Answers
1 Articles 89 and 128 of the Constitution of Pakistan, 1973 (‘Constitution’) respectively provide for the powers of the President of Pakistan and the Governors of the Provinces to make and promulgate Ordinances.

Article 89(1), as amended by the Constitution (Eighteenth Amendment) Act, 2010 (‘18th Amendment’), provides that the President may, except when the Senate or National Assembly is in session, if satisfied that circumstances exist which render it necessary to take immediate action, make and promulgate an Ordinance as the circumstances may require. These two pre-conditions are essential before the issuance of an Ordinance.

Article 89(2) provides that an Ordinance promulgated under that Article shall have the same force and effect as an Act of Majlis-e-Shoora (Parliament), and shall be subject to like restrictions as the power of Majlis-e-Shoora (Parliament) to make law. In the same vein, Article 260(2) dealing with interpretation of the various phrases used in the Constitution, provides that in the Constitution, ‘Act of Majlis-e-Shoora (Parliament)’ or ‘Federal law’ or ‘Act of Provincial Assembly’ or ‘Provincial law’ shall include an Ordinance promulgated by the President or, as the case may be, a Governor. The reference to ‘restrictions’ in Article 89(2) includes (i) the Federal Legislative List (Fourth Schedule to the Constitution) which sets out the subjects on which the Majlis-e-Shoora (Parliament) can exclusively legislate, i.e., to the exclusion of Provincial Legislatures. All other subjects fall within the exclusive competence of the Provincial Legislatures; (ii) Article 8 of the Constitution which provides that any law inconsistent with the Fundamental Rights set out in Chapter-I of Part-II of the Constitution is void. The Supreme Court has recently declared the National Reconciliation Ordinance, 2007, ultra vires the Constitution under Article 8 (Dr Mobashir Hassan v Federation of Pakistan PLD 2010 SC 265).

An Ordinance is subject to legislative scrutiny by the Majlis-e-Shoora (Parliament) depending upon its subject matter. Article 89(2) further provides that if the subject matter of an Ordinance falls within the scope of ‘Money Bill’ under Article 73(2), it shall be laid before the National Assembly and shall stand repealed at the expiration of 120 days from its promulgation or, if before the expiration of that period, a resolution disapproving it is passed by the Assembly, upon the passing of that resolution. Provided that the National Assembly may by a resolution extend the Ordinance for a further period of 120 days and it shall stand repealed at the expiration of the extended period, or, if before the expiration of that period, a resolution disapproving it is passed by the Assembly, upon the passing of that resolution. Provided further that extension for further period may be made only once.

If, however, the subject matter is other than that of a ‘Money Bill’ matter under Article 73(2), the Ordinance shall be laid before both Houses of Majlis-e-Shoora (Parliament) and shall stand repealed at the expiration of 120 days from its promulgation or, if before the expiration of that period, a resolution disapproving it is passed by either House, upon the passing of that resolution. Provided that the National Assembly may by a resolution extend the Ordinance for a further period of 120 days and it shall stand repealed at the expiration of the extended period, or, if before the expiration of that period, a resolution disapproving it is passed by the Assembly, upon the passing of that resolution. Provided further that extension for further period may be made only once.

Article 89(2)(b) provides that an Ordinance may be withdrawn at any time by the President.

Article 89(3) provides that an Ordinance laid before the National Assembly (with respect to Money Bill matters) shall be deemed to be a Bill introduced in the National Assembly and an Ordinance laid before both Houses (with respect to other matters), shall be deemed to be a Bill introduced in the House where it was first laid. This means that an Ordinance laid before the Parliament will be proceeded upon in the usual course of legislation of normal Acts of Parliament (Articles 70 to 75 of the Constitution).

The procedure under Article 128 is generally similar, albeit the Provincial Ordinance is required to be laid before the Provincial Assembly and the time period for its validity is 90 days (as opposed to 120 days under Article 89).

2 (a) Section 2(33) Companies Ordinance, 1984 (‘Ordinance’) states that a company secretary is an individual appointed to perform secretarial, administrative, or other duties aimed to ensure that the affairs of the company are conducted in accordance with the Ordinance. Section 204-A makes it mandatory for listed companies and single member companies to appoint whole time company secretaries possessing such qualification as may be prescribed.

Pursuant to s.204-A, the following qualifications have been prescribed in Rule 14-B of the Companies (General Provisions and Forms) Rules, 1985, in September 2005:

‘(1) The directors of a public listed company shall take reasonable steps to ensure that the company secretary is a person who appears to them to have the requisite knowledge and experience to discharge his functions as company secretary, and who is:

(a) a member of
   (i) a recognised body of professional accountants; or
   (ii) a recognised body of corporate or chartered secretaries; or

(b) a person holding a masters degree in business administration or commerce or being a law graduate from a University recognised by the Higher Education Commission and having at least two years’ relevant experience; or

(c) a retired government servant in BS-19 or equivalent or above with at least 15 years’ service:

Provided that a person already engaged by a public listed company as a company secretary before 26 October 2002 may continue in that capacity if he has an experience of not less than five years in that position.

...’
Clause (xvii) of Code of Corporate Governance, 2002 (‘Code’) provided that ‘no person shall be appointed as the Company Secretary of a listed company unless he is:

(a) a member of a recognised body of professional accountants; or
(b) a member of a recognised body of corporate/chartered secretaries; or
(c) a person holding a masters degree in business administration or commerce or being a law graduate from a University recognised by the Higher Education Commission (HEC) and having at least five years’ relevant experience.

Provided that a person already engaged by a company as secretary before 26 October 2002 may continue in that capacity if he has an experience of not less than five years in that position.’

[The slight differences in the prescribed qualifications under the 1985 Rules and the Code have yet to be resolved by the Securities and Exchange Commission of Pakistan].

(b) A company secretary is recognised as one of the principal officers of the company. The company secretary is the person who is required to ensure compliance with the applicable corporate laws. He is also responsible for managing the various statutory meetings of the company.

A company secretary acts on behalf of the board of directors. The superior courts have held that a company secretary being an officer of the company has extensive duties, including those of making representations on behalf of the company and entering into contracts which come within the day-to-day running of the company’s business.

Generally, a company secretary has duties towards (i) directors; (ii) shareholders; (iii) management and administration; (iv) the company; and (v) law. Duties towards shareholders imply arranging for shareholders’ meetings; keeping minutes of such meetings; receiving applications for allotment of shares; transferring of shares; and recording dividends paid. Duties towards directors imply arranging board meetings; keeping records and minutes of such meetings and implementing decisions taken in the meetings.

If the company is a listed company, the Code becomes applicable. Clause (xviii) of the Code provides that the company secretary of a listed company shall attend meetings of the board of directors. Provided that unless elected as a director, the company secretary shall not be deemed to be a director or entitled to cast a vote at meetings of the board of directors for the purpose of the said clause. It further provides that the company secretary shall not attend such part of a meeting of the board of directors which involves consideration of an agenda item relating to, among other things, the company secretary.

Section 10 Contract Act, 1872 (‘Act’) provides that all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void. Section 14 provides that consent is free when it is not caused by:

(1) coercion, as defined in s.15, or
(2) undue influence, as defined in s.16, or
(3) fraud, as defined in s.17, or
(4) misrepresentation, as defined in s.18, or
(5) mistake, subject to the provisions of ss.20, 21 and 22.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

Absence of free consent renders the contract voidable.

Section 15 Act provides that ‘coercion’ is the committing, or threatening to commit, any act forbidden by the Pakistan Penal Code or the unlawful detaining, or threatening to detain, any property to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement. The Explanation to s.15 states that it is immaterial whether the Pakistan Penal Code is or is not in force in the place where the coercion is employed.

Section 19 Act provides that a contract obtained through coercion is voidable at the option of the party whose consent was obtained so. Further, s.64 Act provides that the party rescinding a voidable contract shall restore the benefit(s) received by him under the contract, to the person from whom the benefit was received. Furthermore, s.72 Act provides that a person to whom money has been paid or anything delivered under coercion must repay or return it.

Section 16 Act provides as follows:

‘(1) A contract is said to be induced by ‘undue influence’ where the relation subsisting between the parties is such that one of the parties is in a position to dominate the will of the other, and uses that position to obtain unfair advantage over the other.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

(a) where he holds a real or apparent authority over the other or where he stands in a fiduciary relation to the other; or
(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.
Where a person who is in a position to dominate the will of another enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other."

The superior courts of Pakistan have held that in order to establish the fact of undue influence, both factors set out in s.16(1), i.e., relationship and abuse thereof, must be proven. The presence of one without the other will not result in undue influence.

Further, as to the effect of undue influence, s.19-A provides that it makes the contract voidable at the option of the party whose consent is obtained by the undue influence. Furthermore, any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit there under, upon such terms and conditions as the court may find just.

Section 305 Companies Ordinance, 1984 ('Companies Ordinance') sets out the circumstances/grounds on which a company may be wound up by the court. These circumstances are:

(i) if the company has, by special resolution, resolved that the company be wound up by the court;
(ii) if default is made in delivering the statutory report to the registrar or in holding the statutory meeting or any two consecutive annual general meetings;
(iii) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;
(iv) if the number of members is reduced, in the case of private company, below two or, in the case of any other company, below seven;
(v) if the company is unable to pay its debts;
(vi) if the company is –
   (I) conceived or brought forth for, or is or has been carrying on, unlawful or fraudulent activities;
   (II) carrying on business not authorised by the memorandum;
   (III) conducting its business in a manner oppressive to any of its members or persons concerned with the formation or promotion of the company or the minority shareholders;
   ‘Minority shareholders’ are defined in the second Explanation to s.305 to mean those collectively holding not less than 20% of the company’s equity share capital.
   (V) run and managed by persons who fail to maintain proper and true accounts, or commit fraud, misfeasance or malfeasance in relation to the company; or
   (VI) managed by persons who refuse to act according to the requirements of the memorandum or articles or the provisions of this Ordinance or fail to carry out the directions or decisions of the court or the registrar or the Commission given in the exercise of powers under this Ordinance;
(vii) if, being a listed company, it ceases to be such company; or
(viii) if the Court is of opinion that it is just and equitable that the company should be wound up; or
(ix) if a company ceases to have a member.

Section 309 Companies Ordinance specifies the persons or entities who may apply to the court to seek winding up of a company. These are:

Any or all of the following, acting together or separately,
(i) the company; or
(ii) any creditor or creditors (including any contingent or prospective creditor or creditors); or
(iii) any contributory or contributories, subject to the conditions specified in s.309(a);
or,
(iv) the Registrar of Companies, subject to the conditions specified in s.309(b); or
(v) the Securities and Exchange Commission of Pakistan (SECP) or a person authorised by the SECP, subject to the conditions specified in s.309(c).
Negligence as a tort is the breach of a legal duty to take care which results in damage, undesired by the defendant, to the plaintiff (Winfield & Jalicowicz on Tort, 13th ed. 1989). Negligence focuses on conduct that falls below the legal standard that the law has established to protect members of society against unreasonable risk of harm. Negligence is based on the concept of fault where the defendant breaches a duty that he or she owes to the plaintiff and such breach causes actual and legal injury resulting in damage.

However, a behaviour may contribute to one's own injury or loss and failure to meet the standard of prudence that one should observe for one's own good. In other words, if the plaintiff’s injuries have been caused partly by the negligence of the defendant and partly by his own negligence, this is called contributory negligence (Tony Weir, Casebook on Tort, (6th Edition) Chap. 5, s.1). Contributory negligence of the plaintiff is frequently pleaded in defence to a charge of negligence.

Earlier, at common law, the plaintiff in case of his contributory negligence could recover nothing. However, the common law rule produced hardships whether one of the two negligent parties suffered the greater loss although his negligence was not the major cause of accident. Accordingly the court modified the defence of contributory negligence by the so-called rule of last opportunity. This enabled the plaintiff to recover notwithstanding his own negligence, if upon the occasion of the accident the defendant could have avoided the accident while the plaintiff could not (Davies v Mann (1842) 10M. & W. 546). It is noted that existence of a duty of care is, though, essential to a cause of action for negligence, but for contributory negligence it is quite unnecessary that the plaintiff should owe a duty to the defendant (Winfield & Jalicowicz on Tort, 13th ed. 1989). Per Viscount Simon, all that is required is that the plaintiff should have failed to take reasonable care for his own safety (Nance v British Columbia Electric Ry (1951) A.C. 601, 611).

The Supreme Court of India has observed that negligence ordinarily means breach of legal duty to care, but when used in the expression, ‘contributory negligence’ it does not mean breach of any duty. It only means the failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy in part as an ‘author of his own wrong’ (Pramod Kumar Raskikhabri Javen v Karmes Kunvard Tak AIR 2002 SC 2864).

Volenti non fit injuria is a common law doctrine which means that if someone willingly places himself in a position where harm might result, knowing that some degree of harm might result, they cannot then sue if the harm actually results. In other words, volenti non fit injuria implies that harm suffered voluntarily does not constitute legal injury and is not actionable. The maxim presupposes a tortuous act by the defendant (Wooldridge v Summer, (1962) All ER 978). Volenti is thus used to describe the plaintiff as ‘consenting to run a risk’. There are many occasions on which harm – sometimes grievous harm – may be inflicted on a person for which he has no remedy in tort, because he consented or at least assented, to the doing of the act which caused his harm. One who has invited or assented to an act being done towards him cannot, when he suffers from it, complain of it as a wrong [Smith v Baker (1891) A.C. 325, 360]. Simple examples are injuries received in the course of a lawful game or sport, or in a lawful surgical operation. The effect of such consent or assent is commonly expressed in the maxim volenti non fit injuria, which is certainly of respectable antiquity (Winfield & Jalicowicz on Tort, 13th ed. 1989).

However, it is to be noted that volenti non fit injuria has no place unless a presumptive tort has been committed, but this is not to say that the element of consent is invariably irrelevant in the absence of a prima facie breach of duty by the defendant. The plaintiff may have consented to a certain disregard of his safety by the defendant with the result that conduct, which would in other circumstances amount to negligence, does not in the event involve the defendant in a breach of his duty of care. As Barwick C.J. observed in Roots v Shelton (1968) A.L.R. 33, 34, that by engaging in a sport...the participant may be held to have accepted risks which are inherent in that sport... but this does not eliminate all duty of care of the one participant to that other. Further, the maxim has not validity against an action on a breach of statutory duty (Wheelar v New Merton Board Mills Ltd (1933) 2 KB 669). Furthermore, the maxim does not apply where the plaintiff has, under an exigency caused by the defendant's wrongful misconduct, consciously and deliberately faced a risk, even of death, to rescue another from imminent danger of personal injury or death, whether the person endangered is one to whom he owes no such special duty (Haynes v Harwood, 1935 1 KB 1246, 157). In such a case, the rescuer will not be deprived of his remedy merely because the risk which he runs is not the same as that run by the person whom he rescues (Chadwick v British Transport Corporation, 1967 2 All ER 945).

Accordingly, the defence of volenti is available only when the plaintiff freely and voluntarily, with full knowledge of the nature and extent of the risk, impliedly agreed to incur it and to waive any claim for injury.

The Companies Ordinance, 1984 (‘Ordinance’) does not provide a specific definition of NBFC. The expression was introduced through insertion of Part VIII A (comprising s.282A to M) into the Ordinance in 2002. Section 282A states that the NBFCs include companies licensed by the Securities and Exchange Commission of Pakistan (“SECP”) to carry out any one or more of the following forms of business, namely:

(i) Investment Finance Services;
(ii) Leasing;
(iii) Housing Finance Services;
(iv) Venture Capital Investment;
(v) Discounting Services;
(vi) Investment Advisory Services;
The Workmen’s Compensation Act, 1923 (‘WC Act’) aims to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident. This compensation under the WC Act is a statutory tortuous remedy. It was originally passed, aimed at covering only workmen whose occupations were hazardous and who were engaged in industries which were more or less organised. Thus, the WC Act covered workers in all but the smallest factories, in mines, on the railways, and tramways, on certain type of building work and in certain less important branches of employment. The underlying spirit of the WC Act is that workmen suffering any tortuous injuries should, in so far as it is possible and subject to the provisions contained therein, be saved from the rigours of regular trials before civil courts in torts. Regulation 9(1) of NBFC Regulations provides that all NBFCs shall ensure prevention of money laundering and other illegal trades and abide by such directives and circulars as may be issued by the Commission to safeguard the NBFCs against involvement in money laundering activities and other illegal trades.

Rule 7(g) of the NBFC Rules, 2003 stipulates that an NBFC shall follow the directions issued to protect NBFCs against their involvement in, among other things, money laundering activities. Regulation 9(1) of NBFC Regulations provides that all NBFCs shall ensure prevention of money laundering and other illegal trades and abide by such directives and circulars as may be issued by the Commission to safeguard the NBFCs against involvement in money laundering activities and other illegal trades. Regulation 9(2) provides that notwithstanding the generality of Regulation 9(1), an NBFC shall comply with the following conditions:

(i) it shall accept deposits from an investor only after ensuring that an account has been opened in the name of the investor using the account opening form developed by the respective industry associations in consultation with the Commission;
(ii) it shall determine the true identity of the prospective customer before extending its services and care shall be taken to identify ownership of all accounts and those using safe custody;
(iii) it shall establish effective procedures for obtaining identification from new customers and devise a policy to ensure that business transactions are not conducted with persons who fail to provide evidence of their identity;
(iv) it shall conduct its business in conformity with the Rules and these Regulations and shall not offer services or provide any assistance in transactions which, in the opinion of the NBFC, are associated with money derived from illegal activities;
(v) it shall establish effective procedures for the monitoring of Borrower accounts on a regular basis, checking identities and bonafide of remitters and beneficiaries of transactions and retain records of transactions; and
(vi) it shall not make payment or receive amounts in cash exceeding Rs. 50,000/-.

The Prudential Regulations for NBFCs issued by the SECP in 2004 and updated from time to time, specify generally similar requirements (see generally, Prudential Regulation No. 4).
Section 202 Companies Ordinance, 1984 ('Ordinance') provides that the directors of a company by resolution passed by not less than three-fourths of the total number of directors for the time being, or the company by a special resolution, may remove a chief executive before the expiration of his term of office notwithstanding anything contained in the articles or in any agreement between the company and such chief executive.

On the given facts, Arif's term of office has not yet expired. Clause 3 of the Contract would not, of itself, prevent the possible removal of Arif because the express wording of s.202 overrides anything to the contrary contained in any agreement between the company and the chief executive.

Under s.202 two possible routes are valuable for Arif's removal: removal by the Board or removal by the company in general meeting. Removal by the Board would require a resolution passed by not less than three-fourths of the total number of directors for the time being of NSML, i.e., 3/4th of twelve – nine directors. Since six directors are out of Pakistan, the requisite nine directors are not available to pass the resolution under s.202 to successfully remove Arif through this method. If the remaining six directors try to pass a resolution for his removal, even if such resolution is unanimous, it will fall foul of s.202 (Khawar M. Butt v Abdullah H. Habib 1985 MLD 1193).

The second method, namely, removal through a special resolution passed by the company may be employed. For this purpose, a general meeting of the members of NSML would have to be convened, provided that due notice of the meeting (of at least 21 days) is given in accordance with ss.158 or 159 of the Ordinance, as the case may be, and the proper quorum is present, a resolution passed by not less than three-fourths of the members entitled to vote as are present in person or through proxy at the general meeting would suffice to remove Arif as the chief executive.

The Board may note, however, that although s.202 will enable the Board or the NSML in general meeting, as the case may be, to remove Arif, he may still bring a claim for damages for breach of contract citing violation of Clause 3. This risk may be aggravated if the allegations against Arif are not substantiated.

Further, by virtue of s.198 read with s.199(1) Ordinance, within 14 days of Arif’s removal, the Board will have to appoint a new chief executive. Failure to do so may entail penal consequences under s.204 Ordinance.

Under the Partnership Act, 1932 ('Act'), an undertaking between two or more persons for a common objective, viz. sharing of profits of a business would constitute a partnership, each partner whereof, would be agent of the same (Kohinoor Soap and Detergents (Private) Limited v Basra Soap Factory PLD 2002 Karachi 119). Section 18 Act provides that subject to the provisions of this Act, a partner is the agent of the firm for the purposes of the business of the firm. Section 19 Act provides that (1) subject to the provisions of s.22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. The authority of a partner to bind the firm conferred by this section is called his 'implied authority'. (2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empowers him to:

(a) submit a dispute relating to the business of the firm to arbitration;

(b) open a bank account on behalf of the firm in his own name;

(c) compromise or relinquish any claim or portion of a claim by the firm;

(d) withdraw a suit or proceeding filed on behalf of the firm;

(e) admit any liability in a suit or proceedings against the firm;

(f) acquire immovable property on behalf of the firm;

(g) transfer immovable property belonging to the firm; or

(h) enter into partnership on behalf of the firm.

Section 22 Act provides that in order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm's name, or in any other manner expressing or implying an intention to bind the firm. The superior courts of Pakistan have interpreted that provisions of s.18 are subject to the provisions of s.19 mentioned above. Further, the words 'or in any other manner expressing or implying an intention to bind the firm' makes it clear from an act or deed, the firm will be bound no matter how the document expressing such intention is worded (Sachindra Kumar Sara v Eastern Banking Corporation Limited PLD 1967 Dacca 35). Further, the superior courts of Pakistan have interpreted the above provision as every partner is the general and accredited agent of the partnership and any act done within the scope and object of the partnership binds the other partner. A firm will be bound if such act is done in the firm's name or on behalf of the firm which expressly or impliedly shows an intention to bind the firm (Australasia Bank Limited v Mahmood Hassan Akbar PLD 1983 Karachi 431),

factory, industrial or commercial establishment or railways.’ The PW Act, among other things, regulates the timings of payment of wages and deductions from wages. It provides for the establishment of a separate authority (under s.15 PW Act) to adjudicate upon claims related to such matters. It is noteworthy that the scope of the PW Act is not restricted to claims of workmen only (as is the case with many principal labour legislations) or any specified amounts of wages, so that any person employed in the establishments covered by the PW Act may bring a claim under the PW Act with respect to wages. Furthermore, in order to benefit the claimants, the authority under s.15 has been especially empowered to entertain claims for any dues relating to provident fund or gratuity payable under any law, both of which were/are not covered under the definition of wages.

8

9
Sections 214 and 216 Companies Ordinance, 1984 (‘Ordinance’) enact aspects of the fiduciary obligations which directors owe to their companies. Breaches of these fiduciary obligations have serious consequences including fines and removal from office.

Section 214(1) provides that every director of a company who is in any way, whether directly or indirectly, concerned or interested in any contract or arrangement entered into, or to be entered into by or on behalf of the company shall disclose the nature of his concern or interest at a meeting of the directors. Such disclosure is required to be made, in the case of a contract or arrangement to be entered into, at the meeting of the directors at which the question of entering into the contract or arrangement is first taken into consideration or, if the director was not, on the date of that meeting, concerned or interested in the contract or arrangement, at the first meeting of the directors held after he becomes so concerned or interested; and, in the case of any other contract or arrangement, at the first meeting of the directors held after the director becomes concerned or interested in the contract or arrangement [s.214(2)]. For the purposes of subsections (1) and (2), a general notice given to the directors to the effect that a director is a director or a member of a specified body corporate or a member of a specified firm and is to be regarded as concerned or interested in any contract or arrangement which may, after the date of the notice, be entered into with that body corporate or firm, shall be deemed to be a sufficient disclosure of concern or interest in relation to any contract or arrangement so made [s.214(3)]. Any such general notice expires at the end of the financial year in which it is given, but may be renewed for a further period of one financial year at a time, by a fresh notice given in the last month of the financial year in which it would otherwise expire [s.214(4)]. No such general notice, and no renewal thereof, is of effect unless either it is given at a meeting of the directors, or the director concerned takes reasonable steps to ensure that it is brought up and read at the first meeting of the directors after it is given [s.214(5)]. Section 214(6) provides that a director who fails to comply with subsection (1) or subsection (2) shall be liable to a fine which may extend to five thousand rupees [s.214(6)].

Section 216 (1) provides that no director of a company shall, as a director, take any part in the discussion of, or vote on, any contract or arrangement entered into, or to be entered into by, or on behalf of the company, if he is in any way, whether directly or indirectly, concerned or interested in the contract or arrangement, nor shall his presence count for the purpose of forming a quorum at the time of any such discussion or vote; and if he does vote, his vote shall be void. Section 216(2), provides that subsection (1) shall not apply to (a) a private company which is neither a subsidiary nor a holding company of a public company; (b) any contract of indemnity against any loss which the directors, or any one or more of them, may suffer by reason of becoming or being sureties or a surety for the company; or, (c) any contract or arrangement entered into or to be entered into with a public company, in which the interest of the director aforesaid consists solely in his being a director of such company and the holder of not more than such shares therein as are requisite to qualify him for appointment as a director thereof, he having been nominated as such director by the company referred to in subsection (1). Every director who knowingly contravenes any of the provisions of subsection (1), or subsection (2) shall be liable to a fine which may extend to five thousand rupees [s.216(3)].

On the given facts, Zafar is a partner of Elixir Traders and he is a director of FTL. In the proposed contract for the purchase of cotton from Elixir Traders, Zafar is directly interested and hence he is under an obligation to disclose his interest under s.214. It is not clear from the facts whether he has disclosed his interest at the Board Meeting or whether he has given any general notice under s.214(3). If he has failed to disclose his interest through either of these means, the shareholder's objection is correct and Zafar would be liable to the penalty under s.214(6). However, the facts indicate that Zafar has been well-known to the members of the Board. This is likely to be attributable to the fact that Elixir Traders has been supplying cotton to the textile sector for the past decade. It is, therefore, likely that the directors at the Board Meeting are already aware of Zafar's status as a partner of Elixir Traders and hence his interest in the proposed contract. If such knowledge on the part of the directors at the Board Meeting can be established, then in spite of lack of formal disclosure by Zafar, he may be able to argue that he was not in breach of the disclosure obligation [Lee Panavision Ltd v Lee Lighting Ltd (1992) BCLC 22 (CA)].

As regards s.216, Zafar's case does not fall into any of the exclusions under s.216(2). Zafar appears to have participated and voted on the proposed contract and appears to be in breach of s.216 and may accordingly be liable to a fine under s.216(3).

It may also be noted that s.217 Ordinance provides that the court may declare a director to be lacking fiduciary behaviour if he contravenes the provisions of s.214 or subsection (1) of s.216 or s.216. However, before making a declaration the court shall afford the director concerned an opportunity of showing cause against the proposed action. In the present case, if appropriate proceedings are instituted, Zafar may, in addition to the fines under ss.214 and 216, be declared by the court as lacking fiduciary behaviour. If such declaration is given, Zafar would be rendered ineligible for appointment as director [s.187(g)]; and, shall, ipso facto, cease to hold office [s.188(1)(a)].
1. This question requires the candidates to demonstrate their knowledge of the process of legislation through Ordinances as envisaged under Article 89 (and 128) of the Constitution of Pakistan, 1973 ('Constitution').

- 7–10 Thorough knowledge of the detailed requirements of Article 89 and 128.
- 4–6 Answers show fair knowledge of the process of law making through Ordinance and the way it is expounded in the Constitution.
- 0–3 Some understanding of the area.

2. This question expects candidates to state and discuss the qualification for appointment as a secretary of a listed company, and describe the duties and responsibilities of a company secretary as provided in the Companies Ordinance, 1984 ('Ordinance') and the Code of Corporate Governance, 2002 ('Code').

(a) 3–5 Comprehensive answers providing s.2(33) and s.204-A Ordinance and Rule 14-B of the Companies (General Provisions and Forms) Rules, 1985 in relation to the qualification for appointment of a secretary of a listed company.

- 0–2 shows some or little knowledge of the term qualifications for appointment of a secretary of a listed company.

(b) 3–5 Comprehensive answers explaining various duties of a secretary of a listed company towards directors, shareholders, management and administration, the company and law.

- 0–2 Answer shows some or little knowledge of the duties of a secretary in a listed company.

3. This question requires the candidates to demonstrate their understanding of the concept of ‘free consent’ and its components and the consequences of absence of free consent in the formation of a contract.

(a) 3–4 Comprehensive answers explaining the concept and importance of free consent as envisaged under ss.10, 13 and 14 Contract Act.

- 0–2 shows some or little knowledge of the concept of free consent.

(b) 2–3 Comprehensive answers explaining various elements and effect of coercion as envisaged under s.15 Contract Act.

- 0–1 Answer shows some or little knowledge of the concept of coercion.

(c) 2–3 Comprehensive answers explaining various elements and effect of undue influence as envisaged under s.16 Contract Act.

- 0–1 Answer shows some or little knowledge of the concept of free consent.

4. This question requires the candidates to demonstrate their knowledge of the basic requirements for compulsory winding up of a company.

(a) 4–5 Comprehensive knowledge of the circumstances/grounds for compulsory winding up of a company.

- 2–3 Good knowledge of the area.
- 0–1 Little or no knowledge.

(b) 4–5 Comprehensive knowledge of the area.

- 2–3 Good knowledge of the area.
- 0–1 Little or no knowledge.
5. This question requires the candidates to explain the concepts of ‘contributory negligence’ and ‘volenti non fit injuria’ in the law of torts.

(a) 3–5 Comprehensive account of the concept of contributory negligence.
    0–2 Shows some or little knowledge of the concept.

(b) 3–5 Comprehensive understanding of the concept of volenti non fit injuria.
    0–2 Answer shows some or little knowledge of the concept.

6. This question requires the candidates to explain the concept of Non-Banking Finance Company (NBFC) and identify the money laundering prevention requirements for NBFCs as envisaged under the Companies Ordinance 1984 ('Ordinance') and the rules and regulations made thereunder.

(a) 3–5 Comprehensive to good account of the concept of NBFCs as provided under Part VIIA through ss.282A to M of the Ordinance.
    0–2 Shows some or little knowledge of the concept of NBFCs.

(b) 3–5 Comprehensive to good identification of money-laundering prevention requirements for NBFCs as provided under NBFC Rules, 2003 and the NBFC Regulations 2008.
    0–2 Answer shows some or little knowledge of the area.

7. This question requires the candidates to give a comprehensive account of the object and scope of the Workmen’s Compensation Act, 1923 ('WC Act') and the Payment of Wages Act, 1936 ('PW Act').

(a) 3–5 Comprehensive understanding of the object of WC Act.
    0–2 Shows some or little understanding.

(b) 3–5 Comprehensive understanding of the object of PW Act.
    0–2 Shows some or little understanding.

8. This question requires the candidates to demonstrate their understanding of the process of removal of a chief executive before the expiration of his term of office as provided under s.202 Companies Ordinance, 1984 ('Ordinance').

8–10 A complete answer highlighting and dealing with all the issues presented in the scenario while relying on s.202 Ordinance.
4–7 A good answer showing good quality account of the legal consequences of the issues presented in the scenario while relying on s.202 of the Ordinance.
0–3 A poor answer showing little understanding of the scenario.

9. This question requires the candidates to demonstrate their understanding of the concept, extent and limitations of implied authority of a partner as agent of the firm as provided under the Partnership Act, 1932 ('Act').

8–10 A comprehensive answer highlighting and dealing with all the issues presented in the given scenario referencing the relevant statutory provisions as provided through ss.18, 19, 20, and 22 of Partnership Act.
4–7 A good answer showing good quality account of the legal consequences of the issues presented in the scenario.
0–3 A poor answer showing little understanding of the scenario and legal consequences of the issue presented in the scenario.
This question requires the candidates to demonstrate their understanding of the provisions of Companies Ordinance, 1984 ('Ordinance') relating to aspects of the fiduciary obligations which directors owe to their companies and the consequences of breach of these duties.

8–10 A comprehensive answer highlighting and analysing the issues presented in the given scenario relating to fiduciary duties and the consequences of breach of such duties as envisaged under ss.214 and 216 Ordinance.

5–7 An accurate recognition of the problems inherent in the question, together with an attempt to apply the appropriate legal rules to the situation.

2–4 Some understanding of the situation but lacking in detail or reference Ordinance.

0–1 Very weak answers showing no or very little understanding of the question.