

J.K. SHAH[®]

**TEST
SERIES**



SUGGESTED SOLUTION

CA INTERMEDIATE

SUBJECT- CORPORATE LAW & OTHERS

Test Code – IMP 2422

BRANCH - () (Date :)

Head Office : Shraddha, 3rd Floor, Near Chinai College, Andheri (E), Mumbai – 69.

Tel : (022) 26836666

MULTIPLE CHOICE QUESTIONS :

1.	(i) D	Manoj will be considered as resident in India as he was in India for 120 days during the financial year (2021- 2022)	2
2.	(ii) C	Rs. 37,25,000	2
3.	(iii) C	Yes, the partner is under obligation to contribute money also to LLP as per the agreement.	2
1.	B	Since, Finload Limited has made 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.	2
2.	B	Company Y qualifies as an associate company of Company X since Company X holds a 25% stake in Company Y and actively participates in its strategic decisions.	2
3.	D	Latest by 30 th May, 2021, the registered proprietor of trade mark should move an application to the Central Government for rectification of this anomaly.	2
4.	A	3 & 4	2
5.	D	2012-2013	2
6.	C	Eight years from the financial year in which the latest entry is made in the Register.	2
7.	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.	2
8.	A	They will not get any extension	2
9.	C	Eight years from the financial year in which the latest entry is made in the Register.	2
10.	D	Person who has stayed in India for a period of not less than 120 days during the financial year.	2
11.	B	Only (i), (ii) and (iv)	2
12.	A	Noscitur a Sociis	2

DESCRIPTIVE ANSWER**ANSWER : 1(A)**

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 15th 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 27th 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.

(5 MARKS)

ANSWER : 1(B)

- (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.

(5 MARKS)

ANSWER : 1(C)

The Companies Act, 2013 lays down the governing provisions for foreign companies in Chapter XXII which is comprised of section 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 Rs. 1,00,000 but which may extend to Rs. 3,00,000 and in the case of a continuing offence, with an additional fine which may extend to Rs. 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 Rs. 25,000 but which may extend to Rs. 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 Rs. 25,000 but which may extend to Rs. 5,00,000, or with both.

(4 MARKS)

ANSWER : 2(A)

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.

(5 MARKS)

ANSWER : 2(B)

(i) Inspection by Directors

As per Section 128(3) of the Companies Act, 2013, any director can inspect the books of account and other books and papers of the company during business hours. Such inspection may be done by any type of director - nominee, independent, promoter or whole time.

The proviso to sub-section 3 provides that a person can inspect the books of account of the subsidiary, only on authorisation by way of the resolution of Board of Directors.

Assistance by officers and Employees

As per Section 128(4), where an inspection is made under sub-section (3), the officers and other employees of the company shall give to the person making such inspection all assistance in connection with the inspection which the company may reasonably be expected to give.

(ii) Period for preservation of books

According to section 128(5) of the Companies Act, 2013, the books of accounts, together with vouchers relevant to any entry in such books, are required to be preserved in good order

by the company for a period of not less than eight years immediately preceding the relevant financial year.

In case of a company incorporated less than eight years before the financial year, the books of accounts for the entire period preceding the financial year together with the vouchers shall be so preserved.

As per proviso to sub-section 5, where an investigation has been ordered in respect of a company under Chapter XIV of the Act related to inspection, inquiry or investigation, the Central Government may direct that the books of account may be kept for such period longer than 8 years, as it may deem fit and give directions to that effect

(5 MARKS)

ANSWER : 2(C)

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.

(4 MARKS)

ANSWER : 3(A)

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.

(5 MARKS)

ANSWER : 3(B)

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.

(5 MARKS)

ANSWER : 3(C)

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 section 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.

(4 MARKS)

ANSWER : 4(A)

- (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 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 dividend to its members.

(6 MARKS)

ANSWER : 4(B)

- (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.

(4 MARKS)

ANSWER : 4(C)

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.

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.

(3 MARKS)

ANSWER : 5(A)

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.

(5 MARKS)

ANSWER : 5(B)

- (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.

(5 MARKS)

ANSWER : 5(C)

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.

(4 MARKS)

ANSWER : 6(A)

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.

ANSWER : 6(B)

According to section 7 of the Limited Liability Partnership Act, 2008, every Limited Liability Partnership (LLP) shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.

Provided, 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.

In the given question, at least Mr. Prateek and one nominee of any bodies corporate shall be designated partners.

(5 MARKS)

ANSWER : 6(C)

Section 5 of the Foreign Exchange Management Act, 1999 provides that any person may sell or draw foreign exchange to or from an authorized person if such sale or drawal is a current account transaction. The Central Government in consultation can, in public interest and in consultation with Reserve Bank of India, impose reasonable restrictions for such transactions.

Schedule II of the Foreign Exchange Management (Current Account Transactions) Rules, 2000 provides that no person shall draw foreign exchange for a transaction without approval of the Central Government. One of the transaction included in Schedule II is 'cultural tours'.

Accordingly, Ms. Kanika Tripathi can withdraw foreign exchange of USD 75,000 for meeting expenses of cultural tour after obtaining permission from Ministry of Human Resource Development (Department of Education and Culture) as prescribed in Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000.

(4 MARKS)