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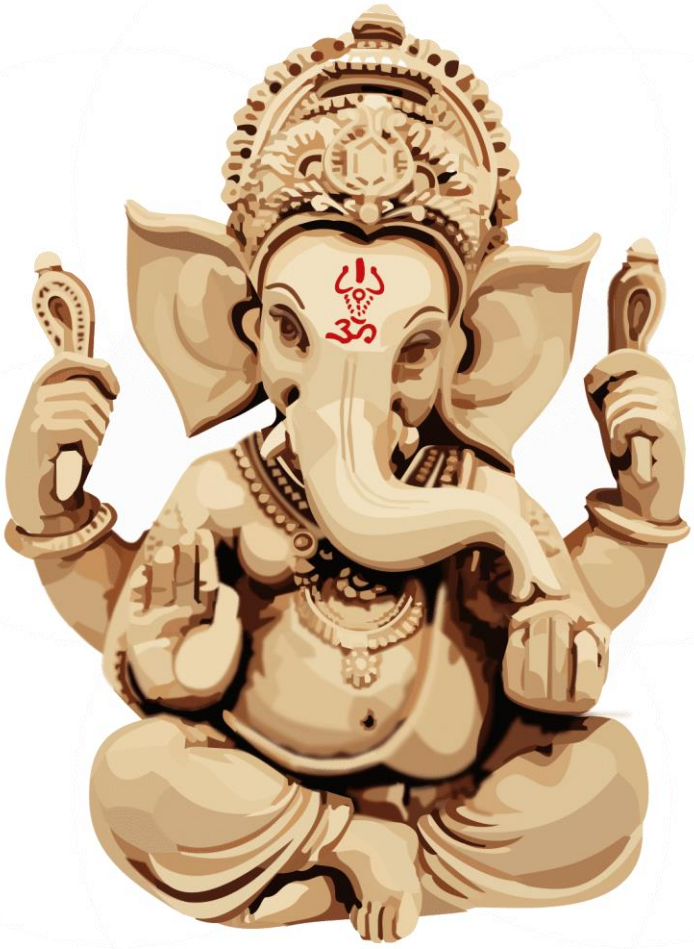
LIST FOR

COMPANY LAW

MOST IMPORTANT QUESTIONS with ANSWERS

By: Vinit Mishra Sir



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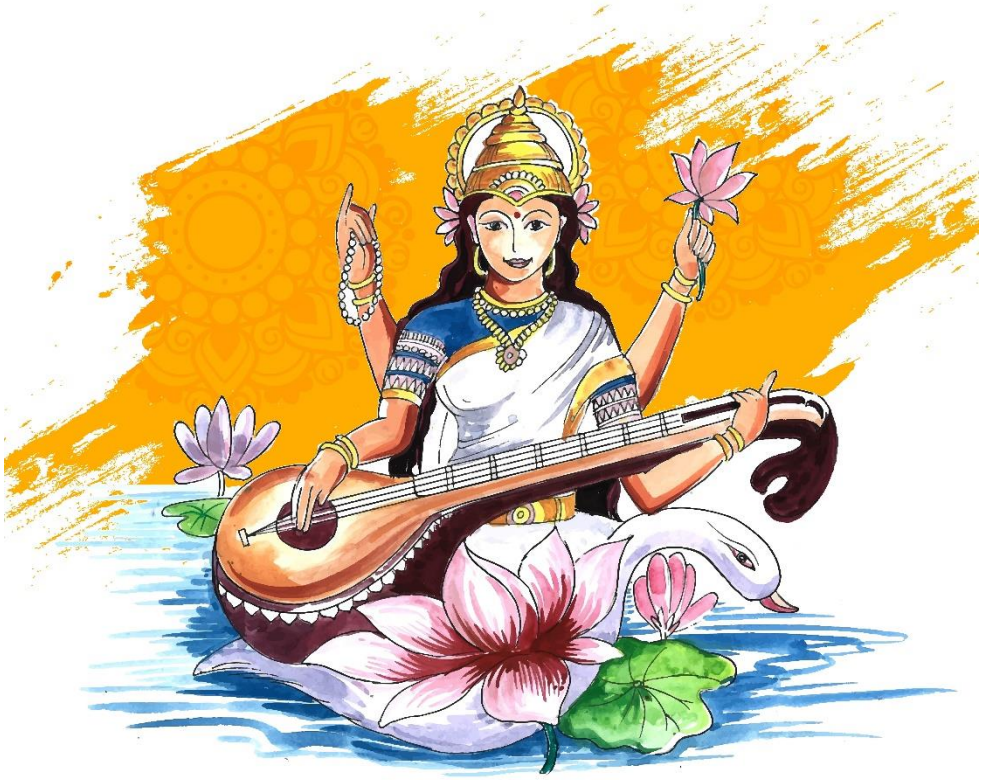

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हंस वाहिनी समायुक्ता विद्या दानं करोतु मे।

CA Dreamers the Avenger

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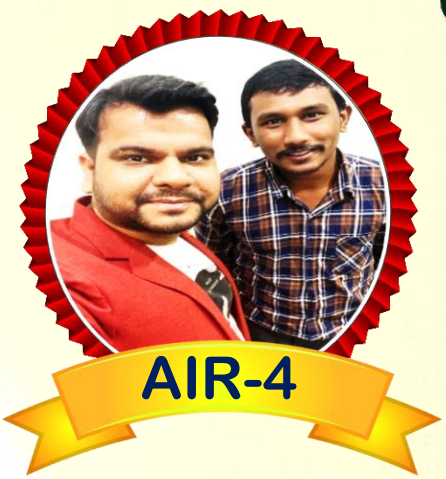

ARUL KUMAR
(STUDENT OF TOP-20)

MEGHANA SAWAKAR
(STUDENT OF TOP-20)

We are waiting for the

NEXT RANK HOLDERS

Is That You

INDEX

CHAPTER 1

PRELIMINARY

Division A - Multiple Choice Questions

(1) Green Ltd. is incorporated on 3rd January, 2022. As per the Companies Act, 2013, what will be the financial year for the company:

(a) 31st March, 2022

(b) 31st December, 2022

(c) 31st March, 2023

(d) 30th September, 2023

(2) Roma along with her six friends has incorporated Roma Trading Ltd. in May 2021. The Paid-up share capital of the company is ₹ 2 crore. Further, in April 2022, she noticed that in the last financial year, the turnover of the company was well below ₹ 40 crore. Advise whether the company can be treated as a 'small company'.

(a) Roma Trading Ltd. is definitely a 'small company' since its paid-up capital is much below ₹ 4 crore and also its turnover has not exceeded the threshold limit of ₹ 40 crore.

(b) The concept of 'small company' is applicable only in case of a private limited company/OPC and therefore, despite meeting the criteria of 'small company' it being a public limited company it cannot enjoy benefits of 'small company'.

(c) Unlike a private limited company/OPC which automatically becomes a 'small company' as soon as it meets the criteria of 'small company', Roma Trading Ltd. being a public limited company has to maintain the norms applicable to a 'small company' continuously for two years so that, thereafter, it will be treated as a 'small company'.

(d) If all the shareholders of Roma Trading Ltd. give an undertaking to the ROC stating that they will not let the paid-up share capital and also turnover exceed the limits applicable to a 'small company' in the next two years, then it can be treated as a 'small company'.

(3) Abhilasha and Amrita have incorporated a 'not for profit' private limited company which is registered under Section 8 of the Companies Act, 2013. One of their friends has informed them that their company can be categorized as a 'small company' because as per the last profit and loss account for the year ending 31st March, 2022, its turnover was less than ₹ 40 crore and its paid up share capital was less than ₹ 4 crore. Advise.

(a) A section 8 company, which meets the criteria of 'turnover' and 'paid-up share capital' in the last financial year, can avail the status of 'small company' only if it acquires at least 5% stake in another 'small company' within the immediately following financial year.

(b) If the acquisition of minimum 5% stake in another 'small company' materializes in the second financial year (and not in the immediately following financial year) after meeting the criteria of 'turnover' and 'paid-up share capital' then with the written permission of concerned ROC, it can acquire the status of 'small company'.

(c) The status of 'small company' cannot be bestowed upon a 'not for profit' company which is registered under Section 8 of the Companies Act, 2013.

(d) A section 8 company, if incorporated as a private limited company (and not as public limited company) can avail the status of 'small company' with the permission of concerned ROC, after it meets the criteria of 'turnover' and 'paid-up share capital'.

(4) Kaveri Goods Carriers Private Limited (KGCPL) issued 9% Non-convertible Debentures worth ₹ 10 lakhs and thereafter, the directors contemplated to get them listed. After due formalities, these privately placed

non-convertible debentures of ₹ 10 lakhs were listed. Which of the following options is applicable in the given situation:

(a) KGCPL shall be considered as a listed company.

(b) KGCPL shall not be considered as a listed company.

(c) KGCPL shall be considered as a listed company only when minimum amount of listed privately placed non-convertible debentures is ₹ 15 lakhs.

(d) KGCPL shall be considered as a listed company only when minimum amount of listed privately placed non-convertible debentures is minimum ₹ 20 lakhs.

(5) "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

(6) 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 MCQ]

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

(a) For creating 'significant influence' Ruchir Marcons Ltd. must control at least 5% of total voting power of Ruchika Marketing Ltd.

(b) For creating 'significant influence' Ruchir Marcons Ltd. must control at least 10% of total voting power of Ruchika Marketing Ltd.

(c) For creating 'significant influence' Ruchir Marcons Ltd. must control at least 15% of total voting power of Ruchika Marketing Ltd.

(d) For creating 'significant influence' Ruchir Marcons Ltd. must control at least 20% of total voting power of Ruchika Marketing Ltd.

[ICAI Sample MCQ; MTP May 2023]

(8) Which of the following is not considered as Key Managerial Person (KMP) in relation to a company as per Companies Act, 2013?

(a) Chief Executive Officer

(b) Company Secretary

(c) Whole Time Director

(d) Statutory auditor

[Nov, 2020]

(9) H Ltd. is the holding company of S Pvt. Ltd. As per the last profit and loss account for the year ending 31st March, 2018 of S Ltd. its turnover was to the extent of ₹ 15 crores; and paid up share capital was ₹ 1 crore.

Since S Pvt. Ltd., as per the turnover and paid up share capital norms, qualifies for the status of a 'small company' it wants to be categorized as 'small company'. Advise.

(a) If H Ltd. converts itself into a private limited company, S Pvt Ltd. being its subsidiary can be categorized as a 'small company' since it meets turnover and paid up share capital norms applicable to a 'small company'.

(b) So long as S Pvt Ltd. meets the turnover and paid up share capital norms applicable to a 'small company' (which at present is the case), it shall be categorized as a 'small company'.

(c) S Pvt Ltd. cannot be categorized as a 'small company' because it is the subsidiary of another company.

(d) Categorisation of S Pvt Ltd. is possible only if H Ltd. the holding company, also meets the turnover and paid up share capital norms applicable to a 'small company'. **[ICAI Sample MCQ]**

(10) Abhilasha and Amrita have incorporated a 'not for profit' private limited company which is registered under Section 8 of the Companies Act, 2013. One of their friends has informed them that their company can be categorized as a 'small company' because as per the last profit and loss account for the year ending 31st March, 2019, its turnover was less than ₹ 20 crores and its paid up share capital was less than ₹ fifty lacs. Advise.

(a) A section 8 company, which meets the criteria of 'turnover' and 'paid-up share capital' in the last financial year, can avail the status of 'small company' only if it acquires at least 5% stake in another 'small company' within the ensuing financial year.

(b) If the acquisition of minimum 5% stake in another 'small company' materializes in the second financial year (and not in the ensuing financial year) after meeting the criteria of 'turnover' and 'paid-up share capital' then with the written permission of concerned ROC, it can acquire the status of 'small company'.

(c) The status of 'small company' cannot be bestowed upon a 'not for profit' company which is registered under Section 8 of the Companies Act, 2013.

(d) A section 8 company, if incorporated as a private limited company (and not as public limited company) can avail the status of 'small company' with the permission of concerned ROC, after it meets the criteria of 'turnover' and 'paid-up share capital'. **[ICAI Sample MCQ, MTP March 21]**

ANSWER (MCQ Based Questions)

(1)	(c)	**(2)**	(b)	**(3)**	(c)	**(4)**	(b)	**(5)**	(c)
(6)	(c)	**(7)**	(d)	**(8)**	(d)	**(9)**	(c)	**(10)**	(c)

Division B - Descriptive Questions

Question - 1

MNP Private Ltd. is a company registered under the Companies Act, 2013 with a paid-up share capital of ₹ 2 crore and turnover of ₹ 60 crore. 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 ₹ 30 crore?

ANSWER

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 ten 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 one hundred 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.

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 four crores and rupees forty crores respectively.

(i) In the present case, MNP Private Ltd., is a company registered under the Companies Act, 2013 with a paid up share capital of ₹ 2 crore and having turnover of ₹ 60 crore.

Since only one criteria of share capital not exceeding ₹ 4 crore is met, but the second criteria of turnover not exceeding ₹ 40 crore 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 ₹ 30 crore, then both the criteria will be fulfilled and MNP Ltd. can avail the status of small company.

Question - 2

Flora Funa 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.

ANSWER

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 numbers 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 x 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.

*The provisions relating to conversion of public company to private company is covered in the Chapter – 2 : Incorporation of Company and Matters incidental thereto.

CHAPTER 2

INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO INCIDENTAL

Division A - Multiple Choice Questions

(1) Entrenchment enhance the protection. Modern Furniture Limited an existing private company willing to insert the provisions for entrenchment; it

(a) Can amend the article by passing an ordinary resolution

(b) Can amend the article by passing a special resolution

(c) Can amend the article agreed by all the members

(d) Can't amend article to made the provisions for entrenchment

(2) 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 resident in India

(a) Both the conclusions are valid

(b) None of the conclusion is valid

(c) First conclusion is invalid

(d) Second conclusion is invalid

(3) 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

(4) Modern Furniture incorporated on 30th June 2022, its directors filled a declaration under section 10A(1)(a) regarding receipt of payment i.e. value of share (against share subscribed by subscriber) to registrar on 18th April 2023. The company and its officers (officers who are in default) shall be charged with penalty of:

(a) ₹ 1,11,000 and ₹ 1,11,000 respectively

(b) ₹ 50,000 and ₹ 1,11,000 respectively

(c) ₹ 1,11,000 and ₹ 50,000 respectively

(d) ₹ 50,000 and ₹ 1,00,000 respectively

(5) I.T.C Limited changed its name to ITC Limited. Company and officers thereat made default by failing to make alteration in every issued copy of memorandums and articles. In this context you are required to pick incorrect statements out of followings

(i) Alternation shall be made to every copy of MOA/AOA because these are considered as public document.

(ii) Alternation shall be made to every copy be it in electronic form or otherwise.

(iii) Penalty shall be Rupees one thousand for every copy of the articles issued without such alteration.

(a) (ii) only

(b) (iii) only

(c) (ii) and (iii) only

(d) None of (i), (ii) and (iii)

(6) 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 his (Rajesh) 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 **[ICAI Sample MCQ; RTP May 19]**

(7) 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 MCQ]**

(8) 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 MCQ]

(9) 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 MCQ]**

(10) Modern Furniture incorporated on 30th June 2022, its directors filled a declaration under section 10A (1)(a) regarding receipt of payment i.e. value of share (against share subscribed by subscriber) to registrar on 18th April 2023. The company and its officers (officers who are in default) shall be charged with penalty of:

(a) ₹ 1,11,000 and ₹ 1,11,000 respectively

(b) ₹ 50,000 and ₹ 1,11,000 respectively

(c) ₹ 1,11,000 and ₹ 50,000 respectively

(d) ₹ 50,000 and ₹ 1,00,000 respectively **[Study Material]**

ANSWER (MCQ Based Questions)

(1)	(c)	**(2)**	(d)	**(3)**	(b)	**(4)**	(d)	**(5)**	(d)
(6)	(b)	**(7)**	(c)	**(8)**	(a)	**(9)**	(d)	**(10)**	(d)

Division B - Descriptive Questions

Question - 1

Yadav dairy products Private limited has registered its articles along with memorandum at the time of registration of company in December, 2019. 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.

ANSWER

- 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.

Question - 2

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.

ANSWER

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.

Question - 3

Alfa school started imparting education on 1st April, 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 2020, 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?

ANSWER

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.

Question - 4

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.

ANSWER

- 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(5) of the Act which deals with the registered office of company, the change in registered office from one town or city to another in the same state, must be approved by a special resolution of the company.
- Further, registered office is shifted from one ROC to another, therefore company will have to seek approval of Regional director.

Question - 5

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.

ANSWER

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.

Question - 6

The object clause of the Memorandum of Vivek Industries Limited., 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?

ANSWER

Alternation 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 Limited can make the required changes in the object clause of its Memorandum of Association.

Question - 7

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.

ANSWER

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.

(iii) **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.

Question - 8

Manglu 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?

ANSWER

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.

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.

Question - 9

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.

ANSWER

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.

Question - 10

Shri Laxmi Electricals Ltd. (S) is a company in which Hanuman power suppliers Limited (H) is holding 60% of its paid up share capital. One of the shareholder of H made a charitable trust and donated his 10% shares in H and INRs 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?

ANSWER

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.

Question - 11

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

ANSWER

- 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.

Question - 12

Ashok, a director of Gama 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. Ashok did not receive this notice and could not attend the meeting and contended that the notice was improper.

Decide:

(i) Whether the contention of Ashok is valid.

(ii) Will your answer be the same if Ashok remains in U.S.A. for one month during the notice of the meeting and the meeting held?

ANSWER

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 Ashok shall be tenable, for the reasons that the notice was not property served.

(ii) In the given circumstances, the company is bound to serve a valid notice to Ashok by registered post at his residential address at Kanpur and not outside India.

Question - 13

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 Firozbhai. Mr. Parag signed partnership deed with Firozbhai 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?

ANSWER

- 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.

Division C – Case Study Based MCQ

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.

Based on above, answer the following questions:

(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 had 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.

[MTP Nov. 2022]

ANSWER

(1)	(b)	**(2)**	(b)	**(3)**	(d)	**(4)**	(a)

CHAPTER 3

PROSPECTUS AND ALLOTMENT OF SECURITIES

Division A - Multiple Choice Questions

(1) Trident Limited is in process of making private placement of securities. It received application money on 2nd March 2023. It shall allot its securities by _____, if failed then repay application money to the subscribers by _____, else liable to repay that money with interest at the rate of _____.

(a) 1st April, 16th April, and 12% respectively

(b) 1st May, 16th May, and 12% respectively

(c) 1st April, 16th April, and 6% respectively

(d) 16th April, 1st May, and 12% respectively

(2) Modern Furniture Limited, issued a document containing offer of securities for sale that is considered as deemed prospectus under section 25, which requires such document must contains certain matters/disclosure in addition to those required under section 26. Which of following are correct requirements;

i. A statement of the net amount received or to be received as consideration for the securities to which the offer relates

ii. The persons making the offer were named in the prospectus as promoters of the company.

iii. The time and place at which the underlying contract for allotment may be inspected.

(a) i or ii only

(b) i or iii only

(c) ii or iii only

(d) All of i, ii and iii

(3) Section 40 of the Companies Act, 2013 requires every company shall make an application to one or more recognised stock exchange or exchanges before making public offer. Madhav Casting Limited filled application to three exchanges for the securities to be dealt with in such stock exchanges, it received permission from couple of them and proceed with public issue. There will be:

(a) No penalty, as application has been filled

(b) Penalty on Madhav Casting ranging from ₹ 5 lakh to ₹ 50 lakh

(c) Penalty on Madhav Casting ranging from ₹ 5 lakh to ₹ 50 lakh and every officer of the company who is in default ranging from ₹ 50 thousand to ₹ 3 lakh

(d) Penalty on Madhav Casting ranging from ₹ 5 lakh to ₹ 50 lakh and every officer of the company who is in default ranging from ₹ 50 thousand to ₹ 3 lakh and/or Imprisonment upto one year.

(4) Rig exploration and refinery limited (RERL) decided to raise capital through issue of a shelf prospectus. Company secretary explains the requirement to board that RERL shall be required to file an information memorandum with the Registrar within_____, prior to the issue of a second or subsequent offer of securities under the shelf prospectus.

(a) 15 days

(b) 21 days

(c) 30 days

(d) 1 month

(5) Modern Furniture decided to raise capital by issue for which prospectus need to be issued. The copy of prospectus submitted with registrar for filling need to be duly signed by:

(a) Any two directors including managing directors

(b) Majority of directors

(c) Majority of directors including proposed directors

(d) Every director or proposed director

(6) A private company may issue securities through the way of, except -

(a) Public offer

(b) Rights issue

(c) Bonus issue

(d) Private placement **[Study Material]**

(7) In case of 'offer of sale of shares by certain members of the company', which of the following options is applicable:

(a) The provisions relating to minimum subscription are not applicable

(b) Entire minimum subscription amount is required to be received within three days of the opening date

(c) 25% of the minimum subscription amount is required to be received on the opening date and the remaining 75% within three days thereafter

(d) 50% of the minimum subscription is required to be received by the second day of the opening date the remaining 50% within next three days after the second day

[ICAI MCQ Booklet]

(8) Delight Sports Garments Limited is contemplating to raise funds through issue of prospects 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. **[RTP Nov. 2019]**

(9) A holder of depository receipts shall have right to vote:

(a) At per with other equity shareholders

(b) Through overseas depository and in the proportion as already specified by company

(c) No right to vote

(d) Only on resolutions directly affecting them **[Study Material]**

(10) Being in need of further capital, Rimsi Cotton-Silk Products Limited opted to offer 50.00 lacs equity shares of Rs. 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 fulfillment 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.

[MTP Nov 19; ICAI MCQ Booklet]

ANSWER (MCQ Based Questions)

(1)	(b)	**(2)**	(b)	**(3)**	(c)	**(4)**	(d)	**(5)**	(d)
(6)	(a)	**(7)**	(a)	**(8)**	(a)	**(9)**	(b)	**(10)**	(b)

Division B - Descriptive Questions

Question - 1

Explain various instances which make the allotment of securities as irregular allotment under the Companies Act, 2013.

ANSWER

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- fulfillment 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 offer 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 filing 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 25% 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.

Question - 2

What is a Shelf-Prospectus? State the important provisions relating to the issuance of Shelf-Prospectus under the provisions of the Companies Act, 2013 and the Companies (Prospectus and Allotment of securities) Rules, 2014.

ANSWER

As per **explanation to section 31**, 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.

A company is required to issue a prospectus each lime it accesses the capital market.

It leads to unnecessary repetition for a company which makes **more than one offer of securities** in a year to mobiles funds from the public.

A way out is shelf prospectus which **remains valid (on the shelf) a specified time period** during which offers for securities may be made by a company to the public without going through the arduous exercise of issuing fresh prospectus every time.

1. Filing of shelf prospectus with the Registrar

Shelf prospectus may be filled with the Registrar **at the stage of first offer of securities**, by class or classes of companies as the Securities and Exchange Board may provide by regulations in this behalf.

It has to indicate a period not exceeding one year as the **period of validity** of such shelf prospectus.

The period of validity is to commence **from the date of opening of the first offer** of securities under such prospectus.

In respect of any **second or sub-sequent offer** of such securities issued **during the period of validity** of such 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 with the Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus containing;

(a) All material facts relating to new charges created,

(b) 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

(c) Such other changes as may be prescribed,

The information memorandum shall be prepared in **Form PAS-2** and filed with the Registrar **along with the fee** as provided in **the Companies (Registration Offices and Fees) Rules, 2014** within **one month prior to the issue of a second or subsequent offer** of securities under the shelf prospectus.

3. Safeguard (in case of changes) to applicants who made payment in advance.

It is 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. Information Memorandum together with Shelf Prospectus is deemed 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.

Question - 3

The Board of Directors of Chandra Mechanical Toys 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.

ANSWER

- 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.

- It is 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 Directors of Chandra Mechanical Toys 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.

Question - 4

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.

ANSWER

Section 40 (6) of the Companies Act 2013, provides that a company may pay commission to any person in connection with the subscription to its securities, subject to a number of conditions which are prescribed under the 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 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 in case of debentures is limited to 2.5%.

In view of the above, the decision of Unique Builders Limited 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 since there is no prohibition on payment of underwriting commission in kind.

Further, in case of Booth v New Africander Gold Mining Co., it was held that underwriting commission may be paid in cash or in kind or in lump sum or by way of a percentage.

Question - 5

PQR Bakers Limited wants to raise funds for its upcoming project. Accordingly, it has issued private placement offer letters for issuing equity shares to 55 persons, of which four are qualified institutional buyers and remaining are individuals. Before the completion of allotment of equity shares under this offer letter, company issued another private placement offer letter to another 155 persons in their individual names for issue of its debentures.

Being a public company is it possible for PQR Bakers Limited to issue securities under a private placement offers? By doing so, whether the company is in compliance with provisions relating to private placement or should these offers be treated as public offers? What if the offer for debenture is given after allotment of equity shares but within the same financial year?

ANSWER

- 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.
- In the given case PQR Bakers Limited, though 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.
- 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.

Question - 6

How does the Companies Act, 2013 regulate and restrict the following matters in respect of a company going for public issue of shares:

(i) Minimum Amount stated in the Prospectus; and

(ii) Application Money payable on shares.

ANSWER

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

Minimum amount stated in a prospectus

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.

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.

- Rule 11 (1) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 mentions that if the stated minimum amount has not been subscribed and the sum payable on application is not received within the period specified therein, then the application money shall be repaid within a period of fifteen days from the closure of the issue and if any such money is not so repaid within such period, the directors of the company who are officers in default shall jointly and severally be liable to repay that money with interest at the rate of fifteen percent per annum.
- In case of any default, 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.

Question - 7

Examine the validity of the following statement with reference to the provisions of the Companies Act, 2013.

The Articles of Association of X Limited contain a provision that the underwriting commission may be paid up to 4% of the issue price of the shares. However, the Board of Directors have decided to pay the underwriting commission of 5% to Deal & Co., the underwriters."

ANSWER

- Section 40 (6) of the Companies Act 2013, provides that a company may pay commission to any person in connection with the subscription to its securities, subject to the conditions prescribed under the Companies (Prospectus and Allotment of Securities) Rules, 2014.
- Rule 13 states that 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 he articles, whichever is less.
- In the given problem, the articles of X Ltd. have prescribed 4% underwriting commission but the directors decided to pay 5% underwriting commission.
- Therefore, the decision of the Board of Directors to pay 5% underwriting commission to the underwriters (i.e. Deal & Co.) is invalid.

Division C - Case Study Based MCQ

Dream Real Estate Builders and Developers Ltd. was incorporated in 2015 as a public company. The company is engaged in the business of development of agriculture land for commercial and residential use, construction of commercial malls and residential flats and the matters incidental thereto.

In the beginning of January, 2022, the company received a mega project to construct a commercial mall in the Wagholi area of Pune. The company was in advance stage of negotiation with some farmers having a total agriculture land area of 20 Bighas (approximately 5.38 lakhs Square feet). The cost of conversion of such agriculture land for urban uses, development of land and construction cost of the shopping mall and offices was estimated to ₹ 500 crores.

The promoters of the company planned to come out with public issue to finance this project. They dialogued with the Merchant Bankers, Bankers to the Issue and other intermediary agencies and professionals and filed Prospectus with the SEBI for its approval. In the prospectus the company mentioned about the construction of mall in Wagholi area of Pune, on the land, for which the company has got lease license rights for next 100 years from the present land owners. But in fact, the company was not having any lease agreement with the land owners and only the talks were at the pre-final stage.

The company entered in to agreement with the underwriters to pay commission @ 5% of the issue price at which the shares will be issued. However, the Articles of the company were silent on payment of such commission.

The prospectus filed with the SEBI got approved. The issue was launched, oversubscribed and the allotment formalities were completed within the prescribed time frame.

After the successful completion of the issue, the land owners changed their decisions and did not execute the lease deed in favour of the company. As a result, the purpose for which the money was raised from public could not be utilised for that specific project. The company therefore, invested such funds raised through the public issue, in buying and trading with equity shares of other companies and made a good profit. The purpose for such buying and trading was to utilise the funds for the time being, till any new real estate project came in the hands of the company.

Suresh, is an advocate, based in Pune. The farmers who were land owners of their agriculture land in Wagholi, Pune had consulted, Suresh, some time before the launch of the public issue by the company, to know the pros and cons of giving of land on lease to the company.

Meanwhile, when the issue opened, Suresh, who was already having the idea of such land dealing, applied and got the allotment of shares. Later on, he came to know that farmers never executed lease license in favour of the company which leads to material mis-statement of facts in the prospectus issued by the company, at the time of issue. The company was actually not having the rights to use the land for the next 100 years, which in fact, the company had mis-stated in the prospectus, that it was having such lease license agreement. Aggrieved from this, Suresh filed a complaint against the company, its promoters and directors.

When the issue was listed on the bourses, it opened with the premium over the issue price. Mahendra purchased 1000 shares from the secondary market. When Mahendra came to know from some media sources, that the company had mis-represented the material facts in the prospectus, he also decided to initiate legal action against the company.

Based on above, answer the following questions:

(1) What will be the fate in relation to the complaint file by Suresh?

(a) The company is not liable for any civil liability in this case.

(b) The company is not liable since Surendra has not suffered any loss, as the issue opened above its issue price and Surendra could have sold his shares.

(c) Since the Prospectus was duly approved and vetted by the SEBI, the company cannot be held accountable for anything, which was later on proved wrong.

(d) The company and every person who, is a director at the time of issue of the prospectus, has authorised himself to be named in the Prospectus as director, is a promoter, has authorise the issue of the prospectus and the expert, shall be liable for such mis- statement.

(2) Whether Mahendra will get a decision in his favour if he files a case against the company?

(a) Yes, as the company has raised money by misstatement of facts.

(b) No, since he has purchased the shares from the secondary market and not by first reading the Prospectus and then subscribing in IPO.

(c) No, as Mahendra can easily sale the shares in the secondary market and realise the amount.

(d) Mahendra should sale the shares in the secondary market and if there is any loss, then for such loss, he can file the case against the company for which he would get decision in his favour.

(3) Who shall be held responsible for the criminal liability if it is proved that such misstatement in the prospectus was intended to mislead or deceive the subscribers?

(a) The company shall be held responsible.

(b) Neither the company nor its employees shall be held responsible for the criminal liability.

(c) Every person who authorises the issue of prospectus containing the mis-leading statement shall be held responsible for the criminal liability.

(d) Only the Legal Adviser who drafted the Prospectus containing the mis-leading information shall be held responsible for the criminal liability.

(4) Choose the correct option in relation to utilization of money raised by company through issue of prospectus:-

(a) Since the idle funds earn no money, it is always better to deploy such funds in a judicious and profitable manner.

(b) The company has every right to utilise the money in other projects, if the project for which the money was raised could not be implemented.

(c) The company shall not use any amount raised by it through prospectus for buying or trading or otherwise dealing in equity shares of the other listed company.

(d) The company should refund the money so raised to the investors since the object behind raising the money could not be accomplished.

(5) The company paid commission of underwriting @ 5% on the issue price of the shares. Is it violations of the provisions of the company law?

(a) No, it is not violation since the Companies Act, 2013 permits for payment of such commission.

(b) The payment of commission should be authorised by the Board of the company.

(c) The payment of commission should be authorised by the Articles of Association of the company.

(d) The rate of commission was not reasonable looking to the size of the issue.

[ICAI MCQ Booklet]

ANSWER

(1)	(d)	**(2)**	(b)	**(3)**	(c)	**(4)**	(c)	**(5)**	(c)

CHAPTER 4

SHARE CAPITAL AND DEBENTURES

Division A - Multiple Choice Questions

(1) Sarvodhaya 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

(2) 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 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

(3) 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

(4) 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

(5) 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

(6) AOA of a Private company states that; it will issue preference shares which will have preference of dividend only but no preference of repayment of capital. Can it issue such preference shares?

(a) No; as per section 43 preference shares should have both preference

(b) No; this will become equity share as per section 43

(c) Yes; because as per section 43 preference shares should have any one preference.

(d) Yes; because AOA allows issue of such preference shares and it is a private company.

[Study Material; ICAI MCQ Booklet]

(7) 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 MCQ]

(8) During the current financial year, the Board of Directors of Vintee Lifestyles Garments Limited is to undertake redemption of 20,000 preference shares of ₹ 100 each at a premium of ₹ 20 per share. It is made out by the Accounts Department that the profits are sufficient to meet the ensuing liability arising out of redemption of preference shares at premium. In this case, the amount that needs to be transferred to Capital Redemption Reserve account out of profits which are otherwise available for dividend, is _____.

(a) ₹ 4,00,000

(b) ₹ 20,00,000

(c) ₹ 24,00,000

(d) Any of the above [Study Material]

(9) A company may convert all or any of its fully paid up shares into stock

(a) By special resolution

(b) By ordinary resolution

(c) With the approval of the tribunal

(d) All of the above [Study Material]

(10) **Goods 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

[MTP May 2022]

ANSWER (MCQ)

(1)	(c)	**(2)**	(b)	**(3)**	(c)	**(4)**	(d)	**(5)**	(d)
(6)	(d)	**(7)**	(c)	**(8)**	(b)	**(9)**	(b)	**(10)**	(b)

Division B - Descriptive Questions

Question - 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, 2019) 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 issued by SV Company Ltd. The Articles of Association of SV Company Ltd. provide that the new shares should first be offered to the existing shareholders of the company. On March 1, 2019 SV Company Ltd. offered new equity shares 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 Ltd. of not offering any further shares to VRS Company Limited.

ANSWER

- The legal issues involved herein are 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 issue of further shares, such shares should first 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 of their holdings.
- As per facts of the case, the Articles of SV Company Ltd. provide 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 equity shares.
- It is to be noted that under the Companies Act, 2013, **SV Company Ltd. did not have any legal authority to do so.**
- Therefore, in the given case, decision of the Board of Directors of SV Company Ltd. not to offer any further equity shares to VRS Company Ltd. on the ground that VRS Company Ltd. already held a high percentage of shareholding in SV Company Ltd. is not valid.

- Such a decision violates the provisions of Section 62 (1) (a) as well as Articles of the issuing company.

Question - 2

The Directors of Mars Motors India Ltd. desire to alter Capital Clause of the Memorandum of Association of their company. Advise them about the ways in which the said clause may be altered under the provisions of the Companies Act, 2013.

ANSWER

Alteration of Capital: Under section 61 (1) a limited company having a share capital may, if authorised 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 its shares, or any of them, 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 Form No. SH-7 as per Rule 15 of the Companies (Share Capital and Debentures) Rules, 2014 with the **Registrar**, along with an **altered memorandum**; within **thirty days** of **alteration** The capital clause of memorandum, if authorised by the articles, shall be altered by passing an ordinary resolution as per Section 61 (1) of the Companies Act, 2013.

Question - 3

Ramesh, a resident of New Delhi, sent a transfer deed duly signed by him as transferee and his brother Suresh as transferor, for registration of transfer of shares to Ryan Entertainment Private Limited at its Registered Office in Mumbai. He did not receive the transferred shares certificates even after the expiry of four months from the date of dispatch of transfer deed. Is there any liability of company and officer in default in the said matter?

ANSWER

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, as per Section 56 (6), where any default is made in complying with the provisions of sub-sections (1) to (5), the company and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.

Question - 4

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?

ANSWER

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.

Question - 5

Trisha Data Security Limited was incorporated just a year ago with a paid- up share capital of ₹ 200 crore. Within such a small period of about year in operation, it has earned sizeable profits and has topped the charts for its high employee-friendly environment. The company wants to issue sweat equity to its employees. A close friend of the CEO of the company has told him that the company cannot issue sweat equity shares as minimum 2 years have not elapsed since the time company commenced its business. The CEO of the company has approached you to advise about the essential conditions to be fulfilled before the issue of sweat equity shares especially since their company is just about a year old.

ANSWER

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 Section 54 and the holders of such shares shall rank pari passu with other equity shareholders.

Trisha Data Security Limited can issue Sweat equity shares by following the conditions as mentioned above. It does not make any difference that the company is just about a year old; because there is no such age (time since commencement of business) requirement under Section 54.

Question - 6

Walnut Foods Limited has an authorized share capital of 2,00,000 equity shares of ₹ 100 per share and an amount of ₹ 2 crore in its Securities Premium Account as on 31-3-2020. The Board of Directors seeks your advice about the application of securities premium account for its business purposes. Please give your advice.

ANSWER

Amount lying to the credit of Securities Premium Account is required to be utilised for certain prescribed purposes.

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 of 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.

Keeping the above points in view Walnut Foods Limited should proceed to utilise the amount of Securities Premium Account.

Question - 7

OLAF Limited, a subsidiary of PQR Limited, decides to give a loan of ₹ 4,00,000 to its Human Resource Manager Mr. Surya Nayan, who does not fall in the category of Key Managerial Personnel and draws a salary of ₹ 40,000 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.

ANSWER

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 director or Key Managerial Personnel;

(b) The amount of such loan shall not exceed an amount equal to **six months' salary** of the employee.

(c) The loan must be extended for subscribing **fully paid-up shares**.

In the given instance, Human Resource Manager Mr. Surya Nayan is not a Key Managerial Personnel of the OLAF Limited. Further, he is drawing a salary of ₹ 40,000 per month and wants to avail loan for purchasing 500 partly paidup equity shares of ₹ 1000 each of OLAF Limited in which he is employed.

Keeping the above facts and legal provisions in view, the decision of OLAF Limited in granting a loan of **₹ 4,00,000 for purchase of its partly paid-up** shares to Human Resource Manager is **invalid due to the following reasons**:

(i) The amount of loan is more than 6 months' salary of Mr. Surya Nayan, the HR Manager. It should have been restricted to **₹ 2,40,000 only**.

(ii) The loan to be given by OLAF Limited to its HR Manager Mr. Surya Nayan is meant for purchase of **Partly paid shares**.

Question - 8

Shilpi Developers India Limited owed to Sunil ₹ 10,000. On becoming this debt payable, the company offered Sunil 100 shares of ₹ 100 each in full settlement of the debt. The said shares were allotted to Sunil as fully paid-

up in lieu of his debt. Examine the validity of this allotment in the light of the provisions of the Companies Act, 2013

ANSWER

- 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 empowered to allot the shares to Sunil in settlement of its debt to him.
- This 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, Shilpi Developers India Limited's allotment, to be classified as **shares issued 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.

Question - 9

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 ₹ 499 only.

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

ANSWER

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 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 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 or 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 as follows:

(i) A shareholder who has no beneficial interest, can be appointed as a debenture trustee.

(ii) A creditor whom company owes ₹ 499 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.

Question - 10

Mr. Nilesh has transferred 1000 equity shares of Perfect Vision Private Limited to his sister Ms. Mukta. The company did not register the transfer of shares and also did not send a notice of refusal to Mr. Nilesh or Ms. Mukta within the prescribed period. Discuss as per the provisions of the Companies Act, 2013, whether aggrieved party has any right(s) against the company?

ANSWER

- The problem given in the question is governed by Section 58 of the Companies Act, 2013 dealing with the refusal to register transfer and appeal against such refusal.
- In the present case, the company has committed the wrongful act of not sending the notice of refusal to register the transfer of shares.
- Under section 58 (1), if a private company limited by shares refuses to register the transfer of, or the transmission by operation of law of the right to any securities or interest of a member in the company, then the company shall send notice of refusal to the transferor and the transferee or to the person giving intimation of such transmission, within a period of **thirty days** from the date on which the instrument of transfer, or the intimation of such transmission, was delivered to the company.
- According to Section 58 (3), the transferee may appeal to the Tribunal against the refusal within a period of thirty days from the date of receipt of the notice or in case no notice has been sent by the company, within a period of **sixty days** from the date on which the instrument of transfer or the intimation of transmission, was delivered to the company.
- In this case, as the **company has not sent even a notice of refusal**, Ms. Mukta being transferee can file an appeal before the Tribunal within a **period of sixty days from the date on which the instrument of transfer was delivered** to the company.

Question - 11

Shankar Portland Cement Limited is engaged in the manufacture of different types of cements and has got a good brand value. Over the years, it has built a good reputation and its Balance Sheet as at March 31, 2020 showed the following position:

1. **Authorized Share Capital (25,00,000 equity shares of ₹ 10/- each) ₹ 2,50,00,000**
2. **Issued, subscribed and paid-up Share Capital (10,00,000 equity shares of ₹ 10/- each, fully paid-up) ₹ 1,00,00,000**
3. **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.

ANSWER

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 are prescribed by Rule 14 of the Companies (Share Capital and debentures) Rules, 2014 which states that the company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.

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

For the issue of bonus shares Shankar Portland Cement Limited will require reserves of ₹ 50,00,000 (i.e. half of ₹ 1,00,00,000 being the paid-up share capital), which is readily available with the company.

Hence, after following the above conditions relating to the issue of bonus shares, the company may proceed for a bonus issue of 1 share for every 2 shares held by the existing shareholders.

Question - 12

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.

ANSWER

- 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.

Division C – Case Study Based MCQ

NAGARJUN AIRCONDITIONERS LTD. (NAL) is a contract manufacturing company incorporated on 1.2.2021 with the primary objective of manufacturing a full range of residential, commercial and portable air conditioners for renowned brands in India. NAL is a family owned unlisted public company, limited by shares. NAL has its registered office in Hyderabad, Telangana and marketing offices in four metropolitan cities at New Delhi, Kolkata, Mumbai and Bengaluru.

SAMUGA, one of the seven members, who also had subscribed to the memorandum of association of NAL, unfortunately met with a road accident and expired on 31.03.2021. All the remaining members attended the funeral. Business was as usual thereafter. All the members, as was the usual practice, were kept informed from time to time regarding all the important matters and issues relating to the company without fail by the CFO cum Company Secretary NIRANJAN. The Company continued its business only with its exiting other members for the next few months. SUGUNA, the wife of SAMUGA was taken as a member of NAL on official records only on 20.12.2021. Meanwhile, NAL borrowed unsecured loans of ₹ 15 crores repayable on demand for meeting working capital needs between the period 15.10.2021 to 15.12.2021 from one of its directors. MUDDU KRISHNA, who is only a family friend, but not a family member. The unsecured loan was borrowed with the stipulation of interest @10% p.a. payable on monthly basis on the outstanding amount(s) to MUDDU KRISHNA, until the demand for payment of principal is made in writing to the company. However, MUDDU KRISHNA, because of his strained relationship with NAGARJUN, the managing director of NAL, resigned as a director of the company on 31.12.2021 and demanded immediate repayment of the entire sum of ₹ 15 crores lent by him to NAL with interest

of 10% p.a. NAL followed delaying tactics, which finally resulted in MUDDU KRISHNA suing NAGARJUN severally for the entire debts owed by NAL to him, since he was the head of the family. There was no unpaid amount of NAGARJUN on the shares held by him of NAL.

MUDDU KRISHNA is also the member of One Person Company (OPC) MUDDU KRISHNA AGRO INDUSTRIES (OPC) PVT LTD. The OPC has been incorporated since the last one year. The Turnover of the OPC during the last financial year was ₹ 1 Crore. The paid up capital of the Company increased to ₹ 55 Lacs from ₹ 5 Lacs as on 15.01.2022. MUDDU KRISHNA after leaving the directorship with NAL continued his business as the member of his OPC.

Years passed. Size of the business and share capital of NAL substantially increased. NAL plans to go for expansion in its capacity, keeping in mind export market, which required about ₹ 25 crores. NAL started looking for various options for financing. One of the options considered was offer or invitation for subscription of equity through private placement. The Board identified a select group of 50 persons and issued private placement offer and applications after passing a special resolution at a general meeting and also after duly following the required procedure under the corporate laws. Monies received on application were kept in a separate bank account with Canara Bank. However, for some reasons NAL could not allot the equity shares within a period of 60 days from the date of receipt of the application money. The private placement plan was effectively cancelled, duly following the required procedure. NAL later opted for bank loans to finance the expansion.

NAL is authorized by its articles of association to accept whole or any part of the amount of remaining unpaid calls from any member, although till date, no part of that amount has been called up. NARESH, one of the shareholders deposited in advance the remaining amount due on his shares without any calls made by NAL. NAL declared dividend during the year after such advance money was paid by NARESH. NARESH wanted to exercise his voting rights also in respect of call money paid in advance at the general meeting.

BHUSHAN AIRCONDITIONERS PVT LTD (BAPL) has been holding 5% equity in NAL, since February 2018. During the month of February 2022, NAL invested in 70% equity shares of BAPL. NAGARJUN wants to understand from NIRANJAN the implications of 5% holding of BAPL.

Based on above, answer the following questions:

(1) MUDDU KRISHNA, because of his strained relationship with NAGARJUN, the Managing Director of NAL, resigned as a Director of the Company on 31.12.2017 and demanded immediate repayment of the entire sum of ₹ 15 Crores lent by him to NAL with interest of 10% P.A. NAL followed delaying tactics, which finally resulted in Muddu Krishna suing NAGARJUNA severally for the debts owed by NAL to him, since he was the head of the family.

(a) Only NAL, as a separate legal person, can be sued for the Debt of ₹ 15 Crores borrowed by NAL between 15.10.2017 and 15.12.2017;

(b) NAGARJUNA can also be sued for the Debt of ₹ 15 Crores borrowed by NAL between 15.10.2017 and 15.12.2017 as per the provisions of the Companies Act, 2013;

(c) Only the Board of Directors of NAL can be sued for the Debt of ₹ 15 Crores borrowed by NAL between 15.10.2017 and 15.12.2017;

(d) NAGARJUNA can be severally sued not because of the provisions of the Companies Act, 2013, but because he is the head of the family run business.

(2) The OPC has been incorporated one year ago. The Turnover of the OPC during the last financial year is ₹ 1 Crore. The paid up capital of the Company increased to ₹ 55 Lacs from ₹ 5 Lacs as on 15.01.2018. State which of the following is correct:

(a) The OPC shall cease to be entitled to continue as a One Person Company w.e.f. 15.01.2018

(b) The OPC cannot be converted at all into a Private Limited Company or a Public Limited Company

(c) The OPC can be converted into a Private Limited Company or a Public Limited Company only after 2 years from the date of incorporation.

(d) The OPC can be converted into a Private Limited Company only after achieving an annual turnover of IN₹ 2 Crores from the date of incorporation.

(3) (i) The Board identified select group of 25 persons and issued private placement offer and applications duly following the required procedure under the corporate laws.

(a) Public at large is to be informed about such an issue through release of public advertisement through utilizing any media, marketing, distribution channels or agents;

(b) A release of public advertisement in any local newspaper and one national newspaper informing private placement is sufficient.

(c) No company issuing securities under private placement shall release any public advertisements or utilize any media, marketing or distribution channels or agents to inform the public at large about such an issue.

(e) Informing the public at large through advertisement or otherwise is optional and the Board of Directors by passing a Board Resolution may decide the matter.

(ii) However, for some reasons NAL could not allot the equity within a period of 60 days from the date of receipt of the application money.

(a) The company shall repay the application money to the subscribers within 15 days from the expiry of 60 days and if the company has failed, it shall also be liable to repay the money with interest @ 18% PA from the expiry of the 75th day;

(b) Since Private Placement, NAL can take further 60 days time with the subscribers agreeing to pay interest @18% PA from the extended date until the actual allotment.

(c) The company shall repay the application money to the subscribers within 15 days from the expiry of 60 days and if the company has failed, it shall also be liable to repay the money with interest @ 12% PA from the expiry of the 60th day;

(d) The company shall repay the application money to the subscribers within 15 days from the expiry of 60 days and if the company has failed, it shall also be liable to repay the money with interest @ 12% PA from the expiry of the 75th day.

(4) NARESH, one of the shareholders deposits in advance the remaining amount due on his shares without any calls made by NAL.

(i) NAL declared dividend during the year.

(a) NARESH is not entitled to any dividend in respect of call money paid in advance;

(b) NARESH is entitled to proportionate dividend in respect of call money paid in advance, if authorized by a Board Resolution;

(c) NARESH is entitled to proportionate dividend in respect of call money paid in advance, if authorized by an Ordinary Resolution in a general meeting;

(e) NARESH is entitled to proportionate dividend in respect of call money paid in advance, if authorized by Articles of Association.

(ii) NARESH wanted to exercise his voting rights also in respect of call money paid in advance in a general meeting;

(a) NARESH can exercise his voting rights also in respect of call money paid in advance in a general meeting, since the relevant shares have been fully paid up.

(b) There would be no voting rights on that advance amount of NARESH in a general meeting till the amount is duly called for and adjusted;

(c) NARESH can exercise his voting rights also in respect of call money paid in advance in a general meeting, if agreed by a Board resolution.

(d) NARESH can exercise his voting rights also in respect of call money paid in advance in a general meeting, if agreed by an ordinary resolution of Members.

(5) BHUSHAN AIRCONDITIONERS PVT LTD (BAPL) has been holding 5% equity in NAL since February 2018. During the month of February 2020, NAL invested in 70% Equity shares of BAPL. NAGARJUN wants to understand from NIRANJAN the implications of 5% holding of BAPL.

(a) BAPL shall surrender its 5% equity holding to NAL immediately once it becomes the subsidiary of NAL;

(b) BAPL shall transfer its 5% equity holding to any nominees of NAL before it becomes the subsidiary of NAL;

(c) BAPL shall immediately transfer its 5% equity holding to any other legal person or entity before investment by NAL;

(d) BAPL may continue to hold or reduce its 5% equity holding in NAL.

[ICAI MCQ Booklet]

ANSWER

(1)	(2)	(3)				(4)				(5)
(b)	(a)	(i)	(c)	(ii)	(c)	(i)	(d)	(ii)	(b)	(d)

CHAPTER 5

ACCEPTANCE OF DEPOSITS BY COMPANIES

Division A - Multiple Choice Questions

(1) Varsha Limited decides to raise deposits of ₹ 20.00 lakh from its members. However, it proposes to secure such deposits partially by offering a security worth ₹ 15.00 lakh. 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

(2) 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

(3) 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.

(4) Every company shall pay a penal rate of interest of _____ per annum for the overdue period in case of deposits, whether secured or unsecured, matured and claimed but remaining unpaid:

(a) 9%

(b) 14%

(c) 18%

(d) 24%

(5) As per the provisions of the Companies Act, 2013 and relevant rules thereunder, an eligible company is not permitted to accept from public or renew the same deposits (whether secured or unsecured) which is repayable on demand or in less than _____ months. Further, the maximum period of acceptance of deposit cannot exceed _____ months. But, for the purpose of meeting any of its short- term requirements of funds, a company may accept or renew deposits for repayment earlier than _____ months subject to certain conditions.

(a) six, thirty six, six

(b) three, twenty four, three

(c) six, sixty, six

(d) three, sixty, six

(6) A Limited Company 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 mandatory minimum period for which it should 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 MCQ Booklet; MTP May 2022; MTP Nov. 2022]

(7) MN Limited failed to repay the Public Deposits on maturity after they are claimed. The Company is required to pay penal interest at the rate of _____ for the overdue period.

(a) 15%

(b) 18%

(c) 12%

(d) 20%

[Nov. 2020]

(8) Dream World Entertainment Limited, has accepted deposits worth ₹ 50.00 lacs from public on 1st April 2019 for a period of 24 months i.e. repayment of deposit would be made on 31st March 2021. The rate of interest payable on such deposits is 9% p.a. One of the depositors Mr. Aman requested the company on 1st June 2020 for premature repayment of his deposit of ₹ 6.00 lacs along with interest. Advise the company in the said matter.

(a) The company can make premature repayment of deposits only with an intention to reduce the total amount of deposits to bring it within permissible limits. Hence, in the given case, the company cannot repay the deposit before the actual maturity.

(b) The company can prematurely repay the deposit along with interest @9% p.a. for the period of 12 months (from 1st April 2019 to 31st March 2020).

(c) The company can prematurely repay the deposit along with interest @8% p.a. for the period of 12 months (from 1st April 2019 to 31st March 2020).

(d) The company can prematurely repay the deposit along with interest @8% p.a. for the period of 14 months (from 1st April 2019 to 31st May 2020).

[ICAI MCQ Booklet; Nov. 2022]

(9) Normally no deposits are payable earlier than _____ from the date of such deposits or renewal thereof

(a) 3 months

(b) 6 months

(c) 12 months

(d) 1 year

[Study Material]

(10) Where depositors so desire, deposits may be accepted in joint name not exceeding_____.

(a) 2

(b) 3

(c) 5

(d) 7

[Study Material; MTP April 21]

ANSWER (MCQ)									
(1)	(b)	**(2)**	(c)	**(3)**	(c)	**(4)**	(c)	**(5)**	(a)
(6)	(c)	**(7)**	(b)	**(8)**	(c)	**(9)**	(b)	**(10)**	(b)

Division B - Descriptive Questions

Question - 1

Enumerate the amounts which when received by a company in the ordinary course of business are not to be considered as deposits.

ANSWER

According to Rule 2 (1) (c) (xii) of the Companies (Acceptance of Deposits) Rules, 2014, 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 it became due for refund.

Question - 2

State the procedure to be followed by companies for acceptance of deposits from its members according to the Companies Act, 2013. What are the exemptions available to a private limited company?

ANSWER

Acceptance of deposits by a 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 fulfilment of the following conditions, namely—

(a) 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, on or before the thirtieth day of April each year, such sum which shall not be less than twenty per cent of the amount of its deposits maturing during the following financial year and kept in a scheduled bank in a separate bank account to be called deposit repayment reserve account;

(d) Omitted

(e) 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 where a default had occurred, the company made good the default and a period of five years had lapsed since the date of making good the default; and

(f) 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 National Company Law Tribunal (NCLT) 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 NCLT may deem fit.

Exemption to certain private companies:

In terms of Notification No. GSR 464 (E), dated 05-06-2015 as amended from time to time, Clauses (a) to (c) and (e) of sub-section (2) of section 73 with respect to issue of circular, filing the copy of such circular with the Registrar, depositing of certain amount and certification as to no default committed, shall not apply to a private company:

(A) Which accepts from its members monies not exceeding one hundred per cent of aggregate of the paid-up share capital, free reserves and securities premium account; 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) Which 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 a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section.

However, such a company [as referred to in clause (A), (B) or (C)] shall file the details of monies accepted to the Registrar in the specified manner (i.e. in Form DPT-3).

Question - 3

Explain the provisions for 'Appointment of Trustee for Depositors' under the Companies Act, 2013 read with the 'Acceptance of Deposits' Rules, 2014.

ANSWER

Appointment of Trustee for Depositors: In this respect following provisions are required to be observed as mentioned in Rule 7 of the Companies (Acceptance of Deposits) Rules, 2014:

- One or more trustees for depositors need to be appointed by the company for creating security for the deposits.
- A written consent shall be obtained from the trustees before their appointment.
- A statement shall appear in the circular or advertisement with reasonable prominence to the effect that the trustees for depositors have given their consent to the company for such appointment.
- The company shall execute a deposit trust deed in Form DPT-2 at least seven days before issuing the circular or circular in the form of advertisement.
- 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.
- 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. In case the company is required to have independent directors, at least one independent director shall be present in such meeting of the Board.

Question - 4

What are the provisions relating to 'Credit Rating' which an 'eligible company' must follow if it wants to raise public deposits?

ANSWER

- 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.

Question - 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) **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 lakh 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 lakh 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 crore 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 lakh 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?**

ANSWER

(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 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, Zarr Technology Private Limited, a start-up company, received ₹ 3.00 lakh 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 ten years from the date of its issue, the amount of ₹ 30.00 lakh shall not 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 lakh 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 lakh shall not be treated as deposit.

(iii) By not repaying the deposit of ₹ 50.00 crore 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 rupees one crore or twice the amount of deposit accepted by the company, whichever is lower but which may extend to rupees 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 lakh but which may extend to rupees two crore.

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 lakh 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 nothing in this sub-section shall apply to a banking company and non-banking financial company as defined in the Reserve Bank of India Act, 1934 and to such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf.

Further, Rule 1 (3) (iii) states that the Companies (Acceptance of Deposits) Rules, 2014 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 'Acceptance of Deposits' Rules shall not apply to it.

Hence, Diamond Housing Finance Limited being an exempted company, can accept and renew deposits from the public from time to time without following the prescribed manner.

Question - 6

ABC Limited having a net worth of ₹ 120 crore 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'.

ANSWER

- 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 Limited has to ensure that acceptance of deposits from its members together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from the members, in no case, exceeds 10% of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.

Question - 7

Define the term 'deposit' under the provisions of the Companies Act, 2013 and comment quoting relevant provisions whether the following amounts received by a company will be considered as deposits or not:

(i) ₹ 5,00,000 raised by Rishi Confectionaries Limited through issue of nonconvertible 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.

(ii) ₹ 2,00,000 received by Raja Yarns Limited from its employee Mr. Tarun, who draws an annual salary of ₹ 1,50,000, as a non-interest bearing security deposit under a contract of employment.

(iii) ₹ 3,00,000 received by a private company 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.

ANSWER

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 may be prescribed in consultation with the Reserve bank of India.

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) ₹5,00,000 raised by Rishi Confectionaries Limited through 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 SEBI, will not be considered as deposit in terms of sub-clause (ixa) of Rule 2 (1) (c).

(ii) ₹ 2,00,000 received by Raja Yarns Limited from its employee Mr. Tarun, 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.

(iii) ₹ 3,00,000 received by a private company 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).

In fact, the preceding sub-clause requires that any amount given by a relative of a director of a private company shall not be considered as deposit if the relative furnishes 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.

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. Further, according to Rule 16 (A)(2), it shall also disclose in its financial statement, by way of notes, about the money received from the directors, or relatives of directors.

Question - 8

State, with reasons, whether the following statements are 'True or False'?

(i) ABC Private Limited may accept 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.

ANSWER

(i) As per the provisions of Section 73 (2) of the Companies Act, 2013 read with Rule 3 (3) of the Companies (Acceptance of Deposits) Rules, 2014, as amended from time to time, 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.

It is 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 Form DPT-3.

Therefore, the given statement where ABC Private Limited is accepting deposits from its members to the extent of ₹ 50.00 lakh is 'true'.

(ii) As per Rule 3 (5) of the Companies (Acceptance of Deposits) Rules 2014, 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.

Therefore, the given statement where the limit of 25% has been stated for acceptance of deposits is 'false'.

Question - 9

Answer the following citing relevant provisions:

(a) **Prayas Electricals Limited having paid-up capital of ₹ 1 crore availed a term loan of ₹ 10,00,000 from Beta Bank Limited to purchase electrical items. Mr. Sambhav, one of the directors of the company, is of the opinion that it shall be considered as 'deposit'. Is his contention correct?**

(b) **Eklavya Publishing Company Limited facing acute cash crunch wants to utilise a portion of 'Deposit Repayment Reserve Account' to pay off its short-term creditors who are pressing hard for repayment of ₹ 20,00,000. Is it justified to use funds lying in 'Deposit Repayment Reserve Account' in this manner?**

(c) **Sanjiv is a shareholder in Utsah Textiles Private Limited holding 10,000 shares of ₹ 10 each. His wife Sneha and his three sons Aayush, Pranav and Himanshu are also shareholders in the company holding 1,000 shares each. In response to the invitation from the company inviting deposits from its members, Sanjiv wants to deposit Rs. 1,00,000 for 36 months jointly with his wife and three sons. Whether Utsah Textiles Private Limited can accede to the request of Sanjiv and accept deposit jointly in five names since all the depositors are shareholders of the company.**

ANSWER

(a) In terms of Rule 2 (1) (c) (iii) of the Companies (Acceptance of Deposits) Rules, 2014, any amount received as a loan or facility from any banking company shall not be considered as 'deposit'.

In view of the above, the contention of Mr. Sambhav that the term loan of ₹ 10,00,000 availed by the company from Beta Bank Limited shall be considered as 'deposit' is not correct.

(b) Rule 13 of the Companies (Acceptance of Deposits) Rules, 2014, states that the amount deposited in the 'Deposit Repayment Reserve Account' shall not be used by a company for any purpose other than repayment of deposits.

Since there is a prohibition, Eklavya Publishing Company Limited is not permitted to utilise its 'Deposit Repayment Reserve Account' to pay off its short-term creditors.

(c) Rule 3 (2) of the Companies (Acceptance of Deposits) Rules, 2014, provides that where depositors so desire, deposits may be accepted in joint names not exceeding three.

In view of this provision, Sanjiv can deposit ₹ 1,00,000 with Utsah Textiles Private Limited jointly with two other persons only irrespective of the fact that all the five persons are members of the company.

Question - 10

Shubhra Chemicals Private Limited (not a start-up company) is desirous of accepting 'deposits' from its members amounting to two hundred percent of aggregate of its paid-up share capital, free reserves and securities premium account. What are the conditions it must fulfil before such acceptance?

ANSWER

According to first proviso to Rule 3 (3), a private company may accept from its members monies not exceeding 100% of aggregate of the paid-up share capital, free reserves and securities premium account.

According to second proviso to Rule 3(3), the maximum limit in respect of deposits to be accepted from members shall not apply to the classes of private company which fulfils all of the following conditions, namely:

(a) Which is not an associate or a subsidiary company of any other company;

(b) 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 less; and

(c) Such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under section 73:

According to third proviso all the companies accepting deposits shall file the details of monies so accepted with the Registrar in Form DPT-3.

In case Shubhra Chemicals Private Limited is not an associate or a subsidiary company of any other company and its borrowings from banks, etc. is less than twice of its paid-up share capital or fifty crore rupees, whichever is less and also it has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits, then it can accept 'deposits' from its members amounting to two hundred percent of aggregate of its paid-up share capital, free reserves and securities premium account.

Further, it shall file the details of monies so accepted with the Registrar in Form DPT-3.

Division C – Case Study Based MCQ

Satyavaan Expert Packers and Movers Limited, a reliable and wellestablished company, was incorporated on 20th September, 2014 with an aim to provide convenient and innovative ways of moving customers' household items, re-location of businesses and offices, shifting of vehicles, etc. in the northern region. Their services have been professionally designed to ensure maximum customers satisfaction. The company had been formed by the directors Vijay Khanna, Pranav Chaturvedi, Vansh Khurana, Roopali Datta and Shikha Kumar whose friendship had developed during their college days. By dint of hard work and their business acumen, the promoters had successfully created a niche for themselves amid cut-throat competition.

The company has a fleet of over 500 vehicles, 55 branches, professionals and technical and non-technical employees. Over a period of time, Satyavaan has become a trusted brand and prospective customers prefer to engage it whenever they want to re-locate their offices or homes since services are provided in a convenient and costeffective manner.

The authorised capital of the company is ₹ 150.00 lacs divided into 15,00,000 equity shares of ₹ 10 each. At the time of incorporation, its paid-up capital was ₹ 1,00,00,000 and there were 50 shareholders. The registered office of the company is situated in Green Park, Kanpur.

With a view to provide world-class relocation and moving solutions throughout the country, the directors decided to enlarge the capital base of the company. During the mid of the current financial year, it offered remaining 5,00,000 shares to another 120 persons at a premium of ₹ 10 per share on private placement basis. Among others, Ria, a freelance software consultant and her younger sister Ruchi, a management consultant in Infratech Solutions Limited which is well-known company for its high export turnover, were also identified as the prospective subscribers. However, they requested the company to offer them only the minimum number of shares. Similar requests were also received from another twelve persons. Their requests were given due consideration by the directors. All the identified persons who were offered shares paid the required amount (including premium) as per the terms of the offer. The allotment of the shares was made much before the statutory period.

Immediately after the aforesaid allotment of shares, the company rolled out its expansion plan as envisaged earlier and utilised the funds so obtained for the requisite purpose. However, the company is desirous of tapping more prospective investors by offering them equity shares on private placement basis during the remaining part of the current financial year. For this purpose, it is proposed to increase the authorised capital from the present ₹ 150.00 lacs to ₹ 300.00 lacs.

In addition to the further allotment of shares on private placement basis, the company is also contemplating to raise deposits from the members. However, Vijay Khanna and Roopali Datta are of the opinion that the company should consider raising of deposits only in the next financial year since the funds already raised need to be properly utilized.

Based on above, answer the following questions:

(1) According to the case scenario, the company allotted the shares issued on the private placement basis well before the statutory period. What is the maximum period statutorily allowed within which the allotment of the shares must be made:

(a) Shares must be allotted within 30 days of the receipt of application money towards such shares.

(b) Shares must be allotted within 45 days of the receipt of application money towards such shares.

(c) Shares must be allotted within 60 days of the receipt of application money towards such shares.

(d) Shares must be allotted within 90 days of the receipt of application money towards such shares.

(2) According to the case scenario, the company is desirous of raising deposits from its members to augment the funding requirements. In case, the company also contemplates to raise deposits from public in addition to its members, which of the following option is applicable:

(a) In order to raise deposits from public besides members, the company should have net worth of minimum ₹ 100 crores and a turnover of minimum ₹ 500 crores.

(b) In order to raise deposits from public besides members, the company should have net worth of minimum ₹ 150 crores and a turnover of minimum ₹ 250 crores.

(c) In order to raise deposits from public besides members, the company should have net worth of minimum ₹ 150 crores or a turnover of minimum ₹ 750 crores.

(d) In order to raise deposits from public besides members, the company should have net worth of minimum ₹ 100 crores or a turnover of minimum ₹ 500 crores.

(3) According to the above case scenario, during the mid of the current financial year, the company offered 5,00,000 shares to 120 persons at a premium of ₹ 10 per share on private placement basis. During the remaining part of the current financial year, the company is desirous of tapping more prospective investors by offering them equity shares on private placement basis. How many more such prospective shareholders can be invited by the company for investment in the capital of the company.

(a) The company can offer equity shares maximum up to the 30 prospective shareholders in the remaining part of the current financial year.

(b) The company can offer equity shares maximum up to the 55 prospective shareholders in the remaining part of the current financial year.

(c) The company can offer equity shares maximum up to the 80 prospective shareholders in the remaining part of the current financial year.

(d) The company can offer equity shares maximum up to the 130 prospective shareholders in the remaining part of the current financial year.

(4) In the given case scenario, suppose the company has failed to allot the shares within the statutorily allowed period. In such a case, the only remedy available with the company is to refund the application money. State the time period within which the company is required to refund the application money to the subscribers if it has failed to allot the shares within the statutorily allowed period.

(a) The application money must be refunded within sixty days from the expiry of statutorily period allowed within which the allotment of shares ought to have been made.

(b) The application money must be refunded within forty-five days from the expiry of statutorily period allowed which the allotment of shares ought to have been made.

(c) The application money must be refunded within thirty days from the expiry of statutorily period allowed within which the allotment of shares ought to have been made.

(d) The application money must be refunded within fifteen days from the expiry of statutorily allowed period within which the allotment of shares ought to have been made.

[ICAI MCQ Booklet; MTP May 2021]

ANSWER

(1)	(c)	**(2)**	(d)	**(3)**	(c)	**(4)**	(d)

CHAPTER 6

REGISTRATION OF CHARGES

Division A - Multiple Choice Questions

(1) Any person acquiring property, on which charge is registered under section 77, shall be deemed to have notice of the charge from:

(a) The expiry of thirty days of such charge

(b) The date of application for registration of the charge

(c) The date of acquiring the property

(d) The date of such registration

(2) 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, 2023. 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. The latest date within which the company must register the charge with the ROC so as to avoid paying ad valorem fees for registration of the charge is:

(a) 27th April, 2023

(b) 17th April, 2023

(c) 2nd May, 2023

(d) 16th June 2023

(3) 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

(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

(5) Who cannot inspect the register of charges and instrument of charges, during business hours, without paying any fees:

(a) Any member of the company

(b) The Creditor of the company

(c) Persons other than member and creditor of the company

(d) No person is allowed to inspect the register of charges

(6) **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, them 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 **[Study Material]**

(7) **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. **[RTP Nov 19]**

(8) **Purvi Pvt. Ltd. is maintaining a register of charges along with all other necessary books and registers. The entry for every creation, modification and satisfaction of charges is being done properly. The company is also preserving every instrument related to such charges. From the following for how long the instrument of charges shall be maintained/preserved by the company---**

(a) for minimum 8 years from the date of creation of charge

(b) For minimum 10 years from the date of creation of charge

(c) For minimum 8 years from the date of satisfaction of charge

(d) permanently, without any time limit **[MTP May 19]**

(9) **The company's 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 **[Study Material; MTP March 21; MTP Nov. 2022]**

(10) **On receipt of intimation of satisfaction of charge, the registrar issues a notice to the holder calling a show cause within such time not exceeding _____ days as to why payment or satisfaction in full should not be regarded as intimated to the Registrar:**

(a) 14

(b) 21

(c) 30

(d) 300 **[Study Material; MTP Nov 19]**

ANSWER (MCQ)									
(1)	(d)	**(2)**	(b)	**(3)**	(c)	**(4)**	(b)	**(5)**	(c)
(6)	(c)	**(7)**	(b)	**(8)**	(c)	**(9)**	(c)	**(10)**	(a)

Division B - Descriptive Questions

Question - 1

How will a copy of an instrument evidencing creation of charge and required to be filed with the Registrar be verified?

ANSWER

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.

Question - 2

What is 'Floating Charge'? When does it get crystallised?

ANSWER

- A 'Floating Charge' is a type of charge that is created on assets or a class of assets which are of fluctuating or changing in nature.
- The assets which are under floating charge may include raw material, stock-in-trade, debtors, etc.
- It is a charge created upon a class of assets both present and future.
- The assets under floating charge keep on changing because the borrowing company is permitted to use them in the ordinary course of business.
- The buyers of the assets covered under floating charge will get them free of charge.

Crystallization of a Floating Charge

In the following events, a floating charge will get crystallised or fixed:

(i) When the creditor enforces the security due to the breach of terms and conditions of floating charge like there is non-payment of interest or default in repayment of instalments as per the terms of agreement.

(ii) When the company ceases to continue its business.

(iii) When the borrowing company goes into liquidation.

A floating charge remains dormant until it becomes fixed or crystallised.

On crystallisation of charge, the security (i.e. raw material, stock-in-trade, etc.) becomes fixed and is available for realization so that borrowed money is repaid.

Question - 3

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.

ANSWER

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 any company is in default in complying with any of the provisions of Chapter VI, the company shall be liable to a penalty of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.

Further, if any person willfully 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).

Question - 4

Renuka Soaps and Detergents Limited realised on 2nd May, 2022 that particulars of charge created on 10th March, 2022 in favour of a Sankalp Commercial Bank Limited 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, 2022 instead of 2nd May, 2022? Explain with reference to the relevant provisions of the Companies Act, 2013.

ANSWER

- The charge in the present case was created after 02-11-2018.
- The relevant provisions of the Companies Act, 2013 applicable in the present case are as explained below:
- Initially, the prescribed particulars of the charge together with the instrument of charge, 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 original 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 jurisdictional Registrar of Companies 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, 2022 instead of 2nd May, 2022, 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 ad valorem fees. Since the first sixty days from creation of charge have expired on 9th May, 2022, Renuka Soaps and Detergents Limited can still get the charge registered within a further period of sixty days from 9th May, 2022 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.

Question - 5

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 came to know that the title deed of the company was not free and the company expressed its inability to get the title deed transferred in Antriksh's 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?

ANSWER

- 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, ought to have been careful while purchasing property and should have verified beforehand that NRT Limited had already created a charge on the property.
- In view of above, the contention of NRT Limited is correct.

Question - 6

'A company is required to keep a Register of Charges at its Registered Office'. Considering this statement, mention the provisions of the Companies Act, 2013 in respect of keeping of Register of Charges by the companies.

ANSWER

In respect of keeping of Register of Charges by a company, Section 85 of the Companies Act, 2013 and Rules 10 as well as 11 of the Companies (Registration of Charges) Rules, 2014 are relevant.

(i) According to section 85(1):

- Every company shall keep a Register of Charges in the prescribed form and manner at its registered office.

  Note: Rule 10(1) specifies Form CHG-7 in which the Register of Charges shall be maintained.
- The Register shall include all charges and floating charges affecting any property or assets of the company or any of its undertakings, indicating in each case the prescribed particulars.

(ii) According to Proviso to Section 85(1):

- A copy of the instrument creating the charge shall also be kept at the registered office along with the Register of Charges.

(iii) Provisions of Rule 10 are as under:

- **Entry of Particulars of all Charges:** According to Rule 10 (1), the company shall enter in the Register particulars of all the charges registered with the Registrar on any of its property, assets or undertakings and the particulars of any property acquired subject to a charge as well as particulars of any modification of a charge and satisfaction of charge.
- **When to make Entries:** According to Rule 10 (2), the entries in the Register shall be made forthwith after the creation, modification or satisfaction of charge, as the case may be.
- **Who can authenticate Entries:** According to Rule 10 (3), the entries in the Register shall be authenticated by a director or the secretary of the company or any other person authorised by the Board for the purpose.

Inspection of Register of Charges and Instrument of Charges: As regards inspection, section 85(2) states that the register of charges and the 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 prescribed fees.

Similarly, regarding inspection, Rule 11 state that the Register of Charges and the instrument of charges kept by the company shall be open for inspection –

(a) By any member or creditor of the company without fees;

(b) By any other person on payment of fee.

Preservation of Register: According to Rule 10(4) the Register of Charges shall be preserved permanently. However, the instrument creating a charge or modification thereon shall be preserved for a period of eight years from the date of satisfaction of charge.

Question - 7

ABC Limited created a charge in favour of OK Bank which was duly registered. Later on, the Bank enhanced the facility by another ₹ 20 crore. Due to inadvertence, the modification in the original charge was not registered. Advise the company as to the course of action to be pursued in this regard.

ANSWER

ABC Limited is advised to immediately file an application for rectification of the Register of Charges in Form No. CHG-8 with the Central Government in accordance with Section 87 of the Companies Act, 2013.

Section 87 and Rule 12 empower the Central Government to order rectification of Register of Charges in the following cases of default:

(a) When there was omission in giving intimation to the Registrar with respect to payment or satisfaction of charge within the specified time;

(b) 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 was not of a nature to prejudice the position of creditors or shareholders of the company.

The application in Form CHG-8 shall be filed by the company or any interested person. Therefore, OK 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.

Question - 8

Ranjit acquired a property from PQR Limited which was mortgaged to Pyramid Bank. He settled the dues to Pyramid Bank in full and the same was registered with the sub-registrar who noted that the mortgage had been settled. But neither the company nor Pyramid Bank filed particulars of satisfaction of charge with the jurisdictional Registrar of Companies. Can Ranjit approach the Registrar and seek any relief in this regard? Discuss this matter in the light of provisions of the Companies Act, 2013.

ANSWER

Section 83 of the Companies Act, 2013 empowers the Registrar to make entries with respect to the satisfaction and release of charge 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.

Division C – Case Study Based MCQ

Ratnakar Cement Manufacturers and Traders Limited (RCMTL) having its registered office at Connaught Place, New Delhi was registered with an Authorised Share Capital of ₹ 5,00,00,000 divided into 50,00,000 shares of ₹ 10 each. As on date, its paid-up share capital is ₹ 4,00,00,000 (40,00,000 shares of ₹ 10 each) and its securities premium account has a balance of ₹ 40,00,000. Its cement-manufacturing plants are located at Faridabad (Haryana), Raebareli and Haldwani (Uttar Pradesh), Rudrapur (Uttarakhand) and Chanderia (Rajasthan). The company which produces cement under the brand name 'Ratnakar Cement', has expertise in manufacturing 53 Grade Ordinary Portland Cement that is used mainly in RCC and pre-stressed concrete of higher grades; but in case of plant located at Faridabad, the company also additionally manufactures Portland Pozzolana Cement (PPC) and White Cement.

Having higher degree of fineness and corrosion-resistant quality, PPC, manufactured by the company, is responsible for making the concrete more dense. Besides, due to its distinct impermeable excellence, PPC is preferred over ordinary cement for mass concreting work and therefore, RCMTL has a sizeable market to cater. The integrated network of traders pan India which RCMTL commands helps it in achieving its annual sales targets almost every year.

Except Faridabad cement plant which is of recent origin having state-of-the-art machinery, all other plants were taken over by the RCMTL at different time intervals from other cement manufacturers; and therefore, they either need renovation or replacement. Further, on the basis of market survey, RCMTL has gathered data which indicates that there is heavy demand for Sulphate Resisting Portland Cement (SRC) which is mainly used for foundation work, construction of basements and underground structures, sewage and water treatment plants, etc. where due to water or soil, 'sulphate attack' is more than anticipated.

Thus, in addition to catering to the increasing demand for PPC, RCMTL is also desirous of manufacturing Sulphate Resisting Portland Cement (SRC). In view of these developments, the company has plans for upgrading its Rudrapur cement manufacturing plant by installing an ultra-modern unit so that it can also manufacture SRC and compete effectively with its competitors by providing high-quality cement across the whole range of different qualities currently available in the markets both in India and abroad. The banking needs of RCMTL are mainly fulfilled by the National Commercial Bank Limited.

Based on above, answer the following questions:

(1) In the given case scenario, RCMTL is desirous of installing an ultra-modern cement plant for its Rudrapur works. It can finance fifty percent of the cost of plant from its own resources but the remaining fifty percent of cost can be financed only by availing loan from National Commercial Bank Limited with whom it is banking since its incorporation. Which kind of loan its banker shall grant for part financing the cost of ultra-modern cement plant against the security of factory land and building situated at Rudrapur as well as the proposed ultra-modern cement plant?

(a) Overdraft in the current account maintained by RCMTL

(b) Term loan

(c) Cash credit

(d) Hypothecation loan

(2) The loan proposal prepared by RCMTL for part financing the cost of ultra-modern cement plant against the security of factory land and building situated at Rudrapur as well as yet to be purchased ultra-modern plant, with a view to avail loan from National Commercial Bank Limited (NCBL) stands sanctioned by the Head Office of NCBL; and the sanction has been conveyed by the Connaught Place branch of NCBL to RCMTL. Which kind of charge shall be created by the NCBL on the factory land and building situated at Rudrapur as well as on the proposed ultra-modern cement plant?

(a) Fixed Charge

(b) Floating Charge

(c) Either Fixed or Floating Charge as desired by RCMTL

(d) Partly fixed and partly floating charge

(3) For the registration of charge created in favour of NCBL concerning securities offered by RCMTL (i.e. factory land and building situated at Rudrapur as well as the ultra-modern cement plant yet to be financed), which Registrar of Companies needs to be approached?

(a) ROC of Uttar Pradesh and Uttarakhand as the securities are located at Rudrapur (Uttarakhand)

(b) ROC of Delhi and Haryana since RCMTL has registered office at Connaught Place, New Delhi

(c) As per the discretion of RCMTL, any of the ROCs can be approached

(d) ROC of West Bengal since the Head Office of NCBL which has sanctioned loan is situated at Kolkata

(4) Installed charge has been created by RCTML in favour of NCBL on its factory land and building situated at Rudrapur as well as the ultra-modern cement plant yet to be installed. What is the time limit for within which this charge must be registered with the respective ROC?

(a) Within 10 days of creation of charge

(b) Within 15 days of creation of charge

(c) Within 30 days of creation of charge

(d) Within 60 days of creation of charge

(5) Due to some unintended mistake, RCMTL could not register the charge created on its fixed assets in favour of NCBL within the first statutory period so allowed. Advise the company, in next how many days, the charge can be permitted to be registered assuming that the charge was created after 02-11-2018.

(a) Within next 10 days

(b) Within next 15 days

(c) Within next 20 days

(d) Within next 30 days

[ICAI MCQ Booklet]

ANSWER

(1)	(b)	**(2)**	(a)	**(3)**	(b)	**(4)**	(c)	**(5)**	(d)

CHAPTER 7

MANAGEMENT AND ADMINISTRATION

Division A - Multiple Choice Questions

(1) 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.

(2) 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

(3) 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.

(4) 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.

[ICAI Sample MCQ; MTP May 19]

(5) 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-eighth

(c) one-tenth

(d) one-third [Study Material]

(6) The gap between 2 AGMs must not be more than

(a) 12 Months

(b) 15 Months

(c) 18 Months

(d) 15 Months as may be extended by Registrar of companies to 18 months [Nov. 2009]

(7) 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 MCQ]

(8) 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.

[RTP Nov. 19]

(9) 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 MCQ]

(10) 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 [Study Material; ICAI MCQ Booklet]

ANSWER (MCQ)

(1)	(d)	**(2)**	(d)	**(3)**	(c)	**(4)**	(d)	**(5)**	(c)
(6)	(d)	**(7)**	(a)	**(8)**	(c)	**(9)**	(d)	**(10)**	(b)

Division B - Descriptive Questions

Question - 1

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?

ANSWER

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.

Question - 2

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?

ANSWER

- 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.

Question - 3

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.

ANSWER

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.

Question - 4

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?

ANSWER

(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.

Question - 5

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 extra-ordinary 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.

ANSWER

- 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.

Question - 6

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?

ANSWER

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.

Question - 7

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 pall. 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.**

ANSWER

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.

Question - 8

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

ANSWER

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.

Question - 9

There are certain entities to which the Companies (Significant Beneficial Owners) Rules, 2018 are not applicable. List them.

ANSWER

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.

Question - 10

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.

ANSWER

- 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.

Question - 11

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:

(a) A is the representative of Governor of Uttar Pradesh.

(b) B and C are preference shareholders,

(c) D is representing Y Ltd. and Z Ltd.

(d) E, F, G and H are proxies of shareholders.

Could it be said that the quorum was preset in the meeting?

ANSWER

- 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.

Question - 12

What do you mean by Proxy? Explain the provisions relating to appointment of proxy under the Companies Act, 2013.

ANSWER

- 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.

Question - 13

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?

ANSWER

- 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.

Question - 14

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?

ANSWER

- 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.

Question - 15

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?

ANSWER

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.

Question - 16

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?

ANSWER

- 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.

Question - 17

With a view to transact some urgent business, Ratna, Rimpi and Ratnesh, the three directors of Shilpkaar 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 ₹ 30 crores divided into 3 crores shares of ₹ 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.

ANSWER

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, Shilpkaar 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.

Question - 18

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.

ANSWER

- 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.

Question - 19

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.

ANSWER

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.

Question - 20

The paid-up share capital of Disha Home Appliances Limited is ₹ 8 crores divided into 80 lacs shares of ₹ 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.

ANSWER

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 ₹ 10 crores or more or turnover of ₹ 50 crores or more.

Accordingly, if Disha Home Appliances Limited gets listed or in case its paid-up share capital is increased to ₹ 10 crores or more or its turnover becomes ₹ 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.

Question - 21

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.

ANSWER

(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:** ₹ 1 lakh and in case of continuing failure, with a further penalty of ₹ 5 hundred for each day after the first during which such failure continues subject to a maximum of ₹ 5 lakh.
- **Every officer who is in default:** Minimum ₹ 25 thousand and in case of continuing failure, with a further penalty of ₹ 5 hundred for each day after the first during which such failure continues subject to a maximum of ₹ 1 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 ₹ 5 lakhs 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 ₹ 1 lakh in case of continuing failure.

Division C - Case Study Based MCQ

Mr. Mohit Aggarwal is a 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 of ₹ 1.5 crores from Mr. Mohit 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. 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 transaction is furnished in the boards' report.

DBSL which is an unlisted public company, also proposed to accept the deposits from the public as on 1st November, 2021, which would be due for repayment on 30th September, 2026. DBSL also accepts a LAP (Loan against property) for a term of 10 years from a financial institution on 18th June 2021. Charge was created on

that day, but DBSL failed to register the charge with the registrar within the prescribed time. The Registrar granted a grace period of further 30 days to DBSL in respect of application filed by it for the same, however, still it failed to register the charge within the prescribed time. Finally, the application for registration of charge was furnished on 18th August 2021.

SCCL has registered office in Paonta-sahib (Himachal Pradesh) and corporate office is situated in Dehradun (Uttarakhand) but around 15% of total 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, 2021 at the registered office of the company. Notice for same was served on 21st August 2021. 78% of members gave consent to convening AGM at shorter notice due to ambiguity and possibility of another lockdown starting from 11th September 2021, on account of the Omicron variant of COVID-19.

Based on above, answer the following 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 1/20th of the total members entered in the register of members reside there

(2) With reference to deposit proposed to be 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 deposit for any duration.

(b) Since DBSL is an unlisted company, provisions relating to the duration of the deposit are not applicable to it.

(c) There is a provision of a minimum duration of six months, but no upper cap to length is provided. Hence deposit proposed to be accepted by DBSL would be in compliance to provisions of Law.

(d) Acceptance of deposits by DBSL would be in violation of provisions 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 fees.

(c) The charge can be registered, if registrar permits but with payment of additional fees as prescribed.

(d) The charge can be registered, with payment of standard fees.

(4) With reference to the loan advanced by Mr. Mohit 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 necessary written declaration is provided by Mr. Mohit in respect of such loan advanced to SCCL.

(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 atleast 95% of members entitled to vote thereat.

(c) Notice served by DBSL is valid because such shorter notice has been consented to, by 75% of members entitled to vote thereat.

(d) Notice served by DBSL is not valid, because notice given within shorter duration needs to be at-least consented by 50% of the members entitled to vote at the AGM and that too, in writing.

[RTP Nov. 2020; RTP May 2021; ICAI MCQ Booklet]

ANSWER

(1)	(c)	**(2)**	(d)	**(3)**	(b)	**(4)**	(d)	**(5)**	(b)

CHAPTER 8

DECLARATION AND PAYMENT OF DIVIDEND

Division A - Multiple Choice Questions

(1) 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 Divided

(2) 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.

(3) The Board of Directors of Vidyut Limited are contemplating to declare interim dividend in the last week of July, 2022 but the company has incurred loss during the current financial year up to the end of June, 2022. However, it is noted that during the previous five financial years i.e., 2017-18, 2018-19, 2019-20, 2020-21 and 2021-22, the company had declared dividend at the rate of 8%, 9%, 12%, 11% and 10% respectively. Advise the Board as to the maximum rate at which they can declare interim dividend despite incurring loss during the current financial year.

(a) Maximum at the rate of 10%.

(b) Maximum at the rate of 11%.

(c) Maximum at the rate of 10.5%.

(d) Maximum at the rate of 11.5%.

(4) The amount accumulated in the Investor Education and Protection Funds 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.

(5) In case a company fails to pay declared dividends or fails to post dividend warrants within 30 days of declaration, company shall be liable to pay simple interest at the rate of _____ during the period for which such default continues.

(a) 6% p.a.

(b) 12% p.a.

(c) 15% p.a.

(d) 18% p.a.

(6) Dividend can be declared out of --

(a) Capital reserves

(b) Revaluation reserve

(c) Debenture Redemption Reserve

(d) Earlier year's reserve brought forward [May 2007]

(7) 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 MCQ]

(8) The Directors of Silver tongue Solutions Limited proposed dividend at 18% on equity shares for the financial year 2018-2019. The same was approved at the Annual general body meeting held on 30th September 2019. Mr. Jagan was the holder of 2000 equity of shares on 31st March, 2019, but he transferred the shares to Mr. Rajiv on 8th August 2019. Mr. Rajiv has sent the shares together with the instrument of transfer to the company for registration of the shares in his favour only on 25th September 2019. The registration of the transfer of shares is pending on 30th September 2019. With respect to the dividend declared the correct action to be taken by the company is:

(a) Pay the dividend to Mr. Jagan

(b) Pay the dividend to Mr. Rajiv

(c) Transfer the dividend in relation to such shares to the Unpaid Dividend Account

(d) Transfer the dividend in relation to such shares to the Investor Education and Protection Fund

[ICAI MCQ Booklet]

(9) Dividend once declared, should be paid within_____ days from the date of declaration

(a) 14 days

(b) 21 days

(c) 30 days

(d) 45 days [ICAI MCQ Booklet]

(10) 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% [Study Material]

ANSWER (MCQ Based Questions)

(1)	(a)	**(2)**	(d)	**(3)**	(b)	**(4)**	(c)	**(5)**	(d)
(6)	(d)	**(7)**	(d)	**(8)**	(c)	**(9)**	(d)	**(10)**	(d)

Division B - Descriptive Questions

Question - 1

The Annual General Meeting of ABC Bakers Limited held on 30th May, 2022, declared a dividend at the rate of 30% payable on its paid-up equity share capital as recommended by Board of Directors. However, the Company was unable to post the dividend warrant to Mr. Ranjan, an equity shareholder, up to 25th July, 2022. Mr. Ranjan filed a suit against the Company for the payment of dividend along with interest at the rate of 20 percent per annum for the period of default. Decide in the light of provisions of the Companies Act, 2013, whether Mr. Ranjan would succeed? Also, state the directors' liability in this regard under the Act.

ANSWER

Section 127 of the Companies Act, 2013 lays down the penalty for nonpayment of dividend within the prescribed time period of 30 days.

According to this section 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 of dividend to any shareholder entitled to the payment of dividend:

(a) Every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment maximum up to two years and with minimum fine of rupees one thousand for every day during which such default continues; and

(b) The company shall be liable to pay simple interest at the rate of 18% per annum during the period for which such default continues.

Therefore, in the given case Mr. Ranjan will not succeed if he claims interest at 20% interest as the limit under section 127 is 18% per annum.

Question - 2

The Board of Directors of Future Fashions 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. Thereafter, the directors at another meeting of the Board passed a board resolution for diverting the total dividend to be paid to the shareholders for purchase of certain short-term investments in the name of the company. As a result, dividend was paid to shareholders after 45 days.

Examining the provisions of the Companies Act, 2013, state whether the act of directors is in violation of the provisions of the Act and if so, state the consequences that shall follow for the above violative act.

ANSWER

- 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.
- In the present case, the Board of Directors of Future Fashions 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.
- Thereafter, the directors at another meeting of the Board decided by passing a board resolution for diverting the total dividend to be paid to the shareholders for purchase of certain short-term investments in the name of the company.

As a result, dividend was paid to shareholders after 45 days.

(i) Sine, 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 a special account to be opened by the company in any scheduled bank to be called the Unpaid Dividend Account.

(ii) The Board of Directors of Future Fashions 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 certain short-term 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.

Question - 3

Referring to the provisions of the Companies Act, 2013, examine the validity of the following:

The Board of Directors of ABC Tractors Limited 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.

ANSWER

- 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 ABC Tractors 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 ABC Tractors Limited is not valid.

Question - 4

Star computers Limited declared and paid dividend in time to all its equity holders for the financial year 2021-22, except in the following two cases:

(i) Mrs. Sheela Bhatt, holding 250 shares had mandated the company to directly deposit the dividend amount in her bank account. The company, accordingly remitted the dividend but the bank returned the payment on the ground that there was difference in surname of the payee in the bank records. The company, however, did not inform Mrs. Sheela Bhatt about this discrepancy.

(ii) Dividend amount of ₹ 50,000 was not paid to the successor of Late Mr. Mohan, in view of the court order restraining the payment due to family dispute about succession.

You are required to analyse these cases with reference to provisions of the Companies Act, 2013 regarding failure to distribute dividends.

ANSWER

(i) 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 could not be complied with but the non-compliance was not communicated to him.

In the given situation, the company has failed to communicate to the shareholder Mrs. Sheela Bhatt about non-compliance of her direction regarding payment of dividend.

Hence, the penal provisions under section 127 will be applicable.

(ii) Section 127, inter-alia, provides that no offence shall be deemed to have been committed where the dividend could not be paid by reason of operation of law.

In the present case, the dividend could not be paid because it was not allowed to be paid by the court until the matter was resolved about succession.

Hence, there will not be any liability on the company and its directors, etc.

Question - 5

Alpha Herbals, a Section 8 company is planning to declare dividend in the Annual General Meeting for the Financial Year ended 31-03-2023. 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.

ANSWER

- According to Section 8(1) of the Companies Act, 2013, the companies licenced under Section 8 of the Act (Formation of companies with Charitable Objects, etc.) are prohibited from paying any dividend to their 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 licenced under Section 8 of the Companies Act, 2013, which is planning to declare dividend, is not according to the provisions of the Companies Act, 2013.

Question - 6

YZ Medical Instruments Limited is a manufacturing company & has proposed a dividend @ 10% for the year 2022-2023 out of the profits of current year. The company has earned a profit of ₹ 910 crores during 2022-2023. 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.

ANSWER

- 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 2022-2023. 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.

Question - 7

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.

ANSWER

- 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.

Question - 8

Alex limited is facing loss in business during the financial year 2022-2023. In the immediate preceding three financial years, the company had declared dividend at the rate of 7%, 11% and 12% respectively. The Board of Directors has decided to declare 12% interim dividend for the current financial year atleast to be in par with the immediate preceding year. Is the act of the Board of Directors valid?

ANSWER

- As per Section 123(3) of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared.
- Provided that 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.
- According to the given facts, Alex Ltd. is facing loss in business during the financial year 2022-2023.
- In the immediate preceding three financial years, the company declared dividend at the rate of 7%, 11% and 12% respectively.
- Accordingly, the rate of dividend declared shall not exceed 10%, the average of the rates (7+11+12=30/3) at which dividend was declared by it during the immediately preceding three financial years.
- Therefore, the act of the Board of Directors as to declaration of interim dividend at the rate of 12% during the F.Y 2022-2023 is not valid.

Division C – Case Study Based MCQ

The Board of Directors of LESCO Pharmaceuticals Limited (hereinafter referred to as "company") were meeting again in the month of May 2019 for the discussion of two important agenda which had a direct relation to the ensuing Annual General Meeting scheduled for 30th September 2019. The first Agenda was related to the authentication of financial statements and the second one was in connection with Dividend. Although the first item in the agenda did not take much time and necessary Board resolution was passed, the second agenda was a matter of concern for the directors.

Ms. Sunita, one of the directors proposed that since the company had not made any profits during the year, it would not be appropriate to declare any dividend for the financial year 2018-19. However, all other directors felt that last year's rate of dividend of 5% should be maintained and the same should at least be paid this year to keep the shareholders happy. Ms. Sunita again objected by saying that the legal provisions as envisaged under Section 123 of the Companies Act, 2013 clearly states that dividend by a company for any financial year can be paid or declared only out of the profits of the company of that year and since there was no profit there was no legal compulsion to pay dividend. She strongly contended that paying dividend was a matter of financial choice by the Board of Directors and accordingly, the board should take an informed decision. The priority for the Board is to ensure that cash flow is maintained first and then the "happiness" of the Shareholders be considered.

Another director, Mr. Robinder suggested that the company had made a substantial gain on revaluation of assets and if that would be considered then there would be sufficient profits for declaration of dividends out of such gain.

Finally, the Chairman-cum-Managing Director, Mr. Ramesh interfered and suggested that perhaps there is a provision in the Companies Act, 2013 relating to payment of dividend in the absence of profits and that the Company Secretary, Ms. Ameeka should work out the possibilities and all legal aspects connected and then call for another Board Meeting for finalising the payment of Dividend. The meeting then ended with a vote of thanks to the Chair.

Based on above, answer the following questions:

(1) Based on the discussions in the Board Meeting of the Company, which of the following is a correct statement relating to the source for payment of Dividend by the Company:

(a) Profits of the Company of that year only arrived at after providing for depreciation.

(b) Profits of the Company of that year or for any previous year or years after providing for depreciation and any reserves available.

(c) Profits of the Company of that year or for any previous year or years after providing for depreciation and remaining undistributed i.e. free reserves.

(d) Profits of the Company of that year or previous year but not necessary to provide for depreciation.

(2) With reference to claim made by Ms. Sunita that Dividend could only be paid or declared out of profits and no other source, which of the following would you completely agree or partly agree?

(a) Completely agree with the contention of Ms. Sunita that only profits are the source for payment of Dividend.

(b) Partly agree with Ms. Sunita but apart from Profits, a company can pay dividend out of money provided by the Central or State Government in pursuance of the guarantee given by them.

(c) Partly agree with Ms. Sunita that apart from profits (either current year or previous year), even in the event of inadequacy or absence of profits, a company may declare dividend out of free reserves, subject to fulfilling certain conditions.

(d) Partly agree with Ms. Sunita that company can pay dividends not only out of profits but also out of money provided by Central Government or State Government in pursuance of the guarantee given by them or out of money available in free reserves, and in each case subject to fulfilment to conditions prescribed.

(3) Which of the option is correct with regard to the proposal made by Mr. Robinder?

(a) Gain made by a company in form of revaluation of assets is definitely available for payment of Dividend.

(b) Gain made by a company in form of revaluation of assets is available only upon satisfaction of terms and conditions prescribed.

(c) Gains made by a company in form of revaluation of assets in not available for computing profits for declaration of dividends.

(d) Gains made by a company in form of revaluation of assets which are only buildings are not available and in all other asses they are available.

(4) As per the Chairman-cum-Managing Director, Mr. Ramesh, there is a provision in the Companies Act, 2013 relating to payment of dividend in the absence of profits. Which of the following is correct with respect to the rate of dividend in such cases?

(a) The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the three years immediately preceding that year.

(b) The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the two years immediately preceding that year.

(c) The rate of dividend declared shall be the average of the rates at which dividend was declared by it in the five years immediately preceding that year.

(d) The rate of dividend declared shall not exceed the rate at which dividend was declared by it in any of the three years immediately preceding that year.

(5) According to the Chairman-cum-Managing Director, Mr. Ramesh, there is a provision in the Companies Act, 2013 relating to payment of dividend in the absence of profits, which of the following is correct with respect to the amount that can be drawn from such accumulated profits of the previous year(s)?

(a) The amount that can be drawn from such accumulated profits shall not exceed one fifth of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement.

(b) The amount that can be drawn from such accumulated profits shall not exceed one tenth of the sum of its paidup share capital and free reserves as appearing in the latest audited financial statement.

(c) The amount that can be drawn from such accumulated profits shall not exceed one tenth of its paid-up share capital as appearing in the latest audited financial statement.

(d) The amount that can be drawn from such accumulated profits shall not exceed one tenth of the average of its paid-up share capital and free reserves as appearing in the latest three years audited financial statement.

[ICAI MCQ Booklet]

ANSWER

(1)	(c)	**(2)**	(d)	**(3)**	(c)	**(4)**	(a)	**(5)**	(b)

CHAPTER 9

ACCOUNTS OF COMPANIES

Division A - Multiple Choice Questions

(1) 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 account of the Company. You, as an expert, are called upon by SEBI to advise the earliest financial year to be quoted in application for reopening of books of account may be granted by Tribunal?

(a) 2018 – 2019

(b) 2016 – 2017

(c) 2013 – 2014

(d) 2014 – 2015

(2) During the half year ended September 2022, 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 2020. Further during the year ended March 2023, the BOD has again made an application to the Tribunal for revision in the board's report pertaining to the year ended March 2022. 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 2023. The application made for revision in the Board report is however valid in law.

(3) 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

(4) Shri Limited (a company having CSR Committee as per the provision of Section 135 of the Companies Act, 2013) decides to spend and utilize the amount of Corporate Social Responsibility on the activities for the benefit of all the employees of Shri 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 Shri Limited for that financial year

(b) No amount spent on Corporate Social Responsibility activities by Shri Limited for that financial year

(c) Only half of the total amount spent, shall be considered to be spent on Corporate Social Responsibility activities by Shri Limited for that financial year

(d) Only the amount that has been spent on the employees having salary of ₹ 20,000 per month or less, shall be considered be considered to be spent on Corporate Social Responsibility activities by Shri Limited for that financial year.

(5) 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. **[ICAI Sample MCQ]**

(6) ABC Limited dealing in Fast Moving Consumable Goods (FMCG) has its registered office at Mumbai. The Composition of Board of Directors and Key Managerial Personnel are:

Mr. P (Managing Director). Mr. Q (Director). Mr. R (Director), Mr. S (nominee Director), Mr. V (Chief Financial Officer), Mr. W (Whole time Company secretary).

If any companies relating to Maintenance and keeping of Books of accounts of Companies Act, 2013, is not followed by the company then penalty for contravention will be imposed on the following persons –

(a) Mr. P & Mr. V

(b) Mr. P, Mr. Q, Mr. R & Mr. S

(c) Mr. P, Mr. S, Mr. V & Mr. W

(d) Mr. P, Mr. Q, Mr. R, Mr. S, Mr. V & Mr. W **[Nov. 2022]**

(7) 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 **[MTP Nov. 2022]**

(8) Which one of the following person/authorities cannot make an application to Court/ NCLT to re- open the books of accounts and financial statements of the Company?

(a) Central Government

(b) Shareholder

(c) Income tax authorities

(d) Securities and Exchange Board of India **[Nov. 2020]**

(9) CSR Committee of the Board shall consist of:

(a) Directors forming 1/3rd of the total number of directors

(b) Atleast 2 directors out of which 1 shall be independent

(c) 3 or more directors out of which one shall be managing director

(d) 3 or more directors, out of which at least 1 director shall be independent.

[Study Material; ICAI MCQ Booklet; MTP May 2023]

(10) Prefect Ltd. is a listed Company. The company is in the business of manufacturing of steel and had its head office at Karnataka. The company's operations are spread out across India. The company appointed a firm

of Chartered Accountants. N & Co. LLP, as its internal auditors for the year ended 31 March 2019. However, for the financial year 2019-20, the company is planning to have an in-house internal audit system commensurate with its size and operations. If the company does that then it is planning not to continue with N & Co LLP as its internal auditors. Please advise.

(a) The company being listed needs to have a firm of CA as its internal auditors and hence the company needs to continue with N & Co LLP or appoint some other firm.

(b) The company being listed needs to have a firm of CA as its internal auditors and hence the company needs to continue with N & Co LLP or may appoint some other consultant which may not be a firm.

(c) The company being listed should not change its internal audit process within a year and hence should continue with N & Co. LLP.

(d) If the internal audit function of the company is fine as per its size and operations then it may decide not to continue with N & Co LLP.

[Study Material]

ANSWER (MCQ Based Questions)

(1)	(d)	**(2)**	(b)	**(3)**	(b)	**(4)**	(b)	**(5)**	(c)
(6)	(a)	**(7)**	(b)	**(8)**	(b)	**(9)**	(d)	**(10)**	(d)

Division B - Descriptive Questions

Question - 1

The registered office of the Bharat Ltd. 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. Advice.

ANSWER

- 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 account 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 above-mentioned procedure.

Question - 2

The Board of Directors of Vishwakarma Electronics Limited consists of Mr. Ghanshyam (Director), Mr. Hyder (Director) and Mr. Indersen (Managing Director). The company has also employed a Company Secretary.

The financial statements of the company were signed by Mr. Ghanshyam and Mr. Hyder. Examine whether the authentication of financial statements of the company was in accordance with the provisions of the Companies Act, 2013?

ANSWER

- According to section 134(1) of the Companies Act, 2013, the financial statements, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon.
- In the instant case, the Balance Sheet and Profit and Loss Account have been signed only by Mr. Ghanshyam and Mr. Hyder, the directors. In view of Section 134(1) of the Companies Act, 2013, Mr. Indersen, the Managing Director should be one of the two signing directors.
- Since, the company has also employed a Company Secretary, he should also sign the financial statements.

Question - 3

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 2022-23. 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.

ANSWER

As per Rule 3(1) 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:

(i) Companies listed with stock exchanges in India and their Indian subsidiaries;

(ii) Companies having paid up capital of five crore rupees or above;

(iii) Companies having turnover of one hundred crore rupees or above;

(iv) 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, exempted from filing its financial statement in XBRL mode.

Question - 4

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.

ANSWER

- 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) Ordinance, 2018, 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.

Question - 5

(i) Ravi Limited maintained its books of account under Single Entry System of Accounting. Is it permitted under the provisions of the Companies Act, 2013?

(ii) State the persons responsible for complying with the provisions regarding maintenance of Books of Account of a Company.

(iii) Whether a Company can keep books of Account in electronic mode accessible only outside India?

ANSWER

(i) 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 account 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 account 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.

(ii) 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.

(iii) A Company 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) The books of account and other relevant books and papers maintained in electronic mode shall remain accessible in India so as to be usable for subsequent reference.

Provided that for the financial year commencing on or after the 1st day of April, 2022, every company which uses accounting software for maintaining its books of account, shall use only such accounting software which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled.

(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.

Question - 6

The Government of India is holding 51% of the paid-up equity share capital of Sun Ltd. The Audited financial statements of Sun Ltd. for the financial year 2021-22 were placed at its annual general meeting held on 31st August 2022. However, pending the comments of the Comptroller and Auditor General of India (CAG) on the said accounts the meeting was adjourned without adoption of the accounts. On receipt of CAG comments on the accounts, the adjourned annual general meeting was held on 15th October, 2022 whereat the accounts were adopted. Thereafter, Sun Ltd. filed its financial statements relevant to the financial year 2021-22 with the Registrar of Companies on 12th November, 2022. Examine, with reference to the applicable provisions of the Companies Act, 2013, whether Sun Ltd. has complied with the statutory requirement regarding filing of accounts with the Registrar?

ANSWER

- According to first proviso to section 137(1) of the Companies Act, 2013, where the financial statements are not adopted at annual general meeting or adjourned annual general meeting, such un-adopted financial statements along with the required documents shall be filed with the Registrar within thirty days of the date of annual general meeting and the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned annual general meeting for that purpose.
- According to second proviso to section 137(1) of the Companies Act, 2013, financial statements adopted in the adjourned AGM shall be filed with the Registrar within thirty days of the date of such adjourned AGM with such fees or such additional fees as may be prescribed.
- In the instant case, the accounts of Sun Ltd. were adopted at the adjourned AGM held on 15th October, 2022 and filing of financial statements with Registrar was done on 12th November, 2022 i.e. within 30 days of the date of adjourned AGM. But Sun Ltd. has not filed its un-adopted financial statements within 30 days of the date of the annual general meeting held on 31st August 2022.
- Hence, Sun Ltd. has not complied with the statutory requirement regarding filing of un-adopted accounts with the Registrar, but has certainly complied with the provisions by filing of adopted accounts within the due date with the Registrar.

Question - 7

The Income Tax Authorities in the current financial year 2022-23 observed, during the assessment proceedings, a need to re-open the accounts of Chetan Ltd. for the financial year 2011-12 and, therefore, filed an application before the National Company Law Tribunal (NCLT) to issue the order to Chetan 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

ANSWER

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 relatability 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 Chetan 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.

Division C - Case Study Based MCQ

A private company by the name of Neha Pvt. Limited was incorporated in the year 2002. 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:

Based on above, answer the following questions:

(1) 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 2019-20 was less than ₹ 1,500 crore.

(2) 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

(3) 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

(4) The company Neha Pvt. Limited shall spend during financial year 2018-19 on Corporate Social Responsibility an amount of atleast:

(a) ₹ 0.04 crore

(b) ₹ 0.12 crore

(c) ₹ 0.18 crore

(d) ₹ 0.06 crore

[RTP May 2020]

ANSWER

(1)	(b)	**(2)**	(d)	**(3)**	(c)	**(4)**	(a)

CHAPTER 10

AUDIT AND AUDITORS

Division A - Multiple Choice Questions

(1) 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

(2) 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

(3) 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.

(4) The word 'firm' for the purpose of section 139 shall include --

(a) An individual auditor

(b) LLP

(c) An individual auditor and LLP both

(d) A company

(5) 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 **[Study Material; ICAI MCQ Booklet]**

(6) Mr. Unfortunate is a Statutory Auditor of OKS Limited, a Listed company. Mr. Unfortunate died in a road accident. The vacancy in the officer of the auditor within _____ days shall be filled in by the Board

(a) 45 days

(b) 60 days

(c) 90 days

(d) 30 days **[Nov. 2020]**

(7) A Chartered Accountant is not eligible for appointment as an auditor of a company when his relative holds securities in the Company of

(a) Market Value not exceeding ₹ 1 Lakh

(b) Book Value not exceeding ₹ 1 Lakh

(c) Face Value not exceeding ₹ 1 Lakh

(d) Face Value not exceeding ₹ 5 Lakh **[Nov. 2020]**

(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).

[MTP Nov. 2022]

(9) MNP Ltd is a medium-sized company engaged in the business of pharmaceuticals. For the year ended 31 March 2018, the company is looking for appointment of GST (Goods and Services Tax) auditor. The company wants to appoint somebody for this work who is familiar with the business of the company i.e. who would have worked with the company in the past so that lesser efforts are required to get the GST audit completed. The company has following options, please suggest which one would be better for the company.

(a) Statutory auditors can be appointed for this work.

(b) Internal auditors can be appointed for this work.

(c) Both statutory and internal auditors can be jointly appointed for this work.

(d) Internal auditors along with the tax consultants of the company can be appointed for this work.

[Study Material]

(10) GP & Co LLP is a firm of Chartered Accountants having 35 partners. The firm has 9 branches across India. The firm was appointed as statutory auditor of PQR Ltd for the year ended 31 March 2018. The firm designated Mr. NG Goel as the signing and engagement partner for the statutory audit of PQR Ltd. During the course of audit. NG Goel was fully involved, however, the finalization of financial statements took long and the time when they got finalized, NG Goel had to travel for some urgent work for a month outside India. As regards the signing of the financial statements, please suggest which of the following options is correct?

(a) PQR Ltd should wait till the time NG Goel returns and if required, NG Goel can sign the financial statements back dated.

(b) PQR Ltd should wait till the time NG Goel returns and only after that financial statements will be signed.

(c) In the absence of NG Goel, any other partner of the firm, being a CA, can sign the financial statements of PQR Ltd.

(d) In the absence of NG Goel, any other partner of the firm, being a CA, can sign the financial statements of PQR Ltd, but the firm should intimate about the same to the ROC and Income Tax authority. **[Study Material]**

ANSWER (MCQ)

(1)	(d)	**(2)**	(c)	**(3)**	(a)	**(4)**	(a)	**(5)**	(b)
(6)	(d)	**(7)**	(c)	**(8)**	(d)	**(9)**	(a)	**(10)**	(c)

Division B - Descriptive Questions

Question - 1

State the procedure of the following, explaining the relevant provisions of the Companies Act, 2013;

(i) 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.

(ii) Removal of Statutory Auditor (appointed in last Annual General Meeting) before the expiry of his term.

ANSWER

(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 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.

Question - 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.

ANSWER

- 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.

Question - 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 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.

ANSWER

- 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.

Question - 4

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.

ANSWER

(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.

Question - 5

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.?

ANSWER

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.

Question - 6

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

ANSWER

(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.

Question - 7

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?

ANSWER

- 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.

Division C - Case Study Based MCQ

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.

Based on above, answer the following questions:

(1) In case of TML, which of the following statements are correct regarding the declaration of dividend?

(a) TML can't declare the dividend because it earns a loss in the current financial year.

(b) TML can declare the dividend but only up to 9%

(c) TML can declare the dividend but only up to 5%

(d) TML can declare the dividend but only up to 6.8%

(2) CA. Dev, who is the auditor of WML have to vacate the office of the auditor in and can be reappointed again only in

(a) 22nd AGM and 27th AGM

(b) 27th AGM and 32nd AGM

(c) 22nd AGM and 23rd AGM

(d) 22nd AGM and can't be re-appointed again.

(3) 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.

(4) 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 immediately 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.

(5) 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.

[RTP Nov. 2020; ICAI MCQ Booklet]

ANSWER

(1)	(c)	**(2)**	(a)	**(3)**	(d)	**(4)**	(c)	**(5)**	(c)

CHAPTER 11

COMPANIES INCORPORATED OUTSIDE INDIA

Division A - Multiple Choice Questions

(1) Jackson Communications LLC, incorporated in Arizona, USA, has established a principal place of business at Kolkata, West Bengal. It is required to deliver requisite documents to the specified authority. You are required to select an appropriate option from the four given below which indicates the number of days within which such documents shall be delivered:

(a) Jackson Communications LLC shall, within 10 days of the establishment of a principal place of business in India, deliver the requisite documents to the specified authority.

(b) Jackson Communications LLC shall, within 15 days of the establishment of a principal place of business in India, deliver the requisite documents to the specified authority.

(c) Jackson Communications LLC shall, within 30 days of the establishment of a principal place of business in India, deliver the requisite documents to the specified authority.

(d) Jackson Communications LLC shall, within 45 days of the establishment of a principal place of business in India, deliver the requisite documents to the specified authority.

(2) Morgen Stern Digi Cables GmbH incorporated in Berlin, Germany, established a place of business at Mumbai to conduct its business of data interchange and other digital supply transactions online. However, Morgen Stern Digi Cables GmbH failed to deliver certain documents to the jurisdictional Registrar of Companies within the prescribed time period in compliance with the respective statutory provisions. Which option, out of the four given below, shall correctly indicate the amount of fine with which Morgen Stern Digi Cables GmbH shall be punishable for its failure to deliver certain documents:

(a) Morgen Stern Digi Cables GmbH is punishable with fine which shall not be less than 50,000 rupees but which may extend to 5,00,000 rupees and in the case of a continuing offence, with an additional fine upto 25,000 rupees for every day after the first during which the contravention continues.

(b) Morgen Stern Digi Cables GmbH is punishable with fine which shall not be less than 1,00,000 rupees but which may extend to 5,00,000 rupees and in the case of a continuing offence, with an additional fine upto 20,000 rupees for every day after the first during which the contravention continues.

(c) Morgen Stern Digi Cables GmbH is punishable with fine which shall not be less than 2,00,000 rupees but which may extend to 5,00,000 rupees and in the case of a continuing offence, with an additional fine upto 50,000 rupees for every day after the first during which the contravention continues.

(d) Morgen Stern Digi Cables GmbH is punishable with fine which shall not be less than 1,00,000 rupees but which may extend to 3,00,000 rupees and in the case of a continuing offence, with an additional fine upto 50,000 rupees for every day after the first during which the contravention continues.

(3) Radix Healthcare Ltd., a company registered in Thailand, although has no place of business established in India, yet it is engaged in online business through remote delivery of healthcare services in India. Select the incorrect statement from those given below as to the nature of the Radix Healthcare Ltd. in the light of the applicable provisions of the Companies Act, 2013:

(a) Radix Healthcare Ltd. is not a foreign company as it has no place of business established in India.

(b) Radix Healthcare Ltd. is a foreign company being involved in business activity through telemedicine.

(c) Radix Healthcare Ltd. is a foreign company for conducting business through electronic mode.

(d) Radix Healthcare Ltd. is a foreign company as it conducts business activity in India.

(4) Fam Software Company Inc., a company incorporated in Australia, proposes to establish a place of business at Mumbai. The list of the Directors includes (i) Mr. Arjun – Managing Director, (ii) Mr. Ranveer –

Director, (iii) Mr. Ramesh Malik - Director and (iv) Mr. Arbaaz - Director. Ms. Lavina has been appointed as the Secretary of Fam Software Company Inc. It is to be noted that Mr. Ramesh Malik and Mr. Arbaaz, resident in India, are the persons who have been authorised by Fam Software Company Inc. to accept on behalf of the company service of process, notices or other documents required to be served on Fam Software Company Inc. In relation to the company's establishment, you are required to enlighten the Fam Company Inc. with respect to whose, a declaration will be required to be submitted to the Registrar of Companies by Fam Software Company Inc. for not being convicted or debarred from formation of companies in or outside India.

(a) Mr. Arjun, Mr. Ranveer, Mr. Ramesh Malik, Mr. Arbaaz and Ms. Lavina.

(b) Mr. Arjun, Mr. Ramesh Malik, Mr. Arbaaz and Ms. Lavina.

(c) Mr. Ramesh Malik and Mr. Arbaaz.

(d) Mr. Arjun, Mr. Ranveer, Mr. Ramesh Malik and Mr. Arbaaz.

(5) 5K Cosmetic Shop plc., a company incorporated in Switzerland, is involved in digital supply services through electronic mode, the server of which is located outside India. The company follows calendar year as its financial year. Every year the company is required to prepare a balance sheet and profit and loss account. You are required to choose the correct timeline within which such documents shall be filed with the Registrar of Companies considering the provisions of Chapter XXII of the Companies Act, 2013:

(a) Within a period of 30 days from the close of the financial year of 5K Cosmetic Shop plc.

(b) Within a period of 3 months from the close of the financial year of 5K Cosmetic Shop plc.

(c) Within a period of 60 days from the close of the financial year of 5K Cosmetic Shop plc.

(d) Within a period of 6 months from the close of the financial year of 5K Cosmetic Shop plc.

(6) Modern Books Publishers plc., a company incorporated in United Kingdom (UK) has a wholly owned subsidiary by the name Beta Periodicals Limited whose Registered Office is situated at Mumbai and which is engaged in publishing scientific, technical and speciality magazines, periodicals and journals. Beta Periodicals Limited considers itself to be a foreign company since it is a wholly owned subsidiary of Modern Books Publishers plc. which is a foreign company. From the four options given below, you are required choose the one which appropriately indicates whether Beta Periodicals Limited can be considered as a foreign company:

(a) Beta Periodicals Limited cannot be considered as a foreign company even if it is a wholly owned subsidiary of Modern Books Publishers plc. which is a foreign company.

(b) Beta Periodicals Limited shall be considered as a foreign company since it is a wholly owned subsidiary of Modern Books Publishers plc. which is a foreign company.

(c) Beta Periodicals Limited can be granted the status as a foreign company, if its holding company Modern Books Publishers plc. makes an application to the Regional Director having jurisdiction over New Delhi for considering its wholly owned subsidiary Beta Periodicals Limited a foreign company.

(d) Beta Periodicals Limited can be granted the status as a foreign company, if its holding company Modern Books Publishers plc. makes an application to the New Delhi Bench of National Company Law Tribunal for considering its wholly owned subsidiary Beta Periodicals Limited a foreign company.

[ICAI MCQ Booklet; MTP May 2022]

(7) Videshi Ltd., a foreign company established with a principal place of business at Kolkata, West Bengal. The company delivered various documents to Registrar or Companies. State the number of days and place where the said company shall deliver such documents.

(a) Within 15 days to the Central Government

(b) Within 15 days to the Registrar having jurisdiction over New Delhi

(c) Within 30 days to the Registrar having jurisdiction over west Bengal

(d) Within 30 days to the Registrar having jurisdiction over New Delhi

[Study Material; ICAI MCQ Booklet; MTP May 2020]

(8) **X Ltd., a foreign company along with the financial statement of FY 2020-2021 of its Indian business operations have to file statement of related party transactions, repatriation of profits and statement of transfer of funds with the Registrar latest by:**

(a) April 30, 2021

(b) June 30, 2021

(c) September 30, 2021

(d) December 31, 2021 **[MTP May 2021]**

(9) **Mannat Company LLC, a company incorporated outside India, proposes to establish a place of business in India through electronic made. Mannat Company LLC issued prospects to the citizens of India for subscription of Mannat company's securities. Mannat Company LLC has been into business for more than 2 years since the company received the commencement of business certificate. The prospectus was duly dated and singed but did not contain the particulars relating to the enactments under which Mannat Company was incorporated and does not provided with any details relating to any establishment in India. You as a pursing Chartered Accountant are required to examine the validity of the prospectus issued by Mannat Company LLC?**

(a) Yes, the prospectus issued is valid in law as it is duly dated and singed.

(b) No, the prospectus issued is invalid in law as it does not contain the particulars relating to the enactments under which the Mannat Company was incorporated.

(c) No, the prospectus issued is invalid in law as Mannat Company LLC does not have a place of business in India.

(d) No, the prospectus issued is invalid in law as it does not contain the particulars with respect to any establishment of a place of business in India.

[ICAI MCQ Booklet]

(10) **Aster Limited, a foreign company with a place of business in India was established to conduct the business online as to data interchange and other digital supply transactions. The said company failed to deliver within the prescribed time period, some desired documents to the Registrar of Companies in compliance to the Companies Act, 2013. Sate the penalty cast on Aster Limited for the cause of its failure.**

(a) Aster Ltd. punishable with fine upto ₹ 3,00,000 + additional fine upto ₹ 50,000 in case of continuing offence.

(b) Aster Ltd. punishable with fine extending upto ₹ 25,000 + additional fine upto ₹ 50,000 in case of continuing offence.

(c) Aster Ltd. punishable with fine extending upto ₹ 5,00,000 + additional fine upto ₹ 50,000 in case of continuing offence.

(d) Aster Ltd. punishable with fine levied ₹ 1,00,000 to ₹ 3,00,000 + additional fine upto ₹ 50,000 in case of continuing offence

[Study Material; ICAI MCQ Booklet]

ANSWER (MCQ)

(1)	(c)	**(2)**	(d)	**(3)**	(a)	**(4)**	(d)	**(5)**	(d)
(6)	(a)	**(7)**	(d)	**(8)**	(c)	**(9)**	(d)	**(10)**	(d)

Division B - Descriptive Questions

Question - 1

(i) ABC Ltd., a foreign company having its Indian principal place of business at Kolkata, West Bengal is required to deliver various documents to Registrar of Companies under the provisions of the Companies Act, 2013. You are required to state, where the said company should deliver such documents.

(ii) In case, a foreign company does not deliver its documents to the Registrar of Companies as required under section 380 of the Companies Act, 2013, state the penalty prescribed under the said Act, which can be levied

ANSWER

(i) The Companies Act, 2013 vide section 380 state that every foreign company is required to deliver to the Registrar for registration, within 30 days of the establishment of office in India, documents which have been specified therein.

According to the Companies (Registration of Foreign Companies) Rules, 2014, any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi.

(ii) 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 fine which shall not be less than 25,000 but which may extend to 5,00,000.

Question - 2

DEJY is a Company Limited incorporated in Singapore desires to establish a branch office at Mumbai. You being a practicing Chartered Accountant have been appointed by the company as a liaison officer for compliance of legal formalities on behalf of the company. Examining the provisions of the Companies Act, 2013, answer the following:

(i) Whether branch office will be considered as a company incorporated outside India.

(ii) If yes, state the documents you are required to furnish on behalf of the company, on the establishment of a branch office at Mumbai.

ANSWER

(i) 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 though an agent, physically or through electronic mode; and

b. Conducts any business activity in India in any other manner.

Further, branch offices are generally considered as reflection of the Parent Company' office.

Thus, branch offices of a company incorporated outside India are considered as a place of business for conducting business activity in India and will be required to follow provisions of this chapter and such other provisions as may be specified elsewhere under Companies Act, 2013.

(ii) Under section 380(1) of the Companies Act, 2013 every foreign company shall, within 30 days of the establishment of place of business in India, deliver to the Registrar for registration the following documents:

(a) A certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company. If the instruments are not in the English language, a certified translation thereof in the English language;

(b) The full address of the registered of principal office of the company;

(c) A list of the directors and secretary of the company containing such particulars as may be prescribed;

In relation to the nature of particulars to be provided as above, the Companies (Registration of Foreign Companies) Rules, 2014, provide that the list of directors and secretary or equivalent (by whatever name called) of the foreign company shall contain the following particulars, for each of the persons included in such list, namely:

(1) Personal name and surname in full;

(2) Any former name or names and surname or surnames in full;

(3) Father's name or mother's name or spouse's name;

(4) Date of birth;

(5) Residential address;

(6) Nationality;

(7) If the present nationality is not the nationality of origin, his nationality of origin;

(8) Passport Number, date of issue and country of issue; (if a person holds more than one passport then details of all passports to be given)

(9) Income-tax **Permanent Account Number (PAN)**, if applicable;

(10) Occupation, if any;

(11) Whether directorship in any other Indian company, **(Director Identification Number (DIN), Name and Corporate Identity Number (CIN)** of the company in case of holding directorship);

(12) Other directorship or directorships held by him;

(13) Membership Number (for Secretary only); and

(14) E-mail ID.

(d) The name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;

(e) The full address of the office of the company in India which is deemed to be its principal place of business in India;

(f) Particulars of opening and closing of a place of business in India on earlier occasion or occasions;

(g) Declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and

(h) Any other information as may be prescribed.

According to the Companies (Registration of Foreign Companies) Rules, 2014, any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi.

Question - 3

Galilio Ltd. is a foreign company in Germany, and it has established a place of business in Mumbai. Explain the relevant provisions of the Companies Act, 2013 and rules made thereunder relating to preparation and filing of financial statements, as also the documents to be attached alongwith the financial statements by the foreign company.

ANSWER

Preparation and filing of financial statements by a foreign company:

According to section 381 of the Companies Act, 2013:

(i) Every foreign company shall, in every calendar year, --

(a) Make out a balance sheet and profit and loss account in such form, containing such particulars and including or having attached or annexed thereto such documents as may be prescribed, and

(b) Deliver a copy of those documents to the Registrar.

According to the Companies (Registration of Foreign Companies) Rules, 2014, every foreign company shall prepare financial statement of its Indian business operations in accordance with Schedule III or as near thereto as possible for each financial year including:

(1) Documents that are required to be annexed should be in accordance with Chapter IX i.e. Accounts of Companies.

(2) The documents relating to copies of latest consolidated financial statements of the parent foreign company, as submitted by it to the prescribed authority in the country of its incorporation under the applicable laws there.

(ii) The Central Government is empowered to direct that, in the case of any foreign company or class of foreign companies, the requirements of clause (a) of section 381(1) shall not apply, or shall apply subject to such exceptions and modifications as may be specified in notification in that behalf.

(iii) If any of the specified documents are not in the English language, a certified translation thereof in the English language shall be annexed. [Section 381(2)]

(iv) Every foreign company shall send to the Registrar along with the documents required to be delivered to him, a copy of a list in the prescribed form, of all places of business established by the company in India as at the date with reference to which the balance sheet referred to in section 381(1) is made.

According to the Companies (Registration of Foreign Companies) Rules, 2014, every foreign company shall file with the Registrar, along with the financial statement, in Form FC-3 with such fee as provided under Companies (Registration Offices and Fees) Rules, 2014 a list of all the places of business established by the foreign company in India as on the date of balance sheet.

According to the Companies (Registration of Foreign Companies) Rules, 2014, if any foreign company ceases to have a place of business in India, it shall forthwith give notice of the fact to the Registrar, and as from the date on which notice is so given, the obligation of the company to deliver any document to the Registrar shall cease, if it does not have other place of business in India.

(v) According to be the Companies (Registration of Foreign Companies) Rules, 2014,

(a) Further, every foreign company shall, along with the financial statement required to be filed with the Registrar, attach thereto the following documents; namely: -

(1) Statement of related party transaction

(2) Statement of repatriation of profits

(3) Statement of transfer of funds (including dividends, if any)

The above statements shall include such other particulars as are prescribed in the Companies (Registration of Foreign Companies) Rules, 2014.

(b) All these documents shall be delivered to the Registrar within a period of 6 months of the close of the financial year of the foreign company to which the documents relate.

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) 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) Xen 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.

ANSWER

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 subscription 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, 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, Xen 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 Xen Limited Liability Company has a place of business in India through electronic mode and is conducting business activity in India.

Hence, Xen Limited Liability Company is a foreign company as per the Companies Act, 2013.

Question - 5

Abroad Ltd., a foreign company without establishing a place of business in India, proposes to issue prospectus for subscription of securities in India. Being a consultant of the company, advise on the procedure of such an issue of prospectus by Abroad Ltd.

ANSWER

As per section 389 of the Companies Act, 2013, no person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless before the issue, circulation or distribution of the prospectus in India, a copy thereof certified by the chairperson of the company and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the Registrar and the prospectus states on the face of it that a copy has been so delivered, and there is endorsed on or attached to the copy, any consent to the issue of the prospectus required by section 388 and such documents as may be prescribed under Rule 11 of the Companies (Incorporated outside India) Rules, 2014.

Accordingly, the Abroad Ltd. a foreign company shall proceed with the issue of prospectus in compliance with the above stated provisions of section 379 of the Act.

Question - 6

Jackson & Jackson LLC, incorporated in Germany, is proposing to establish a business in Mumbai, India. Its official documents are in German language. Whether Jackson & Jackson LLC can file the required documents with Registrar in the same language.

ANSWER

- Every foreign company shall, within 30 days of the establishment of its place of business in India, deliver the documents to the Registrar as per Section 380 of the Companies Act, 2013.
- Further, if the original instruments/ documents are not in the English language, a certified translation in the English language is required for the same and submitted to Registrar.

Question - 7

Swift Pharmaceuticals, a Company registered in Singapore, has started its business in India during the financial year 2016. The Company has submitted all the required documents with registrar within the due date. On March 1, 2023, Swift Pharmaceuticals has shifted its principal office in Singapore. Does the Company required to undertake any steps due to change in address of principal office.

ANSWER

- Section 380 (3) provides that where any alteration is made or occurs in the documents delivered to the Registrar under section 380, the foreign company shall, within 30 days of such alteration, deliver to the Registrar for registration, a return containing the particulars of the alteration in the prescribed form.
- The Companies (Registration of Foreign Companies) Rules, 2014, has prescribed that the return containing the particulars of the alteration shall be filed in form FC-2 along with prescribed fees.
- Accordingly, Swift Pharmaceuticals is required to submit the full address of the new registered or principal office of the company by March 30, 2023.

Division C - Case Study Based MCQ

Parfum International SA, founded by Charlotte and Charles in Nice, France, is a key player in the perfume industry since 1980. Dealing in perfumes, fragrances, colognes, incenses, etc., its products are considered as a scent of energy, liveliness and happiness. The classic bottles containing the admirable products of the company signify personal luxury and are a welcome addition to any dressing table. The fragrances comprise notes of bergamot, lemon, jasmine, patchouli, vetiver, opoponax, sandalwood and ambergris.

Parfum International SA has an extensive distribution network consisting of subsidiaries and joint ventures. Its products are sold world over occupying space in 25 countries. The perfumes are very successful in Europe, Asia, Middle East and in North and South America.

A market survey conducted by Parfum International SA in India astonishingly revealed that the company was missing a vital market of the world. In order to make its presence felt in India, Parfum International SA decided to open its first business outlet in Bandra East, Mumbai, by investing around ₹ 5.00 crore. Ratnesh Shah was appointed as company secretary of the company to look after legal and secretarial matters.

Under the supervision of Ratnesh Shah, various documents were prepared for submission to the jurisdictional Registrar of Companies. These documents included a certified copy of the Charter of the company defining its constitution, a list of the directors and secretary of the company containing the prescribed particulars, names and addresses of two persons resident in India who were authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company, full address of its principal place of business in India, a declaration which stated that none of the directors of the company or the authorised representative in India had ever been convicted or debarred from formation of companies and management in India or abroad, etc. Since the Charter of the company was in French language, it was translated into English for the purpose of filing. As regards particulars of opening and closing of a place of business in India on earlier

occasions, a 'Nil' statement was prepared for submission since Parfum International SA was opening its very first outlet in Mumbai.

Further to this, a signboard exhibiting the name of the company i.e. Parfum International SA and the name of the country of its incorporation i.e. France, in French and also in Marathi was prepared for hanging outside the business outlet in Bandra East.

Various documents, as prepared under the guidance of Ratnesh Shah, were duly filed with the Registrar of Companies.

It is obligatory on the part of Parfum International SA to make out every calendar a balance sheet and profit and loss account of its Indian business operations in the prescribed form containing prescribed particulars and annexing thereto specified documents. The company is also required to prepare and file its Annual Return in the prescribed form containing the particulars as they stood on the close of the financial year.

As per the plans of the company, during next three years, it will open at least 10 outlets in major cities of the country like Delhi, Bangalore, Kolkata, Chandigarh, Lucknow, etc.

Based on above, answer the following questions:

(1) According to the case scenario, Parfum International SA, incorporated in France, established its first business outlet in Bandra East, Mumbai and exhibited on the signboard its name and the name of the country of its incorporation in French and Marathi. From the following options, choose the one which indicates the correct combination of languages to be used by the company to display its name and name of the country of its incorporation:

(a) Since Parfum International SA established its business outlet in Bandra East, Mumbai, it needs to use English and Marathi languages on the signboard which displays its name and the name of the country of its incorporation.

(b) Since Parfum International SA established its business outlet in Bandra East, Mumbai, it needs to use Hindi and Marathi languages on the signboard which displays its name and the name of the country of its incorporation.

(c) Since Parfum International SA is a French company, it has correctly used French and Marathi languages to display its name and the name of the country of its incorporation on the signboard hanging outside its business outlet in Bandra East, Mumbai.

(d) Since Parfum International SA established its business outlet in Bandra East, Mumbai, it needs to use French and Hindi languages on the signboard which displays its name and the name of the country of its incorporation.

(2) Maximum within how much time, Parfum International SA, after establishing its business outlet in Mumbai, is required to file various documents with the jurisdictional Registrar of Companies? Select the correct answer from the following options:

(a) Parfum International SA is required to file various documents with the jurisdictional Registrar of Companies maximum within 15 days of establishment of its business outlet in Mumbai.

(b) Parfum International SA is required to file various documents with the jurisdictional Registrar of Companies maximum within 30 days of establishment of its business outlet in Mumbai.

(c) Parfum International SA is required to file various documents with the jurisdictional Registrar of Companies maximum within 45 days of establishment of its business outlet in Mumbai.

(d) Parfum International SA is required to file various documents with the jurisdictional Registrar of Companies maximum within 60 days of establishment of its business outlet in Mumbai.

(3) According to the case scenario, it is obligatory on the part of Parfum International SA to make out every calendar a balance sheet and profit and loss account of its Indian business operations in the prescribed form containing prescribed particulars and annexing thereto specified documents. Out of the four options given below, which one is applicable for making out a balance sheet and profit and loss account of its Indian business operations:

(a) Being a French company, Parfum International SA is required to make out every calendar a balance sheet and profit and loss account of its Indian business operations in accordance with French Commercial Code.

(b) Being a French company, Parfum International SA is required to make out every calendar a balance sheet and profit and loss account of its Indian business operations in accordance with Schedule III of the Companies Act, 2013.

(c) Being a French company, Parfum International SA is required to make out every calendar a balance sheet and profit and loss account of its Indian business operations in accordance with International Accounting Standards.

(d) Being a French company, Parfum International SA is required to make out every calendar a balance sheet and profit and loss account of its Indian business operations in accordance with French Generally Accepted Accounting Principles (French GAAP), called Plan Comptable Général (PCG).

(4) Maximum within how much time, Parfum International SA is required to file its Annual Return with the jurisdictional Registrar of Companies? Choose the correct option from those stated below:

(a) Parfum International SA is required to file its Annual Return with the jurisdictional Registrar of Companies maximum within a period of thirty days from the last day of its financial year.

(b) Parfum International SA is required to file its Annual Return with the jurisdictional Registrar of Companies maximum within a period of sixty days from the last day of its financial year.

(c) Parfum International SA is required to file its Annual Return with the jurisdictional Registrar of Companies maximum within a period of ninety days from the last day of its financial year.

(d) Parfum International SA is required to file its Annual Return with the jurisdictional Registrar of Companies maximum within a period of one hundred and twenty days from the last day of its financial year.

[MTP May 2022]

ANSWER

(1)	(a)	**(2)**	(b)	**(3)**	(b)	**(4)**	(b)