



Chartered Secretaries Qualifying Scheme – Level Two

Corporate Secretarial Practice

November 2011

Wednesday afternoon 23 November 2011

Time allowed: 3 hours and 15 minutes
(including reading time)

Do not open this examination paper until the presiding officer or an invigilator tells you to.

You must not take this paper out of the examination room.

This examination paper contains **six** questions. Each question is worth 25 marks.

Question 1 to 4 are based on the pre-released case study. Questions 5 and 6 are not based on the pre-released case study.

You must attempt **four questions only**.

Note: Where questions refer to Canadian statutes, you should assume the relevant Articles apply under the Canadian Business Corporations Act.

Case study

Constant Flux Ltd.

You are the newly-appointed corporate secretary of Constant Flux Ltd. ('Flux'), a company listed on the Toronto Stock Exchange. Flux's main business is the production of high definition televisions and the business frequently changes its product lines to keep up with evolving technologies and customer preferences. Flux has several subsidiary companies. As a result of changing product lines, there has been much change in Flux over the past few years, with some parts of the business contracting and being closed down, whilst other parts of the business have been expanding.

Just prior to your appointment, Flux had acquired a controlling share in a former competitor, a group comprising a holding company and a number of subsidiaries. Some of these are public limited companies and some private, but none of them are listed on any stock exchange. All of these companies are solvent.

Your company secretarial team is relatively inexperienced and will need your help on how to implement certain proposed changes to the structure of the companies within the group. In particular, your team is unsure when a different treatment may be required for the private limited companies as opposed to the public ones. Mr White is a director of all of the companies in the newly acquired group (but is not a director of Flux) and, as such, travels extensively on business. Mr White has asked for certain procedures to be considered for adoption for board meetings, to take account of his extensive travelling, and for a review of certain elements of governance for the business. You have agreed to help your team on these matters.

Flux is reaching the end of its financial year and undertakes extensive year-end planning, covering a range of corporate matters. The year-end planning will cover not only Flux, but it will also incorporate a review of all of its subsidiary companies and all companies in which it has a controlling share. One of the objectives of the year-end review is to ensure that the structure of the group companies is optimized for the most efficient running of the group. The review will also ensure that appropriate arrangements are in place to support the group's short-term objectives, which currently include work to ensure that the group has adequate financial resources. The company plans to introduce a brand new range of large-screen televisions next year and will need to conserve cash where possible in order to fund this. The new range of televisions will be developed with Fancy Screens Limited, a company which is not part of the Flux group. The share capital of Flux consists of common shares, preference shares and cumulative preference shares. The company also has interest-bearing debentures. Mr Grey, the Finance Director, has some questions for you about the dividends and has some proposals on which he would like your advice.

Year-end planning includes preparation for next year's Annual General Meeting (AGM) for Flux. The chairman of Flux requires a 'Questions & Answers' pack for the next AGM and the chairman has asked you to prepare answers to several questions. The Questions & Answers pack will be particularly helpful as there is a small section of shareholders who have become disgruntled with the company's strategic direction. The disgruntled shareholders believe that the company should start producing computers, as they believe this is a larger and more profitable market. However, the company is adamant that this is not a wise strategy for it to follow. It is clear that this group of shareholders is becoming frustrated that the company refuses to change its strategic direction and the chairman is now concerned at what actions the group may take next.

There have been several changes to the board of Flux and this will require you to provide advice and guidance to the incoming new director(s), particularly in respect of certain constitutional and governance procedures. There are currently six directors of Flux. As a

listed company, compliance with applicable regulations is a paramount matter for the corporate secretary and part of your duties will be to ensure that you provide high quality advice on relevant aspects, both to any new director(s) and the rest of the board. In particular, Mrs Plan was appointed to the board of Flux recently as the Strategy Director and, as this is her first directorship, she has several questions on which she seeks your guidance.

Questions

Answer **any four** questions from this paper.

Questions 1 – 4, below, are connected to the pre-released case study.

1. Mrs Plan, as the Strategy Director, has a number of questions on which she seeks your advice:

(a) Mrs Plan wishes to know whether the number of directors serving at Flux is sufficient and whether it would be a problem if the number of directors attending at a board meeting fell below the quorum for the meeting. She would also like to know what happens if the number of directors appointed were to fall below the quorum.

(6 marks)

(b) Mrs Plan asks you if it is necessary to have independent directors on the board and if there are any differences or similarities compared to executive directors in respect of their roles or duties.

(6 marks)

Mr Grey, as the Finance Director, has a number of questions about dividends and also wants to develop an understanding of other proposals.

(c) Mr Grey suggests that Flux should not pay any dividends on its shares next year in order to conserve cash ahead of the introduction of the new range of televisions next year. He would like to know if this is possible and whether any issues may arise.

(6 marks)

(d) Mr Grey has heard that other companies operate scrip certificates. He asks what these are and where the regulations condone such certificates. He also noted from the accounts that there were a substantial amount of unclaimed dividends and asked if it could be decided that the dividends were no longer owing to shareholders. He would also like your recommendations for reducing the amount of unclaimed dividends.

(7 marks)

Required

Provide the advice requested in (a), (b), (c) and (d) above. Your advice should include any steps which would need to be taken to address any issues raised.

(Total: 25 marks)

2. The chairman requires answers to the following questions in the 'Questions & Answers' AGM pack:

(a) (i) What would be the procedure for the disgruntled shareholders to add a new resolution, that the company should start producing computers, to the agenda of the next AGM? Describe shareholders' dissent rights.

(ii) Can the disgruntled shareholders amend any of the existing ordinary or special resolutions during the AGM itself? In particular, the chairman is concerned that a group of shareholders may wish to remove a director at the AGM.

(14 marks)

(b) How should the chairman respond to an ordinary shareholder or joint shareholder attending the AGM who claims the meeting is invalid as they failed to receive notice of the AGM?

(5 marks)

(c) Is a shareholder able to insist that a member chairs the next AGM and what are the constitutional provisions in respect of the appointment of the chairman at a general meeting? In addition, what constitutional provisions are there in case the shareholders' frustrations cause disorder at a general meeting.

(6 marks)

Required

Provide advice to the chairman in respect of (a), (b) and (c) above. Your advice should include relevant statutory steps, timings and procedures which would need to be considered.

(Total: 25 marks)

3. In respect of the business acquired just prior to your appointment:

(a) Some of the companies are inactive and are not required. You have agreed to prepare a short briefing for your team as to why striking off these companies would be the best course of action. You have also agreed to provide advice on the considerations, authorities and required steps they would need to take to strike off the companies.

(14 marks)

(b) To help provide cover whilst Mr White is on his business travels, it is being considered whether Mr Black should be appointed as an additional director for a specific term to Mr White. However, your team are unsure whether an additional director for a specific term has the same role and capacity as any other director. They would like to know if any authorities need to be obtained or other steps taken for the appointment of Mr Black. They are also unclear whether, during a board meeting, the votes and interests of Mr White would be in addition to Mr Black's votes and interests.

(11 marks)

Required

Provide the advice requested in respect of (a) and (b) above.

(Total: 25 marks)

4. The board is reviewing year-end matters:

(a) Mr Grey wants to conserve cash ahead of the introduction of the new range of televisions next year. He asks you what the potential sources of capital are in order to achieve this.

(6 marks)

(b) In reviewing year end matters, Mr Grey asks you what the rules are on the constraints of shares in a public company, as well as the rules on the sale of constrained shares, in order to determine whether the structure of the group companies is optimized for the most efficient running of the group?

(9 marks)

(c) Mr Grey is considering creating a new class of shares and would like your advice on methods of altering share capital, including the procedure for alteration of share capital.

(10 marks)

Required

Provide the advice requested in (a), (b) and (c) above.

(Total: 25 marks)

Questions 5 and 6, below, are not connected to the pre-released case study.

5. You are the Assistant Corporate Secretary of Knowledge First Limited ('Knowledge'). You have just been advised by the General Counsel and Corporate Secretary that the first shareholders' meeting of Knowledge will be held within six months. The President is concerned about the restriction on powers of the shareholders versus directors and also wants to know more about the potential power of shareholders when entering into a unanimous shareholder agreement. The General Counsel and Corporate Secretary has asked you the following questions in order for her to assist the President and CEO with the first meeting.
- (a) Outline five restrictions on the power of shareholders to restrict the power of directors.

(5 marks)
 - (b) What is a unanimous shareholder agreement and what are the effects to the directors of such an agreement?

(5 marks)
 - (c) Describe in detail the contents of an Agenda for an annual shareholders meeting. Differentiate between annual, special and class meetings of shareholders.

(10 marks)
 - (d) Describe five rights given to shareholders under the CBCA.

(5 marks)

Required

Write a memorandum to the General Counsel and Corporate Secretary addressing points (a) to (d).

(Total: 25 marks)

6. In addition to the full range of statutory liabilities, it is possible for directors to be held liable for certain common law breaches arising from the actions of the corporation. However, some incorporating legislation, such as the CBCA, deals with 'insider trading' and the latter is also dealt with under securities legislation to ensure that 'insiders', as defined under the legislation, report about and only trade in securities in a mandated fashion. Directors may only be liable if they act in such a deliberate and reckless way that they make the wrongful acts their own as distinct from the corporation's.
- (a) What are the classes of persons included in the definition of an 'insider' of a distributing corporation?
(5 marks)
- (b) Discuss how directors could be determined 'insiders', and their obligations.
(10 marks)
- (c) What are the defences available to a director who has been charged with 'insider trading'?
(5 marks)
- (d) What are the liabilities for a director, for offences under the corporate statutes (CBCA), who knowingly authorizes, permits or acquiesces in the corporation while failing to comply with certain provisions?
(5 marks)
- (Total: 25 marks)

The scenarios included here are entirely fictional. Any resemblance of the information in the scenarios to real persons or organisations, actual or perceived, is purely coincidental.

