notice of meeting to a member entitled to receive notice invalidates proceedings of the meeting. However, up to a further two marks for noting that the Articles provide that

accidental omission to give notice does not invalidate the proceedings of the meeting and also the fact that the shareholder is in attendance precludes him from objecting to non-receipt of notice. (5 marks)

- (b) One mark for noting that Article 62 provides that proxy card appointments must be deposited at the stipulated address not less than 48 hours prior to the start time designated for the meeting. A further mark for stating that Mrs Tardy is not prohibited from attending the meeting in person, regardless of whether she has validly appointed a proxy or not.

Up to two marks for noting that Article 42 provides that the Chairman of the Board, or failing that any other Director nominated by the Directors, shall preside as Chairman of the general meeting – provided the Board have agreed that the Chief Executive shall preside as Chairman of the Meeting the appointment is therefore valid. A further mark for stating that there are no provisions in the Articles for the members to elect their own Chairman of the meeting unless all of the Directors are unable and unwilling to act as the Chairman. (5 marks)

- (c) One mark for noting that a point of order must be dealt with by the Chairman immediately – i.e. it should be addressed prior to dealing with Mr Talk's proposal to amend the resolution. One mark for knowing that a proxy in a private limited company is able to speak on a matter that comes before the meeting – the point of order is therefore invalid. A further mark for knowing that it is not necessary for resolutions to be seconded before they are put to the vote. Up to two marks for knowing that the text of a special resolution is written in full in the Notice of General Meeting and that no alterations may be made to special resolutions – Mr Talk's proposal for amendment is therefore invalid. (5 marks)

- (d) Up to two marks for noting that Article 40 provides that two persons entitled to vote upon the business to be transacted, each being a member or a proxy or a duly authorised representative shall constitute a quorum. Up to a further two marks for stating that Article 41 provides for the automatic adjournment of any inquorate meeting to the same day in the next week at the same time and place or to such time and place as the directors may determine. One mark for stating that any business transacted when the meeting was inquorate is automatically invalid and should be the subject of a fresh vote at the reconvened meeting. (5 marks)

6. (a) One mark for a fair attempt at explaining that an option in this case is a contractual right to purchase a share of Bell Appliances at a price which has already been determined (the option price).

Up to two marks for a fair attempt at explaining that exercise refers to the process where the optionholder (or their representative) pays to the company the option price in exchange for the issue of the respective number of shares. For example, if the option price is £1.00 per share and the optionholder pays £100 to the company, the optionholder will be entitled to receive 100 shares (subject to the number of options granted to the optionholder).

One mark for explaining that the vesting period refers to the time between the grant of the option and the time when the option may first be exercised. In normal circumstances for Inland Revenue approved CSOPs, this is three years.

One mark for mentioning each of the following:

- expressing sympathy with the passing of Mr Smith
- a note has been made in the option register of the death of Mr Smith and the valid appointment of the executors
- usually with Inland Revenue approved CSOPs, the Plan Rules stipulate that options are not exercisable until three years after grant and must be exercised before the tenth anniversary of grant in order to qualify for income tax exemption status
- special exemptions apply however for deceased participants which allow the options to be exercised before the third anniversary without compromising the tax exemption
- the options must still be exercised by the tenth anniversary otherwise they will lapse

A further mark is available for impressive candidates who are aware that most Plan Rules for CSOPs will stipulate that executors have one year following the date of death of the participant to exercise the option and that this usually coincides with the time taken by the executor to administer the estate of the deceased in accordance with the terms of the Will. (10 marks)

(b) One mark for mentioning each of the following:

- condolences for the passing of Mrs Jones
- a note has been made in the register of members noting that Mrs Jones is now deceased
- Mr Jones will need to obtain Grant of Representation as executor of the will from the Court
- Mr Jones should submit the original Grant (or an acceptable "Office Copy") which will be conclusive evidence as to his right to administer the Will. The share certificate should accompany the Grant,
- The share certificate will be returned by the Registrar along with the Grant (if it was an original)
- A stock transfer form will also be sent to Mr Jones (probably along with the share certificate) upon receipt of the Grant for the purposes of transferring the shares to his daughter. The transfer should be executed and returned to the registrar.
- If all is in order the register of members will be updated, the old share certificate shall be cancelled and a new certificate in the name of his daughter shall be issued
- Enquiries should be made as to the age of the daughter with a recommendation that if she is a minor the shares should be held in an adult's name for the account of the minor

Up to two marks for dealing with the dividend cheques:

- The Registrar will need to see if any of the cheques are over 12 years old as the dividend may have been forfeited
- The Registrar should also check to ensure no duplicate cheques have been issued previously as a replacement for the cheques found by Mr Jones
- It will be up to the executor to confirm the treatment of the cheques in accordance with the terms of the will. The executor should therefore return the cheques with an appropriate instruction
- Any cheque over one year old in any case is unlikely to be accepted unless the issuer has had it revalidated (10 marks)