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CLASSES

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Foundation → Intermediate → Final CA ↗

CA INTER
CORPORATE & OTHER LAWS
QUESTION & ANSWER

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MESSAGE TO STUDENTS

ABOUT THE BOOK

This book has been compiled to help students for their Law paper. To make studying the subject easier, the study material of this subject has been organized into **two exhaustive volumes**, ensuring students will not have to refer to any other books while preparing for the subject.

QUESTION AND ANSWERS BOOK

Contents of the book

- Chapter wise distribution of marks of previous examinations from May 2018 onwards (1st attempt of CA Inter).
- Questions & Answers of all chapters taken from all ICAI materials (ICAI Study Material, ICAI Revision Test Papers, ICAI Mock Test Papers, all Exam Questions, MCQs from all sources including ICAI Sample Questions)
(ALL Attempts from May'18 to May'23 Mock Test Papers, RTPs are covered)

How to use this book

- Once the explanation is complete in class, the faculty will discuss the chapter based questions at length in class.
- Students will be solving the question in the class and the faculty will also provide detailed inputs on how the questions must be answered as per the ICAI guidelines.

Note: The book **does not cover** May 2024 & Nov'22 Mock Test papers & RTP Question paper & ICAI Suggested Answer as these materials are issued by the ICAI subsequent to the printing of this book. Students are advised to download such materials from the ICAI website www.icai.org as and when it becomes available.

IMPORTANCE OF WRITING PRACTICE

You will hear your JKSC teachers repeat this regularly in the class, yet we must make this point here:

If you wish to score your best marks in this subject, you will have to invest time and effort in writing practice.

READING THE NOTES OR THE BOOKS TEN TIMES OVER IS NOT A REPLACEMENT FOR WRITING PRACTICE.

The law subject, when discussed and taught in class, is easy to understand and students enjoy the subject quite a bit. This gives them the false confidence that they will find the subject easy to prepare for the exam – all they have to do is read and they will remember everything.

The fact is each topic in this subject is vast and has to be attempted with certain parameters. The information that you have about the topic must fit a predefined framework to help the examiner realize that you know your subject well. You cannot merely string together whatever facts you can remember while writing, in some random order.

This knowledge and understanding of how the answers are to be presented, what ICAI is expecting of you from this paper, and how much of the topic you actually know can only come when you **PHYSICALLY WRITE** the practice papers.

HOW TO STUDY EFFECTIVELY FOR THE EXAM?

- Once the theory of chapter has been completed and the faculty has discussed the Q&A, it is time for you to study the theory, go through the notes and start doing writing practice.
- Do not make pointers or charts or short forms of the notes. These have already been provided in the book and the summary of the chapter is already provided at the end of every chapter. Practicing a chapter like this will not help you answer the questions in the final exam. **Make sure you write the answers in the descriptive format just like you are expected to write in the finals.** This will help you understand what you are forgetting, how to organize your content and help you manage your time, while attempting the paper.
- **How to learn Latin Terms**
 - These terms are well highlighted in the content of the chapters and a list of such terms used in a given chapter is printed at the end of each chapter for your reference.
 - Students are advised to write the page number where the term appears in the chapter alongside this quick reference list.
 - This will make it easy to check the context of the technical term during revisions.

TYPES OF QUESTIONS ASKED IN EXAM & HOW TO ANSWER THEM?

- The paper is divided in 2 parts: 30 Marks Multiple Choice Questions and 70 Marks Descriptive Questions.
- The descriptive questions in the exam can either be of theoretical or practical nature. While there are multiple ways / approaches in which both types of questions can be answered, the following approach is considered ideal:
 - **For theory questions:** Students must write the answer in point format to make it easy for the examiner to rapidly scan the answer.
 - **For practical / case study questions:** It is recommended that students write these answers in 3 paragraph formats. The flow of content in these answers should be as follows:
 - o 1st paragraph: Write the relevant law and case law (if any)
 - o 2nd paragraph: Write the situation in the question and how it is related to the legal provision.
 - o 3rd paragraph: Write the final conclusion.
- Presenting your answers in these formats enables the examiner to understand how much you know and your clarity of thought, at a glance. A comprehensive answer that is well structured and presented can only be written in the final paper if you have practiced the same - in writing, regularly during your study time.
- **What is expected in your answers**
 - 1) Concept explanation of the topic with all relevant content
 - 2) You must quote Case Laws in the exam, use Legal and Latin Terms – this is imperative for scoring good marks.
- Students must note that endlessly repeating one point in different words is not going to help them get the desired marks. Only thorough preparation perfected by writing practice and self-evaluation will help students in achieving the scores they want.

In conclusion, these books have everything you need to prepare for the CA Inter Corporate & Other Laws paper. You do not need anything further in terms of reference material or additional paper samples. We hope you will make the best use of this carefully compiled study material and achieve success in your endeavours.

We wish you a very happy study time.

BEST OF LUCK!

JKSC

Chapter-wise marks distribution of Previous Exams

	Topic Name	May' 18	Nov' 18	May' 19	Nov' 19	Nov' 20	Jan' 21	July' 21	Dec' 21	May' 22	Nov' 22	May' 23
1.	Part I: The Companies Act, 2013											
	1: Preliminary 2: Incorporation of Company and other Matters incidental thereto	6	16	9	9	18	5	10	5	17	16	5
	3: Prospectus and Allotment of Securities	6	17	6	4		10	8	8	5	5	5
	4: Share Capital and Debentures	13	2	5	10	8	10	3	7	3	6	11
	5: Acceptance of Deposits by Company	6	6	2	6	6	7	4	5	2	4	5
	6: Registration of Charges	6	6	2	5	4		-	-	4	5	5
	7: Management & Administration	19	14	16	4	4	8	9	15	7	4	4
	8: Declaration and Payment of Dividend	6	10	7	5	8	5	3	2	2	6	6
	9: Accounts of Companies	10	7	7	8	6	3	12	6	3	5	9
	10: Audit and Auditors	6	6	3	6	6	6	8	9	9	6	7
	11: Companies Incorporated Outside India	0	0	0	0	0	0	0	0	0	0	0
	12: The Limited Liability Partnership Act, 2008	0	0	0	0	0	0	0	0	0	0	0
		78	84	57	57	57	54	57	57	52	57	57
	Part II: Other Laws											
1.	The General Clauses Act, 1897	10	10	5	7	8	7	7	7	7	7	7
2.	Interpretation of Statutes	10	10	6	6	6	6	6	6	6	6	6
3.	The Foreign Exchange Management Act, 1999	0	0	0	0	0	0	0	0	0	0	0
		20	20	11	13	14	13	13	13	13	13	13



CORPORATE LAW

I PRELIMINARY

? QUESTIONS

1. Alfa school started imparting education on 1.4.2010, with the sole objective of providing education to children of weaker society either free of cost or at a very nominal fee depending upon the financial condition of their parents. However, on 30th March 2018, it came to the knowledge of the Central Government that the said school was operating by violating the objects of its objective clause due to which it was granted the status of a **section 8** company under the Companies Act, 2013. Describe what powers can be exercised by the Central Government against the Alfa School, in such a case?

(ICAI Module, May'19 Mock Test)

2. Herry Limited is a company registered in Thailand. It has no place of business established in India, yet it is doing online business through telemarketing in India having its main server for online business outside India. State the status of the Company under the provisions of the Companies Act, 2013. (Nov'19- 2 Marks)

3. Kapila Limited issued equity shares of ₹ 1,00,000 (10,000 shares of ₹ 10 each) on 01.04.2021 which have been fully subscribed, whereby Kusha Limited holds 4000 shares and Prem Limited holds 2000 shares in Kapila Limited. Kapila Limited is also holding 20% equity shares of Red Limited before the date of issue of equity shares stated above. Red Limited controls the composition of Board of Directors of Kusha Limited and Prem Limited from 01.08.2021. Examine with relevant provisions of the Companies Act, 2013:

- (i) Whether Kapila Limited is a subsidiary of Red Limited?
- (ii) Whether Kapila Limited can hold shares of Red Limited?

(ICAI Module, May'2022 Mock Test)

4. Sai along with his six friends desires to incorporate a **Section 8** Company under the Companies Act, 2013. He is seeking your advice in the following matters :

(i) What is the minimum paid-up capital requirement in case of a **Section 8** Company ?

(ii) Whether a firm can be member of the **Section 8** Company ?

(iii) Whether the **Section 8** Company can pay dividend to its members ?

Advise, Sai with reference to the provisions of Companies Act, 2013.

(ICAI Module, May'2022 Mock Test)

5. Mr. Aditya had incorporated a one person company on 07.07.2021. Mr. Yash was named as a nominee in the memorandum of the said one person company. Now, Mr. Aditya, considering the perpetual nature of company form of business, desires to appoint ABC Private Limited as a nominee instead of Mr. Yash. Examine with reference to the Companies Act, 2013, whether the proposal of Mr. Aditya to appoint ABC Private Limited as a nominee is valid? (Nov'22 RTP)

6. P Cricket Club was formed as a Limited Liability Company under **Section 8** of the Companies Act, 2013 with the object of promoting cricket by arranging introductory cricket courses at district level and friendly matches. The club has been earning surplus. Of late, the affairs of the company are conducted fraudulently and dividend was paid to its members. Mr. Y, a member decided make a complaint with Regulatory Authority to curb the fraudulent activities by cancelling the licence given to the company.

(i) Is there any provision under the Companies Act, 2013 to revoke the licence? If so, state the provisions.

(ii) Whether the Company may be wound up?

(iii) Whether the P Cricket Club can be merged with Z Net Private Limited, a company engaged in the business of networking? (Nov'22 Mock Test)

7. Virjesh Limited is a company in which Hrishkesh Limited is holding 60% of its paid up share capital. One of the shareholders of Hrishkesh Limited made a charitable trust and donated his 10% shares in Hrishkesh Limited and ₹ 50 crores to the trust. He appoints Virjesh Limited as the trustee. All the assets of the trust are held in the name of Virjesh Limited. Can a subsidiary company hold shares in its holding company in this way?

(MTP May'23)



MULTIPLE CHOICE QUESTIONS (HOMEWORK)

1. The minimum number of members in a private company and public company are
 - (a) Three and Seven respectively
 - (b) Two and seven respectively
 - (c) Two and nine respectively
 - (d) None of the above

(ICAI Module)

2. Only a natural person who is an Indian citizen and who has stayed in India for a period of at least _____ days during the immediately preceding one calendar year shall be eligible to incorporate a OPC.
 - (a) 180 days
 - (b) 181 days
 - (c) 120 days
 - (d) 183 days

(ICAI Module)

3. A **section 8** company can call its general meeting by giving a clear at least _____ notice.
 - (a) 7
 - (b) 14 days
 - (c) 21 days
 - (d) 27 days

(ICAI Module)

4. XYZ Co; is having 15% share capital held by X Company and 50% held by Central Government and 10% held by State Government and 25% held by other people then that company will be _____ .
 - (a) Government Company
 - (b) Private Company
 - (c) Public Company
 - (d) None of these

(ICAI Module)

5. Which one of the following statements is least likely to be true. A company is a subsidiary if another company:
 - (a) exercises more than 50% of the total voting power
 - (b) controls the composition of its board of directors

- (c) is subsidiary of a company which is subsidiary of the first mentioned company
- (d) is holding of a company which is the holding for the first mentioned company

(ICAI Module)

6. Tweeter Ltd. has invested 51% in the shares of Snapchat Pvt. Ltd. on 31 March 2018. Snapchat Pvt. Ltd. have been holding 2% equity of Tweeter Ltd since 2011. Snapchat Pvt. Ltd. wants to increase its holdings in equity upto 4% in Tweeter Ltd. after 31st March 2017. Can Snapchat Pvt. Ltd. increase its holdings in equity upto 4% in Tweeter Ltd. after 31st March 2018?

- (a) Yes; it can increase its holdings
- (b) No; it cannot increase its holdings
- (c) Can't say
- (d) None of the above

(ICAI Module)

7. "A not for profit company shall not alter the provisions of its memorandum or articles".

- (a) False; it can freely change it
- (b) False; It can do so with permission of Central Government
- (c) True; because it will be violation of terms of licence
- (d) True; because MOA/AOA of a section 8 company is unalterable

(ICAI Module)

8. Rajesh has formed a 'One Person Company (OPC)' with his wife Roopali as nominee. For the last two years his wife Roopali is suffering from terminal illness and due to this hard fact he wants to change her as nominee. He has a trusted and experienced friend Ramnivas who could be made nominee or Rajesh's son Rakshak who is of seventeen years of age. Whom should he nominate as nominee in place of his wife?

- (a) Since blood relation can only be appointed as nominee in case of OPC, Rajesh needs to appoint his son Rakshak.
- (b) Rajesh can appoint his friend Ramnivas as nominee in his OPC
- (c) Roopali is not agreeable to the proposal of Rajesh and hence, Rajesh cannot change her as the nominee
- (d) Either Rakshak or Mr. Ramnivas can be appointed as nominee

(May'19 RTP, ICAI Sample Question)

9. A Ltd. is the holding company of B Ltd. Another company C Ltd. is the subsidiary company of B Ltd. Is there any relationship between A Ltd. and C Ltd.
- There is no relationship between A Ltd. and C Ltd.
 - C Ltd. is deemed to be the subsidiary of A Ltd.
 - A Ltd. shall be deemed to be the holding company of C Ltd. provided A Ltd. acquires at least 10% stake in C Ltd.
 - C Ltd. shall be deemed to be the subsidiary of A Ltd. if the latter company acquires minimum 10% stake in the former company within six months after C Ltd. becomes subsidiary of B Ltd.

(May'19 RTP)

10. In Roopali Marketing Company Private Limited (Authorised capital 50,000 shares of ₹10 each and paid-up share capital of ₹4,50,000), 1000 shares are jointly held by Abeer and Abheek; another 800 shares are jointly held by Seema and Srividya; and another 1200 are jointly held by Ramesh, Raksha and Rajneesh. Further, 42,000 shares are held by 193 individual persons in their individual capacity. Is it possible for the company to induct more persons?
- The company is unable to induce more persons since it already has two hundred individual members.
 - The company can induct four more persons as members.
 - The company can induct another 20 persons (i.e. 10% of two hundred individual members) after seeking permission from the concerned ROC.
 - If the company does not want to seek permission of the concerned ROC, it can induct only 10 more persons (i.e. 5% of two hundred individual members).

(May'19 Mock Test, May'20 Mock Test)

11. Mr. Purshottam Prasad, a business graduate from leading B-School, running the chain of restaurants; as sole proprietor concern; based in Chennai. Mr. Prasad being dynamic businessman, in order to develop the business; decided to give corporate form to his business; but concerned with dilution of the control over business decisions.

Mr. Prasad, during some journey met Mr. Chinmay Dass; who is school days friend of Mr. Prasad and presently working in one of leading corporate advisory firm. Mr. Prasad seeks advice from Mr. Dass, regarding conversion of sole proprietorship concern to company and also explain his intention to keep the entire control in his hand. Mr. Dass told, about new type of company; which can be formed under Companies Act, 2013; One Person Company (OPC). Mr. Dass quoted **section 2 (62)**,

which define 'one person company', a company which has only one person as a member.

Mr. Prasad, felt OPC is correct form of business for him, hence promotes an OPC 'Casa Hangout Private Limited' (One Person Company) on 14th September 2019, to which he sold his sole proprietor business and himself became sole member. Mr. Prasad, appointed his younger son Mr. Vijay, who was 21 year old then; as Nominee to OPC. Mr. Anand who is old friend of Mr. Prasad was appointed as director of OPC, Mr. Prasad himself also become director of company.

Mr. Vijay is professional photographer, and for some certification course went to abroad on 23rd October 2019. He came back on 1st of March 2020. He established photo-studio in form of OPC 'Best Click (OPC) Private Limited' on 20th March 2020, in which Mr. Prasad is nominee and he became sole member. In mean time, Mr. Vijay also gave his consent as nominee to another OPC in which his elder brother Mr. Shankar is sole member.

Mr. Prasad met an accident on 25th March, 2020, in which he lost his life. Nomination clause invoked, resultantly Mr. Vijay has to take charge over 'Casa Hangout (OPC) Private Limited' (One Person Company) as member with immediate effect. On 30th March, 2020 Mr. Shankar was appointed as new nominee to 'Casa Hangout (OPC) Private Limited', who gave written consent on 31st March 2020. Mr. Shankar who is investment banker by profession, is of opinion that 'Casa Hangout (OPC) Private Limited' need to amend its object clause and add 'carry out investment in securities of body corporate' as one of object.

Financial Period closed on 31st March 2020. Financial statements of 'Casa Hangout (OPC) Private Limited', which is not containing cash flow statement; signed by Mr. Anand (who left as only director after death of Mr. Prasad). (Nov'20 RTP)

- A. Mr. Shankar if wish to withdraw his consent as nominee, can do so; by giving written notice to
- (i) Director of OPC and to sole member of company
 - (ii) Director of OPC and to Registrar of companies
 - (iii) Sole member of company and to OPC
 - (iv) Sole member of company and to Registrar of companies
- B. With reference to legal position of Mr. Vijay as member/s and nominee/s to various OPCs, Which of the following statement is correct in reference to ceiling limit in relation to membership and being nominee to OPC? A person, other

than minor; at specific point of time;

- (i) Can be member in any number of OPCs but nominee in one OPC
- (ii) Can be member in one OPC and nominee in any number of OPCs
- (iii) Can be member in one OPC and nominee in another one OPCs
- (iv) Can be member and nominee both in any number of OPCs

C. Which of following statement is correct, in reference to requirement for financial Statements of 'Casa Hangout (OPC) Private Limited'

- (i) Must be signed by one director
- (ii) Must be signed by at-least by two directors
- (iii) Must contain cash flow statement as part of financial statements
- (iv) None of the above

(Note: This concept is to be covered in unit 9)

D. With reference to opinion of Mr. Shankar to add 'carry out investment in securities of body corporate' object, 'Casa Hangout (OPC) Private Limited'

- (i) Can't carry out non-banking financial investment activities & investment in securities of body corporate
- (ii) Can't carry out non-banking financial investment, but can invest in securities of body corporate'
- (iii) Can carry-out non-banking financial investment & invest in securities of body corporate'
- (iv) None of the above

12. Rukmani, a fresh science graduate, wants to make available the farmers good quality seeds and manure. For her business she is contemplating to form a company and is weighing various options. Sometimes before, she came to know that a 'one person company' has minimum one member and one director whereas a private company has minimum two members and two directors. As regards a public company, she has vague idea that there should be minimum three directors but she does not know about the minimum members required in this case. Advise.

- (a) When there is requirement of minimum three directors, the public company can be formed by minimum three persons.
- (b) There should be minimum five persons for formation of a public company though requirement of minimum directors shall remain three.
- (c) There should be minimum seven persons for formation of a public company

though requirement of minimum directors shall remain three.

- (d) There should be minimum nine persons for formation of a public company though requirement of minimum directors shall remain three.

(ICAI Sample Question)

13. Ruchir Marcons Ltd. which provides marketing and consultancy services is keen to have a 'significant influence' in Ruchika Marketing Ltd. so that it becomes its 'associate company'. For having 'significant influence' Ruchir Marcons Ltd. needs to control certain percentage of total voting power of Ruchika Marketing Ltd. What is that?

- (a) For creating 'significant influence' Ruchir Marcons Ltd. must control at least five per cent of total voting power of Ruchika Marketing Ltd.
- (b) For creating 'significant influence' Ruchir Marcons Ltd. must control at least ten per cent of total voting power of Ruchika Marketing Ltd.
- (c) For creating 'significant influence' Ruchir Marcons Ltd. must control at least fifteen per cent of total voting power of Ruchika Marketing Ltd.
- (d) For creating 'significant influence' Ruchir Marcons Ltd. must control at least twenty per cent of total voting power of Ruchika Marketing Ltd.

(ICAI Sample Question)

14. Jatin is desirous of forming a 'One Person Company (OPC)' for which he wants to nominate his wife Jasmin who in the event of his death shall become the member of OPC. However, he is not aware of as to which document should contain the name of the nominee. Advise him in the matter.

- (a) Name of the nominee should be mentioned in the Articles of Association after the names of the directors.
- (b) Name of the nominee should be mentioned in the Memorandum of Association
- (c) Either Articles of Association or Memorandum of Association may contain the name of the nominee.
- (d) There is no need to mention the name of the nominee in either Articles of Association or Memorandum of Association; a simple consent letter obtained from the nominee and kept in the records is sufficient. (ICAI Sample Question)

15. Mr. Pushkar wishes to start his own venture with an idea of recycling of plastic waste. He approaches you for your advice so as to decide on which type of entity he should incorporate mainly based on the aspects of taxation, capital funding and

other monetary benefits to the promoters. Kindly suggest a suitable form of entity from the following –

- (a) Limited Liability Partnership;
- (b) Private Limited Company;
- (c) **Section 8** Company;
- (d) Producer Company.

(ICAI Sample Question)

16. Arun along with his wife Arunima is running successfully a trading business. His friend Akash has suggested him to form a 'One Person Company (OPC)' whose striking feature is 'limited liability'. Arun is all convinced to get incorporated OPC but he is in a dilemma as to how to depict the name of such OPC in the Memorandum. Select the best option for him.

- (a) Aru- &-Aru (One Person Company) Trading Private Limited
- (b) One Person Company - Aru- &-Aru Trading & Co.
- (c) Aru- &-Aru Trading (One Person Company)
- (d) Aru- &-Aru Trading Private Limited (One Person Company) (ICAI Sample Question)

17. Anupam got incorporated 'One Person Company' with his sister Alpana as the nominee and about three years have passed satisfactorily. From time to time Anupam does a number of charitable works and is attached with three NGOs undertaking such assignments. In the meantime his business under his OPC has also flourished. Now he is contemplating to convert the OPC either as a **Section 8** company (i.e. formation of companies with charitable objects) or as a private or public company. Select the best option for him.

- (a) Since OPC belongs to Anupam, he has full discretion to convert the OPC either as a **Section 8** company or as a private or public company
- (b) Since OPC was formed as a private company, the only option available with Anupam is to get it converted into a private limited company. Moreover, there is specific prohibition on converting OPC into a public limited company
- (c) There is specific prohibition on converting OPC into a **Section 8** company; otherwise it can be converted into a private or public company without any hindrance.
- (d) Since Anupam does a lot of charitable works there is no prohibition if he converts his OPC into a **Section 8** company (companies formed with charitable objects).

(ICAI Sample Question)

18. Arshi, is the sole member of his OPC and he has appointed Vishal (his dear friend) as his nominee. Now, Vishal is leaving India permanently and has set up his own business in Italy. Due, to this fact, he has withdrawing his consent to continue as nominee in the said OPC.
- (a) Vishal cannot withdraw his consent to act as a nominee of the OPC
 - (b) Only Arshi has a right to remove Vishal as a nominee
 - (c) Vishal can withdraw his consent to act as a nominee of the OPC by giving proper notice
 - (d) Vishal cannot withdraw his consent only when he is disabled but not due to the reason that he has set up his own business. (ICAI Sample Question)
19. Vivek is in trading business whereby he supplies handmade gloves and socks to many charitable trusts who supports the elderly people. Vivek now wants to expand his business and wants to reap the benefits of company form of organization by opening his business as an OPC registered under **section 8** of the Companies Act, 2013. Advise Vivek:
- (a) Vivek cannot form an OPC as he is in trading business
 - (b) Vivek cannot form an OPC to be registered under **section 8** of the Companies Act, 2013
 - (c) Vivek can form an OPC to be registered under **section 8** of the Companies Act, 2013
 - (d) Vivek can form an OPC as a private company and then convert it into a **section 8** company (ICAI Sample Question)
20. A, B, C, D, E, F, G want to incorporate a public limited company. However, G wants his private limited company to be its member instead of himself. Following this proposition of G, D also wants his registered partnership firm to be its member instead of himself.
- (a) Both G and D are required to sign the Memorandum of newly formed company in their individual capacity and not through their concerns.
 - (b) Private Limited company of G can be the subscriber to the Memorandum of newly formed company but D has to sign the Memorandum in his individual capacity.
 - (c) Both G and D have to obtain the consent of other five persons in writing before their private limited company and partnership firm subscribe to the Memorandum.

- (d) Private Limited company of G cannot be the subscriber to the Memorandum of newly formed company but registered partnership firm of D can be the subscriber to the Memorandum. (ICAI Sample Question)

21. Ravi and Ragini have formed a **Section 8** company; date of incorporation being 18.02.2018 and they being the directors and also the shareholders. During June, 2018 it transpired that two unsuitable articles were required to be altered for smooth functioning of the company. Advise.

- (a) Since articles regulate the internal management of the company, both Ravi and Ragini being directors and shareholders are themselves capable of altering the articles.
- (b) In case of **Section 8** company, articles can be altered only if the company shows profits consecutively for two years.
- (c) In case of **Section 8** company, prior approval of the Central Government is required to be obtained before its articles are altered.
- (d) In case of **Section 8** company, at least one year must elapse from the date of its incorporation before its articles are altered but there is no need to obtain prior permission of the Central Government. (ICAI Sample Question)

22. Ramesh started a new venture of on-line business of supply of grocery items at the door- step of consumers. Initially it was having the area of operations of Jaipur City only. He employed some young boys having their own bikes and allocated the areas which they were accustomed of it, for making delivery of the grocery items as per their orders. He also got developed a website and Mobile App to receive the orders on-line. His friend Sudhanshu who is a Chartered Accountant, suggested him to corporatize this business form, from proprietorship business to a One Person Company (OPC). Ramesh agreed and a OPC was incorporated in the name of "Ask Ramesh4Online Grocery (OPC) Pvt Ltd." (for short OPC-1). In this OPC Ramesh became the member and director and Sudha (the mother of Ramesh) was made as nominee. After a year Ramesh got married with Rachna. Since the business of on-line supply of grocery was on rising trend, day by day, he thought to start a new business of supply of Milk and Milk Products and another OPC in the name of "Rachna Milk Products (OPC) Pvt Ltd" (for short OPC-2) was incorporated with the help of his professional friend Sudhanshu. In this OPC-2, Rachna (his wife) became the member and director and Ramesh was named as Nominee.

To summarise the position, the information is tabulated as under:

Name of OPC	Ask Ramesh4Online Grocery (OPC) Pvt Ltd [OPC-1]	Rachna Milk Products (OPC) Pvt Ltd [OPC-2]
Member and Director	Ramesh	Rachna
Nominee	Sudha (Mother of Ramesh)	Ramesh (Husband of Rachna)

After some time, Sudha (the mother of Ramesh) passed away. However, before the death, Sudha had made a WILL, in which she mentioned that after her demise, her another son Suresh be made nominee in the OPC-1. When Suresh came to know this fact, he argued with Ramesh to fulfil the wish of Sudha as per her WILL (Mother of Ramesh and Suresh), but Ramesh denied this and appointed Rachna (his wife) as nominee.

Aggrieved from the decision of Ramesh for not nominating him (Suresh), Suresh threatened Ramesh to take appropriate legal action against him for not honouring the WILL of mother Sudha and consulted his lawyer. Meanwhile due to continuous threatening and hot talks between Suresh and Ramesh, Rachna became mentally upset and became insane, as certified by the medical doctor, so lost her capacity to contract. In this situation, Ramesh being the nominee in OPC-2 became member and director of this OPC-2.

One of the friends of Ramesh advised him to do some charitable work of providing free education to the girl children of his native village near by Jaipur. Ramesh thought about this proposal and asked his professional friend Sudhanshu to convert this OPC-2 into **Section 8** company. (Nov'21 RTP)

Based on the above facts, answer the following MCQs:

- Since Rachna, being insane, lost the capacity to contract, Ramesh (who was nominee) became the member of OPC-2. Now who will make nomination for this OPC:
 - Ramesh in the capacity of husband of Rachna can nominate any person as Nominee of OPC-2
 - Ramesh (who was nominee) of OPC-2 has now become member of this OPC and now as a member of this OPC he can nominate any person as per his choice as Nominee for this OPC.
 - When no person is nominated, the Central Govt. will make nomination of such OPC-2.
 - When no person is nominated the Registrar shall order the company to be wound up.

- 2 Whether conversion of OPC-2 into a company governed by **Section 8** is permissible?
- (a) Yes, OPC can be converted into **Section 8** company
 - (b) No, OPC cannot be converted into **Section 8** company
 - (c) This OPC-2 can be converted into **section 8** company, provided the Central Govt give license
 - (d) Providing of free education to girl child do not come under the specified objects mentioned for eligibility incorporation of **section 8** company
- 3 Ramesh is a member in OPC-1 and became a member in another OPC-2 (on 2nd April, 2020) by virtue of his being a nominee in that OPC-2. Ramesh shall, by what date, meet the eligibility criteria that an individual can be a member in only one OPC:
- (a) 17th May 2020
 - (b) 25th August 2020
 - (c) 26th August 2020
 - (d) 29th September 2020
- 4 After the demise of Sudha (the mother of Ramesh), Rachna was nominated by Ramesh for OPC-1 as Nominee. But now Rachna has become insane, so what recourse you will suggest to Ramesh:
- (a) Ramesh is required to nominate another person as nominee
 - (b) Ramesh should wait till Rachna becomes good of her health and able to have the capacity to contract
 - (c) Although Rachna has become insane, but if she is able to sign, her nomination in OPC-1 may continue
 - (d) Sudhanshu (the Chartered Accountant) who helped in incorporation of OPC-1, may act as legal consultant on behalf of Rachna

23. Where a company is granted licence under **section 8**, it is not required to use the word even though it is a limited company:
- (a) Guarantee company
 - (b) Limited Liability Partnership
 - (c) Limited or Private Limited, as the case may be
 - (d) Development Authority

(1 Mark) (ICAI Module, May'2022 Mock Test, Nov'22 Mock Test)

24. A Public company may be formed by:
- (a) Only two persons
 - (b) Not more than three persons
 - (c) Not more than Seven Persons
 - (d) Seven or more Persons (Nov'22 RTP)
25. A Ltd. is holding 61% shares in B Ltd. and B Ltd. holds 51% in C Ltd. State which is the correct statement here:
- (a) C Ltd. is the holding company to A Ltd.
 - (b) C Ltd. is the holding company to B Ltd.
 - (c) B Ltd. is the Subsidiary to C Ltd.
 - (d) Both B Ltd. and C Ltd. are subsidiary to A Ltd. (Nov'22 Mock Test)
26. The Best Dry Fruits Ltd was incorporated under the Companies Act, 1913. Whether the provisions of the Companies Act, 2013 shall apply on it:
- (a) No, the provisions of the Companies Act, 2013 shall not apply on it.
 - (b) Yes, the provisions of the Companies Act, 2013 shall apply on it.
 - (c) The Companies Act, 1913 was enacted by the British Government, hence only an Act made by British Government shall apply on such company. (Nov'22 Mock Test)
27. "Associate company", in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company. Here, the words 'significant influence' means:
- (a) Control of at least 10% of total voting power
 - (b) Control of at least 15% of total voting power
 - (c) Control of at least 20% of total voting power
 - (d) Control of at least 25% of total voting power
28. Today, it's May 2023. Mr. Nilanjan Chattopadhyay a 24 years old Indian youngster, who returned back to India in January month of 2023 after completing his education in bio-nutrient and willing to form an OPC; but not sure about the requirements or pre-conditions regarding eligibility. He read some articles on provisions related to OPC and concluded;
- (i) OPC can be formed by Indian Citizen only

- (ii) He can't form OPC because in immediate previous year he was not resident in India

Choose the correct option:

- (a) Both the conclusions are valid
- (b) None of the conclusion is valid
- (c) First conclusion is invalid
- (d) Second conclusion is invalid



ANSWERS

UNIT 1: PRELIMINARY

1: **Section 8** of the Companies Act, 2013 deals with the formation of companies which are formed to promote the charitable objects of commerce, art, science, education, sports etc. Such company intends to apply its profit in promoting its objects. **Section 8** companies are registered by the Registrar only when a license is issued by the Central Government to them. Since, Alfa School was a **Section 8** company and it had started violating the objects of its objective clause, hence in such a situation the following powers can be exercised by the Central Government:

(i) The Central Government may by order **revoke the licence** of the company where the company contravenes any of the requirements or the conditions of this sections subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest, and on revocation the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register. But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and **opportunity** to be **heard** in the matter.

(ii) Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section.

However, no such order shall be made unless the company is given a reasonable opportunity of being heard.

(iii) Where a licence is revoked and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.

2: According to **section 2(42)** of the Companies Act, 2013, “foreign company” means any company or body corporate incorporated outside India which –

- (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- (b) conducts any business activity in India in any other manner.

According to Rule 2(1)(c)(iv) of the Companies (Registration of Foreign Companies) Rules, 2014, “electronic mode” means carrying out electronically based, whether main server is installed in India or not, including, but not limited to online services such as telemarketing, telecommuting, telemedicine, education and information research.

Looking to the above description, it can be said that being involved in telemarketing in India having its main server for online business outside India, Herry Limited will be treated as foreign company.

3: This given problem is based on sub-clause (87) of Clause 2 read with **section 19** of the Companies Act, 2013.

As per sub-clause (87) of Clause 2 of the Companies Act, 2013 “subsidiary company” or “subsidiary”, in relation to any other company (i.e., the holding company), means a company in which the holding company–

- (i) controls the composition of the Board of Directors; or
- (ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.

For the purposes of this clause, Explanation is given providing that a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in point (i) or point (ii) above, is of another subsidiary company of the holding company.

Whereas **section 19** provides that, no company shall, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

Provided that nothing in this sub-section shall apply to a case where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company.

Here in the instant case, Kapila Limited issued 10,000 equity shares on 1.4.2021 whereby Kusha Limited & Prem Limited holds 4000 & 2000 shares respectively in Kapila Ltd., Considering 1 share = 1 vote, Kusha Limited and Prem Limited together

holds more than one-half (50%) of the total voting power. Therefore, Kapila Limited will be subsidiary to Kusha Limited & Prem Limited from 1.4.2021.

Whereas Kapila Limited is already holding 20% equity shares of Red Limited before the date of issue of equity shares i.e. 1.4.2021.

Further, Red Limited controls the composition of Board of Directors of Kusha Limited and Prem Limited from 01.08.2021. In the light of sub-clause (87) of Clause 2, Red Limited is a holding company of Kusha Limited and Prem Limited (Subsidiary companies).

Following are the answers to the questions:

- (i) Yes, Kapila Limited is a subsidiary of Red Limited. In this case Kapila Limited shall be deemed to be a subsidiary company of the holding company (Red Limited) as Red Limited controls the composition of subsidiary companies Kusha Limited & Prem Limited as per explanation to sub-clause (87) of Clause 2.
- (ii) Yes, Kapila Limited can hold shares of Red Limited. In this case Kapila Limited is a subsidiary of Red Limited as Kapila Limited was holding 20% of equity shares of Red Limited even before it became a subsidiary company of the Red Limited (i.e. on 01.08.2021), according to the exception to **section 19**.

(ICAI Module, May'2022 Mock Test)

4.

- (i) The requirement of having a minimum paid up share capital shall not apply to a **section 8** company vide notification dated 5th June 2015.
- (ii) Yes, under **section 8(3)** of the Companies Act, 2013, a firm may be a member of the company registered under **section 8**.
- (iii) According to **Section 8(1)(c)** of the Companies Act, 2013, **section 8** company cannot pay dividend to its members as it prohibits the payment of dividends to its members.

(ICAI Module, May'2022 Mock Test)

5. As per the provisions of Rule 3(1) of the Companies (Incorporation) Rules, 2014, only a natural person who is an Indian citizen whether resident in India or otherwise-
- (a) shall be eligible to incorporate a One Person Company (OPC);
 - (b) shall be a nominee for the sole member of a One Person Company (OPC).

By taking into account the above provisions, ABC Private Ltd. cannot be appointed as nominee in one person company as only natural persons can be appointed as a nominee. Hence, the proposal of Mr. Aditya to appoint ABC Private Ltd. as a nominee is not valid.

(Nov'22 RTP)

6. (i) According to **section 8(6)** of the Companies Act, 2013, the Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of **section 8** subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or in violation of the objects of the company or prejudicial to public interest, and on revocation, the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register. But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter.
- Hence, in the instant case, the Central Government can revoke the license given to P Cricket Club as section 8 company, as the affairs of the company are conducted fraudulently and dividend was paid to its members which is in contravention to the conditions given under **section 8**.
- (ii) Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section. However, no such order shall be made unless the company is given a reasonable opportunity of being heard. [Section 8(7)] Hence, the stated company may be wound up.
- (iii) A company registered under this section shall amalgamate only with another company registered under this section and having similar objects. [**Section 8(10)**] In the instant case, P Cricket Club cannot be merged with Z Net Private Limited as the objects of both the companies are different and not similar.

(Nov'22 Mock Test)

- 7.
- According to section 19 of the Companies Act, 2013 a company shall not hold any shares in its holding company either by itself or through its nominees. Also, holding company shall not allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.
- Following are the exceptions to the above rule;
- Where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
 - Where the subsidiary company holds such shares as a trustee; or
 - Where the subsidiary company is a shareholder even before it became a

subsidiary company of the holding company, but in this case, it will not have a right to vote in the meeting of holding company.

In the given case, one of the shareholders of holding company has transferred his shares in the holding company to a trust where the shares will be held by subsidiary company. It means now subsidiary will hold shares in the holding company. But it will hold shares in the capacity of a trustee. Therefore, we can conclude that in the given situation Vrijesh Limited can hold shares in Hrishkesh Limited.



ANSWER TO MCQs

1	B	2	C	3	B	4	A	5	D
6	B	7	B	8	B	9	B	10	B
11A	(iii)	11B	(iii)	11C	(i)	11D	(i)	12	C
13	D	14	B	15	C	16	D	17	C
18	C	19	B	20	B	21	C	22-1	B
22-2	B	22-3	D	22-4	A	23	C	24	D
25	D	26	B	27	C	28	D		



HOMEWORK QUESTIONS & ANSWER

1. MNP Private Ltd. is a company registered under the Companies Act, 2013 with a paid up Share Capital of ₹45 lakh and turnover of ₹3 crores. Explain the meaning of the “Small Company” and examine the following in accordance with the provisions of the Companies Act, 2013:

- (i) Whether the MNP Private Ltd. can avail the status of small company?
- (ii) What will be your answer if the turnover of the company is ₹1.50 crore?

(ICAI Module, May'18- 6 Marks, Nov'20 Mock Test, May'21 Mock Test)

Note:- Answer given is as per old limits. Student small practice question with new limits

2. Teresa Ltd. is a company registered in New York (U.S.A.). The company has no place of business established in India, but it is doing online business through data interchange in India. Explain with reference to relevant provisions of the Companies Act, 2013 whether Teresa Ltd. will be treated as Foreign Company.

(Nov'18- 6 Marks)

3. A group of individuals intend to form a club namely ‘Budding Pilots Flying Club’ as limited liability Company to impart class room teaching and aircraft flight training to trainee pilots. It was decided to form a limited liability company for charitable purpose under **Section 8** of the Companies Act, 2013 for a period of ten years and thereafter the club will be dissolved and the surplus of assets over the liabilities, if any, will be distributed amongst the members as a usual procedure allowed under the Companies Act.

Examine the feasibility of the proposal and advise the promoters considering the provisions of the Companies Act, 2013.

(ICAI Module, May'19- 5 Marks, Nov'20 Mock Test, May'21 Mock Test)

4. Gully Gilli Danda Club was formed as a Limited Liability Company under **section 8** of the Companies Act, 2013 with the object of promoting Gilli Danda by arranging introductory courses at district level and friendly matches. The club has been earning surplus. Of late, the affairs of the company are conducted fraudulently and dividend was paid to its members. Mr. A, a member decided to make a complaint with Regulatory Authority to curb the fraudulent activities by cancelling the licence given to the company.

- (i) Is there any provision under the Companies Act, 2013 to revoke the licence? If so, state the provisions.
- (ii) Whether the company may be wound up?
- (iii) Whether the Gully Gilli Danda Club can be merged with Stick Private Limited, a company engaged in the business of networking?

(ICAI Module, May'2022 Mock Test)

5. AJD Pvt. Ltd. is having paid up share capital of ₹ 45 Lakhs and annual turnover of ₹185 Lacs. It is a wholly owned subsidiary of K Ltd. - a listed company. Can AJD Pvt. Ltd. be called a small company as per the provisions of the Companies Act, 2013.

(ICAI Module, May'2022 Mock Test)

6. Chhavish, an Indian citizen and resident of India formed "Ekta Readymade Garments (OPC) Private Ltd." as One Person Company on 1st April 2018 with his wife Mrs. Jyoti as nominee. The authorized and paid-up share capital of the company is ₹ 35 lakhs. He got in touch with a readymade garments buyer and was expecting to receive a substantial order by August 2020 where final delivery will be completed by December 2020. To expand the production capacity, he decided to invest an additional capital of ₹ 10 lakhs in plant and machinery. As a result, the company's authorized and paid-up share capital is now ₹ 45 Lakhs. Promoter of the company seeks your advice. Considering the case and referring the provisions of the Companies Act, 2013, advice:

- (A) Who is eligible to act as a member of OPC?
- (B) Whether "Ekta Readymade Garments (OPC) Private Ltd." can convert into any other kind of company as on 1st December 2020?
- (C) If the company increases its paid up share capital by ₹ 30 lakhs in August, 2019, can it be converted in any other kind of company immediately?

(Nov'21 3 Marks)

7. Define "Small Company".

(Nov'21 2 Marks)

8. Following are some of the securities, issued by different companies related with each other, as follows:-

Company	Securities Issued	Remarks
Kleshrahit Ltd.	Listed non-convertible redeemable preference shares issued on private placement basis in terms of relevant SEBI Regulations.	Has the power to appoint 2/3rd directors in Indriyadaman Ltd.
Indriyadaman Ltd.	Listed non-convertible debt securities issued on private placement basis in terms of relevant SEBI Regulations.	Holding 60% voting power in Sajagta (P) Ltd.
Sajagta (P) Ltd.	Listed non-convertible debt securities issued on private placement basis in terms of relevant SEBI Regulations.	The company holds 52% equity shares in Pratibodh Ltd. as an investment on behalf of another company in a capacity of a trustee.

Equity shares issued by the Kleshrahit Ltd. and Indriyadaman Ltd. are not listed in any of the recognized stock exchanges.

In the context of aforesaid facts, answer the following question(s):-

- Whether the aforesaid companies can be considered as listed company(ies)?
- Explain the relationship between the aforesaid companies?

(RTP MAY 22)

- One of the matters contained in the articles of Dhimaan Foundation, incorporated as a limited company under **section 8** of the Companies Act, 2013, was altered by passing a special resolution in its general meeting and thereafter, intimation for the same was given to Registrar of Companies.

However, such alteration in the articles was opposed by Dhway & Co., a partnership firm which is its member that there such alteration was not valid.

Advise, as per the provisions of the Companies Act, 2013, whether the contention of Dhway & Co. was valid and whether it can be a member in such company?

(RTP MAY 22)

- Octagon Limited is holding 58% of the paid up share capital of Pentagon Limited. Vijay, one of the shareholders of Octagon Limited, holding 10% shares of the

company, has made a charitable trust. He donated his 10% shareholding in Octagon Limited and ₹ 20 crore to the trust. He appointed Pentagon Limited as the trustee. All the assets of the trust are held in the name of Pentagon Limited.

As per the provisions of the Companies Act, 2013, decide whether Pentagon Limited can hold shares of Octagon Limited. (Nov'22 Mock Test)

11. The paid-up share capital of Saras Private Limited is ₹1 crore, consisting of 8 lacs equity Shares of ₹10 each, fully paid-up and 2 lacs cumulative Preference Shares of ₹10 each, fully paid-up. Jeevan (JVN) Private Limited and Sudhir Private Limited are holding 3 lacs equity Shares and 50,000 Equity Shares respectively in Saras Private Limited. Jeevan Private Limited and Sudhir Private Limited are the subsidiaries of Piyush Private Limited. With reference to the provisions of the Companies Act, 2013 examine whether Saras Private Limited is a subsidiary of Piyush Private Limited? Would your answer be different if Piyush Private Limited has 8 out of 9 Directors on the Board of Saras Private Limited? (May'18 RTP, May'19 RTP)

12. S Ltd. is a company in which H Ltd. is holding 60% of its paid up share capital. One of the shareholder of H Ltd. made a charitable trust and donated his 10% shares in H Ltd. and ₹50 crores to the trust. He appoints S Ltd. as the trustee. All the assets of the trust are held in the name of S Ltd. Can a subsidiary hold shares in its holding company in this way? (Nov'19 RTP)

13. Red Limited was incorporated on 1st April, 2014 is facing severe effects of depression of the economy. Owing to its bad financial status most of the members have started withdrawing their holding from the company. The company had 250 members on 10th January, 2019. By 15th January, 2019, 244 members had withdrawn their holding. No new member has invested in the company after 15th February till date. Now, Mr. A, an existing member has approached you to advise him regarding his liabilities in such a situation (Nov'19 RTP).

14. Explain in the light of the provisions of the Companies Act, 2013, the circumstances under which a subsidiary company can become a member of its holding company. (ICAI Module)

15. Shri Laxmi Electricals Ltd. (S) is a company in which Hanumaan power suppliers Limited (H) is holding 60% of its paid up share capital. One of the shareholders of H made a charitable trust and donated his 10% shares in H and ₹ 50 crores to the trust. He appoint S as the trustee. All the assets of the trust are held in the name of S. Can a subsidiary hold shares in its holding company in this way?

(ICAI Module)

16. As at 31st March, 2018, the paid up share capital of S Ltd. is ₹1,00,00,000 divided into 10,00,000 equity shares of ₹10 each. Of this, H Ltd. is holding 6,00,000 equity shares and 4,00,000 equity shares are held by others. Simultaneously, S Ltd. is holding 5% equity shares of H Ltd. out of which 1% shares are held as a legal representative of a deceased member of H Ltd. On the basis of the given information, examine and answer the following queries with reference to the provisions of the Companies Act, 2013:

- Can S Ltd. make further investment in equity shares of H Ltd. during 2018-19?
- Can S Ltd. exercise voting rights at Annual general meeting of H Ltd.?
- Can H Ltd. allot or transfer some of its shares to S Ltd.?

(May'19-4 Marks, Nov'21 RTP)

17. Flora Fauna Limited was registered as a public company. There are 230 members in the company as noted below:

(a)	Directors and their relatives	50
(b)	Employees	15
(c)	Ex-Employees (Shares were allotted when they were employees)	10
(d)	5 couples holding shares jointly in the name of husband and wife (5*2)	10
(e)	Others	145

The Board of Directors of the company propose to convert it into a private company. Also advise whether reduction in the number of members is necessary.

(ICAI Module)

18. Mr. Raja along with his family members is running successfully a trading business. He is capable of developing his ideas and participating in the market place. To achieve this, Mr. Raja formed a single person economic entity in the form of One Person Company with his brother Mr. King as its nominee. On 4th May 2020, Mr.

King withdrew his consent as Nominee of the One Person Company. Can he do so under the provisions of the Companies Act, 2013? Examine whether the following individuals are eligible for being nominated as Nominee of the One Person Company as on 5th May 2020 under the above said Act.

- (i) Mr. Shyam, son of Mr. Raja who is 15 years old as on 5th May 2020.
- (ii) Ms. Devaki an Indian Citizen, sister of Mr. Raja stays in Dubai and India. She stayed in India during the period from 2nd January 2019 to 16th August 2019. Thereafter she left for Dubai and stayed there.
- (iii) Mr. Ashok, an Indian Citizen residing in India who is presently a member of a 'One Person Company'.

(Nov'20- 6 Marks)



ANSWERS

1: Small Company:

- **Definition:** As per **Section 2(85)**, small company means a company, **other than a public company**, -
 - (i) **Paid-up share capital** of which **does not exceed 2 crore rupees** or such higher amount as may be prescribed which shall not be more than ten crore rupees;
and
 - (ii) **Turnover** of which as per as per profit and loss account for the immediately preceding financial year **does not exceed 20 crore rupees** or such higher amount as may be prescribed which shall not be more than one hundred crore rupees.
- **Provided that nothing in this clause shall apply to-**
 - (i) a holding company or a subsidiary company;
 - (ii) a company registered under **section 8**; or
 - (iii) a company or body corporate governed by any special Act.

It is basically a private company meeting prescribed threshold.
- **Logic and Advantages of New Concept Small Company:** The 2013 Act provides for a new entity in the form of Small Company, empowering the Central Government to provide for a simpler compliance regime for small companies.
Because of their size, they cannot be burdened with the same level of compliance requirements. The small companies have to be enabled to take quick decisions, be adaptable in the changing economic environment, yet be encouraged to comply with the essential requirements of the law through low cost of compliance cost.
- Following are some of the **important relaxations** provided to a small company:
 - (i) Financial statements of small company may not include the cash flow statement.
 - (ii) Small company shall be deemed to have complied with the provisions relating to Board meeting if at least one meeting of the Board of directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days.
 - (iii) Merger or amalgamations between two or more small companies have been simplified without the requirement of court process.

Note:

Small Company: According to **Section 2(85)** of the Companies Act, 2013, small Company means a company, other than a public company, –

- (1) Paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; and
- (2) Turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees.

Nothing in this clause shall apply to–

- (A) a holding company or a subsidiary company;
 - (B) a company registered under **section 8**; or
 - (C) a company or body corporate governed by any special Act.
- (i) In the present case, MNP Private Ltd., a company registered under the Companies Act, 2013 with a paid up share capital of ₹45 lakh and having turnover of ₹ 3 crore. Since only one criteria of share capital of ₹50 Lakhs is met, but the second criteria of turnover of ₹2 crores is not met and the provisions require both the criteria to be met in order to avail the status of a small company, MNP Ltd. cannot avail the status of small company.
 - (ii) If the turnover of the company is ₹1.50 crore, then both the criteria will be fulfilled and MNP Ltd. can avail the status of small company.

(Note : Please answer/practice as per new limits of small companies)

2: According to **section 2(42)** of the Companies Act, 2013, foreign company means any company or body corporate incorporated outside India which, –

- (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- (b) conducts any business activity in India in any other manner.

As per the Rule given in the Companies (Specification of Definitions Details) Rules, 2014, the term “**electronic mode**”, means carrying out electronically based, whether main server is installed in India or not, including, but not limited to–

- (i) Business to business and business to consumer transactions, data interchange and other digital supply transactions;
- (ii) Offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;
- (iii) Financial settlements, web based marketing, advisory and transactional

services, database services and products, supply chain management;

- (iv) Online services such as telemarketing, telecommuting, telemedicine, education and information research; and
- (v) All related data communication services, whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise;

In the given question, Teresa Ltd. will be treated as a foreign company within the meaning of **section 2(42)** of the Companies Act, 2013 since it is doing online business through data interchange in India even though the company has no place of business established in India.

3: According to **section 8(1)** of the Companies Act, 2013, where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company—

- (a) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
- (b) intends to apply its profits, if any, or other income in promoting its objects; and
- (c) intends to prohibit the payment of any dividend to its members;

the Central Government may, by issue of licence, allow that person or association of persons to be registered as a limited liability company.

In the instant case, the decision of the group of individuals to form a limited liability company for charitable purpose under **section 8** for a period of ten years and thereafter to dissolve the club and to distribute the surplus of assets over the liabilities, if any, amongst the members will not hold good, since there is a restriction as pointed out in point (b) above regarding application of its profits or other income only in promoting its objects. Further, there is restriction in the application of the surplus assets of such a company in the event of winding up or dissolution of the company as provided in sub-**section (9)** of **Section 8** of the Companies Act, 2013. Therefore, the proposal is not feasible.

4:

- (i) According to **section 8(6)** of the Companies Act, 2013, the Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of **section 8** subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or in violation of the objects of the company or prejudicial to public interest, and on revocation, the

Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register. But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter. Hence, in the instant case, the Central Government can revoke the license given to Gully Gilli Danda Club as **section 8** company, as the affairs of the company are conducted fraudulently and dividend was paid to its members which is in contravention to the conditions given under **section 8**.

- (ii) Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section. However, no such order shall be made unless the company is given a reasonable opportunity of being heard. [**Section 8(7)**].

Hence, the stated company may be wound up.

- (iii) A company registered under this section shall amalgamate only with another company registered under this section and having similar objects. [**Section 8(10)**]
In the instant case, Gully Gilli Danda Club cannot be merged with Stick Private Limited as the objects of both the companies are different and not similar.

(ICAI Module, May'2022 Mock Test)

5. As per **Section 2(85)** of the Companies Act 2013 read with Rule 2(1)(t) of the Companies (Specification of definitions Details) Rules, 2014, "Small Company" means a company, other than a public company, having—

- (i) paid-up share capital of which does not exceed two crores rupees; and
- (ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed twenty crore rupees:

Provided that nothing in this clause shall apply to—

- (A) a holding company or a subsidiary company;
- (B) a company registered under **section 8**; or
- (C) a company or body corporate governed by any special Act;

In the given case, AJD Pvt. Ltd. satisfies the turnover and paid up share capital criteria to be small company, but being a subsidiary of K Ltd (a listed), it falls under the exclusions to the definition and hence is not a small Company.

(ICAI Module, May'2022 Mock Test)

- 6.
- (A) The memorandum of OPC shall indicate the name of the other person (nominee), who shall, in the event of the subscriber's death or his incapacity to contract, become

the member of the company.

Only a natural person who is an Indian citizen whether resident in India or otherwise-

- (a) shall be eligible to incorporate One Person Company (OPC);
- (b) shall be a nominee for the sole member of One Person Company (OPC).

(B) OPC cannot convert voluntarily into any kind of company unless two years have expired from the date of incorporation, except where the paid up share capital is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.1

Ekta Readymade Garments Ltd. was incorporated on 1st April, 2018.

Ekta Readymade Garments Ltd. cannot voluntarily convert the OPC into any other kind of company before expiry of two years from 1st April, 2018 i.e. upto 31st March, 2020. Thus, it can convert into any other kind of company as on 1st December, 2020.

(C) If the paid up share capital of Ekta Readymade Garments Ltd. is increased to ₹ 65 lakhs (35+30), it will be converted into other forms company immediately.

(Nov'21 3 Marks)

7. According to **section (85)** of the Companies Act, 2013, 'Small company' means a company, other than a public company,—

- (i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and
- (ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:

Provided that nothing in this clause shall apply to—

- (A) a holding company or a subsidiary company;
- (B) a company registered under **section 8**; or
- (C) a company or body corporate governed by any special Act.

As per the Companies (Specification of Definitions Details) Rules, 2014 , for the purposes of sub-clause (i) and sub-clause (ii) of clause (85) of **section 2** of the Act, paid up capital and turnover of the small company shall not exceed rupees two crores and rupees twenty crores respectively.

(Nov'21 2 Marks)

8.

- (a) According to **section 2(52)** of the Companies Act, 2013, listed company means a company which has any of its securities listed on any recognised stock exchange; Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the Securities and Exchange Board, shall not be considered as listed companies.

According to rule 2A of the Companies (Specification of definitions details) Rules, 2014, the following classes of companies shall not be considered as listed companies, namely:-

- (a) Public companies which have not listed their equity shares on a recognized stock exchange but have listed their –
- (i) non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or
 - (ii) non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or
 - (iii) both categories of (i) and (ii) above.
- (b) Private companies which have listed their non-convertible debt securities on private placement basis on a recognized stock exchange in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008;
- (c) Public companies which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in sub-**section (3)** of **section 23** of the Act.

Company Name	Analysis and Conclusion
Kleshrahit Ltd.	Equity shares issued by the company are not listed. However, the company has issued listed non- convertible redeemable preference shares issued on private placement basis in terms of relevant SEBI Regulations which falls in the exceptions to the listed company, given as per clause (a) (ii) to Rule 2A, as aforesaid, and accordingly, Kleshrahit Ltd. shall not be considered as a listed company.

Indriyadaman Ltd.	Equity shares issued by the company are not listed. However, the company has issued listed non-convertible debt securities issued on private placement basis in terms of relevant SEBI Regulations which falls in the exceptions to the listed company, given as per clause (a)(i) to Rule 2A, as aforesaid, and accordingly, Indriyadaman Ltd. shall not be considered as a listed company.
Sajagta (P) Ltd.	The company has issued listed non-convertible debt securities issued on private placement basis on a recognised Stock Exchange in terms of relevant SEBI Regulations which falls in the exceptions to the listed company given as per clause (b) to Rule 2A, as aforesaid, and accordingly, Sajagta (P) Ltd. shall not be considered as a listed company.

- (b) According to **section 2(46)** of the Companies Act, 2013, holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies.

According to **section 2(87)** of the Companies Act, 2013, subsidiary company or subsidiary, in relation to any other company (that is to say the holding company), means a company in which the holding company—

- (i) controls the composition of the Board of Directors; or
- (ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation—For the purposes of this clause,—

- (a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;
- (b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some

power exercisable by it at its discretion can appoint or remove all or a majority of the directors;

- (c) the expression “company” includes any body corporate;
- (d) “layer” in relation to a holding company means its subsidiary or subsidiaries;

As per the notification dated 27th December 2013, Ministry clarified that the shares held by a company or power exercisable by it in another company in a fiduciary capacity shall not be counted for the purpose of determining the holding – subsidiary relationship in terms of the provision of **section 2(87)** of the Companies Act, 2013.

(i) Relationship between Kleshrahit Ltd. & Indriyadaman Ltd.

It is given that Kleshrahit Ltd. has the power to appoint 2/3rd directors in Indriyadaman Ltd. i.e. majority of the directors can be appointed by Kleshrahit Ltd.

Accordingly, as per sub-clause (i) to **section 2(87)** read with the Explanation given in point (b), it can be understood that Indriyadaman Ltd. is the subsidiary company of Kleshrahit Ltd. while the latter is the holding company of Indriyadaman Ltd.

(ii) Relationship between Indriyadaman Ltd. & Sajagta (P) Ltd.

It is given that Indriyadaman Ltd. is holding 60% voting power in Sajagta (P) Ltd.

Accordingly, as per sub-clause (ii) to **section 2(87)**, it can be understood that Sajagta (P) Ltd. is the subsidiary company of Indriyadaman Ltd. while the latter is the holding company of Sajagta (P) Ltd. as Indriyadaman Ltd. controls more than one-half of the total voting power of Sajagta (P) Ltd.

(iii) Relationship between Kleshrahit Ltd. & Sajagta (P) Ltd.

It is given that Indriyadaman Ltd. is holding 60% voting power in Sajagta (P) Ltd. and it has been derived that Indriyadaman Ltd. is the subsidiary company of Kleshrahit Ltd. and Sajagta (P) Ltd. is the subsidiary company of Indriyadaman Ltd., respectively.

Accordingly, as per sub-clause (ii) to **section 2(87)** read with the Explanation given in point (a), that a company shall be deemed to be a subsidiary company of the holding company even if the control is of another subsidiary company of the holding company i.e. subsidiary of subsidiary company will be deemed to be a subsidiary of the holding company.

Hence, it can be understood that Sajagta (P) Ltd. is deemed to be subsidiary

company of Kleshrahit Ltd. while the latter would be considered as the holding company of Sajagta (P) Ltd.

(iv) Relationship between Sajagta (P) Ltd. & Pratibodh Ltd.

It is given that Sajagta (P) Ltd. holds 52% equity shares in Pratibodh Ltd. as an investment on behalf of another company in a capacity of a trustee i.e. in a fiduciary capacity.

As per the notification dated 27th December 2013, Ministry (MCA) clarified that the shares held by a company or power exercisable by it in another company in a fiduciary capacity shall not be counted for the purpose of determining the holding–subsidiary relationship in terms of the provision of **section 2(87)** of the Companies Act, 2013.

Accordingly, Sajagta (P) Ltd. & Pratibodh Ltd. do not share any holding–subsidiary relationship as the former holds shares in latter just in a fiduciary capacity on behalf of another company.

(RTP MAY 22)

9. According to **section 8** of the Companies Act, 2013, a company registered under this section shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government (the power has been delegated to Registrar of Companies).

Also, a firm may be a member of the company registered under section.

Here, one of the matters of articles of Dhimaan Foundation was altered by passing a special resolution in its general meeting and thereafter, intimation for the same was given to Registrar of Companies.

As per the provisions of the Act, it is necessary to take previous approval of the Registrar of Companies for the same which was not done in the present case and thus the contention of Dhawaj & Co. was valid.

Also, section 8 allows a firm to be a member of such company and hence, Dhawaj & Co. can be its member.

(RTP MAY 22)

10. According to **section 19** of the Companies Act, 2013 a company shall not hold any shares in its holding company either by itself or through its nominees. Also, holding company shall not allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

Following are the exceptions to the above rule—

- (a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
- (b) where the subsidiary company holds such shares as a trustee; or
- (c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company but in this case, it will not have a right to vote in the meeting of holding company.

In the given case, one of the shareholders of holding company (Octagon Limited) has transferred his shares in the holding company to a trust where the shares will be held by subsidiary company (Pentagon Limited). It means now subsidiary will hold shares in the holding company. But it will hold shares in the capacity of a trustee. Therefore, we can conclude that in the given situation Pentagon Limited can hold shares in Octagon Limited.

(Nov'2022 Mock Test)

11: In terms of **section 2 (87)** of the Companies Act 2013 “subsidiary company” or “subsidiary”, in relation to any other company (that is to say the holding company), means a company in which the holding company—

- (ii) controls the composition of the Board of Directors; or
- (iii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation: For the purposes of this clause, -

- (a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;
- (b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors.

In the present case, Jeevan Pvt. Ltd. and Sudhir Pvt. Ltd. together hold less than one half of the total share capital. Hence, Piyush Private Ltd. (holding of Jeevan Pvt. Ltd. and Sudhir Pvt) will not be a holding company of Saras Pvt Ltd.

However, if Piyush Pvt. Ltd. has 8 out of 9 Directors on the Board of Saras Pvt. Ltd. i.e. controls the composition of the Board of Directors; it (Piyush Pvt. Ltd.) will be treated as the holding company of Saras Pvt. Ltd.

- 12: According to **section 19** of the Companies Act, 2013 a company shall not hold any shares in its holding company either by itself or through its nominees. Also, holding company shall not allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

Following are the exceptions to the above rule—

- (a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
- (b) where the subsidiary company holds such shares as a trustee; or
- (c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company but in this case it will not have a right to vote in the meeting of holding company.

In the given case one of the shareholders of holding company has transferred his shares in the holding company to a trust where the shares will be held by subsidiary company. It means now subsidiary will hold shares in the holding company. But it will hold shares in the capacity of a trustee. Therefore, we can conclude that in the given situation S Ltd. can hold shares in H Ltd.

- 3: According to **section 3A** of the Companies Act, 2013, If at any time the number of members of a company is reduced, in the case of a public company, below seven, in the case of a private company, below two, and the company carries on business for more than six months while the number of members is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with less than seven members or two members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefore.

Hence, in the given situation, the number of member in the said public company have fallen below 7 [$250 - 244 = 6$] and these members have continued beyond the specified limit of 6 months, the reduced members of the company during the period of 1 month shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefore.

- 14: In accordance with the provisions of **Section 19** of the Companies Act, 2013, a subsidiary company cannot, either by itself or through its nominees hold any shares

in its holding company and no holding company shall allot or transfer its shares to any subsidiary companies. Any such allotment or transfer of shares in a company to its subsidiary is void. The section however does not apply where:

- (1) the subsidiary company holds shares in its holding company as the legal representative of a deceased member of the holding company,
- (2) the subsidiary company holds such shares as a trustee, or
- (3) the subsidiary company was a shareholder in the holding company even before it became its subsidiary.

15: According to **section 19** of the Companies Act, 2013 a company shall not hold any shares in its holding company either by itself or through its nominees. Also, holding company shall not allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

Following are the exceptions to the above rule—

- (a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
- (b) where the subsidiary company holds such shares as a trustee; or
- (c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company but in this case it will not have a right to vote in the meeting of holding company.

In the given case one of the shareholders of holding company has transferred his shares in the holding company to a trust where the shares will be held by subsidiary company. It means now subsidiary will hold shares in the holding company. But it will hold shares in the capacity of a trustee. Therefore, we can conclude that in the given situation S can hold shares in H.

16: The paid up share capital of S Ltd. is ₹1,00,00,000 divided into 10,00,000 equity shares of ₹10 each. Of this, H Ltd. is holding 6,00,000 equity shares.

Hence, H Ltd. is the holding company of S Ltd. and S Ltd. is the subsidiary company of H Ltd. by virtue of **section 2(87)** of the Companies Act, 2013.

In the instant case,

- (i) As per the provisions of sub-**section (1)** of **Section 19** of the Companies Act, 2013, no company shall, either by itself or through its nominees, hold any shares in its holding company. Therefore, S Ltd. cannot make further investment in equity shares of H Ltd. during 2018-19.

- (ii) As per second proviso to **Section 19**, a subsidiary company shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee. Therefore, S Ltd. can exercise voting rights at the Annual General Meeting of H Ltd. only in respect of 1% shares held as a legal representative of a deceased member of H Ltd.
- (iii) **Section 19** also provides that no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void. Therefore, H Ltd. cannot allot or transfer some of its shares to S Ltd.

17. According to **section 2(68)** of the Companies Act, 2013, “Private company” means a company having a minimum paid-up share capital as may be prescribed, and which by its articles, except in case of One Person Company, limits the number of its members to two hundred.

However, where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member. It is further provided that –

- (A) persons who are in the employment of the company; and
- (B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members.

In the instant case, Flora Fauna Limited may be converted into a private company only if the total members of the company are limited to 200.

Total Number of members:

- (i) Directors and their relatives- 50
- (ii) 5 Couples (5*1)- 5
- (iii) Others- 145

Total 200

Therefore, there is no need for reduction in the number of members since existing number of members are 200 which does not exceed maximum limit of 200.

18: As per **section 3** of the Companies Act, 2013, the memorandum of One Person Company (OPC) shall indicate the name of the other person (nominee), who shall, in the event of the subscriber’s death or his incapacity to contract, become the member of the company. The other person (nominee) whose name is given

in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation along with its Memorandum of Association and Articles of Association. Such other person (nominee) may withdraw his consent in such manner as may be prescribed. Therefore, in terms of the above law, Mr. King, the nominee, whose name was given in the memorandum, can withdraw his consent as a nominee of the OPC by giving a notice in writing to the sole member and to the One Person Company. Following are the answers to the second part of the question as regards the eligibility for being nominated as nominee:

- (i) As per the Rule 3 of the Companies (Incorporation) Rules, 2014, no minor shall become member or nominee of the OPC. Therefore, Mr. Shyam, being a minor is not eligible for being nominated as Nominee of the OPC.
- (ii) As per the Rule 3 of the Companies (Incorporation) Rules, 2014, only a natural person who is an Indian citizen and resident in India, shall be a nominee or the sole member of a One Person Company. The term “Resident in India” means a person who has stayed in India for a period of not less than 182 days during the immediately preceding financial year. Here Ms. Devaki though an Indian Citizen but not resident in India as she stayed for a period of less than 182 days during the immediately preceding financial year in India. So, she is not eligible for being nominated as nominee of the OPC.
- (iv) As per the Rule 3 of the Companies (Incorporation) Rules, 2014, a person shall not be a member of more than one OPC at any point of time and the said person shall not be a nominee of more than one OPC. Mr. Ashok, an Indian Citizen residing in India who is a member of an OPC (Not a nominee in any OPC), can be nominated as nominee.

II

INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO



QUESTIONS

1. XY Ltd. has its registered office at Mumbai in the State of Maharashtra. For better administrative conveniences the company wants to shift its registered office from Mumbai to Pune (within the State of Maharashtra, but from Mumbai ROC to Pune ROC). What formalities the company has to comply with under the provisions of the Companies Act, 2013 for shifting its registered office as stated above? Explain.
(ICAI Module, May'19 Mock Test, Nov'19 Mock Test)
2. Yadav dairy products Private limited has registered its articles along with memorandum at the time of registration of company in December, 2014. Now directors of the company are of the view that provisions of articles regarding forfeiture of shares should not be changed except by a resolution of 90% majority. While as per **section 14** of the Companies Act, 2013 articles may be changed by passing a special resolution only. One of the directors said that they cannot make a provision against the Companies Act. You are required to advise the company on this matter.
(ICAI Module, May'20 RTP)
3. Manglu and friends got registered a company in the name of Taxmann advisory private limited. Taxmann is a registered trade mark. After 5 years When the owner of trade mark came to know about the same, it filed an application with relevant authority. Can the company be compelled to change its name by the owner of trade mark? Can the owner of registered trade mark request the company and then company changes its name at its discretion?
(ICAI Module)
4. Mr. Abhi is a Chartered Accountant and MBA by profession, has been appointed as an Executive Director on the Board of XYZ Limited. His job profile includes advising the Board of Directors of the company on various compliance matters, strategies, business plans, and risk matters relating to the company. Keeping in view of above position whether Mr. Abhi can be classified as the Promoter of XYZ Limited? Please examine the same under the provisions of the Companies Act, 2013. (RTP MAY 22)

5: Aman an engineer has started a new company with the name of Nuts and Bolts Private Limited. He got registered a company with the same name. However, Nuts and Bolts is a registered trademark. After 5 years when the owner of trademark came to know about the same, it filed an application with relevant authority. Can the company be compelled to change its name by the owner of trademark? Can the owner of registered trademark request the company and then company change its name at its discretion?

(MTP, May'23)

6: Examine the validity of the following different decisions/proposals regarding change of office by A Limited under the provisions of the Companies Act, 2013:

- (i) The Registered office is shifted from Thane (Local Limit of Thane District) to Dadar (Local limit of Mumbai District), both places falling within the jurisdiction of the Registrar of Mumbai, by passing a special resolution but without obtaining the approval of the Regional Director.
- (ii) The registered office situated in certain place of a city is proposed to be shifted to another place within the local limits of the same city under the authority of Board Resolution.

(MTP, May'23)

7: Mr. Ram along with his brothers got registered a company in the state of Telangana by furnishing false information knowingly. What action may be taken against the company and its promoters under the provisions of the companies act, 2013?

(MTP, May'23)



MULTIPLE CHOICE QUESTIONS (HOMEWORK)

1. Which on the following is not the content of the Memorandum of Association
 - (a) Name Clause
 - (b) Registered Office Clause
 - (c) Objects Clause
 - (d) Board of Directors Clause

(ICAI Module)
2. The Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of _____ from the date of filing of the special resolution.
 - (a) 30 days
 - (b) 60 days
 - (c) 90 days
 - (d) 6 months

(ICAI Module, Nov'19 Mock Test, ICAI Sample Question)
3. Forms of (1) Articles of guarantee company having a share capital (2) Articles of a guarantee company not having a share capital (3) Memorandum of an unlimited company with share capital (4) Memorandum of a company limited by shares; are respectively given in:
 - (a) Table G; H;E & B
 - (b) Table G; H;E & A
 - (c) Table G; H;D & A
 - (d) Table G; H;B & A

(ICAI Module)
4. A director member deposited with company ₹5000 and demanded that AGM notice should be sent by Blue Dart courier only. Is that company bound to serve it that way only?
 - (a) Yes because he is a director
 - (b) No because company is allowed to serve documents by ordinary post
 - (c) Yes because member has deposited money
 - (d) No because directors can't get special privileges

(ICAI Module)
5. To entrench its article after incorporation a public company:
 - (a) will have to pass a special resolution
 - (b) will have to take consent of all members

- (c) is not allowed to do so
- (d) will have to pass special resolution and take approval of Tribunal (ICAI Module)

6. If a company is registered by incorrect information then its winding up may be ordered by:

- (a) Central Government
- (b) Registrar of Companies
- (c) National Company Law Tribunal
- (d) Court

(ICAI Module)

7. If a company changes its name; which of the following is most accurate:

- (a) It is not allowed to use old name in any way
- (b) New name should not be identical with old name
- (c) Old name should be painted/printed for next 1 years along with new name
- (d) Old name should be painted/printed for next 2 years along with new name

(ICAI Module, Nov'20 Mock Test, May'21 Mock Test)

8. A company registered with the name of a trade mark already in existence:

- (a) Central Government can give it an order anytime to change its name
- (b) Company will have to change its name within 3 months from the order of Central Government
- (c) Trademark owner will make complaint within three years
- (d) All of the above

(ICAI Module)

9. Vinay and Sanjay made a name reservation application accompanied by requisite fee to the Registrar for forming a new private company. The Registrar accorded its approval for reservation of most preferred name Vinanjay Softwares Private Ltd. on 7th July, 2018. By which date necessary documents for incorporation of the company must be submitted to the Registrar so that the reserved name does not get lapsed.

- (a) Latest by 20th July, 2018
- (b) Latest by 27th July, 2018
- (c) Latest by 4th August, 2018
- (d) Latest by 4th September, 2018

(May'19 RTP, May'19 Mock Test)

10. Swastik Private Limited passed a Special Resolution to change its name to Swastik Darshan Private Limited on 30th May, 2019. Relevant MCA filing was done on due time and then Company got its new stationery printed on 1st July, 2019. However there was a delay in issue of Certificate and Company received new certificate on 20th August, 2019 which was issued on 10th August, 2019. Company wants to enter into a lease agreement for new premise. When they can do such agreement in new name of the Company?
- (a) 30th May, 2019
 - (b) 1st July, 2019
 - (c) 20th August, 2019
 - (d) 10th August, 2019
- (May'20 Mock Test, ICAI Sample Question)
11. High Aim Pvt. Ltd. wants to change its object clause of the Memorandum of Association of the Company. The needs:.
- (a) Shareholders approval by way of Ordinary Resolution
 - (b) Shareholders approval is not required for change of object clause of the company.
 - (c) Shareholders approval by way of Special Resolution
 - (d) The approval from Tribunal for changing object clause of the company.
- (ICAI Sample Question)
12. Sapan and Sanjay made a name reservation application accompanied by requisite fee to the Registrar for forming a new private company. The Registrar accorded its approval for reservation of most preferred name Sapanjay Softwares Private Ltd. on 6th July, 2018. In how many days, necessary documents for incorporation of the company must be submitted to the Registrar so that the reserved name does not get lapsed.
- (a) Within 10 days from the date of approval
 - (b) Within 20 days from the date of approval
 - (c) Within 45 days from the date of approval
 - (d) Within 60 days from the date of approval
- (ICAI Sample Question)
13. Seema Bulbs Ltd. is desirous of having significant influence in Shaukeen LED Bulbs and Tubes Ltd. so that the latter becomes its 'associate company'. For exercising 'significant influence' one of the options available to Seema Bulbs is to control at least twenty per cent of total voting power of Shaukeen LED Bulbs and Tubes. What

is the other option available?

- (a) To control or participate in the recruitment decisions relating to appointment of middle management personnel of Shaukeen LED Bulbs and Tubes under an agreement.
- (b) To control or participate in the dividend decisions of Shaukeen LED Bulbs and Tubes under an agreement.
- (c) To control or participate in the business decisions of Shaukeen LED Bulbs and Tubes under an agreement.
- (d) To control or participate in the export decisions of Shaukeen LED Bulbs and Tubes under an agreement.

(ICAI Sample Question)

14. Priyank and Priyanka, got reserved a name and thereafter a private limited company was formed using the reserved name on 1st June, 2018. Later on, a registered proprietor of a trade mark noted that the name of this private limited company was identical to the trade mark he had earlier got registered under the Trade Marks Act, 1999. Advise as to latest by which date, the proprietor of the registered trade mark can move an application to the Central Government against this anomaly.
- (a) Latest by 30th November, 2018, the registered proprietor of trade mark should move an application to the Central Government for rectification of this anomaly.
 - (b) Latest by 30th May, 2019, the registered proprietor of trade mark should move an application to the Central Government for rectification of this anomaly.
 - (c) Latest by 30th May, 2020, the registered proprietor of trade mark should move an application to the Central Government for rectification of this anomaly.
 - (d) Latest by 30th May, 2021, the registered proprietor of trade mark should move an application to the Central Government for rectification of this anomaly.

(ICAI Sample Question)

15. SNDT Ltd decided to shift its registered office from jurisdiction of one Registrar to the jurisdiction of another Registrar. SNDT Ltd complied with the provisions of Companies Act, 2013 and did all relevant filing within due period of time. Confirmation on such shifting was received by Regional Director on 26th June, 2017. By when SNDT Ltd has to file that confirmation with the Registrar?
- (a) 11th July, 2017
 - (b) 25th July, 2017
 - (c) 11th August, 2017
 - (d) 25th August, 2017

(ICAI Sample Question)

16. DEF Private Limited altered its Articles of Association on its conversion into public Company. A copy of order of the competent authority approving the alteration, is required to be filed with Registrar. How many days Company have to file such order?
- (a) 15 days
 - (b) 30 days
 - (c) 45days
 - (d) 60 days
- (ICAI Sample Question)
17. An Indian Company decided to shift its registered office within the jurisdiction of same Registrar in a Board meeting held on 25th May, 2017. Within how many days Company shall intimate such change to Registrar of Companies?
- (a) Within 15days from the date of such change;
 - (b) Within 30days from the date of such change;
 - (c) Within 15days from the date of Board meeting;
 - (d) Within 30days from the date of Board meeting;
- (ICAI Sample Question)
18. Seven Hospitality Limited ("Company") was incorporated in 2013. Company run resorts and hotels nearby Mumbai. In 2018, Central government received an application from Mr. X ("proprietor") who has registered trademark for word "Seven". In ideal situation, what will be the Central Government's stand?
- (a) Central Government will ask to take permission from Registrar, as he have approved this name in first place;
 - (b) Central Government will ask them to mutually agree to use the word "Seven";
 - (c) Central Government will direct the Company to change its name;
 - (d) Central Government will deny his application;
- (ICAI Sample Question)
19. Amar made an application, his wife Abhilasha being other proposed subscriber and got reserved a name for incorporation of a private limited company but the Registrar of Companies, Delhi and Haryana, much before the incorporation, found that the name was applied by furnishing wrong information.
- (a) The reserved name shall be cancelled by the ROC because the name was applied by furnishing wrong information and Amar who made the application shall be liable to a penalty up to Rs. one lac.
 - (b) The reserved name, after seeking explanation from Amar and after he pays a penalty of Rs. one lac shall be allotted by the ROC and the company shall be incorporated by this name.

- (c) The reserved name shall be cancelled by the ROC but Amar shall not be liable to pay any penalty because cancellation of name in itself is a penalty.
- (d) Besides cancellation of the reserved name Amar and Abhilasha shall be debarred from making an application for reservation of name for one year from the date on which cancellation letter was issued by the ROC.

(ICAI Sample Question)

20. cannot be a subscriber to the Memorandum of Association and Articles of Association.

- (a) A company
- (b) Government
- (c) Minor
- (d) Major

(1 Mark) (ICAI Module, May'2022 Mock Test)

21. In case of a private company, the provisions for entrenchment may be made at the time of formation of the company or by amendment of articles,

- (a) By passing a special resolution
- (b) With the consent of all the members
- (c) By passing a special resolution and approval of the Central Government
- (d) With the consent of all the members and approval of the Central Government

(1 Mark) (ICAI Module, May'2022 Mock Test)

22. Jai and Veeru, two friends, formed a private limited company as Basanti Taanga Private Limited and got it registered on 10th January, 2018. The registered office of the company was situated at Kolkata, West Bengal. The company had an authorised share capital of ₹ 50 lacs divided into 5 lacs equity shares of ₹ 10/- each. The issued, subscribed and paid-up share capital of the company was of ₹ 30 lacs divided into 3 lacs equity shares of ₹ 10 each. The company was engaged in supplying various motor parts to the vehicles companies. 'Basanti' was a registered Trade mark of Basanti Motorwala Private Limited of Mumbai since 15th January, 2016 under the Trade Marks Act, 1999. This company was also engaged in manufacturing and supplying various auto parts to the vehicles companies.

Basanti Motorwala Private Ltd. of Mumbai came to know on 20th January, 2022 about Basanti Taanga Private Limited of Kolkata who was using identical name and mark. Being a registered proprietor of a trade mark, Basanti Motorwala Private Ltd. filed an objection with an appropriate authority under Companies Act, 2013 on 15th March, 2022 that the name Basanti Taanga Private Limited or the mark the company

was using is found to be identical with or too nearly resembles to the registered trade mark of Basanti Motorwala Private Ltd. and as such the appropriate authority should direct Basanti Taanga Private Limited to change its name. The appropriate authority after going through all the details rejected the application of Basanti Motorwala Private Ltd.

Thereafter on 14th July, 2020, Basanti Motorwala Private Ltd. requested Basanti Taanga Private Limited to change its name and Basanti Taanga Private Limited accepted the same in good relationship. Basanti Taanga Private Limited complied with all the formalities under Companies Act, 2013 such as passing of all necessary resolutions, taking approval from appropriate authority, filing of documents with the Registrar of Companies etc. The name of the company Basanti Taanga Private Limited was changed to Jai Veeru Private Limited. A fresh certificate of incorporation was issued to the company by the Registrar after being satisfied with the name change application of the company. Subsequent to the issuance of the new incorporation certificate, steps were taken up to incorporate the new name in all copies of the Memorandum of Association, Articles of Association and other documents of the company.

Multiple Choice Questions [3 MCQs of 2 Marks each: Total 6 Marks]

1. In the above case scenario, what can be the most evident reason for the appropriate authority to reject the application of Basanti Motorwala Private Ltd?
 - (a) The appropriate authority rejected the application on the basis that the names of both the companies are different- Basanti Motorwala Private Ltd and Basanti Taanga Private Limited.
 - (b) The appropriate authority rejected the application as Basanti Motorwala Private Ltd (owner of the registered mark) should have filed the objection within three years of the registration of company with identical name.
 - (c) The appropriate authority could have rejected the application on the basis that both the companies are located in different cities and thus can use almost similar names.
 - (d) The appropriate authority could have rejected the application on the basis that both the companies have different years of incorporation and both are located in different cities .

2. In the above case scenario, what ought to have been the time limit within which Basanti Motorwala Private Ltd, should have filed the objection for wrong name:
- (a) On or before 9th January, 2021
 - (b) On or before 9th January, 2022
 - (c) On or before 9th January, 2023
 - (d) They can file the objection at any time
3. According to above case, a fresh certificate of incorporation was issued to the company by the Registrar after being satisfied with the name change application of the company. Which of the following statements is correct in this context?
- (a) The change in name of the company is said to be complete and effective from the date of passing of resolution in the general meeting of members.
 - (b) The change in name of the company is said to be complete and effective from the date of issue of fresh certificate of incorporation by the Registrar.
 - (c) The change in name of the company is said to be complete and effective from the date on which documents were filed with the Registrar.
 - (d) The change in name of the company is said to be complete and effective from the date of the order of Ministry of Corporate Affairs approving the change of name.
- (Nov'22 Mock Test)

23. In case of an application for reservation of name or for change of its name by an existing company, the Registrar may reserve the name for a period of _____ from the date of approval
- (a) 90 days
 - (b) 60 days
 - (c) 30 days
 - (d) 20 days



ANSWERS

- 1: The Companies Act, 2013 under **section 13** provides for the process of altering the Memorandum of a company. Since the location or Registered Office clause in the Memorandum only names the state in which its registered office is situated, a change in address from Mumbai to Pune, **does not result in the alteration of the Memorandum** and hence the provisions of **section 13** (and its sub sections) do not apply in this case.

However, under **Section 12**, following procedure is to be followed:

1. A **special resolution** has to be passed in the general meeting of the company.
2. Apply to Regional Director for approval.
3. Regional Director shall communicate within a period of **30 days** from the date of receipt of application.
4. The company shall file the confirmation with the Registrar within a period of **60 days** of the date of confirmation.
5. ROC shall register the same and certify the registration within a period of **30 days** from the date of filing of such confirmation.
6. Form No. MGT.14 shall be filed to the Registrar of Companies within **30 days** of passing the special resolution.
7. Also within 30 days of the change of the registered office, a notice to the Registrar should be given of the new location of the office in **Form No. INC.22**.

- 2: As per **section 5** of the Companies Act, 2013 the article may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if more restrictive conditions than a special resolution, are met.

The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in prescribed manner.

In the present case, Yadav dairy products Private Limited is a private company and wants to protect provisions of articles regarding forfeiture of shares. It means it wants to make entrenchment of articles, which is allowed. But the company will

have to pass a resolution taking permission of all the members and it should also give notice to ROC regarding entrenchment of articles.

3: According to **section 16** of the Companies Act, 2013 if a company is registered by a name which, –

- in the opinion of the Central Government, is identical with the name by which a company had been previously registered, it may direct the company to change its name. Then the company shall by passing an ordinary resolution change its name within 3 months.
- is identical with a registered trade mark and owner of that trade mark apply to the Central Government within three years of incorporation of registration of the company, it may direct the company to change its name.

Then the company shall change its name by passing an ordinary resolution within 6 months.

Company shall give notice to ROC along with the order of Central Government within 15 days of change. In case of default company and defaulting officer are punishable.

In the given case, owner of registered trade mark is filing objection after 5 years of registration of company with a wrong name which it should have filed the same within 3 years. Therefore, the company cannot be compelled to change its name.

As per **section 13**, company can anytime change its name by passing a special resolution and taking approval of Central Government. Therefore, if owner of registered trade mark request the company for change of its name and the company accepts the same then it can change its name voluntarily by following the provisions of **section 13**.

4. According to **section 2(69)** of the Companies Act, 2013, Promoter means a person: -

- (a) Who has been named as such in a prospectus or is identified by the company in the annual return; or
- (b) Who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
- (c) In accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act.

Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity.

As the job profile of Mr. Abhi is only limited to advise the Board of Directors on

various compliance matters, strategies, business plans and risk matters relating to business of the company and that too only in a professional capacity, he will not be classified as a Promoter of XYZ Limited. (RTP MAY 22)

5. According to section 16 of the Companies Act, 2013 if a company is registered by a name which, –

- in the opinion of the Central Government, is identical with the name by which a company had been previously registered, it may direct the company to change its name. Then the company shall by passing an ordinary resolution change its name within 3 months.
- is identical with a registered trade mark and owner of that trade mark apply to the Central Government within three years of incorporation of registration of the company, it may direct the company to change its name. Then the company shall change its name by passing an ordinary resolution within 3 months.

Company shall give notice to ROC along with the order of Central Government within 15 days of change. In case of default company and defaulting officer are punishable.

In the given case, owner of registered trade-mark is filing objection after 5 years of registration of company with a wrong name. While it should have filed the same within 3 years. Therefore, the company cannot be compelled to change its name.

As per section 13, company can anytime change its name by passing a special resolution and taking approval of Central Government. Therefore, if owner of registered trademark request the company for change of its name and the company accepts the same then it can change its name voluntarily by following the provisions of section 13.

6. Regarding the validity of Proposals w.r.t change of registered office by A Limited in the light of section 12 of the Companies Act, 2013:

- (i) In the first case, the Registered office is shifted from Thane to Dadar (one District to another District) falling under jurisdiction of same ROC i.e. Registrar of Mumbai.

As per Section 12 (5) of the Act which deals with the change in registered office outside the local limit from one town or city to another in the same state, may take place by virtue of a special resolution passed by the company. No approval of regional director is required. Accordingly, said proposal is valid.

- (ii) In the second case, change of registered office within the local limits of the

same city. Said proposal is valid in terms it has been passed under the authority of Board resolution.

7. As per section 7 of the Companies Act, 2013 where a company has been got incorporated by furnishing any incorrect information, the Tribunal may on an application made to it, on being satisfied that the situation so warrants:
- (a) pass orders for regulation of the management of the company including changes, if any, in its memorandum and articles; or
 - (b) direct that liability of the members shall be unlimited; or
 - (c) direct removal of the name of the company from the register of companies; or
 - (d) pass an order for the winding up of the company; or
 - (e) pass such other orders as it may deem fit:

Provided that before making any order under this sub-section,–

- (i) the company shall be given a reasonable opportunity of being heard in the matter; and
- (ii) the Tribunal shall take into consideration the transactions entered into by the company.

Also the promoters, the persons named as the first directors of the company and the persons making declaration at the time of registration of company shall each be liable for action under section 447.



ANSWER TO MCQs

1	D	2	A	3	B	4	C	5	A
6	C	7	D	8	D	9	B	10	D
11	C	12	B	13	C	14	D	15	D
16	A	17	B	18	D	19	A	20	C
21	B	22(1)	B	22(2)	A	22(3)	B	23	B



HOMEWORK QUESTIONS & ANSWER

1. The persons (not being members) dealing with the company are always protected by the doctrine of indoor management. Explain. Also, explain when doctrine of Constructive Notice will apply.

(ICAI Module, Nov'18- 6 Marks, Jan'21- 5 Marks, Nov'22 Mock Test)

2. The object clause of the Memorandum of Vivek Industries Ltd., empowers it to carry on real-estate business and any other business that is allied to it. Due to a downward trend in real-estate business the management of the company has decided to take up the business of Food processing activity. The company wants to alter its Memorandum, so as to include the Food Processing Business in its objects clause. Examine whether the company can make such change as per the provisions of the Companies Act, 2013?

(ICAI Module)

3. Explain the provisions of the Companies Act, 2013 relating to the 'Service of Documents' on a company and the members of the company.

(ICAI Module)

4. Anushka security equipments limited is a manufacturer of CCTV cameras. It has raised ₹100 crores through public issue of its equity shares for starting one more unit of CCTV camera manufacturing. It has utilized 10 crores rupees and then it realized that its existing business has no potential for expansion because government has reduced customs duty on import of CCTV camera hence imported cameras from china are cheaper than its own manufacturing. Now it wants to utilize remaining amount in mobile app development business by adding a new object in its memorandum of association.

Does the Companies Act allow such change of object. If not then what advise will you give to company. If yes, then give steps to be followed.

(ICAI Module, Nov'19 RTP)

5. Parag Constructions Limited is a leading infrastructure company. One of the directors of the company Mr. Parag has been signing all construction contracts on behalf of company for many years. All the parties who ever deal with the company know Mr. Parag very well. Company has got a very important construction contract from a renowned software company. Parag constructions will do construction for this site in partnership with a local contractor Firoz bhai. Mr. Parag signed partnership deed

with Firoz bhai on behalf of company because he has an implied authority. Later in a dispute company denied to accept liability as a partner. Can the company deny its liability as a partner? (ICAI Module)

6. Paritosh and friends got registered a company in the name of Taxmann advisory Private Limited. Taxmann is a registered trademark. After 5 years when the owner of trademark came to know about the same, it filed an application with relevant authority. Can the company be compelled to change its name by the owner of trademark? Can the owner of registered trademark request the company and then company changes its name at its discretion? (ICAI Module, May'2022 Mock Test)

7. Amar, a director of Gokul Electricals Ltd. gave in writing to the company that the notice for any general meeting and of the Board of Directors' meeting be sent to him only by registered post at his residential address at Kanpur for which he deposited sufficient money. The company sent notice to him by ordinary mail under certificate of posting. Amar did not receive this notice and could not attend the meeting and contended that the notice was improper.

Decide, as per the provisions of the Companies Act, 2013:

- (i) Whether the contention of Amar is valid.
- (ii) Will your answer be the same if Amar remains in U.S.A. for one month during which the notice of the meeting was served and the meeting was held?

(5 Marks)

8. Explain the provisions of the Companies Act, 2013 relating to the 'Service of Documents' on a company and the members of the company?

(Nov'22 Mock Test)

9. The Board of Directors of Sindhu Limited wants to make some changes and to alter some Clauses of the Articles of Association which are to be urgently carried out, which include the increase in Authorized Capital of the company, issue of shares, increase in borrowing limits and increase in the number of directors.

Discuss about the provisions of the Companies Act, 2013 to be followed for alteration of Articles of Association.

(Nov'18 RTP)

10. The Directors of Mars India Ltd. desire to alter capital clause of Memorandum of Association of their company. Advise them, under the provisions of the Companies

Act, 2013 about the ways in which the said clause may be altered.

(Nov'19 Mock Test)

11. The directors of Smart Computers limited borrowed a sum of money from Mr. Tridev. The company's articles provided that the directors may borrow on bonds such sums as may, from time to time, be authorized by resolution passed at a general meeting of the company. The shareholders claimed that there had been no such resolution authorizing the loan, and therefore, it was taken without their authority and the company is not bound to repay the loan to Tridev. In the light of the contention of shareholders, decide whether the company is bound to pay the loan.

(May'20 Mock Test)

12. Mahima Ltd. was incorporated by furnishing false information. As per the Companies Act, 2013, state the powers of the Tribunal (NCLT) in this regard. (Nov'19- 5 Marks)

13. Vijay, a member of Mayur Electricals Ltd. gave in writing to the company that the notice for any general meeting be sent to him only by registered post at his residential address at Kanpur for which he deposited sufficient money. The company sent notice to him by ordinary mail under certificate of posting. Vijay did not receive this notice and could not attend the meeting and contended that the notice was improper.

Decide:

- (i) Whether the contention of Vijay is valid.
- (ii) Will your answer be the same if Vijay remains in London for two months during the notice of the meeting and the meeting held? (ICAI Module, Nov'20 RTP)

14. The Authorized share capital of SSP Limited is ₹ 5 crore divided into 50 Lakhs equity shares of ₹ 10 each. The Company issued 30 Lakhs equity shares for subscription which was fully subscribed. The Company called so far ₹ 8 per share and it was paid up. Later on the Company proposed to reduce the Nominal Value of equity share from ₹ 10 each to ₹ 8 each and to carry out the following proposals:

- (i) Reduction in Authorized Capital from ₹ 5 crore divided into 50 Lakhs equity shares of ₹ 10 each to ₹ 4 crore divided into 50 Lakhs equity shares of ₹ 8 each.
- (ii) Conversion of 30 Lakhs partly paid up equity shares of ₹ 8 each to fully paid up equity shares of ₹ 8 each thereby relieving the shareholders from making further payment of ₹ 2 per share. State the procedures to be followed by the Company to carry out the above proposals under the provisions of the Companies Act, 2013.

(Nov'20 - 5 Marks)

15. S Ltd acquired 10% paid up share capital of H Ltd on 15th March 2017. H Ltd acquired 55% paid up share capital of S Ltd on 10th March 2018. H Ltd. on 25th September, 2020 decided to issue bonus shares in the ratio of 1:1 to the existing shareholders. Accordingly, bonus shares were allotted to S Ltd. Examine under the provisions of the Companies Act, 2013 and decide (i) the validity of holding of shares by S Ltd. in H Ltd. (ii) allotment of Bonus shares by H Ltd. to S Ltd.

(Nov'20- 4 Marks)

16. The Articles of Association of a Company may contain provisions for entrenchment under **Section 5** of the Companies Act, 2013. What is meant by entrenchment provisions in this context? Also State the relevant provisions of the said Act dealing with entrenchment provisions.

(Nov'20- 3 Marks, Nov'22 Mock Test)



ANSWERS

1: Doctrine of Indoor Management

According to this doctrine, persons dealing with the company need not inquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and articles of association.

Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner.

The doctrine helps to protect external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the Registrar of Companies.

The doctrine of indoor management is opposite to the doctrine of constructive notice. Whereas the doctrine of constructive notice protects a company against outsiders, the doctrine of indoor management protects outsiders against the actions of a company. This doctrine also is a safeguard against the possibility of abusing the doctrine of constructive notice.

Exceptions to Doctrine of Indoor Management (Applicability of doctrine of constructive notice)

- (i) **Knowledge of irregularity:** In case an 'outsider' has actual knowledge of irregularity within the company, the benefit under the rule of indoor management would no longer be available. In fact, he/she may well be considered part of the irregularity.
- (ii) **Negligence:** If, with a minimum of effort, the irregularities within a company could be discovered, the benefit of the rule of indoor management would not apply. The protection of the rule is also not available where the circumstances surrounding the contract are so suspicious as to invite inquiry, and the outsider dealing with the company does not make proper inquiry.
- (i) **Forgery:** The rule does not apply where a person relies upon a document that turns out to be forged since nothing can validate forgery. A company can never be held bound for forgeries committed by its officers.

2: Alteration of Objects Clause of Memorandum

The Companies Act, 2013 has made alteration of the memorandum simpler and more flexible. Under **section 13(1)** of the Act, a company may, by a **special resolution**

after complying with the procedure specified in this section, alter the provisions of its Memorandum.

In the case of alteration to the objects clause, **Section 13(6)** requires the filing of the Special Resolution by the company with the Registrar. **Section 13 (9)** states that the Registrar shall register any alteration to the Memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution by the company. **Section 13 (10)** further stipulates that no alteration in the Memorandum shall take effect unless it has been **registered with the Registrar** as above.

Hence, the Companies Act, 2013 permits any alteration to the objects clause with ease. Vivek Industries Ltd. can make the required changes in the object clause of its Memorandum of Association.

- 3: Under **section 20** of the Companies Act, 2013 a document may be served on a company or an officer thereof by sending it to the company or the officer at the **registered office** of the company by **registered post** or by **speed post** or by **courier** service or by **leaving** it at its registered office or by means of such **electronic** or other mode as may be **prescribed**. However, in case where securities are held with a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic or other mode.

Under **section 20 (2)**, save as provided in the Act or the rule thereunder for filing of documents with the **registrar** in **electronic** mode, a document may be served on Registrar or any **member** by sending it to him by **post** or by **registered** post or by **speed** post or by **courier** or by **delivering** at his office or address, or by such electronic or other mode as may be prescribed. However, a member may request for delivery of any document through a **particular mode**, for which he shall pay such fees as may be determined by the company in its annual general meeting.

- 4: According to **section 13** of the Companies Act, 2013 a company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company and—
- (i) the details in respect of such resolution shall also be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating therein the justification

for such change;

- (ii) the dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with SEBI regulations. Company will have to file copy of special resolution with ROC and he will certify the registration within a period of thirty days. Alteration will be effective only after this certificate by ROC.

Looking at the above provision we can say that company can add the object of mobile app development in its memorandum and divert public money into that business. But for that it will have to comply with above requirements.

- 5: As per **section 22** of the Companies Act, 2013 a company may authorise any person as its attorney to execute deeds on its behalf in any place either in or outside India. But common seal should be affixed on his authority letter or the authority letter should be signed by two directors of the company or it should be signed by one director and secretary. This authority may be either general for any deeds or it may be for any specific deed.

A deed signed by such an attorney on behalf of the company and under his seal shall bind the company as if it were made under its common seal.

In the present case company has not neither given any written authority not affixed common seal of the authority letter. It means that Mr. Parag is not legally entitled to execute deeds on behalf of the company. Therefore, deeds executed by him are not binding on the company. Therefore, company can deny its liability as a partner.

- 6: According to **section 16** of the Companies Act, 2013 if a company is registered by a name which, –

- in the opinion of the Central Government, is identical with the name by which a company had been previously registered, it may direct the company to change its name. Then the company shall by passing an ordinary resolution change its name within 3 months.
- is identical with a registered trade mark and owner of that trade mark apply to the Central Government within three years of incorporation of registration of the company, it may direct the company to change its name. Then the company shall change its name by passing an ordinary resolution within 3 months.

Company shall give notice to ROC along with the order of Central Government within 15 days of change. In case of default, company and defaulting officer are punishable.

In the given case, owner of registered trade- mark is filing objection after 5 years of registration of company with identical name. While it should have filed the same within 3 years. Therefore, the company cannot be compelled to change its name.

As per **section 13**, company can anytime change its name by passing a special resolution and taking approval of Central Government. Therefore, if owner of registered trademark requests the company for change of its name and the company accepts the same then it can change its name voluntarily by following the provisions of **section 13**.

(ICAI Module, May'2022 Mock Test)

- 7: According to **section 20(2)** of the Companies Act, 2013, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed.

Provided that a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.

Thus, if a member wants the notice to be served on him only by registered post at his residential address at Kanpur for which he has deposited sufficient money, the notice must be served accordingly, otherwise service will not be deemed to have been effected.

Accordingly, the questions as asked may be answered as under:

- (i) The contention of Amar shall be tenable, for the reason that the notice was not properly served.
- (ii) In the given circumstances, the company is bound to serve a valid notice to Amar by registered post at his residential address at Kanpur and not outside India.

(ICAI Module, May'2022 Mock Test)

- 8: (a) Under **section 20** of the Companies Act, 2013 a document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by registered post or by speed post or by courier service or by leaving it at its registered office or by means of such electronic or other mode as may be prescribed. However, in case where securities are held with a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic or other mode.

Under **section 20 (2)**, save as provided in the Act or the rule thereunder for filing

of documents with the registrar in electronic mode, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed. However, a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.

(Nov'22 Mock Test)

9: **Alteration in Articles of Association:** Section 14 of the Companies Act, 2013, vests companies with power to alter or add to its articles. The law with respect to alteration of articles is as follows:

- (1) **Alteration by special resolution:** Subject to the provisions of this Act and the conditions contained in its memorandum, if any, a company may, by a special resolution alter its articles.
- (2) **Filing of alteration with the registrar:** Every alteration of the articles and a copy of the order of the Tribunal approving the alteration, shall be filed with the Registrar, together with a printed copy of the altered articles, within a period of fifteen days in such manner as may be prescribed, who shall register the same.
- (3) **Any alteration made shall be valid:** Any alteration of the articles registered as above shall, subject to the provisions of this Act, be valid as if it were originally contained in the articles.
- (4) **Alteration noted in every copy:** Every alteration made in articles of a company shall be noted in every copy of the articles, as the case may be. If a company makes any default in complying with the stated provisions, the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every copy of the articles issued without such alteration. [Section 15].

10: **Alteration of Capital:** Under section 61(1) of the Companies Act, 2013, a limited company having a share capital may, if authorized by its Articles, alter its Memorandum in its general meeting to:

- (i) increase its authorized share capital by such amount as it thinks expedient;
- (ii) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares

However, no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner.

- (iii) convert all or any of its paid-up shares into stock and reconvert that stock into fully paid shares of any denomination
- (iv) sub-divide the whole or any part of its shares into shares of smaller amount than is fixed by the Memorandum
- (v) 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.

Further, under **section 64**, where a company alters its share capital in any of the above mentioned ways, the company shall file a notice in the prescribed form with the Registrar within a period of thirty days of such alteration or increase or redemption, as the case may be, along with an altered memorandum.

11: Doctrine of Indoor Management: According to this doctrine, persons dealing with the company need not enquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and articles of association. Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner. The doctrine helps to protect external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the Registrar of Companies.

Thus,

1. What happens internal to a company is not a matter of public knowledge. An outsider can only presume the intentions of a company, but not know the information he/she is not privy to.
2. If not for the doctrine, the company could escape creditors by denying the authority of officials to act on its behalf.

In the given question, Mr. Tridev being a person external to the company, need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. Even if the shareholders claim that no resolution authorizing the loan was passed, the company is bound to pay the loan to Mr. Tridev.

12: Order of the Tribunal: According to **section 7(7)** of the Companies Act, 2013, where a company has been got incorporated by furnishing false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants—

- (a) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or
- (b) direct that liability of the members shall be unlimited; or
- (c) direct removal of the name of the company from the register of companies; or
- (d) pass an order for the winding up of the company; or
- (e) pass such other orders as it may deem fit.

However before making any order -

- (i) the company shall be given a reasonable opportunity of being heard in the matter; and
- (ii) the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

13: According to **section 20(2)** of the Companies Act, 2013, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed.

Provided that a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.

Thus, if a member wants the notice to be served on him only by registered post at his residential address at Kanpur for which he has deposited sufficient money, the notice must be served accordingly, otherwise service will not be deemed to have been effected.

Accordingly, the questions as asked may be answered as under:

- (i) The contention of Vijay shall be tenable, for the reason that the notice was not properly served.
- (ii) In the given circumstances, the company is bound to serve a valid notice to Vijay by registered post at his residential address at Kanpur and not outside India.

- 14: (i) Procedure for reduction of share capital: In order to carry out proposals by SSP Limited to reduce the nominal value of the equity share, the company has to comply with the procedure given under **section 66** of the Companies Act, 2013 which deals with the Reduction of share capital. Procedure
- (1) Reduction of share capital by special resolution: Subject to confirmation by the Tribunal on an application by the company, a company limited by shares or limited by guarantee and having a share capital may, by a special resolution, reduce the share capital in any manner and in particular, may—
 - (a) extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up; or
 - (b) either with or without extinguishing or reducing liability on any of its shares,— (i) cancel any paid-up share capital which is lost or is unrepresented by available assets; or (ii) pay off any paid-up share capital which is in excess of the wants of the company, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.
 - (2) Issue of Notice from the Tribunal: The Tribunal shall give notice of every application made to it to the Central Government, Registrar and the creditors of the company and shall take into consideration the representations, if any, made to it by them within a period of three months from the date of receipt of the notice.
 - (3) Order of tribunal: The Tribunal may, if it is satisfied that the debt or claim of every creditor of the company has been discharged or determined or has been secured or his consent is obtained, make an order confirming the reduction of share capital on such terms and conditions as it deems fit.
 - (4) Publishing of order of confirmation of tribunal: The order of confirmation of the reduction of share capital by the Tribunal shall be published by the company in such manner as the Tribunal may direct.
 - (5) Delivery of certified copy of order to the registrar: The company shall deliver a certified copy of the order of the Tribunal and of a minute approved by the Tribunal to the Registrar within thirty days of the receipt of the copy of the order, who shall register the same and issue a certificate to that effect.
- (ii) Alteration of Share Capital: SSP Limited proposes to alter its share capital.

The Present authorized share capital ₹ 5 Crore will be altered to ₹ 4 Crore. According to **Section 61** of the Companies Act, 2013, a limited company having a share capital may alter its capital part of the memorandum. A limited company having a share capital may, if so authorized by its articles, alter its memorandum in its general meeting to –

1. 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. The cancellation of shares shall not be deemed to be reduction of share capital.
2. A company shall within 30 days of the shares having been consolidated, converted, sub-divided, redeemed, or cancelled or the stock having been reconverted, shall give a notice to the Registrar in the prescribed form along with an altered memorandum [**Section 64** of the Companies Act, 2013]. The Company has to follow the above procedures to alter its authorized share capital.

15: As per **Section 19** of the Companies Act, 2013, no company shall, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void. However, this shall not apply where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company. In the given case, H Ltd. has acquired 55% paid up share capital of S Ltd. on 10th March 2018. Whereas, S Ltd. has been holding 10% paid up share capital of H Ltd. since 15th March, 2017. The said instance as asked in the question falls under the exception stated above. Therefore –

- (i) Holding of shares by S Ltd. in H Ltd. is valid in view of the proviso (c) to sub-**section (1)** of **section 19** of the Act, which states that the restrictions of provisions of **section 19(1)** will not be applicable where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company.
- (ii) Allotment of bonus shares by H Ltd. to S Ltd. is also valid in view of the above proviso.

16: Entrenchment: Usually an article of association may be altered by passing special resolution but entrenchment makes it more difficult to change it. So entrenchment

means making something more protective. **Section 5** of the Companies Act, 2013 describes the provisions relating to entrenchment. Articles may contain provisions for entrenchment [**Section 5(3)**]: The articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with. Manner of inclusion of the entrenchment provision [**Section 5(4)**]: The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company. Notice to the registrar of the entrenchment provision [**Section 5(5)**]: Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.

III PROSPECTUS AND ALLOTMENT OF SECURITIES

1. Unique Builders Limited decides to pay 2.5 percent of the value of debentures as underwriting commission to the underwriters but the Articles of the company authorize only 2.0 percent underwriting commission on debentures. The company further decides to pay the underwriting commission in the form of flats. Examine the validity of the above arrangements under the provisions of the Companies Act, 2013.
(ICAI Module, May'18 RTP)
2. PQR limited wants to raise funds for its upcoming project. It has issued private placement offer letters to 55 persons in their individual name to issue its equity shares. Out of these four are qualified institutional buyers. Before allotment under this offer letter company issued another private placement offer letter to another 155 persons in their individual name for issue of its debentures. Being a public company can it issue securities in a private placement? Is it in compliance with provisions related to private placement or should these offers be treated as public offers? What if the offer for debentures is given after allotment of equity shares but within the same financial year?
(ICAI Module)
3. A public limited company which went in for Public issue of shares had applied for listing of shares in three recognised Stock Exchanges and out of it only two had given permission for listing. Can the company proceed for allotment of shares?
(ICAI Module)
4. Examine that following offers of ABC Limited are in compliance with provisions of the Companies Act, 2013, related to private placement or should these offers be treated as public:
 - (i) ABC limited wants to raise funds for its upcoming project. It has issued private placement offer letters to 55 persons in their individual name to issue its equity shares. Out of these four are qualified institutional buyers.
 - (ii) If in case (i) before allotment under this offer letter company issued another private placement offer to another 155 persons in their individual name for

issue of its debentures.

(iii) Being a public company can it issue securities in a private placement offers?

(Nov'21 5 Marks, Nov'22 Mock Test)

5. Bheem Ltd. issued 1,00,000 equity shares of ₹ 100 each at par to the public by issuing a prospectus. The prospectus discloses the minimum subscription amount of ₹ 15,00,000 required to be received on application of shares and share application money shall be payable at ₹20 per share. The prospectus further reveals that Bheem Ltd. has applied for listing of shares in 3 recognized stock exchanges of which 1 application has been rejected. The issue was fully subscribed and Bheem Ltd. received an amount of ₹ 20,00,000 on share application. Bheem Ltd., then proceeded for allotment of shares.

Examine the three disclosures in the above case study which are the deciding factors in an allotment of shares and the consequences for violation, if any under the provisions of the Companies Act, 2013.

(MTP May'23)



MULTIPLE CHOICE QUESTIONS (HOMEWORK)

1. Offer of securities or invitation to subscribe securities under private placement shall be made to -----maximum number of person in the aggregate in a financial year.
(a) 50
(b) 100
(c) 150
(d) 200
(ICAI Module)
2. A private company may issue securities through the way of , except-
(a) Public offer
(b) Rights issue
(c) Bonus issue
(d) Private placement
(ICAI Module, Nov'22 Mock Test)
3. Registrar of companies shall refuse to register a prospectus:
(a) If it is not dated
(b) Contains statement of an expert who has not signed it
(c) Contains information which is old
(d) In all the above cases
(ICAI Module)
4. A prospectus issued in the form of advertisement must state:
(a) The objects for which the company has been formed
(b) The liability of members
(c) The amount of share capital of company
(d) All of the above
(ICAI Module)
5. Shelf prospectus remains valid upto-
(a) 6 months
(b) 1 year
(c) 2 years
(d) 5 years
(ICAI Module)
6. An issue house (share broker) has made an advertisement in newspaper for selling a big lot of share allotted to it by the company under a private placement. In which

of the following conditions the advertisement will not be deemed as prospectus:

- (a) advertisement was given within six months from the date of allotment but it has paid the entire consideration to the company
- (b) advertisement was given after six months from the date of allotment & it has paid the entire consideration to the company
- (c) It has not paid entire consideration to the company till the date of allotment
- (d) None of the above

(ICAI Module)

7. In which of the following situations a company will have to issue prospectus or abridged prospectus along with the application form:

- (a) In relation to shares or debentures which are not offered to the public
- (b) In relation to issue of shares or debentures to the existing members or debenture holders
- (c) In relation of issue of shares which are uniform with shares previously issued and quoted on a recognized stock exchange
- (d) in relation to shares or debentures which are to be offered to the public

(ICAI Module)

8. Criminal liability under **section 34** for misstatement in prospectus may be avoided if :

- 1) the consent to become director was withdrawn
- 2) prospectus was issued without his knowledge
- 3) misstatement was immaterial
- 4) had reasonable ground to believe in truthfulness
- 5) it was based on statement of expert

- (a) 3&4
- (b) 1;2;3;4&5
- (c) 1;2&5
- (d) 3;4&5

(ICAI Module)

9. Which of the following is not true?

- (a) in case of shares; the rate of underwriting commission to be paid shall not exceed five percent of the issue price of the share.
- (b) underwriting commission should not be more than the rate specified by the Article of Association
- (c) in case of debentures; the rate of underwriting commission shall not exceed five percent of the issue price of the debentures.
- (d) amount of commission may be paid out of profits of the company

(ICAI Module)

10. A public company sent private placement offer letter to 200 persons of its choice in March 20XX and allotted shares to them in April 20XX. Can it send private placement offer letter to 200 new people in May 20XX?
- (a) Yes
 - (b) No
 - (c) Yes with the permission of ROC
 - (d) Yes with the permission of NCLT (ICAI Module)
11. Which of the following statement is contrary with the provisions of the Companies Act; 2013?
- (a) a private company can make a private placement of its securities
 - (b) company has to pass a special resolution for private placement
 - (c) Minimum offer per person should have Market Value of ₹20;000
 - (d) a public company can make a private placement of its securities (ICAI Module, May'21 RTP)
12. A company can change terms of contracts mentioned in prospectus by way of:
- (a) Ordinary resolution though postal ballot
 - (b) Ordinary resolution in meeting
 - (c) Special resolution in meeting
 - (d) Special resolution through postal ballot (ICAI Module)
13. A shelf prospectus filed with the ROC shall remain valid for a period of:
- (a) one year from the date of registration
 - (b) one year from the date of closing of first issue
 - (c) one year from the date of opening of first issue
 - (d) Ninety days from the date on which a copy was delivered to ROC (ICAI Module)
14. The paid up share capital of ABC Ltd. is 50,00,000 shares of ₹200 each. 20% of its paid up share capital is held by 4 of its promoters, who wants to off load their holding by making an offer of sale to the public by issuing a prospectus. They want to authorise someone to take all actions and complete all formalities related to such offer of sale. From the following who can be authorised by them to do so—
- (e) Any person who has agreed to fulfil all the formalities related to such offer of sale
 - (f) Any one or more director of the company.

(g) Company itself whose shareholding they want to offload.

(h) Any competent officer of the company.

(May'19 Mock Test)

15. Being in need of further capital, Rimsi Cotton-Silk Products Limited opted to offer 50 lacs equity shares of ₹1 each to 50 identified persons on 'private placement' basis and accordingly a letter of offer accompanied by serially numbered application form was sent to them after fulfilment of due formalities including passing of special resolution. One of the applicants, Rajan made a written complaint to the company highlighting the fact that the letter of offer was incomplete as well as illegal, for the same did not contain 'renunciation clause' though he wanted to exercise his 'right of renunciation' in favour of one of his son Uday. By choosing the correct option, advise the company in this matter.

(a) As the 'Right of Renunciation' cannot be denied, the company needs to rectify its mistake by including the same in the letter of offer and the application form.

(b) The company is prohibited from providing 'Right of Renunciation' and therefore, the letter of offer and the application form need not include any such clause.

(c) Instead of absolute prohibition, the company needs to provide 'Right of Renunciation' limited to twenty five percent of offering.

(d) Instead of absolute prohibition, the company needs to provide 'Right of Renunciation' limited to fifty percent of offering.

(Nov'19 Mock Test)

16. Dwapar Equipment Finance Limited, a non-banking finance company (NBFC), is desirous of offering secured, redeemable, non-convertible 9% Debentures to the public in three or more tranches over a certain period of time. Which kind of prospectus it is required to issue so that its purpose is served and there arises no need to take out a fresh prospectus for second and subsequent offer of securities.

(a) Deemed Prospectus.

(b) Shelf Prospectus.

(c) Red Herring Prospectus.

(d) Abridged prospectus.

(Nov'19 Mock Test)

17. Ajo Private Limited made private placement offer to identified people. It was clearly stated that such people have no right of renunciation. Company received share application money within given period of time however could not allot shares within 60 days from receipt. Now it is duty of Ajo Private Limited to repay the share

application money. Company will be liable to pay interest if they fail to do so. Within how many days Company has to repay the share application money to avoid interest payment?

- (a) 15 days
- (b) 30 days
- (c) 60days
- (d) 90 days

(ICAI Sample Question)

18. Extra Limited is a growing Company and requires additional funds for expansion from time to time. They are following the same process for making an offer to public and then issue those shares. This is very time and energy consuming for them. Kindly advise them if there is any way out.

- (a) During first offer they shall file prospectus with a validity on one year, so subsequent offer issued during the period of validity of that prospectus, no further prospectus is required;
- (b) During first offer they shall file prospectus with a validity on two years, so subsequent offer issued during the period of validity of that prospectus, no further prospectus is required;
- (c) During first offer they shall file shelf prospectus with a validity on one year, so subsequent offer issued during the period of validity of that prospectus, no further prospectus is required;
- (d) During first offer they shall file shelf prospectus with a validity on two years, so subsequent offer issued during the period of validity of that prospectus, no further prospectus is required;

(ICAI Sample Question)

19. When a copy of the contract for the payment of underwriting commission is required to be delivered to the Registrar:

- (a) Three days before the delivery of the prospectus for registration
- (b) At the time of delivery of the prospectus for registration
- (c) Three days after the delivery of the prospectus for registration
- (d) Five days after the delivery of the prospectus for registration

(Nov'20 Mock Test, May'21 Mock Test)

20. A Limited made a public issue of Debentures. The articles of the company authorises the payment of underwriting commission at 2 per cent of the issue price. The company has negotiated with the proposed underwriters, Gama Brokers and has

finalised the rate at 2.25 per cent. The amount that the company is eligible to pay as underwriting commission is:

- (a) 5%
- (b) 2%
- (c) 2.5%
- (d) 2.25%

(Nov'21 RTP)

21. Krishna Religious Publishers Limited has received application money of ₹ 20,00,000 (2,00,000 equity shares of ₹ 10 each) on 10th October, 2019 from the applicants who applied for allotment of shares in response to a private placement offer of securities made by the company to them. Select the latest date by which the company must allot the shares against the application money so received.

- (a) 9th November, 2019
- (b) 24th November, 2019
- (c) 9th December, 2019
- (d) 8th January, 2020

(Nov'21 RTP)

22. The time limit within which a copy of the contract for the payment of underwriting commission is required to be delivered to the Registrar is:

- (a) Three days before the delivery of the prospectus for registration
- (b) At the time of delivery of the prospectus for registration
- (c) Three days after the delivery of the prospectus for registration
- (d) Five days after the delivery of the prospectus for registration

(ICAI Module, May'2022 Mock Test)

23. Which of the following statement is contrary to the provisions of the Companies Act, 2013?

- (a) A private company can make a private placement of its securities.
- (b) The company has to pass a special resolution for private placement.
- (c) Minimum offer per person should have Market Value of ₹ 20,000.
- (d) A public company can make a private placement of its securities.

(MTP May'23)



ANSWERS

1: **Section 40 (6)** of the Companies Act 2013, provides that a company may pay commission to any person in connection with the subscription or procurement of subscription to its securities, whether absolute or conditional, subject to a number of conditions which are prescribed under Companies (Prospectus and Allotment of Securities) Rules, 2014. In relation to the case given, the conditions applicable under the above Rules are as under:

- (a) The payment of such commission shall be authorized in the company's articles of association;
- (b) The commission may be paid out of proceeds of the issue or the profit of the company or both;
- (c) The rate of commission paid or agreed to be paid shall not exceed, in case of shares, five percent (5%) of the price at which the shares are issued or a rate authorised by the articles, whichever is less, and in case of debentures, shall not exceed two and a half per cent (2.5 %) of the price at which the debentures are issued, or as specified in the company's articles, whichever is less;

Thus, the Underwriting commission is limited to 5% of issue price in case of shares and 2.5% in case of debentures. The rates of commission given above are maximum rates.

In view of the above, the decision of Unique Builders Ltd. to pay underwriting commission exceeding 2% as prescribed in the Articles is invalid.

The company may pay the underwriting commission in the form of flats as both the Companies Act and the Rules do not impose any restriction on the mode of payment though the source has been restricted to either the proceeds of the issue or profits of the company.

2:

1. According to **section 42** of the companies act, 2013 any private or public company may make private placement through issued of a private placement offer letter.
2. But the offer shall be made to persons not exceeding fifty or such higher number as may be prescribed, in a financial year. For counting number of persons qualified institutional buyers and employees under employee's stock option scheme will not be considered.

Here rules prescribed limit as 200 persons in a financial year. But this limit should be counted separately for each type of security.

3. If a company makes an offer or invitation to more than the prescribed number of persons it shall be deemed to be an offer to the public and shall be governed by the provisions related to prospectus.

4. Also a company cannot make fresh offer under this section if allotments with respect to any offer made earlier have been completed or that offer has been withdrawn or abandoned by the company. This rule is applicable even if the issue is of different kind of security. Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions will apply accordingly. In the given case PQR limited is a public company and looking at above provisions we can say that even a public company can make private placement. Company has given offer to 55 persons out of which 4 are qualified institutional buyers hence the offer is given to effectively 51 persons which is well within the limit of 200 persons. From this angle company is in compliance with private placement rules. But company has given another private placement offer which is non compliance of provisions of **section 42** hence the offers given by company will be treated as public offer and will be governed accordingly. But if the company gives offer for debentures in the same financial year after allotment of equity shares is complete then both the offers can well be treated as private placement offers. Here we should not add 51 and 155 persons for checking the limit of 200 because this limit should be checked

3: Every company making a public offer shall, before making such offer, make an application to one or more recognised stock exchange or exchanges and obtain permission for the securities to be dealt with in such stock exchange or exchanges.

[**Section 40 (1)**]

Where a prospectus states that an application has been made, such prospectus shall also state the name or names of the stock exchange in which the securities shall be dealt with. [**Section 40 (2)**]

From the above it is clear that not only the company has to apply for listing of the securities at a recognized stock exchange but also obtain permission thereof before making the public offer.

Hence, under the Companies Act, 2013 by making the offer of shares before getting the approval from the stock exchanges, it has violated the provisions of **section 40**.

4. According to **section 42** of the Companies Act, 2013 any private or public company may make private placement through issue of a private placement offer letter. However, the offer shall be made to the persons not exceeding fifty or such higher number as may be prescribed, in a financial year. For counting number of persons, Qualified Institutional Buyers (QIBs) and employees of the company being offered securities under a scheme of employees' stock option will not be considered. Further, Rule 14 (2) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 prescribes maximum of 200 persons who can be offered securities under the private placement in a financial year, though this limit should be counted separately for each type of security.
- It is to be noted that if a company makes an offer or invitation to more than the prescribed number of persons, it shall be deemed to be an offer to the public and accordingly, it shall be governed by the provisions relating to prospectus.
- Also, a company is not permitted to make fresh offer under this section if the allotment with respect to any offer made earlier has not been completed or otherwise, that offer has been withdrawn or abandoned by the company. This provision is applicable even if the issue is of different kind of security.
- Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions will apply accordingly.
- (i) In the given case ABC Limited, though is a public company but the private placement provisions allow even a public company to raise funds through this route. The company has given offer to 55 persons out of which 4 are qualified institutional buyers and hence, the offer is given effectively to only 51 persons which is well within the limit of 200 persons. From this point of view, the company complies the private placement provisions.
 - (ii) However, as per the question, the company has given another private placement offer of debentures before completing the allotment in respect of first offer and therefore, the second offer does not comply with the provisions of **section 42**. Hence, the offers given by the company will be treated as public offer. In case the company gives offer for debentures in the same financial year after allotment of equity shares is complete then both the offers can well be treated as private placement offers.
 - (iii) According to **section 42** of the Companies Act, 2013 any private or public company may make private placement through issue of a private placement offer letter. Hence, ABC Limited can issue securities in a private placement offer.

(Nov'21 5 Marks)

5. As per the requirement of the question, disclosures which are the deciding factors in an allotment of shares are laid down in section 39 of the Companies Act, 2013. According to section 39(1), no allotment of any securities of a company offered to the public for subscription shall be made unless-
- the amount stated in the prospectus as the minimum amount has been subscribed, and
 - the sums payable on application for the amount so stated have been paid to and received by the company by cheque or other instrument.

The amount payable on application on every security shall not be less than five per cent of the nominal amount of the security or such other percentage or amount, as may be specified by the Securities and Exchange Board by making regulations in this behalf.

In the question, Bheem Ltd. issued shares to public by issuing of prospectus, disclosing minimum subscription, sum payable on application for the amount; and the amount received on share application is more than 5% of the nominal amount of the security.

Further, it revealed that Bheem Ltd. has applied for listing of shares in 3 recognized stock exchanges of which one application was rejected.

In the given instance, there is compliance to section 23, as nothing is talked about matters required to be included in the prospectus under section 26 (1) and about filing with the registrar; assuming that the said requirements have been complied with, requirement of section 39 as regards obtaining of minimum subscription and the minimum amount receivable on application (not less than 5% of the nominal value of the securities offered) are fulfilled.

The provisions of section 40 of the Companies Act, 2013 states that every company making public offer shall, before making such offer, make an application to one or more recognized stock exchange or exchanges and obtain permission for the securities to be dealt with in such stock exchange or exchanges.

The above provision is very clear that not only the company has to apply for listing of the securities at a recognized stock exchange, but also obtain permission thereof from all the stock exchanges where it has applied, before making the public offer. Since one of the three recognized stock exchanges, where the company has applied for enlisting, has rejected the application and the company has proceeded with making the offer of shares, it has violated the provisions of section 40. Therefore, this shall be deemed to be irregular allotment of shares.

Consequently, Bheem Ltd. shall be required to refund the application money to the applicants in the prescribed manner within the stipulated time frame.



ANSWER TO MCQs

1	D	2	A	3	D	4	D	5	B
6	B	7	D	8	A	9	C	10	A
11	C	12	D	13	C	14	C	15	B
16	B	17	A	18	C	19	B	20	B
21	C	22	B	23	C				



HOMework QUESTIONS & ANSWER

1. State in what way does the Companies Act, 2013 regulate and restrict the following in respect of a company going for public issue of shares:
 - (i) Minimum Subscription, and
 - (ii) Application Money payable on shares being issued?

(ICAI Module, May'19 Mock Test)

2. The Board of Directors of Reckless Investments Ltd. have allotted shares to the investors of the company without issuing a prospectus with the Registrar of Companies, Mumbai. Explain the remedy available to the investors in this regard.

(ICAI Module)

3. An allottee of shares in a Company brought action against a Director in respect of false statements in prospectus. The director contended that the statements were prepared by the promoters and he has relied on them. Is the Director liable under the circumstances? Decide referring to the provisions of the Companies Act, 2013.

(ICAI Module)

4. A Company issued a prospectus. All the statements contained therein were literally true. It also stated that the company had paid dividends for a number of years, but did not disclose the fact that the dividends were not paid out of trading profits, but out of capital profits. An allottee of shares wants to avoid the contract on the ground that the prospectus was false in material particulars.

(ICAI Module, May'18 RTP)

5. An allottee of shares in a Company brought action against a Director in respect of false statements in prospectus. The director contended that the statements were prepared by the promoters and he has relied on them and so director is not liable. Decide referring to the provisions of the Companies Act, 2013.

(ICAI Module, Nov'19 Mock Test)

6. M applies for share on the basis of a prospectus which contains mis- statement. The shares are allotted to him, who afterwards transfers them to N. Can N bring an action for a rescission on the ground of mis-statement under **section 37** of the Companies Act, 2013?

(ICAI Module)

7. After receiving 80% of the minimum subscription as stated in the prospectus, a company allotted 100 equity shares in favour of 'X'. The company deposited the said amount in the bank but withdrew 50% of the amount, before finalisation of the allotment, for the purchase of certain assets. X refuses to accept the allotment of shares on the ground that the allotment is violative of the provisions of the Companies Act, 2013. (ICAI Module)
8. Swati Limited is intending to issue its securities on private placement basis. Explain to the directors of the company, the provisions of the Companies Act, 2013, on the following matters:
(i) Meaning of Private Placement
(ii) 'Time Limit for Allotment of Securities' and 'repayment of application money in case of default in allotment.' (ICAI Module, May'2022 Mock Test)
9. ABC Limited proposes to issue series of debentures frequently within a period of one year to raise the funds without undergoing the complicated exercise of issuing the prospectus every time of issuing a new series of debentures. Examine the feasibility of the proposal of ABC Limited having taken into account the concept of deemed prospectus dealt with under the provisions of the Companies Act, 2013. (ICAI Module, May'2022 Mock Test)
10. RD Ltd. issued a prospectus. All the statements contained therein were literally true. It also stated that company had paid dividends for a number of years but did not disclose the fact that the dividends were not paid out of trading profits but out of capital profits. An allottee of shares claims to avoid the contract on the ground that the prospectus was false in material particulars. Decide that the argument of shareholder, as per the provision of the Companies Act, 2013, is correct or not? ((Nov'21 3 Marks)
11. The Board of Directors of Plum Limited proposes to issue a prospectus inviting offers from the public for subscribing to the equity shares of the company. State the reports which shall be included in the prospectus for the purposes of providing financial information under the provisions of the Companies Act, 2013. (RTP MAY 22)
12. The Board of Directors of a company decide to pay 5% of issue price of shares as underwriting commission to the underwriters. On the other hand the Articles of

Association of the company permit only 3% commission. The Board of Directors further decide to pay the commission out of the proceeds of the share capital. Are the decisions taken by the Board of Directors valid under the Companies Act, 2013?

(ICAI Module, May'19 Mock Test, May'19- 2 Marks)

13. Prakhar Ltd. intends to raise share capital by issuing Equity Shares in different stages over a certain period of time. However, the company does not wish to issue prospectus each and every time of issue of shares. Considering the provisions of the Companies Act, 2013, discuss what formalities Prakhar Ltd. should follow to avoid repeated issuance of prospectus? (Nov'18 RTP)

14. Green Ltd. was dealing in export of rubber to specified foreign countries. The company was willing to purchase rubber trees in A.P. State. The prospectus issued by the company contained some important extracts of the expert report and number of trees in A.P. State. The report was found untrue. Mr. Andrew purchased the shares of Green Ltd. on the basis of the expert's report published in the prospectus. However, he did not suffer any loss due to purchase of such shares. Will Mr. Andrew have any remedy against the company? State also the circumstances where an expert is not liable under the Companies Act, 2013.

(ICAI Module, May'20 RTP, May'20 Mock Test)

15. TDL Ltd., a public company is planning to bring a public issue of equity shares in June, 2018. The company has appointed underwriters for getting its shares subscribed. As a Chartered Accountant of the company, appraise the Board of TDL Ltd. about the provisions of payment of underwriter's commission as per Companies Act, 2013.

(May'18-6 Marks)

16. What is a Shelf-Prospectus? State the important provisions relating to the issuance of Shelf-Prospectus under the provisions of Companies Act, 2013.

(ICAI Module, Nov'18- 6 Marks)

17. Discuss the provisions relating to private placement of shares under the Companies Act, 2013. (Nov'18-5 Marks)

18. Explain various instances which make the allotment of securities as irregular allotment under the Companies Act, 2013. (ICAI Module, May'19- 4 Marks)

19. The Board of Directors of Chandra Ltd. proposes to issue the prospectus inviting offers from the public for subscribing the shares of the Company. State the reports which shall be included in the prospectus for the purposes of providing financial information under the provisions of the Companies Act, 2013.

(ICAI Module, Nov'19- 4 Marks, Nov'20 RTP)

20. CDS Ltd. is planning to make a private placement of securities. The Managing Director arranged to obtain a brief note from some source explaining the salient features of the issue of private placement that the Board of Directors shall keep in mind while approving the proposal on this subject. The brief note includes, inter alia, the information / suggestions on the following points:

- (i) A private placement shall be made only to a select group of identified persons not exceeding 200 in a financial year.

The aforesaid ceiling of identified persons shall not apply to the offer made to the qualified institutional buyers but is applicable to the employees of the Company who will be covered under the Company's Employees Stock Option Scheme.

- (ii) The offer on private placement basis shall be made only once in a financial year for any number of identified persons not exceeding 200.

The Company solicits your remarks on the points referred above as to whether they are valid or not? Reasoned remarks should be given in accordance with the provisions of the Companies Act, 2013.

(Jan'21- 4 Marks)

21. A Ltd. issued 1,00,000 equity shares of ₹ 100 each at par to the public by issuing a prospectus. The prospectus discloses the minimum subscription amount of ₹ 15,00,000 required to be received on application of shares and share application money shall be payable at ₹ 20 per share. The prospectus further reveals that A Ltd. has applied for listing of shares in 3 recognized stock exchanges of which 1 application has been rejected. The issue was fully subscribed and A Ltd. received an amount of ₹ 20,00,000 on share application. A Ltd., then proceeded for allotment of shares.

Examine the three disclosures in the above case study which are the deciding factors in an allotment of shares and the consequences for violation, if any under the provisions of the Companies Act, 2013.

(Jan'21- 6 Marks)

22. Keya Limited decides to issue 1,00,000 securities of the company. The company decides to publish an advertisement of the prospectus. Enumerate to the company about necessary contents of its memorandum to be specified therein.

(May'21 RTP)

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ANSWERS

1: The Companies Act, 2013 by virtue of provisions as contained in **Section 39 (1)** and (2) regulates and restricts the minimum subscription and the application money payable in a public issue of shares as under:

(i) **Minimum subscription** [**Section 39 (1)**]

No Allotment shall be made of any securities of a company offered to the public for subscription; unless; -

- (i) the amount stated in the prospectus as the minimum amount has been subscribed; and
- (ii) the sums payable on application for such amount has been paid to and received by the company-

(ii) **Application money:** **Section 39 (2)** provides that the amount payable on application on each security shall not be less than 5% of the nominal amount of such security or such amount as SEBI may prescribe by making any regulations in this behalf.

Further **section 39 (3)** provides that if the stated minimum amount is not received by the company within 30 days of the date of issue of the prospectus or such time as prescribed by SEBI, the company will be required to refund the application money received within such time and manner as may be prescribed. In case of any default under sub-section, the company and its officer who is in default shall be liable to a penalty, for each default, of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

Section 40 (3) provides that all moneys received on application from the public for subscription to the securities shall be kept in a separate bank account maintained with a scheduled bank.

2: According to **Section 23** of the Companies Act, 2013, a public company can issue securities to the public only by issuing a prospectus. **Section 26 (1)** lays down the matters required to be disclosed and included in a prospectus and requires the registration of the prospectus with the Registrar before its issue.

In the given case, the company has violated with the above provisions of the Act and hence the allotment made is void. The company will have to refund the entire moneys received and will also be punishable under **section 26 (9)** of the Act.

3: Yes, the Director shall be held liable for the false statements in the prospectus under sections 34 and 35 of the Companies Act, 2013. Whereas section 34 imposes a criminal punishment on every person who authorises the issue of such prospectus, section 35 more particularly includes a director of the company in the imposition of liability for such mis statements.

The only situations when a director will not incur any liability for mis statements in a prospectus are as under:

- (a) No criminal liability under section 34 shall apply to a person if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary.
- (b) No civil liability for any mis statement under section 35 shall apply to a person if he proves that:
 - (1) Having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
 - (2) The prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.

Therefore, in the present case the director cannot hide behind the excuse that he had relied on the promoters for making correct statements in the prospectus. He will be liable for mis-statements in the prospectus.

4: The non-disclosure of the fact that dividends were paid out of capital profits is a concealment of material fact as a company is normally required to distribute dividend only from trading or revenue profits and under exceptional circumstances can do so out of capital profits. Hence, a material misrepresentation has been made. Hence, in the given case the allottee can avoid the contract of allotment of shares.

5: The Director shall be held liable for the false statements in the prospectus under sections 34 and 35 of the Companies Act, 2013. Section 34 imposes a criminal punishment on every person who authorises the issue of such prospectus, and section 35 more particularly includes a director of the company in the imposition of liability for such mis statements. Therefore, in the present case the director cannot hide behind the excuse that he had relied on the promoters for making correct statements in the prospectus.

- 6: No, N cannot bring an action for rescission of the contract to buy shares from M on the ground of mis-statement as under **section 37** of the Companies Act, 2013. A suit may be filed or any other action may be taken under **section 34** or **section 35** or **section 36** only by any person, group of persons or any association of persons affected by any misleading statement or the inclusion or omission of any matter in the prospectus.
- 7: The Company has received 80% of the minimum subscription as stated in the prospectus. Hence, the allotment is in contravention of **section 39(1)** of the Companies Act, 2013 which prohibits a company from making any allotment of securities until it has received the amount of minimum subscription stated in the prospectus. Under **section 39 (3)**, it is required to refund the money received (i.e. 80% of the minimum subscription) to the applicants. It has no other option available.
Therefore, in the present case, X is within his rights to refuse to accept the allotment of shares which has been illegally made by the company.
- 8:
- (i) **Meaning of 'Private Placement'**: As per Explanation I to **section 42(3)**, the term "private placement" means any offer or invitation to subscribe or issue of securities to a select group of persons by a company (other than by way of public offer) through private placement offer - cum-application, which satisfies the conditions specified in **section 42**.
- (ii) **'Time Limit for Allotment of Securities' and 'repayment of application money in case of default in allotment'**: A company making an offer or invitation under **section 42** shall allot its securities within sixty days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within fifteen days from the expiry of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per cent per annum from the expiry of the sixtieth day.
- (ICAI Module, May'2022 Mock Test)
- 9: Information Memorandum together with Shelf Prospectus is deemed Prospectus . The expression "shelf prospectus" means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus. [Explanation

to **Section 31]**

Any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage-

- (i) of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and
- (ii) in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus,

No further prospectus is required for issue of securities. [**Sub-section (1)**]

Hence, the proposal of ABC Limited to take into account the concept of deemed prospectus is correct.

(ICAI Module, May'2022 Mock Test)

10. According to **section 34** of the Companies Act, 2013, where a prospectus, issued, circulated or distributed, includes any statement which is untrue or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead, every person who authorises the issue of such prospectus shall be liable under **section 447**.

Further, **Section 35(3)** provides that, where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person referred to in **sub-section (1)** of **section 35**, shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

In the given question, the non-disclosure of the fact that dividends were paid out of capital profits is a concealment of material fact as a company is normally required to distribute dividend only from trading or revenue profits and under exceptional circumstances it can pay dividend out of capital profits. Hence, a material misrepresentation has been made.

Accordingly, in the given case the allottee can avoid the contract of allotment of shares.

(Nov'21 3 Marks)

11. As per **section 26(1)** of the Companies Act, 2013, every prospectus issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the

formation of a public company, shall be dated and signed and shall state such information and set out such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government. Provided that until the Securities and Exchange Board specifies the information and reports on financial information under this sub-section, the regulations made by the Securities and Exchange Board under the Securities and Exchange Board of India Act, 1992, in respect of such financial information or reports on financial information shall apply.

According to clause (c) of **section 26 (1)**, the prospectus shall make a declaration about the compliance of the provisions of the Companies Act, 2013 and a statement to the effect that nothing in the prospectus is contrary to the provisions of this Act, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 and the rules and regulations made thereunder.

Accordingly, the Board of Plum Limited which proposes to issue the prospectus shall provide such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government to comply with the above stated provisions and make a declaration about such compliance.

(RTP MAY 22)

- 12:** Under the Companies (Prospectus and Allotment of Securities) Rules, 2014 the rate of commission paid or agreed to be paid shall not exceed, in case of shares, five percent (5%) of the price at which the shares are issued or a rate authorised by the articles, whichever is less. The same rules allow the commission to be paid out of proceeds of the issue or the profit of the company or both.

Therefore, the decision of the Board of Directors to pay 5% commission to the underwriters is invalid while the decision to pay out of the proceeds of the share issue is valid.

- 13:** Shelf prospectus means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus

(1) According to **Section 31** of the Company Act, 2013 any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage—

(A) of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which

shall commence from the date of opening of the first offer of securities under that prospectus, and

(B) in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.

- (2) The other formalities related to such repeated/subsequent issue of shares- A company filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first or previous offer of securities and the succeeding offer of securities and such other changes as may be prescribed, with the Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus.

Thus, Prakhhar Ltd. can follow the above provisions and can issue a shelf prospectus.

- 14: Under **section 35 (1)** of the Companies Act 2013, where a person has subscribed for securities of a company acting on any statement included in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person including an expert shall, be liable to pay compensation to the person who has sustained such loss or damage.

In the present case, Mr. Andrew purchased the shares of Green Ltd. on the basis of the expert report published in the prospectus. Mr. Andrew can claim compensation for any loss or damage that he might have sustained from the purchase of shares. However, he did not suffer any loss due to purchase of such shares.

Hence, Mr. Andrew will have no remedy against the company.

Circumstances when an expert is not liable: An expert will not be liable for any mis-statements in the prospectus under the following situations:

- (i) Under **section 26 (5)**, that having given his consent, but withdrew it in writing before delivery of the copy of prospectus for filing, or
- (ii) Under **section 35 (2)**, that the prospectus was issued without his knowledge / consent and that on becoming aware of it, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent;
- (iii) An expert will not be liable in respect of any statement not made by him in the capacity of an expert and included in the prospectus as such;
- (iv) that, as regards every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the

statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by **section 26(5)** to the issue of the prospectus and had not withdrawn that consent before filing of a copy of the prospectus with the Registrar or, to the defendant's knowledge, before allotment there under.

- 15:** The provisions of the Companies Act, 2013 regarding the payment of underwriter's commission are as follows:

Payment of commission: A company may pay commission to any person in connection with the subscription to its securities, whether absolute or conditional, subject to such conditions as given in Rule 13 of the Companies (Prospectus and Allotment of Securities) Rules, 2014.

CONDITIONS FOR THE PAYMENT OF COMMISSION

1. the payment of such commission shall be authorized in the company's articles of association;
2. the commission may be paid out of proceeds of the issue or the profit of the company or both;
3. **Rate of commission:** The rate of commission paid or agreed to be paid shall not exceed, in case of shares, five percent of the price at which the shares are issued or a rate authorised by the articles, whichever is less, and in case of debentures, shall not exceed two and a half per cent of the price at which the debentures are issued, or as specified in the company's articles, whichever is less.
4. **Disclosure of particulars:** the prospectus of the company shall disclose the following particulars -
 - a. the name of the underwriters;
 - b. the rate and amount of the commission payable to the underwriter; and
 - c. the number of securities which is to be underwritten or subscribed by the underwriter absolutely or conditionally.
5. **No commission to be paid:** There shall not be paid commission to any underwriter on securities which are not offered to the public for subscription;
6. **Copy of contract of payment of commission to be delivered to registrar:** A copy of the contract for the payment of commission is delivered to the Registrar at the time of delivery of the prospectus for registration.

16: Shelf prospectus – As per the Explanation given in **Section 31** of the Companies Act, 2013, the expression “shelf prospectus” means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus.

Provisions relating to issue of Shelf-prospectus:

- (1) **Filing of shelf prospectus with the registrar:** According to **section 31**, any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage-
 - (i) of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and
 - (ii) in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.
- (2) **Filing of information memorandum with the shelf prospectus:** A company filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer of securities and such other changes as may be prescribed, with the Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus:
- (3) **Intimation of changes:** Provided that where a company or any other person has received applications for the allotment of securities along with advance payments of subscription before the making of any such change, the company or other person shall intimate the changes to such applicants and if they express a desire to withdraw their application, the company or other person shall refund all the monies received as subscription within fifteen days thereof.
- (4) **Memorandum together with the shelf prospectus shall be deemed to be a prospectus:** Where an information memorandum is filed, every time an offer of securities is made under sub-**section (2)**, such memorandum together with the shelf prospectus shall be deemed to be a prospectus.

17: “Private placement” means any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than by way of public offer) through

issue of a private placement offer letter and which satisfies below conditions. Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions of this Act, and the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 shall be required to be complied with. If a company makes an offer or accepts monies in contravention of this section, the company, its promoters and directors shall be liable for a penalty which may extend to the amount involved in the offer or invitation or two crore rupees, whichever is higher, and the company shall also refund all monies to subscribers within a period of thirty days of the order imposing the penalty.

Requirements of offer or invitation for subscription of securities on private placement:

[Section 42]

(1) **Issue of private placement offer letter:** According to **Section 42(1)**, a company may, make private placement through issue of a private placement offer letter.

(2) **Offer/invitation to number of persons:** The offer of securities or invitation to subscribe securities, shall be made to such number of persons not exceeding fifty or such higher number as may be prescribed, in a financial year and on such conditions (including the form and manner of private placement) as may be prescribed in the relevant Rules given in the Companies (Prospectus and Allotment of Securities) Rules, 2014.

Offer/ invitation made to more than the prescribed number of persons : If a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the prescribed number of persons, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be an offer to the public and shall accordingly be governed by the provisions of Part I of Chapter III.

(3) **No issue of fresh offer/ invitation:** No fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier-

- (i) have been completed, or
- (ii) that offer or invitation has been withdrawn, or
- (iii) abandoned by the company. (Not applicable to specified IFSC Public and IFSC Private Companies)

- (4) **Offer / invitation treated as public offer:** Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions of this Act, and the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 shall be required to be complied with.
- (5) **Payment of amount:** All monies payable towards subscription of securities under this section shall be paid through cheque or demand draft or other banking channels but not by cash.
- (6) **Time for allotment of securities:** A company making an offer or invitation under this section shall allot its securities within sixty days from the date of receipt of the application money for such securities. (90 days in case in the case of specified IFSC Public and IFSC Private Companies)
- Default in allotment of securities:** Where the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within fifteen days from the date of completion of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per cent per annum from the expiry of the sixtieth day:
- Separate Bank Account:** Provided that monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than—
- (a) for adjustment against allotment of securities; or
 - (b) for the repayment of monies where the company is unable to allot securities.
- (7) **Offers made to the persons whose name is recorded :** All offers covered under this section shall be made only to such persons whose names are recorded by the company prior to the invitation to subscribe, and that such persons shall receive the offer by name, and that a complete record of such offers shall be kept by the company in such manner as may be prescribed and complete information about such offer shall be filed with the Registrar within a period of thirty days of circulation of relevant private placement offer letter. (Not applicable to specified IFSC Public and IFSC Private Companies)
- (8) **No publication required:** No company offering securities under this section shall release any public advertisements or utilise any media, marketing or distribution channels or agents to inform the public at large about such an offer.

(9) **Filing with the registrar:** Whenever a company makes any allotment of securities under this section, it shall file with the Registrar a return of allotment in such manner as may be prescribed, including the complete list of all security-holders, with their full names, addresses, number of securities allotted and such other relevant information as may be prescribed.

(10) **In contravention of the section:** If a company makes an offer or accepts monies in contravention of this section, its promoters and directors shall be liable for a penalty:

Amount raised through the private placement or two crore rupees, whichever is lower, and the company shall also refund all monies with interest as specified to subscribers within a period of 30 days of the order imposing the penalty.

18: Irregular allotment: The Companies Act, 2013 does not specifically provide for the term “Irregular Allotment” of securities. Hence, we have to examine the requirements of a proper issue of securities and consider the consequences of non- fulfilment of those requirements.

In broad terms an allotment of shares is deemed to be irregular when it has been made by a company in violation of **Sections 23, 26, 39 or 40**. Irregular allotment therefore arises in the following instances:

1. Where a company does not issue a prospectus in a public issue as required by **section 23**; or
2. Where the prospectus issued by the company does not include any of the matters required to be included therein under **section 26 (1)**, or the information given is misleading, faulty and incorrect; or
3. Where the prospectus has not been filed with the Registrar for registration under **section 26 (4)**; or
4. The minimum subscription as specified in the prospectus has not been received in terms of **section 39**; or
5. The minimum amount receivable on application is less than 5% of the nominal value of the securities offered or lower than the amount prescribed by SEBI in this behalf; or
6. In case of a public issue, approval for listing has not been obtained from one or more of the recognized stock exchanges under **section 40** of the Companies Act, 2013.

19: As per **section 26(1)** of the Companies Act, 2013, every prospectus issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company, shall be dated and signed and shall state such information and set out such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government: Provided that until the Securities and Exchange Board specifies the information and reports on financial information under this sub-section, the regulations made by the Securities and Exchange Board under the Securities and Exchange Board of India Act, 1992, in respect of such financial information or reports on financial information shall apply.

Prospectus issued make a declaration about the compliance of the provisions of this Act and a statement to the effect that nothing in the prospectus is contrary to the provisions of this Act, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 and the rules and regulations made there under.

Accordingly, the Board of Directors of Chandra Ltd. who proposes to issue the prospectus shall provide such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government in compliance with the above stated provision and make a declaration about the compliance of the above stated provisions.

20. As per the provisions of sub-**section (2)** of **section 42** of the Companies Act, 2013, private placement shall be made only to a select group of persons who have been identified by the Board (herein referred to as “identified persons”), whose number shall not exceed 50 or such higher number as may be prescribed, in a financial year subject to such conditions as may be prescribed.

It is also provided that any offer or invitation made to qualified institutional buyers, or to employees of the company under a scheme of employees’ stock option as per provisions of **section 62(1)(b)** shall not be considered while calculating the limit of two hundred persons.

According to Rule 14 (2) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, an offer or invitation to subscribe securities under private placement shall not be made to persons more than two hundred in the aggregate in a financial year.

As per Explanation given in this Rule, it is clarified that the restrictions aforesaid

would be reckoned individually for each kind of security that is equity share, preference share or debenture.

Referring to the above mentioned provisions of sub-section (2) of section 42 of the Companies Act, 2013 and Rule 14 the Companies (Prospectus and Allotment of Securities) Rules, 2014, we can conclude as follows:

(i) The company is correct in proposing that private placement shall be made only to a select group of identified persons not exceeding 200 in a financial year. This part of the proposal is correct.

The company is also correct in proposing that the aforesaid ceiling of identified persons shall not apply to offer made to the qualified institutional buyers, but the company is not correct in saying that the said ceiling is applicable to employees covered under the Company's Employee Stock Option Scheme. Hence, the second part of the proposal is only partially correct.

(ii) The Companies (Prospectus and Allotment of Securities) Rules, 2014 provides that an offer or invitation to subscribe securities under private placement shall not be made to persons more than 200 in aggregate in a financial year.

Keeping the ceiling of 200 persons in aggregate during a financial year, offer of private placement can be made more than once in a financial year. Therefore, the second statement is not fully correct.

21. As per the requirement of the question, disclosures which are the deciding factors in an

allotment of shares are laid down in section 39 of the Companies Act, 2013.

According to Section 39(1), no allotment of any securities of a company offered to the public for subscription shall be made unless-

- the amount stated in the prospectus as the minimum amount has been subscribed, and
- the sums payable on application for the amount so stated have been paid to, and received by the company by cheque or other instrument.
- The amount payable on application on every security shall not be less than five per cent of the nominal amount of the security or such other percentage or amount, as may be specified by the Securities and Exchange Board by making regulations in this behalf.

In the question, A Ltd. issued shares to public by issuing of prospectus, disclosing minimum subscription, sum payable on application for the amount; and the amount received on share application is more than 5% of the nominal amount

of the security.

Further, it revealed that A Ltd. has applied for listing of shares in 3 recognized stock exchanges of which one application was rejected.

In the given instance, there is compliance to **section 23**, as nothing is talked about matters required to be included in the prospectus under **section 26 (1)** and about filing with the registrar; assuming that the said requirements have been complied with, requirement of **section 39** as regards obtaining of minimum subscription and the minimum amount receivable on application (not less than 5% of the nominal value of the securities offered) are fulfilled.

The provisions of **section 40** of the Companies Act, 2013 states that every company making public offer shall, before making such offer, make an application to one or more recognized stock exchange or exchanges and obtain permission for the securities to be dealt with in such stock exchange or exchanges.

The above provision is very clear that not only the company has to apply for listing of the securities at a recognized stock exchange, but also obtain permission thereof from all the stock exchanges where it has applied, before making the public offer. Since one of the three recognized stock exchanges, where the company has applied for enlisting, has rejected the application and the company has proceeded with making the offer of shares, it has violated the provisions of **section 40**. Therefore, this shall be deemed to be irregular allotment of shares.

Consequently, A Ltd. shall be required to refund the application money to the applicants in the prescribed manner within the stipulated time frame.

22. According to **Section 30**, where an advertisement of any prospectus of a company is published in any manner, it shall be necessary to specify therein the contents of its memorandum as regards the following:
- (i) the objects,
 - (ii) the liability of members and the amount of share capital of the company,
 - (iii) the names of the signatories to the memorandum,
 - (iv) the number of shares subscribed for by the signatories, and
 - (v) the capital structure of the company.



SHARE CAPITAL AND DEBENTURES



QUESTIONS

1. Mr. 'Y', the transferee, acquired 250 equity shares of BRS Limited from Mr. 'X', the transferor. But the signature of Mr. 'X', the transferor, on the transfer deed was forged. Mr. 'Y' after getting the shares registered by the company in his name, sold 150 equity shares to Mr. 'Z' on the basis of the share certificate issued by BRS Limited. Mr. 'X' and 'Z' were not aware of the forgery. State the rights of Mr. 'X', 'Y' and 'Z' against the company with reference to the aforesaid shares.

(ICAI Module, May'20 Mock Test, Nov'21 RTP)

2. OLAF Limited, a subsidiary of PQR Limited, decides to give a loan of ₹4,00,000 to the Human Resource Manager, who is not a Key Managerial Personnel of OLAF Limited, drawing salary of ₹30,000 per month, to buy 500 partly paid-up Equity Shares of ₹1000 each in OLAF Limited. Examine the validity of company's decision under the provisions of the Companies Act, 2013.

(ICAI Module, May'20 RTP, Nov'20 Mock Test, Jan'21- 2 Marks, May'21 Mock Test)

3. "The offer of buy-back of its own shares by a company shall not be made within a period of six months from the date of the closure of the preceding offer of buy-back, if any and cooling period to make further issue of same kind of shares including allotment of further shares shall be a period of one year from the completion of buy back subject to certain exceptions." Examine the validity of this statement by explaining the provisions of the Companies Act, 2013 in this regard.

(ICAI Module, May'2022 Mock Test)

4. What are provisions of the Companies Act, 2013 relating to the appointment of 'Debenture Trustee' by a company? Whether the following can be appointed as 'Debenture Trustee'?

- (i) A shareholder of the company who has shares of ₹ 10,000.
- (ii) A creditor whom the company owes ₹ 999 only.

- (iii) A person who has given a guarantee for repayment of amount of debentures issued by the company.

(Nov'21 4 Marks, Nov'22 RTP)

5. It is observed that Golden Apple Transport Limited issued share certificates in duplicate with intend to defraud. The total shares in regard to which such certificates are issued are nearly 12,00,000. Face value of each share is ₹ 10.

The maximum fine that can be imposed on company shall be ₹ 12,00,00,000.

(MTP May'23)



MULTIPLE CHOICE QUESTION (HOMEWORK)

1. The subscribed capital of a company is :
 - (a) never more than the issued capital
 - (b) never less than the issued capital
 - (c) always equal to the issued capital
 - (d) prescribed percentage of the issued capital (ICAI Module)
2. A company may convert all or any of its fully paid up shares into stock :
 - (a) by passing a special resolution
 - (b) by passing a ordinary resolution
 - (c) with the approval of the Tribunal
 - (d) All of the above (ICAI Module)
3. Part of the capital for which application have been received from the public and shares allotted to them :
 - (a) Nominal capital
 - (b) Issued capital
 - (c) Subscribed capital
 - (d) Called up capital (ICAI Module, Nov'19 Mock Test)
4. Shares which are issued by a company to its directors or employees at a discount or for a consideration :
 - (a) Equity Shares
 - (b) Preference Shares
 - (c) Sweat Equity Shares
 - (d) Redeemable preference shares (ICAI Module, Nov'21 RTP)
5. A company issued 10% dividend shares with right to participate in surplus profit every year. Though these shares does not have preference of repayment of capital but they have preference of payment of arrear of dividend at the time of winding up. These shares are:
 - (a) Equity shares
 - (b) Preference Shares
 - (c) DVR
 - (d) None of the above (ICAI Module)

6. A general meeting of the company is to held on 30th April; 2020. The company has not paid dividend for the financial year ending 2019; also it has not yet paid dividend for the year ending; 2020. Articles does not specifies any last date for payment of dividend. In this case preference shareholders:
- (a) will not have the right to vote because the dividend for only last one year has not been paid
 - (b) will have the right to vote because dividend for last two years have not been paid
 - (c) will not have the right to vote because only equity shareholders can vote in general meetings
 - (d) will have right to vote because preference shareholder have the right to vote in general meetings (ICAI Module)
7. If change of right of one class also affect right of other class then:
- (a) A resolution should be passed in general meeting in this case
 - (b) company need not to do anything else
 - (c) Consent of three fourth majority of that other class should also be obtained
 - (d) a resolution in combined meeting of both class should be passed (ICAI Module)
8. Identify the false statement with respect to issue of sweat equity shares by a company:
- (a) company should pass a special resolution
 - (b) There is not limit as to maximum rate of discount
 - (c) company should seek approval of Central Government
 - (d) sweat equity shares means the equity shares issued by the company to the directors or employees at a discount or for consideration other than cash (ICAI Module)
9. Rajesh infrastructure limited wants to issue preference shares for a period of more than 20 years for its infrastructure project. On the basis of which statement company can do so?
- (a) yes; company can issue irredeemable preference shares by passing special resolution
 - (b) yes; company can issue preference shares for a period of more than 20 years with the prior approval of Central Government
 - (c) yes; company can issue irredeemable preference shares for infrastructure project

- (d) yes; company can issue preference shares for infrastructure project for a period upto 30 years. (ICAI Module)

10. If a company have authorised share capital of ₹6,00,000; paid up share capital of ₹5,00,000; and a Loan from government of ₹2,00,000. Government ordered the company to convert its loan into shares. In this case; such order has the effect of increasing -

- (a) the subscribed share capital of the company
- (b) the paid up share capital of the company
- (c) the authorised share capital of the company
- (d) all of the above

(ICAI Module)

11. A company bought back 10% of its equity shares in March 2020; it wants to buy back further 10% equity shares in April; 2020.

- (a) it can; subject to fulfilment of other conditions; because maximum buyback in a financial year can be 25%
- (b) It can't; because there must be time gap of 12 months between two buybacks
- (c) It can; but it will have to pass special resolution in place of board resolution
- (d) It can't; because other conditions might not have fulfilled

(ICAI Module)

12. For debenture redemption reserve which of the following statements is least likely to be true:

- (a) NBFCs should make DRR equal to 25% for any allotment of debentures
- (b) A company should make DRR equal to 25% for any allotment of debentures
- (c) DRR should be created out of profits freely available for distribution of dividend only
- (d) All of the above are true

(ICAI Module)

13. A Company limited by shares can issue equity shares with differential voting rights. Which of the following is not a necessary condition to be fulfilled before issue of such shares:

- (a) The articles of association of the company shall authorize issue of shares with differential rights;
- (b) The issue of shares shall be authorized by an ordinary resolution passed at a general meeting of the shareholders;
- (c) The issue of shares shall be authorized by special resolution passed at a

general meeting of the shareholders;

- (d) The company shall have consistent track record of distributable profits for the last three years; (May'19 RTP)

14. Corrupt Limited has received a request from Mr. Suresh for transfer of 100 partly paid equity shares, to Mr. Ramesh. However, Mr. Ramesh expired in the meantime, but no intimation of the same has been received by the company. In the given circumstances, advise as per the provisions of the Companies Act, 2013:

- (a) Corrupt Limited will not register the transfer the shares in the name of Mr. Ramesh, without verification from Mr. Suresh
(b) Corrupt Limited can register the shares in the name of Mr. Ramesh as it is not aware of the untoward incident.
(c) Corrupt Limited will not register the transfer the shares in the name of Mr. Ramesh, without verification from Mr. Ramesh
(d) Corrupt Limited will give the shares back to Mr. Suresh (May'19 Mock Test)

15. The Authorised share capital clause of LMN & Co. ltd. consisted of Preference share capital and Equity share capital both. With regard to equity share capital, the article of association of the company has given authorisation to issue differential equity shares. Apart from authorisation by the Articles, from the following strike out the condition, which is not mandatory to comply with—

- (a) Such issue of shares must be authorised by an ordinary resolution passed at a general meeting of the shareholders or by postal ballot, as the case may be
(b) The company must have consistent track record of distributable profit for the last five years.
(c) The company has no subsisting default in the payment of the declared dividend to its shareholders.
(d) The company has not defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares (May'19 Mock Test)

16. Delight Sports Garments Limited is contemplating to raise funds through issue of prospectus in which, according to the directors, a sum of ₹50 crores should be stated as the minimum amount that needs to be subscribed by the prospective subscribers. The funds shall be raised in four instalments consisting of application, allotment, first call and second & final call. Advise the company by which instalment it should

receive the minimum subscription stated in the prospectus.

- (a) Along with amount subscribed as application money.
- (b) Along with amount subscribed as final call money.
- (c) Along with amount subscribed as first call money.
- (d) Along with amount subscribed as second and final call money. (Nov'19 RTP)

17. ABC Ltd. wants to issue redeemable preference shares for a period of 35 years. Advise whether it can do so.

- (a) Yes, ABC Ltd. can issue redeemable preference shares
- (b) Yes, ABC Ltd. can issue redeemable preference shares but for only 30 years
- (c) Instead of issuing of shares for 35 years, ABC Ltd. should issue irredeemable preference shares.
- (d) Yes, ABC Ltd. can issue redeemable preference shares for a period not extending 20 years. (ICAI Sample Question)

18. Mr. X is a shareholder of Mark Pvt Ltd. He transferred his shares to his daughter Ms. D, in the month of February. Registration of such instrument of transfer is still pending by the Company. In this scenario, Companies Act, 2013 state certain provisions which have to be kept in mind by the Company. Which provision mentioned below in this regard is correct?

- (a) Company has to transfer the dividend in relation to such shares to the Unpaid Dividend Account;
- (b) Company has to transfer the dividend in relation to such shares in the name of transferee;
- (c) Company has to issue fully paid-up bonus shares in the name of transformer;
- (d) Company has to issue fully paid-up bonus shares in the name of transferee

(ICAI Sample Question)

19. A Company limited by shares can issue equity shares with differential voting rights. Which of the following is not a necessary condition to be fulfilled before issue of such shares:

- (a) The articles of association of the company shall authorize issue of shares with differential rights;
- (b) The issue of shares shall be authorized by an ordinary resolution passed at a general meeting of the shareholders;
- (c) The issue of shares shall be authorized by special resolution passed at a general meeting of the shareholders;

- (d) The company shall have consistent track record of distributable profits for the last three years (ICAI Sample Question)

20. When an unlisted public company issues shares at a premium, amount of the premium received on those shares is transferred to a “securities premium account”. For which purpose amount lying in securities premium account shall be used?

- (a) In writing off preliminary expenses of the company;
(b) In writing off pre-incorporation expenses of the company;
(c) For purchase of immovable assets;
(d) For paying managerial remuneration (ICAI Sample Question)

21. A Private Company can issue preference shares which are liable to be redeemed within particular period, only if articles authorizes such issue. Within how much such preference shares have to be redeemed?

- (a) Within a period not exceeding 10 years;
(b) Within a period not exceeding 15 years;
(c) Within a period not exceeding 20 years;
(d) Within a period not exceeding 25 years; (ICAI Sample Question)

22. Prithvi Cements Limited is desirous of issuing debentures carrying voting rights. Which of the following options is best suited in such a situation:

- (a) Prithvi Cements Limited can issue debentures carrying voting rights if an ordinary resolution is passed permitting such issue.
(b) Prithvi Cements Limited can issue debentures carrying voting rights if a special resolution is passed permitting such issue.
(c) Prithvi Cements Limited can issue debentures carrying voting rights if it mortgages land and buildings worth two times the amount of such debentures.
(d) Prithvi Cements Limited cannot issue debentures carrying voting rights.

(Nov'20 Mock Test, May'21 Mock Testx)

23. Shares issued by a company to its directors or employees at a discount or for a consideration other than cash for their providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called are known as:

- (a) Equity Shares (b) Preference Shares
(c) Sweat Equity Shares (d) Redeemable preference shares

(ICAI Module, May'2022 Mock Test)

24. Goals Limited, a listed company has authorised share capital of ₹ 25,00,000 (issued, subscribed and paid up capital of ₹ 20,00,000). The company has planned to buy back shares worth ₹ 10,00,000. What is the maximum amount of equity shares that the company is allowed to buy back based on the total amount of equity shares?
- (a) ₹ 2,00,000 (b) ₹ 5,00,000
- (c) ₹ 6,25,000 (d) ₹ 8,00,000

(ICAI Module, May'2022 Mock Test)

25. Raman, the original allottee of 2000 equity shares in ABC Limited has transferred the same to Ruchi. The instrument of transfer dated 21st August, 2020, duly stamped and signed by Raman was handed over to Ruchi. Advise Ruchi regarding the latest date by which the instrument of transfer along with share certificates must be delivered to the company, to register the transfer in its register of members.
- | | |
|-------------------------|--------------------------|
| (a) 21st August, 2020. | (b) 20th September, 2020 |
| (c) 20th October, 2020. | (d) 19th November, 2020 |

(RTP MAY 22

26. Where a share capital of the company is divided into different classes of shares, the rights attached to the shares of any class may be varied with the consent in writing of the holders of not less than ----- of the issued shares of that class or by means of a special resolution passed at a separate meeting of the holders of the issued shares of that class:
- (a) One-fourth
 - (b) 50%
 - (c) Three-fourths
 - (d) 75%
- (Nov'22 RTP)

(Nov'22 RTP)

27. DBS Chemicals Limited issue ordinary share of different classes. DBS planned to vary rights of one the class wherein there were only 105 holders. 100 out of 105 holders own 0.5% shares of that class, whereas each of remaining 5 holders hold 10% shares of that class. Presuming 100 holder who own 0.5% shares already signed/authorised the consent letter sanctioning the variation, how many holders out of such 5 need to authorise the said letter to approve the variation.

Options;

a.	0	b.	1
c.	3	d.	5

(MTP May'23)

28. Sarvodaya Urban Nidhi Limited has ₹ 14 Crore and ₹ 6 Crore as paid-up equity and preference share capital respectively. Balance in retain earnings account is ₹ 2.4 Crore. Equity share capital having face value of ₹ 10 each, while preference share has face value of 100 each. Mr. Surya and Mr. Chandan own 11,20,000 and 5,60,000 shares respectively. In context of resolution placed before the company which directly affect the rights attached to his preference shares, the voting right of Mr. Surya and Mr. Chandan in percentage term shall be:
- (a) 8% and 4% respectively
 - (b) 5.6% and 2.8% respectively
 - (c) 5% and 2.8% respectively
 - (d) 5% and 2.5% respectively
- (MTP May'23)
29. In a litigation regarding title of shares, a share certificate issued in physical form by Modern Furniture Limited, an unlisted private company that doesn't have a common seal submitted as evidence of the title. The same shall be clear and convincing evidence of title, if signed by;
- i. two directors
 - ii. two directors, out of which one shall be managing director
 - iii. two directors and the Company Secretary, wherever the company has appointed a Company Secretary
 - iv. a director and the Company Secretary, wherever the company has appointed a Company Secretary
- (a) By i or iii only
 - (b) By i or iv only
 - (c) By ii or iii only
 - (d) By ii or iv only
- (MTP May'23)
30. Mr. Bahu has received a notice from Mahishmati Private Limited on 2nd March, 2023 intimating that Mr. Bali has submitted a transfer deed duly signed by him for transfer of 1000 partly paid shares (₹ 8 paid-up out of Face Value of ₹ 10 per share) in his (Mr. Bahu) name. Mr. Bahu as transferee must raise his objection to the proposed transfer of partly paid shares latest by
- (a) 9th March, 2023
 - (b) 16th March, 2023
 - (c) 17th March, 2023
 - (d) 31st March, 2023
- (MTP May'23)
31. Section 67 of the Companies Act, 2013 impose a restriction on public company from giving any financial assistance whether directly or indirectly and whether by means

of a loan, guarantee, the provision of security or otherwise for the purpose of, or in connection with, a purchase or subscription made or to be made, by any person of or for any shares in the company or in its holding company. Star Engineering Limited which is not covered by any of exemptions specified under said section, contravene the restrictive provisions stated above. Every officer of the company who is in default shall be liable for;

- (a) Fine which shall not be less than one lakh rupees but may extend to twenty-five lakh rupees
- (b) Fine which shall not be less than one lakh rupees but may extend to twenty-five lakh rupees or Imprisonment for a term which may extend to three years or both
- (c) Fine which may extend to twenty-five lakh rupees or Imprisonment for a term which may extend to three years or both
- (d) Fine which shall not be less than one lakh rupees but may extend to twenty-five lakh rupees and Imprisonment for a term which may extend to three years

(MTP May'23)

32. Modern Furniture an unlisted company receive a request for issue of duplicate share certificate. Complete documents in this regards submitted with the company on 30th December 2022. Modern furniture shall issue the duplicate share certificates by:

- (a) 29th January 2023
- (b) 13th February 2023
- (c) 28th February 2023
- (d) 29th March 2023

(MTP May'23)



ANSWERS

- 1: According to **Section 46(1)** of the Companies Act, 2013, a share certificate once issued under the common seal, if any, of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary, specifying the shares held by any person, shall be **prima facie evidence** of the title of the person to such shares. Therefore, in the normal course the person named in the share certificate is for all practical purposes the legal owner of the shares therein and the company cannot deny his title to the shares. However, a **forged transfer is a nullity**. It does not give the transferee (Y) any title to the shares. Similarly, any transfer made by Y (to Z) will also not give a good title to the shares as the title of the buyer is only as good as that of the seller. Therefore, if the company acts on a forged transfer and removes the name of the real owner (X) from the Register of Members, then the **company is bound to restore** the name of X as the holder of the shares and to pay him any dividends which he ought to have received. In the above case, 'therefore, X has the right against the company to get the shares recorded in his name. However, **neither Y nor Z have any rights against the company** even though they are bona fide purchasers. But as Z acted on the faith of share certificate issued by company, he can demand compensation. However, since Y seems to be the perpetrator of the forgery, he will be liable both criminally and for compensation to X, Z and the company.
- 2: **Restrictions on purchase by company or giving of loans by it for purchase of its share:** As per **section 67 (3)** of the Companies Act, 2013 a company is allowed to give a loan to its employees subject to the following limitations:
- (a) The employee must **not** be a **Key Managerial Personnel**;
 - (b) The amount of such loan shall not exceed an amount equal to **six months' salary** of the employee.
 - (c) The shares to be subscribed must be **fully paid** shares
- In the given instance, Human Resource Manager is not a KMP of the OLAF Ltd. He is drawing salary of ₹30,000 per month and loan taken to buy 500 partly paid up equity shares of ₹1000 each in OLAF Ltd. Keeping the above provisions of law in mind, the company's (OLAF Ltd.) decision is invalid due to two reasons:
- i. The amount of loan being **more than 6 months' salary** of the HR Manager,

which should have restricted the loan to ₹1.8 Lakhs.

- ii. The shares subscribed are **partly paid** shares whereas the benefit is available only for subscribing fully paid shares.

- 3: According to proviso to **section 68(2)** of the Companies Act, 2013, no offer of buy-back, shall be made within a period of one year from the date of the closure of the preceding offer of buy-back, if any.

Section 68 (8) casts an obligation that where a company completes a buy-back of its shares or other specified securities under this section, it shall not make further issue of same kind of shares including allotment of further shares under **section 62 (1) (a)** or other specified securities within a period of six months except by way of bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares.

Keeping in view of the above provisions, the statement “the offer of buy-back of its own shares by a company shall not be made within a period of six months from the date of the closure of the preceding offer of buy back, if any and cooling period to make further issue of same kind of shares including allotment of further shares shall be a period of one year from the completion of buy back subject to certain exceptions” is not valid. (ICAI Module, May'2022 Mock Test)

4. Appointment of Debenture Trustee: Under **section 71 (5)** of the Companies Act, 2013, no company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees and the conditions governing the appointment of such trustees shall be such as may be prescribed.

Rule 18 (2) of the Companies (Share Capital and Debentures) Rules, 2014, framed under the Companies Act for the issue of secured debentures provide that 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.

Further according to the provided rules inter-alia, no person shall be appointed as a debenture trustee, if he-

- (1) beneficially holds shares in the company;

- (2) is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;
- (3) has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;

Thus, based on the above provisions answers to the given questions are as follows:

- (i) A shareholder who has holds shares of ₹ 10,000, cannot be appointed as a debenture trustee.
- (ii) A creditor whom company owes ₹ 999 cannot be appointed as a debenture trustee. The amount owed is immaterial.
- (iii) A person who has given guarantee for repayment of principal and interest thereon in respect of debentures also cannot be appointed as a debenture trustee.

(Nov'21 4 Marks)



ANSWER TO MCQs

1	A	2	B	3	C	4	C	5	A
6	B	7	C	8	C	9	D	10	D
11	B	12	A	13	C	14	B	15	B
16	A	17	D	18	A	19	C	20	A
21	C	22	D	23	C	24	B	25	C
26	C	27	C	28	C	29	B	30	C
31	D	32	D						

Calculation For MCQ 24:

$$20,00,000 \times 25\%$$

$$= 500,000.$$



HOMEWORK QUESTIONS AND ANSWER

1. VRS Company Ltd. is holding 45% of total equity shares in SV Company Ltd. The Board of Directors of SV Company Ltd. (incorporated on January 1, 2017) decided to raise the share capital by issuing further Equity shares. The Board of Directors resolved not to offer any shares to VRS Company Ltd, on the ground that it was already holding a high percentage of the total number of shares already issued, in SV Company Ltd. The Articles of Association of SV Company Ltd. provides that the new shares be offered to the existing shareholders of the company. On March 1, 2017 new shares were offered to all the shareholders except VRS Company Ltd. Referring to the provisions of the Companies Act, 2013 examine the validity of the decision of the Board of Directors of SV Company Limited of not offering any further shares to VRS Company Limited. (ICAI Module)
2. The Directors of Mars India Ltd. desire to alter capital clause of Memorandum of Association of their company. Advise them, under the provisions of the Companies Act, 2013 about the ways in which the said clause may be altered. (ICAI Module)
3. Ramesh, who is a resident of New Delhi, sent a transfer deed, for registration of transfer of shares to the company at the address of its Registered Office in Mumbai. He did not receive the shares certificates even after the expiry of four months from the date of dispatch of transfer deed. He lodged a criminal complaint in the Court at New Delhi. Decide, under the provisions of the Companies Act, 2013, whether the Court at New Delhi is competent to take action in the said matter? (ICAI Module)
4. Data Limited (listed on Stock Exchange) was incorporated on 1st October, 2018 with a paid- up share capital of ₹200 crores. Within this small time of 4 months it has earned huge profits and has topped the charts for its high employee friendly environment. The company wants to issue sweat equity to its employees. A friend of the CEO of the company has told him that they cannot issue sweat equity shares as 2 years have not elapsed since the time company has commenced its business. The CEO of the company has approached you to advise them about the essential conditions to fulfill before the issue of sweat equity shares especially since their company is just a few months old.

(ICAI Module, May'19 RTP, May'19 Mock Test, May'20 Mock Test)

5. Walnut Limited has an authorized share capital of 1,00,000 equity shares of ₹ 100 per share and an amount of ₹3 crores in its Share Premium Account as on 31-3-2018. The Board of Directors seeks your advice about the application of share premium account for its business purposes. Please give your advice.

(ICAI Module, May'19 RTP, Jan'21- 5 Marks)

6. Mars India Ltd. owed to Sunil ₹1,000. On becoming this debt payable, the company offered Sunil 10 shares of ₹100 each in full settlement of the debt. The said shares were fully paid and were allotted to Sunil. Examine the validity of this allotment in the light of the provisions of the Companies Act, 2013

(ICAI Module)

7. What are the provisions of the Companies Act, 2013 relating to the appointment of 'Debenture Trustee' by a company? Whether the following can be appointed as 'Debenture Trustee':

- (i) A shareholder who has no beneficial interest.
- (ii) A creditor whom the company owes Rs.499 only.
- (iii) A person who has given a guarantee for repayment of amount of debentures issued by the company?

(ICAI Module)

8. Mr Nilesh has transferred 1000 shares of Perfect Ltd. to Ms. Mukta. The company has refused to register transfer of shares and does not even send a notice of refusal to Mr. Nilesh or Ms. Mukta respectively within the prescribed period. Discuss as per the provisions of the Companies Act, 2013, whether aggrieved party has any right(s) against the company for such refusal?

(ICAI Module, May'18 RTP, May'19 Mock Test, Nov'19 Mock Test)

9. Following is the extract of the Balance sheet Beltex Ltd. as on 31st March, 2020:

Particulars		Amount (₹)
1) Shareholder's Fund		
(a) Share Capital:		
Authorized Capital:		
10,000, 12% Preference Shares of ₹ 10 each		
1,00,000 equity shares of ₹ 10 each	1,00,000	
Issued & Subscribed Capital:	10,00,000	11,00,000
8000, 12% Preference Shares of ₹ 10 each		
fully paid up		
90,000 equity shares of ₹ 10 each, ₹ 8 paid up		
(b) Reserve and Surplus	1,20,000	
General Reserve	75,000	
Capital Reserve	25,000	
Securities Premium	2,00,000	
Surplus in statement of P & L		4,20,000
(2) Non-Current Liabilities:		
(a) Long-term borrowings:		
Secured Loan: 12% partly convertible		5,00,000
Debenture @ ₹ 100 each		

On 1st April, 2020 the company has made final call at ₹ 2 each on 90,000 Equity Shares. The call money was received by 25th April, 2020. Thereafter, the company decided to capitalize its reserves by way of bonus @ 1 share for every 4 shares to existing shareholders.

Answer the following questions according to the Companies Act, 2013, in above case:

- Which of the above-mentioned sources can be used by company to issue bonus shares?
- Calculate the amount to be capitalized from free reserves to issue bonus shares?
- If the company did not ask for the final call on April 1st, 2020. Can it still issue bonus shares to its members?

(Nov'21 3 Marks, Nov'22 Mock Test)

10. Shree Ltd. is engaged in the manufacture of consumer goods and has got a good brand value. Over the years, it has built a good reputation and its Balance Sheet as at March 31, 2017 shows the following position:
- Authorized Share Capital (25,00,000 equity shares of face value of ₹10/- each) : ₹2,50,00,000
- Issued, subscribed and paid-up capital (10,00,000 equity shares of face value of ₹10/- each, fully paid-up) ₹1,00,00,000
- Free Reserves ₹3,00,00,000
- The Board of Directors are proposing to declare a bonus issue of 1 share for every 2 shares held by the existing shareholders. The Board wants to know the conditions and the manner of issuing bonus shares under the provisions of the Companies Act, 2013. Discuss. (ICAI Module, Nov'20 RTP, May'21 RTP)
11. Kavish Ltd., desirous of buying back of all its equity shares from the existing shareholders of the company, seeks your advice. Examining the provisions of the Companies Act, 2013 discuss whether the above buy back of equity shares by the company is possible. Also, state the sources out of which buy back of shares can be financed? (May'18 RTP)
12. Earth Ltd., a Public Company offer the new shares (further issue of shares) to persons other than the existing shareholders of the Company. Explain the conditions when shares can be issued to persons other than existing shareholders. Discuss whether these shares can be offered to the Preference Shareholders? (Nov'18 RTP)
13. Growmore Limited's share capital is divided into different classes. Now, Growmore Limited intends to vary the rights attached to a particular class of shares. Explain the provisions of the Companies Act, 2013 to Growmore Limited as to obtaining consent from the shareholders in relation to variation of rights. (Nov'18 RTP)
14. Heavy Metals Limited wants to provide financial assistance to its employees, to enable them to subscribe for certain number of fully paid shares. Considering the provision of the Companies Act, 2013, what advice would you give to the company in this regard? (Nov'18 RTP)
15. Harsh purchased 1000 shares of Singhania Ltd. from Pratik and sent those shares to the company for transfer in his name. The company neither transferred the shares

nor sent any notice of refusal of transfer to any party within the period stipulated in the Companies Act, 2013. What is the time frame in which the company is supposed to reply to transferee? Does Harsh, the transferee have any remedies against the company for not sending any intimation in relation to transfer of shares to him?

(May'18-4 Marks)

16. Xgen Limited has a paid-up equity capital and free reserves to the extent of ₹ 50,00,000. The company is planning to buy-back shares to the extent of ₹4,50,000. The company approaches you for advice with regard to the following

- (i) Is special resolution required to be passed?
- (ii) What is the time limit for completion of buy-back?
- (iii) What should be ratio of aggregate debts to the paid-up capital-and free reserves after buy-back?

(May'18- 3 Marks)

17. Can equity share with differential voting rights be issued? If yes, state the conditions under which such shares may be issued.

(May'18-6 Marks)

18. ABC Ltd. has following balances in their Balance Sheet as on 31st March, 2018:

Equity shares capital (3.00 lakhs equity shares of ₹10 each)	30.00 lacs
Free reserves	5.00 lacs
Securities Premium Account	3.00 lacs
Capital redemption reserve account	4.00 lacs
Revaluation Reserve	3.00 lacs

Directors of the company seek your advice in following cases:

- (i) Whether company can give bonus shares in the ratio of 1:3?
- (ii) What if company decide to give bonus shares in the ratio of 1:2?

(Nov'18-2 Marks)

19. Which fund may be utilized by a public limited company for purchasing (buy back) its own shares? Also explain the provisions of the Companies Act, 2013 regarding the circumstances in which a company is prohibited to buy back its own shares.

(May'19- 5 Marks)

20. X Ltd. issued a notice on 1st Feb, 2018 to its existing shares holders offering to purchase one extra share for every five shares held by them. The last date to accept the offer was 15th Feb, 2018 only. Mr. Kavi has given an application to renounce

the shares offered to him in favour of Mr. Ravi, who is not a shareholder of the company. Examine the validity of application of Mr. Kavi under the provisions of the Companies Act, 2013. Would your answer differ if Mr. Kavi is a shareholder of X Ltd.?

(Nov'19- 5 Marks)

21. XYZ unlisted company passed a special resolution in a general meeting on January 5th, 2019 to buy back 30% of its own equity shares. The Articles of Association empowers the company to buy back its own shares. Earlier the company has also passed a special resolution to buy back its own shares on January 15th, 2018. The company further decided that the payment for buyback be made out of the proceeds of the company's earlier issue of equity share. In the light of the provisions of the Companies Act, 2013,

- (i) Decide, whether the company's proposal is in order.
- (ii) What will be your answer if buyback offer date is revised from January 5th, 2019 to January 25th 2019 and percentage of buyback is reduced from 30% to 25% keeping the source of purchase as above?

(Nov'19-5 Marks, similar question in Jan'21- 3 Marks)

22. Due to insufficient profits, Silver Robotics Limited is unable to redeem its existing preference shares amounting to ₹ 10,00,000 (10,000 preference shares of ₹ 100 each) though as per the terms of issue they need to be redeemed within next two months. It did not, however, default in payment of dividend as and when it became due. What is the remedy available to the company in respect of outstanding preference shares as per the Companies Act, 2013?

(ICAI Module)

23. State the legal provisions in respect of 'Declaration of Solvency', which an unlisted public company needs to adhere to while taking steps to buy-back its own shares.

(ICAI Module)

24. ABC Limited is a public company incorporated in New Delhi. The Board of Directors (BOD) of the company wants to bring a public issue of 100000 equity shares of ₹ 10 each. The BOD has appointed an underwriter for this issue for ensuring the minimum subscription of the issue. The underwriter advised the BOD that due to current economic situation of the Country it would be better if the company offers these shares at a discount of ₹ 1 per share to ensure full subscription of this public issue. The Board of Directors agreed to the suggestion of underwriter and offered

the shares at a discount of ₹ 1 per share. The issue was fully subscribed and the shares were allotted to the applicants in due course. Decide whether the issue of shares as mentioned above is valid or not as per **Section 53** of Companies Act 2013. What would be your answer in the above case if the shares are issued to employees as Sweat equity shares? (Nov'20 - 3 Marks, Nov'22 Mock Test)

25. Yellow Pvt Ltd. is an unlisted company incorporated in the year 2012. The company have share capital of rupees fifty crores. The company has decided to issue sweat equity share s to its directors and employees. The company decided to issue 10% sweat equity shares (which in total will add up to 30% of its paid up equity shares), with a locking period of five years, as it is a start-up company. How would you justify these facts in relation to the provision for issue of sweat equity shares by a start-up company, with reference to the provision of the Company Act, 2013. Explain? (Nov'21 RTP)



ANSWERS

- 1: The legal issue in the presented problem in the question is covered under **Section 62 (1)** of the Companies Act, 2013.

Section 62 (1) (a) of the Companies Act, 2013 provides that if, at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares should be offered to the existing equity shareholders of the company as at the date of the offer, in proportion to the paid up capital on those shares. Hence, the company cannot ignore a section of the existing shareholders and must offer the shares to the existing equity shareholders in proportion to their holdings.

As per facts of the case, the articles of SV company Ltd. provided that the new shares should first be offered to the existing shareholders. However, the company offered new shares to all shareholders excepting VRS company Ltd., which held a major portion of its shares. Also, under the Companies Act, SV company Ltd. had no legal authority to do so.

Therefore, in the given case, SV Ltd.'s decision not to offer any further shares to VRS Co. Ltd on the ground that VRS Co. Ltd already held a high percentage of shareholding in SV Co. Ltd. is not valid for the reason that it is violation of the provisions of **Section 62 (1) (a)**.

- 2: **Alteration of Capital:** Under **section 61 (1)** a limited company having a share capital may, if authorized by its Articles, alter its Memorandum in its general meeting to:

- (i) **increase** its authorized share capital by such amount as it thinks expedient;
- (ii) **consolidate** and divide all or any of its share capital into shares of a larger amount than its existing shares

However, no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner.

- (iii) convert all or any of its paid- up shares into **stock** and reconvert that stock into fully paid shares of any denomination
- (iv) **sub-divide** the whole or any part of its shares into shares of smaller amount than is fixed by the Memorandum
- (v) **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.

Further, under **section 64** where a company alters its share capital in any of the above mentioned ways, the company shall **file a notice** in the prescribed form with the Registrar within a period of thirty days of such alteration or increase or redemption, as the case may be, along with an altered memorandum. The memorandum shall be altered by a special resolution and in compliance with other relevant provisions of **section 13** of the Companies Act, 2013.

- 3: **Jurisdiction of Court, now Tribunal, the Companies Act, 2013:** According to **Section 56 (4)** of the Companies Act, 2013 every company, unless prohibited by any provision of law or of any order of court, Tribunal or other authority, shall deliver the certificates of all shares **transferred** within a period of **one month** from the date of receipt by the company of the instrument of transfer.

Further under **section 56 (6)**, where any default is made in complying with the provisions of **sub-sections (1) to (5)** of **section 56** (which deals with transfer and transmission of shares), the company shall be **punishable** with fine which shall not be less than 25,000 rupees but which may extend to 5 lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than 10,000 rupees but which may extend to one lakh rupees.

The jurisdiction binding on the company is that of the state in which the registered office of the company is situated. Hence, in the given case the **Delhi court is not competent to take action in the matter.**

- 4: **Sweat equity shares of a class of shares already issued.**

According to **section 54** of the Companies Act, 2013, a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely—

- (i) the issue is **authorised by a special resolution** passed by the company;
- (ii) the **resolution specifies** the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;
- (iii) where the equity shares of the company are **listed** on a recognised stock exchange, the sweat equity shares are issued in accordance **with the regulations** made by the Securities and Exchange Board in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules as prescribed under Rule 8 of the Companies (Share and Debentures) Rules, 2014, The rights, limitations, restrictions and provisions as are for the time being

applicable to equity shares shall be applicable to the sweat equity shares issued under this section and the holders of such shares shall rank pari passu with other equity shareholders.

Data Limited can issue Sweat equity shares by following the conditions as mentioned above. It does not make a difference that the company is just a few months old because no such time limit of 2 years is specified under section 54.

- 5: According to section 52 of the Companies Act, 2013, where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a “securities premium account” and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the securities premium account were the paid-up share capital of the company.

The securities premium account may be applied by the company—

- (a) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;
- (b) in writing off the preliminary expenses of the company;
- (c) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;
- (d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or
- (e) for the purchase of its own shares or other securities under section 68

The securities premium account may be applied by such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies under section 133,—

- (a) in paying up unissued equity shares of the company to be issued to members of the company as fully paid bonus shares; or
- (b) in writing off the expenses of or the commission paid or discount allowed on any issue of equity shares of the company; or
- (c) for the purchase of its own shares or other securities under section 68.

- 6: Under section 62 (1) (c) of the Companies Act, 2013 where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, either for cash or for a consideration other than cash, such shares may be offered to any persons, if it is authorised by a special resolution and if the price of such shares is determined by a valuation report of a registered valuer,

subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.

In the present case, Mars India Ltd is **empowered to allot** the shares to Sunil in settlement of its debt to him. The issue will be classified as issue for consideration other than cash must be approved by the members by a **special resolution**.

Further, the valuation of the shares must be done by a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.

7: Appointment of Debenture Trustee: Under **section 71 (5)** of the Companies Act, 2013, no company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding **five hundred** for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees and the conditions governing the appointment of such trustees shall be such as may be prescribed.

The rules framed under the Companies Act for the issue of secured debentures provide that 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.

Further according to the rules, **no person** shall 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 of such holding company;
- (v) Has furnished any **guarantee** in respect of the principal debts secured by the debentures or interest thereon;
- (vi) Has any **pecuniary** relationship with the company amounting to two percent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;
- (vii) is a **relative** of any promoter or any person who is in the employment of the

company as a director or key managerial personnel;

Thus, based on the above provisions answers to the given questions are:

- (i) A shareholder who has no beneficial interest, **can be appointed** as a debenture trustee.
- (ii) A creditor whom company owes Rs.499 **cannot be** so appointed. The amount owed is immaterial.
- (iii) A person who has given guarantee for repayment of principal and interest thereon in respect of debentures also **cannot** be appointed as a debenture trustee.

8: The problem as asked in the question is governed by **Section 58** of the Companies Act, 2013 dealing with the refusal to register transfer and appeal against refusal. In the present case the company has committed the **wrongful act** of not sending the notice of refusal of registering the transfer of shares.

Under **section 58 (4)**, if a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer is delivered to the company, the transferee may, within a period of **sixty** days of such refusal or where no intimation has been received from the company, within **ninety** days of the delivery of the instrument of transfer, appeal to the Tribunal.

Section 58 (5) further provides that the Tribunal, while dealing with an appeal made under **sub-section (4)**, may, after hearing the parties, either dismiss the appeal, or by order—

- (a) direct that the **transfer** or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or
- (b) direct **rectification** of the register and also direct the company to pay damages, if any, sustained by any party aggrieved;

In the present case Ms. Mukta **can make an appeal** before the tribunal and claim damages.

9. Issue of Bonus Shares

- (1) According to **section 63 (1)** of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of—
- (i) its free reserves;
 - (ii) the securities premium account; or

(iii) the capital redemption reserve account.

However, no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.

(2) **Section 63 (2)** provides that the company can issue bonus shares only when the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up.

(A) The following sources can be used by the company to issue bonus shares:

1. General Reserve
2. Securities Premium
3. Surplus in statement of P&L

(B)	Amount of bonus shares to be issued	= 90,000 shares x 1/4
		= 22,500 shares

Amount that ought to be capitalized for issue of bonus shares

$$= ₹ 2,25,000$$

Total amount available to be capitalized from free reserves to issue bonus shares

$$= ₹ 3,45,000$$

Hence, the amount to be capitalized from free reserves to issue bonus shares will be ₹ 2.25.000.

(C) A company can issue bonus shares on only fully paid shares. Hence, if the company did not ask for the final call on 1st April, 2020, it cannot issue bonus shares to its members.

(Nov'21 3 Marks)

10: According to **Section 63** of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of -

(i)	its free reserves;
(ii)	the securities premium account; or
(iii)	the capital redemption reserve account.

Provided that no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.

Conditions for issue of Bonus Shares: No company shall capitalise its profits or

reserves for the purpose of issuing fully paid-up bonus shares, unless—

- (i) it is authorised by its Articles;
- (ii) it has, on the recommendation of the Board, been authorised in the general meeting of the company;
- (iii) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
- (iv) it has not defaulted in respect of payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;
- (v) the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up;
- (vi) it complies with such conditions as may be prescribed.

But the company has to ensure that the bonus shares shall not be issued in lieu of dividend.

To issue bonus shares company will need reserves of Rs.50,00,000 (half of Rs.1,00,00,000), which is available with the company. Hence, after following the above compliances on issuing bonus shares under the Companies Act, 2013, Shree Ltd. may proceed for a bonus issue of 1 share for every 2 shares held by the existing shareholders.

- 11: In terms of **section 68 (2) (c)** of the Companies Act, 2013 a company is allowed to buy back a maximum of 25% of the aggregate of its paid-up capital and free reserves. Hence, the company in the given case is not allowed to buy back its entire equity shares.

Section 68 (1) of the Companies Act, 2013 specifies the sources of funding buy back of its shares and other specified securities as under:

- (a) Free reserves or
- (b) Security Premium account or
- (c) Proceeds of the issue of any shares or other specified securities

However, under the proviso to **section 68 (1)** no buy back of shares or any specified securities can be made out of the proceeds of an earlier issue of the same kind of shares or same kind of specified securities.

- 12: Issue of Further Shares: **Section 62 (1) (a)** of the Companies Act, 2013 provides that if, at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares should be offered to the existing equity shareholders of the company as at the date of the offer, in proportion to the

capital paid up on those shares.

However, certain exceptions have been provided in the Companies Act, 2013 when such further shares of a company may-be offered to other persons as well. These are as under-

- (a) Under **section 62 (1) (b)** issue of further shares may be offered to employees under a scheme of employees' stock option subject to a special resolution passed by the company and subject to such conditions as may be prescribed.
- (b) Under **section 62 (1) (c)** such shares may be offered to any persons, if it is authorised by a special resolution, either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.
- (c) If any equity shareholder to whom the shares are offered in terms of **section 62(1)** as described above, declines such offer, the Board of Directors may dispose of the shares in such manner as is not disadvantageous to the shareholders or to the company.

Preference Shareholders: From the wordings of **Section 62 (1) (c)**, it is quite clear that these shares can be issued to any persons who may be preference shareholders as well provided such issue is authorized by a special resolution of the company and are issued on such conditions as may be prescribed.

13: According to section 48 of the Companies Act, 2013-

- (1) **Variation in rights of shareholders with consent:** Where a share capital of the company is divided into different classes of shares, the rights attached to the shares of any class may be varied with the consent in writing of the holders of not less than three-fourths of the issued shares of that class or by means of a special resolution passed at a separate meeting of the holders of the issued shares of that class,—
 - (a) if provision with respect to such variation is contained in the memorandum or articles of the company; or
 - (b) in the absence of any such provision in the memorandum or articles, if such variation is not prohibited by the terms of issue of the shares of that class:

Provided that if variation by one class of shareholders affects the rights of any other class of shareholders, the consent of three-fourths of such other class of shareholders shall also be obtained and the provisions of this section shall

apply to such variation.

- (2) **No consent for variation:** Where the holders of not less than ten per cent of the issued shares of a class did not consent to such variation or vote in favour of the special resolution for the variation, they may apply to the Tribunal to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Tribunal:

Provided that an application under this section shall be made within twenty-one days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

- 14: Under **section 67 (2)** of the Companies Act, 2013 no public company is allowed to give, directly or indirectly and whether by means of a loan, guarantee, or security, any financial assistance for the purpose of, or in connection with, a purchase or subscription, by any person of any shares in it or in its holding company.

However, **section 67 (3)** makes an exception by allowing companies to give loans to their employees other than its directors or key managerial personnel, for an amount not exceeding their salary or wages for a period of six months with a view to enabling them to purchase or subscribe for fully paid-up shares in the company or its holding company to be held by them by way of beneficial ownership.

It is further provided that disclosures in respect of voting rights not exercised directly by the employees in respect of shares to which the scheme relates shall be made in the Board's report in such manner as may be prescribed.

Hence, Heavy Metals Ltd can provide financial assistance upto the specified limit to its employees to enable them to subscribe for the shares in the company provided the shares are purchased by the employees to be held for beneficial ownership by them.

However, the directors or key managerial personnel will not be eligible for such assistance.

- 15: **Refusal for Registration of transferred/transmitted securities:** According to **Section 58 (4)** of the Companies Act, 2013, if a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been

received from the company within ninety days of the delivery of the instrument of transfer, appeal to the Tribunal.

Remedies available to the Transferee against the company: Section 58 (5) of the Companies Act, 2013, provides that the Tribunal, while dealing with an appeal may, after hearing the parties, either dismiss the appeal, or by order—

- (a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or
- (b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved;

In the instant case, Harsh, can make an appeal before the tribunal for remedies that the company shall be ordered to register transfer /transmission of securities within 10 days of the receipt of order, or rectify register and pay damages.

16: Section 68(2) of the Companies Act, 2013 deals with the Conditions required for buy-back of shares.

As per the Act, the company shall not purchase its own shares or other specified securities unless—

- (a) The buy-back is authorized by its articles;
- (b) A special resolution has been passed at a general meeting of the company authorizing the buy-back: except where—
 - (1) the buy-back is, ten per cent or less of the total paid-up equity capital and free reserves of the company; and
 - (2) such buy-back has been authorised by the Board by means of a resolution passed at its meeting;

Time limit for Completion of Buy Back: As per section 68(4), every buy-back shall be completed within a period of one year from the date of passing of the special resolution, or as the case may be, the resolution passed by the Board under sub-section (2).

Ratio of aggregate debts: Provision also specifies that ratio of the aggregate debts (secured and unsecured) owed by the company after buy back is not more than twice the paid up capital and its free reserves. However, Central Government may prescribe higher ratio of the debt for a class or classes of companies.

As per the stated facts, Xgen Ltd. has a paid up equity capital and free reserves to the extent of ₹50,00,000. The company planned to buy back shares to the extent of ₹4,50,000.

Referring to the above provisions, the answers will be as follows:

1. No, special resolution will not be required as the buyback is less than 10% of the total paid-up equity capital and free reserves ($50,00,000 \times 10/100 = 5,00,000$) of the company, but such buy back must be authorized by the Board by means of a resolution passed at its meeting.
2. Time limit for completion of buy back will be- within a period of one year from the date of passing of the resolution by the Board.
3. The ratio of the aggregate debts (secured and unsecured) owed by the company after buy back should not be more than twice the paid up capital and its free reserves.

The above buy-back is possible when backed by the authorization by the articles of the company.

17: Conditions for the issue of equity shares with differential rights (Rule 4 of the Companies (Share capital and Debenture) Rules, 2014): No company limited by shares shall issue equity shares with differential rights as to dividend, voting or otherwise, unless it complies with the following conditions, namely:-

- (1) the articles of association of the company authorizes the issue of shares with differential rights;
- (2) the issue of shares is authorized by an ordinary resolution passed at a general meeting of the shareholders.
- (3) However, where the equity shares of a company are listed on a recognized stock exchange, the issue of such shares shall be approved by the shareholders through postal ballot;
- (4) the shares with differential rights shall not exceed seventy-four percent of the total post-issue paid up equity share capital including equity shares with differential rights issued at any point of time;
- (5) the company has not defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares;
- (6) the company has no subsisting default in the payment of a declared dividend to its shareholders or repayment of its matured deposits or redemption of its preference shares or debentures that have become due for redemption or payment of interest on such deposits or debentures or payment of dividend;
- (7) the company has not defaulted in payment of the dividend on preference shares or repayment of any term loan from a public financial institution or

State level financial institution or Scheduled Bank that has become repayable or interest payable thereon or dues with respect to statutory payments relating to its employees to any authority or default in crediting the amount in Investor Education and Protection Fund to the Central Government;

- (8) However, a company may issue equity shares with differential rights upon expiry of five years from the end of the financial Year in which such default was made good.
- (9) the company has not been penalized by Court or Tribunal during the last three years of any offence under the Reserve Bank of India Act, 1934, the Securities and Exchange Board of India Act, 1992, the Securities Contracts Regulation Act, 1956, the Foreign Exchange Management Act, 1999 or any other special Act, under which such companies being regulated by sectoral regulators.

18: Issue of bonus shares [Section 63]: As per Section 63 of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of—

- (i) its free reserves;
- (ii) the securities premium account; or
- (iii) the capital redemption reserve account:

Provided that no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.

As per the given facts, ABC Ltd. has total eligible amount of ₹12 lakhs (i.e. 5.00+3.00+4.00) out of which bonus shares can be issued and the total share capital is ₹30.00 lakhs.

Accordingly:

- (i) For issue of 1:3 bonus shares, there will be a requirement of ₹10 lakhs (i.e., $\frac{1}{3} \times 30.00$ lakh) which is well within the limit of available amount of ₹12 lakhs. So, ABC Limited can go ahead with the bonus issue in the ratio of 1:3.
- (ii) In case ABC Limited intends to issue bonus shares in the ratio of 1:2, there will be a requirement of ₹15 lakhs (i.e., $\frac{1}{2} \times 30.00$ lakh). Here in this case, the company cannot go ahead with the issue of bonus shares in the ratio of 1:2, since the requirement of ₹15 Lakhs is exceeding the available eligible amount of ₹12 lakhs.

19: Funds utilized for purchase of its own securities: Section 68 of the Companies Act, 2013 states that a company may purchase its own securities out of:

- (i) its free reserves; or
- (ii) the securities premium account; or
- (iii) the proceeds of the issue of any shares or other specified securities.

However, buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities

Prohibition for buy-back in certain circumstances [Section 70]

- (1) The provision says that no company shall directly or indirectly purchase its own shares or other specified securities-
 - (a) through any subsidiary company including its own subsidiary companies; or
 - (b) through any investment company or group of investment companies; or
 - (c) if a default is made by the company in repayment of deposits or interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder or repayment of any term loan or interest payable thereon, to any financial institutions or banking company;
But where the default is remedied and a period of three years has lapsed after such default ceased to subsist, then such buy-back is not prohibited.
- (2) No company shall directly or indirectly purchase its own shares or other specified securities in case such company has not complied with provisions of **Sections 92** (Annual Report), **123** (Declaration of dividend), **127** (Punishment for failure to distribute dividends), and **section 129** (Financial Statements).

20: According to **section 62** of the Companies Act, 2013, where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered—

- (a) to persons who, at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the paid-up share capital on those shares by sending a letter of offer subject to the following conditions, namely:-
 - (i) the offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;
 - (ii) unless the articles of the company otherwise provide, the offer aforesaid

shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the notice referred to in clause (i) shall contain a statement of this right;

- (iii) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of Directors may dispose of them in such manner which is not dis-advantageous to the shareholders and the company.

In the instant case, X Ltd. issued a notice on 1st Feb, 2018 to its existing shares holders offering to purchase one extra share for every five shares held by them. The last date to accept the offer was 15th Feb, 2018 only. Mr. Kavi has given an application to renounce the shares offered to him in favour of Mr. Ravi, who is not a shareholder of the company.

As nothing is specified related to the Articles of the company, it is assumed offer shall be deemed to include a right of renunciation. Hence, Mr. Kavi can renounce the shares offered to him in favour of Mr. Ravi, who is not a shareholder of the company. In the second part of the question, even if Mr. Ravi is a shareholder of X Ltd. then also it does not affect the right of renunciation of shares of Mr. Kavi to Mr. Ravi.

21:

- (i) In the instant case, the company's proposal is not in order due to the following reasons:
- (A) Though XYZ unlisted company passed a special resolution but it proposed to buy back 30% of its own equity shares. But as per **section 68(2)(c)** of the Companies Act, 2013, buy-back of equity shares in any financial year shall not exceed 25% of its total paid up equity capital in that financial year.
 - (B) The Articles of Association empowers the company to buy back its own shares. This condition is in order as per **section 68(2)(a)**.
 - (C) Earlier the company has also passed a special resolution to buy back its own shares on January 15th, 2018, now the company passed a special resolution on January 5th, 2019 to buy back its own shares. This is not valid as no offer of buy-back, shall be made within a period of one year from the date of the closure of the preceding offer of buy-back, if any. [proviso to **section 68(2)**]
 - (D) The company further decided that the payment for buy back be made out of the proceeds of the company's earlier issue of equity share. This is not in

order as according to proviso to **section 68(1)**, buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

- (ii) If buyback offer date is revised from 5th January 2019 to January 25th 2019 and percentage of buy back is reduced from 30% to 25% keeping the source of purchase as above, then also the company's proposal is not in order as buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

22. According to **Section 55(3)** of the Companies Act, 2013, where a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue (such shares hereinafter referred to as unredeemed preference shares), it may, with the consent of the holders of three-fourths in value of such preference shares, and with the approval of the Tribunal on a petition made by it in this behalf, issue further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed. Provided that the Tribunal shall, while giving approval under this sub-section, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares.

In view of the provisions of **Section 55 (3)**, Silver Robotics Limited can initiate steps for the issue of further redeemable preference shares equal to the amount due i.e. ₹ 10,00,000. For this purpose, it shall obtain the consent of the holders of three-fourths in value of such preference shares and also seek approval of the Tribunal by making a petition. In case, there are certain preference shareholders who have not accorded their consent for the proposal of issuing further redeemable preference shares, the Tribunal may order the company to redeem forthwith such preference shares. Accordingly, Silver Robotics Limited must be ready with sufficient funds for the redemption of preference shares held by those who have not consented. On the issue of such further redeemable preference shares by the company, the unredeemed preference shares shall be deemed to have been redeemed.

23. According to **Section 68 (6)**, where an unlisted public company has passed a special resolution under **Section 68 (2) (b)** or the Board has passed a resolution under item

(ii) of the proviso to **Section 68 (2) (b)** to buy-back its own shares, it shall, before making such buy-back, file with the Registrar a 'Declaration of Solvency' in Form SH-9. The declaration shall be verified by an affidavit to the effect that the Board has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year from the date of declaration of solvency adopted by the Board. The declaration shall be signed by at least two directors of the company, one of whom shall be the managing director, if any.

24. As per the provisions of sub-**section (1)** of **section 53** read with **section 54** of the Companies Act, 2013, a company shall not issue shares at a discount, except in the case of an issue of sweat equity shares. As per the provisions of sub-**section (2)** of **section 53** of the Companies Act, 2013, any share issued by a company at a discount shall be void. In terms of the above provisions, issue of shares by ABC Limited at a discount of ₹ 1 per share is not valid. In case the above shares have been issued to employees as Sweat equity shares, then the issue of shares at discount is valid. [**Section 54(1)** of the Companies Act, 2013]

25. Sweat Equity Shares is governed by **Section 54** of the Companies Act, 2013 and Rule 8 of Companies (Share capital and debentures) Rules, 2014. According to **Section 54** the company can issue sweat equity shares to its director and permanent employees of the company.

According to rule 8 (4) proviso, states that a start up company, is defined in a notification number Ministry of Commerce and industry Government of India, may issue sweat equity share not exceeding 50% of its paid up share capital up to 10 years from the date of its incorporation or registration.

According to Rule 8(5), the sweat equity shares issued to directors or employees shall be locked in/ non-transferable for a period of three years from the date of allotment and the fact that the share certificates are under lock-in too.

Hence, in the above case the company can issue sweat equity shares by passing special resolution at its general meeting. The company as a startup company is right in issue of 10% sweat equity share as it is overall within the limit of 50% of its paid up share capital. But the lock in period of the shares is limited to maximum three years period from the date of allotment.

II

COMPANIES INCORPORATED OUTSIDE INDIA



QUESTIONS

Question 1:

1. Discuss the following situations in the light of 'deposit provisions' as contained in the Companies Act, 2013 and the Companies (Acceptance of Deposits) Rules, 2014, as amended from time to time.
 - (i) Samit, one of the directors of Zarr Technology Private Limited, a start-up company, requested his close friend Ritesh to lend to the company ₹30.00 lacs in a single tranche by way of a convertible note repayable within a period six years from the date of its issue. Advise whether it is a deposit or not
 - (ii) Polestar Traders Limited received a loan of ₹30.00 lacs from Rachna who is one of its directors. Advise whether it is a deposit or not.
 - (iii) City Bakers Limited failed to repay deposits of ₹50.00 crores and interest due thereon even after the extended time granted by the Tribunal. Is the company or Swati, its officer-in-default, liable to any penalty?
 - (iv) Shringaar Readymade Garments Limited wants to accept deposits of ₹50.00 lacs from its members for a tenure which is less than six months. Is it a possibility?
 - (v) Is it in order for the Diamond Housing Finance Limited to accept and renew deposits from the public from time to time? (ICAI Module, May'20 Mock Test)

Question 2:

2. The Promoters of Green Limited contributed in the form of unsecured loan to the company in fulfilment of the margin money requirements stipulated by State Industries Development Corporation Ltd. (SIDCL) for granting loan. In the light of the provisions of the Companies Act, 2013 and Rules made thereunder whether the unsecured loan will be regarded as Deposit or not ?

(ICAI Module, May'2022 Mock Test)

Question 3:

3. Comment quoting relevant provisions of the Companies Act, 2013, whether the following amounts received by a company will be considered as deposits or not:

- (i) ₹ 2,00,000 received by Yash Limited from its employee Mr. A, who draws an annual salary of ₹ 1,50,000, as a non-interest bearing security deposit under a contract of employment.
- (ii) Textile Traders Limited received a loan of ₹ 30,00,000 from R who is one of its directors.

(ICAI Module, May'2022 Mock Test)

Question 4:

4. Sasha Private Limited received ₹ 3,00,000 from one of the relatives of a Director. The said relative has furnished a declaration that the amount was received by him from his mother as a gift. Decide as per the relevant provisions of the Companies Act, 2013, whether the said amount received by the company will be considered as deposits or not.

(Nov'22 Mock Test)



MULTIPLE CHOICE QUESTIONS (HOMEWORK)

1. An eligible company as per section 76, which is accepting deposits within the limits specified under section 180 (1) (c) may accept deposits by means of _____.
(a) ordinary resolution
(b) unanimous resolution
(c) Special resolution
(d) Special resolution and approval of Central Government (ICAI Module)
2. Every company shall pay a penal rate of interest _____ for the overdue period in case of deposits, both secured and unsecured, matured and claimed but remaining unpaid.
(a) 9% p.a.
(b) 10% p.a.
(c) 12% p.a.
(d) 18% p.a. (ICAI Module, Nov'22 Mock Test)
3. A reserve account that shall not be used by the company for any purpose other than repayment of deposits is called:
(a) debenture redemption reserve
(b) deposit repayment reserve
(c) capital redemption reserve
(d) free reserve (ICAI Module)
4. Where depositors so desire, deposits may be accepted in joint names not exceeding _____
(a) 2 (b) 3
(c) 5 (d) 7 (ICAI Module)
5. Normally no deposits are repayable earlier than _____ from the date of such deposits or renewal thereof.
(a) 3 months
(b) 6 months
(c) 12 months
(d) 1 year (ICAI Module, Nov'19 Mock Test)

6. A company shall execute a deposit trust deed at least _____ days before issuing the circular or circular in the form of advertisement.
- (a) 7
 - (b) 14
 - (c) 21
 - (d) 28
- (ICAI Module)

7. On 30th June 2017, the liability side of Balance Sheet of X Ltd. showed balance of paid up share capital of Rs. 65 lacs, free reserve of Rs. 10 lacs, share premium account of Rs. 20 lacs, deposits of Rs. 25 lacs, repayable in the current financial year, during the month of September 2017. In July 2017, the company was in need of some short term funds to the tune of Rs. 20 lacs for a period of 6 months. The maximum amount which the company may hold as deposit together with existing deposits will be—
- (a) Rs. 33.25 Lacs
 - (b) Rs. 11.25 lacs
 - (c) Rs. 95 lacs
 - (d) Rs. 9.5 lacs.
- (ICAI Sample Question)

8. XYZ Private Limited, has passed a resolution in general meeting to accept deposit from its members. Terms and conditions are finalized in consultation with Reserve Bank of India. Company accepted deposits of INR 30 Lakhs in year 2016. Company wants more deposits in the next quarter. Board of Directors are aware that as per the Act, they have a Ceiling limit, beyond which they cannot accept deposits. What percentage of aggregate of paid-up share capital, free Reserves and securities premium account, they cannot cross?
- (a) 15%
 - (b) 25%
 - (c) 100%
 - (d) 45%
- (ICAI Sample Question)

9. Mr. M. Mishra is a director of Superior Carbonates and Chemicals Limited (SCCL). SCCL was incorporated by Mr. S. K. Mishra (father of Mr. M. Mishra) on 05th July 1995 as a public company. SCCL accepts a loan of ₹ 1.5 crores from Mr. M. Mishra for short term purpose and the loan is expected to be repaid after twenty four months. SCCL in its books of account, records the receipt as a loan under non-current liabilities.

At the time of advancing loan, Mr. M. Mishra affirms in writing that such amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and complete details of his loan transactions are furnished in the boards' report.

DBSL which is an unlisted public company, also accept the deposits from the public as on 1st November 2018, which is due for repayment on 30th September 2023. DBSL also accepts a LAP (Loan against property) for a term of 10 years from a financial institution on 18th June 2020. Charge was created on that day, but DBSL has neglected to register the charge with the registrar. Finally, the application for registration of charge is furnished on 18th August 2020.

SCCL has registered office in Paonta-sahib (Himachal Pradesh) and corporate office is situated in Dehradun (Uttarakhand) but around 15% of members whose name is entered in members register are residents of Nainital (Uttarakhand). SCCL has a liaison Office at Nainital. Management of the company is willing to place, the Register of Members at the Nainital Liaison Office.

DBSL convene its 7th AGM on 10th September 2020 at the registered office of the company. Notice for same was served on 21st August 2020. 78% of members gave consent to convening AGM at shorter notice due to ambiguity and possibility of another lockdown starting from 11th September 2020 on account of the second wave of COVID-19. (May'21 RTP)

Multiple Choice Questions

1. Pick the right statement regarding SCCL's willingness to keep and maintain the register of members at the Nainital liaison office.
 - (a) Register of members shall be kept at either registered office or within the same city that too after passing the resolution, hence SCCL is not correct in placing it at the Nainital liaison office
 - (b) Register of members cannot be kept at any other place by SCCL, without passing an ordinary resolution
 - (c) Register of members can be kept at Nainital liaison office, after passing a special resolution, because more than 1/10th of the total members entered in the register of members reside there
 - (d) Register of members cannot be kept at Nainital liaison office, even after passing a special resolution, because less than 1/5th of the total members entered in the register of members reside there

2. With reference to deposit accepted by DBSL and its duration, you are required to identify which of the following statements is correct:
- (a) There is no requirement relating to the duration of deposit, DBSL can accept a deposit for any duration.
 - (b) Since DBSL is an unlisted company, provision relating to the duration of the deposit is not applicable.
 - (c) There is a provision of a minimum duration of six months, but no upper cap to length is provided. Hence deposit accepted by DBSL is in compliance to provisions of Law.
 - (d) Acceptance of deposits by DBSL is in violation of provision of law, because the maximum period of acceptance of deposit cannot exceed thirty-six months.

3. With reference to application to the registrar for registration of charge by DBSL, which of the following statements is correct?
- (a) The charge cannot be registered now, even if the Registrar permits the same.
 - (b) The charge can be registered, if registrar permits with payment of ad-valorem fee.
 - (c) The charge can be registered, if registrar permits but with payment of an additional fee.
 - (d) The charge can be registered, with payment of a standard fee.

Note:- Students can answer this Question after completing Unit 6 Registration of Charges

4. With reference to the loan advanced by Mr. M. Mishra to SCCL, state whether the same is to be classified as a deposit or not?
- (a) Deposit, because any sum advanced by the director whether loan or otherwise is always classified as a deposit.
 - (b) Deposit, because the tenor of the loan is for a period of more than six months.
 - (c) Not a deposit, because such amount is recorded as loan in books of account of SCCL.
 - (d) Not a deposit, because the written declaration is provided by Mr. M. Mishra, who was a director when the loan was advanced that the loan is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others.

5. Considering the provision relating to length of Notice for AGM, pick out the right option:
- (a) Notice served by DBSL is not valid, because notice given within a shorter duration has to be consented to by all the members entitled to vote at AGM.
 - (b) Notice served by DBSL is not valid, because notice given within a shorter duration has to be consented to by at-least 95% of members entitled to vote thereat.
 - (c) Notice served by DBSL is valid because the shorter length has been consented to by 75% of members entitled to vote thereat.
 - (d) Notice served by DBSL is not valid, because notice given within a shorter length duration needs has to by at-least 50% of the members entitled to vote at AGM that too in writing.

Note:- Students can answer this Question after completing chapter vii Management & administration (Sec 101 & 102 of companies Act 2013)

10. Fin Limited is accepting deposits of various tenures from its members from time to time. The current Register of Deposits, maintained at its registered office is complete. State the minimum period for which it should mandatorily be preserved in good order.
- (a) Four years from the financial year in which the latest entry is made in the Register.
 - (b) Six years from the financial year in which the latest entry is made in the Register.
 - (c) Eight years from the financial year in which the latest entry is made in the Register.
 - (d) Ten years from the latest date of entry. (ICAI Module, May'2022 Mock Test)

11. Varsha Limited decides to raise deposits of ₹ 20.00 lacs from its members. However, it proposes to secure such deposits partially by offering a security worth ₹ 15.00 lacs. Which of the following options best describe such deposits:
- (a) Fully secured deposits (except a small portion)
 - (b) Unsecured deposits
 - (c) Partially secured deposits
 - (d) These cannot be classified as deposits

(1 Mark) (ICAI Module, May'2022 Mock Test, Nov'22 Mock Test)

12. What is the maximum tenure for which a company can accept or renew deposits from its members as well as public?

(a) 12 months	(b) 24 months
(c) 36 months	(d) 48 months

(1 Mark) (ICAI Module, May'2022 Mock Test)



ANSWERS

Answer 1:

- (i) In terms of Rule 2 (1) (c) (xvii) if a start-up company receives rupees twenty five lakh or more by way of a convertible note (convertible into equity shares or repayable within a period not exceeding five years from the date of issue) in a single tranche, from a person, it shall not be treated as deposit.
- In the given case, Zarr Technology Private Limited, a start-up company, received ₹ 30.00 lacs from Ritesh in a single tranche by way of a convertible note which is repayable within a period of six years from the date of its issue. In view of Rule 2 (1) (c) (xvii) which requires a convertible note to be repayable within a period of five years from the date of its issue, the amount of ₹30.00 lacs shall be considered as deposit.
- (ii) In terms of Rule 2 (1) (c) (viii), any amount received from a person who is director of the company at the time of giving loan to the company shall not be treated as deposit if such director furnishes to the company at the time of giving money, a written declaration to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and further, the company shall disclose the details of money so accepted in the Board's report. In the given case, it is assumed that Rachna was one of the directors of Polestar Traders Limited when the company received a loan of ₹30.00 lacs from her. Further, it is assumed that she had furnished to the company at time of giving money, a written declaration to the effect that the amount was not being given out of funds acquired by her by borrowing or accepting loans or deposits from others and in addition, the company had disclosed the details of money so accepted in the appropriate Board's report. If these conditions are satisfied ₹30.00 lacs shall not be treated as deposit.
- (iii) By not repaying the deposit of ₹50.00 crores and the interest due thereon even after the extended time granted by the Tribunal, City Bakers Limited has contravened the conditions prescribed under Section 73 of the Act. Accordingly, following penalty is leviable:
- Punishment for the company: City Bakers Limited shall, in addition to the payment of the amount of deposit and the interest due thereon, be punishable

with fine which shall not be less than ₹ one crore or twice the amount of deposit accepted by the company, whichever is lower but which may extend to ₹ten crores.

- Punishment for officer-in-default: Swati, being the officer-in-default, shall be punishable with imprisonment which may extend to seven years and with fine which shall not be less than rupees twenty-five lakhs but which may extend to ₹two crores.

Further, if it is proved that Swati had contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, she will be liable for action under section 447 (Punishment for fraud).

- (iv) According to Rule 3 (1), a company is not permitted to accept or renew deposits (whether secured or unsecured) which is repayable on demand or in less than six months. Further, the maximum period of acceptance of deposit cannot exceed thirty six months.

However, as an exception to this rule, for the purpose of meeting any of its short-term requirements of funds, a company is permitted to accept or renew deposits for repayment earlier than six months subject to the conditions that:

- (i) such deposits shall not exceed ten per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company; and

- (ii) such deposits are repayable only on or after three months from the date of such deposits or renewal.

In the given case of Shringaar Readymade Garments Limited, it wants to accept deposits of ₹ 50.00 lacs from its members for a tenure which is less than six months. It can do so if it justifies that the deposits are required for the purpose of meeting any of its short-term requirements of funds but in no case such deposits shall exceed 10% ten per cent of the aggregate of its paid-up share capital, free reserves and securities premium account and further, such deposits shall be repayable only on or after three months from the date of such deposits.

- (v) According to section 73 (1) of the Act, no company can accept or renew deposits

from public unless it follows the manner provided under Chapter V of the Act (contains provisions regarding acceptance of deposits by companies) for acceptance or renewal of deposits from public. However, Proviso to **Section 73 (1)** states that such prohibition with respect to the acceptance or renewal of deposit from public, inter-alia, shall not apply to a housing finance company registered with the National Housing Bank established under the National Housing Bank Act, 1987.

In the given case, it is assumed that Diamond Housing Finance Limited is registered with the National Housing Bank and therefore the prohibition contained in section 73 (1) of the Act with respect to the acceptance renewal of deposit from public shall not apply to it. In other words, it being an exempted company, can accept deposits from the public from time to time without following the prescribed manner.

Answer 2:

2. According to Rule 2 (1) (c) of the Companies (Acceptance of Deposits) Rules, 2014, the following amount is not considered as deposit:

Any amount brought in by the promoters of the company by way of unsecured loan in pursuance of the stipulation of any lending financial institution or a bank subject to the fulfillment of following conditions:

- (a) the loan is brought because 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) such exemption shall be available only till the loans of financial institution or bank are repaid and not thereafter.

Hence, in the instant case, the unsecured loan contributed by promoters of Green Limited will not be regarded as deposit as the unsecured loan is brought because of the stipulation imposed by the SIDCL and the loan is provided by the promoters themselves.

(ICAI Module, May'2022 Mock Test)

Answer 3:

3. Rule 2 (1) (c) of the Companies (Acceptance of Deposit) Rules, 2014 states various amounts received by a company which will not be considered as deposits. In terms of this Rule the answers to the given situations shall be as under:

- (i) In terms of Rule 2 (1)(c)(x), any amount received from an employee of the company not exceeding his annual salary under a contract of employment with the company in the nature of non-interest bearing security deposit, shall not be treated as deposit.

₹ 2,00,000 received by Yash Limited from its employee Mr. A, who draws an annual salary of ₹ 1,50,000, as a non-interest bearing security deposit under a contract of employment will be considered as deposit in terms of sub-clause (x) of Rule 2(1)(c), for the amount received is more than his annual salary of ₹ 1,50,000.

- (ii) In terms of Rule 2 (1)(c)(viii), any amount received from a person who is director of the company at the time of giving loan to the company shall not be treated as deposit if such director furnishes to the company at the time of giving money, a written declaration to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and further, the company shall disclose the details of money so accepted in the Board's report.

In the given case, ₹ 30,00,000 received as a loan by Textile Traders Limited from R (a director) shall not be treated as deposit, if he was a director at the time of giving such loan and had furnished to the company at time of giving money, a written declaration to the effect that the amount was not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and in addition, the company had disclosed the details of money so accepted in the appropriate Board's report. (ICAI Module, May'2022 Mock Test)

Answer 4:

4. According to sub-clause (viii) of Rule 2 (1) (c) of the Companies (Acceptance of Deposits) Rules, 2014, any amount received from a person who, at the time of the receipt of the amount, was a director of the company or a relative of the director of the private company, is not considered as deposit.

The director of the company or relative of the director of the private company, as the case may be, from whom money is received, is required to furnish to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and the company shall disclose the details of money so accepted in the Board's report.

₹ 3,00,000 received by Sasha Private Limited, from one of the relatives of a Director. When the relative furnishes a declaration that the said amount was received by him from his mother as a gift, then it will not be considered as deposit in terms of sub-clause (viii) of Rule 2 (1) (c).

Thus, the amount given to the private company out of gifted money by one of the relatives of a director is not a 'deposit'. As an additional requirement, the company shall disclose the details of money so accepted in the Board's report.

(Nov'22 Mock Test)



ANSWER TO MCQs

1	A	2	D	3	B	4	B	5	B
6	A	7	A	8	C	9(1)	C	9(2)	D
9(3)	B	9(4)	D	9(5)	B	10	C	11	B
12	C								

Calculation For MCQ 7:

Public company which is not eligible can accept deposit upto 35% of (paidup share capital + Free Reserve + Securities Premium)

Nothing was mentioned about x Ltd being eligible company so we can assume that it is public company which is not eligible 35% (35 lacs + 10 lacs + 20 lacs) = 33.25 lacs.



HOMework QUESTIONS & ANSWER

1. Enumerate the amounts which when received by a company in the ordinary course of business are not to be considered as deposits. (ICAI Module)
2. ABC Limited having a net worth of ₹120 crores wants to accept deposit from its members. The directors of the company have approached you to advise them as to what special care has to be taken while accepting such deposit from the members in case their company falls within the category of an 'eligible company'. (ICAI Module, May'19 Mock Test, Jan'21- 3 Marks)
3. Ashish Ltd. having a net-worth of ₹80 crores and turnover of ₹30 crores want to accept deposits from public other than its members. Referring to the provisions of the Companies Act, 2013, state the conditions and the procedures to be followed by Ashish Ltd for accepting deposits from public other than its members. (May'19 RTP)
4. Viki Limited engaged in the business of consumer durables. It is managed by a team of professional managers. The Company has not made default in payment of statutory dues, and repayment of debenture/ Institutional loan with interest. The Company advertised a circular in the newspaper dated 20th September 2020 inviting the deposits from the members and public for the first time. The latest audited financial statement of the Company revealed the following data, as on 31.3.2020:
Paid up share capital ₹ 70 Crores Securities Premium ₹ 20 Crores Free Reserves ₹ 20 Crores Long-term borrowings ₹ 50 Crores
The Company in the advertisement invited public deposit for a period of 4 Months Plan A and Plan B for 36 Months.
 - (i) Explain the term 'eligible company' and calculate the Maximum amount of Deposit that can be accepted from Public (Non-Member) for Plan A and Plan B based on latest audited Financial Statement under the provisions of the Companies Act, 2013.
 - (ii) Calculate the maximum amount of deposit Viki Limited can accept from the public under Plan B in case it is a wholly owned Government Company under the provisions of the said Act. (Nov'20- 6 Marks)

5. Discuss the following situations in the light of 'Deposit provisions' as contained in the Companies Act, 2013 and the Companies (Acceptance of Deposits) Rules, 2014, as amended from time to time.
- (i) Bhupendra, one of the Directors of Moon Technology Private Limited, a start-up company, requested his close friend Paras to lend to the company ₹ 20.00 lacs in a single tranche by way of a convertible note repayable within a period of six years from the date of its issue. Advise whether it is a deposit or not.
 - (ii) Shriram Readymade Garments Limited wants to accept deposits of ₹ 50.00 lacs from its member for tenure, which is less than six months. Is there any possibility to do so?
 - (iii) The turnover of Y Ltd. is ₹ 400 crore as per last audited financial statement and net worth is ₹ 50 crores. Can Y Ltd. accept deposits from the public as per **section 73** of the Companies Act, 2013? (Nov'21 5 Marks)
6. Vrinda Limited is a company manufacturing orange and strawberry candies for kids. Now, the company wants to expand its business and start the manufacturing of 10 more types of candies. The company has raised ₹ 1 crore through the issue of non-convertible debentures not constituting a charge on the assets of the company and listed on a recognised stock exchange as per the applicable regulations made by the Securities and Exchange Board of India. Advise, whether the above amount of ₹ 1 crore will be considered as deposit? (RTP MAY 22)
7. Explain provisions for 'Appointment of Trustee for Depositors' under the Companies Act, 2013. (ICAI Module, May'18- 6 Marks)
8. State the procedure to be followed by companies to accept deposits from its members according to the Companies Act, 2013. What are the exemptions available to the Private Limited Companies? (ICAI Module, Nov'18-6 Marks)
9. State, with reasons, whether the following statements are true or false?
- (i) ABC Private Limited may accept the deposits from its members to the extent of ₹50.00 Lakh, if the aggregate of its paid-up capital; free reserves and security premium account is ₹50.00 Lakh.
 - (ii) A Government Company, which is eligible to accept deposits under **Section 76** of the Companies Act, 2013 cannot accept deposits from public exceeding 25% of the aggregate of its paid- up capital, free reserves and security premium

account

(ICAI Module, May'19- 2 Marks, Nov'20 RTP)

10. Define the term 'deposit' under the provisions of the Companies Act, 2013 and comment with relevant provisions that the following amount received by a company will be considered as deposit or not;
- (i) ₹ 5,00,000 raised by Rishi Ltd. through issue of non-convertible debenture not constituting a charge on the assets of the company and listed on a recognised stock exchange as per applicable regulations made by Securities and Exchange Board of India.
 - (ii) ₹2,00,000 received from Mr. T, an employee of the company who is drawing annual salary of ₹1,50,000 under a contract of employment with the company in the nature of non-interest bearing security deposit.
 - (iii) Amount of ₹3, 00,000 received by a private company from a relative of a Director, declared by the depositor as out of gift received from his mother.

(ICAI Module, Nov'19-6 Marks)

11. What are the provisions relating to 'Credit Rating' which an 'eligible company' must follow if it wants to raise public deposits? (ICAI Module)

- 12: RS Ltd. received share application money of ₹ 50.00 Lakh on 01.06.2019 but failed to allot shares within the prescribed time limit.

The share application money of ₹ 5.00 Lakh received from Mr. Khanna, a customer of the Company, was refunded by way of book adjustment towards the dues payable by him to the company on 30.07.2019. The Company Secretary of RS Ltd. reported to the Board that the entire amount of ₹ 50.00 Lakh shall be deemed to be 'Deposits' as on 31.07.2019 and the Company is required to comply with the provisions of the Companies Act, 2013 applicable to acceptance of deposits in relation to this amount.

You are required to examine the validity of the reporting of the Company Secretary in the light of the relevant provisions of the Companies Act, 2013.

(Jan'21- 4 Marks, Nov'22 Mock Test)



ANSWERS

1: According to Rule 2 (1) (c) (xii), following amounts if received by a company in the course of, or for the purposes of, the business of the company, shall not be considered as deposits:

(a) any amount received as an advance for the supply of goods or provision of services accounted for in any manner whatsoever to be appropriated within a period of three hundred and sixty five days from the date of acceptance of such advance:

However, in case any advance is subject matter of any legal proceedings before any court of law, the time limit of three hundred and sixty five days shall not apply.

(b) any amount received as advance in connection with consideration for an immovable property under an agreement or arrangement. However, such advance is required to be adjusted against such property in accordance with the terms of agreement or arrangement; (c) any amount received as security deposit for the performance of the contract for supply of goods or provision of services;

(d) any amount received as advance under long term projects for supply of capital goods except those covered under item (b) above;

(e) any amount received as an advance towards consideration for providing future services in the form of a warranty or maintenance contract as per written agreement or arrangement, if the period for providing such services does not exceed the period prevalent as per common business practice or five years, from the date of acceptance of such service whichever is less;

(f) any amount received as an advance and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;

(g) any amount received as an advance for subscription towards publication, whether in print or in electronic to be adjusted against receipt of such publications;

However, if the amount received under items (a), (b) and (d) above becomes refundable (with or without interest) due to the reasons that the company accepting the money does not have necessary permission or approval, wherever required, to deal in the goods or properties or services for which the money is taken, then the amount received shall be deemed to be a deposit under these rules.

Further, for the purposes of this sub-clause the amount shall be deemed to be deposits on the expiry of fifteen days from the date they become due for refund.

- 2: According to **section 76 (1)** of the Act, an “eligible company” means a public company, having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the public for acceptance of deposits.

However, an ‘eligible company’, which is accepting deposits within the limits specified under **section 180 (1) (c)**, may accept deposits by means of an ordinary resolution. According to Rule 4 (a), an ‘eligible company’ shall accept or renew any deposit from its members, if the amount of such deposit together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from members does not exceed ten per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.

ABC Limited is having a net worth of 120 crore rupees. Hence, it falls in the category of ‘eligible company’.

Thus, ABC has to ensure that acceptance deposits from members together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from members, in no case, exceeds 10% of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.

- 3: Acceptance of deposit from public: According to **section 76** of the Companies Act, 2013, a public company, having net worth of not less than 100 crore rupees or turnover of not less than 500 crore rupees, can accept deposits from persons other than its members subject to compliance with the requirements provided in **sub-section (2) of section 73** and subject to such rules as the Central Government may, in consultation with the Reserve Bank of India, prescribe.

Provided that such a company shall be required to obtain the rating (including its net-worth, liquidity and ability to pay its deposits on due date) from a recognised credit rating agency for informing the public the rating given to the company at the time of invitation of deposits from the public which ensures adequate safety and the rating shall be obtained for every year during the tenure of deposits.

Provided further that every company accepting secured deposits from the public shall within thirty days of such acceptance, create a charge on its assets of an amount not less than the amount of deposits accepted in favour of the deposit holders in accordance with such rules as may be prescribed.

Since, Ashish Ltd. has a net worth of ₹ 80 crores and turnover of ₹ 30 crores, which is less than the prescribed limits, hence, it cannot accept deposit from public other than its members. If the company wants to accept deposits from public other than its members, it has to fulfil the eligibility criteria of net worth or Turnover or both and then the other conditions as stated above.

4. (i) According to Rule 2(1)(e) of the Companies (Acceptance of Deposits) Rules, 2014 “eligible company” means a public company as referred to in sub-section (1) of section 76 of the Companies Act, 2013, having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the Public for acceptance of deposits. Provided that an eligible company, which is accepting deposits within the limits specified under clause (c) of sub-section (1) of section 180, may accept deposits by means of an ordinary resolution.

Net worth of Viki Limited as per section 2(57) of the Companies Act, 2013 can be calculated as follows: Paid up share capital: ₹ 70 crores Free Reserves: ₹ 20 crores Securities premium: ₹ 20 crores Total: ₹ 110 crores Hence, Viki Limited is an eligible company, since its Net worth is in excess of ₹ 100 crores.

Tenure for which Deposits can be Accepted: As per Rule 3(1)(a) of the Companies (Acceptance of Deposits) Rules, 2014, a company is not permitted to accept or renew deposits (whether secured or unsecured) which is repayable on demand or in less than six months. Further, the maximum period of acceptance of deposit cannot exceed thirty six months.

Exception to the rule of tenure of six months: As per the proviso to the above rule, for the purpose of meeting any of its short-term requirements of funds, a company may accept or renew deposits for repayment earlier than six months subject to the condition that such deposits shall not exceed ten per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company. As per Rule 3(1)(b) of the Companies (Acceptance of Deposits) Rules, 2014, such deposits are repayable not earlier than three months from the date of such deposits or renewal thereof.

Maximum Amount of Deposits: As per Rule 3(4)(b) of the Companies (Acceptance of Deposits) Rules, 2014, an eligible company is permitted to accept or renew deposits from persons other than its members. As per the law the amount

of such deposit together with the amount of outstanding deposits (excluding deposits from members) on the date of acceptance or renewal can be maximum twenty-five per cent. of the aggregate of its paid-up share capital, free reserves and securities premium account of the company.

For Plan A: Since the maximum period of deposits is 4 months, the maximum amount of deposits shall not exceed ten per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company. Maximum amount of deposits: 10% of 110 crores (70 + 20 + 20) = 11 crores.

For Plan B: Maximum amount of deposits: 25% of 110 crores (70 + 20 + 20) = 11 crores (outstanding deposit under plan A) = 16.5 crores.

- (ii) In terms of Rule 3(5) of the Companies (Acceptance of Deposits) Rules, 2014, in case Viki Limited is a wholly owned Government Company, so it can accept deposit together with the amount of other outstanding deposits as on the date of acceptance or renewal maximum up to thirty-five per cent. of the aggregate of its paid-up share capital, free reserves and securities premium account. For Plan B: Maximum amount of deposits: 35% of 110 crores (70 + 20 + 20) = 38.5 crores.

5.

- (i) In terms of Rule 2 (1)(c)(xvii) of the Companies (Acceptance of Deposits) Rules, 2014, if a start-up company receives rupees twenty-five lakh or more by way of a convertible note (convertible into equity shares or repayable within a period not exceeding ten years from the date of issue) in a single tranche, from a person, it shall not be treated as deposit.

In the given case, Moon Technology Private Limited, a start-up company, received ₹ 20.00 lacs from Paras in a single tranche by way of a convertible note which is repayable within a period of six years from the date of its issue. The amount received is below threshold limit of ₹ 25.00 lacs. Hence, the amount of ₹ 20.00 lacs shall be considered as deposit and the provisions for acceptance of deposit will apply accordingly.

- (ii) According to Rule 3 (1) of the Companies (Acceptance of Deposits) Rules, 2014, a company is not permitted to accept or renew deposits (whether secured or unsecured) which is repayable on demand or in less than six months. Further, the maximum period of acceptance of deposit cannot exceed thirty six months.

However, as an exception to this rule, for the purpose of meeting any of its short-

term requirements of funds, a company is permitted to accept or renew deposits for repayment earlier than six months subject to the conditions that:

- (1) such deposits shall not exceed ten per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company; and
- (2) such deposits are repayable only on or after three months from the date of such deposits or renewal.

In the given case of Shriram Readymade Garments Limited, it wants to accept deposits of ₹ 50.00 lacs from its members for a tenure which is less than six months. It can do so if it justifies that the deposits are required for the purpose of meeting any of its short-term requirements of funds but in no case such deposits shall exceed 10% ten per cent of the aggregate of its paid-up share capital, free reserves and securities premium account and further, such deposits shall be repayable only on or after three months from the date of such deposits. ③

- (iii) As per Rule 2 (1) (e) of the Companies (Acceptance of Deposits) Rules, 2014, the term “eligible company” means a public company as referred to in **section 76 (1)**, having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the public for acceptance of deposits:

However, an eligible company, which is accepting deposits within the limits specified under section 180 (1) (c), may accept deposits by means of an ordinary resolution. Thus, a public company can accept deposit from public if it is an eligible company. In the given question, Y Ltd. has a turnover of ₹400 crore and net worth of ₹ 50 crore. Hence, it cannot be termed as an eligible company and thus can not accept deposits from the public.

(Nov'21 5 Marks)

6. As per sub-clause (ixa) of Rule 2 (1) (c) of the Companies (Acceptance of Deposit) Rules, 2014, any amount raised by issue of non-convertible debentures not constituting a charge on the assets of the company and listed on recognised stock exchange as per the applicable regulations made by the Securities and Exchange Board of India, are not considered as deposit.

Hence, ₹ 1 crore raised by Vrinda Limited will not be considered as deposit in terms of sub-clause (ixa) of Rule 2 (1) (c).

(RTP MAY 22)

7: Appointment of Trustee for Depositors [Rule 7 of the Companies (Acceptance of Deposits) Rules, 2014]:

- (1) No company referred to in sub-section (2) of section 73 or any eligible company shall issue a circular or advertisement inviting secured deposits unless the company has appointed one or more trustees for depositors for creating security for the deposits.

However, a written consent shall be obtained from the trustee for depositors before their appointment and a statement shall appear in the circular or circular in the form of advertisement with reasonable prominence to the effect that the trustees for depositors have given their consent to the company to be so appointed.

- (2) The company shall execute a deposit trust deed in DPT-2 at least seven days before issuing the circular or circular in the form of advertisement.

- (3) No person including a company that is in the business of providing trusteeship services shall be appointed as a trustee for the depositors, if the proposed trustee:

- (a) is a director, key managerial personnel or any other officer or an employee of the company or of its holding, subsidiary or associate company or a depositor in the company;
- (b) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
- (c) has any material pecuniary relationship with the company;
- (d) has entered into any guarantee arrangement in respect of principal debts secured by the deposits or interest thereon;
- (e) is related to any person specified in clause (a) above.

- (4) No trustee for depositors shall be removed from office after the issue of circular or advertisement and before the expiry of his term except with the consent of all the directors present at a meeting of the board.

However, in case the company is required to have independent directors, at least one independent director shall be present in such meeting of the Board.

8: Acceptance of deposit by company from its members: As per section 73(2) of the Companies Act, 2013, a company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of

such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfillment of the following conditions, namely—

- (a) By issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed;
- (b) Filing a copy of the circular along with such statement with the Registrar within 30 days before the date of issue of the circular;
- (c) Depositing such sum which shall not be less than fifteen per cent of the amount of its deposits maturing during a financial year and the financial year next following, and kept in a scheduled bank in a separate bank account to be called as “deposit repayment reserve account”;
- (d) Certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits; and
- (e) Providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company.

Every deposit accepted by a company shall be repaid with interest in accordance with the terms and conditions of the agreement. Where a company fails to repay the deposit or part thereof or any interest thereon, the depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit.

Exemptions to Private Limited Companies

In case of private company - Points (a) to (d) above shall not apply to private Companies-

- (A) which accepts from its members monies not exceeding 100% of aggregate of the paid up share capital, free reserves, and securities premium accounts, or
- (B) which is a start-up, for five years from the date of its incorporation; or
- (C) which fulfils all of the following conditions, namely:-
 - (a) It is not an associate or a subsidiary company of any other company;
 - (b) if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower; and

- (c) such company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section:

Provided that the company referred to in clauses (A), (B) or (C) shall file the details of monies accepted to the Registrar in such manner as may be specified

9:

- (i) As per the provisions of **Section 73(2)** of the Companies Act, 2013 read with Rule 3 of the Companies (Acceptance of Deposits) Rules, 2014, as amended by the Companies (Acceptance of Deposits) Amendment Rules, 2016, a company shall accept any deposit from its members, together with the amount of other deposits outstanding as on the date of acceptance of such deposits not exceeding thirty five per cent of the aggregate of the Paid-up share capital, free Reserves and securities premium account of the company. Provided that a private company may accept from its members monies not exceeding one hundred per cent of aggregate of the paid up share capital, free reserves and securities premium account and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified.

Therefore, the given statement of eligibility of ABC Private Ltd. to accept deposits from its members to the extent of ₹ 50.00 lakh is True.

- (ii) A Government company is not eligible to accept or renew deposits under **section 76**, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal exceeds thirty five per cent of the aggregate of its Paid-up share capital, free Reserves and securities premium account of the company.

Therefore, the given statement prescribing the limit of 25% to accept deposits is False.

- 10: Deposit:** According to **section 2 (31)** of the Companies Act, 2013, the term 'deposit' 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 prescribed in the Rule 2 (1) (c) of the Companies (Acceptance of deposit) Rules, 2014, in consultation with the Reserve bank of India.

Amounts received by the company will not be considered as deposit: In terms of Rule 2 (1) (c) of the Companies (Acceptance of deposit) Rules, 2014, following shall be the answers-

- (i) In the first case, where ₹5,00,000 raised by the Rishi Ltd. through issue of non-

convertible debenture not constituting a charge on the assets of the company and listed on recognised stock exchange as per the applicable regulations made by the SEBI, will not be considered as deposit in terms of sub-clause (ixa) of the said rule.

- (ii) In the second case, ₹2,00,000 was received from Mr. T, an employee of the company drawing annual salary of ₹1,50,000 under a contract of employment with the company in the nature of non-interest bearing security deposit. This amount received by company from employee, Mr. T will be considered as deposit in terms of sub-clause (x) of the said rule, as amount received is more than his annual salary under a contract of employment with the company in the nature of non-interest bearing security deposit.
- (iii) In the third case, amount of ₹3,00,000 received by a private company from a relative of a Director, declaring details of the amounts so deposited as out of gift received from his mother. This amount received by the private Company will not be considered as deposit in terms of sub-clause (viii) of the said rule. Here as per the requirement, the relative of the director of the private company, from whom money is received, furnished the declaration in writing to the effect that the amount is given out of gift received from his mother and not being given out of funds acquired by him by borrowing or accepting loans or deposits from others.

- 11:** The provisions relating to obtaining of 'Credit Rating' to be followed by an 'eligible company' are contained in **Section 76 (1)** of the Companies Act, 2013 and Rule 3(8) of the Companies (Acceptance of Deposits) Rules, 2014 as amended from time to time. Accordingly, an 'eligible company' which desires to raise public deposits shall be required to obtain the rating (including its net-worth, liquidity and ability to pay its deposits on due date) from a recognised credit rating agency. The given rating which ensures adequate safety shall be informed to the public at the time of invitation of deposits from the public. Further, the rating shall be obtained every year during the tenure of deposits. As per Rule 3 (8), copy of the credit rating which is being obtained at least once in a year shall be sent to the Registrar of Companies along with the Return of Deposits in Form DPT-3. Further, the credit rating shall not be below the minimum investment grade rating or other specified credit rating for fixed deposits. It shall be obtained from any one of the approved credit rating agencies as specified for Non-Banking Financial Companies in the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998,

as amended from time to time

12: According to Rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules, 2014, the following category of receipt is not considered as deposit:

Any amount received and held pursuant to an offer made in accordance with the provisions of the Companies Act, 2013 towards subscription to any securities, including share application money or advance towards allotment of securities, pending allotment, so long as such amount is appropriated only against the amount due on allotment of the securities applied for;

It is clarified by way of Explanation that if the securities for which application money or advance for such securities was received cannot be allotted within 60 days from the date of receipt of the application money or advance for such securities and such application money or advance is not refunded to the subscribers within 15 days from the date of completion of 60 days, such amount shall be treated as a deposit under these rules.

Further, it is clarified that any adjustment of the amount for any other purpose shall not be treated as refund.

In the given question, RS Limited has received ₹ 50 Lakhs as share application money on 01.06.2019. It failed to allot shares within the prescribed limit. Further, on 30.07.2019 the company adjusted the amount of ₹ 5 Lakhs received from Mr. Khanna (a customer of the company), by way of book adjustment towards the dues payable by him to the company.

In the light of the facts of the question and provisions of Law:

- (1) If such application money or advance is not refunded to the subscribers within 15 days from the date of completion of 60 days, such amount shall be treated as a deposit. In the question, the prescribed limit of 60 days will end on 31.07.2019 and the company has 15 more days to refund such application money to the subscribers. Otherwise, after lapse of such 15 days, the amount not so refunded will be treated as deposit. Hence, the Company Secretary of RS Limited is not correct in treating the entire amount of ₹ 50 Lac as 'Deposits' on 31.07.2019.
- (2) Any adjustment of the amount for any other purpose shall not be treated as refund. Thus, the amount of ₹ 5 Lakhs adjusted against payment due to be received from Mr. Khanna, cannot be treated as refund.

VI

REGISTRATION OF CHARGES



QUESTIONS

Question 1:

1. Define the term “charge” and also explain what is the punishment for default with respect to registration of charge as per the provisions of the Companies Act, 2013.
(ICAI Module, May’19 Mock Test, Nov’21 RTP)

Question 2:

2. Mr. Parth purchased a commercial property in Delhi belonging to PQR Limited after entering into an agreement with the company. At the time of registration, Mr. Parth comes to know that the title deed of the company is not free and the company expresses its inability to get the title deed transferred in his name contending that he ought to have the knowledge of charge created on the property of the company. Explain, whether the contention of PQR Limited is correct? Give your answer as per the provisions of the Companies Act, 2013. (ICAI Module, May’2022 Mock Test)

Question 3:

3. Krish Limited created a charge on its assets on 2nd February, 2021. However, the company did not register the charge with the Registrar of companies till 15th March, 2021.
 - (a) What procedure should the company follow to get the charge registered?
 - (b) Suppose the company realises its mistake of not registering the charge on 27th May, 2021 (instead of 15th March, 2021), can it still register the charge? Advise with reference to the relevant provisions of the Companies Act, 2013.(RTP MAY 22)

Question 4:

4. Bows Limited is required to create a charge on one of its assets. However, the above charge could not be registered within the required period of 30 days. State the provisions related to extension of time and procedure for registration of charges, in case when the charge was not registered within 30 days of its creation.
(Nov’22 Mock Test)



MULTIPLE CHOICE QUESTIONS (HOMEWORK)

1. The instrument creating a charge or modification thereon shall be preserved for a period of _____ years from the date of satisfaction of charge by the company.
(a) 5
(b) 7
(c) 8
(d) 15
(Nov'22 Mock Test)
2. On receipt of intimation of satisfaction of charge, the registrar issues a notice to the holder calling upon him to show cause within such time not exceeding _____ days as to why payment or satisfaction in full should not be recorded as intimated to the Registrar:
(a) 14
(b) 21
(c) 30
(d) 300
(ICAI Module, Nov'19 Mock Test)
3. Any person acquiring property (on which charge is registered under **section 77**) shall be deemed to have notice of the charge from:
(a) end of 30 days
(b) date of application for charge
(c) date acquiring the property
(d) date of such registration
(ICAI Module)
4. An interest or lien created on the property or assets of a company or any of its undertakings or both as security is known as:
(a) Debt
(b) Charge
(c) Liability
(d) Hypothecation
(ICAI Module)
5. If a charge is created on or after 02-11-2018 but the registration is not made within the original period of 30 days and also not made within next 30 days after the expiry of original 30 days, then the Registrar is empowered to allow such registration to be

made within a further period of _____

- (a) 30 days
- (b) 45 days
- (c) 60 days
- (d) 90 days

(ICAI Module)

6. Eztech Machines Limited owns a plot of land which was mortgaged to Urbane Commercial Bank Limited for raising term loan of ₹2 crore. The mortgage was duly registered with the Central Registry. First loan instalment of ₹50 lacs was released immediately after sanction of term loan with the condition that subsequent three instalments of ₹50 lacs shall be released as soon as the earlier released instalment is utilized satisfactorily. Is it necessary either for the company or the bank to register the charge on plot with the concerned Registrar of Companies (ROC) when the mortgage is registered with the Central Registry?
- (a) It is not necessary either for the bank or the company to register the charge on plot of land with the concerned Registrar of Companies (ROC) when the mortgage is registered with the Central Registry.
 - (b) It is necessary to get the charge on plot on land registered with the concerned Registrar of Companies (ROC) irrespective of the fact that mortgage is registered with the Central Registry.
 - (c) The charge on plot needs to be registered with the concerned Registrar of Companies (ROC) only when the actual liability of the company with the Bank exceeds ₹1 crore.
 - (d) The charge on plot needs to be registered with the concerned Registrar of Companies (ROC) only when the term loan sanctioned by the bank to the company exceeds ₹2 crores.

(Nov'19 RTP, Nov'19 Mock Test)

7. With a view to augment its production, Surya Techno-Products Limited availed a loan of ₹50 lacs from Shrilaxmi First Bank Limited for purchase of a new machinery by offering its factory worth ₹2.25 crores as security. However, the company did not initiate any steps to get the charge on factory registered in favour of lending banker within the specified time. As soon as the charge-holder bank came to know about the non-registration of charge with the ROC, it applied to the Registrar for registration of charge along with the instrument creating the charge and paid the requisite fees when demanded. Advise the bank whether it can recover the fees so paid for registration of charge from Surya Techno-Products.

- (a) Yes, the bank can recover the fees paid by it for registration of charge.
 - (b) No, the bank cannot recover the fees paid by it for registration of charge because the bank is equally responsible for getting the charge registered.
 - (c) Only when it obtains recovery orders from Regional Director (RD), the bank can recover the fees paid by it for registration of charge from the company.
 - (d) Only when it obtains recovery orders from National Company Law Tribunal (NCLT), the bank can recover the fees paid by it for registration of charge from the company
- (Nov'19 RTP)

8. A charge was created by Cygnus Softwares Limited on its office premises to secure a term loan of ₹1 crore availed from Next_Gen Commercial Bank Limited through an instrument of charge executed by both the parties on 16th February, 2019. Inadvertently, the company could not get the charge registered with the concerned Registrar of Companies (ROC) within the first statutory period permitted by law and the default was made known to it by the lending banker with a stern warning to take immediate steps for rectification. Advise the company regarding the latest date within which it must register the charge with the ROC so that it is not required to pay a specific type of fees for charge registration.
- (a) With a view to avoid paying a specific type of fees for charge registration, the company must get the charge registered latest by 27th April, 2019.
 - (b) With a view to avoid paying a specific type of fees for charge registration, the company must get the charge registered latest by 17th April, 2019.
 - (c) With a view to avoid paying a specific type of fees for charge registration, the company must get the charge registered latest by 2nd May, 2019.
 - (d) The company cannot now get the charge register as the time prescribed by Law has expired.
- (Nov'19 RTP)

9. Cyplish Games and Toys Limited was sanctioned a term loan of ₹ 60.00 lacs by Zawnn Industrial Bank Limited on 21st November, 2018. As a security, the company offered its office premises situated at Bandra, Mumbai and an instrument of charge was executed. However, the company failed to get the charge registered with the concerned Registrar within the first as well as second statutory period available as per law. This was adversely commented by the internal auditors of the bank and therefore, after a strict advisory received from Shahji, the senior manager of the bank, the company was prompted to take steps for registration of charge. Name the specific type of fees which the company is now required to pay for registration

of charge.

- (a) Special Fees.
- (b) Ad-valorem Fees.
- (c) A Late Registration Fees.
- (d) Ad-valorem Duty.

(Nov'19 RTP)

10. A charge was created on assets of Pram Limited. Such charge is registered on 12th November, 2018. Any person acquiring such assets shall be deemed to have notice of the charge: (Give your answer as per the provisions of the Companies Act, 2013)
- (a) from 12th November, 2018;
 - (b) from 13th November, 2018;
 - (c) from 12th December, 2018;
 - (d) from 12th January, 2019;

(ICAI Sample Question)

11. An interest or lien created on the property or assets of a company or any of its undertakings or both as security is known as:
- (a) Debt
 - (b) Charge
 - (c) Liability
 - (d) Hypothecation

(ICAI Module, May'2022 Mock Test)

12. The registrar shall keep a register of charges which shall be open to inspection by _____ on payment of fee:
- (a) the company
 - (b) the charge holder
 - (c) holder
 - (d) any person

(1 Mark) (ICAI Module, May'2022 Mock Test)



ANSWERS

Answer 1:

- 1: The term charge has been defined in **section 2 (16)** of the Companies Act, 2013 as 'an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage'.

Punishment for contravention – According to **section 86** of the Companies Act, 2013, if a company makes any default with respect to the registration of charges covered under Chapter VI, a penalty shall be levied, Upto 5,00,000.

Every defaulting officer is punishable with Fine 50000/-.

Further, if any person wilfully furnishes any false or incorrect information or knowingly suppresses any material information which is required to be registered under **section 77**, he shall be liable for action under **section 447** (punishment for fraud).

Answer 2:

- 2: According to **section 80** of the Companies Act, 2013, where any charge on any property or assets of a company or any of its undertakings is registered under **section 77** of the Companies Act, 2013, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration.

Thus, **section 80** clarifies that if any person acquires a property, assets or undertaking in respect of which a charge is already registered, it would be deemed that he has complete knowledge of charge from the date of its registration. Mr. Parth, therefore, ought to have been careful while purchasing property and should have verified beforehand that PQR Limited had already created a charge on the property.

In view of above, the contention of PQR Limited is correct.

(ICAI Module, May'2022 Mock Test)

Answer 3:

3. According to **section 77(1)** of the Companies Act, 2013 it shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India, to register the particulars of the charge signed by the company and the chargeholder together with the instruments, if any, creating such charge in such form, on payment

of such fees and in such manner as may be prescribed, with the Registrar within 30 days of its creation.

However, under clause (b) of first proviso to **section 77 (1)** the Registrar is empowered to extend the period of 30 days by another 30 days (i.e. sixty days from the date of creation) on payment of prescribed additional fee.

(a) Krish Limited did not register the charge with the Registrar of companies till 15 th March, 2021. In this case particulars of charge were not filed within the prescribed period of 30 days (i.e. till 4th March, 2021).

Taking advantage of clause (b) of first proviso to **section 77 (1)**, Krish Limited should immediately file the particulars of charge with the Registrar after satisfying him through making an application that it had sufficient cause for not filing the particulars of charge within 30 days of its creation.

(b) Clause (b) of second Proviso to **Section 77 (1)** provides another opportunity for registration of charge by granting a further period of sixty days but the company is required to pay ad valorem fees.

If the company realises its mistake of not registering the charge on 27 th May, 2021 instead of 15th March, 2021, it shall be noted that a period of sixty days has already expired from the date of creation of charge.

Since the first sixty days from creation of charge have expired on 3rd April, 2021, Krish Limited can still get the charge registered within a further period of sixty days from 3rd April, 2021 after paying the prescribed ad valorem fees. The company is required to make an application to the Registrar in this respect giving sufficient cause for non- registration of charge. (RTP MAY 22)

Answer 4:

4. As per the provisions of **Section 77** of the Companies Act, 2013, in case the charge was not registered within 30 days of creation of the charge, the Registrar may, on an application by the company, allow such registration to be made within a period of 60 days of such creation (i.e. another 30 days are granted after the expiry of original 30 days), on payment of additional fees as prescribed.

Procedure for Extension of Time Limit: For seeking extension of time, the company is required to make an application to the Registrar in the prescribed form. It should be supported by a declaration from the company signed by its company secretary or a director that such belated filing shall not adversely affect the rights of any other intervening creditors of the company.

The application so made must satisfy the Registrar that the company had sufficient

cause for not filing the particulars and the instrument of charge, if any, within the original period of thirty days.

Only then he will allow registration of charge within the extended period. Further, requisite additional fee or advalorem fee, as applicable, must also be paid. (Nov'22 Mock Test)



ANSWER TO MCQs

1	C	2	A	3	D	4	B	5	C
6	B	7	A	8	B	9	B	10	A
11	B	12	D						



HOMEWORK QUESTIONS & ANSWER

1. How will a copy of an instrument evidencing creation of charge and required to be filed with the Registrar be verified?

(ICAI Module)

2. Briefly explain the provisions enforced by the Companies (Amendment) Second Ordinance, 2019 when a charge created before 02-11-2018 is not registered within the prescribed period of thirty days as provided in **Section 77 (1)**.

(ICAI Module, May'20 Mock Test)

3. Renuka Soaps and Detergents Limited realised on 2nd May, 2019 that particulars of charge created on 12th March, 2019 in favour of a Bank were not registered with the Registrar of Companies. What procedure should the company follow to get the charge registered? Would the procedure be different if the company realised its mistake of not registering the charge on 7th June, 2019 instead of 2nd May, 2019? Explain with reference to the relevant provisions of the Companies Act, 2013.

(ICAI Module, Nov'19 Mock Test)

4. Mr. Antriksh purchased a commercial property in Delhi belonging to NRT Limited after entering into an agreement with the company. At the time of registration, Mr. Antriksh comes to know that the title deed of the company is not free and the company expresses its inability to get the title deed transferred in his name contending that he ought to have the knowledge of charge created on the property of the company. Explain, whether the contention of NRT Limited is correct?

(ICAI Module, May'18 RTP, Nov'19 Mock Test)

1. Explain the provisions of the Companies Act, 2013 relating to Rectification by Central Government in Register of Charges.

(ICAI Module)

2. What are the powers of Registrar to make entries of satisfaction and release of charges in the absence of any intimation from the company? Discuss this matter in the light of provisions of the Companies Act, 2013.

(ICAI Module, May'19 Mock Test, Nov'19 Mock Test, Nov'20 RTP)

3. Explain the term 'charge'. State the circumstances under which necessity to

create a charge arises. What is the time limit for registration of charge with the registrar?

(May'18-6 Marks)

4. What is the time limit for registration of charge with the registrar? Where should the company's Register of charges be kept? State the persons who have the right to inspect the Company's Register of charges.

(Nov'18-6 Marks)

5. State, with reasons, whether the following statements are True or False?

- (i) The Registrar of Companies is not bound to issue notice to the holder of charge, if the company gives intimation of satisfaction of charge in the specified form and signed by the holder of charge.
- (ii) The Registrar of Companies may allow the company or holder of charge to file intimation within a period of 300 days of the satisfaction of charge on payment of fee and additional fees as may be prescribed.

(May'19-2 Marks)

6. DN Limited hypothecated its plant to a Nationalised Bank and availed a term loan. The Company registered the charge with the Registrar of Companies. The Company settled the term loan in full, The Company requested the Bank to issue a letter confirming the settlement of the term loan. The Bank did not respond to the request. State the relevant provisions of the Companies Act, 2013 to register the satisfaction of charge in the above circumstance. State the time frame up to which the Registrar of Companies may allow the Company to intimate satisfaction of charges.

(Nov'19-5 Marks)

7. Ranjit acquired a property from ABC Limited which was mortgaged to OK Bank. He settled the dues to Ok Bank in full and the same was registered with the sub-registrar who has noted that the mortgage has been settled. But neither the company nor OK Bank has filed particulars of satisfaction of charge with the Registrar of Companies. Can Mr. Ranjit approach the Registrar and seek any relief in this regard? Discuss this matter in the light of provisions of the Companies Act, 2013.

(ICAI Module, Nov'20 Mock Test, May'21 Mock Test, Nov'22 Mock Test)

8. ABC Limited created a charge in favour of Z Bank. The charge was duly registered. Later, the Bank enhanced the facility by another ₹ 20 crores. Due to inadvertence, this modification in the original charge was not registered. Advise the company as

to the course of action to be pursued in this regard.

(ICAI Module, Nov'20 Mock Test, May'21 Mock Test)

9. Rose (Private) Limited on 3rd April 2019 obtained ₹ 30 lakhs working capital loan by offering its Stock and Accounts Receivables as security and ₹ 5 Lakhs adhoc overdraft on the personal guarantee of a Director of Rose (Private) Limited, from a financial institution.

- (i) Is it required to create charge for working capital loan and adhoc overdraft in accordance with the provisions of the Companies Act, 2013?
- (j) State the provisions relating to extension of time and procedure for registration of charges in case the above charge was not registered within 30 days of its creation.

(Nov'20- 4 Marks, Nov'22 Mock Test)

10. Moon Light Ltd. is having its establishment in USA. It obtained a loan there creating a charge on the assets of the foreign establishment. The Company received a notice from the Registrar of Companies for not filing the particulars of charge created by the Company on the property or assets situated outside India. The Company wants to defend the notice on the ground that it shall not be the duty of the company to register the particulars of the charge created on the assets not located in India. Do you agree with the stand taken by the Company? Give your answer with respect to the provisions of the Companies Act, 2013.

(Jan'21- 3 Marks)



ANSWERS

- 1: A copy of every instrument evidencing any creation or modification of charge and required to be filed with the Registrar shall be verified as follows:
- (a) in case property is situated outside India: where the instrument or deed relates solely to the property situated outside India, the copy shall be verified by a certificate issued either under the seal, if any, of the company, or under the hand of any director or company secretary of the company or an authorised officer of the charge holder or under the hand of some person other than the company who is interested in the mortgage or charge;
 - (b) in case property is situated in India (whether wholly or partly): where the instrument or deed relates to the property situated in India (whether wholly or partly), the copy shall be verified by a certificate issued under the hand of any director or company secretary of the company or an authorised officer of the charge holder.
- 2: As per **Section 77 (1)** of the Companies Act, 2013 every company creating a charge:
- a. within or outside India,
 - b. on its property or assets or any of its undertakings,
 - c. whether tangible or otherwise, and
 - d. situated in or outside India,
- is required to register the particulars of the charge with the Registrar within thirty days of its creation.
- In case the charge was created before 02-11-2018 and it was not registered within the prescribed period of thirty of its creation, clause (a) of the first Proviso to **Section 77 (1)** states that the Registrar may, on an application by the company, allow such registration to be made within a period of **300 days** of such creation.
- According to clause (a) of the Second Proviso to **Section 77 (1)**, if the registration is not made within the extended period of 300 days, it shall be made within six months from 02-11-2018 on payment of prescribed additional fees. It is provided that different fees may be prescribed for different classes of companies.
- Note:** The Companies (Amendment) Second Ordinance, 2019 stand enforced w.r.e.f. 02-11-2018.
- 3: The charge in the present case was created after 02-11-2018 (i.e. the date of commencement of the Companies (Amendment) Second Ordinance, 2019) to which another set of provisions is applicable. These provisions are different from a case

where the charge was created before 02-11-2018.

Initially, the prescribed particulars of the charge together with the instrument, if any, by which the charge is created or evidenced, or a copy thereof, duly verified by a certificate, are to be filed with the Registrar within 30 days of its creation. [Section 77 (1)]. In this case particulars of charge were not filed within the prescribed period of 30 days.

However, the Registrar is empowered under clause (b) of first proviso to section 77 (1) to extend the period of 30 days by another 30 days (i.e. sixty days from the date of creation) on payment of prescribed additional fee. Taking advantage of this provision, Renuka Soaps and Detergents Limited should immediately file the particulars of charge with the Registrar after satisfying him through making an application that it had sufficient cause for not filing the particulars of charge within 30 days of its creation.

If the company realises its mistake of not registering the charge on 7th June, 2019 instead of 2nd May, 2019, it shall be noted that a period of sixty days has already expired from the date of creation of charge. However, Clause (b) of Second Proviso to Section 77 (1) provides another opportunity for registration of charge by granting a further period of sixty days but the company is required to pay advalorem fees. Since first sixty days from creation of charge were expired on 11th May, 2019, Renuka Soaps and Detergents Limited can still get the charge registered within a further period of 60 days from 11th May, 2019 after paying the prescribed advalorem fees. The company is required to make an application to the Registrar in this respect giving sufficient cause for non-registration of charge.

- 4: According to section 80 of the Companies Act, 2013, where any charge on any property or assets of a company or any of its undertakings is registered under section 77 of the Companies Act, 2013, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration.

Thus, Section 80 clarifies that if any person acquires a property, assets or undertaking in respect of which a charge is already registered, it would be deemed that he has complete knowledge of charge from the date of its registration. Mr. Antriksh, therefore, was ought to have been careful while purchasing property and should have noticed beforehand that NRT Limited had already created a charge on the property.

In view of above, the contention of NRT Limited is correct.

1: **Section 87** of the Act of 2013 and Rule 12 empowers the Central Government to order rectification of Register of Charges in the following cases of default:

- (i) when there was omission in giving intimation to the Registrar with respect to payment or satisfaction of charge within the specified time;
- (ii) when there was omission or mis-statement of any particulars in any filing previously made to the Registrar. Such filing may relate to any charge or any modification of charge or with respect to any memorandum of satisfaction or other entry made under **Section 82** (Company to report satisfaction of charge) or **Section 83** (Power of Registrar to make entries of satisfaction and release). Before directing that the 'time for giving the intimation of payment or satisfaction shall be extended' or the 'omission or mis-statement shall be rectified', the Central Government needs to be satisfied that such default was accidental or due to inadvertence or because of some other sufficient cause or it did not prejudice the position of creditors or shareholders. The application in Form CHG-8 shall be filed by the company or any interested person and order of rectification shall be made by the Central Government on such terms and conditions as it deems just and expedient.

2: **Section 83** of the Act of 2013 empowers the Registrar to make entries with respect to the satisfaction and release of charges even if no intimation has been received by him from the company.

Accordingly, with respect to any registered charge if an evidence is shown to the satisfaction of Registrar that the debt secured by charge has been paid or satisfied in whole or in part or that the part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking, then he may enter in the register of charges a memorandum of satisfaction that:

- ❖ the debt has been satisfied in whole or in part; or
- ❖ the part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking.

This power can be exercised by the Registrar despite the fact that no intimation has been received by him from the company.

Information to affected parties: The Registrar shall inform the affected parties within 30 days of making the entry in the register of charges.

Issue of Certificate: As per Rule 8 (2), in case the Registrar enters a memorandum of

satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge in Form No. CHG-5.

- 3: **Charge:** According to **section 2(16)** of the Companies Act, 2013 “charge” has been defined as an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage.

Why creating a charge is a necessity for companies? The answer to this lies in the setup of raising capital by the companies. Generally, companies depend on share capital and borrowed capital for funding their projects. When the company raises money through borrowings, they may issue debentures or by obtaining loans from banks/ financial institutions. These banks/ financial institutions need a surety regarding the repayment of their funds. Thus, they create a mortgage or hypothecation on the assets of the company for safe and secured lending of the funds. This creation of right on the assets and properties of the borrower companies is known as a charge on assets.

Once charge is registered and filed, it becomes information in public domain as to how much company has borrowed against its assets and from whom.

Time limit for registration of charge with the registrar: It shall be duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and situated in or outside India, to register the particulars of the charge signed by the company and the charge holder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the registrar within 30 days of creation.

Provided that the Registrar may, on an application by the company, allow such registration to be made within a period of three hundred days of such creation on payment of such additional fees as may be prescribed.

Provided further that if registration is not made within a period of three hundred days of such creation, the company shall seek extension of time from the Central Government in accordance with **section 87**.

- 4: **Time limit for registration of charge with the registrar:** According to **section 77** of the Companies Act, 2013, it shall be duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, to register the particulars of the charge, on payment of such fees and in such manner as may be prescribed, with the registrar within 30 days of creation.

The Registrar may, on being satisfied that the company had sufficient cause for not filing the particulars and instrument of charge, if any, within a period of 30 days of the date of creation of the charge, allow the registration of the same after 30 days but within a period of 300 days of the date of such creation of charge or modification of charge on payment of such additional fees as may prescribed.

The application for delay shall be made and supported by a declaration from the company signed by its secretary or director that such belated filing shall not adversely affect rights of any other intervening creditors of the company [The companies (Registration of charges) Rules, 2014].

Provided that if registration is not made within a period of 300 days of such creation, the company shall seek extension of time from the Central Government in accordance with the provisions of **Section 87**.

(Time Limit given above is as per old Companies Rules which was prevalent for Nov'18 Exam)

Place of keeping company's register of charges: According to **section 85** of the Companies Act, 2013, every company shall keep at its registered office a register of charges.

Inspection of the register of charges and instrument of charges: The register of charges and instrument of charges, shall be open for inspection during business hours—

(a) by any member or creditor without any payment of fees; or

(b) by any other person on payment of such fees as may be prescribed,

-subject to such reasonable restrictions as the company may, by its articles, impose.

(The above mentioned Section 85 is removed from your syllabus as per ICAI Notification)

- 5: (i) According to the proviso to **section 82(2)** of the Companies Act, 2013, no notice shall be required to be sent, in case the intimation to the Registrar in this regard is in the specified form and signed by the holder of charge.

Hence, the given statement is True.

- (ii) As per **section 77** of the Companies Act, 2013, it shall be duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and situated in or outside India, to register the particulars of the charge signed by the company and the charge holder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the

registrar within 30 days of creation. The Registrar may, on an application by the company, allow such registration to be made within a period of three hundred days of such creation on payment of such additional fees as may be prescribed. Hence, the given statement is True.

6: Intimation regarding Satisfaction of Charge

Section 82 of the Companies Act, 2013, requires a company to give intimation of payment or satisfaction in full of any charge earlier registered, to the Registrar in the prescribed form. The intimation needs to be given within a period of 30 days from the date of such payment or satisfaction.

Extended period of intimation: Proviso to **Section 82 (1)** extends the period of intimation from thirty days to three hundred days. Accordingly, it is provided that the Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of 300 days of such payment or satisfaction on payment of prescribed additional fees.

7: Section 83 of the Companies Act, 2013 empowers the Registrar to make entries with respect to the satisfaction and release of charges even if no intimation has been received by him from the company. Accordingly, with respect to any registered charge if an evidence is shown to the satisfaction of Registrar that the debt secured by charge has been paid or satisfied in whole or in part or that the part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking, then he may enter in the register of charges a memorandum of satisfaction that:

- the debt has been satisfied in whole or in part; or
- the part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking.

This power can be exercised by the Registrar despite the fact that no intimation has been received by him from the company.

Information to affected parties: The Registrar shall inform the affected parties within 30 days of making the entry in the register of charges.

Issue of Certificate: As per Rule 8 (2), in case the Registrar enters a memorandum of satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge in Form No. CHG-5.

Therefore, Ranjit can approach the Registrar and show evidence to his satisfaction that the charge has been duly settled and satisfied and request the Registrar to

enter a memorandum of satisfaction noting the release of charge.

- 8: The company is advised to immediately file an application for rectification of the Register of Charges in Form No CHG- 8 to the Central Government under **Section 87** of the Companies Act, 2013

Section 87 of the Act of 2013 and Rule 12 empowers the Central Government to order rectification of Register of Charges in the following cases of default:

- (i) when there was omission in giving intimation to the Registrar with respect to payment or satisfaction of charge within the specified time;
- (ii) when there was omission or mis-statement of any particulars in any filing previously made to the Registrar. Such filing may relate to any charge or any modification of charge or with respect to any memorandum of satisfaction or other entry made under **Section 82** (Company to report satisfaction of charge) or **Section 83** (Power of Registrar to make entries of satisfaction and release).

Before directing that the 'time for giving the intimation of payment or satisfaction shall be extended' or the 'omission or mis-statement shall be rectified', the Central Government needs to be satisfied that such default was accidental or due to inadvertence or because of some other sufficient cause or it did not prejudice the position of creditors or shareholders.

The application in Form CHG-8 shall be filed by the company or any interested person. Therefore Z Bank can also proceed under **Section 87** as aforesaid.

The order of rectification shall be made by the Central Government on such terms and conditions as it deems just and expedient.

9. As per the provisions of **Section 2(16)** of the Companies Act, 2013, "charge" means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes mortgage.

- (i) Whenever a company obtains working capital loans from financial institutions by offering stock and Accounts Receivables as security, Rose (Private) Limited is required to create a charge on such property or assets in favour of the lender. Hence, for ₹ 30 Lakhs working capital loan, it is required to create a charge on it. Rose (Private) Limited is not required to create a charge for ₹ 5 Lakh adhoc overdraft on the personal guarantee of a director. Since charge is always created on the property or assets of a company and personal guarantee of director is not a property or asset of company.
- (ii) As per the provisions of **Section 77** of the Companies Act, 2013, in case the

above charge was not registered within 30 days of creation of the charge, the Registrar may, on an application by the company, allow such registration to be made within a period of 60 days of such creation (i.e. another 30 days are granted after the expiry of original 30 days), on payment of additional fees as prescribed. Procedure for Extension of Time Limit: For seeking extension of time, the company is required to make an application to the Registrar in the prescribed form. It should be supported by a declaration from the company signed by its company secretary or a director that such belated filing shall not adversely affect the rights of any other intervening creditors of the company. The application so made must satisfy the Registrar that the company had sufficient cause for not filing the particulars and the instrument of charge, if any, within the original period of thirty days. Only then he will allow registration of charge within the extended period. Further, requisite additional fee or advalorem fee, as applicable, must also be paid.

10. According to **section 77** of the Companies Act, 2013, it shall be duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and situated in or outside India, to register the particulars of the charge.

Thus, charge may be created within India or outside India. Also the subject-matter of the charge i.e. the property or assets or any of the company's undertakings, may be situated within India or outside India.

In the given question, the company has obtained a loan by creating a charge on the assets of the foreign establishment.

As per the above provisions, it is the duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and whether situated in or outside India, to register the particulars of the charge.

Hence, the stand taken by Moon Light Ltd. not to register the particulars of charge created on the assets located outside India is not correct.

VII

MANAGEMENT AND ADMINISTRATION

? QUESTIONS

1. Big Fox Private Limited called its Annual General Meeting on 30th September, 2018 for laying down the financial statement for approval of its shareholders' for the financial year ended 31st March 2018. However, due to want of quorum, the meeting could not take place and was cancelled. The company has not file the annual financial statements, or the annual return for the year ending March 2018, with the ROC till date. The director is of the view that since the annual general meeting did not take place, the period of 60 days for filing of annual return is not applicable and thus, there is no contravention of **section 92**. Discuss.

(ICAI Module, May'18- 4 Marks, Nov'21 RTP)

OR

Due to heavy rains and floods Chennai Handloom Limited was unable to convene annual general meeting upto 30th September, 2017. The company has not filed the annual financial statements, or the annual return as the directors of the company are of the view that since the annual general meeting did not take place, the period of 60 days for filing of annual return is not applicable and thus, there is no contravention of **Section 92** of the Companies Act, 2013. Discuss whether the contention of directors is correct.

(Nov'18- 3 Marks, Nov'20 Mock Test, May'21 Mock Test)

2. Abbey Limited has 2300 members and the annual general meeting of the company is to be held on 23rd February 2019 at 10.30 a.m. On the day of the meeting, 18 members were personally present by 11.00 a.m. and the Chairman proceeded to initiate the chronicles of the meeting. There were 5 special businesses to be discussed at the said meeting and by 2.30 p.m. Agenda 1 to 3 had been discussed and appropriate resolutions were passed. However, due to some emergency, 4 of the members had to leave around 3 p.m. The Chairman granted them the permission and proceeded to discuss Agenda 4 & 5 and accordingly passed resolution as per the consent of the remaining members. Comment whether the meeting is a properly convened meeting as per the provisions of **section 103** of the Companies Act, 2013.

(ICAI Module)

3. At a General meeting of a XYZ Limited, a matter was to be passed by a special resolution. Out of 40 members present, 20 voted in favour of the resolution, 5 voted against it and 5 votes were found invalid. The remaining 10 members abstained from voting. The Chairman of the meeting declared the resolution as passed. With reference to the provisions of the Companies Act, 2013, examine the validity of the Chairman's declaration. (Nov'19 Mock Test)
- 4: Examine the validity of the following statements in respect of Annual General Meeting (AGM) as per the provisions of the Companies Act, 2013:
- (i) The first AGM of a company shall be held within a period of six months from the date of closing of the first financial year.
 - (ii) The Registrar may, for any special reason, extend the time within which the first AGM shall be held. (ICAI Module, May'2022 Mock Test)
5. Examine the validity of the following with reference to the relevant provisions of the Companies Act, 2013:
- (i) The Board of Directors of a company refuse to convene the extraordinary general meeting of the members on the ground that the requisitionists have not given explanatory statement for the resolution proposed to be passed at the meeting.
 - (ii) The Board of Directors refuse to convene the extraordinary general meeting on the ground that the requisitions have not been signed by the joint holder of the shares.
 - (iii) Adjournment of extraordinary general meeting called upon the requisition of members on the ground that the quorum was not present in the meeting. (Nov'21 6 Marks)
6. A' and his wife 'B' has joint Demat Account in Vrinda Limited. The company's Annual General Meeting is to be held on 28.08.2022. In such a case, who will cast the vote in the Annual General Meeting? Give your answer as per the provisions of the Companies Act, 2013. (Nov'22 RTP)
7. Prabhas Limited is a company having its shares listed on a recognised stock exchange. The company has 5,000 members. The Annual General Meeting of the company is to be held on 07-09-2022. As per the provisions of the Companies Act, 2013, advise the company, the remote e- voting period and the time of closing of remote e-voting. (Nov'22 RTP)

8. Mr. Abhinav, a member of Elixir Logistics Limited, filed a complaint against the company for not serving him a notice for attending the Annual General Meeting. The company, in turn, provided the proof that they had sent the notice, by way of an email to Mr. Abhinav, inviting him to attend the annual general meeting of the company. Mr. Abhinav alleges that he never received the email. State whether the company is liable to be guilty for contravening the provisions of section 101 of the Companies Act, 2013 read with the applicable Rules.

(MTP May'23)

9. The paid-up share capital of Aakash Soaps Limited is Rs. fifty lakh divided into five lakh shares of ₹10 each. The directors of the company are desirous of calling an extra-ordinary general meeting (EGM) by giving a shorter notice which is less than 21 days. Sixty percent of the members holding shares worth Rs. forty lakh accorded their consent by electronic mode to the shorter notice. Whether EGM can be validly called.

(MTP May'23)

10. Abbey Lights and Sounds Limited has 2300 members. The company called its Annual General Meeting on Tuesday, 23rd August, 2022 at 10.30 a.m. at its registered office situated in Connaught Place, New Delhi. On the day of the meeting, 18 members were personally present by 11.00 a.m. and the Chairman proceeded to initiate the Annual General Meeting. There were 5 special businesses to be discussed at the said meeting and by 2.30 p.m. Agenda 1 to 3 had been discussed and appropriate resolutions were passed. However, due to some emergency, 4 of the members had to leave around 3 p.m. The Chairman granted them the permission and proceeded to discuss Agenda 4 and 5 and accordingly passed resolutions as per the consent of the remaining members. Comment whether the meeting is a properly convened meeting as per the provisions of section 103 of the Companies Act, 2013.

(MTP May'23)

11. Abbyrush Mechanics Limited was incorporated on 12th July, 2022. When should the company hold its first Annual General Meeting (AGM)?

(MTP May'23)

12. The members of Blumove Peacocks Appliances Private Limited, holding more than 1/10th voting power of the company, requisitioned the Board of Directors to call a general meeting on 14th July, 2022. However, the directors did not pay any heed

to such a requisition and therefore, no general meeting was called. Discuss the consequences of the contravention of not calling a general meeting on the requisition of required number of members in accordance with the Companies Act, 2013.

(MTP May'23)

13. The Board of Directors of Vishnu Orchards Limited, a company having its registered office in New Delhi, did not proceed to call a meeting despite receipt of a requisition from the required number of requisitionists. In view of this, requisitionists themselves decided to call the meeting to be held in Madrid, Spain on 2nd October, 2022. Discuss whether the general meeting can be convened on the said date and place.

Keeping in view the facts of the above case, the meeting cannot be convened as proposed to be held by the requisitionists. As per Rule 17 (2) of the Companies (Management and Administration) Rules, 2014, the requisitionists should hold the meeting at the registered office of the company or in the same city or town in which the registered office is situated. In addition, the day of holding the meeting should be a working day and not a National Holiday. It is to be noted that 2nd October, 2022 is a National Holiday.

(MTP May'23)

14. In a General meeting of Alpha Software Limited, the chairman directed to exclude certain matters detrimental to the interest of the company from the minutes, Mukesh, a shareholder contended that the minutes of the meeting must contain fair and correct summary of the proceedings thereat. Decide, whether the contention of Mukesh is maintainable under the provisions of the Companies Act, 2013?

(MTP May'23)

15. A General Meeting was scheduled to be held on Friday, 15th April, 2022 at 3.00 P.M. As per the notice the members who are unable to attend a meeting in person can appoint a proxy and the proxy forms duly filled should be sent to the company so as to reach at least 48 hours before the meeting. Mr. X, a member of the company appoints Mr. Y as his proxy and the proxy form dated 09-04-2022 was deposited by Mr. Y with the company at its registered Office on 11-04-2022. Similarly, another member Mr. W also gives two separate proxies to two individuals named Mr. M and Mr. N. In the case of Mr. M, the proxy dated 12-04-2022 was deposited with the company on the same day and the proxy form in favour of Mr. N was deposited on

14-04-2022. All the proxies viz., Y, M and N were present before the meeting.

According to the provisions of the Companies Act, 2013, who would be the persons allowed to represent as proxies for members X and W respectively?

16. M. H. Mechanics Company Limited served a notice of General Meeting upon its shareholders. The notice stated that the issue of sweat equity shares would be considered at such meeting. Mr. 'A', a shareholder of the M. H. Mechanics Company Limited complains that the issue of sweat equity shares was not specified fully in the notice. Is the notice issued by M. H. Mechanics Company Limited regarding issue of sweat equity shares valid according to the provisions of the Companies Act, 2013? Explain in detail.

(MTP May'23)

17. Tulip Gardens Ltd. maintains its Register of Members at its registered office in Mumbai. A group of members residing in Kolkata wants to keep the register of members at Kolkata.

- (i) Keeping in view the provisions of the Companies Act, 2013, explain whether Tulip Gardens Ltd. can keep the Registers and Returns at Kolkata.
- (ii) Whether Mr. Rich, a director holding only 400 shares of worth ₹ 4000, has the right to inspect the Register of Members?

(MTP May'23)

18. Examine the validity of the following situation with reference to the relevant provisions of the Companies Act, 2013:

The Board of Directors of Shreya Transporters and Logistics Ltd. called an extraordinary general meeting upon the requisition of members. However, the meeting was adjourned on the ground that the quorum was not present at the meeting. Advise the company.

(MTP May'23)

19. Zorab Garments Limited served a notice of General Meeting upon its members. The notice stated that a resolution to increase the share capital of the company would be considered at such meeting. Roshni, a shareholder of the company complained that the amount of the proposed increase was not specified in the notice. Is the notice valid?

20. Examine the validity of the following decisions of the Board of Directors with reference of the provisions of the Companies Act, 2013.
- (i) In an Annual General Meeting of a company having share capital, 80 members present in person or by proxy holding more than 1/10th of the total voting power, demanded for poll. The chairman of the meeting rejected the request on the ground that only the members present in person can demand for poll.
 - (ii) In an annual general meeting, during the process of poll, the members who earlier demanded for poll want to withdraw it. The chairman of the meeting rejected the request on the ground that once poll started, it cannot be withdrawn.

(MTP May'23)

21. Surya, a shareholder, gives a notice for inspecting proxies, five days before the meeting is scheduled and approaches the company two days before the scheduled meeting for inspecting the same. What is the legal position in respect of demand for inspection of proxies by Surya as per the provisions of the Companies Act, 2013

(MTP May'23)

22. There are certain entities to which the Companies (Significant Beneficial Owners) Rules, 2018 are not applicable. List them.

(MTP May'23)

23. Infotech Ltd. was incorporated on 1.4.2018. No General Meeting of the company has been held till 30.4.2020. Discuss the provisions of the Companies Act, 2013 regarding the time limit for holding the first annual general meeting of the Company and the power of the Registrar to grant extension of time for the First Annual General Meeting.

(MTP May'23)

24. The Articles of Association of DJA Water Tanks Ltd. require the personal presence of 7 members to constitute quorum of General Meetings. The company has 965 members as on the date of meeting. The following persons were present in the extra-ordinary general meeting to consider the appointment of Managing Director:

- (i) A is the representative of Governor of Uttar Pradesh.
- (ii) B and C are preference shareholders,
- (iii) D is representing Y Ltd. and Z Ltd.

(iv) E, F, G and H are proxies of shareholders.

Could it be said that the quorum was present in the meeting?

(MTP May'23)

25. What do you mean by Proxy? Explain the provisions relating to appointment of proxy under the Companies Act, 2013. (MTP May'23)

26. Super Mart Limited called its AGM in order to lay down the financial statements for the approval of the shareholders. Due to want of Quorum, the meeting was cancelled. The directors did not file the annual returns with the Registrar. The directors were of the opinion that the time for filing of returns within 60 days from the date of AGM would not apply, as AGM was cancelled. Has the company contravened the provisions of Companies Act, 2013? If the company has contravened the provisions of the Act, how will it be penalized? (MTP May'23)

27. Madurai Bakestry Ltd. issued a notice for holding of its Annual General Meeting on 7th September, 2022. The notice was posted to the members on 16th August, 2022. Some members of the company alleged that the company had not complied with the provisions of the Companies Act, 2013 with regard to the period of notice and as such the meeting was not valid. Referring to the provisions of the Act, decide:

- (i) Whether the meeting has been validly called?
- (ii) If there is a shortfall, state and explain by how many days does the notice fall short of the statutory requirement?
- (iii) Can the delay in giving notice be condoned? (MTP May'23)

28. KMN Cables Ltd. scheduled its Annual General Meeting to be held on 15th September, 2022 at 11:00 A.M. The company has 900 members. On the scheduled date of AGM following persons were present by 11:30 A.M.

1. P1, P2 & P3 shareholders

2. P4 representing ABC Ltd.

3. P5 representing DEF Ltd.

4. P6 & P7 as proxies of the shareholders

(i) Examine with reference to relevant provisions of the Companies Act, 2013, whether quorum was present in the meeting.

(ii) What will be your answer if P4 representing ABC Ltd., reached in the meeting after 11:30 A.M.?

- (iii) In case lack of Quorum, discuss the provisions as applicable for an adjourned meeting in terms of date, time & place.

What happens if there is no Quorum at the adjourned meeting?

(MTP May'23)

29. As a matter of fact, the usual time allowed for making entries in the register of members or register of debenture-holders or register of other security holders is seven days after the Board of Directors or its committee grants its approval. There are certain events, on the happening of which the entries can be made even after seven days. Which are those events?

(MTP May'23)

30. With a view to transact some urgent business, Ratna, Rimpi and Ratnesh, the three directors of Shilpkar Constructions Limited are desirous of calling a general meeting of shareholders by giving shorter notice than 21 days' clear notice. The fourth director, Nilesh is of the opinion that such an action will attract penalty provisions since there is contravention. The paid-up share capital of the company is Rs. 30 crores divided into 3 crores shares of Rs. 10 each. Keeping in view the applicable provisions of the Companies Act, 2013, discuss regarding the possibility of calling a general meeting by giving shorter notice.

(MTP May'23)

31. Miraj Sugar Mills Limited held its Annual General Meeting on September 15, 2022. The meeting was presided over by Mr. Venkat, the Chairman of the Board of Directors of the company. On September 17, 2022, Mr. Venkat, the Chairman, without signing the minutes of the meeting, left India to look after his father who fell sick in London. Referring to the provisions of the Companies Act, 2013, examine the manner in which the minutes of the above meeting are to be signed in the absence of Mr. Venkat and by whom.

(MTP May'23)

32. Shikhar Cement Limited passed two resolutions by means of postal ballot. Keeping in view the relevant provisions of the Companies Act, 2013, you are required to advise the directors of the company regarding the provisions applicable for making entries in the minutes book including the time limit within which the entries must be made.

33. The paid-up share capital of Disha Home Appliances Limited is Rs. 8 crores divided into 80 lacs shares of Rs. 10 each. The directors of the company would like to know the circumstances under which the Annual Return of the company shall be required to be certified by a company secretary in practice.

(MTP May'23)

34. Prince Auto-parts Limited, a listed company, has recently concluded its Annual General Meeting. As a statutory requirement, it is obligatory on its part to file with the jurisdictional Registrar of Companies a copy of the Report on its AGM.

- (i) State within how much time it is required to file the said Report.
- (ii) In case Prince Auto-parts Limited fails to file the Report on its AGM within the specified time, state the penalty to which the company and also its every officer who is in default shall be liable for such failure.

(MTP May'23)



MULTIPLE CHOICE QUESTIONS (HOMEWORK)

1. Which one of the following required ordinary resolution?
 - (a) to change the name of the company
 - (b) to alter the articles of association
 - (c) to reduce the share capital
 - (d) to declare dividends. (ICAI Module, May'20 Mock Test)

2. A resolution shall be a special resolution when the votes cast in favour of the resolution by members are not less than _____ the number of votes, if any, cast against the resolution.
 - (a) Twice
 - (b) Three times
 - (c) One third
 - (d) One fourth (ICAI Module)

3. Register of members, debenture holders, other security holders or copies of return may also be kept at any other place in India in which more than _____ of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company and the Registrar has been given a copy of the proposed special resolution in advance.
 - (a) one-half
 - (b) one-eight
 - (c) one-tenth
 - (d) one-third (ICAI Module)

4. The Registrar may grant an extension by _____, for holding the Annual General Meeting to any company for special reasons (except in the case of first AGM of the company).
 - (a) 1 Month
 - (b) 2 Months
 - (c) 3 Months
 - (d) 6 Months (ICAI Module)

5. Every listed company shall file with the Registrar a copy of the report on each annual general meeting within _____ of the conclusion of the annual general

meeting.

- (a) 7 days
- (b) 30 days
- (c) 3 months
- (d) 90 days

(ICAI Module)

6. Annual general meeting need to be called by giving 21 days' clear notice. However it can be called on a shorter notice if members entitled to vote in that meeting give their consent in writing or by electronic mode. In such case, how many members have to give their consents?

- (e) 75% of members entitled;
- (f) 90% of members entitled;
- (g) 91% of members entitled;
- (h) 95% of members entitled;

(May'19 Mock Test, ICAI Sample Question, Nov'22 Mock Test)

7. Supertech Computers Pvt. Ltd has 120 members. It sends notice to all of them. 20 members did not attend the meeting. Out of remaining 100 members, 20 members abstained from voting. Advice the company, how many members should vote in favour of resolution, if it has to be passed as a Special Resolution?

- (a) 60 Votes
- (b) 80 Votes
- (c) 41 votes
- (d) 20 votes.

(May'19 Mock Test)

8. ABC Infrastructures Limited is a listed company quoted at National Stock Exchange. The company closed its Register of Members in June and August, 2017 for 12 and 21 days respectively. The CFO of company has informed the company secretary to consider closing of register in December for another 15 days for some strategic reasons. Referring to the provisions of Companies Act, 2013, examine the validity of above action of the company.

- (a) Valid, as the closure of register of members by company each time is not exceeding 30 days.
- (b) Invalid, as company cannot go for closure of Register of members more than twice in a year.
- (c) Invalid, as the period of closing register of members exceeding 30 days in a year.

- (d) Invalid, as the period of closing the Register of members by the company is exceeding 45 days in a year. (May'19 Mock Test)

9. The Annual General meeting of Tirupati Limited was scheduled for 28th December, 2017. Mr. Anant, shareholder of Tirupati Limited has desired to inspect inspection of proxies lodged with the company. The notice for inspection should be given at least before the meeting:

- (a) 24 hours
- (b) 1 day
- (c) 2 days
- (d) 3 days

(May'19 Mock Test, ICAI Sample Question)

10. All the 40 members of Taxila Traders Limited have valid voting rights. Due to some urgency, its directors are desirous of convening Annual General Meeting (AGM) at a shorter notice than statutorily required. Is it possible for them to do so?

- (a) Taxila Traders Limited cannot convene AGM at shorter notice than statutorily required.
- (b) Taxila Traders Limited can convene AGM at shorter notice than statutorily required, if consent in writing or by electronic mode is accorded by all the forty members who are entitled to vote at the AGM.
- (c) Taxila Traders Limited can convene AGM at shorter notice than statutorily required if consent in writing or by electronic mode is accorded by at least 38 members who are entitled to vote at the AGM.
- (d) Taxila Traders Limited can convene AGM at shorter notice than statutorily required if consent in writing or by electronic mode is accorded by at least 36 members who are entitled to vote at the AGM.

(Nov'19 RTP)

11. In the current financial year Zune Traders Limited, a non-listed company, has 556 members, increased from 451 members which it had in the immediate previous financial year. For the forthcoming Annual General Meeting (AGM), advise the company whether it is required to provide to its members the facility to exercise their right to vote at this AGM by electronic means.

- (a) Since the company has more than 500 members it is required to provide to its members the facility to exercise their right to vote at the forthcoming AGM by electronic means.
- (b) The company is not required to provide to its members the facility to exercise

their right to vote at the forthcoming AGM by electronic means since its members are less than one thousand.

- (c) Though the company is required to provide to its members the facility to exercise their right to vote at the forthcoming AGM by electronic means because it has more than 500 members, it can, as a one-time measure, seek exemption from ROC beforehand and in that case, it need not provide facility of voting by electronic means.
- (d) Only a listed company is required to provide to its members the facility to exercise their right to vote at the General Meetings by electronic means.

(Nov'19 Mock Test)

12. GHWX Private Limited was incorporated in the year 2009. The registered office of the company GHWX Private Limited was situated in city T of state V. The Board of Directors of GHWX Private Limited comprised of five directors namely Mr. K, Mr. N, Mr. R, Mr. U and Mr. W.

During the financial year beginning on 01/04/2018 and ending on 31/03/2019 the second meeting of Board of Directors of GHWX Private Limited was held on 7 September, 2018.

Out of 5 directors, Mr. K, Mr. N, Mr. R and Mr. W were present for the said meeting. During the meeting of Board of Directors a resolution on one of the important matters was passed. While three directors namely Mr. K, Mr. N and Mr. R agreed with the resolution and voted in favour of resolution, however, Mr. W did not agree with the resolution and voted against the resolution.

The minutes of the second meeting of Board of Directors of GHWX Private Limited held on 7 September, 2018 were prepared and they were entered in Minutes Book of meeting of Board of Directors of GHWX Private Limited. One of the director Mr. K was of the opinion that minutes of second meeting of Board of Directors of GHWX Private Limited must be prepared and entered in Minute Book of meeting of Board of Directors of GHWX Private Limited by end of October, 2018. The remaining four directors namely Mr. N, Mr. R, Mr. U and Mr. W did not agree with the opinion of Mr. K because they thought that it was not within the time limit as prescribed by the law. One of the directors, Mr. N. opined that minute books of meetings of Board of Directors of GHWX Private Limited for the years starting with 2009 to 2015 should be shredded to ruins as these papers were taking a lot of space. He further added that since the Companies Act, 2013 is silent as to maintaining the minute book of meetings of Board of Directors, it is not necessary to maintain such minute books.

The Board of Directors of GHWX Private Limited did not decide any place where minute book of meetings of Board of Directors of GHWX Private Limited will be kept. Keeping the provisions of the Companies Act, 2013, in mind answer the following multiple choice questions: (May'20 RTP)

- (A) The second meeting of Board of Directors of GHWX Private Limited was held on 7 September, 2018 for the financial year 2018-19. The minutes of second meeting of Board of Directors of GHWX Private Limited for financial year 2018-19 must contain:
- (a) Name of director Mr. U who was absent from the meeting of Board of Directors held on 7 September, 2018.
 - (b) Names of all the directors Mr. K, Mr. N, Mr. R, Mr. U and Mr. W comprising Board of Directors of GHWX Private Limited.
 - (c) Name of one director Mr. U who was absent and at least one director who was present in the meeting of Board of Directors held on 7 September, 2018.
 - (d) Names of directors Mr. K, Mr. N, Mr. R and Mr. W who were present in the meeting of Board of Directors held on 7 September, 2018.
- (B) In case of the resolution talked in the case study, the minutes of second meeting of Board of Directors of GHWX Private Limited for financial year 2018-19 held on 7 September, 2018 must contain:
- (a) Name of any two directors who were present in meeting and voted in the resolution.
 - (b) Name of director Mr. W who voted against the resolution.
 - (c) Name of directors Mr. K, Mr. N and Mr. R who voted in favour of the resolution.
 - (d) Names of all the directors Mr. K, Mr. N, Mr. R, Mr. U and Mr. W who all had the right to attend the meeting and vote in the resolution.
- (C) The opinion of one of the director, Mr. K was that minutes of second meeting of Board of Directors of GHWX Private Limited for financial year 2018-19 must be prepared and entered in minutes book of meeting of Board of Directors of GHWX Private Limited by the end of October, 2018 is incorrect. The opinion of Mr. K is incorrect because:
- (a) Minutes of second meeting of Board of Directors of GHWX Private Limited for financial year 2018-19 must be entered in minute book of meeting

of Board of Directors within thirty days of the conclusion of meeting on 7 September, 2018.

- (b) Minutes of second meeting of Board of Directors of GHWX Private Limited for the financial year 2018-19 must be entered in minute book of meeting of Board of Directors within sixty days of the conclusion of meeting on 7 September, 2018.
- (c) Minutes of second meeting of Board of Directors of GHWX Private Limited for the financial year 2018-19 must be entered in minute book of meeting of Board of Directors within ninety days of the conclusion of meeting on 7 September, 2018.
- (d) Minutes of second meeting of Board of Directors of GHWX Private Limited for financial year 2018-19 must be entered in minute book of meeting of Board of Directors within one twenty days of the conclusion of meeting on 7 September, 2018.

13. The minute book of General meetings of Alpha Limited will be kept at:

- (a) That place where members of Alpha Limited will decide.
- (b) That place where all employees of Alpha Limited will decide.
- (c) Registered office of the company Alpha Limited.
- (d) That place where senior officials of Alpha Limited will decide. (May'20 RTP)

14. Vivek Shah is the Chief Finance Officer (CFO) and Sachin Bhatt is the Company Secretary of Jitendra Iron Works Private Ltd (JIWPL), in Manipal, Karnataka. JIWPL is an integrated set up of foundries and machine shops that add value by machining more than 75% of the castings manufactured to fully finished condition. JIWPL is one of the largest jobbing foundries producing grey iron castings required for automobile, farm equipment sector and diesel engines industry. JIWPL serves customers globally. The turnover of JIWPL is about ₹600 Crores, including export turnover of about ₹250 Crores.

During the year 2019, JIWPL planned expansion to enhance its production capacity to meet the increasing demand from its customers, by importing fully automatic plant and equipment from Germany for the unit at Manipal. The means of finance of the expansion project:-

- 1. JIWPL received an amount of ₹25 Crores from Malini Shetty, wife of one of the promoter director of JIWPL, Mahesh Shetty. Mahesh Shetty wanted to know from Sachin Bhatt any compliance needed from the perspective of acceptance

of Deposits.

2. The Board and the CFO also approached the main banker of the company viz., Bank of Baroda. The Bank after proper credit analysis, sanctioned an amount of Rs. 50 Crores for meeting the working capital needs of the expansion project, which included interchangeable limits of cash credit, foreign and inland bills for negotiation and acceptance. The security cover was floating charge on the book debts, inventory and other current assets of the expansion project in Manipal of JIWPL.

The CFO and the CS together coordinated with the legal department of the Bank on procedures relating to creation of security and registration of charges.

The registered office of JIWPL is located in Manipal. Out of the company's 180 members, 20 members, who are entered in the Register of Members reside in Mangaluru, a nearby city, requested the company for some reasons to maintain the Register of Members in the company's liaison office in Mangaluru, instead of Manipal henceforth.

(May'20 Mock Test)

- (A) JIWPL received an amount of ₹25 Crores from Malini Shetty, wife of one of the promoter directors Mahesh Shetty of JIWPL. Mahesh Shetty wanted to know from Sachin Bhatt any compliance needed from the perspective of acceptance of deposits. The CS has to ensure -:
- (i) That the particulars of amount received are immediately entered in the register of deposits maintained in such manner and in such format as prescribed;
 - (ii) To issue immediately a circular to the members of the company with a statement of deposits accepted as on date with the names of each depositor, amount(s) received as on date, the due date(s) and the liability(ies) on the due date(s) in respect of each depositor
 - (iii) That a declaration is to be obtained to the effect that the amount given is not sourced from borrowed funds or accepting loans or deposits from others and disclose the details in the Board's Report;
 - (iv) To file the particulars of deposits received within 30 days from the date of its receipt with the Registrar.
- (B) JIWPL was also sanctioned an additional amount of 50 Crores for meeting the working capital needs of the expansion project., which included interchangeable limits of cash credit, foreign and Inland bills for negotiation and acceptance.

The security cover was floating charge on the book debts, Inventory and other current assets of the expansion project of JIWPL. A floating Charge, in general is created by way of :

- (i) Passing a board resolution
- (ii) Signing and acknowledging the Credit Sanction letter
- (iii) Mortgage
- (iv) Hypothecation or lien.

(C) The registered office of JIWPL is located in Manipal. Out of the company's 180 Members, 20 members, who are entered in the register of members (ROM) reside in Mangaluru, a nearby city. These members requested the company for some reasons to maintain the Register of members (ROM) in the company's liaison office in Mangaluru, instead of Manipal henceforth.

- (i) The ROM shall be maintained only at the registered office in Manipal and maintaining in a place other than the registered office is not permitted under the Companies Act 2013 and the relevant Rules there under.
- (ii) By passing a Special Resolution in a General Meeting, the ROM can be maintained in Mangaluru.
- (iii) The Board of Directors by passing a Board Resolution in one of its meetings, may direct the Company Secretary to maintain the ROM in Mangaluru.
- (iv) If more than 1/3rd of the members, whose names are entered in the ROM request for the change, then only the ROM can be maintained at Mangaluru after passing a Special Resolution in a General Meeting.

15. Red Flag Ltd., which has its registered office at Delhi and having 12500 members is holding its Annual General Meeting in Ashoka Hotel. Despite swanky arrangements most of the members did not turn up and quorum was not present within half an hour of the schedule time of the meeting, as a result meeting was adjourned. However, due to heavy booking schedule, hotel authorities could not make available, for adjourned meeting, sufficient space in the same hall where meeting was originally called but allowed conduct of meeting in a different hall on a different floor next week at same time. Please advise the option available to board:

- (a) The meeting stands adjourned automatically to the same place and time next week as per provisions of law. There is no alternate but to hold meeting in the same hall,
- (b) As same banquet hall is not available meeting can be held at different place as

may be decided appropriate by the Board,

- (c) As the same hall is not available to conduct meeting after one week, a fresh notice of 21 days is needed for a different location,
 - (d) As the same hall is not available to conduct the meeting, the company needs to conduct meeting electronically through internet and give sufficient notice to shareholders
- (Nov'20 RTP)

16. Swiss Commodities Private Limited was incorporated in 2015. Company was not running its business properly due to unexpected ups and downs. It could not hold its first annual general meeting in the year 2016. The company is planning to apply for extension of time for holding the AGM from the Registrar of Companies. On which grounds Company can get an extension?

- (a) They will not get any extension.
 - (b) It Company proves that their financial statements are confiscated.
 - (c) If they prove that directors have fell below numbers.
 - (d) If they prove that members are not available.
- (ICAI Sample Question)

17. The Board of Directors of Gama Ltd. did not call the Extra Ordinary General meeting within 21 days from the date of receipt of requisition from members, then the requisitionists may themselves call a meeting within a period of from the date of requisition.

- (a) 15 days
 - (b) 30 days
 - (c) 1month
 - (d) 3 months
- (ICAI Sample Question)

18. Soya Limited was incorporated in 2014 and has its registered office in Noida. Company wants to call its 4th Annual General Meeting in Mumbai. Whether it is possible?

- (a) It is not possible as Annual General Meeting has to be held in Noida;
- (b) It is possible with consent of 50% members is received;
- (c) It is possible if consent of 75% members is received;
- (d) It is possible if consent of 100% members is received (ICAI Sample Question)

19. Mr. N is a Company Secretary of Mayo Private Limited. For calling Company's Annual General meeting, Mr. N has to issue notice of that meeting before stipulated period

of time. Draft notice is ready with him. However, he is confused on agenda items for which he has to attach explanatory statement to the notice. Please help him to understand which agenda item needs explanatory Statement?

- (a) Consideration of Auditors Report;
- (b) Fixing remuneration of Auditor;
- (c) Fixing remuneration of Manager;
- (d) Declaration of any dividend

(ICAI Sample Question)

20. Wide Infra Limited is a Company with 1350 members. Extra General Meeting of Wide Infra Limited was scheduled on 15th November, 2018 at 11 am. On the day of meeting, 3 members were present at 10.45 am. What number of members is required to fulfil quorum requirement?

- (a) Additional 4 members before 11.30 am;
- (b) Additional 4 members before 11.15 am;
- (c) Additional 12 members before 11.30 am;
- (d) Additional 12 members before 11.15 am;

(ICAI Sample Question)

21. The members of Matrix Limited requisitioned for calling Extra Ordinary General Meeting to consider some urgent matters. The same was called by the company. Meeting was scheduled on 31st August, 2018. However, required quorum was not present at the meeting. In this case, what Matrix Limited shall do?

- (a) Matrix Limited shall adjourn the meeting to the same day in the next week at the same time and place;
- (b) Matrix Limited shall adjourn the meeting to such other day at such other time and place;
- (c) The meeting shall be cancelled;
- (d) Matrix Limited shall proceed ahead with the available quorum

(ICAI Sample Question)

22. In Annual General Meeting, which one of the follow will be treated as special business?

- (a) declaration of any dividend;
- (b) fixing of the remuneration of the auditors;
- (c) appointment of directors in place of those retiring;
- (d) regularization of Director's Appointment

(ICAI Sample Question)

23. Sukant and Sukriti, architects by profession and residents of Janakpuri, Delhi, have formed a company by the name Suk Architects and Consultants Private Limited, whose registered office is situated in a somewhat less inhibited market area of Gurugram, Haryana. They do not consider it to be a safe place. Therefore, to be on safer side they have kept all the documents and information relating to incorporation of their company (that were originally filed with Registrar for registration of Company) at Sukant's residence. Is their action justified?
- (a) It is their prerogative to keep all the documents and information relating to incorporation of their company at a place which they think is quite safe – even if it is Janakpuri, Delhi.
 - (b) Considering registered office to be unsafe, they can keep all the documents and information relating to incorporation of their company at any place in Haryana only where Gurugram is situated but for this purpose they must seek permission of the ROC.
 - (c) If they do not want to seek permission of ROC, considering registered office to be unsafe, they can keep all the documents and information relating to incorporation of their company at any place which should be within three kms. of their registered office but in Gurugram only.
 - (d) They have to keep all the documents and information relating to incorporation of their company at the registered office, only. [\(ICAI Sample Question\)](#)
24. Mr. Mohit Aggarwal is the director of Superior Carbonates and Chemicals Limited (SCCL). SCCL was incorporated by Mr. S. K. Aggarwal (father of Mr. Mohit) on 05th July 1995 as a public company. SCCL accepts a loan from Mr. Mohit of INRs 1.5 crores for short term purpose and expected to repay after 24 months. SCCL in its book of accounts, records such receipt as loan and borrowing under non-current liabilities. At the time of advancing loan, Mr. Mohit affirms in writing that such amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and complete details of such loan transactions are furnished in the board report.
- SCCL has its registered office in Paonta-sahib (Himachal Pradesh) and corporate office is situated in Dehradun (Uttarakhand) but around 15% of members whose name is entered in members' register are residents of Nainital (Uttarakhand). At Nainital, SCCL has Liaison Office. Management of the company is willing to place, register of members at Nainital Liaison Office.

SCCL convene its 7th AGM on 10th September, 2020 at the registered office of the company. Notice for same was served on 21st August, 2020. More than 78% of members gave consent to convening AGM at shorter notice due to ambiguity and possibility of another lockdown starting from 11th September 2020 on account of the second wave of COVID-19.

On the basis of above facts, answer the following MCQs

(3 MCQ of 2 Marks each: Total 6 Marks) (Nov'20 Mock Test, May'21 Mock Test)

1. With reference to the loan advanced by Mr. Mohit to SCCL, apprise whether same is classified as deposit or not?
 - (a) Deposit, because any sum advanced by the director whether loan or otherwise is always classified as a deposit
 - (b) Deposit, because the length of the loan is for a period; more than six months.
 - (c) Not a deposit, because such amount is recorded as loan in books of account of SCCL
 - (d) Not a deposit, because the written declaration is provided by Mr. Mohit that said sum of loan is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others.
2. Pick the right statement regarding SCCL's willingness to keep and maintain the register of members at the Nainital liaison office.
 - (a) Register of members shall be kept at either registered office or within the same city that too after passing the resolution, hence SCCL can't place it at Nainital liaison office
 - (b) Register of members can't be kept at any other place by SCCL, without passing an ordinary resolution
 - (c) Register of members can be kept at Nainital liaison office, after passing a special resolution, because more than 1/10th of the total members entered in the register of members reside there
 - (d) Register of members can't be kept at Nainital liaison office, even after passing a special resolution, because less than 1/5th of the total members entered in the register of members reside there
3. Considering the provision dealt with length of Notice of AGM, pick the right option depicting the validity of notice served by SCCL.

- (a) Notice served by SCCL is not valid, because shorter length needs to be consented by all the members entitled to vote at AGM.
- (b) Notice served by SCCL is not valid, because shorter length needs to be consented by at-least 95% of members entitled to vote thereat.
- (c) Notice served by SCCL is valid because the shorter length is consented by 75% of members entitled to vote thereat.
- (d) Notice served by SCCL is not valid, because shorter length need to be consented by at-least 50% of the members entitled to vote at AGM that too in writing.

25. Awareness Limited's General Meetings are held at its registered office situated in Delhi. The minute book of General meetings of Awareness Limited will be kept at:

- (a) That place where members of Awareness Limited will decide.
- (b) That place where all employees of Awareness Limited will decide.
- (c) Registered office of Awareness Limited.
- (d) That place where senior officials of Awareness Limited will decide.

(ICAI Module, May'2022 Mock Test, Nov'22 Mock Test)

26. A resolution shall be a special resolution when the votes cast in favour of the resolution by members are not less than the number of votes, if any, cast against the resolution :

- (a) Twice
- (b) Three times
- (c) Three fourth of
- (d) Two third of

(1 Mark) (ICAI Module, May'2022 Mock Test)

27. Amber Limited is a manufacturer of glassware. Its paid up share capital is divided into 20,0000 shares of ₹ 100 each. The company is maintaining its register of members as per the provisions of the Companies Act, 2013. The company wanted to close its register of members for declaring dividend. It may do so by giving minimum days' notice.

- (a) 7 days
- (b) 10 days
- (c) 15 days
- (d) The register of members cannot be closed.

(RTP MAY 22)

28. Shree Tyres Ltd. is an unlisted public limited company. The company's accounts for the financial year ending on 31st March, 2022 were finalised and audited by the Statutory Auditor. The meeting of the Board of Directors was convened and approved the financial accounts of the company and proposed to convene the Annual General Meeting of the shareholders on Thursday, the 25th August, 2022 at 10 am. The total number of members is 3500. The Article of the company provides that the quorum for the general meeting of the shareholders shall be at least fifty members. On the day of the meeting only 10 members were physically present. Even after waiting of 30 minutes, the quorum was not present. Accordingly, the meeting was adjourned. According to the provisions of the Companies Act, 2013, the meeting shall adjourn to the same day in the next week at the same time and place. However, on the same day in the next week i.e., on Thursday, the 1st September, 2022, the same venue (which is a Hotel's Conference Hall) was available from 3 pm only. The Board agreed to conduct the meeting from 3 pm and the all the members were informed individually via mail and also published it in the newspapers (one in English and another in vernacular language) The adjourned meeting started at 3 pm on 1st September, 2022, the quorum required as per the Articles was 50, however 75 members were present. Out of the 75 members attending the meeting 25 persons were having the residence near the venue of Annual General Meeting and rest of the members were staying far away. Due to heavy rainfall and scarce availability of public transportation, 40 persons left the meeting so that they can reach home on time. By that time only the ordinary business resolutions were approved and two special business agendas were pending for approval by the members.

Based on the above facts, answer the following MCQs:

- 1 In the light of the given facts, the General Meeting of the shareholders was decided to be scheduled . Determine by which date the notices to the shareholder should have been given to the members:
 - (a) 1st August, 2022
 - (b) 2nd August, 2022
 - (c) 3rd August, 2022
 - (d) 4th August, 2022
- 2 Whether adjournment of the general meeting of shareholders of Shree Tyres Ltd. for want of quorum, was justified as per the requirement of the Companies Act, 2013:

- (a) Yes, it was justified, since the quorum was not present within 30 minutes from the time appointed for holding the meeting
 - (b) No, it was not justified since the waiting time for the arrival of the requisite quorum is 30 minutes as per the provisions of the Companies Act, 2013, whereas the decision of the adjournment of the meeting was just taken after 15 minutes.
 - (c) Yes, if the quorum is not present at the given time (sharp) of meeting, the meeting stands to be adjourned, and there is no requirement of waiting time.
 - (d) Yes, it was justified, since the quorum was not present within 45 minutes (as per statutory requirement) from the time appointed for holding the meeting.
- 3 What shall be the quorum for the General Meeting of the Shareholders, where the number of members is 3500:
- (a) Five
 - (b) Fifteen
 - (c) Thirty
 - (d) Fifty
- 4 As some members left the meeting, the quorum was not present all the time during the Annual General Meeting. The agendas for special business transactions remained un-approved. What is your opinion:
- (a) The quorum once present in the beginning of the meeting is enough.
 - (b) The quorum should be present all the time when the meeting is in progress. Any items which could not approved by members for want of quorum, shall be treated as NIL.
 - (c) When the quorum is present in the beginning of the meeting, it may be assumed that all the resolutions have been approved, until and unless objected later on by the members present therein.
 - (d) The Board may seek special written consent from the all the members later on.
- (Nov'22 RTP)

29. The Annual General Meeting of Yellow Limited was held on 25th June 2022. According to the provisions of Companies Act, 2013, till what date the company should submit report on AGM to the registrar?
- (a) 30.06.2022
 - (b) 10.07.2022
 - (c) 24.07.2022
 - (d) 25.07.2022
- (Nov'2022 Mock Test)
30. The Annual General Meeting (AGM) of Green Limited was held on 31.8.2022. Suppose the Chairman of the company after two days of AGM went abroad for next 31 days. Due to the unavailability of the Chairman, within time period prescribed for submission of copy of report of AGM with the registrar, the report as required was signed by two Directors of the company, of which one was additional Director of the company. Comment on the signing of this report of AGM.®
- (a) Yes, the signing is in order as the report can be signed by any director in the absence of Chairman.
 - (b) No, the signing is not in order as only the Chairman is authorised to sign the report
 - (c) Yes, the signing is in order, as in the absence of Chairman at least two directors should sign the report.
 - (d) No, the signing is not in order, since in case the Chairman is unable to sign, the report shall be signed by any two directors of the company, one of whom shall be the Managing director, if there is one and company secretary of the company.
- (Nov'2022 Mock Test)
31. The Annual General Meeting (AGM) of Green Limited was held on 31.8.2022. Suppose the Chairman of the company after two days of AGM went abroad for next 31 days. Due to the unavailability of the Chairman, within time period prescribed for submission of copy of report of AGM with the registrar, the report as required was signed by two Directors of the company, of which one was additional Director of the company. Comment on the signing of this report of AGM.
- (a) Yes, the signing is in order as the report can be signed by any director in the absence of Chairman.
 - (b) No, the signing is not in order as only the Chairman is authorised to sign the report
 - (c) Yes, the signing is in order, as in the absence of Chairman at least two directors

should sign the report.

- (d) No, the signing is not in order, since in case the Chairman is unable to sign, the report shall be signed by any two directors of the company, one of whom shall be the Managing director, if there is one and company secretary of the company.

(MTP May'23)

32. The AGM shall be called by giving 21 clear days' notice. However, it can be called by giving shorter notice if members entitled to vote at that meeting give their consent in writing or by electronic mode. In such cases how many members have to give their consent?

- (a) 75% of members entitled
- (b) 90% of members entitled
- (c) 91% of members entitled
- (d) 95% of members entitled

(MTP May'23)

33. Which among the following companies is not required to provide its members the facility to exercise right to vote by electronic mode under the provisions of the Companies Act, 2013?

- (a) B Limited, whose equity shares (the company is having both equity as well as preference shares) are listed on a recognised stock exchange.
- (b) A Limited, whose equity shares (only type of share the company is having) are listed on a recognised stock exchange
- (c) C Limited, whose preference shares (the company is having both equity as well as preference shares) are listed on a recognised stock exchange
- (d) D Limited, whose equity shares as well as preference shares are listed on a recognised stock exchange.

(MTP May'23)



ANSWERS

1: The director is incorrect in holding that there no contravention of the provisions of the Companies Act, 2013. **Section 92** states that every company has to file an annual return with the ROC in Form MGT – 7 within 60 days of date on which annual general meeting was held or the date when it must have been held. In the above case, the annual general meeting of Big Fox Private Limited should have been held by 30th September 2018, but it did not take place. Thus, the company has contravened the provisions of **section 92** of the Companies Act, 2013 and shall be liable for a penalty as specified in **Section 92(5)** of the Act.

2: As per the provisions of **Section 103** of the Companies Act, 2013, the quorum for a Private Limited Company shall be two members personally present. Thus, the quorum for the annual general meeting of Dicey Private Limited was complied with and the company is not in contravention with any of the provisions of the Companies Act, 2013.

In the above case, while the appropriate quorum was present at the time when the meeting started as per **section 103** of the Companies Act, 2013, the quorum was not present at the time of deciding Agenda 4 & 5. It has been held that where at the time of transacting business, the number of members is less than the quorum fixed for the meeting, the business cannot be transacted and shall be a nullity.

3: Under **Section 114(2)** of the Companies Act, 2013, for a valid special resolution to be passed at a meeting of members of a company, the following conditions need to be satisfied:

- (i) The intention to propose the resolution, as a special resolution must have been specified in the notice calling the general meeting or other intimation given to the members;
- (ii) The notice required under the Companies Act must have been duly given of the general meeting;
- (iii) The votes cast in favour of the resolution (whether by show of hands or electronically or on a poll, as the case may be) by members present in person or by proxy or by postal ballot are not less than 3 times the number of votes, if any, cast against the resolution by members so entitled and voting.

Thus, in terms of the requisite majority, votes cast in favour have to be compared with votes cast against the resolution. Abstentions or invalid votes, if any, are not

to be taken into account.

Accordingly, in the given problem, the votes cast in favour (20) being more than 3 times of the votes cast against (5), and presuming other conditions of **Section 114(2)** are satisfied, the decision of the Chairman is in order.

4:

- (i) According to **section 96** of the Companies Act, 2013, first annual general meeting of the company should be held within nine months from the closing of the first financial year.

Hence, the statement that the first Annual General Meeting (AGM) of a company shall be held within a period of six months from the date of closing of the first financial year is incorrect.

- (ii) According to proviso to **section 96(1)**, the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months. Thus, the Registrar cannot extend (for any reason) the time period within which the first AGM shall be held. Given statement is incorrect.

(ICAI Module, May'2022 Mock Test)

5.

- (i) Rule 17 of the Companies (Management and Administration) Rules, 2014 provides that no explanatory statement as required under **section 102** of the Companies Act, 2013, need be annexed to the notice of an extraordinary general meeting convened by the requisitionists and the requisitionists may disclose the reasons for the resolution(s) which they propose to move at the meeting.

Hence, the Board of Directors cannot refuse to convene the extraordinary general meeting of the members on the ground that the requisitionists have not given the explanatory statement for the resolution proposed to be passed at the meeting.

- (ii) The notice shall be signed by all the requisitionists or by a requisitionists duly authorised in writing by all other requisitionists on their behalf or by sending an electronic request attaching therewith a scanned copy of such duly signed requisition. Hence, it is imperative for joint holders (or by requisitionist duly authorised in writing by joint holder) also to sign the notice to call the meeting. Thus, Board of directors are correct in refusing to convene the extra ordinary general meeting on the ground that the requisitions have not been signed by the joint holder of shares.

- (iii) According to **section 103(2)(b)** of the Companies Act, 2013, if the quorum is not

present within half-an-hour from the time appointed for holding a meeting of the company the meeting, if called by requisitionists under **section 100**, shall stand cancelled.

Thus, if quorum is not present for the meeting called by requisitionists, it shall stand cancelled and cannot be adjourned.

(Nov'21 6 Marks)

6. The voting in case of joint shareholders is done in the order of seniority, which is determined on the basis of the order in which their names appear in the register of members/ shareholders. The joint- holders have a right to instruct the company as to the order in which their names are to appear in the register.

As per Rule 21 of the Companies (Management and Administration) Rules, 2014, the Scrutinizers shall arrange for Polling papers and distribute them to the members and proxies present at the meeting; in case of joint shareholders, the polling paper shall be given to the first named holder or in his absence to the joint holder attending the meeting as appearing in the chronological order in the folio.

Thus, in the given case, 'A' or his wife 'B', whosoever names appears first in chronological order in the register of members/ shareholders shall be entitled to vote.

(Nov'22 RTP)

7. Rule 20 of the Companies (Management & Administration) Rules, 2014, provides that:

1. Every company which has listed its equity shares on a recognised stock exchange and company having not less than one thousand members shall provide to its members facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means.
2. The facility for remote e-voting shall remain open for not less than three days and shall close at 5.00 p.m. on the date preceding the date of the general meeting.

In the question, Prabhas Limited has its shares listed on recognised stock exchange and has 5,000 members, hence, it has to provide to its members facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means. Thus, if the Annual General Meeting of Prabhas Limited is going to be held on 7.9.2022, the facility for remote e-voting shall open on 4.9.2022 and close at 5.00 p.m. on 6.9.2022.

(Nov'22 RTP)

- 8: As per Rule 18 (3) (v) of the Companies (Management & Administration) Rules, 2014, the company's obligation shall be satisfied when it transmits the e- mail and the company shall not be held responsible for a failure in transmission beyond its control. Also, Rule 18 (3) (vi) if a member entitled to receive the notice fails to provide or update relevant e-mail address to the company, or to the depository participant as the case may be, the company shall not be in default for not delivering notice via e-mail. Accordingly, Elixir Logistics Limited shall not be held guilty if there was a failure in transmission beyond its control or in case where Mr. Abhinav did not update his e-mail address.
9. In the above case, consent to call the EGM by shorter notice has been accorded by sixty percent members holding shares worth Rs. forty lakh which works out to 80% $(40,00,000/50,00,000 * 100)$ whereas the requirement is that majority in number of members who represent not less than 95% of paid-up share capital which gives them a right to vote at the meeting (i.e. shareholders holding shares worth ₹ 47,50,000) must consent to shorter notice. Therefore, the EGM cannot be validly called and held.
10. According to Secretarial Standard - 2 (SS-2), Quorum shall be present not only at the time of commencement of the Meeting but also while transacting business. In the above case, while the required quorum as per section 103 of the Companies Act, 2013 was present at the time when the meeting started, the quorum was not present at the time of deciding Agenda 4 and 5. Thus, where at the time of transacting business, the number of members is less than the quorum fixed for the meeting, the business cannot be transacted and shall be a nullity.
11. In the above case, the financial year of Abbyrush Mechanics Limited will close on 31st March, 2023. According to section 96 (1), the company must hold its first AGM latest by 31st December 2023 i.e. within 9 months of the close of its financial year on 31st March 2023. If Abbyrush Mechanics Limited holds its first AGM in this manner, it shall not be necessary for the company to hold any AGM in the year of its incorporation.
12. In the above case, the requisition for calling a general meeting is made by the sufficient number of requisitionists and therefore, the Board Directors is required to initiate the process of calling the meeting. According to section 100 (4), if the Board

does not, within 21 days from the date of receipt of a valid requisition, proceed to call a meeting within 45 days from the date of receipt of such requisition, then the requisitionists may themselves call and hold the meeting. This can be done within a period of three months from the date of the requisition. According to section 100 (5), a meeting by the requisitionists shall be called and held in the same manner in which the meeting is called and held by the Board of Directors.

Accordingly, the requisitionists being members of Blumove Peacocks Appliances Private Limited can call and hold the general meeting within a period of three months from the date of the requisition since the Board was not inclined to call such a meeting within the stipulated time after the requisition was made.

13. ?

14. Under Section 118 (5) of the Companies Act, 2013, there shall not be included in the Minutes of a meeting, any matter which, in the opinion of the Chairman of the meeting:

- (i) is or could reasonably be regarded as defamatory of any person;
- (ii) is irrelevant or immaterial to the proceeding; or
- (iii) is detrimental to the interests of the company;

Further, under section 118(6) the chairman shall exercise absolute discretion in regard to the inclusion or non-inclusion of any matter in the Minutes on the grounds specified in sub-section (5) of section 118.

Hence, in view of the above, the contention of Mukesh, a shareholder of Alpha Limited is not valid because the Chairman has absolute discretion on the inclusion or exclusion of any matter in the minutes for aforesaid reasons.

15. A Proxy is an instrument in writing executed by a shareholder authorizing another person to attend a meeting and to vote thereat on his behalf in his absence. As per the provisions of Section 105 of the Companies Act, 2013, every shareholder who is entitled to attend and vote has a statutory right to appoint another person as his proxy. It is not necessary that the proxy be a member of the company. Further, any provision in the articles of association of the company requiring instrument of

proxy to be lodged with the company more than 48 hours before a meeting shall have effect as if 48 hours had been specified therein. The members have a right to revoke the proxy's authority by voting himself before the proxy has voted but once the proxy has voted the member cannot retract his authority.

Where two proxy instruments by the same shareholder are lodged in such a manner that one is lodged before and the other after the expiry of the date fixed for lodging proxies, the former will be counted.

Thus, in case of member X, the proxy Y will be permitted to vote on his behalf as form for appointing proxy was submitted within the permissible time.

However, in the case of Member W, the proxy M (and not Proxy N) would be permitted to vote as the proxy authorizing N to vote was deposited in less than 48 hours before the meeting.

16. Under **section 102 (2) (b)** of the Companies Act, 2013, in the case of any meeting other than an Annual General Meeting, all business transacted thereat shall be deemed to be special business.

Further under section 102 (1) a statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting:

- (a) the nature of concern or interest, financial or otherwise, if any, in respect of each items, of every director and the manager, if any or every other key managerial personnel and relatives of such persons; and
- (b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

Thus, the objection of the member is valid since the complete details about the issue of sweat equity were required to be sent with the notice of meeting. The notice is, therefore, cannot be said to be a valid one when the provisions of Section 102 of the Companies Act, 2013 are considered.

17. (i) **Maintenance of the Register of Members etc.:** As per **section 94(1)** of the Companies Act, 2013, the registers required to be kept and maintained by a

company under section 88 and copies of the annual return filed under **section 92** shall be kept at the registered office of the company:

Provided that such registers or copies of return may also be kept at any other place in India in which more than one-tenth of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company.

So, Tulip Ltd. can also keep the registers and returns at Kolkata after compliance with the above provisions, provided more than one-tenth of the total number of members entered in the register of members reside in Kolkata.

- (ii) As per **section 94(2)** of the Companies Act, the registers and their indices, except when they are closed under the provisions of this Act, and the copies of all the returns shall be open for inspection by any member, debenture-holder, other security holder or beneficial owner, during business hours without payment of any fees and by any other person on payment of such fees as may be prescribed. Accordingly, a director Mr. Rich, who is a shareholder of the company, has a right to inspect the Register of Members during business hours without payment of any fees, as per the provisions of this section.

18. According to **section 100 (2)** of the Companies Act 2013, the Board of directors must convene a general meeting upon requisition made by the stipulated minimum number of members.

As per **Section 103 (2) (b)** of the Companies Act, 2013, if the quorum is not present within half an hour from the appointed time for holding a meeting of the company, the meeting, if called on the requisition of members, shall stand cancelled. Therefore, the meeting stands cancelled and the stand taken by the Board of Directors to adjourn it, is not proper and valid.

19. Under **section 102 (2) (b)** of the Companies Act, 2013, in the case of any general meeting other than an AGM, all business transacted thereat shall be deemed to be special business.

Further under **section 102 (1)**, a statement setting out the following material facts concerning each item of special business to be transacted at a general meeting,

shall be annexed to the notice calling such meeting, namely:—

- (a) the nature of concern or interest, financial or otherwise, if any, in respect of each items, of:
 - (i) every director and the manager, if any;
 - (ii) every other key managerial personnel; and
 - (iii) relatives of the persons mentioned in sub-clauses (i) and (ii);
- (b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

Thus, the objection of the shareholder is valid since the details of the item to be considered at the general meeting are not fully disclosed. The information about the amount is a material fact with reference to the proposed increase of share capital. The notice is, therefore, not a valid notice considering the provisions of section 102 of the Companies Act, 2013.

20. **Section 109** of the Companies Act, 2013 provides for the demand of poll before or on the declaration of the result of the voting on any resolution on show of hands. Accordingly, section 109 (1) lays down as under:

Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf:—

- (a) In the case of a company having a share capital, by the members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power or holding shares on which an aggregate sum of not less than five lakh rupees or such higher amount as may be prescribed has been paid-up; and
- (b) in the case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than one tenth of the total voting power.

Withdrawal of the demand for poll: According to **section 109 (2)**, the demand for a poll may be withdrawn at any time by the persons who made the demand.

Hence, on the basis on the above provisions of the Companies Act, 2013:

- (i) The chairman cannot reject the demand for poll subject to the provisions contained in the articles of company.

- (ii) The chairman cannot reject the request of the members for withdrawal of the demand for poll.

21. Under [section 105 \(8\)](#) of the Companies Act, 2013 every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, shall be entitled during the period beginning twenty-four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at any time during the business hours of the company, provided not less than three days' notice in writing of the intention so to inspect is given to the company.

In the given case, Surya has given a proper notice. Therefore, validity of notice cannot be denied.

However, such inspection can be undertaken only during the period beginning 24 hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting.

In view of above provision, Surya can undertake the inspection only during the above-mentioned period and not two days prior to the meeting.

22. Rule 8 of the Companies (Significant Beneficial Owners) Rules, 2018 (as amended by the Companies (Significant Beneficial Owners) Amendment Rules, 2019, w.e.f. 8-2-2019) states that the 'SBO' Rules shall not be made applicable to the extent the shares of the Reporting Company are held by following entities:

- (a) the Investor Education and Protection Fund Authority [constituted under section 125 (5)];
- (b) its holding reporting company provided that the details of such holding reporting company shall be reported in Form No. BEN-2;
- (c) the Central Government, State Government or any local authority;
- (d)
 - (i) a reporting company; or
 - (ii) a body corporate; or
 - (iii) an entity, controlled wholly or partly by the Central Government and/ or State Government(s);
- (e) Securities and Exchange Board of India (SEBI) registered Investment Vehicles such as mutual funds, alternative investment funds (AIFs), Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InVITs) regulated by SEBI;
- (f) Investment Vehicles regulated by Reserve Bank of India, or Insurance

Regulatory and Development Authority of India, or Pension Fund Regulatory and Development Authority.

23. According to Section 96 of the Companies Act, 2013, every company shall be required to hold its first Annual General Meeting within a period of 9 months from the date of closing of its first financial year.

The first financial year of Infotech Ltd is for the period 1st April 2018 to 31st March 2019, the first Annual General Meeting (AGM) of the company should be held on or before 31st December, 2019.

The section further provides that the Registrar may, for any special reason, extend the time within which any Annual General Meeting, other than the first Annual General Meeting, shall be held, by a period not exceeding three months.

Thus, the first AGM of Infotech Ltd. should have been held on or before 31st December, 2019. Further, in case of first AGM, the Registrar of Companies does not have the power to grant extension of any time limit.

24. According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number in case of a public company, five members personally present if the number of members as on the date of meeting is not more than one thousand, shall be the quorum.

In this case the quorum for holding a general meeting is 7 members to be personally present (higher of 5 or 7). For the purpose of quorum, only those members are counted who are entitled to vote on resolution proposed to be passed in the meeting. Again, only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purpose of quorum.

If a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum. Where two or more companies which are members of another company, appoint a single person as their representative then each such company will be counted as quorum at a meeting of the latter company.

Further, the President of India or Governor of a State, if he is a member of a company,

may appoint such a person as he thinks fit, to act as his representative at any meeting of the company. A person so appointed shall be deemed to be a member of such a company and thus considered as member personally present.

In view of the above there are only three members personally present.

‘A’ will be included for the purpose of quorum. B & C have to be excluded for the purpose of quorum because they represent the preference shares and since the agenda being the appointment of Managing Director, their rights cannot be said to be directly affected and therefore, they shall not have voting rights. D will have two votes for the purpose of quorum as he represents two companies ‘Y Ltd.’ and ‘Z Ltd.’ E, F, G and H are not to be included as they are not members but proxies representing the members.

Thus, it can be said that the requirement of quorum has not been met and the composition shall not constitute a valid quorum for the meeting.

25. A proxy is an instrument in writing executed by a shareholder authorising another person to attend a meeting and to vote thereat on his behalf in his absence. The term also applies to the person so appointed and in such case a proxy is a person appointed by a member of a company, to attend the general meeting of the company and vote thereat on his behalf.

The various provisions relating to the appointment of a proxy are contained in **section 105** of the Companies Act, 2013. They are as under:

1. Under **section 105 (1)** any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf.
2. A proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll. This means that a proxy cannot vote on a resolution by show of hands.
3. The Central Government may prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy.
4. Under **section 105 (6)** the instrument appointing a proxy shall be in writing; and be signed by the appointer or his attorney duly authorised in writing or, if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it.
5. Under **section 105 (7)** an instrument appointing a proxy, if in the form as may be prescribed, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles of a company.

26. According to **section 92 (4)** of the Companies Act, 2013, every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting.

Sub-section (5) of Section 92 also states that if any company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default.

In the instant case, the opinion of the directors that since the AGM was cancelled, the provisions requiring the company to file annual returns within 60 days from the date of AGM would not apply, is not correct.

In the above case, the annual general meeting of Super Mart Limited should have been held within a period of six months, from the date of closing of the financial year but it did not take place. Thus, the company has contravened the provisions of section 92 of the Companies Act, 2013 for not filing the annual return and shall attract the penal provisions along with every officer of the company who is in default as specified in **Section 92 (5)** of the Act.

27. According to section 101(1) of the Companies Act, 2013, a general meeting of a company may be called by giving not less than clear twenty-one days' notice either in writing or through electronic mode in such manner as may be prescribed.

Also, it is to be noted that 21 clear days mean that the date on which notice is served and the date of meeting are excluded for sending the notice.

Further, Rule 35(6) of the Companies (Incorporation) Rules, 2014, provides that in case of delivery by post, such service shall be deemed to have been effected - in the case of a notice of a meeting, at the expiration of forty eight hours after the letter

containing the same is posted.

Hence, in the given question:

- (i) A 21 days' clear notice must be given. In the given question, only 19 clear days' notice is served (after excluding 48 hours from the time of its posting and the day of sending and date of meeting). Therefore, the meeting was not validly called.
- (ii) As explained in (i) above, notice falls short by 2 days.
- (iii) The Companies Act, 2013 does not provide anything specific regarding the condonation of delay in giving of notice. Hence, the delay in giving the notice calling the meeting cannot be condoned.

28. According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number, the quorum for the meeting of a Public Limited Company shall be 5 members personally present, if number of members is not more than 1000.

- (i) (1) P1, P2 and P3 will be counted as three members.
(2) If a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum. Hence, P4 and P5 representing ABC Ltd. and DEF Ltd. respectively will be counted as two members.
(3) Only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum. Thus, P6 and P7 shall not be counted as constituting quorum.

In the light of the provision of the Act and the facts of the question, it can be concluded that the quorum for Annual General Meeting of KMN Cables Ltd. is 5 members personally present. Total 5 members (P1, P2, P3, P4 and P5) were present. Hence, the requirement of quorum is fulfilled.

- (ii) The section further states that, if the required quorum is not present within half an hour, the meeting shall stand adjourned for the next week at the same time and place or such other time and place as decided by the Board of Directors. Since, P4 is an essential part for meeting the requirement of quorum and he reaches after 11:30 A.M. (i.e. after half an hour from the starting time of the meeting), the meeting will be adjourned as provided above.

(iii) In case of lack of quorum, the meeting will be adjourned as provided in section 103 of the Companies Act, 2013.

In case of the adjourned meeting or change of day, time or place of meeting, the company shall give not less than 3 days' notice to the members either individually or by publishing an advertisement in the newspaper.

(iv) Where quorum is not present in the adjourned meeting also within half an hour, then the members present shall form the quorum.

29. In this respect Rules 5 (7) and 5 (8) of the Companies (Management and Administration) Rules, 2014 are relevant.

Rule 5 (7) specifies that in case of companies whose securities are listed on a stock exchange in or outside India, the particulars of any pledge, charge, lien or hypothecation created by the promoters in respect of any securities of the company held by the promoter including the names of pledgee/pawnee and any revocation therein shall be entered in the register within **fifteen days** from such an event.

According to Rule 5 (8), if promoters of any listed company, which has formed a joint venture company with another company, have pledged or hypothecated or created charge or lien in respect of any security of the listed company in connection with such joint venture company, the particulars of such pledge, hypothecation, charge and lien shall be entered in the register members of the listed company within **fifteen days** from such an event.

Thus, in the above two cases, it is permitted for the listed companies to make entries relating to pledge, charge, lien or hypothecation in the registers within fifteen days from the happening of such an event.

30. Normally, general meetings are to be called by giving at least 21 clear days' notice as required by Section 101 (1) of the Companies Act, 2013.

As an exception, first proviso to Section 101 (1) states that a general meeting may be called after giving shorter notice than that specified in sub-section (1) of Section 101, if consent, in writing or by electronic mode, is accorded thereto—

(i) in the case of an **annual general meeting**, by not less than ninety-five per cent. of the members entitled to vote thereat; and

(ii) in the case of **any other general meeting**, by members of the company—

- (a) holding, if the company has a share capital, majority in number of members entitled to vote and who represent not less than ninety- five per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or
- (b) having, if the company has no share capital, not less than ninety- five per cent. of the total voting power exercisable at that meeting.

Second proviso to **Section 101 (1)** clarifies that where any member of a company is entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of sub **section (1)** of **section 101** in respect of the former resolution or resolutions and not in respect of the latter.

In view of the above provisions, Shilpkkaar Constructions Limited is permitted to call the requisite general meeting by giving a shorter notice. However, the members holding at least ninety-five per cent of the paid-up share capital of the company which gives them a right to vote at the meeting must consent to the shorter notice.

Hence, the opinion of Nilesh that there shall be contravention of relevant provisions attracting penalty if a general meeting is called at shorter notice than usually required is not correct.

31. Section 118 of the Companies Act, 2013 provides that every company shall prepare, sign and keep minutes of proceedings of every general meeting, including the meeting called by the requisitionists and all proceedings of meeting of any class of shareholders or creditors or Board of Directors or committee of the Board and also resolution passed by postal ballot within thirty days of the conclusion of every such meeting concerned. Minutes kept shall be evidence of the proceedings recorded in a meeting.

By virtue of Rule 25 of the Companies (Management and Administration) Rules 2014 read with section 118 of the Companies Act, 2013 each page of every such book shall be initialled or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed by, in the case of minutes of proceedings of a general meeting, by the Chairman of the same meeting within the aforesaid period of thirty days or in the event of the death or

inability of that Chairman within that period, by a director duly authorized by the Board for the purpose.

Therefore, the minutes of the meeting referred to in the case given above can be signed in the absence of Mr Venkat, by any other director also who is authorized by the Board.

32. **Section 118** of the Companies Act, 2013 requires a company to make entries of resolutions passed by means of postal ballot in the minutes book.

Rule 25 (1) (b) (ii) of the Companies (Management and Administration) Rules, 2014 states that in case of every resolution passed by postal ballot, a brief report on the postal ballot conducted including the resolution proposed, the result of the voting thereon and the summary of the scrutinizer's report shall be entered in the minutes book of general meetings along with the date of such entry within thirty days from the date of passing of resolution.

Accordingly, the directors of Shikhar Cement Limited are advised to keep following points under consideration while entering resolutions passed by means of postal ballot in the minutes book of general meetings:

- (i) there should be entered a brief report on the postal ballot conducted including the resolution proposed.
- (ii) there should be entered the result of the voting made by the shareholders in respect of resolution.
- (iii) there should be entered the summary of the scrutinizer's report.
- (iv) there should be entered the date of making entry.

Further, the directors must ensure that the entries in respect of resolutions are made within thirty days from the date of passing of resolution by means of postal ballot.

33. In respect of certification of Annual Return by a company secretary in practice, the directors of Disha Home Appliances Limited are advised to refer Section 92 (2) of the Companies Act, 2013 and also Rule 11 (2) of the Companies (Management and Administration) Rules, 2014 which state that the Annual Returns of following companies shall be certified by a company secretary in practice:

- (i) a listed company; or
- (ii) a company having paid-up share capital of Rs. 10 crores or more or turnover

of Rs. 50 crores or more.

Accordingly, if Disha Home Appliances Limited gets listed or in case its paid-up share capital is increased to Rs. 10 crores or more or its turnover becomes Rs. 50 crores or more, it shall be required to get its Annual Return certified by a company secretary in practice. The certificate given by the company secretary in practice shall be in Form No. MGT-8. The certificate, inter-alia, shall state that the Annual Return discloses the facts correctly and adequately and that the company has complied with all the provisions of the Companies Act, 2013.

34. (i) In terms of **Section 121 (2)** of the Companies Act, 2013, Prince Auto- parts Limited is required to file with the jurisdictional Registrar of Companies a copy of the Report maximum within thirty days of the conclusion of its Annual General Meeting.
- (ii) In terms of **Section 121 (3)** of the Companies Act, 2013, every listed company, which fails to file with the jurisdictional Registrar of Companies a copy of the Report on its Annual General Meeting within the specified time limit, shall be liable to the following penalty:
- **Company:** Rs. one lakh and in case of continuing failure, with a further penalty of Rs. five hundred for each day after the first during which such failure continues subject to a maximum of Rs. five lakh.
 - **Every officer who is in default:** Minimum Rs. twenty-five thousand and in case of continuing failure, with a further penalty of Rs. five hundred for each day after the first during which such failure continues subject to a maximum of Rs. one lakh.

Accordingly, if Prince Auto-parts Limited fails to file a copy of the report on its Annual General Meeting within the specified time limit of thirty days, it shall be liable to the above stated penalty which may go maximum up to Rs. five lakh in case of continuing default. In addition, its every officer who is in default shall also liable to the penalty maximum of which will be Rs. one lakh in case of continuing failure.



ANSWER TO MCQs

1	D	2	B	3	C	4	C	5	B
6	D	7	A	8	D	9	D	10	C
11	B	12A	D	12B	B	12C	A	13	C
14A	(iii)	14B	(iv)	14C	(ii)	15	B	16	A
17	D	18	D	19	C	20	C	21	C
22	D	23	D	24(1)	D	24(2)	C	24(3)	B
25	C	26	B	27	A	28(1)	C	28(2)	A
28(3)	D	28(4)	B	29	D	30	D	31	D
32	D	33	C						



HOMEWORK QUESTIONS & ANSWER

1. Mr. Abeer filed a complaint against the company, Elixir Private Limited since it did not serve the notice to him for attending the annual general meeting. The company, in turn, provided the proof that they had sent the notice, by way of an email to Mr. Abeer, inviting him to attend the annual general meeting of the company. Abeer alleges that he never received the email. State whether the company is liable as guilty for contravening the provisions of **section 101** of the Companies Act, 2013 read with rules. (ICAI Module)
2. There are 54 members of Dicey Private Limited. The company held its annual general meeting on 1st July 2019 at 2.00 p.m. and 28 members were present till 2.45 p.m. The Chairman of the meeting proceeded to initiate the meeting and passed the resolutions as discussed in the meeting. Comment whether the meeting took place as per the provisions of Companies Act, 2013. (ICAI Module)
3. In a General meeting of Alpha Limited, the chairman directed to exclude certain matters detrimental to the interest of the company from the minutes, Mukesh, a shareholder contended that the minutes of the meeting must contain fair and correct summary of the proceedings thereat. Decide, whether the contention of Mukesh is maintainable under the provisions of the Companies Act, 2013? (ICAI Module, May'18 RTP, Nov'19 Mock Test)
4. A General Meeting was scheduled to be held on 15th April, 2018 at 3.00 P.M. As per the notice the members who are unable to attend a meeting in person can appoint a proxy and the proxy forms duly filled should be sent to the company so as to reach at least 48 hours before the meeting. Mr. X, a member of the company appoints Mr. Y as his proxy and the proxy form dated 10-04-2018 was deposited by Mr. Y with the company at its registered Office on 11-04-2018. Similarly, another member Mr. W also gives two separate proxies to two individuals named Mr. M and Mr. N. In the case of Mr. M, the proxy dated 12-04-2018 was deposited with the company on the same day and the proxy form in favour of Mr. N was deposited on 14-04-2018. All the proxies viz., Y, M and N were present before the meeting. According to the provisions of the Companies Act, 2013, who would be the persons allowed to represent at proxies for members X and W respectively?

(ICAI Module, May'19 Mock, May'21 RTP)

5. M. H. Company Limited served a notice of general meeting upon its shareholders. The notice stated that the issue of sweat equity shares would be considered at such meeting. Mr. 'A', a shareholder of the M. H. Company Limited complains that the issue of sweat equity shares was not specified fully in the notice. Is the notice issued by M. H. Company Limited regarding issue of sweat equity shares valid according to the provisions of the Companies Act, 2013? Explain in detail. (ICAI Module)
6. M/s. Tulip Ltd. maintains its Register of Members at its registered office in Mumbai. A group of members residing in Kolkata want to keep the register of members at Kolkata.
1. Explain with provisions of Companies Act, 2013, whether the company can keep the Registers and Returns at Kolkata. (ICAI Module, May'18- 5 Marks)
 2. Does Mr. Rich, holding 400 shares of total worth ₹4000 only, has the right to inspect the Register of Members? (ICAI Module)
 3. Does Mr. Ranjit, Director(but not a shareholder) of the company have the right to inspect the Register of Members? (May'18- 5 Marks)
7. Examine the validity of the following with reference to the relevant provisions of the Companies Act, 2013:
1. The Board of Directors of Shrey Ltd. called an extraordinary general meeting upon the requisition of members. However, the meeting was adjourned on the ground that the quorum was not present at the meeting. Advise the company. (ICAI Module, Nov'18 RTP, May'19 Mock Test)
 2. Mr. Bheem is holding 500 shares (of ZYZ Limited) of total worth Rs. 5000 only. Advise, whether he has the right to inspect the Register of Members? (May'19 Mock Test)
8. Infotech Ltd. was incorporated on 1.4.2016. No General Meeting of the company has been held till 30.4.2018. Discuss the provisions of the Companies Act, 2013 regarding the time limit for holding the first annual general meeting of the Company and the power of the Registrar to grant extension of time for the First Annual General Meeting. (ICAI Module, Nov'19 RTP)
9. The Articles of Association of DJA Ltd. require the personal presence of 7 members to constitute quorum of General Meetings. The company has 965 members as on the date of meeting. The following persons were present in the extra-ordinary meeting

to consider the appointment of Managing Director:

1. A, the representative of Governor of Uttar Pradesh.
2. B and C, shareholders of preference shares,
3. D, representing Y Ltd. and Z Ltd.
4. E, F, G and H as proxies of shareholders.

Can it be said that the quorum was present in the meeting?

(ICAI Module, May'20 RTP Nov'22 Mock Test)

10. EFG Ltd. was incorporated on 1.4.2017. No General Meeting of the company has been held till 30.4.2019. Discuss the provisions of the Companies Act, 2013 regarding the time limit for holding the first annual general meeting of the Company and the power of the Registrar to grant extension of time for the First Annual General Meeting.

(May'20 Mock Test)

11. As per the provisions of the Companies Act, 2013, every company is required to file with the Registrar of Companies, the Annual Return as prescribed in section 92, in Form MGT -7. Explain the particulars required to be contained in it.?

(May'18- 6 Marks)

12. Benson Limited issued a notice with the agenda for nine businesses to be transacted in the Annual General Meeting (two businesses were regarding appointment of Mr. Sahu and Mr. Pranav as directors). The chairman decided to move the resolutions for all the nine businesses together to save the time of the members present. Examine the validity of the resolutions.

(May'18- 4 Marks)

- 13: A Ltd. held its Annual General Meeting on September 15, 2021. The meeting was presided over by Mr. B, the Chairman of the Company's Board of Directors. On September 17, 2021, Mr. B, the Chairman, without signing the minutes of the meeting, left India to look after his father who fell sick in London. Referring to the provisions of the Companies Act, 2013, state the manner in which the minutes of the above meeting are to be signed in the absence of Mr. B and by whom?

(ICAI Module, May'2022 Mock Test)

- 14: Kurt Limited is a company engaged in the business of manufacturing papers. The company has approached you to explain them the following as per the provisions of the Companies Act, 2013:

- (a) Quorum for the general meeting if the company has 800 members.
- (b) Quorum for the general meeting if the company has 6500 members.
- (c) Quorum for the general meeting if the company has 5500 members. The articles of association has prescribed the quorum for the meeting to be 50.

(ICAI Module, May'2022 Mock Test)

15. Explain the provisions of e-voting in an annual general meeting in the following cases as per the Companies Act, 2013:

- (i) 'A' and his wife 'B' has joint Demat Account in Alfa Investment Ltd. in such a case, who will cast the vote in e-voting system?
- (ii) AGM is going to be held on 07-09-2020. Then what will be the e-voting period and the time of closing?

(Nov'21 4 Marks)

16. New Pharma Ltd. issued a notice for holding its annual general meeting on 7th September 2020. The notice was posted to the members on 16th August 2020. Some members of the company alleged that the company has not complied with the provision of the Companies Act, 2013, with regard to the period of notice and as such the meeting was invalid. Referring to the provision of the Companies Act, 2013, decide:

- (i) Whether meeting has been validly called?
- (ii) If there is a shortfall in the notice, state and explain by how many days does the notice fall short of statutory requirements?
- (iii) Whether the length of serving of notices be curtailed by Article of Association?

(Nov'21 5 Marks)

17. Abhiyogic Ltd. having 1,000 members with paid-up capital of ₹ 1 crore, decided to hold its Annual General Meeting (AGM) on 21st August, 2022, and it received a notice on 2nd July, 2022, from its 60 members holding paid-up capital of ₹ 7 lakhs, in aggregate, for a resolution to be passed at the AGM for appointing Vedya & Co., as its auditor from

FY. 2022-23 onwards, instead of its existing auditor, Chepal & Co. which was originally appointed for 5 years term and had completed its 4 years term.

Such a notice for resolution was forthwith send by the company to Chepal & Co. which gave its representation in writing to the company along with a request for its notification to the members of the company, but it was received too late (3 days

before the meeting) by the company.

In the context of aforesaid facts, please answer to the following question(s):-

- (a) Whether the said notice was given by adequate number of members within the prescribed time limit to Abhiyogic Ltd.?
- (b) Whether the company was bound to send to its members such representation made by Chepal & Co. and if it could not have been send, then in such case, what was the responsibility(ies) of the company?

(RTP MAY 22)

18. Mr. Zoey purchased the shares of Luxy Hairstyles Private Limited, at market price, in the name of his daughter, Mila, who is 4 years old. Mr. Joe, the Director of the Company, has approached you to advise him on the updation of said change in the register of members, since Mila, being a minor is incompetent to contract in her capacity.

(ICAI Module)

19. Mrs. And Mr. Taneja, recently got married and jointly purchased the shares of New Hopes India Private Limited on 14th August 2016. Mr. Taneja intimated the company that only the name of his wife should appear in the records of the company, for the shares purchased by them. The secretary of the company is not sure whether this is possible, given that the shares are held in the names of both the persons.

(ICAI Module)

20. Ms. Emma gifted the shares purchased by her of the Company Bio-Optics Limited, to her sister Cathy. Emma had purchased these shares on the occasion of her birthday in February 2017. However, neither Emma nor Cathy were aware that they had to intimate about the transaction of transfer of such shares as a gift, to the company. Discuss the same in light of the provisions of **section 89** of the Act.

(ICAI Module)

21. Zorab Limited served a notice of General Meeting upon its members. The notice stated that a resolution to increase the share capital of the Company would be considered at such meeting. A shareholder complained that the amount of the proposed increase was not specified in the notice. Is the notice valid? (ICAI Module)

22. Examine the validity of the following decisions of the Board of Directors with reference of the provisions of the Companies Act, 2013.

- 1. In an Annual General Meeting of a company having share capital, 80 members

present in person or by proxy holding more than 1/10th of the total voting power, demanded for poll. The chairman of the meeting rejected the request on the ground that only the members present in person can demand for poll.

2. In an annual general meeting, during the process of poll, the members who earlier demanded for poll want to withdraw it. The chairman of the meeting rejected the request on the ground that once poll started, it cannot be withdrawn. (ICAI Module, Nov'18 RTP, May'20 Mock Test)

23. Sirhj, a shareholder, gives a notice for inspecting proxies, five days before the meeting is scheduled and approaches the company two days before the scheduled meeting for inspecting the same. What is the legal position relating to his actions (as per the provisions of the Companies Act, 2013)? (ICAI Module)

24. Miraj Limited held its Annual General Meeting on September 15, 2018. The meeting was presided over by Mr. Venkat, the Chairman of the Company's Board of Directors. On September 17, 2018, Mr Venkat, the Chairman, without signing the minutes of the meeting, left India to after his father who fell sick in London. Referring to the provisions of the Companies Act, 2013, examine the manner in which the minutes of the above meeting are to be signed in the absence of Mr. Venkat and by whom. (ICAI Module, May'19 Mock Test, Jan'21- 5 Marks)

25. Primal Limited is a company incorporated in India. It owns two subsidiaries- Privy Limited (in which it holds 75% shares) and Malvy Limited (a wholly owned subsidiary). Both the subsidiaries are incorporated outside India. The Board of Directors of Primal Limited intends to call an Extraordinary General Meeting (EGM) of Primal Limited on urgent basis. Advise the Board of Directors on the following:
- (i) EGM be held in India
 - (ii) EGM be held in Netherlands (May'19 RTP)

26. Mr. Pink held 100 partly paid up shares of Red Limited. The company asked him to pay the final call money on the shares. Due to some unavoidable circumstances he was unable to pay the amount of call money to the company. At a general meeting of the shareholders, the chairman disallowed him to cast his vote on the ground that the articles do not permit a shareholder to vote if he has not paid the calls on the shares held by him. Mr. Pink contested the decision of the Chairman. Referring to the provisions of the Companies Act, 2013 decide whether the contention of Mr. Pink is valid. (Nov'19 RTP)

27. Rijwan Limited, a listed company, is in the business of garment manufacturing and has its registered office at 123, N Tower, Commercial Beta Complex, Biwadi, Rajasthan. The company has called its 6th Annual General Meeting at 3 PM on 22nd August, 2019 at Ansal Plaza, Bhiwadi. Some of the members of the company have opposed to calling of the meeting at Ansal Plaza. The company has approached you to advise them in this regard. Suppose, Rijwan Limited is an unlisted company and wants to call their 6th AGM at Jaipur, will your answer differ? (Nov'19 RTP)
28. Members of ZA Ltd. holding less than 1% of total voting power want the company to give a special notice to move a resolution for appointment of an auditor other than retiring auditor. Explain whether members have complied with relevant provisions of the Companies Act, 2013 in making their request. (Nov'18- 3 Marks)
29. KMN Ltd. scheduled its annual general meeting to be held on 11th March, 2018 at 11:00 A.M. The company has 900 members. On 11th March, 2018 following persons were present by 11:30 A.M.
1. P1, P2 & P3 shareholders
 2. P4 representing ABC Ltd.
 3. P5 representing DEF Ltd.
 4. P6 & P7 as proxies of the shareholders
1. Examine with reference to relevant provisions of the Companies Act, 2013, whether quorum was present in the meeting.
 2. What will be your answer if P4 representing ABC Ltd., reached in the meeting after 11:30 A.M.? (ICAI Module, Nov'18-4 Marks)
30. 'X' a member of LKM Ltd. is holding 250 shares, which are partly paid. The company held its general meeting where voting right was denied to 'X' claiming he has not paid the calls on the shares held by him. Examine the validity of company's denial to 'X' with reference to the relevant provisions of the Companies Act, 2013, assuming that Articles of association of the Company do not restrict the voting right of such members. (Nov'18- 4 Marks)
31. Madurai Ltd. issued a notice for holding of its Annual general meeting on 7th November 2018. The notice was posted to the members on 16th October 2018. Some members of the company allege that the company had not complied with the provisions of the Companies Act, 2013 with regard to the period of notice and

as such the meeting was valid. Referring to the provisions of the Act, decide:

1. Whether the meeting has been validly called?
2. If there is a shortfall, state and explain by how many days does the notice fall short of the statutory requirement?
3. Can the delay in giving notice be condoned?

(ICAI Module, May'19- 6 Marks, Nov'20 RTP)

32. Give the points of distinction between ordinary resolution and special resolution.

(May'19-5 Marks)

33. (i) Explain the provisions of the Companies Act, 2013 relating to quorum for general meeting of a public company having total 30 members, of which, two members are bodies corporate and one member is the President of India.

Whether the representatives appointed by body corporate and President of India to participate in the general meeting shall be counted for quorum and can such representatives cast vote at that general meeting? (May'19- 3 Marks)

(ii) If a member of a listed company who has casted his vote through electronic voting can attend general meeting of the company and change his vote subsequently and can he appoint a proxy? (May'19- 2 Marks)

34. Om Limited served a notice of General Meeting upon its members. The notice stated that the following resolutions will be considered at such meeting:

1. Resolution to increase the Authorised share capital of the company.
2. Appointment and fixation of the remuneration of Mr. Prateek as the auditor.

A shareholder complained that the amount of the proposed increase and the remuneration was not specified in the notice. Is the notice valid under the provisions of the Companies Act, 2013. (Nov'19- 4 Marks)

35. What do you mean by Proxy? Explain the provisions relating to appointment of proxy under the Companies Act, 2013 (ICAI Module)

36. PQ Limited is a public company having its registered office in Mumbai. It has 3680 members. The company sent notice to all its members for its Annual general Meeting to be held on 2nd September 2019 (Monday) at 11 :00 AM at its registered office. On the day of meeting there were only 12 members personally present upto 11:30 AM. The Chairman adjourned the meeting to same day in next week at the same time and

place. On the day of adjourned meeting only 10 members were personally present. The Chairman initiated the meeting after 11:30 AM and passed the resolutions after discussion as per the agenda of the meeting given in the notice. Comment whether the AGM conducted after adjournment is valid or not as per the provisions of **section 103** of Companies Act 2013 by explaining the relevant provisions in this regard. What would be your answer in the above case, if PQ Limited is a Private company?

(Nov'20 - 4 Marks)

37. A company received a proxy form 54 hours before the time fixed for the start of the meeting. The company refused to accept the proxy form on the ground that the Articles of the company provided that a proxy form must be filed 60 hours before the start of the meeting. Define proxy and decide under the provisions of the Companies Act, 2013, whether the proxy holder can compel the company to admit the proxy in this case?

(Jan'21- 3 Marks)

38. Pristine Limited, a listed public company, conducted its Annual General Meeting on 31st August, 2020. However, 10 days have passed since 31st August, 2020, but it has still not filed report on Annual General Meeting. The Accountant of the company has approached you to advise them whether Pristine Limited is required to file report on Annual General Meeting?

(May'21 RTP)



ANSWERS

- 1: As per Rule 18(3) of the Companies (Management & Administration) Rules, 2014, the company's obligation shall be satisfied when it transmits the e-mail and the company shall not be held responsible for a failure in transmission beyond its control. Also, if the member entitled to receive the notice fails to provide or update relevant e-mail address to the company, or to the depository participant as the case may be, the company shall not be in default for not delivering notice via e-mail.
- 2: As per the provisions of **Section 103** of the Companies Act, 2013, the quorum for a Private Limited Company shall be two members personally present. Thus, the quorum for the annual general meeting of Dicey Private Limited was complied with and the company is not in contravention with any of the provisions of the Companies Act, 2013.
- 3: Under **Section 118 (5)** of the Companies Act, 2013, there shall not be included in the Minutes of a meeting, any matter which, in the opinion of the Chairman of the meeting:
1. is or could reasonably be regarded as defamatory of any person;
 2. is irrelevant or immaterial to the proceeding; or
 3. is detrimental to the interests of the company;
- Further, under **section 118(6)** the chairman shall exercise absolute discretion in regard to the inclusion or non-inclusion of any matter in the Minutes on the grounds specified in **sub-section (5)** above.
- Hence, in view of the above, the contention of Mukesh, a shareholder of Alpha Limited is not valid because the Chairman has absolute discretion on the inclusion or exclusion of any matter in the minutes for aforesaid reasons
4. A Proxy is an instrument in writing executed by a shareholder authorizing another person to attend a meeting and to vote thereat on his behalf and in his absence. As per the provisions of **Section 105** of the Companies Act, 2013, every shareholder who is entitled to attend and vote has a statutory right to appoint another person as his proxy. It is not necessary that the proxy be a member of the company. Further, any provision in the articles of association of the company requiring instrument of proxy to be lodged with the company more than 48 hours before a meeting shall

have effect as if 48 hours had been specified therein. The members have a right to revoke the proxy's authority by voting himself before the proxy has voted but once the proxy has voted the member cannot retract his authority.

Where two proxy instruments by the same shareholder are lodged of in such a manner that one is lodged before and the other after the expiry of the date fixed for lodging proxies, the former will be counted.

Thus, in case of member X, the proxy Y will be permitted to vote on his behalf as form for appointing proxy was submitted within the permitted time.

However, in the case of Member W, the proxy M (and not Proxy N) will be permitted to vote as the proxy authorizing N to vote was deposited in less than 48 hours before the meeting.

5: Under **section 102 (2) (b)** of the Companies Act, 2013, in the case of any meeting other than an Annual General Meeting, all business transacted thereat shall be deemed to be special business.

Further under **section 102 (1)** a statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting:

- (a) the nature of concern or interest, financial or otherwise, if any, in respect of each items, of every director and the manager, if any or every other key managerial personnel and relatives of such persons; and
- (b) any other information and facts that may enable members to understand the meaning scope and implications of the items of business and to take decision thereon

Thus, the objection of the member is valid since the complete details about the issue of sweat equity should be sent with the notice. The notice is, therefore, not a valid notice under **Section 102** of the Companies Act, 2013.

6:
(i) **Maintenance of the Register of Members etc.:** As per **section 94(1)** of the Companies Act, 2013, the registers required to be kept and maintained by a company under **section 88** and copies of the annual return filed under **section 92** shall be kept at the registered office of the company:

Provided that such registers or copies of return may also be kept at any other place in India in which more than one-tenth of the total number of members entered in the register of members reside, if approved by a special resolution passed at a

general meeting of the company.

So, Tulip Ltd. can also keep the registers and returns at Kolkata after compliance with the above provisions, provided more than one-tenth of the total number of members entered in the register of members reside in Kolkata.

- (ii) As per **section 94(2)** of the Companies Act, the registers and their indices, except when they are closed under the provisions of this Act, and the copies of all the returns shall be open for inspection by any member, debenture- holder, other security holder or beneficial owner, during business hours without payment of any fees and by any other person on payment of such fees as may be prescribed. Accordingly, a director Mr. Rich, who is a shareholder of the company, has a right to inspect the Register of Members during business hours without payment of any fees, as per the provisions of this section.

- (iii) As per **section 94(2)** of the Companies Act, the inspection of the records, i.e. registers and indices, and annual return can be done by members, debenture- holders, other security holders or beneficial owners of the company. Accordingly, a director Mr. Ranjit, who is not a shareholder of the company, has no right to inspect the Register of Members of company, as per the provisions of this section.

[**Note:** A presumption may be taken with respect to payment of fees. In such a case any other person (other than specified above) may also inspect the Register of members of company]

7:

1. According to **section 100 (2)** of the Companies Act 2013, the Board of directors must convene a general meeting upon requisition by the stipulated minimum number of members.
As per **Section 103 (2) (b)** of the Companies Act, 2013, if the quorum is not present within half an hour from the appointed time for holding a meeting of the company, the meeting, if called on the requisition of members, shall stand cancelled. Therefore, the meeting stands cancelled and the stand taken by the Board of Directors to adjourn it, is not proper.
2. As per **section 94(2)** of the Companies Act, the registers and their indices, except when they are closed under the provisions of this Act, and the copies of all the returns shall be open for inspection by any member, debenture-holder, other security holder or beneficial owner, during business hours without payment of any fees and by any other person on payment of such fees as may be prescribed.

Accordingly, a director Mr. Bheem, who is a shareholder of the company, has a right to inspect the Register of Members during business hours without payment of any fees, as per the provisions of this section.

- 8: According to **Section 96** of the Companies Act, 2013, every company shall be required to hold its first annual general meeting within a period of 9 months from the date of closing of its first financial year.

The first financial year of Infotech Ltd is for the period 1st April 2016 to 31st March 2017, the first annual general meeting (AGM) of the company should be held on or before 31st December, 2017.

The section further provides that the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.

Thus, the first AGM of Infotech should have been held on or before 31st December, 2017. Further, the Registrar does not have the power to grant extension to time limit

- 9: According to **section 103** of the Companies Act, 2013, unless the articles of the company provide for a larger number in case of a public company, five members personally present if the number of members as on the date of meeting is not more than one thousand, shall be the quorum.

In this case the quorum for holding a general meeting is 7 members to be personally present (higher of 5 or 7). For the purpose of quorum, only those members are counted who are entitled to vote on resolution proposed to be passed in the meeting. Again, only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum.

If a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum. Where two or more companies which are members of another company, appoint a single person as their representative then each such company will be counted as quorum at a meeting of the latter company.

Further the President of India or Governor of a State, if he is a member of a company, may appoint such a person as he thinks fit, to act as his representative at any meeting of the company. A person so appointed shall be deemed to be a member

of such a company and thus considered as member personally present.

In view of the above there are only three members personally present.

'A' will be included for the purpose of quorum. B & C have to be excluded for the purpose of quorum because they represent the preference shares and since the agenda being the appointment of Managing Director, their rights cannot be said to be directly affected and therefore, they shall not have voting rights. D will have two votes for the purpose of quorum as he represents two companies 'Y Ltd.' and 'Z Ltd.' E, F, G and H are not to be included as they are not members but representing as proxies for the members.

Thus, it can be said that the requirements of quorum has not been met and it shall not constitute a valid quorum for the meeting.

10: According to **Section 96** of the Companies Act, 2013, every company shall be required to hold its first annual general meeting within a period of 9 months from the date of closing of its first financial year.

The first financial year of EFG Ltd is for the period 1st April 2017 to 31st March 2018, the first annual general meeting (AGM) of the company should be held on or before 31st December, 2018.

The section further provides that the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.

Thus, the first AGM of EFG Ltd. should have been held on or before 31st December, 2018. Further, the Registrar does not have the power to grant extension to time limit for the first AGM.

11: Every company is required to file with the Registrar of Companies, the annual return as prescribed in **section 92**, in Form MGT – 7 as per Rule 11(1) of the Companies (Management & Administration) Rules, 2014.

The particulars contained in an annual return, to be filed by every company are as follows–

1. Its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
2. Its shares, debentures and other securities and shareholding pattern
3. Its indebtedness;
4. Its members and debenture-holders along with the changes therein since the close of the previous financial year;

5. Its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;
6. Meetings of members or a class thereof, Board and its various committees along with attendance details;
7. Remuneration of directors and key managerial personnel;
8. Penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;
9. Matters relating to certification of compliances, disclosures;
10. Details in respect of shares held by or on behalf of the Foreign Institutional Investors including their names, addresses, countries of incorporation, registration and percentage of shareholding held by them;
11. Such other matters as may be prescribed.

12: For the sake of avoiding confusion and mixing up, the resolutions are generally moved separately in the annual general meeting. However, there is nothing illegal if the Chairman of the meeting desires that two or more resolutions should be moved together, unless any member requires that each resolution should be put to vote separately or unless a poll is demanded in respect of any.

Where notice has been given of several resolutions, each resolution must be put separately. However, if the meeting unanimously adopts all the resolutions, this would not be illegal barring a few occasions.

One resolution which should be moved separately is relating to appointment of directors at a general meeting of a public or private company, where two or more directors cannot be appointed as directors by a single resolution.

Hence, in the instant case, all the nine businesses cannot be moved together as two businesses were regarding appointment of Mr. Sahu and Mr. Pranav as directors. Besides these two resolutions, other seven resolutions can be moved together if the members unanimously agree.

13: **Section 118** of the Companies Act, 2013 provides that every company shall prepare, sign and keep minutes of proceedings of every general meeting, including the meeting called by the requisitionists and all proceedings of meeting of any class of shareholders or creditors or Board of Directors or committee of the Board and also resolution passed by postal ballot within thirty days of the conclusion of every such meeting concerned. Minutes kept shall be evidence of the proceedings recorded in a

meeting.

By virtue of Rule 25 of the Companies (Management and Administration) Rules, 2014 read with **section 118** of the Companies Act, 2013, each page of every such book shall be initialled or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed by, in the case of minutes of proceedings of a general meeting, by the chairman of the same meeting within the aforesaid period of thirty days or in the event of the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose.

(ICAI Module, May'2022 Mock Test)

14: According to **section 103(1)** of the Companies Act, 2013, unless the articles of the company provide for a larger number, in case of a public company:

- (1) five members personally present if the number of members as on the date of meeting is not more than one thousand,
- (2) fifteen members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand,
- (3) thirty members personally present if the number of members as on the date of the meeting exceeds five thousand.

The term 'members personally present' as mentioned above refers to the members entitled to vote in respect of the items of business on the agenda of the meeting. Thus,

- (a) If the company has 800 members, quorum shall be 5 members personally present.
- (b) If the company has 6500 members, quorum shall be 30 members personally present.
- (c) If the company has 5500 members, quorum shall be 30 members personally present. However, since the articles of association has prescribed the quorum for the meeting to be 50, the quorum shall be 50 (higher of 30 and 50).

(ICAI Module, May'2022 Mock Test)

15.

- (i) Joint shareholders must concur in voting unless the articles provide to the contrary. The voting in case of joint shareholders is done in the order of seniority, which is determined on the basis of the order in which their names appear in the register of members/ shareholders. The joint- holders have a right to instruct the company as to the order in which their names are to appear in the register.

As per Rule 21 of the Companies (Management and Administration) Rules, 2014, the Scrutinizers shall arrange for Polling papers and distribute them to the members and proxies present at the meeting; in case of joint shareholders, the polling paper shall be given to the first named holder or in his absence to the joint holder attending the meeting as appearing in the chronological order in the folio.

Thus, in the given case, 'A' or his wife 'B', whosoever names appears first in chronological order in the register of members/ shareholders shall be entitled to vote.

- (ii) Time period for e-voting: The facility for remote e-voting shall remain open for not less than three days and shall close at 5.00 p.m. on the date preceding the date of the general meeting.

Thus, if the Annual General Meeting is going to be held on 7.9.2020, the facility for remote e- voting shall open on 4.9.2020 and close at 5.00 p.m. on 6.9.2020.

(Nov'21 4 Marks)

16. According to **section 101(1)** of the Companies Act, 2013, a general meeting of a company may be called by giving not less than clear twenty-one days' notice either in writing or through electronic mode in such manner as may be prescribed.

Also, it is to be noted that 21 clear days mean that the date on which notice is served and the date of meeting, are excluded for sending the notice.

Further, Rule 35(6) of the Companies (Incorporation) Rules, 2014, provides that in case of delivery by post, such service shall be deemed to have been effected-in the case of a notice of a meeting, at the expiration of forty eight hours after the letter containing the same is posted.

Hence, in the given question:

- (i) A 21 days' clear notice must be given. In the given question, only 19 clear days' notice is served (after excluding 48 hours from the time of its posting and the day of sending and date of meeting). Therefore, the meeting was not validly called.
- (ii) As explained in (i) above, notice falls short by 2 days.
- (iii) The Companies Act, 2013 does not provide anything specific regarding the condonation of delay in giving of notice. Hence, the delay in giving the notice calling the meeting cannot be condoned.

(Nov'21 5 Marks)

17.

- (a) As per **section 140(4)** of the Companies Act, 2013, resolution for appointment of an auditor other than the retiring auditor at an Annual General Meeting requires special notice. As per **Section 115** of the Companies Act, 2013, read with rule 23 of Companies (Management and Administration) Rules, 2014:-

Where, by any provision contained in this Act or in the Articles of Association of a company, special notice is required for passing any resolution, then the notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of the total voting power, or holding shares on which such aggregate sum not exceeding five lakh rupees, as may be prescribed, has been paid-up.

The afore-mentioned notice shall be sent by members to the company not earlier than 3 months but at least 14 days before the date of meeting at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting.

Here, Abhiyogic Ltd. is having 1,000 members with paid-up capital of ₹ 1 crore, and it received a notice from its 60 members holding paid-up capital of ₹ 7 lakhs, in aggregate, on 2nd July, 2022 for a resolution to be passed at the AGM to be held on 21st August, 2022.

As the members who gave the notice hold more than ₹ 5 lakhs in the paid-up capital of the company, they were eligible to give such notice.

Further, the notice should have been given not earlier than 3 months but at least 14 days before the date of meeting - 21st August, 2022, and the notice was given on 2nd July, 2022 i.e. within the prescribed time limit.

Thus, it can be said that the said notice was made by adequate number of members within the prescribed time limit to Abhiyogic Ltd.

- (b) As per **Section 140(4)** of the Companies Act, 2013: Where notice is given of a resolution appointing as auditor a person other than a retiring auditor and the retiring auditor makes with respect thereto representation in writing to the company (not exceeding a reasonable length) and requests its notification to members of the company, the company shall, unless the representation is received by it too late for it to do so,—
- (1) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and
 - (2) send a copy of the representation to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representation by the company.

However, in the present case, Abhiyogic Ltd. received the representation made by Chepal & Co. too late and accordingly it was not bound to send such representation to its members even though it was requested by Chepal & Co. to do so.

Further, as per **Section 140(4)** of the Companies Act, 2013, if a copy of the representation is not sent as aforesaid because it was received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representation shall be read out at the meeting such a copy of representation thereof shall be filed with the Registrar.

Accordingly, Abhiyogic Ltd., apart from giving to right to be heard orally to Chepal & Co. shall also made the representation read out at the AGM, if so required by Chepal & Co., and shall also file such representation with the Registrar, respectively.

(RTP MAY 22)

18: Since, the minors are not competent to enter into any contract, thus their names cannot be entered in the register of members. Therefore, Mr. Joe is advised that while filing MGT – 1 and MGT – 2, the names of the minor can only be entered only if the details of the guardian are present. Thus, Zoey's name shall appear in the register of members of Luxy Hairstyles Private Limited since Mila is a minor.

19: Joint holders of shares may request the company to enter their names on the register in a certain order, or execute transfers to have their holding split, with the result that part of the holding is entered showing the name of one holder and part showing the name of another. However, the condition of Mr. Taneja that only the name of his wife should appear in the register as a member cannot be catered to, although the names can be entered in the order such that the name of his wife appears first. The reason for this is that the articles of most companies provide that, in the case of exclusion of the other joint holders, and for this purpose, seniority shall be determined by the order in which the names stand in the register of members.

20: The provisions of the **section 89** of the Act, dealing with declaration of beneficial interest in shares by a person to the company does not apply in a civil suit where the title of the shares is in a dispute. Where the shares are gifted away, they become the property of the donee. Hence, the provisions relating to declaration of beneficial interest are not applicable.

21: Under **section 102(2)(b)** in the case of any meeting other than an AGM, all business transacted thereat shall be deemed to be special business.

Further under **section 102 (1)**, a statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting, namely:—

- (a) the nature of concern or interest, financial or otherwise, if any, in respect of each items, of:
 - 1. every director and the manager, if any;
 - 2. every other key managerial personnel; and
 - 3. relatives of the persons mentioned in sub-clauses (i) and (ii);
- (b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

Thus, the objection of the shareholder is valid since the details on the item to be considered are lacking. The information about the amount is a material fact with reference to the proposed increase of share capital. The notice is, therefore, not a valid notice under **Section 102** of the Companies Act, 2013.

22. **Section 109** of the Companies Act, 2013 provides for the demand of poll before or on the declaration of the result of the voting on any resolution on show of hands. Accordingly, law says that:—

Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf:—

- (a) In the case a company having a share capital, by the members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power or holding shares on which an aggregate sum of not less than five lakh rupees or such higher amount as may be prescribed has been paid-up; and
- (b) in the case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than one tenth of the total voting power.

Withdrawal of the demand: The demand for a poll may be withdrawn at any time by the persons who made the demand.

Hence, on the basis on the above provisions of the Companies Act, 2013:

- (i) The chairman cannot reject the demand for poll subject to provision in the articles of company.
- (ii) The chairman cannot reject the request of the members for withdrawing the demand of the Poll.

23. Under **section 105 (8)** of the Companies Act, 2013 every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, shall be entitled during the period beginning twenty-four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at any time during the business hours of the company, provided not less than three days' notice in writing of the intention so to inspect is given to the company.

In the given case, Sirhj has given proper notice.

However, such inspection can be undertaken only during the period beginning 24 hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting. So, Sirhj can undertake the inspection only during the above mentioned period and not two days prior to the meeting.

24: **Section 118** of the Companies Act, 2013 provides that every company shall prepare, sign and keep minutes of proceedings of every general meeting, including the meeting called by the requisitionists and all proceedings of meeting of any class of shareholders or creditors or Board of Directors or committee of the Board and also resolution passed by postal ballot within thirty days of the conclusion of every such meeting concerned. Minutes kept shall be evidence of the proceedings recorded in a meeting.

By virtue of Rule 25 of the Companies (Management and Administration) Rules 2014 read with **section 118** of the Companies Act, 2013 each page of every such book shall be initialled or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed by, in the case of minutes of proceedings of a general meeting, by the chairman of the same meeting within the aforesaid period of thirty days or in the event of the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose.

Therefore, the minutes of the meeting referred to in the case given above can be signed in the absence of Mr Venkat, by any director who is authorized by the Board.

25: According to **section 100** of the Companies Act, 2013, the Board may, whenever it deems fit, call an extraordinary general meeting of the company.

Provided that an extraordinary general meeting of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India.

In the light of the above provisions:

- (i) The Board of Directors can call the EGM in India.
- (ii) The Board of Directors cannot call the EGM of Primal Limited outside India as it is a company incorporated in India.

26: **Section 106 (1)** of the Companies Act, 2013 states that the articles of a company may provide that no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid, or in regard to which the company has exercised any right of lien.

In the present case the articles of the company do not permit a shareholder to vote if he has not paid the calls on the shares held by him. Therefore, the chairman at the meeting is well within its right to refuse him the right to vote at the meeting and Mr. Pink's contention is not valid.

27: According to **section 96(2)** of the Companies Act, 2013, every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate.

Provided, that annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.

Thus, in the first case, the company is right in calling the Annual General meeting at Ansal Plaza.

In the second scenario, in case of an unlisted company, annual general meeting may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance. Hence, if consent is given in writing or by electronic mode by all the members in advance, the AGM can be called at Jaipur, otherwise not.

28: Resolutions requiring special notice [Section 115]

Section 115 of the Companies Act, 2013 states that where any provision of this Act specifically requires or Articles of Association of a company so require that a special notice is required for passing any resolution, then the notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of the total voting power, or holding shares on which such aggregate sum not exceeding 5,00,000/- has been paid-up. In such a case, the company shall give its members notice of the resolution in the manner as prescribed in Rule 22 of the Companies (Management & Administration) Rules, 2014. Further, **Section 115** of the Act specifies that special notice is required to appoint as auditor a person other than a retiring auditor under **Section 140** of the Act.

According to the given facts in the question, there is non-compliance of requirement of **section 115** as stated above i.e. the notice of the intention to move such resolution as to appointment of auditor other than retiring auditor was given by members of ZA Ltd. holding less than 1% of the total voting power.

29: According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number, the quorum for the meeting of a Public Limited Company shall be 5 members personally present, if number of members is not more than 1000.

1. (1) P1, P2 and P3 will be counted as three members.
- (2) If a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum. Hence, P4 and P5 representing ABC Ltd. and DEF Ltd. respectively will be counted as two members.
- (3) Only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum. Thus, P6 and P7 shall not be counted in quorum.

In the light of the provision of the Act and the facts of the question, it can be concluded that the quorum for Annual General Meeting of KMN Ltd. is 5 members personally present. Total 5 members (P1, P2, P3, P4 and P5) were present. Hence, the requirement of quorum is fulfilled.

2. The section further states that, if the required quorum is not present within half an hour, the meeting shall stand adjourned for the next week at the same time

and place or such other time and place as decided by the Board of Directors.

Since, P4 is an essential part for meeting the quorum requirement, and he reaches after 11:30 AM (i.e. half an hour after the starting of the meeting), the meeting will be adjourned as provided above.

3. In case of lack of quorum, the meeting will be adjourned as provided in **section 103**.

In case of the adjourned meeting or change of day, time or place of meeting, the company shall give not less than 3 days' notice to the members either individually or by publishing an advertisement in the newspaper.

4. Where quorum is not present in the adjourned meeting also within half an hour, then the members present shall form the quorum.

30: Restriction on voting rights [Section 106 of the Companies Act, 2013]

According to the said Section:

1. Notwithstanding anything contained in this Act, the articles of a company may provide that no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums are presently payable by him have not been paid, or in regard to which the company has exercised any right of lien.
2. A company shall not, except on the grounds specified in sub-**section (1)**, prohibit any member from exercising his voting right on any other ground.

In the given question, Mr. X (member) holding 250 shares of LKM Ltd. has not paid certain calls on the shares. The company has denied his voting rights in the general meeting though the Articles of association of the company does not contain any restriction in the voting rights of such members.

On examination of the above provisions of the Act and the facts of the case, LKM Ltd.'s denial to 'X' for exercising his voting rights is not valid.

31: According to **section 101(1)** of the Companies Act, 2013, a general meeting of a company may be called by giving not less than clear twenty-one days' notice either in writing or through electronic mode in such manner as may be prescribed.

Also, it is to be noted that 21 clear days mean that the date on which notice is served and the date of meeting are excluded for sending the notice.

Further, Rule 35(6) of the Companies (Incorporation) Rules, 2014, provides that in case of delivery by post, such service shall be deemed to have been effected - in the case of a notice of a meeting, at the expiration of forty eight hours after the letter

containing the same is posted.

Hence, in the given question:

1. A 21 days' clear notice must be given. In the given question, only 19 clear days' notice is served (after excluding 48 hours from the time of its posting and the day of sending and date of meeting). Therefore, the meeting was not validly called.
2. As explained in (i) above, notice falls short by 2 days.
3. The Companies Act, 2013 does not provide anything specific regarding the condonation of delay in giving of notice. Hence, the delay in giving the notice calling the meeting cannot be condoned.

32: Difference between ordinary resolution and Special resolution

Ordinary Resolution—

Section 114(1) of the Companies Act, 2013 states that a resolution shall be ordinary resolution, if the notice required under this Act has been duly given and it is required to be passed by the votes cast, whether on a show of hands, or electronically or on a poll, as the case may be, in favour of the resolution, including the casting vote of the Chairman, if any, of the Chairman, by members, who, being entitled so to do, vote in person, or where proxies are allowed, by proxy or by postal ballot, exceed the votes, if any cast against the resolution by members, so entitled and voting. Simply put, the votes cast in the favour of the resolution, by any mode of voting should exceed the votes cast against it.

Special Resolution—

As per **Section 114(2)** of the Act, a resolution shall be a special resolution, when—

- (a) The intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;
- (b) The notice required under this Act has been duly given; and
- (c) The votes cast in favour of the resolution, whether on a show of hands, or electronically or on a poll, as the case may be, in favour of the resolution, including the casting vote of the Chairman, if any, of the Chairman, by members, who, being entitled so to do, vote in person, or where proxies are allowed, by proxy or by postal ballot, are required to be not less than 3 times the number of the votes, if any, cast against the resolution by members so entitled and voting.

33:

- (i) According to **section 103(1)(a)(i)** of the Companies Act, 2013, unless the articles of the company provide for a larger number, in case of public company, if the number of members as on the date of meeting is not more than one thousand, five members personally present shall be the quorum for a meeting of the company. In the instant case, the quorum for the public company will be 5 members personally present. In the said company, two members are bodies corporate and one member is the President of India.

Only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum.

As per **section 113** of the Companies Act, 2013, if a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum and shall be entitled to vote.

As per **section 112** of the Companies Act, 2013, the President of India, if he is a member of a company, may appoint such a person as he thinks fit, to act as his representative at any meeting of the company. A person so appointed shall be deemed to be a member of such a company and thus considered as member personally present and shall be entitled to vote.

- (ii) According to Rule – 20(4)(iii)(C) of the Companies (Management and Administration) Rules, 2014, the notice of the meeting shall clearly state that the members who have cast their vote by remote e-voting prior to the meeting may also attend the meeting but shall not be entitled to cast their vote again.

In the instant case, a member of a listed company who has casted his vote through electronic voting can attend general meeting of the company but cannot change his vote subsequently and is not permitted to appoint a proxy.

- 34: Under **section 102(2)(b)** of the Companies Act, 2013, in the case of any meeting other than an Annual General Meeting, all business transacted thereat shall be deemed to be special business.

Further, under **section 102(1)**, an explanatory statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting., namely:-

1. the nature of concern or interest, financial or otherwise, if any, in respect of

each items, of:

1. every director and the manager, if any;
2. every other key managerial personnel; and
3. relatives of the persons mentioned in sub-clauses (i) and (ii);
2. any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

The information about the amount is also a material fact that may enable members to understand the meaning and implication of items of business to be transacted and to take decision thereon.

Section 102 also prescribes ordinary businesses for which explanatory statement is not required.

Part (i) of the question relating to increase in the Authorized Capital falls under special business and hence in the absence of amount of proposed increase of share capital, the notice will be treated as invalid.

Part(ii) is an ordinary business and hence explanatory statement is not required. However, considering the two resolutions mentioned in the question are to be passed in the same meeting, notice of the meeting is invalid.

Thus, the objection of the shareholder is valid since the details on the item to be considered are lacking.

The information about the amount is a material fact with reference to the proposed increase of authorized share capital and remuneration of Mr. Prateek as the auditor. The notice is, therefore, not a valid notice under **Section 102** of the Companies Act, 2013.

35. A proxy is an instrument in writing executed by a share holder authorising another person to attend a meeting and to vote thereat on his behalf and in his absence. The term also applies to the person so appointed in such case a proxy is a person appointed by a member of a company, to attend a meeting of the company and vote thereat on his behalf. The various provisions relating to the appointment of a proxy is contained in **section 105** of the Companies Act, 2013 are as under: 1. Under **section 105 (1)** any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf. 2. A proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll. This means that a proxy cannot vote on a resolution by a show of hands. 3. The Central

Government may prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy. 4. Under **section 105 (6)** the instrument appointing a proxy shall be in writing; and be signed by the appointer or his attorney duly authorised in writing or, if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it. 5. Under **section 105 (7)** an instrument appointing a proxy, if in the form as may be prescribed, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles of a company.

36. According to **section 103** of the Companies Act, 2013, unless the articles of the company provide for a larger number, in case of a public company, fifteen members personally present may fulfil the requirement of quorum, if the number of members as on the date of meeting is more than one thousand but up to five thousand. If the specified quorum is not present within half-an-hour from the time appointed for holding a meeting of the company, the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine. If at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum. In the instant case, there were only 12 members personally present on the day of meeting of PQ Limited upto 11:30 AM. This was not in compliance with the required quorum as per the law. In the adjourned meeting also, the required quorum was not present but in the adjourned meeting, the members present shall be considered as quorum in line with the provisions of **section 103**. Hence, the AGM conducted by PQ Limited after adjournment is valid. As per the provisions of **section 103(1)(b)**, in case of a private company, two members personally present, shall be quorum for the meeting of a company. Therefore, in case PQ Limited is a private company, then only two members personally present shall be the quorum for AGM and there was no need for adjournment.

37. **Section 105** of the Companies Act, 2013 deals with the provisions of proxy for meetings.

Section 105(1) of the Act provides that any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf.

Further, **Section 105(4)** of the Act provides that a proxy received 48 hours before the

meeting will be valid even if the articles provide for a longer period.

In the given case, the company received a proxy form 54 hours before the time fixed for start of the meeting. The Company refused to accept proxy on the ground that articles of the company provides filing of proxy before 60 hours of the meeting. In the said case, in line with requirement of the above stated legal provision, a proxy received 48 hours before the meeting will be valid even if the articles provide for a longer period. Accordingly, the proxy holder can compel the company to admit the proxy.

38. According to **Section 121**, every listed public company shall prepare a report on each annual general meeting including the confirmation to the effect that the meeting was convened held and conducted as per the provisions of the Act and the rules made thereunder. A copy of the report is to be filed with the Registrar in Form No. MGT. 15 within thirty days of the conclusion of AGM along with the prescribed fee. If the company does not file such report on Annual General Meeting within 30 days of the conclusion of the Annual General Meeting then the company and defaulting officers are liable for prescribed penalties.
- Since, Pristine Ltd. is a listed company, hence it has to file a copy of 1annual Report with the Registrar within 30 days from 31st August, 2020.

VIII DECLARATION AND PAYMENT OF DIVIDEND

QUESTIONS

1. Alpha Herbals, a **Section 8** company is planning to declare dividend in the Annual General Meeting for the Financial Year ended 31-03-2019. Mr. Chopra is holding 800 equity shares as on date. State whether the act of the company is according to the provisions of the Companies Act, 2013.

(ICAI Module, May'18-2 Marks, Nov'20 Mock Test, May'21 RTP, May'21 Mock Test)

- 2.
- a) YZ Medical Instruments Limited is a manufacturing company & has proposed a dividend @ 10% for the year 2018-19 out of the profits of current year. The company has earned a profit of ₹910 crores during 2018-19. The company does not intend to transfer any amount to the general reserves out of the profits. Is YZ Medical Instruments Limited allowed to do so? Comment. (ICAI Module, May'19 Mock Test, Nov'18- 3 Marks, Nov'20 Mock Test, May'21 Mock Test, Nov'22 Mock Test)
- b) Karan, holder of 5000 equity shares of ₹100 each of M/s. Rachit Leather Shoes Limited did not pay final call of ₹10 per share. M/s. Rachit Leather Shoes Limited declared dividend of 10%. Examine with reference to relevant provisions of the Companies Act, 2013, the amount of dividend Karan should receive.

(ICAI Module, May'19 Mock Test, Nov'18- 3 Marks, May'21 RTP)

3. RST Ltd. declared dividend at the rate of 20% for the financial year 2017-2018 in the AGM scheduled on 15th June 2018. As RST Ltd. is left with certain unpaid and unclaimed dividend, it transferred amount of unpaid and unclaimed dividend to UDA (unpaid dividend account). After remaining unpaid and unclaimed for more than 2 years in the UDA, some of the entitled shareholders made liable RST Ltd. for noncompliance of **section 124**, and claimed for their unpaid dividend amount. RST Ltd. denies saying that there were certain legal issues on the entitlement of the dividend amount to the respective shareholders

State in the light of the given facts, whether the allegation marked by shareholders and claim for the divided amount, against RST Ltd. is justifiable? (May'19 RTP)

4. The Board of Directors of ABC Limited at its board meeting declared dividend on its paid-up equity share capital which was later on approved by the company's Annual General Meeting. In the meantime, the directors diverted the amount of total dividend to be paid to shareholders for purchase of investments for the company. Due to this dividend was paid to shareholders after 45 days declaration. Examining the provisions of the Companies Act, 2013, state whether the act of directors is in violation of the provisions of the Companies Act, 2013. Also explain what are the consequences of the above act of directors. (Nov'21 2 Marks)
5. Mr. R, holder of 1000 equity shares of ₹ 10 each of Vimal Ltd. approached the company in the last week of September, 2022 with a claim for the payment of dividend of ₹ 2000 declared @ 20% by the Company at its Annual General Meeting held on 31.08.2014 with respect to the financial year 2013 - 14. The Company refused to accept the request of R and informed him that his shares on which dividend has not been claimed till date, have also been transferred to the Investor Education and Protection Fund. Examine, in the light of the provisions of the Companies Act, 2013, the validity of the decision of the Company and suggest the remedy, if available, to him for obtaining the unclaimed amount of dividend and re-transfer of corresponding shares in his name. (MTP, MAY 23)



MULTIPLE CHOICE QUESTIONS (HOMEWORK)

1. After declaration of dividend it should be paid within
 - (a) 14 days
 - (b) 21 days
 - (c) 30 days
 - (d) 45 days

(ICAI Module, May'19 Mock Test)
2. Which of the following amount is not credited to IEPF Account
 - (a) Unpaid dividend account of company
 - (b) Matured deposit with company
 - (c) Profit on sale of asset
 - (d) Matured debentures with companies

(ICAI Module)
3. In how many days from the date of declaration, the interim dividend shall be deposited in a separate bank account
 - (a) 5 days
 - (b) 7 days
 - (c) 15 days
 - (d) 21 days

(May'19 Mock Test, ICAI Module)
4. After the expiry of -----, the amount of unpaid dividend account should be transferred to Investor Education and Protection Fund
 - (a) 3 years
 - (b) 5 years
 - (c) 7 years
 - (d) 10 years

(ICAI Module)
5. Amount to be transferred to reserves out of profits before any declaration of dividend is _____
 - (a) 5%
 - (b) 7.5%
 - (c) 10%
 - (d) at the discretion of the company.

(ICAI Module)

6. If declared dividend has not been paid or the warrant in respect thereof has not been posted within 30 days from the date of declaration to any entitled shareholder, the company shall be liable to pay simple interest at the rate of ____ p.a. during the period for which such default continues.
- (a) 5%
 - (b) 6%
 - (c) 15%
 - (d) 18%
- (ICAI Module)

7. ABC Ltd., a listed company proposed a dividend @ 15% on equity shares for the financial year ended on 31st March 2018. The Annual General Meeting (AGM) of the company was held on 15th July 2018 and the proposed dividend was approved and declared in the same. Due to some technical issues, dividend on 600 shares neither be paid within the time limit prescribed by the Act nor was transferred to unpaid dividend account. In such a situation which regulatory authority can take action against the company and its officers in default?
- (a) Central Government
 - (b) SEBI
 - (c) Tribunal
 - (d) Investor Education and Protection Fund Authority.
- (May'19 Mock Test)

8. Sumitra Healthcare and Hospitality Limited had issued 9% non-convertible debentures which matured four years back. However, 1000 such debentures of ₹100 each are still remaining unclaimed and unpaid even after the maturity. State the period after which the company needs to transfer them to Investor Education and Protection Fund (IEPF) if they remain unclaimed and unpaid.
- (a) After the expiry of five years from the maturity date.
 - (b) After the expiry of six years from the maturity date
 - (c) After the expiry of seven years from the maturity date
 - (d) After the expiry of eight years from the maturity date.

(Nov'19 RTP, Nov'19 Mock Test)

9. Mr. B R Mohanty, around two-decade back; along with two of his elder brothers and few friends, who are pharma and chemical engineers by profession promoted two companies; first being Well-Mount Limited (WML) dealing in wellness products and pharmaceuticals; whereas other is Tex-Mount Limited (TML) dealing in textile

products. During these two decades, both WML and TML has grown magnificently as both the sectors expanded beyond imagination. Both companies went public and stock of same listed on leading stock exchanges of countries.

TML did well in the past and emerged as a major export unit but in recent years the textile sector witness stiff competition due to new entrants. The increased cost of the workforce and other input materials is also made sector unprofitable and recent lockdown hit the sector further adversely. TML's bottom line for the current financial year is red. TML was declaring dividends since the very first year of operation and willing to continue the tradition considering dividend as signalling effect to an investor for valuation purpose. Rate of dividend for the recent five years was 9%, 10%, 8%, 5% and 2% (9% being five years ago and 2% being the previous year) respectively. The management at TML decided to declare dividends out of the profit of previous years. TML deals in export hence came under the scanner of enforcement authority, who seek financial statements and books of accounts of TML for scrutiny for the last 10 preceding financial years. In response to notice, TML furnish financial statements and books of accounts for last 8 immediately preceding financial years only, stating as per its Article of Association; TML is required to maintain and keep the books of accounts for 8 immediately preceding financial years only and that too without any record of vouchers pertaining to such accounts.

WML is doing well, it seizes outbreak of COVID-19 as a business opportunity and registers significant growth in both top and bottom line. For the past many years, WML declare a dividend at a constant rate of 20%. During the financial year 2019-20, WML earns a profit of 580 Crores. Board of directors of WML declares 25% dividend without transferring any % to reserve on 15th June, 2020. On 14th July, 2020 some of the amount remaining unpaid, due to operation of law; has been transferred to unpaid dividend account on 20th July, 2020. CA. Dev was appointed as auditor under **section 139** of Companies Act, 2013 of WML in individual capacity during 17th AGM for against the financial year 2018-19. (Nov'20 RTP)

A. In case of TML, which of the following statements are correct regarding the declaration of dividend?

- (i) TML can't declare the dividend because it earns a loss in the current financial year.
- (ii) TML can declare the dividend but only up to 9%
- (iii) TML can declare the dividend but only up to 5%
- (iv) TML can declare the dividend but only up to 6.8%

B. CA. Dev, who is the auditor of WML have to vacate the office of the auditor in

and can be reappointed again only in

- (i) 22nd AGM and 27th AGM
- (ii) 27th AGM and 32nd AGM
- (iii) 22nd AGM and 23rd AGM
- (iv) 22nd AGM and can't be re-appointed again.

C. In case of WML, which of the following statements is correct regarding the declaration of dividend?

- (i) WML can't declare the dividend at a rate more than 20%
- (ii) WML can declare the dividend out current year's profit but it needs to transfer sum equal to 20% to reserve first.
- (iii) WML can declare the dividend out current year's profit but it needs to transfer sum equal to 10% of paid-up share capital to reserve first.
- (iv) WML can declare the dividend out of current years' profit without transferring any % to reserve.

D. In case of TML, regarding maintenance and keeping the books of account; which of the following statements hold truth?

- (i) TML needs to maintain and keep the books of account for 10 preceding financial years, hence TML violate the law.
- (ii) TML doesn't violate the provision of law because it keeps the books of account for 8 immediate preceding financial years.
- (iii) TML violate the provision of law because it keeps the books of account for 8 immediately preceding financial years without keeping relevant vouchers in the record pertaining to such books of account.
- (iv) TML doesn't violate the provision of law because it is complying to its Article of Association.

E. Regarding declaration and distribution of dividend by WML, which of the following statements is correct from the view of the timeline?

- (i) WML violates the law, because some of the dividend remain unpaid; irrespective of reason for non-payment
- (ii) WML violates the law, because unpaid dividend need to transfer to unpaid dividend account by 19th July 2020.
- (iii) WML doesn't violate the law, because an unpaid dividend transferred to unpaid dividend account prior to 21st July 2020.

- (iv) WML doesn't violate the law, because an unpaid dividend can be transferred to unpaid dividend account at any time within 90 days from the date of declaration.

10. Shreyas Mechanics Limited owns a plot of land which was purchased long before. As the property rates are going up, it is decided to revalue the plot at fair value which is moderately ten times the original price, thus resulting in a revaluation profit of ₹ 20,00,000. The Board of Directors is keen to utilize ₹ 20,00,000 along with free reserves of ₹ 24,00,000 for declaration of dividend at the forthcoming Annual General Meeting (AGM) to be held on 28th September, 2019. Advise the company.

- (a) ₹ 20,00,000 are to be excluded from the distributable profits as the same cannot be utilized towards declaration of dividend.
- (b) Only 25% of ₹ 20,00,000 can be utilized as distributable profits towards declaration of dividend.
- (c) Up to 50% of ₹ 20,00,000 can be utilized as distributable profits towards declaration of dividend.
- (d) Up to 60% of ₹ 20,00,000 can be utilized as distributable profits towards declaration of dividend.

(Nov'20 RTP)

11. XP Ltd declared 12% dividend to its Equity Shareholders. However Company missed to transfer unpaid dividend to bank account even after 40 days from declaration of Dividend. In such case how much interest will be payable?

- (a) 8% p.a.
- (b) 16% p.a.
- (c) 10%p.a.
- (d) 12% p.a.

(ICAI Sample Question)

12. Mr. Abhinav Gyan is a tech expert and one among the promoter of Doon Technology Limited (DTL). He did his engineering from one of the prestigious IIT in CSE and then perused masters in management from IIM. He started DTL fifteen years back. DTL is famous for advance technologies such as artificial intelligence, block-chain solutions and many others. The company went public a decade ago but not listed. Since DTL is expanding its operations in wake of opportunities arises out of industrial revolution, hence willing to retain the profit for growth of the company, but shareholders are seeking dividend; because for shareholders larger the bottom line means larger the dividend. The outbreak of COVID-19 is another reason which forced the directors to

retain the earnings. After the closure of books of account for year 2019-20, directors proposed the dividend of 10% against the expectation of 20% by shareholders. But considering the extended lock-down which causes a delay in delivering the projects (results in deferment of revenue and additional cost), directors are of the opinion to revoke the dividend. Shareholders seeks appointment of internal auditor for audit on a concurrent basis, whereas management of DTL states it does not require to appoint an internal auditor under the law and it will cause an unnecessary financial burden on the company. The excerpts from financial statements of the preceding financial year 2019-20 are as under:

Particulars	Amount in Crores
Paid up share capital	45
Turnover	495
Outstanding Loans or Borrowings*	105
Outstanding Deposits	22#

*Includes inter-corporate loan of INRs 25 crores

up-till 31st January, 2020 the outstanding deposit was INRs 30 crores

Mr. Gyan, one of the shareholder of DTL, out of his savings bought 40,000 shares of another company Time Consultancy Services (TCS) of face value 10 each. On such shares, the final call of 2 is due but unpaid by Mr. Gyan. In the meantime, TCS declared the dividend at a rate of 15%. Out of total dividend of INRs 8.4 crores declared on 31st August 2020, INRs 0.42 crores remain unpaid as on 30th September 2020 at the end of TCS. Out of such INRs 0.42 crores, INRs 12 lakhs are on account of the operation of law and INRs 3 lakhs on account of legal disputes of right. The unpaid dividend was finally paid on 12th December, 2020 in full.

Mr. Gyan came from humble background, hence as part of ethical commitment to uplift the society by promoting education to children of the economically weak section, he decided to form a **section 8** company around 2 years back with the support of fellow professional, who later become a member of such a company. Receipts are excess of expenditure hence it was decided that Gyan foundation will declare some dividend to its members.

On the basis of above facts, answer the following MCQs

[4 MCQs of 2 Marks each: Total 8 Marks]: [\(Nov'20 Mock Test, May'21 Mock Test\)](#)

- Regarding un-paid call money by Mr. Gyan, in light of dividend due to him from TCS, state which of following statements hold truth?
 - Dividend can't be adjusted against the unpaid call money

- (b) The dividend of INRs 48,000 can be adjusted against unpaid call money
- (c) The dividend of INRs 48,000 can be adjusted against unpaid call money, if consent is given by Mr. Gyan
- (d) The dividend of INRs 64,000 can be adjusted against unpaid call money, if consent is given by Mr. Gyan

2. Does DTL is required to appoint Internal Auditor under **section 138** of Companies Act, 2013?

- (a) No, because DTL is unlisted company
- (b) No, because paid-up share capital is less than INR 50 crores
- (c) Yes, because turnover is more than INR 200 crores
- (d) Yes, because outstanding loan is above INR 100 crores

3. With reference to the declaration of dividend by Gyan Foundation, state which of following statements hold truth?

- (a) Gyan Foundation can declare dividend out of the capital as well.
- (b) Gyan Foundation can declare dividend either out of current years or previous years' profit, but need to transfer a certain % to reserve.
- (c) Gyan Foundation can't declare the dividend because three years has not been elapsed since its incorporation.
- (d) Gyan Foundation can't declare the dividend in any case.

4. What will be the amount of penalty which TCS needs to pay under **section 127** of the Companies Act, 2013?

- (a) Up-to INRs 1000 per day till the default continues
- (b) INRs 64,800
- (c) INRs 97,200
- (d) INRs 1,08,00

13. Mr. Ajay is a renowned finance professional with wide experience in banking operations. Due to his experience, he has been appointed as director on the Board of various companies. He is working as the Executive Director - Finance of Doon Carbonates Limited (DCL) for the past 4-5 years and heading the finance department there. As per the object clause of the Memorandum of Association of DCL, it can raise funds by way of loans for the advancement of its business. Articles of Association of DCL authorizes the directors to borrow up to INR 50 lakhs on behalf of the company

after passing a valid board resolution and any loans for amounts exceeding the above limit can be raised only after approval at a general meeting.

Board of Directors of DCL raised INR 80 lakhs from Srikant Finance Services after passing a board resolution and out of this amount, INR 60 lakhs was used to pay a legitimate liability of DCL by the directors. DCL is a widely held company with around 5600 members as per the members register. The 21st AGM of DCL is convened on 1st September 2020. A total of 34 members attended the meeting out of which 7 members attended through proxy. 6 of such members are represented by single proxy, Mr. Das. The articles of DCL is silent about the quorum.

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Mr. Ajay is also director of Padmani Silk Limited (PSL). PSL was established around 25 years back as a private company operating as a micro business with 10 employees in a three- room building. During these years, the company grew exceptionally and went public and was also listed on SME exchange. PSL declares the interim dividend out of the previous year's undistributed profit on 31st August 2020 on the occasion of the 25th anniversary of the company. PSL deposited the amount of said dividend in a separate bank account with a NBFC on 4th of September, 2020.

Mr. Ajay hails from a farming family and carries on the business of cultivation and milling of paddy. He is also the sole member of New-Deal Limited (NDL), a one person company. NDL is operated as rice sheller and also deals in trading of high quality basmati rice. Mr. Ajay's father is operating as a nominee for the purposes

of this OPC. The accounts department of NDL prepared and published only Profit and Loss Account and Balance Sheet as a financial statement and did not prepare cash flow statements and explanatory notes to accounts. A statement of changes in equity is not required in the case of NDL. (May'21 RTP)

Multiple Choice Questions

1. Regarding compliance for declaration and distribution of Interim dividend by PSL, which of the following statements is correct?
 - (a) There is a violation of the provisions because interim dividend can only be declared out of current year's profits.
 - (b) There is no violation at all, and all the provisions prescribed by law have been complied with.
 - (c) There is a violation because the bank account shall be designated and shall be one of existing banks account of company.
 - (d) There is a violation because the bank account shall be opened with scheduled banks only.
2. Which of the following statements is correct, with reference to the requirement for financial Statements of 'New Deal Limited' (One Person Company)
 - (a) NDL fails to meet the requirement because its financial statement do not include explanatory notes to accounts
 - (b) NDL fails to meet the requirement because its financial statements do not include cash flow statement
 - (c) NDL fails to meet the requirement because its financial statements do not include explanatory notes to account and cash flow statement
 - (d) NDL has complied with the requirements related to financial statements
3. The borrowing of the sum of INR 80 lakhs by the directors of DCL is
 - (a) Void-ab-initio
 - (b) Void
 - (c) Voidable
 - (d) Valid
4. Regarding the validity of the 21st Annual General Meeting of DCL, which of the following statements is correct?
 - (a) The meeting doesn't have a quorum, because 30 members need to be present in person at the meeting.
 - (b) The meeting is valid and has a quorum because 30 members are present at meeting either personally or through a proxy.
 - (c) The meeting is valid and has a quorum, because only 5 members are

required to be present, either personally or through a proxy, if the number of members as on the date of the meeting is more than five thousand but not more than ten thousand

- (d) The meeting is valid and has a quorum, because only 15 members are required to be present, either personally or through a proxy, if the number of members as on the date of the meeting is more than five thousand but not more than ten thousand

14. Perfect Tyres and Rubbers Ltd. is a listed entity engaged in the business of manufacturing of tyres and tubes for Light and Heavy Commercial Vehicles. During the financial year 2019-20, the company has declared interim dividend of 5% on the equity shares in its Board meeting held on 17th October, 2019, out of the profits earned during the first quarter of FY 2019-20. Further, the Board of Directors of the company after reviewing results of the fourth quarter of FY 2019-20 again recommended for second Interim Dividend @ 5% on 25th April, 2020.

The Board of Directors of the company approved the financial result for the FY 2019-20 in its meeting held on 5th August, 2020, and recommended a final dividend of 15% (including the interim dividends paid earlier) in this board meeting. The general meeting of the shareholders was convened on 31st August, 2020. The shareholders of the company demanded that since interim dividend @10% (5% + 5%) was declared by the company, so the final dividend should not be less than 20% (including the interim dividends). When the Company Secretary emphasised that final dividend cannot exceed, what the Board of Directors have recommended in their board meeting, some of the shareholders boycotted the meeting and moved out of the meeting hall, in protest of the company's decision. However, the agenda for declaration of the dividend was passed unanimously by rest of the shareholders present in the meeting hall, fulfilling the criteria of requirement of quorum, as per the provisions of the Companies Act, 2013.

After approval of the shareholders, the dividend amount was paid to the shareholders, however dividend to some of the shareholders could not be paid within the prescribed period for variety of reasons. The company transferred the unpaid dividend amount to a separate bank account on 15th October, 2020.

The details of the unpaid dividend amount for the previous year's lying in the unpaid dividend account is as under:

S. No.	Dividend pertaining to the FY	Date of declaration of Dividend	Date when the Amount was transferred to Unpaid dividend Account	Amount lying in the Unpaid Dividend Account (₹ in lakhs)
1	2019-20	31.08.2020	15.10.2020	92.50
2	2018-19	25.08.2019	28.09.2019	85.14
3	2017-18	20.08.2018	22.09.2018	80.00
4	2016-17	05.09.2017	07.10.2017	75.25
5	2015-16	01.09.2016	04.10.2016	45.15
6	2014-15	07.09.2015	09.10.2015	35.26
7	2013-14	05.05.2014	08.06.2014	15.10
8.	2012-13	06.06.2013	08.07.2013	07.25

Sustram, one of the investors who is holding 1000 shares in physical form, by visiting web- site of the company, came to know that company had declared the dividends in some previous years, but have not been paid to him. This happened due to the fact the company was not having his current address and bank account details. Sustram approached the company, along with all the supporting evidence to his claim and demanded the dividend amount.

The company after being satisfied, paid all the dividend amount pertaining to the FY 2013- 14 to FY 2019-20. However, for FY 2012- 13, the company informed that since the amount of dividend has been transferred to Investor Education and Protection Fund, it cannot be taken back now. Aggrieved from this, Sustram threatened the company officials to take appropriate legal action.

Based on the above facts, answer the following MCQs:

- 1.1 When the shareholders demanded for increase in the rate of dividend, but since the shareholders cannot increase the rate of dividend what the Board of Directors have recommended, some of them walked out of the meeting hall. What shall be the consequences of it:
- If, even after boycott, quorum is present, all the time during the course of general meeting and they have approved with majority, the rate recommended by the Board shall be treated as approved.
 - Members present at the beginning of the meeting shall remain present all the time during the general meeting, to approve any agenda, else it will be treated as nullified.

- (c) The approval of the dividend is an ordinary business resolution of the company, so if some of the members have boycotted the meeting, it will have no effect, even if the quorum is not present.
- (d) The recommendation of the Board of Directors of the company relating to the rate of dividend shall stand withdrawn.

1.2 At which date, the unpaid dividend not claimed by the shareholders, shall be transferred to a separate bank account, in the above case:

- (a) On 5th August, 2020 (the date of Meeting of Board)
- (b) On 31st August, 2020 (the date of Meeting of Shareholders)
- (c) On 30th September, 2020 (the date, after 30 days from the meeting of shareholders)
- (d) Latest by 7th October, 2020 (within seven days from the date of expiry of 30 days)

1.3 The company transferred the amount of unpaid dividend to a separate bank account on 15th October, 2020.

What is the interest liability on the part of the company?

- (a) No liability.
- (b) Interest @ 10% p.a. on so much of the amount as has not been transferred to the Unpaid Dividend Account.
- (c) Interest @ 12% p.a. on so much of the amount as has not been transferred to the Unpaid Dividend Account.
- (d) Interest @ 15% p.a. on so much of the amount as has not been transferred to the Unpaid Dividend Account.

1.4 In the given case, when and how much amount, the company shall transfer the funds to the Investor Education and Protection Fund:

- (a) Four years after 01.09.2016; Rs 45.15 lakh
- (b) Five years after 07.09.2015; Rs 35.26 lakh
- (c) Six years after 05.05.2014; ₹ 15.10 lakh
- (d) Seven years after 08.07.2013: ₹ 07.25 lakh

(RTP MAY 22)

15. When the dividend is declared at the Annual General Meeting of the company, it is known as
- (a) Final Dividend
 - (b) Interim Dividend
 - (c) Dividend on preference shares
 - (d) Scrip Dividend
- (Nov'22 Mock Test)
16. The amount accumulated in the Investor Education and Protection Fund shall not be used for:
- (a) refunds in respect of unclaimed dividends, matured deposits, matured debentures, application money due for refund and interest thereon.
 - (b) reimbursement of legal expenses incurred in pursuing class action suits under section 37 and 245.
 - (c) grants or donation to the Central Government for the purpose of investor's education and training.
 - (d) distribution of any disgorged amount among eligible and identifiable applicants who have suffered losses.
- (May'23 MTP)
17. In the given case, the amount due to be recovered from Mahesh Kumar was deducted by the company and nothing was now payable to him on account of dividend. Is the action of the company right:
- (a) No, payment of dividend is a separate matter and should not be clubbed with any other matter
 - (b) Yes, Mahesh Kumar can take action against the company for not paying any dividend to him
 - (c) The company can adjust the any sum, due to it, from the shareholder
 - (d) The company should take into confidence and consent of Mahesh Kumar's family members to adjust its dues
- (May'23 MTP)



ANSWERS

1: According to **Section 8(1)** of the Companies Act, 2013, the companies having licence under **Section 8** of the Act (Formation of companies with Charitable Objects, etc.) are prohibited from paying any dividend to its members. Their profits are intended to be applied only in promoting the objects for which they are formed.

Hence, in the instant case, the proposed act of Alpha Herbals, a company having licence under **Section 8** of the Companies Act, 2013, which is planning to declare dividend, is not according to the provisions of the Act of 2013.

2:

(i) According to **section 123** of the Companies Act, 2013 a company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company. Such transfer is not mandatory and the percentage to be transferred to reserves is at the discretion of the company.

As per the given facts, YZ Medical Instruments Limited has earned a profit of 910 crores for the financial year 2018-19. It has proposed a dividend @ 10%. However, it does not intend to transfer any amount to the reserves of the company out of the profits of current year.

As per the provisions stated above, the amount to be transferred to reserves out of profits for any financial year is at the discretion of the company acting through its Board of Directors. Therefore, at its discretion, if YZ Medical Instruments Limited decides not to transfer any profit to reserves before the declaration of dividend at 10%, it is legally allowed to do so.

(ii) As per the proviso to **section 127** of the Companies Act, 2013, no offence will be deemed to have been committed by a director for adjusting the calls in arrears remaining unpaid or any other sum due from a member against the dividend declared by the company.

Thus, as per the given facts, M/s. Rachit Leather Shoes Limited can adjust the unpaid call money of ₹50,000 against the declared dividend of 10%, i.e. $5,00,000 \times 10/100 = 50,000$. Hence, call money of ₹50,000 not paid by Karan can be adjusted fully from the entitled dividend amount of ₹50,000 payable to him.

- 3: As per **section 124** of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid/claimed to/by shareholder within 30 days from the date of the declaration, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid/unclaimed to the Unpaid Dividend Account.

The company shall, within a period of 90 days of making any transfer of an amount, prepare a statement containing the names, their last known addresses and the unpaid dividend to be paid to each person and place it on the web-site of the company, if any, and also on any other web-site approved by the Central Government for this purpose, in such form, manner and other particulars as may be prescribed.

Accordingly, in the given situation, RST Ltd. failed to give statement of Unpaid/unclaimed dividend and so liable for the said noncompliance of **section 124** of the Companies Act, 2013. Any person claiming to be entitled to any money transferred under **section 124(1)** to the Unpaid Dividend Account of the company may apply to the company for payment of the money claimed. Since RST Ltd. failed to comply with the requirements of this section as to the preparing of a statement of unpaid dividend, so shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to 5 lakh rupees.

4. According to **section 124** of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in any scheduled bank to be called the Unpaid Dividend Account.

Further, according to **section 127** of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30 days from the date of declaration to any entitled shareholder, every director of the company shall, if he is knowingly a party to the default, be liable for punishment.

The Board of Directors of ABC Limited at its meeting recommended a dividend on its paid-up equity share capital which was later on approved by the shareholders at the Annual General Meeting. In the meantime, the directors diverted the total dividend to be paid to the shareholders for purchase of investments in the name of the company. As a

result, dividend was paid to shareholders after 45 days.

1. Since, declared dividend has not been paid within 30 days from the date of the declaration to any shareholder entitled to the payment of dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to the Unpaid Dividend Account.
2. The Board of Directors of ABC Limited has violated **section 127** of the Companies Act, 2013 as it failed to pay dividend to shareholders within 30 days due to its decision to divert the total dividend to be paid to shareholders for purchase of investments in the name of the company.

Consequences: The following are the consequences for violation of the above provisions:

- (a) Every director of the company shall, if he is knowingly a party to the default, be punishable with maximum imprisonment of two years and shall also be liable for a minimum fine rupees one thousand for every day during which such default continues.
- (b) The company shall also be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues. **(Nov'21 2 Marks)**

5. According to section 124 of the Companies Act, 2013:

- (1) Unpaid or Unclaimed Dividend to be transferred to the Unpaid Dividend Account
- Where a dividend has been declared by a company but has not been paid or claimed within thirty (30) days from the date of declaration, the company shall, within seven (7) days from the expiry of the said period of 30 days, transfer the total amount of unpaid or unclaimed dividend to a special account called the Unpaid Dividend Account (UDA). The UDA shall be opened by the company in any scheduled bank.
- (2) Transfer of Unclaimed Amount to Investor Education and Protection Fund (IEPF)
- Any money transferred to the Unpaid Dividend Account which remains unpaid or unclaimed for a period of seven (7) years from the date of such transfer shall be transferred by the company along with interest accrued thereon to the Investor Education and Protection Fund.
- (3) Transfer of Shares to IEPF- All shares in respect of which dividend has not been paid or claimed for 7 consecutive years or more shall be transferred by the company in the name of Investor Education and Protection Fund along with a statement containing the prescribed details.

- (4) Right of Owner of 'transferred shares' to Reclaim - Any claimant of shares so transferred to IEPF shall be entitled to reclaim the 'transferred shares' from Investor Education and Protection Fund in accordance with the prescribed procedure and on submission of prescribed documents.

As per the provisions of sub-section (3) of section 125 of the Companies Act, 2013, read with rule 7 of Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016, any person, whose unclaimed dividends have been transferred to the Fund, may apply for refund, to the Authority, by submitting an online application.

In the given question, Mr. R did not claim the payment of dividend on his shares for a period of more than 7 years (i.e. expiry of 30 days from 31.08.2014 to last week of September 2022). As a result, his unclaimed dividend (₹ 2,000) along with such shares (1,000 equity shares) must have been transferred to Investor Education and Protection Fund Account. Therefore, the company is justified in refusing to accept the request of Mr. R for the payment of dividend of ₹ 2,000 (declared in Annual General Meeting on 31.8.2014).

In terms of the above stated provisions, Mr. R should be advised as under:

- (i) If Mr. R wants to reclaim the transferred shares, he should apply to IEPF authorities along with the necessary documents in accordance with the prescribed procedure.
- (ii) He is also entitled to get refund of the dividend amount, which was transferred to the above fund; in accordance with the prescribed rules.



ANSWER TO MCQs

1	C	2	C	3	A	4	C	5	D
6	D	7	B	8	C	9A	(iii)	9B	(i)
9C	(iv)	9D	(iii)	9E	(iii)	10	A	11	D
12(1)	B	12(2)	C	12(3)	D	12(4)	C	13(1)	D
13(2)	A	13(3)	C	13(4)	A	14(1.1)	A	14(1.2)	D
14(1.3)	C	14(1.4)	D	15	A	16	C	17	C

Calculation For MCQ 12(4):

Total unpaid dividend = ₹42 lacs

(-) Not paid due to:-

1) Operation of Law (₹ 12 lacs)

2) Legal dispute (₹ 3 lacs)

Inpaid Amount ₹ 27 lacs

Penalty = ₹ 27 lacs × 18% × $\frac{73}{365}$ = 973200



HOMework QUESTIONS & ANSWER

1. TAT Ltd. incurred loss in business upto current quarter of financial year 2017 - 18. The company has declared dividend at the rate of 12%, 15% and 18% respectively in the immediate preceding three years. In spite of the loss, the Board of Directors of the company have decided to declare interim dividend @ 15% for the current financial year. Examine the decision of TAT Ltd. stating the provisions of declaration of interim dividend under the Companies Act.
(ICAI Module, May'19 Mock Test, May'18- 4 Marks, May'19- 3 Marks, May'20 Mock Test)
2. State any 6 amounts that can be credited to the Investor Education and Protection Fund. Give your answer as per the provisions of the Companies Act, 2013.
(May'19 Mock Test)
3. Komal Ltd. declares a dividend for its shareholders in its AGM held on 27th September, 2018. Referring to provisions of the General Clauses Act, 1897 and Companies Act, 2013, advice:
 - a) The dates during which Komal Ltd. is required to pay the dividend?
 - b) The dates during which Komal Ltd. is required to transfer the unpaid or unclaimed dividend to unpaid dividend account? (Nov'18- 4 Marks, May'20 Mock Test)
4. PQ Ltd. declared and paid 10% dividend to all its shareholders except Mr. Kumar, holding 500 equity shares, who instructed the company to deposit the dividend amount directly in his bank account. The company accordingly remitted the dividend, but the bank returned the payment on the ground that the account number as given by Mr. Kumar doesn't tally with the records of the bank. The company, however, did not inform Mr. Kumar about this discrepancy. Comment on this issue with reference to the provisions of the Companies Act, 2013 regarding failure to distribute dividend.
(ICAI Module, May'19- 2 Marks, Nov'22 Mock Test)
5. Referring to the provisions of the Companies Act, 2013, examine the validity of the following :
 1. The Board of Directors of Anand Ltd. proposes to declare dividend at the rate of 20% to the equity shareholders, despite the fact that the company has defaulted in repayment of public deposits accepted before the commencement of this Act.

2. Whether a Company can declare dividend for the financial year in which it incurred loss. (Nov'19- 5 Marks)

6. Sun Light Limited was incorporated on 22nd January 2019 with the objects of providing software services. The Company adopted its first financial year as from 22nd January 2019 to 31st March 2020. The financial statement for the said period, after providing for depreciation in accordance with Schedule II of the Companies Act, 2013 revealed net profit. The Board of Directors declared 20% interim dividend at their meeting held on 7th July 2020, before holding its first Annual General Meeting. In the light of the provisions of the Companies Act, 2013 and Rules made thereunder:

- (m) Whether the Company has complied due diligence in declaring interim dividend?
- (b) Whether the Company can declare dividend in case it was registered under **Section 8** of the Companies Act, 2013?
- (c) What are the penal consequences in case of failure to pay the interim dividend? (Nov'20 - 4 Marks)

7. AB Limited is a public company having its registered office in Coimbatore. The company has incurred a net loss of ₹ 20 lakhs in the Financial Year (FY) 2019-20. The Board of Directors (BOD) wants to declare dividend for the FY 2019-20. The balances of the company as per the latest audited financial statements are as follows: 1. Equity Share Capital (₹ 10 each) - 100 lakhs 2. General Reserve - 150 lakhs 3. Debenture redemption Reserve - 50 lakhs The company has not declared any dividend in the preceding three financial years. Decide whether AB Limited is allowed to declare dividend or not for the FY 2019-20 by explaining the relevant provisions of the Companies Act in this regard. If allowed to declare dividend then state the maximum amount of dividend that can be paid by AB Limited as per the **Section 123** of Companies Act 2013. (Nov'20- 4 Marks)

8. Mr. R, holder of 1000 equity shares of ₹ 10 each of AB Ltd. approached the Company in the last week of September, 2019 with a claim for the payment of dividend of ₹ 2000 declared @ 20% by the Company at its Annual General Meeting held on 31.08.2011 with respect to the financial year 2010-11. The Company refused to accept the request of R and informed him that his shares on which dividend has not been claimed till date, have also been transferred to the Investor Education And Protection Fund.

Examine, in the light of the provisions of the Companies Act, 2013, the validity of the decision of the Company and suggest the remedy, if available, to him for obtaining the unclaimed amount of dividend and re-transfer of corresponding shares in his name.

(Jan'21- 5 Marks)

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ANSWERS

- 1: According to **section 123(3)** of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend.
- However, in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.
- In the instant case, Interim dividend by TAT Ltd. shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years [i.e. $(12+15+18)/3 = 45/3 = 15\%$]. Therefore, decision of Board of Directors to declare 15% of the interim dividend for the current financial year is tenable.
- 2: **Credit of amount to the Fund:** There shall be credited to the Investor Education and Protection Fund the following amounts—
- (a) **Amount given by the Central Government-** the amount given by the Central Government by way of grants after due appropriation made by Parliament by law in this behalf for being utilised for the purposes of the Fund;
 - (b) **Donations by the Central Government-** donations given to the Fund by the Central Government, State Governments, companies or any other institution for the purposes of the Fund;
 - (c) **Amount of Unpaid Dividend Account-** the amount in the Unpaid Dividend Account (UDA) of companies transferred to the Fund under **section 124(5)**;
 - (d) **Amount in IEPF-** the amount lying in the Investor Education and Protection Fund under **section 205C** of the Companies Act, 1956;
 - (e) **Income from investments-** the interest or other income received out of investments made from the Fund;
 - (f) **Application money-** the application money received by companies for allotment of any securities and due for refund;

- (g) **Matured deposits**- matured deposits with companies other than banking companies;
- (h) **Matured debentures**- matured debentures with companies;
- (i) **Interest**- interest accrued on the amounts referred to in clauses (h) to(j);

3: As per **section 9** of the General Clauses Act, 1897, for computation of time, the section states that in any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word “from” and for the purpose of including the last in a series of days or any other period of time, to use the word “to”.

1. **Payment of dividend:** In the given instance, Komal Ltd. declares dividend for its shareholder in its Annual General Meeting held on 27/09/2018. Under the provisions of **Section 127** of the Companies Act, 2013, a company is required to pay declared dividend within 30 days from the date of declaration, i.e. from 28/09/2018 to 27/10/2018. In this series of 30 days, 27/09/2018 will be excluded and last 30th day, i.e. 27/10/2018 will be included. Accordingly, Komal Ltd. will be required to pay dividend within 28/09/2018 and 27/10/2018 (both days inclusive).
2. **Transfer of unpaid or unclaimed dividend:** As per the provisions of **Section 124** of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the “Unpaid Dividend Account” (UDA). Therefore, Komal Ltd. shall transfer the unpaid/unclaimed dividend to UDA within the period of 28th October, 2018 to 3rd November, 2018 (both days inclusive)

4: **Section 127** of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time. One of such situations is where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has not been communicated to the shareholder.

In the instant case, PQ Ltd. has failed to communicate to the shareholder Mr. Kumar about non-compliance of his direction regarding payment of dividend. Hence, the penal provisions under **section 127** will be attracted.

5:

1. **Section 123(6)** of the Companies Act, 2013, specifically provides that a company which fails to comply with the provisions of **section 73** (Prohibition of acceptance of deposits from public) and **section 74** (Repayment of deposits, etc., accepted before the commencement of this Act) shall not, so long as such failure continues, declare any dividend on its equity shares.

In the given instance, the Board of Directors of Anand Limited proposes to declare dividend at the rate of 20% to the equity shareholders, in spite of the fact that the company has defaulted in repayment of public deposits accepted before the commencement of the Companies Act, 2013. Hence, according to the above provision, declaration of dividend by the Anand Limited is not valid.

2. As per Second Proviso to **Section 123 (1)** of the Companies Act, 2013, in the event of inadequacy or absence of profits in any financial year, a company may declare dividend out of the accumulated profits of previous years which have been transferred to the free reserves. However, such declaration of dividend shall be subject to the conditions as prescribed under Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014.

- 6: (i) According to **section 123(3)** of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend. In the instant case, Sun Light Limited has complied due diligence in declaring interim dividend as the Interim Dividend was declared by Board of Directors at their meeting held on 7th July, 2020 before holding its first Annual General Meeting. Also, the financial statement revealed net profit so the interim dividend can be paid out of profits of the financial year ending 31st March, 2020.
- (ii) According to **section 8 (1)** of the Companies Act, 2013, a company having licence under **Section 8** (Formation of companies with charitable objects, etc.) is prohibited from paying any dividend to its members. Its profits are intended to be applied only in promoting the objects for which it is formed.
- (iii) Penal consequences: According to **section 127** of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or

the warrant in respect thereof has not been posted within thirty days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent per annum during the period for which such default continues.

- 7: In the given case, AB Limited has not made adequate profits during the current year ending on 31st March, 2020, but it still wants to declare dividend. Therefore, Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014 will be applied. According to the said rule, the required conditions are:

Condition I: The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by the company in the three years immediately preceding that year. Since the company has not declared any dividend in the preceding three financial years, hence condition I is not applicable in this case.

Condition II: The total amount to be drawn from such accumulated profits shall not exceed 10% of its paid-up share capital and free reserves as appearing in the latest audited financial statement. Paid-up capital+Free reserves = ₹ (100+150) Lakhs (General reserves are free reserves) = ₹ 250 Lakhs 10% thereof = ₹ 25 Lakhs

Condition III: The amount so drawn shall first be utilized to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared. The amount drawn as stated above = ₹ 25 Lakhs Less: loss for the financial year 2019-2020 = ₹ 20 Lakhs Amount available = ₹ 5 Lakhs Hence, the quantum of dividend is further restricted to ₹ 5 lakhs.

Condition IV: The balance of reserves after such withdrawal shall not fall below 15% of its paid up share capital as appearing in the latest audited financial statement. Accumulated Reserves ₹ 150 Lakhs Proposed withdrawal declaration of dividend ₹ 5 Lakhs Balance of Reserves ₹ 145 Lakhs This is more than 15% of paid-up capital (i.e. 15% of ₹ 100 Lakhs) i.e. ₹ 15 lakhs. Thus, the company can declare a dividend of ₹ 5 lakhs. Hence, by following above provisions, AB Limited is allowed to declare dividend for the FY 2019-2020 and the maximum amount of dividend that can be paid is ₹ 5 Lakhs.

8: According to **section 124** of the Companies Act, 2013:

- (1) **Unpaid or Unclaimed Dividend to be transferred to the Unpaid Dividend Account**
- Where a dividend has been declared by a company but has not been paid or claimed within thirty (30) days from the date of declaration, the company shall, within seven (7) days from the expiry of the said period of 30 days, transfer the total amount of unpaid or unclaimed dividend to a special account called the Unpaid Dividend Account (UDA). The UDA shall be opened by the company in any scheduled bank.
- (2) **Transfer of Unclaimed Amount to Investor Education and Protection Fund (IEPF)**
- Any money transferred to the Unpaid Dividend Account which remains unpaid or unclaimed for a period of seven (7) years from the date of such transfer shall be transferred by the company along with interest accrued thereon to the Investor Education and Protection Fund.
- (3) **Transfer of Shares to IEPF** - All shares in respect of which dividend has not been paid or claimed for 7 consecutive years or more shall be transferred by the company in the name of Investor Education and Protection Fund along with a statement containing the prescribed details.
- (4) **Right of Owner of 'transferred shares' to Reclaim** - Any claimant of shares so transferred to IEPF shall be entitled to reclaim the 'transferred shares' from Investor Education and Protection Fund in accordance with the prescribed procedure and on submission of prescribed documents.

As per the provisions of sub-**section (3)** of **section 125** of the Companies Act, 2013, read with rule 7 of Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016, any person, whose unclaimed dividends have been transferred to the Fund, may apply for refund, to the Authority, by submitting an online application.

In the given question, Mr. R did not claim the payment of dividend on his shares for a period of more than 7 years (i.e. expiry of 30 days from 31.08.2011 to last week of September 2019). As a result, his unclaimed dividend (₹ 2,000) along with such shares (1,000 equity shares) must have been transferred to Investor Education and Protection Fund Account. Therefore, the company is justified in refusing to accept the request of Mr. R for the payment of dividend of ₹ 2,000 (declared in Annual General Meeting on 31.8.2011).

In terms of the above stated provisions, Mr. R should be advised as under:

- (i) If Mr. R wants to reclaim the transferred shares, he should apply to IEPF authorities along with the necessary documents in accordance with the

prescribed procedure.

- (ii) He is also entitled to get refund of the dividend amount, which was transferred to the above fund; in accordance with the prescribed rules.

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ACCOUNTS OF COMPANIES

QUESTIONS

1. A Housing Finance Ltd. is a housing finance company having a paid up share capital of ₹11 crores and a turnover of ₹145 crores during the financial year 2017-18. Explain with reference to the relevant provisions and rules, whether it is necessary for A Housing Finance Ltd. to file its financial statements in XBRL mode.
(ICAI Module, Nov'18-3 Marks)
2. Herry Limited is a company registered in Thailand. SKP Limited (Registered in India), a wholly owned subsidiary company of Herry Limited decided to follow different financial year for consolidation of its accounts outside India. State the procedure to be followed in this regard.
(ICAI Module, Nov'19-2 Marks)
3. Diya Limited, incorporated under the provisions of the Companies Act, 2013, has two subsidiaries – Jai Limited and Vijay Limited. All the three companies have prepared their financial statements for the year ended 31st March, 2021. Examining the provisions of the Companies Act, 2013, explain in what manner the subsidiaries– Jai Limited and Vijay Limited shall prepare their Balance Sheet and Statement of Profit & Loss?
(Nov'21 3 Marks)
4. The Companies Act, 2013 has prescribed an additional duty on the Board of directors to include in the Board's Report a 'Directors' Responsibility Statement'. Briefly explain any three matters to be furnished in the said statement.
(Nov'21 3 Marks)
5. Geeta Private Limited is a start-up company. Mr. Prabodh has been appointed as Accounts Manager of Geeta Private Limited. The Board meeting for approval of accounts is to be held on 01.08.2022 and he has to prepare the financial statements for approval by the Board. Referring to **section 2(40)** of the Companies Act, 2013, advise Mr. Prabodh about the statements that are required to be prepared.

(Nov'22 RTP)

6. State the persons responsible for complying with the provisions regarding maintenance of Books of Accounts of a company. Support with the help of relevant provisions of the Companies Act, 2013. (Nov'22 RTP)

7. Hastprat Ltd. is an unlisted public company, having five directors in its board which includes two independent directors.

Sankul (P) Ltd., is subsidiary company of Hastprat Ltd., actively carrying on its business, having paid up capital of ₹ 1.5 crore with 40 members and turnover of ₹ 18 crore, respectively and the said company is not a start-up company.

In the context of aforesaid case-scenario, please answer to the following question(s):- Whether Sankul (P) Ltd. is mandatorily required to prepare cash flow statement for the financial year as a part of its financial statements?

Provide your answer by analyzing Sankul (P) Ltd. into following category of companies:-

(i) One person company, (ii) Small company, (iii) Dormant company and (iv) Private company, respectively. (MAY 23, MTP)

8. Yellow Ltd. received a communication from Central Government for preparation of periodical financial results and complete audit or limited review of such periodical financial results. The Board of Directors have raised an objection on the ground that as it is an unlisted company, periodical financial results need not to be prepared. Examine, referring the provisions of the Companies Act, 2013, in this regard.

(MAY 23, MTP)

9. Red Limited (the Company) was incorporated on 01.04.2020. The balances extracted from its audited financial statement are as given below:

Financial Year (FY)	Net Profit before tax	Net Profit after tax (Ignore Income Tax computation)
2020-21	₹ 5.00 crore	₹ 3.75 crore
2021-22	₹ 7.00 crore	₹ 5.25 crore

The Company proposes to allocate the minimum required amount for CSR Activities to be undertaken during FY 2022-23, if it is mandatory. You are requested to advice the Company in this regard and compute the minimum amount to be allocated, if so required, taking into account the relevant provisions of the Companies Act, 2013.

(MAY 23, MTP)

10. Explain the following as per the provisions of the Companies Act, 2013:

- (i) Who shall sign Board's Report
- (ii) Filing of financial statements with the Registrar when AGM is not held

(MAY 23, MTP)

11. The Income Tax Authorities in the current financial year 2022-23 observed, during the assessment proceedings, a need to re-open the accounts of Sun Ltd. for the financial year 2011-12 and, therefore, filed an application before the National Company Law Tribunal (NCLT) to issue the order to Sun Ltd. for re-opening of its accounts and recasting the financial statements for the financial year 2011-12. Examine the validity of the application filed by the Income Tax Authorities to NCLT.

(MAY 23, MTP)



MULTIPLE CHOICE QUESTIONS (HOMEWORK)

1. The books of accounts of every company shall be maintained in order for:
(a) 3 Years
(b) 5 years
(c) 8 years
(d) 10 years
(ICAI Module)
2. A company can re-open/ recast its book of accounts on an application to Tribunal made by:
(a) Registrar
(b) Member
(c) Board of Directors
(d) Income –tax authorities
(ICAI Module, May'19 Mock Test)
3. CSR Committee of the Board shall consist of:
(a) Directors forming 1/3rd of the total no of directors
(b) At least 2 directors
(c) 3 or more directors
(d) 3 or more directors, out of which at least 1 director shall be an independent director.
(ICAI Module)
4. Provisions of CSR are applicable to:
(a) Companies with net worth of 500 cr or more
(b) Companies with turnover of 1000 cr or more
(c) Companies with net profit of 5 cr or more in any financial year
(d) All of the above
(ICAI Module)
5. One Person Company shall file a copy of the duly adopted financial statements to the Registrar in:
(a) 30 days of the date of meeting in which it was adopted
(b) 90 days of the date of meeting in which it was adopted
(c) 90 days from the closure of the financial statement
(d) 180 days from the closure of the financial statement
(ICAI Module, Nov'20 RTP, Nov'22 Mock Test)

6. Who can be appointed as an internal auditor?

- (a) Chartered Accountants
- (b) Cost accountants
- (c) Any other professional
- (d) All of the above

(ICAI Module)

7. Amex limited is a public company having a net- worth of ₹950 crores, turnover of ₹200 crores (the company is just 5 years since the date of its incorporation) during the immediately preceding financial year, has to constitute a Corporate Social Responsibility (CSR) Committee. It has 9 Directors (A, B, C, D, E, F, G, H and I). Further, Mr. F, G, H and I are independent directors. Out of the following statements which statement is correct:

- (a) CSR committee may constitute of A, B and C
- (b) CSR committee may constitute of A, B and D
- (c) CSR committee may constitute of A, F and G
- (d) There is no need to constitute a CSR committee as the turnover is just 200 crores during the immediately preceding financial year

(May'19 Mock Test)

8. Excellent Art Private Limited, has a paid up capital of ₹50 crore, Turnover of ₹25 crore and borrowing of ₹25 crore and outstanding deposits of ₹30 crore. Decide if the Company needs to comply with internal audit requirements under the Act?

- (a) No. The provisions of Internal audit are not applicable on private companies.
- (b) Yes. Company is having Paid up capital of ₹50 Crore and outstanding deposits more than ₹25 crore.
- (c) No. Because the borrowings are less than Rs.100 crore and turnover is less than ₹200 crore
- (d) None of the above.

(May'19 Mock Test)

9. From the following information in respect of BMR Consultants Pvt. Ltd., compute the amount company is required to contribute on account of CSR:

Financial Year	Net Profit (in Lacs)
2015-16	15
2016-17	50
2017-18	70

- (a) Nil. If in any of the three financial years company has incurred losses, then company is not required to spend amount towards CSR but explain the reason

for not spending the amount.

(b) ₹2.4 Lacs

(c) ₹90,000/- (Option given by ICAI was 80,000 but we changed it to 90,000)

(d) ₹2.1 Lacs

(May'19 Mock Test)

10. ABC Ltd., a pharmaceutical company was having its manufacturing plant in Solan, Himachal Pradesh. The address of its registered office as informed to the Registrar of Companies was of one of its Director's office, situated at Mumbai, Maharashtra. To comply with the provisions of the Companies Act, 2013 it was keeping all its books of accounts, other relevant papers and financial statements at its registered office. After sometime Directors of the company found it difficult to maintain such books etc. at the registered office, so in a duly convened meeting of the Board of the Directors, it was decided that the books of accounts and other relevant papers be kept at the office situated in Solan. Within which time period the Registrar must be given notice about such decision of the board –

(a) Within 30 days from the date of taking such decision by the board.

(b) Within 15 days from the date it starts maintaining its books of accounts at the office situated at Solan.

(c) Within 30 days from the date it starts maintaining its books of accounts at the office situated at Solan.

(d) Within 7 days from the date of taking such decision by the board.

(May'19 Mock Test)

11. Feel Rich Co. Ltd. Having its registered office at New Delhi, is a subsidiary of a German company named Richman Company limited. The financial year of the parent/holding company ends on 31st December every year. The subsidiary company intends to follow a different financial year for consolidation of its accounts with its parent company, situated outside India. For doing so it is required to take prior permission of the competent authority. For the purpose from the following who will be this competent authority –

(a) Registrar of Companies at New Delhi

(b) Tribunal

(c) Ministry of Corporate Affairs

(d) SEBI

(May'19 Mock Test)

12. The registered office of the company Neha Pvt. Limited was situated in city K of state Y. During the financial year beginning on 01/04/2018 and ending on 31/03/2019 the turnover of the company Neha Pvt. Limited was ₹1010 crore. The net profit of the company Neha Pvt. Limited for the financial year 2018-19 was ₹4 crore. The Board of Directors of Neha Pvt. Limited consisted of only two directors namely Mr. M and Mr. N. Mr. M and Mr. N were the only directors of company Neha Pvt. Limited since its incorporation in the year 2002. Mr. M one of the two directors of Neha Pvt. Limited was of the opinion that no Corporate Social Responsibility Committee of the Board was required to be formed as for the financial year 2019 – 20 due to the reason that net profit of the company Neha Pvt. Limited for financial year 2018-19 was ₹4 crore which was less than ₹5 crore. Mr. N the other director of Neha Pvt. Limited was not having the same opinion as Mr. M. He was of the opinion that Corporate Social Responsibility Committee of the Board must be formed for the company Neha Pvt. Limited. The net profit of the company Neha Pvt. Limited for the financial year 2015-16, 2016-17 and 2017-18 were ₹1 crore, ₹2 crore and ₹3 crore respectively. Keeping the basic provisions of Companies Act in mind answer the following multiple choice questions: (May'20 RTP)

- (A) Mr. M one of the director of Neha Pvt. Limited was of the opinion that no Corporate Social Responsibility Committee of Board was required to be formed for financial year 2019-20 but Mr. N other director was of opinion that it was required to be formed. According to your understanding which one of the two director is right and why:
- (a) Mr. M because net profit of Neha Pvt. Limited for financial year 2018-19 was less than ₹5 crore.
 - (b) Mr. N because turnover of Neha Pvt. Limited for financial year 2018-19 was more than ₹1,000 crore.
 - (c) Mr. N because net profit of Neha Pvt. Limited for financial year 2018-19 was more than ₹2 crore.
 - (d) Mr. M because turnover of Neha Pvt. Limited for financial year 2019-19 was less than ₹1,500 crore.
- (B) The company Neha Pvt. Limited must give preference to spend the amount of contribution towards Corporate Social Responsibility in area of:
- (a) City O of State Y

- (b) City A of State Z
- (c) City G of State Z
- (d) City K of State Y

(C) According to law Corporate Social Responsibility Committee shall consist of three or more directors, so for company Neha Pvt. Limited the Corporate Social Responsibility Committee will:

- (a) Not be formed as it has only two directors namely Mr. M and Mr. N
- (b) Be formed only after appointing one more director apart from Mr. M and Mr. N
- (c) Be formed with two directors only namely Mr. M and Mr. N
- (d) Be formed only after appointing two more directors apart from Mr. M and Mr. N

(D) The company Neha Pvt. Limited shall spend during financial year 2018-19 on Corporate Social Responsibility an amount of at least:

- (a) ₹0.04 crore
- (b) ₹0.12 crore
- (c) ₹0.18 crore
- (d) ₹0.06 crore

13. G Ltd. (a company having CSR Committee as per the provision of **Section 135** of the Companies Act, 2013) decides to spend and utilize half of the amount of Corporate Social Responsibility on the activities for the benefit of all the employees of G Limited and the remaining half of the amount of Corporate Social Responsibility on the activities for the benefit of family members of employees of G Limited As per the provision of Companies Act, 2013 this would mean that:-

- (a) This is the total amount spent on Corporate Social Responsibility activities by G Limited for that financial year
- (b) No amount spent on Corporate Social Responsibility activities by G Limited for that financial year
- (c) Half amount spent on Corporate Social Responsibility activities by G Limited for that financial year
- (d) Half amount spent on Corporate Social Responsibility activities and remaining half amount spent on Other Activities by G Limited for that financial year.

(May'20 RTP)

14. Vishal Crockery Limited was incorporated on 24th September, 2010 under the jurisdiction of Registrar of Companies, Rajasthan with its registered office located in Jaipur and its manufacturing units spread out in Mumbai, Kanpur, Delhi and Ludhiana. Under the dynamic leadership of Hans Rajpal, the Chairman and Managing Director (CMD) of the company, it could easily be ascertained that the company had reached the new heights of success. The directors of the company numbered eight including CMD of which two were the independent directors.

The turnover of the company for the Financial Year 2018-2019 was Rs. 750.00crores – a whopping rise of more than 20% from the previous year and net profit stood at a prestigious figure of ₹6.60crores – also increased by ₹1.80 crores as compared to the net profit of previous year. The company had a net worth of Rs. 250.00 crores; and it was noticed that the net worth had also registered a northern trend by more than 15%. The authorised and paid-up share capital of the company was ₹8.00 crores. Keeping in view the applicability of forming a CSR Committee for the current financial year 2019-20, a CSR Committee was formed with four directors as members of which one was the independent member. The Committee was, among others, given the responsibility to formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII.

The company plans to diversify its business by adding another segment to manufacture steel utensils and therefore, is desirous to shift its registered office to Mumbai from the present one at Jaipur which will help the company in easing out the new business. Another strategically important segment which the company tapped earlier and now wishes to engage itself on a large scale relates to manufacturing of stationery items.

The company hopes that with the shifting of registered office to Mumbai, it shall be able to target international markets to export its quality products. As on date, the export turnover of the company is not that much significant. The directors, Janardan Mittal (Finance) and Ratish Jain (Marketing), however, have in-depth knowledge of export markets, particularly those existing in UK and Singapore, where they can place their products successfully and achieve laurels for the company in terms of wealth maximisation.

During the current Financial Year 2019-20, the company under the CSR activities provided ample support for improvement of infrastructure in schools established at Mumbai, Kanpur, Delhi and Ludhiana. Not only this, the company contributed towards establishment of Digital Smart Classroom, Libraries and computer labs

in these cities. The company also deployed mobile medical units equipped with medical facilities and qualified doctors. In addition to this, a large number of public health and sanitation activities had been initiated under Swachh Bharat Abhiyan. The total amount spent on these activities was, till date, almost equal to the minimum spendable amount and it is hoped that as the current Financial Year 2019-20 approaches its end, the total spending on CSR activities will certainly exceed the budgeted figure. (May'20 Mock Test)

- (A) Which of the following criterion prompted Vishal Crockery Limited to mandatorily form a Corporate Social Responsibility (CSR) Committee for the current financial year?
- (i) The net profit had increased to ₹6.60 crores and it was more by ₹1.80 crores in comparison to previous year's net profit.
 - (ii) The turnover was ₹750.00 crores which was increased by more than 20% as compared to the previous year.
 - (iii) The net worth was ₹250.00 crores which when compared to the previous year had registered an increase by more than 15%.
 - (iv) The paid-up share capital was ₹8.00 crores.
- (B) What is the minimum amount (in percentage form) that Vishal Crockery Limited is required to spend during the Financial Year 2019-20 on the CSR activities after it formed a Corporate Social Responsibility Committee.
- (i) Minimum 2% of the average net profits made during the two immediately preceding financial years.
 - (ii) Minimum 2% of the average net profits made during the three immediately preceding financial years.
 - (iii) Minimum 2.5% of the average net profits made during the two immediately preceding financial years.
 - (iv) Minimum 2.5% of the average net profits made during the three immediately preceding financial years.
- (C) In the given case scenario, Vishal Crockery Limited decided to undertake CSR activities at its own. In case, it had decided to engage an external **Section 8** company for undertaking its CSR activities and such charitable company is not established by Vishal nor it is established by the Central/State Government or by any entity established under an Act of Parliament or a State Legislature,

then what should be the established track which this **Section 8** company should have in undertaking similar programs or projects which Vishal Crockery Limited wants it to accomplish?

- (i) Track record of minimum one year
- (ii) Track record of minimum two years
- (iii) Track record of minimum three years
- (iv) None of the above

15. From the following information in respect of company ABC Ltd. Compute the amount the company is required to spend on account of Corporate Social Responsibility:

Financial Year	Net Profit (In crores)
2014-15	30
2015-16	22
2016-17	27

- a) 26 Crore
- b) 52.67 Lacs
- c) 55 Lacs
- d) 26 Lacs

16. JX Limited, an unlisted public Company has its registered office in Mumbai. Due to a shortage of storage space, the Board of Directors of JX Limited has decided not to preserve the books of accounts and other related records of accounts. The Board has approached you, to seek an advice on this matter. Give suitable advice to the Board of JX Limited:

- (a) The Company is not mandatorily required to maintain the Statutory Registers and Records at the Registered Office.
- (b) The Company can make space by destroying all Statutory Registers and Records which are older than 8 years.
- (c) Company can shift the Statutory Registers and Records at JX Limited's branch office situated at Pune, where more than one-tenth of the total number of members entered in the register of members reside.
- (d) Company can digitize all the Statutory Registers and Records.

17. Kamya Ltd. is incorporated on 3rd January, 2021. As per the Companies Act, 2013, what will be the financial year for the company:

- (a) 31st March, 2021
- (b) 31st December, 2021
- (c) 31st March, 2022
- (d) 30th September, 2022

18. As per the provisions of the Companies Act, 2013, which of the following statement is correct with respect to the surplus arising out of the CSR activities:
- (a) The surplus cannot exceed five percent of total CSR expenditure of the company for the financial year.
 - (b) The surplus shall not form part of the business profit of a company
 - (c) The surplus cannot exceed 10 percent of total CSR expenditure of the company for the financial year.
 - (d) The surplus shall form part of the business profit of a company

(ICAI Module, May'2022 Mock Test)

19. Madhu Oils and Fats Ltd. is a listed entity. It finalised its annual accounts for the year ended on 31st March, 2021. The Audit Committee of Board (ACB) recommended and subsequently the Board approved the same.
- Annual General meeting of the shareholders was convened on 25th August, 2021, in which the annual accounts of the company were presented before the shareholders. The shareholders have approved dividend @ 10%.
- A report of the Board of Directors was attached with the annual accounts of the company. During the said meeting, a shareholder pointed out that during the year of 2020-21 there was a big news in the media and newspaper that a fraud has happened in the company of an amount of ₹ 75 lakhs, with the involvement of a senior management official of the company, who is absconding since the news came into media. However, there was no mention about the fraud in the Auditor's Report as well as no comment in the Board's Report. The auditor, who was also present in the General Meeting of the shareholders informed that fraud was detected during the course of audit but no further action was taken by him (auditor).

Multiple Choice Questions

[4 MCQs of 2 Marks each: Total 8 Marks]

1. Going by the facts of the case, by what date should the amount be deposited in a separate account maintained with the scheduled bank for dividend purposes?
 - (a) By 30th August 2021
 - (b) By 1st September 2021
 - (c) By 7th September 2021
 - (d) By 24th September 2021
2. By what date should the dividend declared in the meeting, be paid to the members of the company?
 - (a) By 30th August 2021
 - (b) By 1st September 2021
 - (c) By 7th September 2021
 - (d) By 24th September 2021

3. With regard to preservation of the books of Madhu Oils and Fats Ltd, the books of accounts for the Financial Year (FY) 2020-21 needs to be kept in good order until at least which of the following years?
- (a) FY 2025-26 (b) FY 2026-27
(c) FY 2027-28 (d) FY 2028-29
4. The auditor had noticed the fraud that was committed by the senior management. Which is the correct statement in this respect:
- (a) The auditor shall report the matter to the Central Government immediately.
(b) It is not necessary to disclose the details of fraud in the Board's Report
(c) The auditor shall report the matter to the audit committee constituted under **section 177** or to the Board.
(d) Since the Senior Management Personnel is absconding, the auditor is not required to take any action.

(May'2022 Mock Test)

20. ABC Limited has its shares listed on a recognized stock exchange in India. During the current financial year ending on 31st March 2021, the securities and exchange board of India (SEBI) has found some irregularities in the filings made by the company. Accordingly, SEBI proposes to make an application to the Tribunal for reopening of the books of accounts of the Company. You, as an expert, are called upon by SEBI to advise with which last financial year for reopening of books of accounts an application can be made?
- (a) 2016-2017 (b) 2014-2015
(c) 2011-2012 (d) 2012-2013

(2 Marks) (ICAI Module, May'2022 Mock Test)

21. The aggregate value of the paid-up share capital of Sai Ram Limited, a listed company, was ₹ 200 crore divided into 20 crore equity shares of ₹10/- each at the end of the financial year 2021-22 having its registered office at Pune. This company had been registered with an authorised share capital of ₹ 300 crore divided into 30 crore equity shares of ₹10/- each. The company has very good reputation in compliance of all legal requirements on time. The company produces health related products such as ayurvedic medicines, medical instruments, sanitizers, masks, medical soaps etc. The extract of Balance Sheet of the company as on 31st March, 2022 showed the following figures—

Particulars	Amount (₹ in crore)
Free reserves created out of profits	200
Securities Premium account	80
Credit balance of Profit & Loss account	50
Reserves created out of revaluation of assets	25
Miscellaneous expenditure not written off	10

Turnover of the company during the financial year 2021-22 was ₹ 700 crore and the net profit calculated in accordance with section 198 of the Companies Act, 2013 with other adjustments as per CSR Rules was ₹4 crore only.

The Board of Directors of the company constituted of the following persons as directors- a Chartered Accountant 'Sai Ram' as the Managing Director, 'Roshan' and 'Prachita' as independent directors, 'Hari Om', 'Bindu', 'Reddy' and 'Komal'. Prakash, Chief compliance officer of the company informed the Board on 20th April, 2022 that the company attracts the provisions of section 135 of the Companies Act, 2013 and all the formalities have to be complied with accordingly. Thereafter, on 30th April, 2022 a CSR committee was formed to act and comply the provisions of Corporate Social Responsibility.

The company proposed a list of activities to spend 4% of the average net profits of the company made during the three immediately preceding financial years in pursuance of its CSR Policy as under –

1. The CSR projects for the benefit of employees of the company and their families only.
2. A contribution of ₹ 10,000/- to a political party under section 182 of the Companies Act, 2013.
3. A contribution to the PM CARES Fund during Covid pandemic.
4. Local activities like promotion of child and women education.
5. Activities carried out for fulfilment of any other statutory obligations under any law in force in India.
6. CSR projects undertaken through a Section 8 company.

On the basis of above facts and by applying applicable provisions of Companies Act, 2013 and the applicable Rules therein, choose the correct answer.

Multiple Choice Questions [3 MCQs of 2 Marks each: Total 6 Marks]

1. Prakash, Chief compliance officer of the company informed the Board on 20th April, 2022 that the company attracts the provisions of section 135 of

the Companies Act, 2013. On what basis of the following he arrived at this conclusion -

- (a) On the basis of turnover of the company.
- (b) On the basis of turnover and net profit of the company taken together.
- (c) On the basis of net worth of the company.
- (d) On the basis of net worth and turnover of the company taken together.

2. For the purpose of section 135 of the Companies Act, 2013, the net worth has to be calculated as defined under section 2(57) of the Act. In this context, which of the following statements is correct with reference to the above case -

- (a) The net worth of Sai Ram Limited during the financial year 2021-22 was ₹520 crore.
- (b) The net worth of Sai Ram Limited during the financial year 2021-22 was ₹530 crore.
- (c) The net worth of Sai Ram Limited during the financial year 2021-22 was ₹555 crore.
- (d) The net worth of Sai Ram Limited during the financial year 2021-22 was ₹620 crore.

3. Sai Ram Limited constituted a Corporate Social Responsibility Committee as per the provisions of the Act and Companies (Corporate Social Responsibility Policy) Rules, 2014, therein consisting of-

- (a) Sai Ram, Hari Om, Bindu and Reddy
- (b) Hari Om, Bindu, Reddy and Prakash
- (c) Sai Ram, Hari Om, Bindu and Prakash
- (d) Sai Ram, Hari Om, Bindu and Roshan

(May'2022 Mock Test)

22. The financial statement in relation to a dormant company may not include:

- (a) balance sheet
- (b) cash flow statement
- (c) applicable explanatory note
- (d) profit and loss account

(Nov'22 Mock Test)

23. During the half year ended September 2021, the board of directors (BOD) of New Era Limited has made an application to the Tribunal for revision in the accounts of the company for the financial year ended on March 2019. Further during the

year ended March 2022, the BOD has again made an application to the Tribunal for revision in the board's report pertaining to the year ended March 2021. You are required to state the validity of the acts of the Board of directors.

- (a) The act of the BOD is valid only to the extent of application made for revisions in accounts as board's report are not eligible for revision.
- (b) The act of the BOD is valid as application made for revision in the accounts and board's report pertains to two different financial year.
- (c) The act of the BOD is invalid as the law provides for only one time application to be made in a financial year for revision of accounts and boards report.
- (d) The act of the BOD is invalid as to the application made for revision in accounts pertains to a period beyond 2 years immediately preceding the year 2022. The application made for revision in the Board report is however valid in law.

(Nov'2022 Mock Test)

24. ABC Limited has its shares listed on a recognized stock exchange in India. During the current financial year ending on 31st March 2023, the Securities and Exchange Board of India (SEBI) has found some irregularities in the filings made by the company. Accordingly, SEBI proposes to make an application to the Tribunal for reopening of the books of accounts of the Company. You, as an expert, are called upon by SEBI to advise with which last financial year for reopening of books of accounts an application can be made?

- (a) 2018-2019
- (b) 2016-2017
- (c) 2013-2014
- (d) 2014-2015

(MAY 23, MTP)

25. Pratham Limited has decided to spend ₹ 40 lakhs on project of CSR. The average net profit of the company is ₹ 10 crores. But due to some reasons, company was able to spend only ₹ 30 lakhs. Now what will be the option for the company for the rest ₹ 10 lakhs.

- (a) Penal provision will be applicable for unspent amount of ₹ 10 lakhs.
- (b) No penal provision but explanation is required in Board report for not spending ₹ 10 lakhs
- (c) No penal provision
- (d) The company is required to transfer the amount to separate fund.

(MAY 23, MTP)

26. The company X plans to cover its skilled as well as semi-skilled workers of its units under medical health insurance plan, for which the company X will bear the expenses. Will this expenditure be permissible under CSR activities as per the provisions of the Companies Act, 2013:

- (a) only expenditure on skilled workers is allowed
- (b) expenditure on both skilled and semi- skilled workers is allowed
- (c) Resolution to be passed in board meeting before incurring this expenditure and in the board report it must be mentioned, so that the same will be permissible under CSR activities
- (d) such expenditure is not permissible under eligible CSR activities

(May'23 MTP)

27. The Corporate Social Responsibility Committee of the board shall consist of:

- (a) Three or more directors out of which at two directors shall be Independent Director
- (b) Three or more directors out of which at least one director shall be Independent Director.
- (c) Three or more directors and all should be Independent Directors
- (d) Three or more directors with condition of not a single director should be Independent Director

(May'23 MTP)

28. Victory Limited was incorporated in January 2015. How much expenditure Victory Limited shall ensure to spend in pursuance of its Corporate Social Responsibility Policy:

- (a) The company shall ensure to spend in every financial year, at least 2% of the average gross profits of the company made during the 2 immediately preceding financial years.
- (b) The company shall ensure to spend in every financial year, at least 2% of the average net profits of the company made during the 3 immediately preceding financial years.
- (c) The company shall ensure to spend in every financial year, at least 1% of the average net profits of the company made during the 2 immediately preceding financial years.
- (d) The company shall ensure to spend in every financial year, at least 1% of the average net profits of the company made during the 3 immediately preceding financial years.

(May'23 MTP)

29. Which of the following is not mandatorily required to include cash flow as part of its financial statement.

- (a) Shiv Limited
- (b) Shiv Private Limited (not a start-up company)
- (c) Shiv (OPC) Private Limited
- (d) Shiv Limited, having paid up share capital of 3 crore and turnover of 30 crore

(May'23 MTP)

30. Compute the minimum amount the company (Natraj Limited) is required to spend on account of Corporate Social responsibility year 2022-2023, if during the financial years 2019-2020, 2020-2021 and 2021-2022 net profits are ₹ 30 crore, ₹ 25 crore and ₹ 32 crore respectively.

(a) ₹ 87 lac	(b) ₹ 1.14 crore
(c) ₹ 1.64 crore	(d) ₹ 58 lac

(May'23 MTP)



ANSWERS

1: Filing of financial statements in XBRL Mode

As per Rule 3 of the Companies (Filing of Documents and forms in Extensible Business Reporting Language) Rules, 2015, following class of companies shall file their financial statements and other documents under **section 137** of the Act with the Registrar in e-form AOC-4 XBRL as per Annexure-I:

1. companies listed with stock exchanges in India and their Indian subsidiaries;
2. companies having paid up capital of five crore rupees or above;
3. companies having turnover of one hundred crore rupees or above;
4. all companies which are required to prepare their financial statements in accordance with Companies (Indian Accounting Standards) Rules, 2015.

Provided further that non-banking financial companies, housing finance companies and companies engaged in the business of banking and insurance sector are exempted from filing of financial statements under these rules.

Hence A housing Finance Ltd., being a housing finance company, is exempted from filing its financial statement in XBRL mod

2: Where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year.

Any application pending before the Tribunal as on the date of commencement of the Companies (Amendment) Act, 2019, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.

Also, a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause.

SKP Limited is advised to follow the above procedure accordingly.

[Note: This answer is based on the assumption that Herry limited is a foreign Company registered outside India as inferred from part (i) of the question]

3. According to **section 129(3)** of the Companies Act, 2013, where a company has one or more subsidiaries or associate companies, it shall, in addition to financial statements provided under sub-**section (2)**, prepare a consolidated financial statement (CFS) of the company and of all the subsidiaries and associate companies in the same form and manner as that of its own and in accordance with applicable accounting standards, which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub-**section (2)**. The company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries and associate company or companies in Form AOC-1 as per Rule 5 of the Companies (Accounts) Rules, 2014.

Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed under Rule 6 of the Companies (Accounts) Rules, 2014.

Since, consolidation of accounts is to be done by the holding company (i.e. Diya Limited), Jai Limited and Vijay Limited shall prepare their Balance Sheet and Statement of Profit and Loss Account normally following the relevant provisions of the Companies Act, 2013 compliant with the applicable Accounting Standards.

(Nov'21 3 Marks)

4. **Directors' Responsibility Statement:** According to **section 134(5)** of the Companies Act, 2013, the Directors' Responsibility Statement referred to in 134(3)(c) shall state that—

- (1) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
- (2) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;
- (3) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;
- (4) the directors had prepared the annual accounts on a going concern basis; and
- (5) the directors, in the case of a listed company, had laid down internal financial

controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.

Here, the term “internal financial controls” means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company’s policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information;

- (6) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively. (Nov’21 3 Marks)

5. As per **section 2(40)** of the Companies Act, 2013, Financial Statement in relation to a company, includes—

- (i) a balance sheet as at the end of the financial year;
- (ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
- (iii) cash flow statement for the financial year;
- (iv) a statement of changes in equity, if applicable; and
- (v) any explanatory note annexed to, or forming part of, any document referred to in subclause (i) to sub-clause (iv):

Exemption: As per the proviso to **section 2(40)**, the financial statement, with respect to one person company, small company, dormant company and private company (if such private company is a start-up) may not include the cash flow statement.

In the instant case, Mr. Prabodh has to prepare the above financial statements except Cash Flow Statement; since Geeta Private Limited is a start-up private company

(Nov’22 RTP)

6. Persons responsible to maintain books: As per **Section 128 (6)** of the Companies Act, 2013, the person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of account etc. shall be:

- (a) Managing Director,
- (b) Whole-Time Director, in charge of finance
- (c) Chief Financial Officer
- (d) Any other person of a company charged by the Board with duty of complying with provisions of **section 128**. (Nov’22 RTP)

7. According to section 2(10) of the Companies Act, 2013, Financial statement in relation to a company, includes—
- (i) a balance sheet as at the end of the financial year;
 - (ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
 - (iii) cash flow statement for the financial year;
 - (iv) a statement of changes in equity, if applicable; and
 - (v) any explanatory note annexed to, or forming part of, any document referred to in sub- clause (i) to sub-clause (iv):

Provided that the financial statement, with respect to one person company, small company, dormant company and private company (if such private company is a start-up) may not include the cash flow statement.

For considering the applicability of preparation cash flow statement in case of Sankul (P) Ltd., it is required first to be analyzed that Sankul (P) Ltd. does not fall in any of the categories of companies mentioned under proviso to section 2(10) of the Companies Act, 2013:

- (i) One person company – It is given that the company is having 40 members and also its name does not contain the words ‘OPC’, so it is not a one person company.
- (ii) Small company – A company which is a subsidiary company cannot be categorized as a small company as per proviso to section 2(85) even though its paid up capital and turnover are within the prescribed limits and accordingly, as Sankul (P) Ltd. is a subsidiary company of Hastprat Ltd., it cannot be considered as small company also.
- (iii) Dormant company – It is given that the company is actively carrying on its business, so it cannot be also categorized as a dormant company based upon the facts given.
- (iv) Private company (which is a start-up) – It is given that Sankul (P) Ltd. is not a start- up company and also, as per proviso to section 2(71) of the Act, a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles.

So, Sankul (P) Ltd. shall be deemed to be a public company as it is subsidiary of Hastprat Ltd., an unlisted public company and so it will not fall into this category of exemption as well.

Thus, it can be concluded that Sankul (P) Ltd. is mandatorily required to prepare

cash flow statement for the financial year as a part of its financial statements as it does not fall in any of the categories of companies mentioned under proviso to section 2(10) of the Companies Act, 2013.

8. Periodical Financial Results [Section 129A of the Companies Act, 2013]

The Central Government may, require such class or classes of unlisted companies, as may be prescribed,—

- (a) to prepare the financial results of the company on periodical basis and in prescribed form
- (b) to obtain approval of the Board of Directors and complete audit or limited review of such periodical financial results in the prescribed manner; and
- (c) file a copy with the Registrar within a period of thirty days of completion of the relevant period with such fees as may be prescribed.

Therefore, the objection of the Board of Directors on the ground that as Yellow Ltd. is an unlisted company, periodical financial results need not be prepared, is not correct. Section 129A clearly specifies that even unlisted company has to prepare Periodical Financial Results.

9. According to section 135(1) of the Companies Act, 2013, every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board.

Further, according to section 135(5), the Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy. Here, the “Net Profit” shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198. In the instant case,

- 1. Net Profit before tax of Red Limited for the FY 2021-22 is ₹ 7 crore, hence, Red Limited is required to constitute a CSR committee during FY 2022-23 as the Net profit before tax for the FY exceeds ₹ 5 crore.
- 2. Minimum contribution towards CSR will be: 2% of average net profits since incorporation (Red Limited was incorporated on 1.04.2020.)

Average Net Profit since incorporation: (₹ 5 crore + ₹ 7 crore)/ 2 = ₹ 6 crore

Minimum contribution towards CSR will be: 2% of ₹ 6 crore = ₹ 0.12 crore or ₹ 12 Lacs.

10.

- (i) **Signing of Board's Report [Section 134(6)]:** The Board's report and any annexures thereto under section 134(3) shall be signed by its chairperson of the company if he is authorised by the Board and where he is not so authorised, shall be signed by at least two directors, one of whom shall be a managing director, or by the director where there is one director.
- (ii) **Annual General meeting not held [Section 137(2)]:** Where the AGM of a company for any year has not been held, the financial statements along with the documents required to be attached, duly signed along with the statement of facts and reasons for not holding the AGM shall be filed with the Registrar within thirty days of the last date before which the AGM should have been held and in such manner, with such fees or additional fees as may be prescribed.

11. As per section 130 of the Companies Act, 2013, a company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by the Central Government, the Income-tax authorities, the Securities and Exchange Board, any other statutory body or authority or any person concerned and an order is made by a court of competent jurisdiction or the Tribunal to the effect that—

- (i) the relevant earlier accounts were prepared in a fraudulent manner; or
- (ii) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements:

However, no order shall be made in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year.

In the given instance, an application was filed for re-opening and re-casting of the financial statements of Sun Ltd. for the financial year 2011-2012 which is beyond 8 financial years immediately preceding the current financial year.

Though application filed by the Income Tax Authorities to NCLT is valid, its recommendation for reopening and recasting of financial statements for the period earlier than eight financial years immediately preceding the current financial year i.e. 2022-2023, is invalid.



ANSWER TO MCQs

1	C	2	D	3	D	4	D	5	D
6	D	7	C	8	C	9	C	10	D
11	B	12A	B	12B	D	12C	C	12D	A
13	B	14A	(i)	14B	(ii)	14C	(iii)	15	B
16	C	17	C	18	B	19(1)	A	19(2)	D
19(3)	D	19(4)	C	20	D	21(1)	C	21(2)	A
21(3)	D	22	B	23	B	24	D	25	C
26	D	27	B	28	B	29	C	30	D

Calculation For MCQ 9: $\frac{15+50+70}{3} = 45 \text{ Lacs}$

$$45 \text{ Lacs} \times 2\% = 90,000$$

Calculation For MCQ 12D: $\frac{1\text{cr}+2\text{cr}+3\text{cr}}{3} = 2\text{cr}$

$$2\text{cr} \times 2\% = 0.04 \text{ Cr}$$

Calculation For MCQ 15: $\frac{30+22+27}{3}$

$$= 2,63,33,333 \times 2\% = 52,66,667$$



HOMEWORK QUESTIONS & ANSWER

1. The registered office of the company is situated in a classified backward area of Maharashtra. The Board wants to keep its books of account at its corporate office in Mumbai which is conveniently located. The Board seeks your advice about the feasibility of maintaining the accounting records at a place other than the registered office of the company. Please advise. (ICAI Module)
2. The statutory auditors of a company were required to issue a certificate on the net worth of the company as per the requirement of the management as of 30 September 2018 computed as per the provision of **section 2(57)** of the Companies Act, 2013.
The company had fair valued its property, plant and equipment in the current year which was mistakenly taken into retained earnings of the company in its books of accounts. Please advise whether this fair valuation would be covered in the net worth of the company as per the legal requirements. (ICAI Module)
3. ADV Ltd is engaged in the business of construction and has various projects which are under execution in Delhi-NCR region. The company is also looking for new projects, particularly in Southern part of India based on an understanding that the margins are very high over there. During the year ended 31 March 2018, the company got covered within the requirements of CSR. Considering the nature of its business, company has a large employee base and it decided to spend CSR on some activity related to construction which would benefit its employees and would indirectly also help the business of the company. Please advise on this. (ICAI Module)
4. The directors of Element Ltd. want to voluntary revise the Financial statements of the company. They have approached you to state to them the provisions of the Companies Act, 2013 regarding voluntary revision of financial statements. (Nov'18 RTP)
5. Rera Ltd., a company incorporated under the Companies Act, 2013 having turnover of ₹100 crore, net profit ₹3 crore, accumulated loss of ₹50 crore and securities premium ₹300 crore as per the audited accounts of the company for the Financial Year 2016 -17. The CFO of the company informed the directors of the company

that the Corporate Social Responsibility (CSR) committee is required to be constituted as per the Companies Act, 2013. The directors seek your advice as a professional regarding the criteria required to constitute CSR committee and whether it is applicable to Rera Ltd. or not. (May'18-6 Marks)

6. State any four contents of a Directors Responsibility Statement as required under Section 134 of the Companies Act, 2013. (May'18- 4 Marks, Nov'22 Mock Test)

7. What does the term Financial Statements include in relation to a company under the Companies Act, 2013? Which companies need not prepare a cash flow statement? (Nov'18- 4 Marks)

8. 1. Ravi Limited maintained its books of accounts under Single Entry System of Accounting. Is it permitted under the provisions of the Companies Act, 2013? (ICAI Module, Nov'19- 2 Marks)

2. State the person responsible for complying with the provisions regarding maintenance of Books of Accounts of a Company. (ICAI Module, Nov'19- 2 Marks)

3. Whether a Company can keep books of Accounts in electronic mode accessible only outside India. (ICAI Module, Nov'19- 2 Marks, Nov'20 Mock Test, May'21 Mock Test)

9. Explain the following in brief with reference to Companies Act 2013:

(n) National Financial Reporting Authority (NFRA)

(ii) Corporate Social Responsibility (CSR) Committee (Nov'20- 6 Marks)

10. X Ltd. is a listed company having a paid-up share capital of ₹ 25 crore as at 31st March, 2019 and turnover of ₹ 100 crore during the financial year 2018-19. The Company Secretary has advised the Board of Directors that X Ltd. is not required to appoint 'Internal Auditor' as the company's paid up share capital and turnover are less than the threshold limit prescribed under the Companies Act, 2013. Do you agree with the advice of the Company Secretary? Explain your view referring to the provisions of the Companies Act, 2013. (Jan'21- 3 Marks, Nov'21 RTP)



ANSWERS

- 1: According to **section 128(1)** of the Companies Act, 2013, every company is required to prepare and keep the books of accounts and other relevant books and papers and financial statement for every financial year which give a true and fair view of the state of the affairs of the company, including that of its branch office or offices, if any, and explain the transactions effected both at the registered office and its branches and such books shall be kept on accrual basis and according to the double entry system of accounting.

The proviso to **section 128(1)** further provides that all or any of the books of account aforesaid and other relevant papers may be kept at such other place in India as the Board of Directors may decide and where such a decision is taken, the company shall, within seven days thereof, file with the Registrar a notice in writing giving the full address of that other place. Further company may keep such books of accounts or other relevant papers in electronic mode as per the Rule 3 of the Companies (Accounts) Rules, 2014.

Therefore, the Board of Bharat Ltd. can keep its books of account at its corporate office in Mumbai by following the abovementioned procedure.

- 2: As per sec 2(57) of the Companies Act 2013, any reserves created out of revaluation of assets doesn't form part of net worth. The company fair valued its property, plant and equipment and took that to retained earnings.

Even if the company has taken the fair valuation to the retained earnings in its books of accounts, the resultant credit in reserves (by whatever name called) would be in the category of 'reserves created out of revaluation of assets' which is specifically excluded in the definition of 'net worth' in **section 2 (57)** and hence should be excluded by the company.

Further the auditors should also consider the matter related to accounting of this reserve separately at the time of audit of books of accounts of the company.

- 3: As per the requirements of CSR, the projects or programs or activities that benefit only the employees of the company and their families shall not be considered as CSR activities in accordance with **section 135** of the Act. Accordingly, in the given case, the activity planned by the company related to its business only and that too only for the benefit of its employees would not be considered as part of CSR requirements.

4:

(1) **Preparation of revised financial statement or revised report on the approval of Tribunal:** If it appears to the directors of a company that—

- (a) the financial statement of the company; or
- (b) the report of the Board,

do not comply with the provisions of **section 129** or **section 134**, they may prepare revised financial statement or a revised report in respect of any of the three preceding financial years after obtaining approval of the Tribunal on an application made by the company in such form and manner as may be prescribed and a copy of the order passed by the Tribunal shall be filed with the Registrar:

Tribunal to serve the notice: Provided that the Tribunal shall give notice to the Central Government and the Income tax authorities and shall take into consideration the representations, if any, made by that Government or the authorities before passing any order under this section:

Number of times of revision and recast: Provided further that such revised financial statement or report shall not be prepared or filed more than once in a financial year:

Reason for revision to be disclosed: Provided also that the detailed reasons for revision of such financial statement or report shall also be disclosed in the Board's report in the relevant financial year in which such revision is being made.

(2) **Limits of revisions:** Where copies of the previous financial statement or report have been sent out to members or delivered to the Registrar or laid before the company in general meeting, the revisions must be confined to—

- (a) the correction in respect of which the previous financial statement or report do not comply with the provisions of **section 129** or **section 134**; and
- (b) the making of any necessary consequential alternation.

(3) **Framing of rules by the Central Government in relation to revised financial statement or director's report:** The Central Government may make rules as to the application of the provisions of this Act in relation to revised financial statement or a revised director's report and such rules may, in particular—

- (a) make different provisions according to which the previous financial statement or report are replaced or are supplemented by a document indicating the corrections to be made;
- (b) make provisions with respect to the functions of the company's auditor in relation to the revised financial statement or report;
- (c) require the directors to take such steps as may be prescribed.

5: Corporate Social Responsibility Committee: According to **Section 135** of the Companies Act, 2013 read with the Companies (Corporate Social Responsibility) Rules, 2014, every company including its holding or subsidiary, and a foreign company defined under **section 2(42)** of the Companies Act, 2013, having its branch office or project office in India, having:

- (1) net worth of ₹500 crore or more, or
- (2) turnover of ₹1000 crore or more or
- (3) a net profit of ₹5 crore or more

during any financial year shall constitute a Corporate Social Responsibility Committee of the Board.

“Net worth” [**Section 2(57)**] means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

In the present case,

-turnover of Rera Ltd. is ₹100 crore,

-net profit of ₹3 crore and

-net worth of ₹253 crore (Net profit + securities premium - accumulated loss = 3 + 300 - 50 = 253 crore).

Hence, RERA Ltd. is not fulfilling any criteria prescribed for constitution of CSR committee. So, it is not obligatory for Rera Ltd. to constitute CSR Committee.

6: **Contents of Directors Responsibility Statement** [**Section 134(5)** of the Companies Act, 2013]: The Directors’ Responsibility Statement referred to in 134(3) (c) shall state that—

- (1) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
- (2) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;
- (3) the directors had taken proper and sufficient care for the maintenance of

adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;

- (4) the directors had prepared the annual accounts on a going concern basis;
- (5) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively; and
- (6) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

7: According to **section 2(40)** of the Companies Act, 2013, Financial statement in relation to a company, includes—

1. a balance sheet as at the end of the financial year;
2. a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
3. cash flow statement for the financial year;
4. a statement of changes in equity, if applicable; and
5. any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):

Provided that the financial statement, with respect to one person company, small company, dormant company and private company (if such private company is a start-up company) may not include the cash flow statement.

8:

1. According to **Section 128(1)** of the Companies Act, 2013, every company shall prepare “books of account” and other relevant books and papers and financial statement for every financial year.

These books of accounts should give a true and fair view of the state of the affairs of the company, including that of its branch office(s).

These books of accounts must be kept on accrual basis and according to the double entry system of accounting.

Hence, maintenance of books of account under Singly Entry System of Accounting by Ravi Limited is not permitted.

2. Persons responsible to maintain books

As per **Section 128 (6)** of the Companies Act, 2013, the person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of accounts etc. shall be:

- (a) Managing Director,
- (b) Whole-Time Director, in charge of finance
- (c) Chief Financial Officer
- (d) Any other person of a company charged by the Board with duty of complying with provisions of **section 128**.

3. A Company have has the option of keeping such books of account or other relevant papers in electronic mode as per Rule 3 of the Companies (Accounts) Rules, 2014. According to such Rule,

- a) Such books of accounts or other relevant books or papers maintained in electronic mode shall remain accessible in India so as to be usable for subsequent reference.
- b) There shall be a proper system for storage, retrieval, display or printout of the electronic records as the Audit Committee, if any, or the Board may deem appropriate and such records shall not be disposed of or rendered unusable, unless permitted by law.
- c) The back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a periodic basis.

Hence, a company cannot keep books of Account in electronic mode accessible only outside India.

9. (i) **National Financial Reporting Authority (NFRA):** According to **section 132** of the Companies Act, 2013, the Central Government may, by notification, constitute the National Financial Reporting Authority (NFRA) to provide for matters relating to accounting and auditing standards under this Act. Notwithstanding anything contained in any other law for the time being in force, the NFRA shall—

- (a) make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be;

- (b) monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed;
- (c) oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of service and such other related matters as may be prescribed; and
- (d) perform such other functions relating to clauses (a), (b) and (c) as may be prescribed.

(ii) **Corporate Social Responsibility (CSR) Committee:** According to **section 135(1)** of the Companies Act, 2013, every company having (1) net worth of rupees 500 crore or more, or (2) turnover of rupees 1000 crore or more or (3) a net profit of rupees 5 crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director. Provided that where a company is not required to appoint an independent director under sub-**section (4)** of **section 149**, it shall have in its Corporate Social Responsibility Committee two or more directors. Duties of CSR Committee [**Section 135(3)**]: The CSR Committee shall- (a) formulate and recommend to the Board, a CSR Policy which shall indicate the activities to be undertaken by the company in areas or subject, specified in Schedule VII; (b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and (c) monitor the CSR Policy of the company from time to time.

10. According to the provisions of **Section 138** of the Companies Act, 2013, read with Rule 13 of the Companies (Accounts) Rules, 2014, the following class of companies shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate, namely:

- (1) every listed company;
- (2) every unlisted public company having-
 - (A) paid up share capital of 50 crore rupees or more during the preceding financial year; or
 - (B) turnover of 200 crore rupees or more during the preceding financial year;
 - (C) outstanding loans or borrowings from banks or financial institutions exceeding one hundred crore rupees or more at any point of time during

the preceding financial year; or

- (D) outstanding deposits of twenty five crore rupees or more at any point of time during the preceding financial year.

Besides, some private companies are also required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate.

Thus, X limited (which is a listed company) is required to appoint an internal auditor, irrespective of its paid-up share capital or turnover (as the limit of paid- up share capital or turnover is applicable for unlisted public company).

Hence, the advice of the Company Secretary is not correct.



AUDIT AND AUDITORS



QUESTIONS

Following questions are to be solved by students after they complete this part in Audit.

1. State the procedure for the following, explaining the relevant provisions of the Companies Act, 2013:
 1. Appointment of First Auditor, when the Board of directors did not appoint the First Auditor within one month from the date of registration of the company.
 2. Removal of Statutory Auditor (appointed in last Annual General Meeting) before the expiry of his term. (ICAI Module)
2. One-fourth of the subscribed capital of AMC Limited was held by the Government of Rajasthan. Mr. Neeraj, a Chartered Accountant, was appointed as an auditor of the Company at the Annual General Meeting held on 30 April 2018 by an ordinary resolution. Mr. Sanjay, a shareholder of the Company, objects to the manner of appointment of Mr. Neeraj on the ground of violation of the Companies Act 2013. Decide whether the objection of Mr. Sanjay is tenable? Also examine the consequences of the above appointment under the said Act. (ICAI Module, Nov'20 Mock Test, May'21 Mock Test)
3. EF Limited appointed an individual firm, Naresh & Company, Chartered Accountants, as Auditors of the company at the Annual General Meeting held on 30 September 2018. Mrs. Kamala, wife of Mr. Naresh, invested in the equity shares face value of ₹1 lakh of EF Limited on 15 October 2018. But Naresh & Company continues to function as statutory auditors of the company. Advice. (ICAI Module, May'19 Mock Test, May'20 RTP, Nov'20 RTP)
4. Explain how the auditor will be appointed in the following cases:
 1. A Government company within the meaning of **section 394** of the Companies Act 2013.
 2. A public company whose shareholders include XYZ Bank (a nationalized bank) holding 18% of the subscribed capital of the company. (ICAI Module, May'18 RTP, May'19 Mock Test)

5. Examine the following situations in the light of the Companies Act, 2013
1. Mr. Ayush, a Chartered Accountant, has been appointed as an auditor of X Ltd. in the Annual General Meeting of the company held in September 2018, in which he accepted the assignment. Subsequently, in January 2019 he joined B, as a partner in the consultancy firm of Mr. B. Mr. B is also working as a Finance Executive of X Ltd.
 2. “Mr. Abhi”, a practicing Chartered Accountant, is holding securities of Abhiman Ltd. having face value of ₹1000/- . Whether Mr. Abhi is qualified for appointment as an Auditor of Abhiman Ltd.? (ICAI Module, May’19 RTP, May’19 Mock Test)
6. Lemon &Company, Chartered Accountants a Limited Liability Partnership firm with CA. L, CA. M and CA. N as partners, is the statutory auditor of a listed company M/s Big Limited for past 6 years as on 01.04.2014. CA.M is also a partner in other Chartered Accountant firm Dew & Company, Chartered Accountants. Advise under the provisions of the Companies Act, 2013:
- (1) Upto how many years can Lemon &Company continue as statutory auditors of M/s Big Limited?
 - (2) What shall be the cooling-off period for Lemon &Company with respect to M/s Big Limited?
 - (3) Can Dew &Company; be appointed as a statutory auditor of M/s Big Limited and it’s another listed subsidiary M/s Dark Limited during such cooling-off period?
 - (4) Can Lemon &Company be appointed as internal auditors of M/s Big Limited and it’s another listed subsidiary M/s Dark Limited, during such cooling-off period? (Nov’18 RTP)
7. Mrs.Sita, wife of CA. ‘Arjun’ the statutory auditor of Stellar Builders Limited, acquired shares in the company for a face value of ₹75000/- on 15th March, 2018. CA. ‘Arjun’, issued his audit report on 25th April, 2018. Examine the validity of this transaction under the Companies Act, 2013. Would your answer be different if face value of the shares have been 150000/- (market value ₹95000/)? (Nov’18 RTP)

8. (i) The Auditor of the company (other than government company) has resigned on 31st December, 2018, while the Financial year of the company ends on 31st March, 2019. Discuss as per the provisions of the Companies Act, 2013, how the auditor will be appointed in this case.
- (ii) A company includes the following shareholders also:
- a) Bank of Baroda (A Nationalized Bank) holding 12% of the subscribed capital in the company.
 - b) National Insurance Company Limited (carrying on General Insurance Business) holding 10% of the subscribed capital in the company.
 - c) Maharashtra State Financial Corporation (A Public Financial Institution) holding 8% of the subscribed capital in the company. Advise the company, whether the provisions related to 'appointment of auditor in case of Government Company' are applicable to it.
- Discuss in the light of the provisions of the Companies Act, 2013.

(Nov'19 Mock Test)

9. (i) Rupa Limited, a listed company appointed M/s. VG & ASSOCIATES an audit firm as Company's auditor in the Annual General Meeting held on 30 -09-2017. Explain the provisions of the Companies Act, 2013 relating to the appointment or reappointment of an auditor in relation to the tenure of an auditor.
- (ii) PKC Ltd., wants to appoint Mr. Praveen Kumar, a practicing Chartered Accountant as the statutory auditor of the company and asked the proposed auditor to give a certificate in this regard. What are the contents of the certificate to be issued in accordance with the Companies (Audit & Auditors Rules, 2014)?

(May'18- 6 Marks)

10. (i) CA. M is a partner in SM & Company (Chartered Accountants) and ML & Company (Chartered Accountants). SM & Company are statutory auditors of M/s. Global Ltd. (listed) for past seven years as on 1-04-2018. Advice under relevant provisions of the Companies Act, 2013:
- (1) For how many more years SM & Company can continue as statutory auditors of M/s. Global Ltd. (listed)?
 - (2) Can ML & Company be appointed as statutory auditor of M/s. Global Ltd. during cooling off period for SM & Company?
- (ii) Mr. Ram brother of CA. Shyam, a practicing chartered accountant, acquired securities of M/s. Cool Ltd. having market value of ₹1,20,000 (face value

₹95,000). State whether CA. Shyam is qualified to be appointed as a statutory auditor of M/s. Cool Ltd. (Nov'18- 6 Marks)

11. The Board of Directors of A Ltd. requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the Company. How will you approach to this proposal, as an Statutory Auditor of A Ltd., taking into account the consequences, if any, of accepting this proposal?

(ICAI Module, May'19- 3 Marks, May'21 RTP)

12. Examine whether the following persons are eligible for being appointed as auditor under the provisions of the Companies Act, 2013 :

1. "Mr. Prakash" is a practicing Chartered Accountant and "Mr. Aakash", who is a relative of "Mr. Prakash" is holding securities of "ABC Ltd." having face value of ₹ ₹70,000/- (market value ₹1,10,000/-). Directors of ABC Ltd. want to appoint Mr. Prakash as an auditor of the company:
2. Mr. Ramesh is a practicing Chartered Accountant indebted to MNP Ltd. for ₹ 6 lacs. Directors of MNP Ltd. want to appoint Mr. Ramesh as an auditor of the company.
3. Mrs. KVJ spouse of Mr. Kumar, a Chartered Accountant, is the store keeper of PRC Ltd. Directors of PRC Ltd. want to appoint Mr. Kumar as an auditor of the company.

(ICAI Module, Nov'19- 6 Marks)

13. The Board of Directors of Moon Light Limited, a listed company appointed Mr. Tel, Chartered Accountant as its first auditor within 30 days of the date of registration of the Company to hold office from the date of incorporation to conclusion of the first Annual General Meeting (AGM). At the first AGM, Mr. Tel was re-appointed to hold office from the conclusion of its first AGM till the conclusion of 6 th AGM. In the light of the provisions of the Companies Act, 2013, examine the validity of appointment/ reappointment in the following cases: (i) Appointment of Mr. Tel by the Board of Directors. (ii) Re-appointment of Mr. Tel at the first AGM in the above situation. (iii) In case Mr. Bell, Chartered Accountant, was appointed as auditor at the first AGM to hold office from the conclusion of its first AGM till the conclusion of 5th AGM. ie., 4 years tenure. (Nov'20- 6 Marks, Nov'21 RTP)

14. Three chartered accountants, Mr. Robert, Mr. Ram and Mrs. Rohini, formed a Limited Liability Partnership under the Limited Liability Partnership Act, 2008 in the name of 'R & Associates LLP', practicing chartered accountants. SR Ltd. intends to appoint 'R & Associates LLP' as auditors of the company.

Examine the validity of the proposal of SR Ltd. to appoint 'R & Associates LLP', a body corporate, as an auditor of the company as per the provisions of the Companies Act, 2013. (Jan'21- 3 Marks)

15. Advise as per the provisions of the Companies Act, 2013, with regard to appointment of auditor:

- (i) Mr. Shepra is a practising Chartered Accountant. He holds shares in X Limited. The nominal value of these shares is ₹ 50,000. Whether X Limited can appoint Mr. Shepra as auditor?
- (ii) Mr. Showik, a practising Chartered Accountant has business relationship with Primus Hotels Limited. The hotel used to provide services to Mr. Showik frequently, on the same price as charged from other customers. Whether Primus Hotels Limited can appoint Mr. Showik as its auditor?

(ICAI Module, May'2022 Mock Test)

16. The Board of Directors of Mines Limited, a listed company appointed Mr. Guru, Chartered Accountant as its first auditor within 30 days of the date of registration of the company to hold office from the date of incorporation to conclusion of the first Annual General Meeting (AGM). At the first AGM, Mr. Guru was re-appointed to hold office from the conclusion of its first AGM till the conclusion of 6th AGM. In the light of the provisions of the Companies Act, 2013, examine the validity of appointment/reappointment in the following cases:

- (i) Appointment of Mr. Guru by the Board of Directors.
- (ii) Re-appointment of Mr. Guru at the first AGM in the above situation.

(ICAI Module, May'2022 Mock Test)

17. Gajendra Ltd. was incorporated in 1995 in the town of Alwar. Its main business is manufacturing tiles. It is in the process of appointing statutory auditors for the financial year 2021 -22. Advise whether the following persons are qualified to be appointed as statutory auditor of the Gajendra Ltd :

- (i) Maninder, a qualified Chartered Accountant, holds equity shares of nominal value of ₹2,00,000 of Narender Ltd., which is an associate company of Gajendra Ltd.

- (ii) Dinesh, a qualified Chartered Accountant, whose son owes Gajendra Ltd. a sum of ₹ 99,000
- (iii) Rajender, a qualified Chartered Accountant, who has been convicted in the year 2005 by a Court for an offence involving fraud.

(ICAI Module, May'2022 Mock Test, Nov'22 Mock Test)

18. Examine the validity of the following statements with reference to the General Clauses Act, 1897:

Board of Directors of Sabarwal Construction Private Limited authorised by passing resolution in board meeting Mr. Munim to appoint five employees for accounts department of company. Mr. Munim appointed five employees including Mr. Rupal who was relative of one of the director of company. After one month, Mr. Munim observed that Mr. Rupal was not performing his duties honestly. Mr. Munim issued the order of dismissal of Mr. Rupal with proper reasons. Mr. Rupal filed a petition in the court that his dismissal order is not valid as Board of Directors had authorised Mr. Munim only for appointment of employees not for dismissal. Whether is Mr. Rupal correct with his words?

(ICAI Module, May'2022 Mock Test)

19. Mr. Raman, a Chartered Accountant, was appointed as an auditor of Surya Distributors Ltd., in the AGM of the company held in August, 2020, in which he accepted the assignment. Later on, in November, 2020, he joined as a partner in the Consultancy firm where Mr. Som is also a partner. Mr. Som is also working as a Finance executive of Surya Distributors Ltd. Explaining the provisions of the Companies Act, 2013, decide whether Mr. Raman is required to vacate the office as an auditor.

(Nov'21 2 Marks)

20. Managing Director of ABC Ltd. himself appointed Mr. Aakash, a practicing chartered accountant as first auditor of the company. Is it a valid appointment? Also explain the provisions of the Companies Act, 2013, in this regard?

(Nov'21 2 Marks)

21. Referring the provisions of the Companies Act, 2013, regarding appointment of auditors, answer the following:

- (i) XYZ Ltd. is a newly established company owned by the Central Government. State the provisions regarding appointment of its first auditor.
- (ii) Mr. Kamal is the auditor of XYZ Limited, which is a Government company. He has resigned on 31st December, 2020 while the financial year of the company

ends on 31st March, 2021. Explain the provisions regarding filling or such vacancy. Would your answer differ if it is other than a Government company?

(Nov'21 5 Marks)

22. Mr. Govind Ram is a partner and in-charge (and certifies financial statements) of P & Associates. The firm is appointed as an auditor firm of Kanha Limited (listed company). Mr. Govind Ram retires from P & Associates and after some time join Gupta & Gupta firm as a partner, on 20/05/22. In the general meeting of Kanha Limited held on 15/06/22, the company appointed Gupta & Gupta firm as next auditor of the company. Advise Kanha Limited, whether the company has adhered to the provision of the Company Act, 2013, by appointing Gupta & Gupta as auditor for the company?

(Nov'22 RTP)

23. XYZ & Associates, a firm of Chartered Accountants was re-appointed as auditors at the Annual General Meeting of ABC Ltd. held on 30-09-2021. However, the Board of Directors recommended to remove them before expiry of their term by passing a resolution in the Board Meeting held on 31-03-2022. Subsequently, having given consideration to the Board recommendation, XYZ & Associates were removed at the general meeting held on 25-05-2022 by passing a special resolution. The approval of the Central Government was not taken before passing the special resolution. Explaining the provisions for removal of second and subsequent auditors, examine the validity of removal of XYZ & Associates by ABC Ltd. under the provisions of the Companies Act, 2013.

(Nov'22 Mock Test)

24. Modern Furniture Limited (MFL), despite not mandated by Section 177 of the Act, read with Companies (Meetings of Board and its Powers) Rules, 2014 to constitute audit committee; on their own on voluntary basis constitute such audit committee. Such committee recommend to the Board, the name of an individual auditor or of an audit firm who may replace the incumbent auditor on expiry of the term of such incumbent; but board didn't consider the recommendation of such committee. Examine the legal validity of act of audit committee and board of MFL.

(MTP May'23)

25. Managing Director of PQR Limited wanted to appoint Mr. Ganpati, a practicing Chartered Accountant, as first auditor of company. He himself without consulting the board, appointed Shri Ganpati as auditor. Evaluate legal validity

(MTP May'23)

26. FLP Ltd, engaged in the business of real estate and energy, defaulted on its borrowings which amounted to thousands of crore. During the year ended 31st March 2023, a fraud was uncovered in respect of various transactions of the company and it was observed by the Central Government that the auditors of the company were involved in such fraud. Please suggest what can be the course of action in this case.
(MTP May'23)
27. Mr. Anil, a Chartered accountant, is a partner of a firm and has been appointed as an auditor of Laxman Ltd. in the Annual General Meeting of the company held in September 2022 in which he accepted the assignment. Subsequently, in January 2023, he offered Bharat, another Chartered Accountant, who is the Manager Finance of Laxman Ltd., to join the firm of Anil as a partner.
(MTP May'23)
28. "Mr. Ashish", a practicing Chartered Accountant, is holding securities of "XYZ Ltd." having face value of ₹ 900/- . Whether Mr. Ashish is qualified for appointment as an Auditor of "XYZ Ltd."?
(MTP May'23)
29. "Mr. P" is a practicing Chartered Accountant and "Mr. Q", the relative of "Mr. P", is holding securities of "ABC Ltd." having face value of ₹ 90,000/-. Whether "Mr. P" is qualified for being appointed as an auditor of "ABC Ltd."?
(MTP May'23)
30. BC & Co." is an audit firm having partners "Mr. B" and "Mr. C" and "Mr. A", relative of "Mr. C", is holding securities of "MWF Ltd." having face value of ₹ 1,10,000. Whether "BC & Co." is qualified for appointment as auditor of "MWF Ltd."?
(MTP May'23)
31. "ABC & Co." is an audit firm having partners "Mr. A", "Mr. B" and "Mr. C", Chartered Accountants. "Mr. A", "Mr. B" and "Mr. C" are holding appointment as auditors in 4, 6 and 10 companies respectively.
- Provide the maximum number of audits remaining in the name of "ABC & Co."
 - Provide the maximum number of audits remaining in the name of individual partner i.e. Mr. A, Mr. B and Mr. C.
- (MTP May'23)
32. MNO Ltd. is a listed company engaged in the business of trading of various products. The company also plans to start manufacturing of certain products which are currently traded.
During the course of its audit, the auditors completed all the procedures related

to audit of financial statements. However, the auditor got stuck on one procedure because of which audit has not got concluded.

Auditors are waiting for certain additional information – Directors report and Management Discussion and Analysis (MD&A) for their review. However, the management is not ready with this information and wants the auditors to complete their work without review of this information. Please advise as per the legal requirements. (MTP May'23)

33. NSH Ltd is engaged in the business of retail and is listed on National stock exchange. The company recently acquired a business undertaking to expand its business. During the year, certain transactions amounting to thousands of rupees were carried out by the employees/ directors of the company which the management found suspicious and appointed a forensic consultant to carry out their review. Pursuant to this review process, certain suspicious transactions were identified by the management and the management reported these transactions to the appropriate authorities. During the course of statutory audit, such transactions were also made known to the statutory auditors. How should the auditor deal with such matter? (MTP May'23)

34. Regarding the general meeting for which notice is served on auditor;
- Whether auditor is mandatorily required to be attend the said general meeting?
 - If yes, whether he is required to attend the meeting personally?
- (MTP May'23)

35. Can a professional LLP which have CAs and CMAs as its partners, appointed as Cost Auditor u/s 148 as well as Statutory Independent Auditor u/s 139 (MTP May'23)

- 36 State the procedure for the following, explaining the relevant provisions of the Companies Act, 2013;
- Appointment of First Auditor, when the Board of directors did not appoint the First Auditor within one month from the date of registration of the company.
 - Removal of Statutory Auditor (appointed in last Annual General Meeting) before the expiry of his term. (MTP May'23)

37. One-fourth of the subscribed capital of AMC Limited was held by the Government of Rajasthan. Mr. Neeraj, a Chartered Accountant, was appointed as an auditor of the Company at the Annual General Meeting held on 30 April, 2018 by an ordinary

resolution. Mr. Sanjay, a shareholder of the Company, objects to the manner of appointment of Mr. Neeraj on the ground of violation of the Companies Act, 2013. Decide whether the objection of Mr. Sanjay is tenable? Also examine the consequences of the above appointment under the said Act. (MTP May'23)

38. EF Limited appointed an individual firm, Naresh & Company, Chartered Accountants, as Auditors of the company at the Annual General Meeting held on 30 September 2022. Mrs. Kamala, wife of Mr. Naresh, invested in the equity shares face value of ₹ 1 lakh of EF Limited on 15 October 2022. But Naresh & Company continues to function as statutory auditors of the company. Advice.

(MTP May'23)

39. Explain how the auditor will be appointed in the following cases:

- (i) A Government company within the meaning of section 394 of the Companies Act, 2013.
- (ii) A public company whose shareholders include XYZ Bank (a nationalized bank) holding 18% of the subscribed capital of the company.

(MTP May'23)

40. Examine the following situations in the light of the Companies Act, 2013

“Mr. Abhi”, a practicing Chartered Accountant, is holding securities of Abhiman Ltd. having face value of ₹ 1000/-. Whether Mr. Abhi is qualified for appointment as an Auditor of Abhiman Ltd.?

(MTP May'23)

41. Examine whether the following persons are eligible for being appointed as auditor under the provisions of the Companies Act, 2013:

- (i) “Mr. Prakash” is a practicing Chartered Accountant and “Mr. Aakash”, who is a relative of “Mr. Prakash” is holding securities of “ABC Ltd.” having face value of ₹ 70,000/- (market value ₹ 1, 10,000/-). Directors of ABC Ltd. want to appoint Mr. Prakash as an auditor of the company.
- (ii) Mr. Ramesh is a practicing Chartered Accountant indebted to MNP Ltd. for rupees 6 lakh. Directors of MNP Ltd. want to appoint Mr. Ramesh as an auditor of the company.
- (iii) Mrs. KVJ spouse of Mr. Kumar, a Chartered Accountant, is the store keeper of PRC Ltd. Directors of PRC Ltd. want to appoint Mr. Kumar as an auditor of the company.

(MTP May'23)

42. The Board of Directors of A Limited requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the Company. How will you approach to this proposal, as a Statutory Auditor of A Ltd., taking into account the consequences, if any, of accepting this proposal?

(MTP May'23)



MULTIPLE CHOICE QUESTIONS (HOMEWORK)

1. For appointing an auditor other than the retiring auditor,
 - (a) Special notice is required.
 - (b) Ordinary notice is required.
 - (c) Neither ordinary nor special notice is required
 - (d) Approval of Central Government is required.

(ICAI Module, May'19 Mock Test, May'20 Mock Test)
2. After registration of a company, first auditors shall be appointed within
 - (a) 30 days
 - (b) 90 months
 - (c) 180 days
 - (d) One year

(ICAI Module)
3. The auditor of a Government Company shall be appointed or re-appointed by
 - (a) The Central Government
 - (b) Comptroller and Auditor General of India.
 - (c) Central Government on the advice of Comptroller and Auditor General of India.
 - (d) None of the above

(ICAI Module)
4. Which of the following is a prohibited service to be rendered by the auditor of the Company
 - (a) design and implementation of any financial information system
 - (b) making report to the members of the company on the accounts examined by him
 - (c) compliance with the auditing standards
 - (d) Reporting of fraud against the company by officers or employees to the Central Government

(ICAI Module, May'19 Mock Test)
5. Advise whether the auditor appointed by a private limited company with paid up capital of ₹30 Crore, in the following cases are valid for the financial year 2017-18:-
 - (i) Amanpreet (an Individual auditor) who has been the auditor since the Financial Year 2011-12
 - (j) Firm MGA & associates, was appointed as auditor in the Financial Year 2011 -12.
 - (k) Firm MGA & associates, who completed 10 years continuously as auditor in

company. Now company wants to appoint VGA & associates wherein Mr. V is a partner who is also partner in MGA & Associates.

- (l) The provisions of rotation of auditor are not applicable on private companies.

(May'19 Mock Test)

6. BSP Ltd appointed XPP & Co LLP as their statutory auditors for the year ended 31 March 2018 on 18 June 2018, as per **Section 139(8)** of the Companies Act 2013, to fill the casual vacancy caused by resignation of previous statutory auditors to hold office till the conclusion of next Annual general Meeting (AGM) of BSP Ltd. BSP Ltd is listed with Bombay Stock Exchange and National Stock Exchange. BSP Ltd is covered under auditors rotation requirements and wants to re-appoint XPP & Co LLP at their next AGM. Please advise.

- (a) XPP & Co LLP can be re-appointed for a term of five consecutive years at the AGM and after that can be considered for re-appointment for another five consecutive years.
- (b) XPP & Co LLP can be re-appointed for a term of four consecutive years at the AGM and after that can be considered for re-appointment for another five consecutive years.
- (c) XPP & Co LLP can be re-appointed for a term of five consecutive years at the AGM.
- (d) XPP & Co LLP cannot be re-appointed at the AGM.

(Nov'19 Mock Test)

7. NTW Ltd is listed on National Stock Exchange and has a turnover of INR 4500 crores. NTW Ltd has 12 subsidiaries, 3 associate companies and 5 joint venture companies (collectively referred to as NTW Group). AKW & Co LLP is the statutory auditor of NTW Ltd. NTW Ltd wants to appoint AKW as the statutory auditors for entire NTW Group. In respect of this, please advise the management of NTW Group.

- (a) AKW & Co LLP can be appointed as statutory auditors for only 10 companies of NTW Group.
- (b) AKW & Co LLP can be appointed as statutory auditors for only 20 companies of NTW Group.
- (c) AKW & Co LLP can be appointed as statutory auditors for all the companies of NTW Group.
- (d) AKW & Co LLP can be appointed as statutory auditors for all the companies of NTW Group provided they meet the limits requirements as per the Companies Act 2013.

(Nov'19 Mock Test)

8. Which of the non-financial matter, Statutory auditor is required to report in his report:
- (a) Whether employees appointed during the period covered by audit meet the requisite educational/professional qualification at the time of appointment.
 - (b) Whether every page of minute book of General meetings bears full signature of Chairman as per provisions of Companies Act, 2013.
 - (c) Whether the incorporation documents are managed properly.
 - (d) Whether any director is disqualified from being appointed as a director under section 164(2). (Nov'20 Mock Test, May'21 Mock Test)

9. Sourabh Publishers Ltd., a listed entity, passed a resolution in its Board meeting for appointment of Jain & Jain, a Chartered Accountants firm, as Statutory Auditor of the company. The company obtained the consent in writing from Jain & Jain and also placed this recommendation before the general meeting of the shareholder and got it approved.

The company thereafter informed the CA Firm about their appointment and also filed a notice of appointment with the Registrar of Companies within the prescribed time.

Jain & Jain, Chartered Accountants firm is having 3 partners namely, Mridula Jain, Shyamla Jain, Parul Jain. In this firm Mayank Jain and Shashank Jain were associates and were being paid on case-to-case basis and not on fixed salary.

Prior to the appointment of Jain & Jain, the previous auditor was Agrawal Jain & Associates. In this CA firm there were 6 partners namely, Prashant Agrawal, Vikas Agrawal, Vishal Agrawal, Vyom Agrawal, Mayank Jain and Shashank Jain.

Mayank Jain and Shashank Jain were common persons in both the firms.

While working with Sourabh Publishers Ltd., Jain & Jain started facing a lot of issues with the management of the company. After sometime, due to these disputes with the management, Jain & Jain resigned from the company.

Multiple Choice Questions

1. The newly appointed CA Firm (Jain & Jain) and retiring CA Firm (Agrawal Jain & Associates) have common persons i.e., Mayank Jain and Shashank Jain. Whether the appointment of Jain & Jain in Sourabh Publishers Ltd. is valid as per the provisions of the Companies Act, 2013:
- (a) It not valid since both the CA Firms (New and Old) have common persons
 - (b) Mayank Jain and Shashank Jain are the associates in Jain & Jain and not

the partners, hence appointment of Jain & Jain, is valid

- (c) Jain & Jain should expel Mayank Jain and Shashank Jain in order to retain its appointment
 - (d) Agrawal Jain & Associates should expel Mayank Jain and Shashank Jain
2. What would have been the position if, Mayank Jain and Shashank Jain are partners in Jain & Jain:
- (a) The position will remain same as MCQ 1 above
 - (b) There shall be no change and the Jain & Jain may continue as audit firm
 - (c) The appointment of Jain & Jain would not have been in terms of the provisions of the Companies Act, 2013
 - (d) The company may obtain permission from the shareholders in the general meeting by way of Special Resolution for continuation of appointment of Jain & Jain
3. In the given case, Jain & Jain due to some dispute with the management on some issues resigned from the company. Choose the correct option in respect to filling of this vacancy:
- (a) Jain & Jain cannot resign and has to hold the office till the conclusion of the next annual general meeting
 - (b) The resignation is tendered by the auditor, the Board of Directors shall appoint new auditor within 30 days and such appointment shall also be approved by the shareholders in the general meeting within 3 months of the recommendation of the Board
 - (c) This vacancy of auditor can be filled by the shareholders in consultation of the Central Government
 - (d) This vacancy of auditor can be filled by the Board of Directors in consultation of the Comptroller and Auditor-General of India

(ICAI Module, May'2022 Mock Test)

10. Birthday Card Limited, a listed company can appoint or re-appoint, Mishra & Associates (a firm of Chartered Accountants), as their statutory auditors for:
- (a) One year only
 - (b) One term of 3 consecutive years only
 - (c) One term of 4 consecutive years only
 - (d) Two terms of 5 consecutive years

(ICAI Module, May'2022 Mock Test)

11. Every company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its:
- (a) Second annual general meeting
 - (b) Fourth annual general meeting
 - (c) Sixth annual general meeting
 - (d) Eight annual general meeting
- (May'2022 Mock Test)

12. Unicorn Steel Private Limited is incorporated as on 02.06.2022, board of directors of the company held board meeting as on 15.06.2022 to appoint Jain Ajmera & Associates as a first auditor of the company for a term of 5 years. As per section 139(6) of the Companies Act, 2013, the board shall appoint first director within 30 days from the date of registration of the company. Evaluate the legal validity;
- Options
- a. Valid
 - b. Invalid
 - c. Valid after approval of shareholder in General Meeting
 - d. Valid only after approval of Central Government

(MTP May'23)

13. Special Resolution to remove auditor at general meeting shall be passed within, form the approval from central government.
- a. 30 days
 - b. 1 month
 - c. 60 days
 - d. 3 months

(MTP May'23)

14. Birthday Card Limited, a listed company can appoint or re-appoint, Mishra & Associates (a firm of Chartered Accountants), as their statutory auditors for:
- (a) One year only
 - (b) One term of 3 consecutive years only
 - (c) One term of 4 consecutive years only
 - (d) Two terms of 5 consecutive years

(MTP May'23)

15. Every company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its:
- (a) Second annual general meeting
 - (b) Fourth annual general meeting
 - (c) Sixth annual general meeting
 - (d) Eight annual general meeting

(MTP May'23)

16. For appointing an auditor other than the retiring auditor,
- (a) Special notice is required.
 - (b) Ordinary notice is required.
 - (c) Neither ordinary nor special notice is required
 - (d) Approval of Central Government is required.

(MTP May'23)



ANSWERS

1:

1. **Section 139(6)** of the Companies Act, 2013 lays down that the first auditor of a company shall be appointed by the Board of Directors within 30 days of the registration of the company.

Section 139 (6) continues to provide further that if the Board of Directors fails to appoint such auditor, it shall inform the members of the company, who shall within ninety days at an extraordinary general meeting appoint such auditor and such auditor shall hold office till the conclusion of the first annual general meeting. From the above provisions of law if the Board of Directors fails to appoint the first auditors within the stipulated 30 days, it shall take the following steps:

1. Inform the members of the Company;
2. Immediately take steps to convene an extra ordinary general meeting not later than 90 days;
3. Members shall at that extra ordinary meeting appoint the first auditors of the company;
4. The first auditors so appointed shall hold office upto the conclusion of the first AGM of the company.

2. **Section 140** of the Companies Act, 2013 prescribes certain procedure for removal of auditors. Under **section 140 (1)** the auditor appointed under **section 139** may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner. From this sub section it is clear that the approval of the Central Government shall be taken first and thereafter the special resolution of the company should be passed.

Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.

Therefore, in terms of **section 140 (1)** of the Companies Act, 2013 read with Rule 7 of the Companies (Audit & Auditors) Rules, 2014, the following steps should be taken for the removal of an auditor before the completion of his term:

The application to the Central Government for removal of auditor shall be made in Form ADT-2 and accompanied with fees as provided for this purpose under the Companies (Registration Offices and Fees) Rules, 2014.

The application shall be made to the Central Government within thirty days of the resolution passed by the Board.

The company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution.

- 2: As per the **section 2(45)** of the Companies Act, 2013, the holding of 25% shares of AMC Ltd. by the Government of Rajasthan does not make it a government company. Hence, it will be treated as a non-government company.

Under **section 139** of the Companies Act, 2013, the appointment of an auditor by a company vests generally with the members of the company except in the case of the first auditors and in the filling up of the casual vacancy not caused by the resignation of the auditor, in which case, the power to appoint the auditor vests with the Board of Directors. The appointment by the members is by way of an ordinary resolution only and no exceptions have been made in the Act whereby a special resolution is required for the appointment of the auditors.

Therefore, the contention of Mr. Sanjay is not tenable. The appointment is valid under the Companies Act, 2013.

- 3: **Disqualification of auditor:** According to **section 141(3)(d)(i)** of the Companies Act, 2013, a person who, or his relative or partner holds any security of the company or its subsidiary or of its holding or associate company a subsidiary of such holding company, which carries voting rights, such person cannot be appointed as auditor of the company. Provided that the relative of such person may hold security or interest in the company of face value not exceeding 1 lakh rupees as prescribed under the Companies (Audit and Auditors) Rules, 2014.

In the case Mr. Naresh, Chartered Accountants, did not hold any such security. But Mrs. Kamala, his wife held equity shares of EF Limited of face value ₹ 1 lakh, which is within the specified limit.

Further **Section 141(4)** provides that if an auditor becomes subject, after his appointment, to any of the disqualifications specified in **sub-section 3** of **section 141**, he shall be deemed to have vacated his office of auditor. Hence, Naresh & Company can continue to function as auditors of the Company even after 15 October 2018 i.e. after the investment made by his wife in the equity shares of EF Limited.

4:

1. The appointment and re-appointment of auditor of a Government Company or a

government controlled company is governed by the provisions of **section 139** of the Companies Act, 2013 which are summarized as under:

The first auditor shall be appointed by the Comptroller and Auditor General of India within 60 days from the date of incorporation and in case of failure to do so, the Board shall appoint auditor within next 30 days and on failure to do so by Board of Directors, it shall inform the members, who shall appoint the auditor within 60 days at an extraordinary general meeting (EGM), such auditor shall hold office till conclusion of first Annual General Meeting.

In case of subsequent auditor for existing government companies, the Comptroller & Auditor General of India shall appoint the auditor within a period of 180 days from the commencement of the financial year and the auditor so appointed shall hold his position till the conclusion of the Annual General Meeting.

2. In the given case as the total shareholding of the XYZ Bank is just 18% of the subscribed capital of the company, it is not a government company. Hence the provisions applicable to non-government companies in relation to the appointment of auditors shall apply.

The auditor shall be appointed as follows:

- (1) The company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting.
- (2) Before such appointment of auditor is made, the written consent of the auditor to such appointment, and a certificate from him or firm of auditors that the appointment, if made, shall be obtained from the auditor:

Further, the company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Registrar within 15 days of the meeting in which the auditor is appointed.

5:

1. **Provisions and Explanation:** **Section 141(3) (c)** of the Companies Act, 2013 prescribes that any person who is a partner or in employment of an officer or employee of the company will be disqualified to act as an auditor of a company. Sub-**section (4)** of **Section 141** provides that an auditor who becomes subject, after his appointment, to any of the disqualifications specified in sub-**sections (3)** of **Section 141**, he shall be deemed to have vacated his office as an auditor.

Conclusion: In the present case, Ayush, an auditor of X Ltd., joined as partner with

consultancy firm where B is also a partner and B is also the Finance executive of X Ltd. Hence Ayush has attracted clause (3)(c) of **Section 141** and, therefore, he shall be deemed to have vacated office of the auditor of X Limited.

2. As per **section 141(3)(d)(i)**, an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holds any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.

In the present case, Mr. Abhi. is holding security of ₹1000 in the Abhiman Ltd, therefore, he is not eligible for appointment as an auditor of Abhiman Ltd.

- 6: According to **Section 139 (2)** of the Companies Act, 2013,

- I. Listed companies and other prescribed class or classes of companies (except one person companies and small companies) shall not appoint or re-appoint an audit firm as auditor for more than two terms of 5 consecutive years.
- II. An audit firm which has completed its term (i.e. two terms of five consecutive years) shall not be eligible for re- appointment as auditor in the same company for five years from the completion of such term.
- III. Further, as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as an auditor of the same company for a period of five years.
- IV. For the purpose of the rotation of auditors, in case of an auditor (whether an individual or audit firm), the period for which the individual or the firm has held office as auditor prior to the commencement of the Act shall be taken into account for calculating the period of 5 consecutive years or 10 consecutive years, as the case maybe.

Applying the above provisions,

- (1) Lemon & Company can continue as statutory auditors of M/s Big Limited for 4 more years from 1.4.2014, i.e. they can continue in office only till 31.3.2018.
- (2) The cooling- off period shall be of 5 years.
- (3) Dew & Company cannot be appointed as a statutory auditor of M/s Big Limited during the cooling – off period of Lemon & Company, as CA. M is the common partner in both Lemon & Company and Dew & Company.
However, Dew & Company can be appointed as a statutory auditor of M/s Dark Limited (a listed subsidiary of M/s Big Limited), during the cooling– off period.
- (4) As per **Section 138 (1)** of the Companies Act, 2013, every listed company and

other prescribed class of companies, shall be required to appoint an internal auditor, who shall either be a chartered accountant or a cost accountant, or such other professional (which may be either an individual or a partnership firm or a body corporate) as may be decided by the Board to conduct internal audit of the functions and activities of the company.

Accordingly, M/s Lemon & Company can be appointed as an internal auditor of M/s Big Limited and in its subsidiary M/S Dark Limited (a listed company). The provision of cooling off period as given under **Section 139** of the Companies Act, 2013, shall not be applicable on the Internal auditors.

- 7: As per **Section 141(3)(d)(i)** of the Companies Act, 2013, a person who, or his relative or partner is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company, shall not be appointed as an auditor of the company.

However, Rule 10 of the Companies (Audit and Auditors) Rules, 2014, states that a relative of an auditor may hold securities in the company of face value not exceeding rupees one lakh.

In the given case Mrs. Sita, wife of CA. Arjun acquired shares in Stellar Builders Limited, in which he was a statutory auditor on 15th March, 2018. Since, the securities held by Mrs. Sita is within the prescribed limit of ₹1 lakh, such a transaction is valid. Yes, the answer will be different in case where the face value of acquired shares is ₹1,50,000. Then in that case:

- (i) Corrective action to maintain the limit specified (i.e., ₹1 lac) shall be taken by the auditor within 60 days of such acquisition, or
- (ii) Auditor has to vacate his office.

- 8: (i) The situation as stated in the question relates to the creation of a casual vacancy in the office of an auditor due to resignation of the auditor before the AGM in case of a company other government company. Under **section 139 (8)(i)** any casual vacancy in the office of an auditor arising as a result of his resignation, such vacancy can be filled by the Board of Directors within 30 days thereof and in addition the appointment of the new auditor shall also be approved by the company at a general meeting convened within 3 months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting.
- (ii) According to **section 139(5)** of the Companies Act, 2013, in the case of a

Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the Comptroller and Auditor-General of India shall, in respect of a financial year, appoint an auditor duly qualified to be appointed as an auditor of companies under this Act, within a period of one hundred and eighty days from the commencement of the financial year, who shall hold office till the conclusion of the annual general meeting.

In the given case as the total shareholding of the three institutions adds up to 30% of the subscribed capital of the company it is not a government company. Hence, the provisions applicable to non-government companies in relation to the appointment of auditors shall apply.

9: (i) **Tenure of Auditor:** Section 139(2) of the Companies Act, 2013, provides that listed companies and other prescribed class or classes of companies (except one person companies and small companies) shall not appoint or re-appoint-

- 1) an individual as auditor for more than one term of five consecutive years; and
- 2) an audit firm as auditor for more than two terms of five consecutive years.

Cooling off Period:

- (1) An individual auditor who has completed his term (i.e. one term of five consecutive years) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;
- (2) An audit firm which has completed its term (i.e. two terms of five consecutive years) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term.

In terms of the above provisions, Rupa Limited, which is a listed company, can appoint M/S VG & ASSOCIATES an audit firm, for a term of 5 years, i.e. from the conclusion of the AGM held on 30.09.2017 to the conclusion of the AGM to be held in the year 2022. Now, in terms of Section 139(2), since M/S VG & ASSOCIATES is an audit firm, it can be re-appointed as auditor for one more term of five years, i.e., upto the conclusion of the AGM to be held in 2027.

(ii) As per proviso to section 139(1) of the Companies Act, 2013, before the appointment is made, a written consent of the auditor to such appointment,

and a certificate from him or it that the appointment, if made, shall be in accordance with the conditions as may be prescribed, shall be obtained.

Certificate by Auditor: The Companies (Audit and Auditors) Rules, 2014 provides the content of the Certificate. According to this, the auditor appointed shall submit a certificate that –

- (A) the individual or the firm, as the case may be, is eligible for appointment and is not disqualified for appointment under the Act, the Chartered Accountants Act, 1949 and the rules or regulations made thereunder;
- (B) the proposed appointment is as per the term provided under the Act;
- (C) the proposed appointment is within the limits laid down by or under the authority of the Act;
- (D) the list of proceedings against the auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct.

The certificate shall also indicate whether the auditor satisfies the criteria provided in **section 141**.

Mr. Praveen Kumar, the proposed auditor has to give the above certificate to the company before accepting the appointment as the auditor of PKC Ltd.

10:

- (i) (1) As per **section 139** read with relevant Rule 6 of the Companies (Audit & Auditors) Rules, 2014, in case of an auditor (whether an individual or audit firm), the period for which the individual or the firm has held office as auditor prior to the commencement of the Act shall be taken into account for calculating the period of five consecutive years (individual) or ten consecutive years (audit firm), as the case may be.

As per the stated facts, SM & Co. are statutory auditors of M/s. Global Ltd. for past seven years as on 1.04.2018. Accordingly, SM & Co. can continue as statutory auditors of M/s. Global Ltd. for 3 more years i.e., till 31.03.2021.

- (2) **Section 139(2)** states that as on the date of appointment no audit firm having a common partner or partners of the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years.

Hence, as per the above provision, ML & Co. cannot be appointed as statutory auditor of M/s. Global Ltd. during cooling period because CA. M was the common partner in both the Audit firms. This prohibition is only for 5 years i.e. upto year 2026. After 5 years, M/s.

Global Ltd. is free to appoint ML & Co. as its statutory auditors.

- (ii) As per the provisions of **Section 141(3)(d)** of the Companies Act, 2013, a person who, or his relative or partner is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company shall not be appointed as an auditor of the Company.

However, the proviso to the said section states that the above restriction will not apply where such relative holds security or interest in any of the above companies of face value not exceeding ₹1,00,000 (as prescribed under the Company (Audit and Auditors) Rules, 2014).

In the given instance, CA. Shyam is not disqualified to be appointed as a statutory auditor in M/s Cool Ltd. due to the fact that the value of securities held by his brother (relative) is of face value of ₹95,000 in the said company, which is within the prescribed limit.

- 11:** According to **section 144** of the Companies Act, 2013, an auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be. But such services shall not include designing and implementation of any financial information system. In the said instance, the Board of directors of A Ltd. requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the company. As per the above provision said service is strictly prohibited.

In case the Statutory Auditor accepts the assignment, he will attract the penal provisions as specified in **Section 147** of the Companies Act, 2013.

In the light of the above provisions, we shall advise the Statutory Auditor not to take up the above stated assignment.

12:

1. As per **section 141 (3)(d)(i)** of the Companies Act, 2013, an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.

Further as per proviso to this Section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of ₹1,00,000.

In the present case, Mr. Aakash (relative of Mr. Prakash, an auditor), is having

securities of ABC Ltd. having face value of ₹70,000 (market value ₹1,10,000), which is within the limit as per requirement of under the proviso to **section 141 (3)(d)(i)**. Therefore, Mr. Prakash will not be disqualified to be appointed as an auditor of ABC Ltd.

2. As per **section 141(3)(d)(ii)**, an auditor is disqualified to be appointed as an auditor if he or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ₹5 Lacs.

In the instant case, Mr. Ramesh will be disqualified to be appointed as an auditor of MNP Ltd. as he indebted to MNP Ltd. for ₹6 lacs.

3. As per **section 141(3)(f)**, an auditor is disqualified to be appointed as an auditor if a person whose relative is a director or is in the employment of the company as a director or a key managerial personnel.

In the instant case, since Mrs. KVJ Spouse of Mr. Kumar (Chartered Accountant) is the store keeper (not a director or KMP) of PRC Ltd., hence Mr. Kumar will not be disqualified to be appointed as an auditor in the said company.

13. As per **section 139(6)** of the Companies Act, 2013, the first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within thirty days from the date of registration of the company and such auditor shall hold office till the conclusion of the first annual general meeting. Whereas **Section 139(1)** of the Companies Act, 2013 states that every company shall, at the first annual general meeting (AGM), appoint an individual or a firm as an auditor of the company who shall hold office from the conclusion of 1st AGM till the conclusion of its 6th AGM and thereafter till the conclusion of every sixth AGM. As per **section 139(2)**, no listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint an individual as auditor for more than one term of five consecutive years. As per the given provisions following are the answers: (i) Appointment of Mr. Tel by the Board of Directors is valid as per the provisions of **section 139(6)**. (ii) Appointment of Mr. Tel at the first Annual General Meeting is valid due to the fact that the appointment of the first auditor made by the Board of Directors is a separate appointment and the period of such appointment is not to be considered, while Mr. Tel is appointed in the first Annual General Meeting, which is for the period from the conclusion of the first Annual General Meeting to the conclusion of the sixth Annual General Meeting. (iii) As per law, auditor appointed shall hold office from the conclusion of 1st AGM till

the conclusion of its 6th AGM i.e., for 5 years. Accordingly, here appointment of Mr. Bell, which is for 4 years, is not in compliance with the said legal provision, so his appointment is not valid.

14. As per the provisions of **Section 141 (3)** of the Companies Act, 2013 read with Rule 10 of Companies (Audit and Auditors) Rule 2014, a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008 shall not be qualified for appointment as auditor of a company.

In the given case, proposal of SR Ltd. to appoint 'R & Associates LLP' as auditors of the company is valid as the restriction marked for appointment as auditor for a body corporate is not applicable to Limited Liability Partnership.

15.

- (i) As per **section 141 (3)(d)(i)** an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.

In this case Mr. Shepra, a practicing Chartered Accountant holding shares in X Limited cannot be appointed as auditor of X Limited.

- (ii) **Section 141(3)** of the Companies Act, 2013 read with Rule 10 of the Companies (Audit and Auditors) Rules, 2014 provides that a person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company, shall not be eligible for appointment as an auditor of a company.

The term business relationship shall be construed as any transaction entered into for a commercial purpose except –

- commercial transactions which are in the nature of professional services permitted to be rendered by an auditor or audit firm under the Act and the Chartered Accountant Act, 1949 and the rules or the regulations made under those Act;
- commercial transactions which are in the ordinary course of business of the company at arm's length price – like sale of products or services to the auditors, as customer, in the ordinary course of business, by companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses.

In the given question, since the transaction is at arm's length price so Mr. Showik can

be appointed as an auditor of Primus Hotels Limited.

(ICAI Module, May'2022 Mock Test)

16. As per **section 139(6)** of the Companies Act, 2013, the first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within thirty days from the date of registration of the company and such auditor shall hold office till the conclusion of the first annual general meeting.

Whereas **Section 139(1)** of the Companies Act, 2013 states that every company shall, at the first annual general meeting (AGM), appoint an individual or a firm as an auditor of the company who shall hold office from the conclusion of 1st AGM till the conclusion of its 6th AGM and thereafter till the conclusion of every sixth AGM.

As per **section 139(2)**, no listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint an individual as auditor for more than one term of five consecutive years.

As per the given provisions following are the answers:

- (i) Appointment of Mr. Guru (as first auditor) by the Board of Directors is valid as per the provisions of **section 139(6)**.
- (ii) Appointment of Mr. Guru at the first Annual General Meeting is valid due to the fact that the appointment of the first auditor made by the Board of Directors is a separate appointment and the period of such appointment is not to be considered, while Mr. Guru is appointed in the first Annual General Meeting, which is for the period from the conclusion of the first Annual General Meeting to the conclusion of the sixth Annual General Meeting.

(ICAI Module, May'2022 Mock Test)

17.

- (i) As per **section 141 (3)(d)(i)** of the Companies Act, 2013, read with Rule 10 of the Companies (Audit and Auditors) Rules, 2014, a person is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.

Hence, Maninder is disqualified to be appointed as an auditor in Gajendra Ltd. as he holds securities in the Narender Ltd. (associate company of Gajendra Ltd.)

- (ii) As per **section 141(3)(d)(ii)** a person is disqualified to be appointed as an auditor if he, or his relative or partner is indebted to the company, or its subsidiary, or its

holding or associate company or a subsidiary of such holding company, in excess of ₹ 5 Lacs.

Hence, Dinesh is not disqualified as the limit of indebtedness for the auditor or his relative is exceeding Rs.5,00,000 and in this case Dinesh's son owes only ₹ 99,000.

- (iii) As per **section 141(3)(h)**, a person who has been convicted by a court of an offence involving fraud and a period of 10 years has not elapsed from the date of such conviction, shall not be qualified to be appointed as an auditor of a company.

Though Rajender was convicted by a court for an offence involving fraud but as a period of 10 years have elapsed, hence, Rajendra is qualified to be appointed as statutory auditor of Gajendra Ltd.

(ICAI Module, May'2022 Mock Test)

18. As per the provisions of **section 16** of the General Clauses Act, 1897, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power.

Mr. Munim was appointed in board meeting of Sabarwal Construction Private Limited to appoint five employees for accounts department of company. Mr. Munim appointed five employees. After one month, he issued the order of dismissal to one of those five employees. That employee filed an application in the court challenging the validity of dismissal order with the words that Mr. Munim was authorised only for appointment of employees not for dismissal.

On the basis of above provisions and facts of the case, Mr. Rupal was not correct with his words because as per the General Clauses Act, 1897, power to appoint includes power to suspend or dismiss. Hence, Mr. Munim has power to dismiss Mr. Rupal.

(ICAI Module, May'2022 Mock Test)

19. **Section 141(3)(c)** of the Companies Act, 2013, prescribes that any person who is a partner or in employment of an officer or employee of the company will be disqualified to act as an auditor of a company. **Sub-section (4)** of **section 141** provides that an auditor who becomes subject, after his appointment, to any of the disqualifications specified in **sub-sections (3)** of **section 141**, he shall be deemed to have vacated his office as an auditor.

In the present case, Mr. Raman, an auditor of Surya Distributors Ltd., joined as partner with consultancy firm where Mr. Som is also a partner and Mr. Som is also

the Finance executive of Surya Distributors Ltd. Hence, Mr. Raman has attracted clause (3)(c) of **section 141** and, therefore, he shall be deemed to have vacated office of the auditor of Surya Distributors Ltd.

(Nov'21 2 Marks)

20. **Section 139(6)** of the Companies Act, 2013 provides that “the first auditor or auditors of a company shall be appointed by the Board of directors within 30 days from the date of registration of the company”.

In the instant case, the appointment of Mr. Aakash, a practicing Chartered Accountant as first auditor by the Managing Director of ABC Ltd. by himself is in violation of **section 139(6)** of the Companies Act, 2013, which requires the Board of Directors to appoint the first auditor of the company.

In view of the above, the Managing Director of ABC Ltd. cannot appoint the first auditor of the company himself.

(Nov'21 2 Marks)

21. (i) **First auditor**

(1) According to **section 139(7)** of the Companies Act, 2013, in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments, the first auditor shall be appointed by the Comptroller and Auditor General of India (CAG) within 60 days from the date of registration of the company.

(2) In case the CAG does not appoint first auditor within the said period, the Board of Directors of the company shall appoint such auditor within the next 30 days.

(3) Further, in the case of failure of the Board to appoint such auditor within the next 30 days, it shall inform the members of the company who shall appoint such auditor within the 60 days at an Extraordinary General Meeting, who shall hold office till the conclusion of the first annual general meeting.

(ii) **Casual vacancy**

According to **section 139(8)** of the Companies Act, 2013,

(1) In the case of a company whose accounts are subject to audit by an auditor appointed by the CAG, casual vacancy of an auditor shall be filled by the CAG within 30 days.

(2) In case the CAG does not fill the vacancy within the said period, the Board of

Directors shall fill the vacancy within next 30 days.

XYZ Ltd. can follow the above provisions for filling of its casual vacancy of its auditor.

In case, XYZ Ltd. would have been a company other than a government company, the following provisions would be applicable for filling of its casual vacancy:

- (a) The Board may fill any casual vacancy in the office of an auditor within 30 days but where such vacancy is caused by the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board.
- (b) Any auditor appointed in a casual vacancy shall hold office until the conclusion of the next annual general meeting.

(Nov'21 5 Marks)

22. According to **Section 139(2)** of the Companies Act, 2013, no listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint—

- (a) an individual as auditor for more than one term of five consecutive years; and
- (b) an audit firm as auditor for more than two terms of five consecutive years.

Provided that –

- (i) an individual auditor who has completed his term under clause (a) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;
- (ii) an audit firm which has completed its term under clause (b), shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term.

Provided further that as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years.

As per Explanation II in Rule 6(3) of the Companies (Audit and Auditors) Rules, 2014, if a partner, who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of chartered accountants, such other firm shall also be ineligible to be appointed for a period of five years.

Here, Mr. Govind Ram has retired from P & Associates and joined Gupta & Gupta Firm. Mr. Govind Ram was a partner, in- charge Associates (and certifies the financial statement of the company) in P & Associates. He retires from P &

Associates and joins Gupta & Gupta firm.

As per the facts of the question and provisions of law, Gupta & Gupta Firm will also be ineligible, to be appointed as auditor of Kanha Limited (listed company) for a period of 5 years. (Nov'22 RTP)

23. **Section 140** of the Companies Act, 2013 prescribes procedure for removal of auditors. Under section 140 (1) the auditor appointed under **section 139** may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner.

From this sub section it is clear that the approval of the Central Government shall be taken first and thereafter the special resolution of the company should be passed. Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.

Therefore, in terms of **section 140 (1)** of the Companies Act, 2013 read with Rule 7 of the Companies (Audit & Auditors) Rules, 2014, the following steps should be taken for the removal of an auditor before the completion of his term:

The application to the Central Government for removal of auditor shall be made in Form ADT-2 and accompanied with fees as provided for this purpose under the Companies (Registration Offices and Fees) Rules, 2014.

The application shall be made to the Central Government within thirty days of the resolution passed by the Board.

The company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution.

Hence, in the instant case, the decision of ABC Ltd. to remove XYZ & Associates, auditors of the company at the general meeting held on 25-5-2022 subject to approval of Central Government is not valid. The Approval of the Central Government shall be taken before passing the special resolution in the general meeting.

(Nov'22 Mock Test)

24. Rule 6(1) read in conjunction with rule 6(2) of the Companies (Audit & Auditors) Rules, 2014 provides that in case where Audit committee not required to be constituted under section 177, but constituted by company, then also such audit committee shall recommend to the Board, the name of an individual auditor or of an audit firm who may replace the incumbent auditor on expiry of the term of such incumbent; but in such cases board may or may not consider the recommendation of said audit committee.

Hence, act of audit committee and board at MFL is legally valid.

(MTP May'23)

25. Section 139(6) of the Companies Act, 2013 provides that “the first auditor or auditors of a company shall be appointed by the Board of directors within 30 days from the date of registration of the company”. Hence in the instant case, the appointment of Mr. Ganpati by the Managing Director himself is invalid due to violation of Section 139(6) of the Companies Act, 2013.

26. The Central Government may apply to the Tribunal in respect of such matter highlighting that the auditors miserably failed to fulfill their duties as auditors of the company. If the Tribunal is satisfied that the auditors were involved in the fraud with the company, the Tribunal may direct the company to change its auditors and those auditors shall not be eligible to be appointed as auditor of any company for 5 years and also liable for action under section 447 of the Companies Act 2013.

27. Section 141(3)(c) of the Companies Act, 2013 prescribes that any person who is a partner or in employment of an officer or employee of the company will be disqualified to act as an auditor of a company. Sub-section (4) of Section 141 provides that an auditor who becomes subject, after his appointment, to any of the disqualifications specified in sub-sections (3) of Section 141, shall be deemed to have vacated his office as an auditor.

In the present case, Anil is auditor of M/s Laxman Limited and any employee of Laxman Limited cannot become the Partner of the firm where Anil is a Partner. In case that happens, he/the firm shall be deemed to have vacated office of the auditor of M/s Laxman Limited.

28. As per section 141 (3)(d) (i) an auditor is disqualified to be appointed as an auditor if he, or his partner is holding any security or interest in the company or its subsidiary,

or of its holding or associate company or a subsidiary of such holding company. In the present case, Mr. Ashish is holding security of ₹ 900 in XYZ Ltd, therefore he is not eligible for appointment as an Auditor of “XYZ Ltd”.

29. As per **section 141 (3)(d)(i)**, an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. Further as per proviso to this Section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of ₹ 1,00,000. In the present case, Mr. Q. (relative of Mr. P, an auditor), is having securities of ₹ 90,000 face value in ABC Ltd., which is as per requirement of proviso to **section 141(3)(d)(i)**. Therefore, Mr. P will not be disqualified to be appointed as an auditor of ABC Ltd.

30. As per **section 141(3)(d)(i)** an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. Further as per proviso to this Section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of ₹ 1,00,000. In the instant case, BC & Co, will be disqualified for appointment as an auditor of MWF Ltd as the relative of Mr. C i.e. partner of BC & Co., is holding the securities in MWF Ltd which is exceeding the limit mentioned in proviso to **section 141(3)(d)(i)** .

31. In the instant case, Mr. A is holding appointment in 4 companies, Mr. B is having appointment in 6 companies and Mr. C is having appointment in 10 companies. In aggregate all three partners are having 20 audits.

As per **section 141(3)(g)** of the Companies Act, 2013, a person shall not be eligible for appointment as an auditor if he is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such person or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies other than one person companies, dormant companies, small companies and private companies having paid-up share capital less than ₹ 100 crore.

As per **section 141 (3)(g)**, this limit of 20 company audits is per person. In the case of an audit firm having 3 partners, the overall ceiling will be $3 \times 20 = 60$ companies' audit. Sometimes, a Chartered Accountant may be a partner in a number of auditing

firms. In such a case, all the firms in which he is partner or proprietor will be together entitled to 20 company audits only on his account.

Therefore, ABC & Co. can hold appointment as an auditor of 40 more companies:

Total Number of audits for which the firm would be eligible = $20 \times 3 = 60$ Number of audits already taken by all the partners

In their individual capacity = $4 + 6 + 10 = 20$

Remaining number of audits available to the firm = 40

With reference to above provisions, an auditor can hold more appointment as auditor (i.e. ceiling limit as per **section 141(3)(g)** - already holding appointments as an auditor). Hence

i. Mr. A can hold: $20 - 4 = 16$ more audits.

ii. Mr. B can hold $20 - 6 = 14$ more audits and

iii. Mr. C can hold $20 - 10 = 10$ more audits

32. In the given case, the requirement of the auditors regarding additional information i.e. Directors report and MD&A without which they have not been able to conclude the audit doesn't look valid. The auditor is required to audit the financial statements and express an opinion on the same. The auditor does not audit these additional information.

Hence the auditor should conclude the work without delaying because of this additional information.

33. As per **Section 143(12)** of the Companies Act, 2013, the auditor is required to report to the Audit Committee or to the Board of Directors and, where applicable, to the Central Government an offence of fraud in the company by its officers or employees only if he is the first person to identify/note such instance in the course of performance of his duties as an auditor. In this case, the suspicious transactions have been identified by the management first and information about the same has been given by the management to the auditor. Accordingly, the auditor should report about this matter to the Audit Committee/ Board of Directors but the auditor would not be required to report the same to Central Government.

34. Answer to first part is yes, while no in case of second, because as per **section 146** of the Companies Act 2013, the auditor shall, unless otherwise exempted by the company, attend either by himself or through his authorized representative, who

shall also be qualified to be an auditor, any general meeting.

35. No, because as per proviso to **section 148(3)**, no person (or firm including LLP) appointed under **section 139** as an auditor of the company shall be appointed for conducting the audit of cost records or vice-versa.

36. (i) **Section 139(6)** of the Companies Act, 2013 lays down that the first auditor of a company shall be appointed by the Board of Directors within 30 days of the registration of the company.

Section 139 (6) continues to provide further that if the Board of Directors fails to appoint such auditor, it shall inform the members of the company, who shall within ninety days at an extraordinary general meeting appoint such auditor and such auditor shall hold office till the conclusion of the first annual general meeting.

From the above provisions of law if the Board of Directors fails to appoint the first auditors within the stipulated 30 days, it shall take the following steps:

- a. Inform the members of the Company;
- b. Immediately take steps to convene an extra ordinary general meeting not later than 90 days;
- c. Members shall at that extra ordinary meeting appoint the first auditors of the company;
- d. The first auditors so appointed shall hold office upto the conclusion of the first AGM of the company.

(ii) **Section 140** of the Companies Act, 2013 prescribes certain procedure for removal of auditors. Under **section 140 (1)** the auditor appointed under **section 139** may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner. From this sub section it is clear that the approval of the Central Government shall be taken first and thereafter the special resolution of the company should be passed.

Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.

Therefore, in terms of **section 140 (1)** of the Companies Act, 2013 read with Rule 7 of the Companies (Audit & Auditors) Rules, 2014, following steps should be taken

for the removal of an auditor before the completion of his term:

The application to the Central Government for removal of auditor shall be made in Form ADT-2 and accompanied with fees as provided for this purpose under the Companies (Registration Offices and Fees) Rules, 2014.

The application shall be made to the Central Government within thirty days of the resolution passed by the Board.

The company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution.

37. As per the **section 2(45)** of the Companies Act, 2013, the holding of 25% shares of AMC Ltd. by the Government of Rajasthan does not make it a government company. Hence, it will be treated as a non-government company. ®

Under **section 139** of the Companies Act, 2013, the appointment of an auditor by a company vests generally with the members of the company except in the case of the first auditors and in the filling up of the casual vacancy not caused by the resignation of the auditor, in which case, the power to appoint the auditor vests with the Board of Directors. The appointment by the members is by way of an ordinary resolution only and no exceptions have been made in the Act whereby a special resolution is required for the appointment of the auditors.

Therefore, the contention of Mr. Sanjay is not tenable. The appointment is valid under the Companies Act, 2013.

38. According to **section 141(3)(d)(i)** of the Companies Act, 2013, a person who, or his relative or partner holds any security of the company or its subsidiary or of its holding or associate company a subsidiary of such holding company, which carries voting rights, such person cannot be appointed as auditor of the company. Provided that the relative of such person may hold security or interest in the company of face value not exceeding 1 lakh rupees as prescribed under the Companies (Audit and Auditors) Rules, 2014.

In the case Mr. Naresh, Chartered Accountants, did not hold any such security. But Mrs. Kamala, his wife held equity shares of EF Limited of face value ₹ 1 lakh, which is within the specified limit.

Further **Section 141(4)** provides that if an auditor becomes subject, after his appointment, to any of the disqualifications specified in sub-**section 3** of **section**

141, he shall be deemed to have vacated his office of auditor. Hence, Naresh & Company can continue to function as auditors of the Company even after 15 October 2022 i.e. after the investment made by his wife in the equity shares of EF Limited.

39.

- (i) The appointment and re-appointment of auditor of a Government Company or a government controlled company is governed by the provisions of section 139 of the Companies Act, 2013 which are summarized as under:

The first auditor shall be appointed by the Comptroller and Auditor General of India within 60 days from the date of incorporation and in case of failure to do so, the Board shall appoint auditor within next 30 days and on failure to do so by Board of Directors, it shall inform the members, who shall appoint the auditor within 60 days at an extraordinary general meeting (EGM), such auditor shall hold office till conclusion of first Annual General Meeting.

In case of subsequent auditor for existing government companies, the Comptroller & Auditor General of India shall appoint the auditor within a period of 180 days from the commencement of the financial year and the auditor so appointed shall hold his position till the conclusion of the Annual General Meeting.

- (ii) In the given case as the total shareholding of the XYZ Bank is just 18% of the subscribed capital of the company, it is not a government company. Hence the provisions applicable to non-government companies in relation to the appointment of auditors shall apply.

The auditor shall be appointed as follows:

- (1) The company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting.
- (2) Before such appointment of auditor is made, the written consent of the auditor to such appointment, and a certificate from him or firm of auditors that the appointment, if made, shall be obtained from the auditor:

Further, the company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Registrar within 15 days of the meeting in which the auditor is appointed.

40. As per section 141(3)(d)(i), an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holds any security of or interest in the company or its

subsidiary, or of its holding or associate company or a subsidiary of such holding company.

In the present case, Mr. Abhi is holding security of ₹ 1000 in the Abhiman Ltd, therefore, he is not eligible for appointment as an auditor of Abhiman Ltd.

41.

- (i) As per **section 141 (3)(d)(i)** of the Companies Act, 2013, an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. Further as per proviso to this Section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of ₹ 1,00,000. In the present case, Mr. Aakash (relative of Mr. Prakash, an auditor), is having securities of ABC Ltd. having face value of ₹ 70,000 (market value ₹ 1,10,000), which is within the limit as per requirement of under the proviso to **section 141 (3)(d)(i)**. Therefore, Mr. Prakash will not be disqualified to be appointed as an auditor of ABC Ltd.
- (ii) As per **section 141(3)(d)(ii)**, an auditor is disqualified to be appointed as an auditor if he or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of rupees 5 Lakh. In the instant case, Mr. Ramesh will be disqualified to be appointed as an auditor of MNP Ltd. as he indebted to MNP Ltd. for rupees 6 Lakh.
- (iii) As per **section 141(3)(f)**, an auditor is disqualified to be appointed as an auditor if a person whose relative is a director or is in the employment of the company as a director or a key managerial personnel. In the instant case, since Mrs. KVJ Spouse of Mr. Kumar (Chartered Accountant) is the store keeper (not a director or KMP) of PRC Ltd., hence Mr. Kumar will not be disqualified to be appointed as an auditor in the said company.

42. According to **section 144** of the Companies Act, 2013, an auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be. But such services shall not include designing and implementation of any financial information system.

In the said instance, the Board of directors of A Ltd. requested its Statutory Auditor

to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the company. As per the above provision said service is strictly prohibited.

In case the Statutory Auditor accepts the assignment, he will attract the penal provisions as specified in **Section 147** of the Companies Act, 2013.

In the light of the above provisions, we shall advise the Statutory Auditor not to take up the above stated assignment.



ANSWER TO MCQs

1	A	2	A	3	B	4	A	5	B
6	A	7	D	8	D	9(1)	B	9(2)	C
9(3)	B	10	D	11	C	12	B	13	C
14	D	15	C	16	A				



COMPANIES INCORPORATED OUTSIDE INDIA

QUESTIONS

Question 1:

Qinghai Huading Industrial Company Ltd., incorporated in China established a place of business at Mumbai. The Charter / Documents constituting the Company is in Mandarin Chinese (Chinese local language). It is required inter alia to file a certified translation of above documents with the Registrar of Companies in India. Who can authenticate the translated charter/ documents as per the provisions of the Companies Act, 2013 and Rules made there under governing foreign companies in case such translation is made at Mumbai?

(May 2018)(2 Marks)

Question 2:

In the light of the provisions of the Companies Act, 2013 explain whether the following Companies can be considered as a 'Foreign Company':

- (i) A Company which has no place of business established in India, yet, is doing online business through telemarketing in India.
- (ii) A Company which is incorporated outside India employs agents in India but has no place of business in India.
- (iii) A Company incorporated outside India having shareholders who are all Indian citizens.

(8 Marks) (Nov 18)

Question 3:

Ronnie Coleman Ltd., a foreign Company failed to deliver some documents to the Registrar of Companies as required under Section 380 of the Companies Act, 2013. State the provisions of penalty prescribed under the Act, which can be levied on Ronnie Coleman Ltd. for its failure to deliver the documents.

(Nov 18)

Question 4

In the light of the provisions of the Companies Act, 2013, examine whether the following Companies can be considered as a 'Foreign Company':

- (i) M/s Red Stone Limited is a Company registered in Singapore. The Board of Directors meets and executes business decisions at their Board Meeting held in India.
- (ii) M/s Blue Star Public Company Limited registered in Thailand has authorized Mr. 'Y' in India to find customers and to enter contracts with them on behalf of the Company.
- (iii) M/s Xex Limited Liability Company registered in Dubai has installed its main server in Dubai for maintaining office automation software by Cloud Computing for its client in India.

(8 Marks) (Nov 19)



MULTIPLE CHOICE QUESTIONS (HOMEWORK)

1. Filing of details of Foreign Co. u/s 380 are in form:
(a) Form FC 3 (b) Form FC 4
(c) Form FC 1 (d) Form FC 2
2. RMN Ltd., a Foreign company has made alteration in the documents delivered to the Registrar, do they need to file the revised documents with the ROC and within how many days?
(a) Within 30 days In Form FC 2 (b) Within 15 days In Form FC 1
(c) Within 30 days In Form FC 1 (d) Within 15 days In Form FC 2
3. A ltd is a Foreign Company which can issue prospectus to Indian Public if the Prospectus is:
(a) i. Signed by the Chairman & 1 director of the Company. ii. Approved by the resolution of the MD. iii. Delivered to ROC for registration. iv. Stating that it is being delivered to ROC & consent is rightfully obtained u/s 388 as stated above
(b) i. Signed by the Chairman & 2 other directors of the Company ii. Approved by the resolution of the BOD. iii. Delivered to ROC for registration iv. Stating that it is being delivered to ROC & consent is rightfully obtained u/s 388 as stated above
(c) i. Signed by the Chairman & 2 other directors of the Company
ii. Approved by the resolution of the MD. iii. Delivered to ROC for registration
iv. Stating that it is being delivered to ROC & consent is rightfully obtained u/s 388 as stated above
(d) i. Signed by the Chairman & 1 Managing Director and 1 CS of the Company. ii. Approved by the resolution of the BOD. iii. Delivered to ROC for registration iv. Stating that it is being delivered to ROC & consent is rightfully obtained u/s 388 as stated above
4. Z ltd ,a foreign company shall, within how many days of the establishment of its place of business (POB) in India, deliver to the Registrar for registration the documents required –
(a) Within 60 days (b) Within 90 days
(c) Within a month (d) within 30 days

5. X Ltd is an existing Foreign Company who has not filed the documents and particulars u/s 592(1) of the Companies Act, 1956 shall file under following section of the Companies Act, 2013.
- (a) Sec 382 (b) Sec 381
(c) Sec 380 (d) Sec 383
6. Under the Companies Act, 2013 a foreign LLP shall be considered as :
- (a) Subsidiary of Indian Company (b) Indian Company
(c) Foreign LLP (d) None of the above
7. LIT Ltd, incorporated outside India, is a company having place of business in Canada and 45 % of its capital is held by Mr. Pankaj, an Indian citizen, state the laws applicable to LIT Ltd
- (a) Chapter of Foreign Company
(b) Companies act, 2013 considering it as Deemed Indian Company
(c) Companies act 2013 (d) None of the above
8. If minimum 50% of Paid up capital of Foreign Company is held by then provisions of Companies Act, 2013 shall NOT apply:
- (a) One or more companies in India; or/&
(b) One or more bodies corporate in India
(c) One or more citizen or citizens of India; or/&
(d) None of the above
9. IPL Ltd, incorporated outside India, having place of business in India and 60% of its Paid Up capital is held by one or more Indian citizens. State the type of company.
- (a) Deemed Indian Company (b) Indian Company
(c) Foreign company (d) None of the above
10. PQR Ltd, incorporated outside India, having place of business in India and 45 % of its Paid up capital is held by Indian Body Corporate. State the type of company and laws applicable to it.
- (a) Deemed Indian Company Companies act, 2013
(b) Indian Company, Companies act 2013
(c) Foreign company, Chapter of Foreign Company
(d) None of the above

11. Sec 387 related to 'Dating of prospectus and particulars to be contained therein' for a Foreign Company shall not be applicable for issue of prospectus of/ for:
- (a) For securities of the same nature which are already issued by company and are listed on recognized stock exchange
 - (b) Securities issued for formation of company or future formation of company
 - (c) To existing shareholders or debenture holders irrespective of whether they renounce the shares or not
 - (d) (b) & (c)
12. LYT Ltd., a Foreign Company contravened the provisions of chapter on 'Company Registered outside India' and they seek to know the consequences of the same.
- (a) Fine, which shall not be less than Rs. 1 lakh but which may extend to Rs. 5 lakh; and for continuing offence Additional fine which may extend to Rs. 50 thousand for every day. Every officer in default:
 - i. Imprisonment which may extend to 6 months or;
 - ii. Fine which shall not be less than Rs. 25 thousand but which may extend to Rs. 3 lakh or;
 - iii. Both.
 - (b) Fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 3 lakh; and for continuing offence Additional fine which may extend to Rs. 50 thousand for every day Every officer in default:
 - i. Imprisonment which may extend to 6 months or;
 - ii. Fine which shall not be less than Rs. 25 thousand but which may extend to Rs. 3 lakh or;
 - iii. Both.
 - (c) Fine - not less than Rs. 1 lakh but which may extend to Rs. 5 lakh; and for continuing offence Additional fine which may extend to Rs. 50,000 for every day Every officer in default:
 - i. Imprisonment which may extend to 6 months or;
 - ii. Fine which shall not be less than Rs. 25,000 but which may extend to Rs. 5 lakh or;
 - iii. Both.
 - (d) Fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 3 lakh; and for continuing offence Additional fine which may extend to Rs. 50,000 for every day Every officer in default:
 - i. Imprisonment which may extend to 6 months or;

- ii. Fine which shall not be less than Rs. 25,000 but which may extend to Rs. 5 lakh or;
- iii. Both.

13. If minimum 50% of Paid up capital of Foreign Company is held by following then provisions of Companies Act, 2013 shall not apply to: (a) One or more citizen or citizens of India; or/&
(b) One or more bodies corporate in India
(c) One or more companies in India; or/&
(d) None of the above
14. LIFE Ltd, incorporated outside India, having place of business in India and 57% of its Paid Up capital is held by one or more Indian citizens. State the type of company.
(a) Foreign company (b) Deemed Indian Company
(c) Indian Company (d) None of the above
15. TILT Ltd is a company incorporated in India having place of business in Mexico of which 45 % capital is held by Mr. Pankaj, an Indian citizen, state the laws applicable to LIT ltd. (a) Companies act, 2013 considering it as Deemed Indian Company
(b) Companies Act, 2013
(c) Chapter of Foreign Company
(d) None of the above
16. JHU Ltd. a Foreign Company, contravened provisions of chapter "Company Incorporated outside India". What is the consequence of such contravention?
(a) Fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 3 lakh; and for continuing offence Additional fine which may extend to Rs. 50 thousand for every day
(b) Fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 3 lakh
(c) Fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 5 lakh
(d) Fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 5 lakh; and for continuing offence Additional fine which may extend to Rs. 50 thousand for every day

17. LYT Ltd., a Foreign Company failed to comply with the provisions of chapter on 'Company Registered outside India'. Company is of the opinion that the acts and contracts entered into by it shall not be affected. Further, since it was in a dispute with XYZ Pvt. Ltd. it seeks to file a suit against it against it. Comment
- (a) Since the Company has failed to comply with the Chapter, the acts and contracts entered into by the Company shall be invalid. However, it can file suit
 - (b) Since the Company has failed to comply with the Chapter, its acts shall be construed invalid and it cannot file any suit as well.
 - (c) Since the Company has failed to comply with the Chapter, it cannot file a suit until compliance is made however the acts and contracts entered into by the Company shall be valid
 - (d) Though the Company has failed to comply with the Chapter, it can file suits and also the acts and contracts entered into by the Company shall be valid.
18. Any process, notice, or other document required to be served on a foreign company shall be deemed to be sufficiently served
- (a) if addressed to any person whose name & address have been delivered to the ROC
 - (b) left at, or sent by post to, the address which has been so delivered to the Registrar
 - (c) If sent by electronic mode
 - (d) Any of the above
19. Marine Ltd, incorporated outside India, having place of business in India and 39 % of its Paid up capital is held by Indian Body Corporate. State the type of company and laws applicable to it.
- (a) Indian Company, Companies act, 2013
 - (b) Deemed Company, Companies act 2013
 - (c) Foreign company, Chapter of Foreign Company
 - (d) None of the above
20. HUL Ltd. is a Foreign Company and seeks to know which of the following sections shall apply. Comment
- (a) Sec 135 related to Corporate Social Responsibility subject to such exceptions, modifications, adaptations

- (b) Section 71 related to Debentures
- (c) Section 128 relating to Books of Accounts
- (d) All of the above

21. Filing of details of Foreign Co. u/s 380 are in form:

- (a) Form FC 4
- (b) Form FC 1
- (c) Form FC 2
- (d) Form FC 3

22. Under the Companies Act, 2013 a shall be considered as foreign LLP:

- (a) Subsidiary of Indian Company
- (b) Indian Company
- (c) Foreign LLP
- (d) None of the above

23. SIM Ltd. is a Foreign Company and seeks to know which of the following sections shall apply. Comment.

- (a) Sec 135 related to Corporate Social Responsibility subject to such exceptions, modifications, adaptations
- (b) Section 71 related to Debentures
- (c) Section 128 relating to Books of Accounts
- (d) All of the above

24. Any process, notice, or other document required to be served on a foreign company shall be deemed to be sufficiently served:

- (a) If addressed by electronic mode
- (b) left at, or sent by post to, the address which has been so delivered to the Registrar
- (c) if addressed to any person whose name & address have been delivered to the ROC
- (d) Any of the above

25. Sec 387 related to 'Dating of prospectus and particulars to be contained therein' for a Foreign Company shall not be applicable for issue of prospectus of/ for:

- (a) For securities of the same nature which are already issued by company and are listed on recognized stock exchange
- (b) Securities issued for formation of company or future formation of company
- (c) To existing shareholders or debenture holders irrespective of whether they renounce the shares or not
- (d) (b) & (c)

26. A Ltd is a Foreign Company which can issue prospectus to Indian Public on if the Prospectus is:.

- (a) i. Signed by the Chairman & 1 Managing Director and 1 CS of the Company.
- ii. Approved by the resolution of the BOD.
- iii. Delivered to ROC for registration
- iv. Stating that it is being delivered to ROC & consent is rightfully obtained u/s 388 as stated above
- (b) i. Signed by the Chairman & 2 other directors of the Company
- ii. Approved by the resolution of the MD.
- iii. Delivered to ROC for registration
- iv. Stating that it is being delivered to ROC & consent is rightfully obtained u/s 388 as stated above
- (c) i. Signed by the Chairman & 1 director of the Company.
- ii. Approved by the resolution of the MD.
- iii. Delivered to ROC for registration.
- iv. Stating that it is being delivered to ROC & consent is rightfully obtained u/s 388 as stated above
- (d) i. Signed by the Chairman & 2 other directors of the Company
- ii. Approved by the resolution of the BOD.
- iii. Delivered to ROC for registration
- iv. Stating that it is being delivered to ROC & consent is rightfully obtained u/s 388 as stated above

27. SHTA Ltd., a Foreign company has made alteration in the documents delivered to the Registrar; do they need to file the revised documents with the ROC and within how many days?.

- (a) Within 15 days In Form FC 2
- (b) Within 30 days In Form FC 1
- (c) Within 15 days In Form FC 1
- (d) Within 30 days In Form FC 2

28. EMNM Ltd, a foreign company shall, within how many days of the establishment of its place of business (POB) in India, deliver to the Registrar for registration the documents required –

- (a) Within a month
- (b) Within 30 days
- (c) Within 90 days
- (d) Within 60 days

29. HUM Ltd. a Foreign Company, contravened provisions of chapter “Company Incorporated outside India”. What is the consequence of such contravention?

(a)	Fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 3 lakh; and for continuing offence Additional fine which may extend to Rs. 50 thousand for every day
(b)	Fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 5 lakh; and for continuing offence Additional fine which may extend to Rs. 50 thousand for every day
(c)	Fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 5 lakh
(d)	Fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 3 lakh;

30. X Ltd is an existing Foreign Company who has not filed the documents and particulars u/s 592(1) of the Companies Act, 1956 shall file under following section of the Companies Act, 2013.

(a) Sec 383	(b) Sec 380
(c) Sec 381	(d) Sec 382

31. YNT Ltd., a Foreign Company contravened the provisions of chapter on ‘Company Registered outside India’ and they seek to know the consequences of the same.

(a)	Fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 3 lakh; and for continuing offence Additional fine which may extend to Rs.50 thousand for every day Every officer in default:
i.	Imprisonment which may extend to 6 months or;
ii.	Fine which shall not be less than Rs. 25 thousand but which may extend to Rs. 3 lakh or;
iii.	Both
(b)	Fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 3 lakh; and for continuing offence Additional fine which may extend to Rs. 50,000 for every day Every officer in default:
i.	Imprisonment which may extend to 6 months or;
ii.	Fine which shall not be less than Rs. 25,000 but which may extend to Rs. 5 lakh or;
iii.	Both. (c) Fine - not less than Rs. 1 lakh but which may extend to Rs. 5 lakh; and for continuing offence Additional fine which may extend to Rs.

50,000 for every day Every officer in default:

- i. Imprisonment which may extend to 6 months or;
- ii. Fine which shall not be less than Rs. 25,000 but which may extend to Rs. 5 lakh or;
- iii. Both. (d) Fine, which shall not be less than Rs. 1 lakh but which may extend to Rs. 5 lakh; and for continuing offence Additional fine which may extend to Rs. 50 thousand for every day. Every officer in default:
 - i. Imprisonment which may extend to 6 months or;
 - ii. Fine which shall not be less than Rs. 25 thousand but which may extend to Rs. 3 Lakh or;
 - iii. Both.

32. LYT Ltd., a Foreign Company failed to comply with the provisions of chapter on 'Company Registered outside India'. Company is of the opinion that the acts and contracts entered into by it shall not be affected. Further, since it was in a dispute with ZYS Pvt. Ltd. it seeks to file a suit against it against it. Comment

- (a) Since the Company has failed to comply with the Chapter, the acts and contracts entered into by the Company shall be invalid. However, it can file suit.
- (b) Since the Company has failed to comply with the Chapter, its acts shall be construed invalid and it cannot file any suit as well.
- (c) Since the Company has failed to comply with the Chapter, it cannot file a n y suit until compliance is made however the acts and contracts entered into by the Company shall be valid.
- (d) Though the Company has failed to comply with the Chapter, it can file suits and also the acts and contracts entered into by the Company shall be valid.



ANSWERS

Answer 1:

According to Rule 10 of the Companies (Registration of Foreign Companies) Rules, 2014,

- (i) All the documents required to be filed with the Registrar by the foreign companies shall be in English language and where any such document is not in English language, there shall be attached a translation thereof in English language duly certified to be correct in the manner given in these rules.
- (ii) Where such translation is made within India, it shall be authenticated by-
 - (a) an advocate, attorney or pleader entitled to appear before any High Court; or
 - (b) an affidavit, of a competent person having, in the opinion of the Registrar, an adequate knowledge of the language of the original and of English. In the instant case, Qinghai Huading Industrial company Ltd. can translate the related documents within India and they shall be authenticated by the persons mentioned under the above Rules.

Answer 2:

Foreign Company [Section 2(42) of the Companies Act, 2013]: “Foreign company” means any company or body corporate incorporated outside India which-

- (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- (b) conducts any business activity in India in any other manner.

According to Rule 2 (c) of the Companies (Registration of Foreign Companies) Rules, 2014, “electronic mode” means carrying out electronically based, whether main server is installed in India or not, including, but not limited to -

- (a) business to business and business to consumer transactions, data interchange and other digital supply transactions;
- (b) offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;
- (c) financial settlements, web based marketing, advisory and transactional services, database services and products, supply chain management;
- (d) online services such as telemarketing, telecommuting, telemedicine, education and information research; and
- (e) all related data communication services, whether conducted by e-mail, mobile

devices, social media, cloud computing, document management, voice or data transmission or otherwise.

In the light of the said provisions of the Companies Act, 2013, as enumerated above:

- (i) *A company which has no place of business in India but is doing online business through telemarketing in India, will be considered as a 'Foreign Company'.
- (ii) A company incorporated outside India which has a place of business in India whether by itself or through an agent, physically or through electronic mode, will be considered as foreign company. Thus, a company incorporated outside India which does not have a place of business in India, will not be considered a 'Foreign Company'.
- (iii) A company incorporated outside India having shareholders who are all Indian citizens shall be a 'Foreign Company'.

(*It is presumed that the company in question is incorporated outside India, so that provisions of section 2(42) of the Companies Act, 2013 can be applied on it.)

Answer 3:

The Companies Act, 2013 lays down the governing provisions for foreign companies in Chapter XXII which is comprised of sections 379 to 393. The penalties for non filing or for contravention of any provision for this chapter including for non filing of documents with the Registrar as required by section 380 and other sections in this chapter are laid down in section 392 of the Act which provides that if a foreign company contravenes the provisions of this Chapter, the foreign company shall be punishable with a fine which shall not be less than ` 1,00,000 but which may extend to ` 3,00,000 and in the case of a continuing offence, with an additional fine which may extend to ` 50,000 for every day after the first during which the contravention continues and every officer of the foreign company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than ` 25,000 but which may extend to ` 5,00,000, or with both.

Answer 4:

According to section 2(42) of the Companies Act, 2013, "Foreign company" means any company or body corporate incorporated outside India which-

- (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- (b) conducts any business activity in India in any other manner.

According to the Companies (Registration of Foreign Companies) Rules, 2014, “electronic mode” means carrying out electronically based, whether main server is installed in India or not, including, but not limited to-

- (a) business to business and business to consumer transactions, data interchange and other digital supply transactions;
- (b) offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;
- (c) financial settlements, web based marketing, advisory and transactional services, database services and products, supply chain management;
- (d) online services such as telemarketing, telecommuting, telemedicine, education and information research; and
- (e) all related data communication services,

whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.

- (i) In the given situation, M/s Red Stone Limited is registered in Singapore. However, it does not have a place of business in India whether by itself or through an agent, physically or through electronic mode; and does not conduct any business activity in India in any other manner. Mere holding of board meetings and executing business decisions in India cannot be termed as conducting business activity in India. Hence, M/s Red Stone Limited is not a foreign company as per the Companies Act, 2013.
- (ii) In the given situation, M/s Blue Star is registered in Thailand. It has authorised Mr. Y in India to find customers and enter into contract on behalf of the company. Thus, it can be said that M/s Blue Star Limited has both place of business in India through an agent, physically or through electronic mode; and is conducting business activity in India. Hence, M/s Blue Star Limited is a foreign company as per the Companies Act, 2013.
- (iii) In the given situation, M/s Xex Limited Liability Company is registered in Dubai and has installed its main server in Dubai for maintaining office automation software by Cloud Computing for its client in India. Thus, it can be said that M/s Xex Limited Liability Company has a place of business in India through electronic mode and is conducting business activity in India. Hence, M/s Xex Limited Liability Company is a foreign company as per the Companies Act, 2013.



ANSWER TO MCQs

1.	(c)	11.	(d)	21.	(b)	31.	(b)
2.	(a)	12.	(d)	22.	(c)	32.	(c)
3.	(b)	13.	(d)	23.	(d)		
4.	(d)	14.	(b)	24.	(d)		
5.	(c)	15.	(d)	25.	(d)		
6.	(c)	16.	(a)	26.	(d)		
7.	(d)	17.	(c)	27.	(d)		
8.	(d)	18.	(d)	28.	(b)		
9.	(a)	19.	(c)	29.	(a)		
10.	(c)	20.	(d)	30.	(b)		

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THE LIMITED LIABILITY PARTNERSHIP ACT, 2008



QUESTIONS

1. What do you mean by Designated Partner? Whether it is mandatory to appoint Designated Partner in a LLP?
(ICAI Module, Nov'19 ICAI Mock Test, Nov'20 RTP, May'21 RTP)
2. Enumerate the circumstances in which LLP may be wound up by Tribunal.
(ICAI Module, May'20 ICAI RTP, Jan'21- 5 Marks, May'21 Mock Test)
3. Who are the individuals which shall not be capable of becoming a partner of a Limited Liability Partnership?
(Nov'19 ICAI RTP)
4. "LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership". Explain.
(ICAI Module, May'19 – 5 Marks, Jul'21-5 Mark, May'22 – RTP, May'22-RTP, Nov'22 Mock Test)
5. State the rules regarding registered office of a Limited Liability Partnership (LLP) and change therein as per provisions of the Limited Liability Partnership Act, 2008.
(Dec'21- 5 Marks)
6. What is Small Limited Liability Partnership as per Limited Liability Partnership (Amendment) Act, 2021?
(Nov'22- 5 Marks)
7. Mr. Ankit Sharma wants to form a LLP taking him, his wife Mrs. Archika Sharma and One HUF as partners for that. Whether this LLP can be incorporated under LLP Act, 2008? Explain.
(ICAI MODULE)
8. There is an LLP by the name Ram Infra Development LLP which has 4 partners namely Mr. Rahul, Mr. Raheem, Mr. Kartar and Mr. Albert. Mr. Rahul and Mr. Albert are non – resident while other two are resident. LLP wants to take Mr. Rahul and Mr. Raheem

as Designated Partner. Explain in the light of Limited Liability Partnership Act, 2008 whether LLP can do so?

(ICAI MODULE)

9. Mr. Mudit is the creditor of Devi Ram Food Circle LLP. He has a claim of ₹10,00,000 against the LLP but the worth of the assets of LLP are only ₹7,00,000. Now Mr. Mudit wants to make the partners of LLP personally liable for the deficiency of ₹3,00,000. Whether by virtue of provisions of Limited Liability Act, 2008, Mr. Mudit can claim the deficiency from the partners of Devi Ram Food Circle LLP?

(ICAI MODULE)

10. M/s Vardhman Steels LLP was incorporated on 01.09.2022. On 01.01.2023, one partner of a partnership firm named M/s Vardhimaan Steels is registered with Indian Partnership Act, 1932 since 01.01.2000 requested ROC that as the name of LLP is nearly resembles with the name of already registered partnership firm, the name of LLP should be changed. Explain whether M/s Vardhman Steels LLP is liable to change its name under the provisions of Limited Liability Act, 2008?

(ICAI MODULE)

11. Kanik, Priyansh, Abhinav and Bhawna were partners in Singh Jain & Associates LLP. Abhinav resigned from the firm w.e.f. 01.11.2022 but this was not informed to ROC by LLP or Abhinav. Whether Abhinav will still be liable for the loss of firm of the transactions entered after 01.11.2022?

(ICAI MODULE)



MULTIPLE CHOICE QUESTIONS (HOMEWORK)

1. Which of the following cannot be converted into LLP?
(a) Partnership firm (b) Private company
(c) Listed company (d) Unlisted company (ICAI MODULE)
2. The approved name of LLP shall be valid for a period of from the date of approval:
(a) 1 Month (b) 2 Months
(c) 3 months (d) 6 months (ICAI MODULE)
3. Name of the Limited Liability Partnership shall be ended by:
(a) Limited (b) Limited Liability partnership or LLP
(c) Private Limited (d) OPC (ICAI MODULE)
4. Which one of the following statements about limited liability partnerships (LLPs) is incorrect?
(a) An LLP has a legal personality separate from that of its members.
(b) The liability of each partner in an LLP is limited.
(c) Members of an LLP are taxed as partners.
(d) A listed company can convert to an LLP. (ICAI MODULE)
5. For the purpose of LLP, Resident in India means:
(a) Person who has stayed in India for a period of not less than 182 days during the current year.
(b) Person who has stayed in India for a period of not less than 180 days during the immediately preceding one year.
(c) Person who has stayed in India for a period of not less than 181 days during the immediately preceding one year
(d) Person who has stayed in India for a period of not less than 120 days during the financial year. (ICAI MODULE)



ANSWERS

1. **Designated Partner [Section 2(j)]:** “Designated partner” means any partner designated as such pursuant to **section 7**.
According to **section 7** of the LLP Act, 2008:
 - (i) Every LLP shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.
 - (ii) If in LLP, all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as designated partners.
 - (iii) Resident in India: For the purposes of this section, the term “resident in India” means a person who has stayed in India for a period of not less than 182 days during the immediately preceding one year.
2. **Circumstances in which LLP may be wound up by Tribunal (Section 64):** A LLP may be wound up by the Tribunal:
 - (a) If the LLP decides that LLP be wound up by the Tribunal;
 - (b) If, for a period of more than six months, the number of partners of the LLP is reduced below two;
 - (c) If the LLP is unable to pay its debts;
 - (d) If the LLP has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;
 - (e) If the LLP has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any five consecutive financial years; or
 - (f) if the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.
3. **Partners (Section 5 of Limited Liability Partnership Act, 2008):** Any individual or body corporate may be a partner in a LLP.
However, an individual shall not be capable of becoming a partner of a LLP, if—
 - (a) He has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;
 - (b) He is an undischarged insolvent; or
 - (c) He has applied to be adjudicated as an insolvent and his application is pending.

4. **LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership**
- Limited Liability:** Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners (**Section 26** of the LLP Act, 2008). The liability of the partners will be limited to their agreed contribution in the LLP, while the LLP itself will be liable for the full extent of its assets.
- Flexibility of a partnership:** The LLP allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. The LLP form enables entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for investment by venture capital.
5. **Registered office of LLP and Change therein (**Section 13** of the Limited Liability Partnership Act, 2008)**
- (i) Every LLP shall have a registered office to which all communications and notices may be addressed and where they shall be received.
 - (ii) A document may be served on a LLP or a partner or designated partner thereof by sending it by post under a certificate of posting or by registered post or by any other manner, as may be prescribed, at the registered office and any other address specifically declared by the LLP for the purpose in such form and manner as may be prescribed.
 - (iii) A LLP may change the place of its registered office and file the notice of such change with the Registrar in such form and manner and subject to such conditions as may be prescribed and any such change shall take effect only upon such filing.
 - (iv) If the LLP contravenes any provisions of this section, the LLP and its every partner shall be liable to a penalty of ₹500 for each day during which the default continues, subject to a maximum of ₹50,000.
6. **“Small Limited Liability Partnership [**Section 2(ta)** of the Limited Liability Partnership Act, 2008]:** It means a Limited Liability Partnership—
- (i) the contribution of which, does not exceed twenty-five lakh rupees or such higher amount, not exceeding five crore rupees, as may be prescribed; and
 - (ii) the turnover of which, as per the Statement of Accounts and Solvency for the

immediately preceding financial year, does not exceed forty lakh rupees or such higher amount, not exceeding fifty crore rupees, as may be prescribed; or
(iii) which meets such other requirements as may be prescribed and fulfils such terms and conditions as may be prescribed.

7. Section 5 of Limited Liability Partnership Act, 2008 provides any individual or body corporate may be a partner in an LLP. However, an individual shall not be capable of becoming a partner of a LLP, if—
- (a) he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;
 - (b) he is an undischarged insolvent; or
 - (c) he has applied to be adjudicated as an insolvent and his application is pending.

Further, Section (2)(1)(e) provides that a Body Corporate it means a company as defined in 'clause (20) of section 2 of the Companies Act, 2013 and includes—

- (i) an LLP registered under this Act;
- (ii) an LLP incorporated outside India; and
- (iii) a company incorporated outside India, but does not include—
 - (i) a corporation sole;
 - (ii) a co-operative society registered under any law for the time being in force; and
 - (iii) any other body corporate (not being a company as defined in 'clause (20) of section 2 of the Companies Act, 2013' or a limited liability partnership as defined in this Act), which the Central Government may, by notification in the Official Gazette, specify in this behalf.

Therefore, HUF is not covered in the definition of body corporate and cannot be partner in LLP.

8. According to Section 7 of LLP Act, 2008 every LLP shall have at least two designated partners who are individuals and at least one of them shall be a resident in India. Further, explanation to the section provides, the term "resident in India" means a person who has stayed in India for a period of not less than one hundred twenty days during the financial year. Hence, in the given problem, besides Mr. Ram and Mr. Raheem, Mr. Albert should also be designated partners.
9. A limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners. The LLP itself will be

liable for the full extent of its assets but the liability of the partners will be limited. Creditors of LLP shall be the creditors of LLP alone. In other words, creditors of LLP cannot claim from partners. The liability of the partners will be limited to their agreed contribution in the LLP. Hence the creditors of Devi Ram Food Circle LLP are the creditors of Devi Ram Food Circle LLP only. Partners of LLP are not personally liable towards creditors. Mr. Mudit can not claim his deficiency of ₹ 3,00,000 from the partners of Devi Ram Food Circle LLP.

10. Section 15 of LLP Act, 2008 provides no LLP shall be registered by a name which, in the opinion of the Central Government is—

- (a) undesirable; or
- (b) identical or too nearly resembles to that of any other ‘LLP or a company or a registered trade mark of any other person under the Trade Marks Act, 1999’.

Further, section 17 provides, if the name of LLP is identical with or too nearly resembles to—

- (a) that of any other LLP or a company; or
 - (b) a registered trade mark of a proprietor under the Trade Marks Act, 1999
- then on an application of such LLP or proprietor referred to in clauses (a) and (b) respectively or a company, the CG may direct that such LLP to change its name within a period of 3 months from the date of issue of such direction.

Following the above provisions, LLP need not change its name if its name resembles with the name of a partnership firm. These provisions are applicable only in case where name is resembles with LLP, company or a registered trade mark of a proprietor.

Hence, M/s Vardhman Steels LLP need not change its name even it resembles with the name of partnership firm.

11. According to section 24(3), where a person has ceased to be a partner of a LLP (hereinafter referred to as “former partner”), the former partner is to be regarded (in relation to any person dealing with the LLP) as still being a partner of the LLP unless—

- (a) the person has notice that the former partner has ceased to be a partner of the LLP; or
- (b) notice that the former partner has ceased to be a partner of the LLP has been delivered to the Registrar.

Hence, by virtue of the above provisions, as no notice of resignation was given to

ROC, Abhinav will still be liable for the loss of firm of the transactions entered after 01.11.2022.



ANSWER TO MCQs

1	C	2	A	3	B	4	B	5	D

HOMEWORK QUESTIONS & ANSWER

1. Examine the concept of LLP. (ICAI Module, May'19 ICAI RTP)
2. What are the effects of registration of LLP? (ICAI Module, Nov'19 ICAI RTP)
3. Differentiate between a LLP and a partnership firm? (Nov'18 ICAI RTP, Nov'21, RTP)
4. Differentiate between the Limited Liability Partnership (LLP) and Limited Liability Company. (May'19 ICAI Mock Test, May'21 Mock Test)
5. State the meaning of Limited Liability Partnership (LLP). What are the relevant steps to incorporate LLP? (May'19 ICAI Mock Test)
6. What is the procedure for changing the name of Limited Liability Partnership (LLP) under the LLP Act, 2008? (May'20 ICAI RTP)
7. State the circumstances under which a LLP and its partners may face unlimited liability under the Limited Liability Partnership Act, 2008. (Nov'20- 5 Marks)
8. Enumerate the various characteristics of the LLP. (ICAI Module, May'19 ICAI RTP)
9. State the essential elements to incorporate a LLP?
(ICAI Module, May'18- 5 Marks, Nov'18 ICAI RTP, Nov'18- 5 Marks, May'22- 5 Marks)
10. Discuss the conditions under which LLP will be liable and not liable for the acts of the partner. (Nov'19- 5 Marks)
11. What is the procedure for maintenance of books of account, other records and audit of Limited Liability Partnership under LLP Act, 2008? (Nov'22 RTP)



ANSWERS

1. **Meaning** – A LLP is a new form of legal business entity with limited liability. It is an alternative corporate business vehicle that gives the benefits of limited liability but allows its partners the flexibility of organising their internal structure as a traditional partnership. The LLP is a separate legal entity and, while the LLP itself will be liable for the full extent of its assets, the liability of the partners will be limited.

Concept of “limited liability partnership”

- The LLP can continue its existence irrespective of changes in partners. It is capable of entering into contracts and holding property in its own name.
- The LLP is a separate legal entity, is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP.
- Further, no partner is liable on account of the independent or un-authorized actions of other partners, thus individual partners are shielded from joint liability created by another partner’s wrongful business decisions or misconduct.
- Mutual rights and duties of the partners within a LLP are governed by an agreement between the partners or between the partners and the LLP as the case may be. The LLP, however, is not relieved of the liability for its other obligations as a separate entity.
- LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership.

Since LLP contains elements of both ‘a corporate structure’ as well as ‘a partnership firm structure’ LLP is called a hybrid between a company and a partnership.

2. **Effect of registration (Section 14):**

On registration, a LLP shall, by its name, be capable of—

- (a) Suing and being sued;
- (b) Acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible;
- (c) Having a common seal, if it decides to have one; and
- (d) Doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.

3. **Distinction between LLP and Partnership Firm:** The points of distinction between a limited liability partnership and partnership firm are tabulated as follows:

	Basis	LLP	Partnership firm
1.	Regulating Act	The Limited Liability Partnership Aact, 2008.	The Indian Partnership Act, 1932.
2.	Body corporate	It is a body corporate.	It is not a body corporate.
3.	Separate legal entity	It is a legal entity separate from its members.	It is a group of persons with no separate legal entity.
4.	Creation	It is created by a legal process called registration under the LLP Act, 2008.	It is created by an agreement between the partners.
5.	Registration	Registration is mandatory. LLP can sue and be sued in its own name.	Registration is voluntary. Only the registered partnership firm can sue the third parties.
6.	Perpetual succession	The death, insanity, Retirement or insolvency of the partner(s) does not affect its existence of LLP. Members may join or leave But it existence continues	The death, insanity, retirement or insolvency of the partner(s) may affect its existence. It has no perpetual succession.
7.	Name	Name of the LLP to contain the word limited liability partners (LLP) as suffix.	No guidelines. The partners can have any name as per their choice.
8.	Liability	Liability of each partner limited to the extent to agreed contribution except in case of wilful fraud.	Liability of each partner is unlimited. It can be extended upto the personal assets of the partners.
9.	Mutual agency	Each partner can bind the LLP by his own acts but not the other partners.	Each partner can bind the firm as well as other partners by his own acts.

10.	Designated partners	At least two designated partners and atleast one of them shall be resident in India.	There is no provision for such partners under the Indian partnership Act, 1932.
11.	Common seal	It may have its common seal as its official signatures.	There is no such concept in partnership
12.	Legal compliances	Only designated partners are responsible for all the compliances and penalties under this Act.	All partners are responsible for all the compliances and penalties under the Act.
13.	Annual filing documents	LLP is required to file: (a) Annual statement of accounts (b) Statement of solvency (c) Annual return with the registration of LLP every year.	Partnership firm is not required to file any annual document with the registrar of firms.
14.	Foreign partnership	Foreign nationals can become a partner in a LLP.	Foreign nationals cannot become a partner in a
15.	Minor as partner	Minor cannot be admitted to the benefits of LLP.	Minor can be admitted to the Benefits of the partnership with the prior consent of the existing partners.

4. Distinction between LLP and Limited Liability Company (LLC)

	Basis	LLP	LLC
1.	Regulating Act	The LLP Act, 2008.	The Companies Act, 2013.
2.	Members / Partners	The persons who contribute to LLP are known as partners of the LLP.	The persons who invest the money in the shares are known as members of the company.

3.	Internal governance structure	The internal governance structure of a LLP is governed by agreement between the partners.	The internal governance structure of a company is regulated by statute (i.e., Companies Act, 2013).
4.	Name	Name of the LLP to contain the word “Limited liability partnership” or “LLP” as suffix.	Name of the public company to contain the word “limited” and Private company to contain the word “Private Limited”
5.	Number of members/ partners	Minimum - 2 members Maximum - No such limit on the members in the Act. The members of the LLP can be individuals /or body corporate through the nominees.	Private company: Minimum - 2 members Maximum - 200 members Public company: Minimum - 7 members Maximum - No such limit on the members.
6.	Liability of members/ partners	Liability of a partners is limited to the extent of agreed contribution except in case of wilful fraud.	Liability of a member is limited to the amount unpaid on the shares held by them.
7.	Management	The business of the company managed by the partners including the designated partners authorized in the agreement.	The affairs of the company are managed by board of directors elected shareholders.
8.	Minimum number of directors/ partners	Minimum 2 partners.	Private Co. - 2 directors Public Co. - 3 directors

5. **Meaning:** A LLP is a new form of legal business entity with limited liability. It is an alternative corporate business vehicle that not only gives the benefits of limited liability at low compliance cost but allows its partners the flexibility of organising their internal structure as a traditional partnership. The LLP is a separate legal entity and, while the LLP itself will be liable for the full extent of its assets, the liability of the partners will be limited.

Steps to incorporate LLP:

Step 1: LLP Name

➤ Name (Section 15):

- a) Every limited liability partnership shall have either the words “limited liability partnership” or the acronym “LLP” as the last words of its name.
- b) LLP shall not be registered by a name which, in the opinion of the Central Government is—
 - a) undesirable; or
 - b) identical or too nearly resembles to that of any other partnership firm or LLP or body corporate or a registered trade mark, or a trade mark which is the subject matter of an application for registration of any other person under the Trade Marks Act, 1999.

➤ Reservation of name (Section 16):

- a) A person has to apply in such form and manner and accompanied by such fee as may be prescribed to the Registrar for the reservation of a name set out in the application as the name of a proposed LLP; or
- b) Upon receipt of an application and on payment of the prescribed fee, the Registrar may, if he is satisfied, **reserve the name for a period of 3 months** from the date of intimation by the Registrar.

Step 2: Incorporation Document (Section 11)

1) For a LLP to be incorporated:

- a) two or more persons associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation document;
- b) the incorporation document shall be filed in such manner and with such fees, as may be prescribed with the Registrar of the State in which the registered office of the LLP is to be situated; and
- c) Statement to be filed:
 - ❖ Along with the incorporation document, a statement in the prescribed form shall also be filed,
 - ❖ made by either an advocate, or a Company Secretary or a Chartered Accountant or a Cost Accountant, who is engaged in the formation of the LLP and
 - ❖ by anyone who subscribed his name to the incorporation document,
 - ❖ that all the requirements of this Act and the rules made there under have been complied with,

❖ in respect of incorporation and matters related to it.

2) The incorporation document shall—

- a) be in a form as may be prescribed;
- b) state the name of the LLP;
- c) state the proposed business of the LLP;
- d) state the address of the registered office of the LLP;
- e) state the name and address of each of the persons who are to be partners of the LLP on incorporation;
- f) state the name and address of the persons who are to be designated partners of the LLP on incorporation;
- g) contain such other information concerning the proposed LLP as may be prescribed.

3) If a person makes a statement as discussed above which he knows to be false; or shall be punishable

- ❖ with imprisonment for a term which may extend to 2 years and
- ❖ with fine which shall not be less than ₹10,000 but which may extend to ₹5 Lakhs.

Step 3: Incorporation Registration (Section 12)

- 1) When the requirements imposed by Section 11 have been complied with, the Registrar shall retain the incorporation document & accept the statement as mentioned above and, he shall, within a period of 14 days—
 - a) register the incorporation document; and
 - b) give a certificate that the LLP is incorporated by the name specified therein.
- 2) The certificate issued shall be signed by the Registrar and authenticated by his official seal.
- 3) The certificate shall be conclusive evidence that the LLP is incorporated by the name specified therein.

Step 4: Effect of registration (Section 14)

On registration, a limited liability partnership shall, by its name, be capable of—

- (a) suing and being sued;
- (b) acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible;
- (c) having a common seal, if it decides to have one; and
- (d) doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.

Step 5: LLP Agreement (Section 23)

1. Unless otherwise provided by this Act, the mutual rights and duties of the partners of a LLP, and the mutual rights and duties of a LLP and its partners, shall be governed by the LLP agreement between the partners, or between the LLP and its partners.
2. The LLP agreement, made therein shall be filed with the Registrar in e-Form 3 within 30 days of incorporation of LLP and accompanied by such fees as may be prescribed.
3. In the absence of agreement as to any matter, the mutual rights and duties of the partners and the mutual rights and duties of the LLP and the partners shall be determined by the provisions relating to that matter as are set-out in the First Schedule.

6. Change of name of LLP (Section 17 of LLP Act, 2008):

1. Where the Central Government is satisfied that a LLP has been registered (whether through inadvertence or otherwise and whether originally or by a change of name) under a name which –
 1. resembles the name of any other LLP or Company
 2. a registered trade mark of a proprietor under the Trade Marks Act, 1999, as is likely to be mistaken for it, then on an application of such limited liability partnership or proprietor, the Central Government may direct that such limited liability partnership to change its name or new name within a period of 3 months from the date of issue of such direction.
2. But the above application of the proprietor of the registered trade marks shall be maintainable within a period of 3 years from the date of incorporation or registration or change of name of the limited liability partnership under this Act.
3. Where a LLP changes its name or obtains a new name, it shall within a period of 15 days from the date of such change, give notice of the change to Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and within 30 days of such change in the certificate of incorporation, such limited liability partnership shall change its name in the limited liability partnership agreement.

4. If the LLP is in default in complying with any direction given, the Central Government shall allot a new name to the limited liability partnership in such manner as may be prescribed and the Registrar shall enter the new name in the register of limited liability partnerships in place of the old name and issue a fresh certificate of incorporation with new name, which the limited liability partnership shall use thereafter.

However, LLP can change the name subsequently in accordance with the provisions of section 16.

7. As per Section 30 of the Limited Liability Partnership Act, 2008, LLP and its Partners may face unlimited liability in case of fraud. According to this section, the liability arises, in the event of an act carried out by an LLP or any of its partners -

- with intent to defraud creditors of the LLP,
- or any other person, or
- for any fraudulent purpose.

The liability of the LLP and partners who acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited for all or any of the debts or other liabilities of the LLP. However, in case any such act is carried out by a partner, the LLP is liable to the same extent as the partner unless it is established by the LLP that such act was without the knowledge or the authority of the LLP.

Where LLP, Partner or employee of LLP has conducted the affairs of the LLP in fraudulent manner, then without prejudice to any criminal proceedings which may arise under any law for the time being in force, the LLP and any such partner or employee shall be liable to pay compensation to any such person who has suffered any loss by reason of such conduct.

8. LLP registered with the Registrar under the LLP Act, 2008 has the following characteristics:

- Body Corporate
- Perpetual Succession
- Separate legal entity
- Mutual Agency
- LLP Agreement
- Artificial Legal person
- Common Seal
- Limited liability

- Management of business
- Minimum and maximum number of members
- Business for profit only
- Investigation
- Compromise or Arrangement
- Conversion into LLP
- E-filing of documents
- Foreign LLP

9. **Essential elements to incorporate LLP** - Under the LLP Act, 2008, the following elements are very essential to form a LLP in India:

- To complete and submit incorporation document in the form prescribed with the Registrar electronically;
- To have at least two partners for incorporation of LLP [Individual or body corporate];
- To have registered office in India to which all communications will be made and received;
- To appoint minimum two individuals as designated partners who will be responsible for number of duties including doing of all acts, matters and things as are required to be done by the LLP. Atleast one of them should be resident in India.
- A person or nominee of body corporate intending to be appointed as designated partner of LLP should hold a Designated Partner Identification Number (DPIN) allotted by MCA.
- To execute a partnership agreement between the partners inter se or between the LLP and its partners. In the absence of any agreement the provisions as set out in First Schedule of LLP Act, 2008 will be applied.
- LLP Name.

10. **Conditions under which LLP will be liable** [Section 27(2) of the LLP Act, 2008]

The LLP is liable if a partner of a LLP is liable to any person as a result of a wrongful act or omission on his part in the course of the business of the LLP or with its authority.

- the partner in fact has no authority to act for the LLP in doing a particular act; and
- the person knows that he has no authority or does not know or believe him to be a partner of the LLP.

11. Maintenance of books of account, other records and audit, etc. (Section 34 of LLP Act, 2008):

The LLP shall maintain such proper books of account as may be prescribed relating to its affairs for each year of its existence on cash basis or accrual basis and according to double entry system of accounting and shall maintain the same at its registered office for such period as may be prescribed.

Every LLP shall, within a period of six months from the end of each financial year, prepare a Statement of Account and Solvency for the said financial year as at the last day of the said financial year in such form as may be prescribed, and such statement shall be signed by the designated partners of the LLP.

Every LLP shall file within the prescribed time, the Statement of Account and Solvency prepared with the Registrar every year in such form and manner and accompanied by such fees as may be prescribed.

The accounts of LLP shall be audited in accordance with such rules as may be prescribed.



OTHER LAW

01

The General Clauses Act, 1897



QUESTIONS

1. As per the provisions of the Companies Act, 2013, a whole time Key Managerial Personnel (KMP) shall not hold office in more than one company except its subsidiary company at the same time. Referring to the **Section 13** of the General Clauses Act, 1897, examine whether a whole time KMP can be appointed in more than one subsidiary company?
(ICAI Module, Nov'20 Mock Test, May'21 Mock Test)
2. X owned a land with fifty tamarind trees. He sold his land and the timber (obtained after cutting the fifty trees) to Y. X wants to know whether the sale of timber tantamount to sale of immovable property. Advise him with reference to provisions of "General Clauses Act, 1897".
(ICAI Module, Nov'19 RTP, May'19 Mock Test, Nov'19 Mock Test, May'18- 4 Marks, May'23 RTP)
3. Referring to the provisions of the General Clauses Act, 1897, find out the day/ date on which the following Act/Regulation comes into force. Give reasons also,
 - (1) An Act of Parliament which has not specifically mentioned a particular date.
 - (2) The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations. 2015 was issued by SEBI vide Notification dated 14th August, 2015 with effect from 1st January, 2016(May'19- 2 Marks, Nov'20 RTP)
4. Mr. Vyas is the owner of House No. 20 in Geeta Colony, Delhi. He has rented two rooms in this house to Mr. Iyer. The Income Tax Authority has served a show cause notice to Mr. Vyas. The said notice was received by Mr. Iyer and returned the notice with an endorsement of refusal. Decide with reference to provisions of "General Clauses Act, 1897", whether the notice was rightfully served on Mr. Vyas.

(May'20 RTP)

5. PK and VK had a long dispute regarding the ownership of a land for which a legal suit was pending in the court. The court fixed the date of hearing on 29.04.2018, which was announced to be a holiday subsequently by the Government. What will be the computation of time of the hearing in this case under the General Clauses Act, 1897?
(Jan'21- 2 Marks, May'23 RTP)
6. Ayush and Vipul are good friends and pursuing CA course. While doing group studies for the paper of "Corporate and Other Law", they are confused about the provisions of **section 3** of the Companies Act 2013. **Section 3** provides "A company may be formed for any lawful purpose by....." Both Ayush and Vipul are in difficulty about the meaning of word "may". Whether it should be taken as mandatory or directory?
(ICAI Module, May'22 RTP)
7. What is the meaning of service by post as per provisions of The General Clauses Act, 1897?
(ICAI Module, May'19 Mock Test, May'18-2 Marks, May'20 Mock Test, May'21 RTP, Nov'22 Mock Test)
8. Explain various provisions applicable to rules or bye-laws being made after previous publications as enumerated in **Section 23** of the General Clauses Act, 1897.
(Nov'18-4 Marks)
9. What is "Immovable Property" under the General Clauses Act, 1897?
(ICAI Module)
10. 'Repeal' of provision is different from 'deletion' of provision. Explain as per the General Clauses Act, 1897.
(ICAI Module, Nov'18- 2 Marks, Nov'19 Mock Test, Nov'20 Mock Test, May'21 Mock Test)
11. Mr. Ram, an advocate has fraudulently deceived his client Mr. Shyam, who was taking his expert advice on taxation matters. Now, Mr. Ram is liable to a fine for acting fraudulently both under the Advocates Act, 1961 as well as the Income Tax Act, 1961. State the provision as to whether his offence is punishable under the both the Acts, as per the General Clauses Act, 1897.
(Nov'18 RTP, May'21 Mock Test)

12. Explain briefly any four effects by repeal of an existing Act by central legislation enumerated in **Section-6** of The General Clauses Act, 1897. (May'18-4 Marks)
13. (i) Mrs. K went to a jewellery shop to purchase diamond ornaments. The owners of jewellery shop are notorious and indulging in smuggling activities. Mrs. K purchased diamond ornaments honestly without making proper enquiries. Was the purchase made in Good faith as per the provisions of the General Clauses Act, 1897 so as to convey good title?
- (ii) There are two ways to reach city A from city B. The distance between the two cities by roadways is 100 kms and by water ways 80 kms. How is the distance measured for the purpose of any Central Act under the provisions of the General Clauses Act, 1897? (Nov'20- 4 Marks)
14. Mr. Apar and Mr. New, both aspiring Chartered Accountants have met in a conference for CA students. Both are having an argument about the meaning of Financial Year. They have approached you as a senior in the profession to guide them about the meaning of Financial Year as per the provisions of the General Clauses Act, 1872. Also, brief them about the difference between a calendar year and financial year. (May'21 RTP, Nov'22 Mock Test)



MULTIPLE CHOICE QUESTION (HOMEWORK)

1. The General Clauses Act, 1897 was enacted on:
(a) 11th March, 1897 (b) 14th January, 1897
(c) 14th January, 1887 (d) 3rd January, 1868
(ICAI Module)
2. The General Clauses Act, 1897 intends to:
(a) Provide general definitions.
(b) Applicable to all Central Acts and Regulations.
(c) Applicable where there is no definition, unless there is anything repugnant in the subject or context.
(d) All of the above. (ICAI Module)
3. The preamble is most important in any legislation, it:
(a) Provides definitions in the Act.
(b) Expresses scope, object and purpose of the Act.
(c) Provides summary of the entire Act.
(d) None of the above. (ICAI Module, May'20 Mock Test)
4. As per a Rule of an Educational Institution, every student may come on weekends for extra classes but every student shall appear on a weekly test conducted in the institute, which means:
(a) Attending weekend classes is optional but appearing in weekly test is compulsory.
(b) Attending weekend classes is compulsory but appearing in weekly test is optional.
(c) Attending weekend classes and appearing in weekly test, both are compulsory for students.
(d) Attending weekend classes and appearing in weekly test both are optional for students. (ICAI Module, Nov'19 Mock Test)
5. Which of the following is not an Immovable Property?
(a) Land (b) Building
(c) Timber (d) Machinery permanently attached to the land
(ICAI Module, May'19 Mock Test, May'20 Mock Test, May'21 Mock Test)

6. Mr. A died at the age of 72 leaving behind some movable and immovable properties to be distributed between his two sons C & D, as per his registered will. His Will clearly mentioned that all the immovable property should go to C and all the movable property should go to (D) Both the brothers divided the property as per will except below mentioned properties, because they could not establish which property should go to whom. Kindly help them by ticking the property/ies which should go to D as per the provisions of the general Clause Act, 1897):
- (a) Standing crop in the fields
 - (b) Cut crop, ready to sell
 - (c) Tube well in the agriculture land
 - (d) Sandal wood tree
- (May'19 Mock Test)
7. Which of the following given Statement/s is/are correct:
- (i) In all Central Acts and Regulations, any words which denote the masculine gender shall also be taken to include females, and vice versa
 - (ii) In all Central Acts and Regulations, words in the singular shall include the plural, but not vice versa.
- a) Only statement (1) is correct
 - b) Only statement (2) is correct
 - c) Both the statements are correct
 - d) None of the statement is correct
- (Nov'19 Mock Test)
8. The act by which the operation of a previous Act comes to an end, is called as ____
- (a) The Repealing Act
 - (b) The Consolidating Act
 - (c) The Amending Act
 - (d) Analogous Act
- (Nov'19 Mock Test)
9. Where an act of parliament does not expressly specify any particular day as to the day of coming into operation of such Act, then it shall come into operation on the day on which
- (a) It receives the assent of the President
 - (b) It receives the assent of the Governor General
 - (c) It is notified in the official gazette
 - (d) None of these
- (ICAI Module)

10. Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under
- (a) Under either or any of those enactments
 - (b) Twice for the same offence
 - (c) Either a. or b. as per the discretion of the court
 - (d) None of these
- (ICAI Module, Nov'20 Mock Test, May'21 Mock Test)
11. What among the following could be considered in the term 'Immovable Property' as defined under **section 3(26)** of the General Clauses Act, 1897?
- (i) The soil for making bricks
 - (ii) Right to catch fish
 - (iii) Right to drain water
 - (iv) Doors and Windows of the house
- (a) Only (i) and (iv)
 - (b) Only (i), (ii) and (iv)
 - (c) Only (i) and (ii)
 - (d) Only (ii), (iii) and (iv)
- (Nov'20 Mock Test, Nov'22 Mock Test)
12. In all Central Acts and Regulations, unless there is anything repugnant in the subject or context, words importing the masculine gender shall be taken:
- (a) To exclude females
 - (b) To exclude girl child
 - (c) To include females
 - (d) To exclude boy child
- (May'23 Mock Test)



ANSWERS

1. **Section 203(3)** of the Companies Act, 2013 provides that whole time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time. With respect to the issue that whether a whole time KMP of holding company be appointed in more than one subsidiary company or can be appointed in only one subsidiary company.

It can be noted that **Section 13** of General Clauses Act, 1897 provides that the word 'singular' shall include the 'plural', unless there is anything repugnant to the subject or the context. Thus, a whole time key managerial personnel may hold office in more than one subsidiary company as per the present law.

2. "Immovable Property" [**Section 3(26)** of the General Clauses Act, 1897]: 'Immovable Property' shall include:

- (i) Land,
- (ii) Benefits to arise out of land, and
- (iii) Things attached to the earth, or
- (iv) Permanently fastened to anything attached to the earth.

It is an inclusive definition. It contains four elements: land, benefits to arise out of land, things attached to the earth and things permanently fastened to anything attached to the earth. Where, in any enactment, the definition of immovable property is in the negative and not exhaustive, the definition as given in the General Clauses Act will apply to the expression given in that enactment.

In the instant case, X sold Land along with timber (obtained after cutting trees) of fifty tamarind trees of his land. According to the above definition, Land is immovable property; however, timber cannot be immovable property since the same are not attached to the earth.

3. (1) According to **section 5** of the General Clauses Act, 1897, where any Central Act has not specifically mentioned a particular date to come into force, it shall be implemented on the day on which it receives the assent of the President in case of an Act of Parliament.

- (2) If any specific date of enforcement is prescribed in the Official Gazette, the Act shall come into enforcement from such date. Thus, in the given question, the SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment)

Regulations, 2015 shall come into enforcement on 1st January, 2016 rather than the date of its notification in the gazette.

4. According to **section 27** of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

- (i) Properly addressing
- (ii) Pre-paying, and
- (iii) Posting by registered post.

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.

The facts of the question are similar to a decided case law, wherein it was held that where a notice is sent to the landlord by registered post and the same is returned by the tenant with an endorsement of refusal, it will be presumed that the notice has been served. Thus, in the given question it can be deemed that the notice was rightfully served on Mr. Vyas.

5. According to **Section 10** of the General Clauses Act, 1897, where by any legislation or regulation, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period then, if the Court or office is closed on that day or last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open. In the given question, the court fixed the date of hearing of dispute between PK and VK, on 29.04.2018, which was subsequently announced to be a holiday. Applying the above provisions we can conclude that the hearing date of 29.04.2018, shall be extended to the next working day.

6. The word 'shall' is used to raise a presumption of something which is mandatory or imperative while the word 'may' is used to connote something which is not mandatory but is only directory or enabling. However, sometimes Word 'may' has a mandatory force if directory force will defeat the object of the Act.

However, sometimes the words "may and shall" can be interpreted interchangeably depending on the intention of the legislator.

Ayush and Vipul, two CA students, are confused with the language of the provisions of **section 3** of the Companies Act 2013 that whether the word "may" used in should

be considered as mandatory or directory.

In the given case, it can be said that the word “may” should be taken as mandatory force, because the law will never allow the formation of company with unlawful object.

Here the word used “may” shall be read as “shall”. Usage of word ‘may’ here makes it mandatory for a company for the compliance of **section 3** for its formation.

7. “Meaning of Service by post” [**Section 27** of the General Clauses Act, 1897]: Where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:
- (i) Properly addressing
 - (ii) Pre-paying, and
 - (iii) Posting by registered post.

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.

8. Provisions applicable to making of rules or bye-laws after previous publications: Where, by any Central Act or Regulation, a power to make rules or bye-laws is expressed to be given, then the following provisions shall apply:
1. The authority having power to make the rules or bye-laws shall publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby.
 2. The publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the Government concerned prescribes.
 3. A notice shall be published with the draft specifying a date on or after which the draft will be taken into consideration.
 4. The authority having power to make the rules or bye-laws shall consider the objections and suggestions of the authority whose sanction, approval or concurrence is required with respect to the draft before the date so specified.
 5. The publication in the Official Gazette of a rule or bye-law shall be conclusive proof that the rule or bye-laws has been duly made.

9. According to **Section 3(26)** of the General Clauses Act, 1897, ‘Immovable Property’ shall include:
- (i) Land,

- (ii) Benefits to arise out of land, and
- (iii) Things attached to the earth, or permanently fastened to anything attached to the earth.

For example, trees are immovable property because trees are benefits arise out of the land and attached to the earth. However, timber is not immovable property as the same are not permanently attached to the earth. In the same manner, buildings are immovable property.

10. 'Repeal' of provision is in distinction from 'deletion' of provision. 'Repeal' ordinarily brings about complete obliteration (abolition) of the provision as if it never existed, thereby affecting all inchoate rights and all causes of action related to the 'repealed' provision while 'deletion' ordinarily takes effect from the date of legislature affecting the said deletion, never to effect total effecting or wiping out of the provision as if it never existed.
11. "Provision as to offence punishable under two or more enactments" [Section 26]: Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be punished twice for the same offence. Thus, Mr. Ram shall be liable to be punished under the Advocates Act, 1961 or the Income Tax Act, 1961, but shall not be punished twice for the same offence.
12. According to Section 6 of the General Clauses Act, 1897, where any Central legislation or any regulation made after the commencement of this Act repeals any Act made or yet to be made, unless another purpose exists, the repeal shall not:
- Revive anything not enforced or prevailed during the period at which repeal is effected or;
 - Affect the prior management of any legislation that is repealed or anything performed or undergone or;
 - Affect any claim, privilege, responsibility or debt obtained, ensued or sustained under any legislation so repealed or;
 - Affect any punishment, forfeiture or penalty sustained with regard to any offence committed as opposed to any legislation or
 - Affect any inquiry, litigation or remedy with regard to such claim, privilege, debt or responsibility or any inquiry, litigation or remedy may be initiated, continued or insisted.

13. (i) In the instant case, the purchase of diamond ornaments by Mrs. K from a Jewellery Shop, the owners of which are notorious and indulged in smuggling activities, made in good faith, will not convey good title.

As per **section 3 (22)** of the General Clauses Act, 1897, a thing shall be deemed to be done in “good faith” where it is in fact done honestly, whether it is done negligently or not.

The definition of good faith as is generally understood in the civil law and which may be taken as a practical guide in understanding the expression in the Indian Contract Act, 1872 is that nothing is said to be done in good faith which is done without due care and attention as is expected with a man of ordinary prudence. An honest purchase made carelessly without making proper enquiries cannot be said to have been made in good faith so as to convey good title.

- (ii) “Measurement of Distances” [**Section 11** of the General Clauses Act, 1897]: In the measurement of any distance, for the purposes of any Central Act or Regulation made after the commencement of this Act, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane.

14. Financial Year: According to **section 3(21)** of the General Clauses Act, 1897, financial year shall mean the year commencing on the first day of April.

The term Year has been defined under **Section 3(66)** as a year reckoned according to the British calendar. Thus, as per General Clauses Act, Year means calendar year which starts from January to December.

Difference between Financial Year and Calendar Year: Financial year starts from first day of April but Calendar Year starts from first day of January.



ANSWER TO MCQs

1	A	2	D	3	B	4	A	5	C
6	B	7	A	8	A	9	A	10	A
11	B	12	C						



HOMEWORK QUESTIONS AND ANSWER

1. Komal Ltd. declares a dividend for its shareholders in its AGM held on 27th September, 2018. Referring to provisions of the General Clauses Act, 1897 and Companies Act, 2013, advice:
 - (i) The dates during which Komal Ltd. is required to pay the dividend?
 - (ii) The dates during which Komal Ltd. is required to transfer the unpaid or unclaimed dividend to unpaid dividend account?

(ICAI Module, Nov'18-4 Marks, May'20 Mock Test)
2. A notice was served on Mr. P for appearing in the court. However, the notice could not be served on account of the fact that the house of the Mr. P was found locked. Thus, Mr. P. did not appear in the court at the said date. Examine the situation as per the provisions of the General Clauses Act, 1897 and determine whether Mr. P. will be liable in the given situation.

(May'19 Mock Test)
3. If it is defined as:
 - (i) "Company means a company incorporated under the Companies Act, 2013 or under any previous company Law".
 - (ii) "Person" includes. under the Consumer Protection Act, 1986.

How would you interpret/construct the nature and scope of the above definitions?

(May'19- 3 Marks)
4. Elucidate the term "Commencement" as per the General Clauses Act, 1897.

(May'21 Mock Test)
5. Income Tax Act, 1961 provides that the gratuity paid by the government to its employees is fully exempt from tax. You are required to explain the scope of the term 'government' and clarify whether the exemption from gratuity income will be available to the State Government Employees? Give your answer in accordance with the provisions of the General Clauses Act, 1897.

(Jan'21- 2 Marks, May'23 MTP)
6. Examine the validity of the following statements with reference to the General Clauses Act, 1897:
 - (i) 'Things attached to the earth' have been held to be immovable property.

(ii) The word “bullocks” could be interpreted to include “cows”.

(ICAI Module, May'2022 Mock Test)

7. “The act done negligently shall be deemed to be done in good faith.”

Comment with the help of the provisions of the General Clauses Act, 1897

(ICAI Module, May'2022 Mock Test)

8. Examine the validity of the following statements with reference to the General Clauses Act, 1897:

Board of Directors of Sabarwal Construction Private Limited authorised by passing resolution in board meeting Mr. Munim to appoint five employees for accounts department of company. Mr. Munim appointed five employees including Mr. Rupal who was relative of one of the director of company. After one month, Mr. Munim observed that Mr. Rupal was not performing his duties honestly. Mr. Munim issued the order of dismissal of Mr. Rupal with proper reasons. Mr. Rupal filed a petition in the court that his dismissal order is not valid as Board of Directors had authorised Mr. Munim only for appointment of employees not for dismissal. Whether is Mr. Rupal correct with his words?

(ICAI Module, May'2022 Mock Test)

9. What is the meaning of the following as per provisions of the General Clauses Act, 1897?

(i) Movable Property

(ii) Person

(ICAI Module, May'2022 Mock Test)

10. Mr. Sohan has issued a promissory note of ₹1000 to Mr. Mohan on 17th May 2021 payable 3 months after date. After that, a sudden holiday was declared on 20th August 2021 due to Moharram. As per the provisions of the General Clauses Act 1897, what should be the date of presentment of promissory note for payment? Whether it should be 19th August 2021 or 21st August 2021?

(ICAI Module, Nov'21 RTP)

11. A confusion, regarding the meaning of ‘financial year’ arose among the financial executive and accountant of a company. Both were having different arguments regarding the meaning of financial year & calendar year. What is the correct meaning of financial year under the provision of the General Clauses Act, 1897? How it is different from calendar year?

(Dec'21 - 4 Marks, Nov'22 Mock Test)

12. Give the definition of the following as per the General Clauses Act, 1897:

- (i) “Rule”
- (ii) “Oath”
- (iii) “Person”

(Dec’21 - 3 Marks)

13. Section 2(18)(aa) of the Income Tax Act, 1961, provides that a company is said to be a company in which the public are substantially interested, if it is a company which is registered under section 25 of the Companies Act, 1956. After the advent of Companies Act, 2013, the corresponding change has not been made in section 2(18) of the Income tax Act, 1961. Explain, with reference to the provisions of the General Clauses Act 1897, how will the provisions of section 2(18)(aa) of the Income Tax Act, 1961, will be considered after the enactment of the Companies Act 2013?

(Nov’22 RTP)

14. What is “Financial Year” under the General Clauses Act, 1897?

(ICAI Module)

15. What do you understand by the term ‘Good Faith’? Explain it as per the provisions of the General Clauses Act, 1897. Mr. X purchased a watch from Mr. Y carelessly without proper enquiry. Whether the purchase made could said to be made in good faith.

(Nov’19- 4 Marks)

16. A notice when required under the Statutory rules to be sent by “registered post acknowledgment due” is instead sent by “registered post” only. Whether the protection of presumption regarding serving of notice by “registered post” under the General Clauses Act is tenable? Referring to the provisions of the General Clauses Act, 1897, examine the validity of such notice in this case.

(ICAI Module, May’18 RTP, May’19 RTP)

17. What do you understand by the term ‘Good Faith’? Explain as per the provisions of the General Clauses Act, 1897.

(May’19 Mock Test, Nov’20- 2 Marks)

OR

“The act done negligently shall be deemed to be done in good faith.” Comment with the help of the provisions of the General Clauses Act, 1897.

(Jan’21- 3 Marks)

18. The Companies Act, 2013 provides that the amount of dividend remained unpaid / unclaimed on expiry of 30 days from the date of declaration of dividend shall be transferred to unpaid dividend account within 7 days from the date of expiry of such period of 30 days. If the expiry date of such 30 days is 30.10.2018, decide the last date on or before which the unpaid/unclaimed dividend amount shall be required to be transferred to a separate bank account in the light of the relevant provisions of the General Clauses Act, 1897? (May'19- 2 Marks)
19. Define the term "Affidavit" under the General Clauses Act, 1897. (Nov'19-3 Marks, Nov'20 – 2 Marks)
20. Mr. Sohan has issued a promissory note of ₹1000 to Mr. Mohan on 17th May 2021 payable 3 months after date. After that, a sudden holiday was declared on 20th August 2021 due to Moharram. As per the provisions of the General Clauses Act 1897, what should be the date of presentment of promissory note for payment? Whether it should be 19th August 2021 or 21st August 2021? (Nov'21 RTP)



ANSWERS

1. As per **section 9** of the General Clauses Act, 1897, for computation of time, the section states that in any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word “from” and for the purpose of including the last in a series of days or any other period of time, to use the word “to”.
 - (i) **Payment of dividend:** In the given instance, Komal Ltd. declares dividend for its shareholder in its Annual General Meeting held on 27/09/2018. Under the provisions of **Section 127** of the Companies Act, 2013, a company is required to pay declared dividend within 30 days from the date of declaration, i.e. from 28/09/2018 to 27/10/2018. In this series of 30 days, 27/09/2018 will be excluded and last 30th day, i.e. 27/10/2018 will be included. Accordingly, Komal Ltd. will be required to pay dividend within 28/09/2018 and 27/10/2018 (both days inclusive).
 - (ii) **Transfer of unpaid or unclaimed dividend:** As per the provisions of **Section 124** of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the “Unpaid Dividend Account” (UDA). Therefore, Komal Ltd. shall transfer the unpaid/unclaimed dividend to UDA within the period of 28th October, 2018 to 3rd November, 2018 (both days inclusive).
2. According to **section 27** of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:
 - a. properly addressing
 - b. pre-paying, and
 - c. posting by registered post.

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post

Hence, where the where the notice could not be served on account of the fact that the house of MrP was found locked, it will be deemed that the notice was properly

served as per the provisions of **Section 27** of the General Clauses Act, and it would be for Mr. P to prove that it was not really served and that he was not responsible for such non-service.

3. **Restrictive and extensive definitions:** The definition of a word or expression in the definition section may either be restricting of its ordinary meaning or may be extensive of the same.

When a word is defined to **'mean'** such and such, the definition is 'prima facie' restrictive and exhaustive, we must restrict the meaning of the word to that given in the definition section.

But where the word is defined to **'include'** such and such, the definition is 'prima facie' extensive: here the word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section.

Thus,

- (i) The definition is restrictive and exhaustive to the effect that only an entity incorporated under the Companies Act, 2013 or under any previous Companies Act, shall be deemed to be company.
- (ii) The definition is inclusive in nature, thereby the meaning assigned to the respective word (here 'person') is extensive. It has a wider scope to include other terms into the ambit of the definition having regard to the object of the definition.

4. **Section 3(13)** of the General Clauses Act, 1897, defines the term "Commencement". "Commencement" used with reference to an Act or Regulation, shall mean the day on which the Act or Regulation comes into force.

Coming into force or entry into force (also called commencement) refers to the process by which legislation; regulations, treaties and other legal instruments come to have a legal force and effect.

A law cannot be said to be in force unless it is brought into operation by legislative enactment, or by the exercise of authority by a delegate empowered to bring it into operation. The theory of a statute being "in operation in a constitutional sense" though it is not in fact in operation has no validity.

5. According to **section 3(23)** of the General Clauses Act, 1897, 'Government' or 'the Government' shall include both the Central Government and State Government.

Hence, wherever, the word 'Government' is used, it will include Central Government and State Government both. Thus, when the Income Tax Act, 1961, provides that gratuity paid by the government to its employees is fully exempt from tax, the exemption from gratuity income will be available to the State Government employees also.

6. (i) 'Things attached to the earth' have been held to be immovable property: This statement is valid.

As per section 3(26) of the General Clauses Act, 1897, 'Immovable Property' shall include:

- (1) Land,
- (2) Benefits to arise out of land, and
- (3) Things attached to the earth, or
- (4) Permanently fastened to anything attached to the earth.

It is an inclusive definition. The four elements to the definition includes 'things permanently fastened to anything attached to the earth'. Hence, the given statement is correct.

- (ii) The word 'bullocks' could be interpreted to include 'cows': This statement is not valid.

Where a word connoting a common gender is available but the word used conveys a specific gender, there is a presumption that the provisions of General Clauses Act, 1897 do not apply. Thus, the word 'bullocks' could not be interpreted to include 'cows'.

7. In general, anything done with due care and attention, which is not malafide is presumed to have been done in good faith.

But, according to section 3(22) of the General Clauses Act, 1897, a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not.

The question of good faith under the General Clauses Act is one of fact. It is to determine with reference to the circumstances of each case.

It is therefore understood that the General Clauses Act, 1897 considers the honesty in doing the Act as a primary test to constitute the thing done in good faith and therefore the act done honestly but with negligence may also be termed as done in good faith as per the General Clauses Act, 1897.

8. As per the provisions of **section 16** of the General Clauses Act, 1897, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power.

Mr. Munim was appointed in board meeting of Sabarwal Construction Private Limited to appoint five employees for accounts department of company. Mr. Munim appointed five employees. After one month, he issued the order of dismissal to one of those five employees. That employee filed an application in the court challenging the validity of dismissal order with the words that Mr. Munim was authorised only for appointment of employees not for dismissal.

On the basis of above provisions and facts of the case, Mr. Rupal was not correct with his words because as per the General Clauses Act, 1897, power to appoint includes power to suspend or dismiss. Hence, Mr. Munim has power to dismiss Mr. Rupal.

9. (i) **Movable Property:** According to **section 3(36)** of the General Clauses Act, 1897, 'Movable Property' shall mean property of every description, except immovable property.

Thus, any property which is not immovable property is movable property. Debts, share, electricity are moveable property.

- (ii) **Person:** According to **section 3(42)** of the General Clauses Act, 1897, 'Person' shall include any company or association or body of individuals, whether incorporated or not.

10. **Section 10** of the General Clauses Act 1897 provides where by any legislation or regulation, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period then, if the Court or office is closed on that day or last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

A promissory note of ₹1000 was issued by Mr. Sohan to Mr. Mohan on 17th May 2021 which was payable 3 months after date. After that, a sudden holiday was declared on 20th August 2021 due to Moharram.

In the given case, the period of 3 months ends on 17th August 2021. Three days of grace are to be added. It falls due on 20th August 2021 which declared to be a public holiday after the issue of Promissory Note. In the light of provisions of Sec.

10 of the General Clauses Act 1897, the due date will be on next day when office is open i.e. 21st August 2021.

11. Financial Year: According to **Section 3(21)** of the General Clauses Act, 1897, financial year shall mean the year commencing on the first day of April.

The term Year has been defined under **section 3(66)** as a year reckoned according to the British calendar. Thus, as per the General Clauses Act, 1897, year means calendar year which starts from January to December.

Difference between Financial Year and Calendar Year: Financial year starts from first day of April but Calendar Year starts from first day of January.

12. (i) Rule: As per **section 3(51)** of the General Clauses Act, 1897, 'Rule' shall mean a rule made in exercise of a power conferred by any enactment, and shall include a Regulation made as a rule under any enactment.

(ii) Oath: As per **section 3(37)** of the General Clauses Act, 1897, 'Oath' shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.

(iii) Person: As per **section 3(42)** of the General Clauses Act, 1897, "Person" shall include:

- (1) any company, or
- (2) association, or
- (3) body of individuals, whether incorporated or not.

13. According to **section 8** of the General Clauses Act, 1897, where this Act or Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

Also, in *Gauri Shankar Gaur v. State of U.P.*, AIR 1994 SC 169, it was held that every Act has its own distinction. If a later Act merely makes a reference to a former Act or existing law, it is only by reference and all amendments, repeals new law subsequently made will have effect unless its operation is saved by the relevant provision of the section of the Act.

14. According to **Section 3(21)** of the General Clauses Act, 1897, 'Financial Year' shall mean the year commencing on the first day of April.

The term year has been defined under **Section 3(66)** as a year reckoned according to the British calendar. Thus, as per General Clauses Act, Year means calendar year which starts from January to December.

Hence, in view of the both above definitions, it can be concluded that Financial Year is a year which starts from first day of April to the end of March.

15. As per **Section 3(22)** of the General Clauses Act, 1897, the term "good faith" means a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not;

The term "Good faith" has been defined differently in different enactments. This definition of the good faith does not apply to that enactment which contains a special definition of the term "good faith" and there the definition given in that particular enactment has to be followed.

The question of good faith under the General Clauses Act is one of fact. It is to determine with reference to the circumstances of each case. Thus, anything done with due care and attention, which is not malafide is presumed to have been done in good faith.

In the given problem in the question, Mr. X purchased a watch from Mr. Y carelessly without proper enquiry. Such a purchase made could not be said to be made in good faith as it was done without due care and attention as is expected with a man of ordinary prudence. An honest purchase made carelessly without making proper enquiries cannot be said to have been made in good faith so as to convey good title.

16. As per the provisions of **Section 27** of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

- (i) Properly addressing,
- (ii) Pre-paying, and
- (iii) Posting by registered post.

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Therefore, in view of the above provision, since, the statutory rules itself provides about the service of notice that a notice when required under said statutory rules to be sent by 'registered post acknowledgement due', then, if notice was sent by

‘registered post’ only it will not be the compliance of said rules. However, if such provision was not provided by such statutory rules, then service of notice if by registered post only shall be deemed to be effected.

A notice when required under the statutory rules to be sent by ‘registered post acknowledgement due’ is instead sent by ‘registered post’ only, the protection of presumption regarding serving of notice under ‘registered post’ under this section of the Act neither tenable nor based upon sound exposition of law.

17. “Good Faith” [Section 3(22) of the General Clauses Act, 1897]: A thing shall be deemed to be done in “good faith” where it is in fact done honestly, whether it is done negligently or not;

The question of good faith under the General Clauses Act is one of fact. It is to determine with reference to the circumstances of each case. The term “Good faith” has been defined differently in different enactments. This definition of the good faith does not apply to that enactment which contains a special definition of the term “good faith” and there the definition given in that particular enactment has to be followed. This definition may be applied only if there is nothing repugnant in subject or context, and if that is so, the definition is not applicable.

18. Section 9 of the General Clauses Act, 1897 provides that, for computation of time, in any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word “from” and for the purpose of including the last in a series of days or any other period of time, to use the word “to”.

As per the facts of the question the company shall transfer the unpaid/unclaimed dividend to unpaid dividend account within the period of 7 days. 30th October 2018 will be excluded and 6th November 2018 shall be included, i.e. 31st October, 2018 to 6th November, 2018 (both days inclusive).

19. “Affidavit” [Section 3(3) of the General Clauses Act, 1897]: ‘Affidavit’ shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.

There are two important points derived from the above definition:

1. Affirmation and declaration,
2. In case of persons allowed affirming or declaring instead of swearing.

The above definition is inclusive in nature. It states that Affidavit shall include

affirmation and declarations. This definition does not define affidavit. However, we can understand this term in general parlance. Affidavit is a written statement confirmed by oath or affirmation for use as evidence in Court or before any authority.

20. **Section 10** of the General Clauses Act 1897 provides where by any legislation or regulation, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period then, if the Court or office is closed on that day or last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

A promissory note of ₹1000 was issued by Mr. Sohan to Mr. Mohan on 17th May 2021 which was payable 3 months after date. After that, a sudden holiday was declared on 20th August 2021 due to Moharram.

In the given case, the period of 3 months ends on 17th August 2021. Three days of grace are to be added. It falls due on 20th August 2021 which declared to be a public holiday after the issue of Promissory Note. In the light of provisions of Sec. 10 of the General Clauses Act 1897, the due date will be on next day when office is open i.e. 21st August 2021.

02

Interpretation of Statutes, Deeds and Documents



QUESTIONS

1. Explain how 'Dictionary Definitions' can be of great help in interpreting / constructing an Act when the statute is ambiguous.

(ICAI Module, May'19 Mock Test, Nov'19 Mock Test, Nov'18-2 Marks)

2. The meaning of a word is to be judged by the company it keeps'. Explain the concept of 'Noscitur A Sociis'. (May'20 Mock Test)

OR

"Associate words to be understood in common sense manner." Explain this statement with reference to rules of interpretation of statutes.

(Nov'20 – 3 Marks, Nov'22 Mock Test)

3. At the time of interpreting a statutes what will be the effect of 'Usage' or 'Practice'? (Nov'19-3 Marks, Nov'20 Mock Test, May'21 RTP, May'21 Mock Test, Nov'21 RTP)

4. Soheli, a director of a Company, not being personally concerned or interested, financially or otherwise, in a matter of a proposed motion placed before the Board Meeting, did not disclose his interest although he has knowledge that his sister is interested in that proposal. He restrains from making any disclosure of his interest on the presumption that he is not required by law to disclose any interest as he is not personally interested or concerned in the proposal. He made his presumption relying on the 'Rule of Literal Construction'. Explaining the scope of interpretation under this rule in the given situation, decide whether the decision of Soheli is correct?

(Jan'21 - 3 Marks, May'23 MTP)

5. Write short note on:

(i) Proviso

(ii) Explanation,

with reference to interpretation of Statutes, Deeds and Documents.

(ICAI Module, May'2022 Mock Test)

6. When can the Preamble be used as an aid to interpretation of a statute?
(ICAI Module, May'22 RTP, May'23 RTP,)
7. Explain the rule of 'beneficial construction' while interpreting the statutes quoting an example.
(ICAI Module, May'19 Mock Test)
8. Gaurav Textile Company Limited has entered into a contract with a Company. You are invited to read and interpret the document of contract. What rules of interpretation of deeds and documents would you apply while doing so? (ICAI Module)
9. Differentiate Mandatory Provision from a Directory Provision. What factors decide whether a provision is directory or mandatory?
(ICAI Module, May'18-4 Marks, May'19- 3 Marks, May'21 Mock Test)
10. Explain the meaning of term 'Proviso'. Give the distinction between proviso, exception and Saving Clause.
(May'18 RTP)
11. What is a Document as per the Indian Evidence Act, 1872? (May'18-2 Marks)
12. How will you interpret the definitions in a statute, if the following words are used in a statute?
(i) Means, (ii) Includes
Give one illustration for each of the above from statutes you are familiar with.
(ICAI Module, May'20 Mock Test, Nov'22 RTP, Nov'22 Mock Test)
13. Explain 'Mischief Rule' for interpretation of statute. Also, give four matters it considers in construing an Act.
(ICAI Module, Nov'19 Mock Test, Nov'18- 4 Marks, Nov'20 Mock Test, May'21 Mock Test)



MULTIPLE CHOICE QUESTIONS (HOMEWORK)

- (1) When there is a conflict between two or more statute or two or more parts of a statute and both of them need to be honoured, then which rule of interpretation is to be applied:
- (a) Rule of Harmonious construction
 - (b) Rule of Literal construction
 - (c) Rule of Beneficial construction
 - (d) Rule of exceptional construction (May'19 Mock Test)
- (2) An aid that expresses the scope, object and purpose of the Act—
- (a) Title of the Act
 - (b) Heading of the Chapter
 - (c) Preamble
 - (d) Definitional sections (May'19 Mock Test, ICAI Module, Nov'20 RTP, May'21 Mock Test)
- (3) An internal aid that may be added to include something within the section or to exclude something from it, is—
- (a) Proviso
 - (b) Explanation
 - (c) Schedule
 - (d) Illustrations (May'19 Mock Test, ICAI Module, ICAI Sample Question)
- (4) As per _____, the best way to interpret a statute or document is to read it as it would have been read when it was enacted or made.
- (a) Optima legume interpres est consuetudo
 - (b) Expressio unius Est Exclusio Alterius
 - (c) Ut res magis valeat quam pereat
 - (d) Contemporanea expositio (Nov'19 Mock Test)

- (5) If the _____ used in a statute make it clear that a _____ sense is intended, the rule of Ejusdem Generis shall not apply.
(a) Specific words, narrow
(b) Specific words, wider
(c) General words, narrow
(d) General words, wider (Nov'19 Mock Test)
- (6) Formal legal document which creates or confirms a right or record a fact is a—
(a) Document
(b) Deed
(c) Statute
(d) Instrument (ICAI Module, May'20 Mock Test, May'21 Mock Test)
- (7) Which among the following is the cardinal rule of construction of statutes—
(a) Harmonious Rule of construction
(b) Beneficial Rule of construction
(c) Literal Rule of construction
(d) Reasonable Rule of construction (ICAI Module, ICAI Sample Question)
- (8) Rule of Reasonable Construction is based on the maxim—
(a) Absolut asentenia expositor non indigent
(b) Ut res magis valeat quam pareat
(c) Quo facit per alium facit per se
(d) Contemporanea exposition (ICAI Module)
- (9) Rule of Beneficial construction is also known as—
(a) Purposive construction
(b) Mischieve Rule
(c) Heydons's Rule
(d) All of the Above (ICAI Module, May'20 Mock Test)
- (10) Pick the odd one out of the following aids to interpretation—
(a) Preamble
(b) Marginal Notes
(c) Proviso
(d) Usage (ICAI Module, Nov'22 Mock Test, May'23 Mock Test)

(11) Which rule of construction is applicable where there is a real and not merely apparent conflict between the provisions of an Act, and one of them has not been made subject to the other—

- (a) Rule of Beneficial construction
- (b) Rule of Literal construction
- (c) Rule of Harmonious construction
- (d) Rule of Exceptional construction

(ICAI Module)

(12) The preamble is most important in any legislation, it:

- (a) Provides definitions in the Act.
- (b) Expresses scope, object and purpose of the Act.
- (c) Provides summary of the entire Act.
- (d) None of the above.

(May'20 Mock Test)

(13) _____ is the cardinal rule of construction that words, sentences and phrases of a statute should be read in their ordinary, natural and grammatical meaning so that they may have effect in their widest amplitude

- (a) Rule of Literal Construction
- (b) Rule of Harmonious Construction
- (c) Rule of Beneficial Construction
- (d) Rule of Exceptional Construction

(Nov'20 Mock Test, May'21 Mock Test, Nov'22 Mock Test, May'23 RTP)

(14) According to the _____, the words of the statute are to be given their plain and ordinary meaning. —

(a) Literal rule	(b) golden rule
(c) natural rule	(d) mischief rule

(15) When there is a conflict between two or more statutes or two or more parts of a statute then which rule is applicable:

(a) Welfare construction	(b) Strict construction
(c) Harmonious construction	(d) Mischief Rule

(1 Mark, Nov'22 Mock Test)

(16) The Rule in Heydon's case is also known as—

(a) Reasonable rule	(b) Mischief Rule
(c) Golden Rule	(d) None of the Above

(17) Pick the odd one out of the following aids to interpretation—

(a) Preamble	(b) Marginal Notes
(c) Proviso	(d) Usage
- (Nov'22 Mock Test)

(18) When the law is clear and unambiguous the court shall construe the meaning of a provision based on strict.....

(a) grammatical meaning	(b) logical meaning
(c) alternative interpretation	(d) hypothetical meaning

(19) According to _____ rule of interpretation, meaning of words should be known from its accompanying or associated words.

(a) Mischief rule	(b) Primary Rule
(c) Noscitur a Sociis	(d) Golden Rule

(20) A clause that begins with the words 'Notwithstanding anything contained' is called:

(a) An obstacle clause	(b) A non- obstante clause
(c) An objectionable clause	(d) A superior clause

(Nov'22 RTP, May'23MTP)

(21) means that when two or more words that are susceptible of analogous meaning, are coupled together they are understood to be used in their cognate sense.

- | |
|---|
| (a) Noscitur a Sociis |
| (b) Contemporanea Expositio |
| (c) prima facie |
| (d) absoluta sententia expositore non indiget |
- (Nov'22 Mock Test)

(22) As per Rule of Literal Construction, Technical words are to understood in:

(a) Normal sense	(b) Ordinary sense
(c) Technical sense	(d) Legal sense

(May'23 Mock Test)



ANSWERS

1. **Dictionary Definitions:** First we refer the Act in question to find out if any particular word or expression is defined in it. Where we find that a word is not defined in the Act itself, we may refer to dictionaries to find out the general sense in which that word is commonly understood. However, in selecting one out of the several meanings of a word, we must always take into consideration the context in which it is used in the Act. It is the fundamental rule that the meanings of words and expressions used in an Act must take their colour from the context in which they appear. Further, judicial decisions laying down the meaning of words in construing statutes in pari materia will have greater weight than the meaning furnished by dictionaries. However, for technical terms, reference may be made to technical dictionaries.
2. **Associated Words to be Understood in Common Sense Manner:** When two words or expressions are coupled together one of which generally excludes the other, obviously the more general term is used in a meaning excluding the specific one. On the other hand, there is the concept of 'Noscitur A Sociis' ('it is known by its associates'), that is to say 'the meaning of a word is to be judged by the company it keeps'. When two or more words which are capable of analogous (similar or parallel) meaning are coupled together, they are to be understood in their cognate sense (i.e. akin in origin, nature or quality). They take, as it were, their colour from each other, i.e., the more general is restricted to a sense analogous to the less general. It is a rule wider than the rule of ejusdem generis, rather ejusdem generis is only an application of the noscitur a sociis. It must be borne in mind that noscitur a sociis, is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider.
For example, in the expression 'commercial establishment means an establishment which carries on any business, trade or profession', the term 'profession' was construed with the associated words 'business' and 'trade' and it was held that a private dispensary was not within the definition.
3. **Effect of 'Usage' or 'Practice':**
 - In this connection, we have to bear in mind two Latin maxims:
 - (i) 'Optima Legum interpret est consuetude' (the custom is the best interpreter of the law); and

(ii) 'Contempranea exposito est optima et fortissinia in lege'

- 'Contempranea exposito est optima et fortissinia in lege' means best way to interpret a document is to read it as it would have been read when made.
- As per this rule, the best interpretation/construction of a statute or any other document is that which has been made by the contemporary authority. In simple words, old statutes and documents should be interpreted as they would have been at the time when they were enacted/written. Expose the old laws to new circumstances and technology.
- Optima Legum interpres est consuetude' (the custom is the best interpreter of the law): If there is uniform notorious practice continued under an old statute and the Legislature has not amended the same, then the usage or practice receives judicial or legislative approval.

4. Rule of Literal Construction

Normally, where the words of a statute are in themselves clear and unambiguous, then these words should be construed in their natural and ordinary sense and it is not open to the court to adopt any other hypothetical construction. This is called the rule of literal construction. This principle is contained in the Latin maxim "absoluta sententia expositore non indeget" which literally means "an absolute sentence or preposition needs not an expositor". In other words, plain words require no explanation. Sometimes, occasions may arise when a choice has to be made between two interpretations – one narrower and the other wider or bolder. In such a situation, if the narrower interpretation would fail to achieve the manifest purpose of the legislation, one should rather adopt the wider one. When we talk of disclosure of 'the nature of concern or interest, financial or otherwise' of a director or the manager of a company in the subject-matter of a proposed motion (as referred to in **section 102** of the Companies Act, 2013), we have to interpret in its broader sense of referring to any concern or interest containing any information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decisions thereon. What is required is a full and frank disclosure without reservation or suppression, as, for instance where a son or daughter or father or mother or brother or sister is concerned in any contract or matter, the shareholders ought fairly to be informed of it and the material facts disclosed to them. Here a restricted narrow interpretation would defeat the very purpose of the disclosure.

In the given question, Sohel (a director) did not disclose his interest in a matter placed

before the Board Meeting (in which his sister has interest), as he is not personally interested or concerned in the proposal. Here, he ought to have considered broader meaning of the provision of law; and therefore, even though he was personally not interested or concerned in the proposal, he should have disclosed the interest.

5. (i) **Proviso:** The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment. Ordinarily a proviso is not interpreted as stating a general rule.

It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision.

- (ii) **Explanation:** An Explanation is at times appended to a section to explain the meaning of the text of the section. An Explanation may be added to include something within the section or to exclude something from it. An Explanation should normally be so read as to harmonise with and clear up any ambiguity in the main section. It should not be so construed as to widen the ambit of the section.

The meaning to be given to an explanation will really depend upon its terms and not on any theory of its purpose.

It may also happen that there is a conflict between two or more clauses of the same documents. An effect must be made to resolve the conflict by interpreting the clauses so that all the clauses are given effect. If, however, it is not possible to give effect of all of them, then it is the earlier clause that will override the latter one.

6. While the Preamble can be used to know the aims and objects of the legislation it cannot be used to control or qualify the precise and unambiguous language of an enactment. The preamble is the key to the mind of the maker of the law, but it cannot override in order to enlarge or restrict the enacting provision of the Act. A provision contained in the Act cannot be considered as invalid because they do not accord with the preamble, which is only a brief summary of legislative objectives behind the Act, and if there is any conflict between the preamble and any provision of an Act, the provision prevails. The preamble merely affords help in the matter of construction if there is any ambiguity. Where the language of the Act is clear, the

court is bound to give it effect.

When will courts refer to the preamble as an aid to construction?

Situation 1: Where there is any ambiguity in the words of an enactment the assistance of the preamble may be taken to resolve the conflict.

Situation 2: Where the words of an enactment appear to be too general in scope or application then courts may resort to the preamble to determine the scope or limited application for which the words are meant.

- 7: Where the language used in a statute is capable of more than one interpretation, the most firmly established rule for construction is the principle laid down in the Heydon's case. This rule enables consideration of four matters in constituting an act:
- (1) What was the law before making of the Act,
 - (2) What was the mischief or defect for which the law did not provide,
 - (3) What is the remedy that the Act has provided, and
 - (4) What is the reason for the remedy.

The rule then directs that the courts must adopt that construction which 'shall suppress the mischief and advance the remedy'. Therefore even in a case where the usual meaning of the language used falls short of the whole object of the legislature, a more extended meaning may be attributed to the words, provided they are fairly susceptible of it. If the object of any enactment is public safety, then it's working must be interpreted widely to give effect to that object. Thus in the case of Workmen's Compensation Act, 1923 the main object being provision of compensation to workmen, it was held that the Act ought to be so construed, as far as possible, so as to give effect to its primary provisions.

However, it has been emphasized by the Supreme Court that the rule in Heydon's case is applicable only when the words used are ambiguous and are reasonably capable of more than one meaning

- 8: The rules regarding interpretation of deeds and documents are as follows :
- First and the foremost point that has to be borne in mind is that one has to find out what reasonable man, who has taken care to inform himself of the surrounding circumstances of a deed or a document, and of its scope and intendments, would understand by the words used in that deed or document.
- It is inexpedient to construe the terms of one deed by reference to the terms of another. Further, it is well established that the same word cannot have two different meanings in the same documents, unless the context compels the adoption of such a rule.

The Golden Rule is to ascertain the intention of the parties of the instrument after considering all the words in the documents/deed concerned in their ordinary, natural sense. For this purpose, the relevant portions of the document have to be considered as a whole. The circumstances in which the particular words have been used have also to be taken into account. Very often, the status and training of the parties using the words have also to be taken into account as the same words maybe used by a ordinary person in one sense and by a trained person or a specialist in quite another sense and a special sense. It has also to be considered that very many words are used in more than one sense. It may happen that the same word understood in one sense will give effect to all the clauses in the deed while taken in another sense might render one or more of the clauses ineffective. In such a case the word should be understood in the former and not in the latter sense.

It may also happen that there is a conflict between two or more clauses of the same documents. An effect must be made to resolve the conflict by interpreting the clauses so that all the clauses are given effect. If, however, it is not possible to give effect of all of them, then it is the earlier clause that will override the latter one.

- 9: Practically speaking, the distinction between a provision which is 'mandatory' and one which is 'directory' is that when it is mandatory, it must be strictly observed; when it is 'directory' it would be sufficient that it is substantially complied with. However, we have to look to the substance and not merely the form, an enactment in mandatory form might substantially be directory and, conversely, a statute in directory form may in substance be mandatory. Hence, it is the substance that counts and must take precedence over mere form. If a provision gives a power coupled with a duty, it is mandatory: whether it is or is not so would depend on such consideration as:
- the nature of the thing empowered to be done,
 - the object for which it is done, and
 - the person for whose benefit the power is to be exercised.

- 10: **Proviso:** The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment. Ordinarily a proviso is not interpreted as stating a general rule.

It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other.

Distinction between Proviso, exception and saving Clause

There is said to exist difference between provisions worded as 'Proviso', 'Exception', or 'Saving Clause'.

Proviso	Exception	Saving Clause
'Exception' is intended to restrain the enacting clause to particular cases	'Proviso' is used to remove special cases from general enactment and provide for them specially	'Saving clause' is used to preserve from destruction certain rights, remedies or privileges already existing

- 11: **As per Indian the Evidence Act, 1872: 'Document':** Generally understood, a document is a paper or other material thing giving information, proof or evidence of anything. The Law defines 'document' in a more technical form. As per **Section 3** of the Indian Evidence Act, 1872, 'document' means any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

For Example: A writing is a document, any words printed, photographed are documents.

- 12: Interpretation of the words "Means" and "Includes" in the definitions- The definition of a word or expression in the definition section may either be restricting of its ordinary meaning or may be extensive of the same.

When a word is defined to 'mean' such and such, the definition is 'prima facie' restrictive and exhaustive, we must restrict the meaning of the word to that given in the definition section.

But where the word is defined to 'include' such and such, the definition is 'prima facie' extensive, here the word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section.

Example—

Definition of Director [**section 2(34)** of the Companies Act, 2013]—Director means a director appointed to the board of a company. The word "means" suggests exhaustive

definition.

Definition of Whole time director [Section 2(94) of the Companies Act, 2013]—Whole time director includes a director in the whole time employment of the company. The word “includes” suggests extensive definition. Other directors may be included in the category of the whole time director.

13: Mischief Rule: Where the language used in a statute is capable of more than one interpretation, principle laid down in the Heydon’s case is followed. This is known as ‘purposive construction’ or ‘mischief rule’. The rule then directs that the courts must adopt that construction which ‘shall suppress the mischief and advance the remedy’. It has been emphasized by the Supreme Court that the rule in Heydon’s case is applicable only when the words used are ambiguous and are reasonably capable of more than one meaning.

It enables consideration of four matters in construing an Act:

- (1) what was the law before the making of the Act;
- (2) what was the mischief or defect for which the law did not provide;
- (3) what is the remedy that the Act has provided; and
- (4) what is the reason for the remedy.



ANSWER TO MCQs

1	A	2	C	3	B	4	A	5	B
6	D	7	C	8	B	9	D	10	D
11	C	12	B	13	A	14	A	15	C
16	B	17	D	18	A	19	C	20	B
21	A	22	C						



HOMEWORK QUESTIONS AND ANSWER

1. The 'Statute should be read as a Whole'. Explain the statement. (Nov'18 RTP)
2. Explain whether Foreign Decisions be used for construing Indian Acts. (Nov'19 RTP)
3. 'Preamble does not over-ride the plain provision of the Act.' Comment. Also give suitable example. (Nov'20 RTP)
4. What is External Aid to interpretation? Explain how the Dictionary definitions are the External Aids to Interpretations?
(Jan'21 - 3 Marks)
5. "Associate words to be understood in common sense manner." Explain this statement with reference to rules of interpretation of statutes
(ICAI Module, May'2022 Mock Test)
6. Write short notes on the following in understanding definitions while interpreting statutes:
 - (i) Ambiguous definitions
 - (ii) Definitions subject to a contrary context
(ICAI Module, May'2022 Mock Test, May'23 MTP)
7. Radha Limited has entered into a contract with Gopal Limited. You are invited to read and interpret the document of contract. What rules of interpretation of deeds and documents would you apply while doing so?
(ICAI Module, May'2022 Mock Test)
8. At the time of interpreting a statutes what will be the effect of 'Usage' or 'customs and Practices'?
(ICAI Module, Nov'21 RTP)
9. Explain the Mischief Rule / the rule in Heydon's case for interpretation of statute. Also give four matters it considers in construing an Act.
(Dec'21 - 3 Marks)

10. In what way are the following terms considered as external aid in the interpretation of statutes:

- (i) Historical Setting
- (ii) Use of Foreign Decisions

(Dec'21 - 3 Marks, Nov'22 Mock Test)

11. Enumerate when does the rule of Ejusdem Generis apply.

(3 Marks)(Nov'22 Mock Test)

12. (i) What is the effect of proviso? Does it qualify the main provisions of an enactment?

- (ii) Does an explanation added to a section widen the ambit of a section?

(ICAI Module, Nov'18-4 Marks, May'21 Mock Test)

13. Define Grammatical Interpretation. What are the exceptions to grammatical interpretation?

(ICAI Module, May'18-4 Marks)

14. Many a time a proviso is added to a Section of the enactment. Explain the function of such a proviso in the interpretation of the section/ provision.

(May'19 RTP, May'20 RTP)

OR

Write a short note on "Proviso" with reference to the rules of interpretation.

(Nov'20- 3 Marks)

15. How far is 'preamble' in an enactment helpful in interpreting any of the parts of an enactment?

(May'19 Mock Test, May'19- 3 Marks)

16. Explain the principles of "Grammatical Interpretation" and "Logical Interpretation" of a Statute.

(May'19 Mock Test, Nov'22 Mock Test)

17. How will you interpret the term "Instrument" used in statutes? (Nov'19-3 Marks)

18. Explain the principles of "grammatical interpretation" and "logical interpretation" of a Statute. What are the duties of a court in this regard?

(ICAI Module)

19. Write short note on:

(i) Proviso

(ii) Explanation,

with reference to interpretation of Statutes, Deeds and Documents. (ICAI Module)

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ANSWERS

1. **Read the Statute as a Whole':** It is the elementary principle that construction of a statute is to be made of all its parts taken together and not of one part only. The deed/ statute must be read as a whole in order to ascertain the true meaning of its several clauses, and the words of each clause should be so interpreted as to bring them into harmony with other provisions – if that interpretation does no violence to the meaning of which they are naturally susceptible. And the same approach would apply with equal force with regard to Acts and Rules passed by the legislature. One of the safest guides to the construction of sweeping general words is to examine other words of like import in the same enactment or instrument to see what limitations must be imposed on them. If we find that a number of such expressions have to be subjected to limitations and qualifications and that such limitations and qualifications are of the same nature, that circumstance forms a strong argument for subjecting the expression in dispute to a similar limitation and qualification.
2. **Use of Foreign Decisions:**
 - Foreign decisions of countries following the same system of jurisprudence (legal system) as ours and given on laws similar to ours can be legitimately used for construing our own Acts.
 - But, more importance is always to be given to the language of the Indian statute. Where guidance can be obtained from Indian decisions, reference to foreign decisions is not required.
3. **Preamble:** The Preamble expresses the scope, object and purpose of the Act more comprehensively. The Preamble of a Statute is a part of the enactment and can legitimately be used as an internal aid for construing it. However, the Preamble does not over-ride the plain provision of the Act. But if the wording of the statute gives rise to doubts as to its proper construction, for example, where the words or phrase has more than one meaning and a doubt arises as to which of the two meanings is intended in the Act, the Preamble can and ought to be referred to in order to arrive at the proper construction.
In short, the Preamble to an Act discloses the primary intention of the legislature but can only be brought in as an aid to construction if the language of the statute is not clear. However, it cannot override the provisions of the enactment.
Example: Use of the word 'may' in **section 5** of the Hindu Marriage Act, 1955 provides

that “a marriage may be solemnized between two Hindus.....” has been construed to be mandatory in the sense that both parties to the marriage must be Hindus as defined in **section 2** of the Act. It was held that a marriage between a Christian male and a Hindu female solemnized under the Hindu Marriage Act was void. This result was reached also having regard to the preamble of the Act which reads: ‘An Act to amend and codify the law relating to marriage among Hindus’

4. External aids are the factors that help in interpreting/construing an Act and have been given the convenient nomenclature of ‘External Aids to Interpretation’. Apart from the statute itself there are many matters which may be taken into account when the statute is ambiguous. These matters are called external aids. Dictionary Definitions:

Dictionary Definitions is one of the External Aids to interpretation. First we have to refer to the Act in question to find out if any particular word or expression is defined in it. Where we find that a word is not defined in the Act itself, we may refer to dictionaries to find out the general sense in which that word is commonly understood. However, in selecting one out of the several meanings of a word, we must always take into consideration the context in which it is used in the Act. It is the fundamental rule that the meanings of words and expressions used in an Act must take their colour from the context in which they appear. Further, judicial decisions laying down the meaning of words in construing statutes in ‘pari materia’ will have greater weight than the meaning furnished by dictionaries. However, for technical terms reference may be made to technical dictionaries.

5. Associated Words to be Understood in Common Sense Manner: When two words or expressions are coupled together one of which generally excludes the other, obviously the more general term is used in a meaning excluding the specific one. On the other hand, there is the concept of ‘Noscitur A Sociis’ (‘it is known by its associates’), that is to say ‘the meaning of a word is to be judged by the company it keeps’. When two or more words which are capable of analogous (similar or parallel) meaning are coupled together, they are to be understood in their cognate sense (i.e. akin in origin, nature or quality). They take, as it were, their colour from each other, i.e., the more general is restricted to a sense analogous to the less general. It is a rule wider than the rule of ejusdem generis, rather ejusdem generis is only an application of the noscitur a sociis. It must be borne in mind that noscitur a sociis, is merely a rule of construction and it cannot prevail in cases where it is clear that the

wider words have been deliberately used in order to make the scope of the defined word correspondingly wider.

6. (i) **Ambiguous definitions:** Sometime, we may find that the definition section may itself be ambiguous, and so it may have to be interpreted in the light of the other provisions of the Act and having regard to the ordinary meaning of the word defined. Such type of definition is not to be read in isolation. It must be read in the context of the phrase which it defines, realising that the function of a definition is to give accuracy and certainty to a word or phrase which would otherwise be vague and uncertain but not to contradict it or depose it altogether.
- (ii) **Definitions subject to a contrary context:** When a word is defined to bear a number of inclusive meanings, the sense in which the word is used in a particular provision must be ascertained from the context of the scheme of the Act, the language of the provision and the object intended to be served thereby.

7. The rules regarding interpretation of deeds and documents are as follows:
First and the foremost point that has to be borne in mind is that one has to find out what reasonable man, who has taken care to inform himself of the surrounding circumstances of a deed or a document, and of its scope and intendments, would understand by the words used in that deed or document.

It is inexpedient to construe the terms of one deed by reference to the terms of another. Further, it is well established that the same word cannot have two different meanings in the same documents, unless the context compels the adoption of such a rule.

The Golden Rule is to ascertain the intention of the parties of the instrument after considering all the words in the documents/deed concerned in their ordinary, natural sense. For this purpose, the relevant portions of the document have to be considered as a whole. The circumstances in which the particular words have been used have also to be taken into account. Very often, the status and training of the parties using the words have also to be taken into account as the same words maybe used by an ordinary person in one sense and by a trained person or a specialist in quite another sense and a special sense. It has also to be considered that very many words are used in more than one sense. It may happen that the same word understood in one sense will give effect to all the clauses in the deed while taken in another sense might render one or more of the clauses ineffective. In such a case the word should be understood in the former and not in the latter sense.

8. **Effect of usage:** Usage or practice developed under the statute is indicative of the meaning recognized to its words by contemporary opinion. A uniform notorious practice continued under an old statute and inaction of the Legislature to amend the same are important factors to show that the practice so followed was based on correct understanding of the law. When the usage or practice receives judicial or legislative approval it gains additional weight.

In this connection, we have to bear in mind two Latin maxims:

- (i) 'Optima Legum interpres est consuetudo' (the custom is the best interpreter of the law); and
- (ii) 'Contemporanea exposito est optima et fortissinia in lege' (the best way to interpret a document is to read it as it would have been read when made).

Therefore, the best interpretation/construction of a statute or any other document is that which has been made by the contemporary authority. Simply stated, old statutes and documents should be interpreted as they would have been at the time when they were enacted/written.

Contemporary official statements throwing light on the construction of a statute and statutory instruments made under it have been used as contemporanea expositio to interpret not only ancient but even recent statutes in India.

9. **Mischief Rule/ Heydon's Rule:** Where the language used in a statute is capable of more than one interpretation, the most firmly established rule for construction is the principle laid down in the Heydon's case. This rule enables, consideration of four matters in constituting an Act:

- (1) what was the law before making of the Act,
- (2) what was the mischief or defect for which the law did not provide,
- (3) what is the remedy that the Act has provided, and
- (4) what is the reason for the remedy.

The rule then directs that the courts must adopt that construction which 'shall suppress the mischief and advance the remedy'. Therefore, even in a case where the usual meaning of the language used falls short of the whole object of the legislature, a more extended meaning may be attributed to the words, provided they are fairly susceptible of it. If the object of any enactment is public safety, then its working must be interpreted widely to give effect to that object. Thus, in the case of Workmen's Compensation Act, 1923 the main object being provision of compensation to workmen, it was held that the Act ought to be so construed, as far as possible, so as to give effect to its primary provisions.

However, it has been emphasized by the Supreme Court that the rule in Heydon's case is applicable only when the words used are ambiguous and are reasonably capable of more than one meaning [CIT v. Soda Devi (1957) 32 ITR 615 (SC)].

10. (i) Historical Setting: The history of the external circumstances which led to the enactment in question is of much significance in construing any enactment. We have, for this purpose, to take help from all those external or historical facts which are necessary in the understanding and comprehension of the subject matter and the scope and object of the enactment. History in general and Parliamentary History in particular, ancient statutes, contemporary or other authentic works and writings all are relevant in interpreting and construing an Act.
- (ii) Use of Foreign Decisions: Foreign decisions of countries following the same system of jurisprudence as ours and given on laws similar to ours can be legitimately used for construing our own Acts. However, prime importance is always to be given to the language of the Indian statute. Further, where guidance can be obtained from Indian decisions, reference to foreign decisions may become unnecessary.
11. The rule of Eiusdem Generis applies when:
1. The statute contains an enumeration of specific words
 2. The subject of enumeration constitutes a class or category
 3. That class or category is not exhausted by the enumeration
 4. General terms follow the enumeration; and
 5. There is no indication of a different legislative intent.
- 12: (i) Normally a Proviso is added to a section of an Act to except something or qualify something stated in that particular section to which it is added. A proviso should not be, ordinarily, interpreted as a general rule. A proviso to a particular section carves out an exception to the main provision to which it has been enacted as a Proviso and to no other provision.
- (ii) Sometimes an explanation is added to a section of an Act for the purpose of explaining the main provisions contained in that section. If there is some ambiguity in the provisions of the main section, the explanation is inserted to harmonise and clear up and ambiguity in the main section. Something may added be to or something may be excluded from the main provision by insertion

of an explanation. But the explanation should not be construed to widen the ambit of the section.

13: Grammatical Interpretation and its exceptions: 'Grammatical interpretation' concerns itself exclusively with the verbal expression of the law, it does not go beyond the letter of the law. In all ordinary cases, 'grammatical interpretation' is the sole form allowable. The Court cannot take from or add to modify the letter of the law.

This rule, however, is subject to some exceptions:

- (1) Where the letter of the law is logically defective on account of ambiguity, inconsistency or incompleteness. As regard the defect to ambiguity, the Court is under a duty to travel beyond the letter of the law so as to determine from the other sources the true intention of the legislature. In the case of the statutory expression being defective on account of inconsistency, the court must ascertain the spirit of the law.
- (2) If the text leads to a result which is so unreasonable that it is self-evident that the legislature could not mean what it says, the court may resolve such impasse by inferring logically the intention of the legislature.

14: The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment ordinarily a proviso is not interpreted as it stating a general rule.

It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the provision to which it has been enacted as a proviso and not to the other.

15: Preamble: It expresses the scope and object of the Act more comprehensively than the long title. The preamble may recite the ground and the cause for making a statute and or the evil which is sought to be remedied by it.

The preamble like the Long title can legitimately be used for construing it. However, the preamble cannot override the provisions of the Act. Only if the wording of the Act gives rise to doubts as to its proper construction (e.g., where the words or a phrase has more than the one meaning and doubts arise as to which of the

two meanings is intended in the Act) the preamble can and ought to be referred to arrive at the proper construction.

16: Principles of Grammatical Interpretation and Logical Interpretation: In order to ascertain the meaning of any law/ statute the principles of Grammatical and Logical Interpretation is applied to conclude the real meaning of the law and the intention of the legislature behind enacting it.

Grammatical interpretation concerns itself exclusively with the verbal expression of law. It does not go beyond the letter of the law, whereas Logical interpretation on the other hand, seeks more satisfactory evidence of the true intention of the legislature.

17: Instrument': In common parlance, 'instrument' means a formal legal document which creates or confirms a right or records a fact. It is a formal writing of any kind, such as an agreement, deed, charter or record, drawn up and executed in a technical form. It also means a formal legal document having legal effect, either as creating liability or as affording evidence of it. **Section 2(14)** of the Indian Stamp Act, 1899 states that 'instrument' includes every document by which any right or liability is or purports to be created, transferred, extended, extinguished or recorded.

18: Principles of Grammatical Interpretation and Logical Interpretation: In order to ascertain the meaning of any law/ statute the principles of Grammatical and Logical Interpretation is applied to conclude the real meaning of the law and the intention of the legislature behind enacting it.

Meaning: Grammatical interpretation concerns itself exclusively with the verbal expression of law. It does not go beyond the letter of the law, whereas Logical interpretation on the other hand, seeks more satisfactory evidence of the true intention of the legislature.

Application of the principles in the court: In all ordinary cases, the grammatical interpretation is the sole form allowable. The court cannot delete or add to modify the letter of the law. However, where the letter of the law is logically defective on account of ambiguity, inconsistency or incompleteness, the court is under a duty to travel beyond the letter of law so as to determine the true intentions of the legislature. So that a statute is enforceable at law, however, unreasonable it may be. The duty of the court is to administer the law as it stands rather it is just or unreasonable.

However, if there are two possible constructions of a clause, the courts may prefer the logical construction which emerges from the setting in which the clause appears and the circumstances in which it came to be enacted and also the words used therein.

- 19: (i) **Proviso:** The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment. Ordinarily a proviso is not interpreted as stating a general rule.

It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision.

- (ii) **Explanation:** An Explanation is at times appended to a section to explain the meaning of the text of the section. An Explanation may be added to include something within the section or to exclude something from it. An Explanation should normally be so read as to harmonize with and clear up any ambiguity in the main section. It should not be so construed as to widen the ambit of the section.

The meaning to be given to an explanation will really depend upon its terms and not on any theory of its purpose.

03

The Foreign Exchange Management Act, 1999



QUESTIONS

Question 1

Examine whether the following branches can be considered as a 'Person resident in India' under Foreign Exchange Management Act, 1999:

- (i) ABC Limited, a company incorporated in India established a branch at London on 1st January, 2003.
- (ii) M/s XYZ, a foreign company, established a branch at New Delhi on 1st January, 2003. The branch at New Delhi controls a branch at Colombo.

Question 2

'Printex Computer' is a Singapore based company having several business units all over the world. It has a unit for manufacturing computer printers with its Headquarters in Pune. It has a Branch in Dubai which is controlled by the Headquarters in Pune. What would be the residential status under the FEMA, 1999 of printer units in Pune and that of Dubai branch?

Question 3

Mr. Ram had resided in India during the Financial Year 2014-2015 for less than 183 days. He again came to India on 1st May, 2015 for higher studies and business and stayed upto 15th July, 2016. State under the Foreign Exchange Management Act, 1999.

- (i) If Mr. Ram can be considered 'person Resident in India' during the Financial year 2015-2016
and
- (ii) Is citizenship relevant for determining such a status?

Question 4

Referring to the provisions of the Foreign Exchange Management Act, 1999, state the kind of approval required for the following transactions:

- (i) M requires U.S. \$ 5,000 for remittance towards hire charges of transponders.
- (ii) P requires U.S. \$ 2,000 for payment related to call back services of telephones

Question 5

Mr. Sane, an Indian National desires to obtain Foreign Exchange for the following purposes:

- (i) Remittance of US Dollar 50,000 out of winnings on a lottery ticket.
- (ii) US Dollar 1,00,000 for sending a cultural troupe on a tour of U.S.A. Advise him whether he can get Foreign Exchange and if so, under what conditions?

Question 6

State which kind of approval is required for the following transactions under the Foreign Exchange Management Act, 1999:

- (i) X, a Film Star, wants to perform alongwith associates in New York on the occasion of Diwali for Indians residing at New York. Foreign Exchange drawal to the extent of US dollars 20,000 is required for this purpose.
- (ii) R wants to get his heart surgery done at United Kingdom. Up to what limit Foreign Exchange can be drawn by him and what are the approvals required?

Question 7

Mr. Suresh resided in India during the Financial Year 2013-14. He left India on 15th July, 2014 for Switzerland for pursuing higher studies in Biotechnology for 2 years. What would be his residential status under the Foreign Exchange Management Act, 1999 during the Financial Years 2014-15 and 2015-16?

Mr. Suresh requires every year USD 25,000 towards tuition fees and USD 30,000 for incidental and stay expenses for studying abroad. Is it possible for Mr. Suresh to get the required Foreign Exchange and, if so, under what conditions?

Question 8

Mr. Rohan, an Indian Resident individual desires to obtain Foreign Exchange for the following purposes:

- (A) US\$ 1,20,000 for studies abroad on the basis of estimates given by the foreign university.
- (B) Gift Remittance amounting US\$ 10,000.

Advise him whether he can get Foreign Exchange and if so, under what condition(s)?

Question 9

- (i) Mr. P has won a big lottery and wants to remit US Dollar 20,000 out of his winnings to his son who is in USA. Advise whether such remittance is possible under the Foreign Exchange Management Act, 1999.

- (ii) Mr. Z is unwell and would like to have a kidney transplant done in USA. He would like to know the formalities required and the amount that can be drawn as foreign exchange for the medical treatment abroad.

Question 10

Explain the meaning of “Capital Account Transactions” under the Foreign Exchange Management Act, 1999. Examine whether an Investment by person resident in India in Foreign Securities is permissible or not under the above Act as Capital Account transactions.

Question 11

Lifesys Limited, a billion dollar, Indian company wishes to create a chair in a reputed university in the U.S. This chair is for the department of computer science. The company wishes to obtain your advise in regard to the following with reference to the FEMA, 1999.

- (i) Is such “chair” creation permissible?
- (ii) What is the maximum amount that can be denoted for such chair?
- (iii) Any formalities to be complied with?

Question 12

Mr. T. Raghava has secured admission in a reputed and recognized university in Germany, for the study of higher and technical education, outside India. After arrival in Germany, he has gone ill and wants medical treatment facility in a reputed German hospital. He desires to apply to the Government of India for availing the additional remittance beyond the limit approved for foreign currency exchange facility. He has already enjoyed the permitted facility of foreign exchange for studies abroad, for the said financial year. Decide the following as to the facts given in the question as per the provisions of the Foreign Exchange Management Act, 1999:

Question 13

Mr. Hillary Benjamin, a citizen of India, left India for employment in U.S.A. on 1st June, 2015.

Mr. Hillary Benjamin purchased a flat at New Delhi for Rs.60 lacs in September, 2016. His brother, Mr. Henry Benjamin employed in New Delhi, also purchased a flat in the same building in September 2016 for Rs. 65 lacs. Mr. Henry Benjamin’s flat was financed by a loan from a Housing Finance Company and the loan was guaranteed by Mr. Hillary Benjamin. Examine with reference to the provisions of the Foreign Exchange Management

Act, 1999 whether purchase of flat and guarantee by Mr. Hillary Benjamin are Capital Account transactions and whether these transactions are permissible.

Question 14

Explain the meaning of “Capital Account Transactions” under the Foreign Exchange Management Act, 1999. State its categories and also examine whether the following transactions are permissible or not under the above Act as Capital Account transactions:

- (i) Investment by person resident in India in Foreign Securities.
- (ii) Foreign currency loans raised in India and abroad by a person resident in India.
- (iii) Export, import and holding of currency / currency notes.
- (iv) Investment in a Nidhi Company.
- (i) Trading in transferable development rights

**MULTIPLE CHOICE QUESTION (HOMEWORK)**

1. In September, 2021, Mr. Purshottam Saha visited Atlanta as well as Athens and thereafter, London and Berlin on a month-long business trip, for which he withdrew foreign exchange to the extent of US\$ 50,000 from his banker State Bank of India, New Delhi branch. In December, 2021 he further, withdrew US\$ 50,000 from SBI and remitted the same to his son Raviyansh Saha who was studying in Toronto, Canada. In the first week of January, 2022, he sent his ailing mother Mrs. Savita Saha for a specialised treatment along with his wife Mrs. Rashmi Saha to Seattle where his younger brother Pranav Saha, holder of Green Card, is residing. For the purpose of his mother's treatment and to help Pranav Saha to meet increased expenses, he requested his banker SBI to remit US\$ 75,000 to Pranav Saha's account maintained with Citibank, Seattle. In February, 2022, Mr. Purshottam Saha's daughter Devanshi Saha got engaged and she opted for a 'destination marriage' to be held in August, 2022 in Zurich, Switzerland. While on a trip to Dubai in the last week of March, 2022, he again withdrew US\$ 35,000 to be used by him and Devanshi Saha for meeting various trip expenses including shopping in Dubai. Later, the event manager gave an estimate of US\$ 2,50,000 for the wedding of Devanshi Saha at Zurich, Switzerland. Which option do you think is the correct one in the light of applicable provisions of Foreign Exchange Management Act, 1999 including obtaining of prior approval, if any, from Reserve Bank of India since Mr. Purshottam Saha withdrew foreign exchange on various occasions from his banker State Bank of India.
- (a) In respect of withdrawal of foreign exchange on various occasions from his banker State Bank of India and remitting the same outside India during the financial year 2021-22, Mr. Purshottam Saha is not required to obtain any prior approval.
- (b) In respect of withdrawal of US\$ 35,000 in the last week of March, 2022, for a trip to Dubai, Mr. Purshottam Saha must have obtained prior approval of Reserve Bank of India since the maximum amount of foreign exchange that can be withdrawn in a financial year is US\$ 1,75,000.
- (c) After withdrawing US\$ 1,00,000, Mr. Purshottam Saha must have obtained prior approval of Reserve Bank of India for the remaining remittances made during the financial year 2021-22, otherwise SBI would not have permitted further withdrawals.
- (d) After withdrawing US\$ 50,000, Mr. Purshottam Saha must have obtained prior approval of Reserve Bank of India for the remaining remittances made during

the financial year 2021-22, otherwise SBI would not have permitted further withdrawals.

2. M/s. Kedhar Sports Academy, a private coaching club, provides coaching for cricket, football and other similar sports. It coaches sports aspirants pan India. It also conducts various sports events and campaigns, across the country. In 2022, to mark the 25th year of its operation, a cricket tournament (akin to the format of T-20) is being organized by M/s. Kedhar Sports Academy in Lancashire, England, in the first half of April. The prize money for the 'winning team' is fixed at USD 40,000 whereas in case of 'runner-up', it is pegged at USD 11,000. You are required to choose the correct option from the four given below which signifies the steps to be taken by M/s. Kedhar Sports Academy for remittance of the prize money of USD 51,000 (i.e. USD 40,000+USD 11,000) to England keeping in view the relevant provisions of Foreign Exchange Management Act, 1999:
- (a) For remittance of the prize money of USD 51,000, M/s Kedhar Sports Academy is required to obtain prior permission from the Ministry of Human Resource Development (Department of Youth Affairs and Sports).
 - (b) For remittance of the prize money of USD 51,000, M/s Kedhar Sports Academy is required to obtain prior permission from the Reserve Bank of India.
 - (c) For remittance of the prize money of USD 51,000, M/s Kedhar Sports Academy is not required to obtain any prior permission from any authority, whatsoever, and it can proceed to make the remittance.
 - (d) For remittance of the prize money of USD 51,000, M/s Kedhar Sports Academy is required to obtain prior permission from the Ministry of Finance (Department of Economic Affairs).
3. Akash Ceramics Limited, an Indian company, holds a commercial plot in Chennai which it intends to sell. M/s. Super Seller, a real estate broker with its Head Office in the USA, has been appointed by Akash Ceramics Limited to find some suitable buyers for the said commercial plot in Chennai which is situated at a prime location. M/s. Super Seller identifies Glory Estate Inc., based out of USA, as the potential buyer. It is to be noted that Glory Estate Inc. is controlled from India and hence, is a 'Person Resident in India' under the applicable provisions of Foreign Exchange Management Act, 1999. A deal is finalised and Glory Estate Inc. agrees to purchase the commercial plot for USD 600,000 (assuming 1 USD = ₹ 70). According to the agreement, Akash Ceramics Limited is required to pay commission @ 7% of the

sale proceeds to M/s. Super Seller for arranging the sale of commercial plot to Glory Estate Inc. and commission is to be remitted in USD to the Head Office of M/s. Super Seller located in USA. Considering the relevant provisions of Foreign Exchange Management Act, 1999, which statement out of the four given below is correct (ignoring TDS implications arising under the Income-tax Act, 1961):

- (a) There is no requirement of obtaining prior permission of Reserve Bank of India (RBI) for remittance of commission upto USD 25,000 by Akash Ceramics Limited to M/s. Super Seller but for the balance commission of USD 17,000, prior permission of RBI is required to be obtained.
- (b) There is no requirement of obtaining prior permission of Reserve Bank of India (RBI) for remittance of commission upto USD 30,000 by Akash Ceramics Limited to M/s. Super Seller but for the balance commission of USD 12,000, prior permission of RBI is required to be obtained.
- (c) There is no requirement of obtaining prior permission of Reserve Bank of India (RBI) for remittance of entire commission of USD 42,000 by Akash Ceramics Limited to M/s. Super Seller.
- (d) It is mandatory to obtain prior permission of Reserve Bank of India (RBI) for remittance of entire commission of USD 42,000 by Akash Ceramics Limited to M/s. Super Seller.

4. Mohita Periodicals and Mags Publications Limited, having registered office in Chennai, has obtained consultancy services from an entity based in France for setting up a software programme to strengthen various aspects relating to publications. The consideration for such consultancy services is required to be paid in foreign currency. The compliance officer of Mohita Periodicals and Mags Publications Limited, Mrs. Ritika requires your advice regarding the foreign exchange that can be remitted for the purpose of obtaining consultancy services from abroad without prior approval of Reserve Bank of India. Out of the following four options, choose the one which correctly portrays the amount of foreign exchange remittable for the given purpose after considering the provisions of the Foreign Exchange Management Act, 1999 and regulations made thereunder:

- (a) Permissible amount of foreign exchange that can be remitted by Mohita Periodicals and Mags Publications Limited for obtaining consultancy services from an entity based in France without prior approval of RBI is US\$ 50,000,000.
- (b) Permissible amount of foreign exchange that can be remitted by Mohita Periodicals and Mags Publications Limited for obtaining consultancy services

from an entity based in France without prior approval of RBI is US\$ 10,000,000.

- (c) Permissible amount of foreign exchange that can be remitted by Mohita Periodicals and Mags Publications Limited for obtaining consultancy services from an entity based in France without prior approval of RBI is US\$ 5,000,000.
- (d) Permissible amount of foreign exchange that can be remitted by Mohita Periodicals and Mags Publications Limited for obtaining consultancy services from an entity based in France without prior approval of RBI is US\$ 1,000,000.

5. After five years of stay in USA, Mr. Umesh came to India at his paternal place in New Delhi on October 25, 2021, for the purpose of conducting business with his two younger brothers Rajesh and Somesh and contributed a sum of ₹ 10,00,000 as his capital. Simultaneously, Mr. Umesh also started a proprietary business of selling artistic brass ware, jewellery, etc. procured directly from the manufacturers based at Moradabad. Within a period of two months after his arrival from USA, Mr. Umesh established a branch of his proprietary business at Minnesota, USA. You are required choose the appropriate option with respect to residential status of Mr. Umesh and his branch for the financial year 2022-23 after considering the applicable provisions of the Foreign Exchange Management Act, 1999:

- (a) For the financial year 2022-23, Mr. Umesh and his branch established at Minnesota, USA, are both persons resident outside India.
- (b) For the financial year 2022-23, Mr. Umesh is a resident in India but his branch established at Minnesota, USA, is a person resident outside India.
- (c) For the financial year 2022-23, Mr. Umesh and his branch established at Minnesota, USA, are both persons resident in India.
- (d) For the financial year 2022-23, Mr. Umesh is a person resident outside India but his branch established at Minnesota, USA, is a person resident in India.



ANSWERS

Answer: 1

Person resident in India (Foreign Exchange Management Act, 1999):

- (i) According to Section 2(v)(iii) of FEMA, 1999 an office, branch or agency in India owned or controlled by a person resident outside India is a 'person resident in India'.
Only a body corporate registered or incorporated in India is a 'person resident in India'. 'person resident outside India' means a person who is not resident in India.
Hence M/s XYZ, foreign company is a 'resident outside India.' But the branch at New Delhi owned by M/s XYZ is a 'resident in India'.
- (ii) from the date of establishment i.e. 1st January, 2003. The branch at Colombo controlled by the branch at New Delhi referred to in the question is a person 'resident in India'.

Answer: 2

- (i) Printex Computer being a Singapore based company would be person resident outside India (Section 2 (u) defines 'person' under clause (viii) thereof, as person would include any agency, office or branch owned or controlled by such person. The term such person appears to refer to a person who is included in clause (i) to (vi).
Accordingly, Printex unit in Pune, being a branch of a company would be a 'person'.
- (ii) Section 2(v) defines a person resident in India. It would include an office, branch or agency in India owned or controlled by a person resident outside India. Printex unit in Pune is owned or controlled by a person resident outside India, and hence it, would be a 'person resident in India.'
- (iii) However, Dubai Branch though not owned is controlled by Print unit in Pune which is a person resident in India. Hence Dubai Branch is a person resident in India.

Answer : 3

- (i) No. Mr. Ram cannot be considered 'Person resident in India' during the financial year 2015-2016 notwithstanding the purpose or duration of his stay in India during 2015-2016. An individual has to be present in India for more than 182 days in the preceding financial year. Mr. Ram does not satisfy this condition for the FY 2015-2016. But from 1.5.2015- will be treated as PRI.
- (ii) No. Citizenship is not relevant for determining the status.

Answer: 4

- (i) It is a current account transaction, where M is required to take approval of the Central Government for drawal of foreign exchange for remittance of hire charges of transponders.
- (ii) Withdrawal of foreign exchange for payment related to call back services of telephone is a prohibited transaction. Hence, Mr. P will not succeed in acquiring US \$ 2,000 for the said purpose.

Answer: 5

Under provisions of section 5 of the Foreign Exchange Management Act, 1999 certain Rules have been made for drawal of Foreign Exchange for Current Account transactions. As per these Rules, Foreign Exchange for certain Current Account transactions is prohibited. some other Current Account transactions, Foreign Exchange can be drawn with prior permission of the Central Government & Reserve Bank of India is required.

- (i) Remittance out of lottery winnings, such remittance is prohibited and the same is included in First Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, Mr. Sane cannot withdraw Foreign Exchange for this purpose.
- (ii) Foreign Exchange for meeting expenses of cultural tour can be withdrawn by any person after obtaining permission from Government of India, Ministry of Human Resources Development, (Department of Education and Culture) as prescribed in Second Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, Mr. Sane can withdraw the Foreign Exchange after obtaining such permission.

Answer: 6

Approval to the following transactions under FEMA, 1999:

- (i) Foreign Exchange drawals for cultural tours require prior permission of the Government of India irrespective of the amount of foreign exchange required. Therefore, in the given case X, the Film Star is required to seek permission of the Government of India.
- (ii) Individuals can avail of foreign exchange facility within the limit of USD 2,50,000 only.
Any additional remittance in excess of the said limit for the expenses in connection with medical treatment abroad, shall require prior approval of the Reserve Bank of India. Therefore, R can draw foreign exchange up to the USD 2,50,000 and for

additional remittance in excess of this limit for bearing the expenses of medical treatment in UK, prior permission/approval of RBI will be required. However, No approval required in case it is within Estimation.

Answer: 7

Residential Status: According to section 2(v) of the Foreign Exchange Management Act, 1999, 'Person resident in India' means a person residing in India for more than 182 days during the course of preceding financial year. However, it does not include a person who has gone out of India or who stays outside India for employment outside India or for any other purpose in such circumstances as would indicate his intention to stay outside India for an uncertain period.

In this case, Mr. Suresh who resided in India during the financial year 2013-14 left on 15.7.2014 for Switzerland for pursuing higher studies in Biotechnology for 2 years, he will be resident for 2014-15, as he has gone to stay outside India for a 'certain period'. Mr. Suresh will not be resident during the Financial Year 2015-2016 as he did not stay in India during the relevant previous financial year i.e. 2014-15.

Foreign Exchange for studies abroad: According to Para I of Schedule III to Foreign Exchange Management (Current Account Transactions), Amendment Rule, 2015 dated 26th May, 2015, individuals can avail of foreign exchange facility for the studies abroad within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit shall require prior approval of the RBI. Further individual may be allowed remittances exceeding USD 2,50,000 based on the estimate received from the institution abroad. In this case the foreign exchange required is only USD 55,000 per academic year and hence approval of RBI is not required.

Answer: 8

(A) **Remittance of Foreign Exchange for studies abroad:** Foreign exchange may be released for studies abroad up to a limit of US \$ 2,50,000 for the studies abroad without any permission from the RBI. Above this limit, RBI's prior approval is required. Further proviso to Para I of Schedule III states that individual may be allowed remittances without seeking prior approval of the RBI exceeding USD 2,50,000 based on the estimate received from the institution abroad. In this case since US \$ 1,20,000 is the drawal of foreign exchange, so permission of the RBI is not required.

(B) **Gift remittance exceeding US \$ 10,000:** Under the provisions of Section 5 of FEMA 1999, certain Rules have been made for drawal of foreign exchange for current

account transactions. Gift remittance is a current account transaction. Gift remittance exceeding US \$ 2,50,000 can be made after obtaining prior approval of the RBI. In the present case, since the amount to be gifted by an individual, Mr. Rohan is USD 10,000, so there is no need for any permission from the RBI.

Answer: 9

(i) Mr. P wanted to remit US Dollar 20,000 out of his lottery winnings to his son residing in USA. Such remittance is prohibited and the same is included in the Foreign Exchange Management (Current Account Transactions) Rules, 2000.
Hence Mr. P cannot withdraw foreign exchange for this purpose.

(ii) "Remittance of foreign exchange for medical treatment abroad" requires prior permission or approval of RBI where the individual requires withdrawal of foreign exchange exceeding USD 2,50,000. The Schedule also prescribes that for the purpose of expenses in connection with medical treatment, the individual may avail of exchange facility for an amount in excess of the limit prescribed under the Liberalized Remittance Scheme, if so required by a medical institute offering treatment.

Therefore, Mr. Z can draw foreign exchange up to the USD 2,50,000 and no prior permission/ approval of RBI will be required. For amount exceeding the above limit, authorised dealers may release foreign exchange under general permission based on the estimate from the doctor in India or hospital or doctor abroad.

Answer: 10

Meaning of Capital Account Transaction: It means a transaction which alters the assets or liabilities including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of a person resident outside India.

The Reserve Bank of India has formed the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000.

A person resident in India may enter into any of the following capital account transactions provided the regulations specified by the Reserve Bank of India in respect of such capital account transactions are complied with.

In view of the above, an Investment by person resident in India in Foreign Securities is permissible capital account transaction.

Answer: 11

(i) In the first case, "chair" creation for the department of computer science in reputed

university in the U.S. is permissible.

- (ii) Maximum amount that can be donated for such chair will be one per cent of their foreign exchange earnings during the previous three financial years or USD 5,000,000, whichever is less without prior approval of the Reserve Bank of India.
- (iii) In case where donations exceeds one per cent of their foreign exchange earnings during the previous three financial years or USD 5,000,000, it shall require prior approval of Reserve Bank of India.

Answer: 12

According to the Schedule III of the FEM (current account transactions) Rules, 2000, following shall be the limit for the remittance of Foreign Exchange in the given situations:
Remittance of Foreign Exchange for Studies Abroad: Foreign exchange may be released for studies abroad up to a limit of US \$ 2,50,000 without any permission from the RBI.

Above this limit, RBI's prior approval is required.

Remittance for Medical Treatment: Remittance of foreign exchange for medical treatment abroad requires prior permission or approval of RBI where the individual requires withdrawal of foreign exchange exceeding USD 2,50,000. The Schedule also prescribes that for the purpose of expenses in connection with medical treatment, the individual may avail of exchange facility for an amount in excess of the limit prescribed under the Liberalized Remittance Scheme, if so required by a medical institute offering treatment. Such amount shall be reduced from USD 2,50,000 by the amount so remitted.

Therefore, Mr. T. Raghava can draw foreign exchange exceeding USD 2,50,000 by taking prior permission/ approval of RBI.

Answer: 13

Section 2(e) of Foreign Exchange Management Act, 1999 states that 'capital account transactions' means:

- (a) a transaction which alters the assets or liabilities, including contingent liabilities, outside India of person's resident in India
- (b) a transaction which alters assets or liabilities in India of persons resident outside India.

According to the said definition, a transaction which alters the contingent liability will be considered as capital account transaction in the case of person resident in India, but it is not so in the case of person resident outside India.

Purchase of immovable property by Mr. Hillary Benjamin in India is a capital account transaction.

According to the Capital Account Regulations both the purchase of immovable property by Mr. Hillary Benjamin and guarantee by Mr. Hillary Benjamin are permissible.

Answer: 14

Meaning of Capital Account Transaction: It means a transaction which alters the assets or liabilities including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of a person resident outside India.

The Reserve Bank of India has formed the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000. The provisions of these regulations are as under:

Categories of Capital Account Transactions: As per these regulations, capital account transactions may be classified under the following heads.

- (1) Permissible capital account transaction of persons resident in India (schedule 1)
- (2) Permissible Capital transactions of persons resident outside India (schedule II).
- (3) Prohibited capital account transactions.

A person resident in India may enter into any of the following capital account transactions provided the regulations specified by the Reserve Bank of India in respect of such capital account transactions are complied with.

In view of the above provisions: among five capital account transaction of question first three i.e. (i), (ii) and (iii) are permissible capital account transactions and rest two i.e., (iv) and (v) are prohibited capital transactions.



ANSWER TO MCQs

1.	(a)	4.	(d)
2.	(c)	5.	(c)
3.	(d)		